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8
9 **UNITED STATES DISTRICT COURT**
10 **FOR THE EASTERN DISTRICT OF CALIFORNIA -**
11 **BAKERSFIELD DIVISION**

12
13 NADIA ROBERTS, an individual; SEAN) CASE NO.
14 ROBERTS, an individual; BERNHARD)
15 GUBSER, an individual; HEIDI GUBSER,) COMPLAINT FOR:
16 an individual; ANTON GINZBURG, an) 1. Fraudulent Misrepresentation and
17 individual; ARTHUR JOEL EISENBERG,) Concealment
18 an individual; JEFFREY CHERNICK,) 2. Constructive Fraud
19 individually and on behalf of SHAMBA, a) 3. Negligent Misrepresentation
20 foreign corporation AND SIMBA, a foreign) 4. Fraud in Connection with the
21 corporation,) Purchase or Sale of Securities –
22) Violations of Section 10(b) of the
23) Exchange Act and Rule 10b-5
24) 5. Damages for Sale of Securities by
25) Means of Communications
26) Containing False Statements and
27) Omissions [Cal. Corp §§ 25401 and
28) 25501]
) 6. Breach of Fiduciary Duties
) 7. Violation of U.S.C. § 1962 (c) –
) Federal RICO
) 8. Violation of 18 U.S.C. § 1962 (d) –
) Federal RICO Conspiracy
) 9. Professional Malpractice
) 10. Disgorgement of Unethical
) Excessive & Illegal Fees
) 11. Civil Conspiracy
) 12. Unfair Business Practices Act [Cal.
) Bus. & Prof. Code §17200]
) 13. Violation of Texas Deceptive
) Practice Act [Tex. Bus. & Com.
) Code §§17.41]
) 14. Deceptive Acts and Practices

20 Plaintiffs,
21 v.
22 UBS AG, a foreign Swiss corporation;
23 MICHEL GUIGNARD, an individual;
24 MARTIN LIECHTI, an individual; RAOUL
25 WEIL, an individual; CHRISTIAN
26 BOVAY, an individual; GILBERT BENZ,
27 an individual, ROGER HARTMANN, an
28 individual, PHILLIP BIGGER an
individual, JUERGEN HIRSCH, an
individual, KENNY PANG an individual,

1	HANS THOMANN, an individual,)	Unlawful [N.Y. Gen. Bus. Law §
2	MARCEL BEELER, an individual,)	349]
3	GILBERT BENZ, an individual, RAOUL)	15. Unfair Business Practices [Rev.
4	WEIL, an individual, GERARD)	Code. Wash. §19.86.020]
5	HOFMANN, an individual, CHARLES)	16. Breach of Contract
6	FALK, an individual, CLAUDE ULLMAN,)	17. Conversion
7	an individual, BJORN MULLI, an)	18. Breach of Confidentiality
8	individual, GIAN GISLER, an individual,)	19. Accounting
9	DANIEL PERRON, an individual, BEDA)	20. Declaratory Relief
10	SINGENBERGER, an individual, SINCO)	
11	TRULAND AG, a foreign Swiss business)	
12	entity, form unknown, HANSRUEDI)	
13	SCHUMACHER, an individual,)	
14	MATTHIAS RICKENBACH, an individual,)	
15	RICKENBACH & PARTNER, a foreign)	
16	Swiss business entity, form unknown,)	
17	GILBERT ZELLWEGER, an individual,)	
18	THE BANK OF N.T. BUTTERFIELD &)	
19	SON LIMITED a foreign Bermuda business)	
20	entity, form unknown, WEGELIN & CO. a)	
21	foreign Swiss limited partnership, DELTA)	
22	INVESTMENT PARTNER AG, a foreign)	
23	Swiss business entity, form unknown, NZB)	
24	NEUE ZURCHER BANK a foreign Swiss)	
25	business entity, form unknown, ZURCHER)	
26	KANTONALBANK, a foreign Swiss)	
27	business entity, form unknown,)	
28)	
	Defendants.)	

DEMAND FOR JURY TRIAL

INTRODUCTION

1. In early 2000, the world's largest investment banking firm, UBS AG, was faced with new IRS requirements that threatened the very existence of U.S.-based business for the Swiss firm. Its response was to hatch and execute a strategy so perfect that it took eight years for the IRS to catch up to it, only to be punished with a meager slap on the wrist. This meticulously thought out plan involved dozens of board members, directors, and employees and included the cooperation of several third parties

1 located in the United States, Switzerland and Liechtenstein. Left in the wake of the
2 UBS-IRS clash were tens of thousands of U.S. customers many of whom were naïve
3 pawns believing they were acting within the law. The instant group of Plaintiffs falls
4 within this group of pawns.

5 2. The Defendants' plan was so perfectly thought out that it placed its
6 customers in a position where it would be difficult to seek recourse against the bank once
7 the wheels fell off the bus. Having finally been caught and making several full public
8 confessions of their intent to defraud the U.S. and its customers, it is now time for UBS
9 AG to make its customers whole.

10 3. UBS AG acted duplicitously as it reported Plaintiffs to the U.S. Treasury as
11 tax violators, in violation of Swiss law. In some instances, UBS AG siphoned money
12 from Plaintiffs as "compensation" for providing false information that these parties were
13 not being investigated by the Department of Justice ("DOJ"). In other instances, UBS
14 AG simply refrained from informing its customers anything at all, waiting until much too
15 late to provide its required notice. Meanwhile, UBS AG wrongfully took control over the
16 Plaintiffs' respective accounts, arbitrarily freezing assets, and advising them that their
17 investments were properly identified for tax purposes or otherwise placed in IRS-
18 compliant vehicles.

19 4. In truth, UBS AG concealed key information from Plaintiffs, intentionally
20 failing to send proper instructions and tax documents for tax filing purposes, and sending
21 documents in direct contravention to U.S. reporting requirements in accordance with a
22 2001 Qualified Intermediary Agreement UBS AG had signed with the U.S. Government
23 mere months before carrying out its scheme.

24 5. For Plaintiffs, this scheme robbed them of millions of dollars in unwarranted
25 service fees, legal fees, and inappropriate investments. It also placed them and their
26 family years of tremendous stress, unnecessary criminal investigations, threats of or
27 actual incarceration, audits by the Internal Revenue Service and the DOJ. Further, the
28 scheme has caused each of them to incur millions of dollars in tax penalties, interest and

1 professional fees while forever tarnishing their good names and business reputations. All
2 for what amounted to be mere thousands of dollars in taxes which none of these Plaintiffs
3 had any intention of evading.

4 **JURISDICTION AND VENUE**

5 6. This Court has jurisdiction over the subject matter of this action
6 pursuant to 28 U.S.C. §1332(d) because: (a) there is a federal question regarding
7 whether or not Defendants violated Rule 10(b) of the Exchange Act and/or 18 U.S.C. §
8 1962(c) (Civil RICO), (b) the claims of Plaintiffs exceed \$75,000.00 and Plaintiffs are
9 diverse from at least one Defendant, and (c) the Court maintains pendent jurisdiction
10 over the state statutory and common law Claims for Relief. Venue is proper in this
11 District pursuant to 28 U.S.C. §1391 because a substantial part of the events giving rise
12 to the claims asserted herein occurred and caused damages in this district. Additionally,
13 pursuant to F.R.C.P. Rule 20, Plaintiffs may be joined since they assert several claims
14 arising out of the same occurrence and series of occurrences.

15 **THE PARTIES**

16 7. NADIA ROBERTS is, and at all times relevant to this action was, an
17 individual residing in the County of Kern, California.

18 8. SEAN ROBERTS is, and at all times relevant to this action was, an
19 individual residing in the County of Kern, California.

20 9. BERNHARD GUBSER is, and at all times relevant to this action
21 was, an individual residing in the State of Texas

22 10. HEIDI GUBSER is, and at all times relevant to this action was, an
23 individual residing in the State of Texas.

24 11. ANTON GINZBURG is, and at all times relevant to this action was,
25 an individual residing in the State of New York.

26 12. ARTHUR JOEL EISENBERG is, and at all times relevant to this
27 action was, an individual residing in the State of Washington.

28

1 13. JEFFREY CHERNICK is, and at all times relevant to this action was,
2 an individual residing in the State of New York.

3 14. Plaintiff SHAMBA is and at all times relevant to this action was, a
4 Hong Kong corporation, headquartered and primarily conducting business in the Hong
5 Kong, China.

6 15. Plaintiff SIMBA is and at all times relevant to this action was, a
7 Liberia corporation, headquartered and primarily conducting business in the Hong Kong,
8 China (“JEFFREY CHERNICK,” “SHAMBA,” and “SIMBA” shall sometimes
9 collectively be referred to as “JEFFREY CHERNICK” when referring to property and
10 investment accounts owned by these entities. Such references are made for ease of
11 pleading only and shall not be construed or indicative of any commonality or lack of
12 separateness between the individual and the corporate entity).

13 16. Plaintiff is informed and believes and thereon alleges that Defendant
14 UBS AG (“UBS AG”) is, and at all relevant times was, a foreign Swiss corporation, and
15 doing business in the United States of America (“U.S.”) and within the County of
16 Orange, California. UBS AG, is a foreign banking and investment firm located in
17 Switzerland, operating worldwide branches including in California, Connecticut, Illinois,
18 New York and Florida. The California and Florida branches are federally licensed by
19 the Office of the Comptroller of the Currency. Additionally, the Board of Governors of
20 the Federal Reserve System exercises examination and regulatory authority over UBS
21 AG’s state-licensed U.S. branches. On April 10, 2000, UBS AG was designated a
22 “financial holding company” under the Bank Holding Company Act of 1956. Such
23 financial holding companies may engage in a broader spectrum of activities, including
24 underwriting and dealing in securities. Regulations applicable to UBS AG and its
25 subsidiaries impose obligations to maintain appropriate policies, procedures and controls
26 to detect, prevent and report money laundering, terrorist financing and to verify the
27 identity of its customers. Failure to maintain and implement such adequate programs
28 results in serious consequences for the firm, both legally and in terms of its reputation.

1 17. UBS AG, UBS Securities LLC and UBS Financial Services, Inc., as
2 well as UBS's other U.S. registered broker-dealer entities are subject to regulations, by
3 the Securities and Exchange Commission, the Financial Industry Regulatory Authority,
4 the New York Stock Exchange, Municipal Securities Rulemaking Board, the U.S.
5 Department of the Treasury, and the Commodities Futures Trading Commission.

6 18. Defendant UBS AG ("UBS AG") is, and at all relevant times was, a
7 foreign Swiss corporation, and doing business in the United States of America, including
8 New York. UBS AG is a corporation that has its principal offices in Basel and Zurich,
9 Switzerland. UBS AG is a global financial services company, and is registered as a
10 public corporation in the United States with the New York Stock Exchange ("NYSE").
11 UBS AG offers banking, securities, trading, brokerage and related products, and Wealth
12 Management services. Additionally, the Board of Governors of the Federal Reserve
13 System exercises examination and regulatory authority over UBS AG's state-licensed
14 U.S. branches. On April 10, 2000, UBS AG was designated a "financial holding
15 company" under the Bank Holding Company Act of 1956. Such financial holding
16 companies may engage in a broader spectrum of activities, including underwriting and
17 dealing in securities. Regulations applicable to UBS AG and its subsidiaries impose
18 obligations to maintain appropriate policies, procedures and controls to detect, prevent
19 and report money laundering, terrorist financing and to verify the identity of its
20 customers. Failure to maintain and implement such adequate programs results in serious
21 consequences for the firm, both legally and in terms of its reputation.

22 19. Defendant Phillip Bigger ("Bigger") upon information and belief, is,
23 and at all relevant time was, a citizen of Switzerland and was an agent of Swiss Bank
24 Corporation ("SBC") throughout the 1990s and thereafter for UBS AG as an Executive
25 Director of North America handling accounts with \$50,000,000 or more for UBS AG
26 requiring travel and the conducting of business to New York and the U.S., including
27 business conducted with Plaintiffs, from at least 1998 through July 2008. It is further
28 believed that Bigger is currently assigned to UBS AG's Mexico office.

1 20. Defendant Juergen Hirsch (“Hirsch”), upon information and belief,
2 is, and at all relevant time was, a citizen of an unknown country and was an agent of
3 UBS Hong Kong as an account advisor whose specific title is unknown. Hirsch
4 conducted business with U.S. clients, including Plaintiffs, from 2002 through 2006.

5 21. Defendant Kenny Pang (“Pang”), upon information and belief, is, and
6 at all relevant time was, citizen of Hong Kong and acted as an agent of UBS Hong Kong
7 as a financial advisor who conducted business with U.S. clients, including Plaintiffs,
8 around the year 2004.

9 22. Defendant Hans Thomann (“Thomann”), upon information and
10 belief, is, and at all relevant time was, a citizen of Switzerland and was an agent of UBS
11 AG as a account advisor/executive director whose specific title is unknown and whose
12 business required travel to the U.S. to meet with clients, including Plaintiffs, from at
13 least 2000 through approximately 2004 whereupon Thomann became an agent of Delta
14 Investment Partner AG (“Delta”). Thomann worked as a financial advisor at Delta.
15 Thomann’s specific title is unknown, but, upon information and belief, he served as an
16 investment advisor and traveled to New York and the U.S. in order to advise clients,
17 including Plaintiffs, concerning investments from approximately 2005 until at least
18 December 31, 2008.

19 23. Defendant Marcel Beeler (“Beeler”), upon information and belief, is,
20 and at all relevant time was, a citizen of Switzerland and was an agent of UBS AG as a
21 financial advisor whose specific title is unknown and whose business required travel to
22 New York and the U.S. to meet with clients, including Plaintiffs, from at least 2003
23 through approximately 2004.

24 24. Defendant Gilbert Benz (“Benz”), upon information and belief, is,
25 and at all relevant time was, a citizen of an unknown country and was an agent of UBS
26 AG as a Executive Director and whose business was conducted through travel to New
27 York and the U.S. to meet clients, including Plaintiffs, in either 2003 or 2004.
28

1 25. Defendant Raoul Weil (“Weil”), upon information and belief, is, and
2 at all relevant times was, a citizen of an unknown country and the Chairman and CEO of
3 UBS AG’s Global Wealth Management & Business Banking Division, who conducted
4 business in the U.S.

5 26. Defendant Björn Mülli (“Müllli”), upon information and belief, is,
6 and at all relevant times was, a citizen of unknown country and banker employed by
7 UBS AG’s Global Wealth Management & Business Banking Division, who conducted
8 business in the U.S.

9 27. Defendant Gerard Hofmann (“Hofmann”), upon information and
10 belief, is, and at all relevant times was, a citizen of unknown country and banker
11 employed by UBS AG’s Global Wealth Management & Business Banking Division,
12 who conducted business in the U.S.

13 28. Defendant Charles (“Faulk”), upon information and belief, is, and at
14 all relevant times was, a citizen of unknown country and banker employed by UBS AG’s
15 Global Wealth Management & Business Banking Division, who conducted business in
16 the U.S.

17 29. Defendant Claude Ullman (“Ullman”), upon information and belief,
18 is, and at all relevant times was, a citizen of unknown country and banker employed by
19 UBS AG’s Global Wealth Management & Business Banking Division, who conducted
20 business in the U.S.

21 30. Defendant Gian Gisler (“Gisler”), upon information and belief, is,
22 and at all relevant times was, a citizen of unknown country and banker employed by
23 UBS AG’s Global Wealth Management & Business Banking Division, who conducted
24 business in the U.S.

25 31. Defendant Daniel Perron (“Perron”), upon information and belief, is,
26 and at all relevant times was, a citizen of unknown country and Director of UBS AG’s
27 Global Wealth Management & Business Banking Division, who conducted business in
28 the U.S.

1 32. Defendant Beda Singenberger (“Singenberger”), upon information
2 and belief, is, and at all relevant times was, a citizen of unknown country and owner of
3 Sinco Truland AG, who conducted a legal services business in the U.S. vis-à-vis
4 engagement by UBS AG to set up third party trusts.

5 33. Defendant Hansruedi Schumacher (“Schumacher”), upon information
6 and belief is, and at all relevant time was, a citizen of Switzerland, and from the late
7 1990s through mid-2002 an agent of UBS AG as a Regional Market Manger for UBS’s
8 North America International business including U.S. cross-border business. In this
9 capacity Schumacher was required to travel to the U.S. to meet clients, including
10 Plaintiffs. In mid-2002 Schumacher became an agent of Defendant NZB Neue Zurcher
11 Bank as a private banker and executive manager and traveled to New York and the U.S.
12 to meet with clients, including Plaintiffs, to conduct business from mid-2002 through at
13 least July 2009. Currently, Schumacher has been declared as a fugitive from justice as a
14 result of his flight and evasion of U.S. authorities in connection with criminal
15 prosecution initiated as a consequence of his involvement in the events described below.

16 34. Defendants’ Bigger, Pang, Thomann, Hirsch, Beeler, Benz,
17 Rickenbach, Weil, Hofman, Falk, Ullman, Mulli, Sinco Truland AG, Gisler, Perron,
18 Singenberger, and Schumacher are hereinafter referred to collectively as the “UBS AG
19 Defendants.”

20 35. Defendant Matthias W. Rickenbach (“Rickenbach”) upon
21 information and belief, is, and at all relevant times was, a citizen of Switzerland and a
22 partner of Rickenbach Firm. Upon information and belief, Rickenback received a
23 masters degree in tax law from the University of San Diego in 1999 and had a contract to
24 provide legal advice to UBS and NZB Neue Zurcher Bank, The Bank of N.T. Butterfield
25 & Son Limited, and Delta Investment Partner AG clients, including Plaintiffs, through
26 office visits in Switzerland and travels to New York and the U.S., concerning the setting
27 up of trusts and fictitious corporate “sham” entities in addition to providing tax advice.
28 Currently, Rickenbach has been declared a fugitive from justice as a result of his flight

1 and evasion of U.S. authorities in connection with criminal prosecution initiated as a
2 consequence of his involvement in the events described below.

3 36. Defendant Rickenbach & Partner (“Rickenbach Firm”), upon
4 information and belief, is, and at all relevant times was, a Switzerland corporate entity
5 located in Zurich and was a law firm that advised clients, including Plaintiffs, on matters
6 including trusts and estates and Swiss and U.S. tax law. From 2002 until approximately
7 2007 Rickenbach Firm sent at least one agent into New York and the U.S. to conduct its
8 law practice in connection to its business arrangements with Defendants UBS AG and
9 NZB Neue Zurcher Bank.

10 37. Defendant Gilbert Zellweger (“Zellweger”), upon information and
11 belief, is, and at all relevant times was, a citizen of an unknown country and was an agent
12 of Schumacher, a former UBS AG employee, and may have been an employee of NZB
13 under Schumacher. Zellweger used Julius Bear as his clients’ clearing agent. Zellweger
14 solicited investments in Swiss accounts from U.S. citizens.

15 38. Defendant The Bank of N.T. Butterfield & Son Limited
16 (“Butterfield”) is a publicly traded Bermuda Corporation with shares listed on the
17 Bermuda and Cayman Island exchanges and conducted business with customers in the
18 U.S., including Plaintiffs. Butterfield is a full service community bank and a provider of
19 specialized international financial services encompassing retail, corporate banking, and
20 treasury activities. In the wealth management area, Butterfield provides private banking,
21 asset management, and personal trust services from its headquarters in Bermuda and
22 subsidiary offices in The Bahamas, the Cayman Islands, Guernsey, Switzerland and the
23 United Kingdom.

24 39. Defendants’ Butterfield, Rickenbach, and Schumacher are hereinafter
25 referred to collectively as the “Butterfield Defendants.”

26 40. Defendant Wegelin & Co. (“Wegelin”) is a foreign Switzerland
27 limited partnership that conducted business with clients in the U.S., including Plaintiffs.
28

1 Wegelin specializes in developing customized wealth management and retirement
2 planning solutions for clients.

3 41. Defendant Delta is a foreign Switzerland entity, form unknown, that
4 provides investment advisory services for clients and conducts business for U.S. clients,
5 including Plaintiffs.

6 42. Defendants' Thomann, Wegelin, and Delta Investment, are
7 hereinafter referred to collectively as the "Wegelin Defendants."

8 43. Defendant NZB Neue Zurcher Bank ("NZB") is a foreign
9 Switzerland private bank, form unknown, established in 2000 by three bankers formerly
10 employees of Bank Julius Baer. In 2001, NZB became a member of the Swiss stock
11 exchange. NZB conducts business in the U.S. by sending its agents to New York and
12 the U.S. and soliciting business from U.S. citizens.

13 44. Defendant Zurcher Kantonalbank ("Kantonalbank") is a foreign
14 Switzerland private bank, form unknown, and is the largest cantonal bank and leading
15 financial services provider in the greater Kantonalbank area. Kantonalbank conducts
16 business in the U.S. by holding account assets of U.S. clients, including Plaintiffs, at the
17 bank.

18 45. Defendants' Rickenbach, Schumacher, Zellweger, and Kantonalbank,
19 are hereinafter referred to collectively as the "NZB Defendants."

20 46. Plaintiff is unaware of the true names, capacities, or basis for liability
21 of defendants DOES 1 through 10, inclusive, and therefore sues said defendants by their
22 fictitious names. Plaintiff will amend this complaint to allege their true names,
23 capacities, or basis for liability when the same has been ascertained. Plaintiff is
24 informed and believes and thereon alleges that defendants, DOES 1 through 10,
25 inclusive, and each of them, are in some manner liable to plaintiff. Plaintiff is entitled to
26 name DOE defendants pending discovery to identify additional defendants connected
27 with the already-identified corporation defendants. (*Johnson v. City of Erie,*
28 *Pennsylvania*, 834 F. Supp. 873 (W.D.Pa.1993) and *Wilkins v. Bittenbender*, 2006 WL

1 860140.) Indeed, diversity jurisdiction is already established based on the residences of
2 already-identified defendants, hereinabove, and as set forth herein below. Moreover,
3 federal question jurisdiction exists as more fully detailed in Paragraph 3, *supra*.

4 FACTUAL STATEMENT

5 UBS AG's Scheme

6 47. In the years prior to January 2001, the United States Treasury Department
7 estimated that it lost billions of dollars in taxes owed by U.S. citizens from their
8 overseas investments. To end this practice, the U.S. Treasury advised foreign banks,
9 such as UBS AG and others, that if they wished to continue conducting business in the
10 U.S. with its citizens, it would be required to enter into what became known as the
11 Qualified Intermediary ("QI") Agreement.

12 48. Under the QI Agreement, UBS AG was required to agree to have UBS AG
13 customers complete IRS Forms W-8BEN or W-9, both of which required the beneficial
14 owner of any accounts to be identified on the form if they believed or knew that person
15 to be a U.S. citizen or resident. If a U.S. client was deemed by UBS AG to have
16 "refused" QI Agreement identification, UBS AG purported to agree to withhold and pay
17 over to the U.S. Treasury a twenty-eight percent (28%) withholding tax on U.S. source
18 payments and then bar the client from holding U.S. investments. Additionally, the sales
19 proceeds, interest and dividends earned on non-U.S. investments, if the purchase or sale
20 of the investment was made as a result of contact (in person, via email, telephone or
21 facsimile) with a U.S. client in the U.S., was subject to the Bank issuing IRS Form 1099
22 reporting requirements or twenty-eight percent (28%) withholding.

23 49. Since compliance with the QI requirements would result in the elimination
24 of the bank's and Switzerland's well-known account secrecy, requiring taxation of its
25 U.S. based customers would result in a significant reduction in the investment returns for
26 its U.S. clients. Without being able to offer greater returns on investments, UBS AG
27 feared its U.S. clients would invest in U.S. based banks and would the bank would suffer
28 from the reduction in wealthy individuals holding accounts with UBS AG's investment

1 management services. In turn, the reduction in wealth client accounts would cause UBS
2 AG to suffer a tremendous blow to its bottom line as well as a blow to the compensation
3 to its executives and directors.

4 50. In response to this impending death knell, UBS AG's board and executives
5 met in 1999 and 2000 to strategize how to best respond to the U.S.'s pressure. In
6 approximately late 1999, the decision was made to act with duplicity toward the IRS and
7 U.S. wealthy customers. Specifically, UBS AG would inform the IRS that it would
8 agree to the QI Agreement terms while devising a scheme to avoid doing just that.

9 51. As it would turn out, depending on the source of invested funds, UBS AG
10 had an action plan to manipulate its U.S. customers such that UBS AG would avoid its
11 own compliance with the QI Agreement while also misleading its customers regarding
12 taxes and reporting responsibilities, as follows:

- 13 a. UBS AG advised the use of third party trust entities, did not comply
14 with its advisement-disclosure-withholding duties under the QI
15 Agreement; and
- 16 b. UBS AG encouraged inherited offshore accounts to remain in said
17 offshore accounts and concealed the QI Agreement requirements.

18 UBS went so far as to advise its clients that taxes were not required to be paid
19 unless and until a client brought its money into the U.S., or otherwise repatriated it.

20 52. UBS AG contracted professional service companies, such as the
21 Rickenbach Firm, and "Financial Intermediaries" (referred to by UBS as "FIMs") to
22 create the appearance of legality and independent recommendation and counsel in order
23 to perpetrate their unlawful scheme to avoid the terms of the QI Agreement. UBS AG's
24 scheme ultimately exposed its U.S. clients, including each Plaintiff, to criminal
25 investigation, felony charges, imprisonment, unnecessary tax and FBAR penalties, back
26 payment fees, emotional distress, and loss of business reputation.

27 53. Following the aforementioned 1999-2000 board meetings, UBS AG made a
28 company-wide statement to its wealth management executives that it was committed to

1 providing secret private banking services to U.S. citizens notwithstanding the QI
2 Agreement and in direct contravention of the agreement. UBS AG and UBS AG
3 Defendants continued to reinforce the message that their private wealth management
4 executives had directed them to, and did, deliver to their U.S. clients, including each
5 Plaintiff, was that said customers would continue to enjoy their respective privacy and
6 secrecy citing Swiss Law and the bank's relationship with the IRS.

7 54. As admitted by UBS AG, its directors and management established written
8 policies and guidelines to effectuate the scheme in an effort to gain additional U.S.
9 clients and investments under the fraudulent promises of lawful tax planning strategies.

10 55. UBS AG's actions and promises were not lawful as the UBS AG
11 Defendants and co-conspirators had presented them to be to U.S. clients, including each
12 Plaintiff. Due to UBS AG's sheer size, purported expertise and respectable worldwide
13 position, the firm was able to manipulate its clients, including Plaintiffs. UBS AG
14 Defendants were eager to grow this business and revenue stream from wealthy U.S.
15 citizens at any expense, including through unlawful and fraudulent means and methods.

16 56. Accordingly, UBS AG directly authorized and encouraged UBS AG
17 Defendants, and other wealth management executives to regularly travel to the U.S. to
18 solicit new clients and solicit the sale of securities while conducting banking for existing
19 U.S. clients. Moreover, UBS AG sponsored formal dinners and seminars, visiting art
20 shows, sailing regattas, and other such events to facilitate contact with wealthy citizens
21 and instruct them in means for transferring assets undetected by the IRS and other U.S.
22 tax agencies. UBS AG trained its executive bankers in techniques to avoid questioning
23 by U.S. law enforcement by falsely stating their purpose of travel to be recreational
24 rather than business on U.S. Customs entry forms. Additionally, UBS AG instructed
25 agents to travel quietly and to not be tracked by authorities while in the U.S. Upon
26 information and belief, UBS AG trained its agents to conceal and transfer clients'
27 account funds and assets overseas without detection. UBS AG and UBS AG Defendants
28 also trained their agents how to present to, and swindle, prospective and existing clients

1 into believing that UBS AG's careful advice and account handling was legal and within
2 IRS regulations. UBS AG's management, Board of Directors and others, were aware of,
3 encouraged, directed, authorized and commanded UBS AG employees, including UBS
4 AG Defendants to execute their fraudulent and unlawful scheme against U.S. citizens,
5 including each Plaintiff.

6 57. For the purposes of specifying some of UBS AG's, UBS AG Defendants',
7 and UBS AG directors and management unlawful policies and guidelines, the following
8 are examples of documents created by UBS AG designed to defraud Plaintiffs and U.S.
9 authorities:

10 a. In a document entitled "Review of US Resident Non-W9 Business Legal
11 and Compliance" dated December 10, 2004, authored by J Watson and
12 Franz Zimmermann and published by UBS AG Wealth Management &
13 Business Bank, Risk and Compliance division, UBS AG addresses the
14 risks due to UBS AG's violation of the QI agreement in the handling of
15 U.S. accounts. Specifically the document examines the firm's failure to
16 provide W-9 information for U.S. account holders. Key findings
17 include:

18 i. "The number of account relationships in [UBS Wealth
19 Management and Business Banking "WM&BB"] in Switzerland
20 with US residents where the account holder has not provided a W-
21 9 is approximately 52,000 (representing CHF 17 billion in
22 assets)."

23 ii. "UBS AG, Switzerland, is not licensed to conduct regulated
24 activities within the US. The primary risk facing WM&BB
25 therefore in dealing with US Residents generally (whether or not
26 W9s), is that we are alleged by the SEC to have carried on
27 securities related activities within the US for US persons against
28 SEC regulation. Specifically this is the risk that WM&BB has

1 communicated within or into the US to US Persons regarding
2 securities.”

3 iii. Actions taken by UBS to limit detection risk include efforts to
4 ensure that UBS does “not enter into postal or e-mail
5 communication into the US regarding the portfolios”; “increase
6 the number of relationships that require no (or little)
7 communication into the US”; and creating guidelines and training
8 materials for Client Advisors “indicating the limits of what they
9 can do with respect to communicating into the US”.

10 iv. “In the last year, we are advised that 32 different Client Advisors
11 from BS NAM have traveled to the US on business. On average,
12 each Client Advisor visited the US for 30 days per year, seeing 4
13 clients per day. This means that approximately 3,800 clients are
14 visited in the US per year by WM&BB Client Advisors based in
15 Switzerland.”

16 b. In a document entitled “US crossborder business model/QI: Sales
17 deemed to be affected in the United States” dated January 9, 2002 and
18 published by UBS AG Legal & Compliance International division to
19 UBS directors and managers, including Schumacher, authored by Franz
20 Zimmermann, UBS discusses its compliance procedures under the QI
21 and lays out proposals for circumventing the QI Agreement. These
22 proposals reveal:

23 i. UBS AG had no intention of being QI compliant believing that
24 the firm “has ‘only’ to be in substantial compliance with the QI
25 rules to receive a positive audit rating.”

26 ii. UBS AG intended to circumvent the QI by *automatically*
27 *transferring* client accounts to discretionary accounts.
28

- 1 c. In a document entitled “Cross-Border Business Training Workshop
2 North America 2004” dated September 20, 2004, and published by UBS
3 AG Wealth Management authored by Franz Zimmermann, UBS trains
4 its Client Advisors how to circumvent U.S. law. UBS AG trained its
5 agents to avoid U.S. law by:
- 6 i. Training its agents to avoid U.S. laws and likening the endeavor
7 to fighting on a regulatory “Battle Field.”
 - 8 ii. Implementing a “ringfencing model” that could be used to avoid
9 the SEC’s definition of a sale of securities in the U.S.
- 10 d. In a document entitled “US Training Sessions – US International NAM”
11 dated September 25, 2006, and published by UBS AG, UBS AG trains
12 its Client Advisors how to behave and interact with clients when
13 traveling to the US. UBS AG trained its agents to avoid U.S. law by:
- 14 i. Increasing “ring-fenced discretionary solutions” by switching
15 clients into discretionary accounts
 - 16 ii. Creating guidelines to provide false and misleading information to
17 U.S. boarder agents about the purposes of the advisor’s travels to
18 the U.S.
 - 19 iii. Altering travel habits and flight routines in order to avoid patterns
20 and detection. UBS made a “strong recommendation to change
21 hotels in rotation” in order to avoid U.S. detection.

22 58. Further, UBS AG Defendants knew that they themselves, their executives,
23 and agents were not properly licensed to provide banking services, offer tax and
24 investment advice, manage funds and/or solicit the purchase or sale of securities to U.S.
25 citizens and/or soliciting unregistered securities and that its actions in soliciting and
26 servicing U.S. clients, including Plaintiffs, were in violation of U.S. securities laws.
27 UBS’s foreign employees appear to have deliberately defied their obligations to register
28 themselves and the securities offered with the federal and state regulators and/or become

1 a member of FINRA, as required under federal law because they recognized that such
2 registration would subject UBS AG and UBS AG Defendants to detailed record-keeping,
3 examination, and reporting requirements, something that would prove problematic for
4 UBS AG's illegal and covert operations and continuing to avoid disclosing its clients'
5 identities to the Internal Revenue Service; the same reporting that UBS AG specifically
6 instructed Plaintiffs that they were exempt from complying with under UBS AG's
7 investment model. While engaging in secret brokerage and investment advisory services,
8 UBS AG and its co-conspirators continued to feign compliance with the IRS and the QI
9 Agreement, but failed to disclose this illegal activity to Plaintiffs or any of its other U.S.
10 clients.

11 59. In the furtherance of UBS AG and UBS AG Defendants' illegal scheme, the
12 firm took precautions to avoid liability should it one day be the subject of a criminal
13 investigation and understood as early as 2003 that "immediate action is required in order
14 to build up a defense against a possible future criminal case against the bank." Rather
15 than cease their illegal activities, disclose to clients their requirements under the QI and
16 advise their clients appropriately in accordance with U.S. law, UBS AG and UBS AG
17 Defendants schemed to conceal their activities and counter that any suit or IRS action
18 contained information that is being made "up about the bank." *Id.* Thus, UBS AG, and
19 UBS AG Defendants not only schemed to defraud U.S. authorities and solicited, offered,
20 and induced U.S. clients to conceal offshore assets but UBS AG also anticipated and
21 planned to retaliate against their own clients by creating or positing evidence contrary to
22 the truth should UBS AG clients come forward to the IRS once discovered.

23 60. As such, UBS AG, UBS AG Defendants, directors, and management
24 intentionally or recklessly --or in the alternative, was at least negligent or unreasonable
25 in not knowing-- solicited, offered, and induced U.S. clients, including Plaintiffs, to
26 conceal offshore assets from the U.S. Government using a variety of means, disguises,
27 schemes, tactics, and covers, engaged in unlawful trading of U.S. securities, which each
28 Plaintiff reasonably relied upon to their own legal and financial detriment.

1 61. Further, the UBS AG Defendants knew that their executives and agents
2 were not properly licensed to provide banking services, offer tax and investment advice,
3 manage funds and/or solicit the purchase or sale of securities to U.S. citizens and that its
4 actions in soliciting and servicing U.S. clients, including Plaintiff, were in violation of
5 15 U.S.C. §§ 780(a) and 80b-3(a)¹ and California Corp. Code §25004(a)(4). UBS's
6 foreign employees appear to have deliberately defied their obligations to register with
7 the federal and state regulators and/or become a member of FINRA, as required under
8 federal law because they recognized that such registration would subject UBS and such
9 employees to detailed record-keeping, examination, and reporting requirements,
10 something that would prove problematic for UBS if it wanted to avoid disclosing its
11 clients' identities to the Internal Revenue Service; the same reporting that UBS
12 specifically instructed each Plaintiff he was exempt from complying with under their
13 investment model. While engaging in the secret brokerage and investment advisory
14 services, UBS continued to feign compliance with the IRS QI Agreement, but failed to
15 disclose this illegal activity to Plaintiffs or any of its clients. This, as described below,
16 constituted a material omission in violation of the federal securities anti-fraud statute.

17 62. Indeed, in or around November 6, 2008, the DOJ filed an indictment against
18 UBS AG Chief Executive Officer Raoul Weil for his active role in the above-described
19 activities. The indictment further identifies a multitude of involved, but yet-to-be-named
20 executives, managers, "desk heads," and bankers and corroborates Plaintiffs' allegations.
21 The indictment further notes that these personnel maintained positions on committees
22 that oversaw legal, compliance, tax, risk, and regulatory issues related to the United
23 States cross-border business. It further notes that the reporting chain traveled from the
24 bankers to the desk heads to the managers to the executives, including Defendant Weil.
25 Notwithstanding the anonymous code terms used by the DOJ, Defendants Guignard,
26 Liechti, Bovay, and Benz, each served in the functions of executive, manager, and/or

27
28 ¹ Secs. 15(a) of the Securities Exchange Act of 1934 and 203(a) of the Investment Advisers Act of 1940.

1 desk head as described by the DOJ in the indictment in their management and handling
2 of Plaintiffs' assets.

3 **The Scheme Executed Against Each Plaintiff:**

4 **NADIA AND SEAN ROBERTS:**

5 63. NADIA and SEAN ROBERTS are a married couple. In or around 2004,
6 SEAN ROBERTS owned a UBS account in the Isle of Mann. Claude Ullman was the
7 UBS AG banker who communicated with SEAN ROBERTS and convinced him to
8 transfer his account to UBS AG's Switzerland location. Master Account No. 0206-
9 P0056602 was then created.

10 64. SEAN ROBERTS was also introduced to Beda Singenberger at Sinco
11 Truland AG. As with at least one other Plaintiff herein, Singenberger was hired by UBS
12 AG to set up a trust for SEAN ROBERTS. Singenberger created a third party trust for
13 SEAN ROBERTS's benefit; however, at no time did UBS AG, Singenberger, or any of
14 their co-conspirators advise plaintiffs of the illegal nature of said third party trust and/or
15 plaintiffs' reporting requirements.

16 65. Between 2004 and 2009, NADIA and SEAN ROBERTS were also
17 contacted and visited regularly in Kern County, California by Charles Falk, another UBS
18 AG representative. Falk would provide statements and otherwise discuss said plaintiffs'
19 accounts.

20 66. At no time were they advised of the QI Agreement or its terms contained
21 therein. At the time UBS AG was striking a deal with the U.S. to release names, UBS
22 AG and its co-conspirators failed to even advise plaintiffs that their accounts were set up
23 in violation of the QI Agreement and that said plaintiffs needed to take steps to advise the
24 IRS and mitigate their damages. In fact, UBS AG sent information about said plaintiffs
25 to the IRS in or around February 2009; however, it did not send an amnesty letter to
26 plaintiffs until *ten* months later in November 2009.

27 67. Based on the foregoing, said plaintiffs suffered in excess of \$3.5 Million in
28 penalties for which they should not have incurred, but for UBS AG's fraud and breach of

1 fiduciary duty. NADIA and SEAN ROBERTS also suffered personal and business
2 reputation damages related to their test pilot school and their relationship with the FAA.
3

4 **BERNHARD AND HEIDI GUBSER:**

5 68. BERNHARD and HEIDI GUBSER are two individuals who were married
6 between 1978 and 2008. In the early 1970s, plaintiffs held a UBS AG Master Account
7 No. 0252-00556738. The parties earned and/or inherited money, which is the subject of
8 this claim, prior to 1982 when they moved to the U.S. from Switzerland. Over the years,
9 they occasionally deposited after-tax money, but the bulk of the account was deposited
10 while they were Swiss citizens. They did manage the account, but rather allowed the
11 account to simply sit there. They did not even become U.S. citizens until 1992 and
12 always intended on retiring in Switzerland.

13 69. After the QI Agreement was entered into, Gerard Hofmann served as the
14 UBS AG representative who serviced said plaintiffs. Hofmann has since left UBS AG as
15 of 2008.

16 70. Between approximately 2000 and 2004, while working for UBS AG and
17 during his rounds in the U.S., Hofmann visited BERNHARD and HEIDI GUBSER on
18 multiple occasions in San Antonio, Texas to discuss the account and provide plaintiffs
19 with account statements.

20 71. The account eventually reached close to \$5.5 Million. At no time did
21 anyone at UBS AG ever advise BERNHARD and HEIDI GUBSER that they were
22 subject to the QI Agreement and its terms contained therein. Unfortunately, said
23 plaintiffs' account experienced income growth each year between 2004 and 2009.

24 72. In or around December 2010, said plaintiffs realized that they may be
25 subject to the prosecution by the IRS for failing to declare a 40-year old account
26 originating in Switzerland. Plaintiffs have been damaged in excess of \$2.75 Million
27 combined.
28

1 **ANTON GINZBURG:**

2 73. Ginzburg is a Medical Professional. Concerned about frivolous malpractice
3 lawsuits he consulted a UBS AG banker in New York, Mr. Felix Kuntsman, regarding
4 asset protection in early 1994. He was advised by Mr. Kuntsman to deposit his funds in
5 a UBS AG overseas account. Relying on Kuntsman's expertise and UBS AG's
6 reputation, GINZBURG did so. He was assured that this is the most common way of
7 asset protection and Mr. Kuntsman's exact purpose of visiting US regularly was to meet
8 with the potential clients US clients needing asset protection. He advised Ginzburg that
9 although other banks in New York were providing similar services, UBS AG was the
10 biggest and the most reliable of them all.

11 74. In or around 2000, UBS AG banker Gian Gisler replaced Kuntsman as his
12 bank representative. Gisler advised Ginzburg that he needed to change the structure in
13 which his funds were held and introduced plaintiff to Mr. Matthias Rickenbach at the
14 recommendation of UBS's legal department. Ginzburg attended a meeting with Gisler,
15 UBS Director Daniel Perron, and Rickenbach. These bank representatives then advised
16 Ginzburg to close a Liechtenstein-based trust structure they had previously
17 recommended back in 1998 and to open a Hong Kong-based trust. They assured him
18 that opening a foreign "trust account" was the most common asset protection strategy
19 under US constitution based on British law. Moreover, they advised him that he "would
20 not have to pay any taxes on any capital gains or dividends until the funds were
21 repatriated" to Plaintiff's country of future domicile as Plaintiff possesses dual
22 citizenship. Ginzburg was advised that he would only have to pay the taxes on any
23 possible capital gains or dividends of the country – U.S. or Israel—where he would
24 ultimately repatriate the funds. Upon Ginzburg's further inquiry to confirm this, UBS
25 AG advised Plaintiff that it had a great understanding of the US Tax code. Further,
26 Rickenbach was presented as a licensed US Attorney specializing in setting up trusts.
27 Ginzburg was assured that numerous such trusts were set up by Rickenbach at the bank's
28 recommendation and the bankers unanimously vouched for Rickenbach's professional

1 integrity. Trusting in these representations, Ginzburg allowed Rickenbach to set up the
2 recommended trust at UBS AG's repeated strong recommendations.

3 75. Ginzburg was not an active investor. Instead, he allowed his money to sit in
4 simple stock accounts. He would regularly have telephone and in-person conferences
5 with Gisler who would frequently visit him and dozens of other similar clients in New
6 York and Boston to provide them with UBS AG account statements and stock market
7 research. Rickenbach had also visited Ginzburg in New York in or around 2007 as a
8 purported "checkup."

9 76. Ginzburg was never informed of the 2001 QI Agreement, or its terms
10 contained therein. Indeed, his account was invested in U.S. stocks despite UBS AG's
11 knowledge and agreement with U.S. Authorities to comply with one of the protocols
12 pertaining to a W-8BEN form or withholding.

13 77. Then, in or around November 2008, Ginzburg was advised by Gisler that
14 his accounts were being arbitrarily and wrongfully frozen by UBS which prevented him
15 from mitigating his losses, during a downturn in the market, resulting in more than a \$1
16 Million loss. In all, Plaintiff's monetary losses are in excess of \$4.5 Million.

17 83. In or around December 2008, a new UBS AG representative, Patrick
18 Hoffmann, was placed in charge of Ginzburg's account. Over the next few months,
19 Ginzburg, outraged by the lawlessness perpetrated on him by the bank, pressured UBS
20 AG representatives for all bank records necessary to file a voluntary disclosure with the
21 U.S. Authorities as per Plaintiff's US Attorney's Advice. No assistance was furnished to
22 Ginzburg as all bank representatives were reluctant to provide any information or
23 documents uncertain of their own legal standing in view of US Authority's pressure. In
24 the interim, Bank representatives have refused to give out any information about
25 Plaintiff's funds. Yet, without any notice to the Plaintiff, or Plaintiff's authorization, the
26 Bank had forcefully liquidated the stock portfolio at 2009 market levels causing 1.5
27 million dollars loss. In addition, despite of losses in portfolio, a "sales tax" in the amount
28 of \$565,000.00 was withheld without any benefit to the plaintiff.

1 **ARTHUR JOEL EISENBERG:**

2 78. ARTHUR JOEL EISENBERG held a UBS account in the Grand Caymans
3 which he opened decades ago. By chance, during a vacation, he entered the bank to
4 inquire about an account he thought he had there when he was informed that it was on
5 the “abandoned accounts” list and was transferred to UBS AG n Switzerland.

6 79. Upon traveling to Zurich, Switzerland to confirm the account was indeed
7 his, ARTHUR JOEL EISENBERG was introduced to Hansruedi Schumacher who
8 suggested ARTHUR JOEL EISENBERG set up a trust account, seemingly for purposes
9 of avoiding the QI Agreement. Unwittingly, ARTHUR JOEL EISENBERG permitted
10 Schumacher to set up the account in a Liechtenstein trust.

11 80. This account was never actively managed and held no U.S. securities. Yet,
12 ARTHUR JOEL EISENBERG was still visited monthly in Seattle, King County, State
13 of Washington, by UBS AG’s Björn Mülli who provided ARTHUR JOEL EISENBERG
14 with his account statements during these visits. Moreover, UBS AG was wrongfully
15 double-charging its account fees during the entire tenure of the account.

16 81. At no time was ARTHUR JOEL EISENBERG ever advised of the QI
17 Agreement or his requirement to report his account for tax purposes.

18 82. Moreover, despite its dealings with the U.S. in disclosing names of U.S.
19 clients, UBS AG failed to provide ARTHUR JOEL EISENBERG with any notice that it
20 would be releasing his name to the U.S., thereby depriving him of the opportunity to
21 correct any defects, file for voluntary disclosure, or otherwise appeal the disclosure of
22 his name which would have put his reputation at unwarranted risk. This disclosure
23 violated UBS AG’s own stated elements for proper disclosure and further violated Swiss
24 Laws regarding confidentiality.

25 83. Consequently, ARTHUR JOEL EISENBERG’s name was released with the
26 first 450 names given to the IRS and he was prosecuted and forced to pay tremendous
27 penalties -\$2.5 Million-- for what amounted to be an approximate \$65,000 tax bill.

1 **JEFFREY CHERNICK:**

2 84. JEFFREY CHERNICK has worked his entire life in the toy business and
3 succeeded in becoming a prominent businessman in the toy industry. After City College
4 and working in retail products sales, JEFFREY CHERNICK started his products
5 business in Hong Kong in the 1970's, eventually opening a products manufacturing
6 company called SHAMBA in 1981. JEFFREY CHERNICK is an extremely hard
7 worker who runs his company without employees and grew the company to over \$30
8 million in revenue per year. JEFFREY CHERNICK's products company is also the
9 largest supplier of toys to several prominent retailers.

10 85. JEFFREY CHERNICK sought to collect the profits from his Hong Kong
11 products business in overseas accounts and invest the profits prudently to safely manage
12 and grow assets from accumulated wealth from his successful products business.
13 JEFFREY CHERNICK did not seek risky or speculative investments or to violate U.S.
14 tax law. JEFFREY CHERNICK's products business and SHAMBA were legitimate
15 overseas operations not setup in order to defraud the U.S. government. The scheme to
16 use JEFFREY CHERNICK and SHAMBA's accounts to conduct illegal securities
17 trading and defraud the U.S. government was originated, planned, executed, and caused
18 by UBS AG, UBS AG Defendants, and Schumacher under the false representations
19 made to JEFFREY CHERNICK that the corporate structures and tax deferral used legal
20 means.

21 86. In 2000, Bigger recommended that JEFFREY CHERNICK move his
22 Cayman Island account to open an account in UBS' Hong Kong office. JEFFREY
23 CHERNICK opened up UBS AG accounts in Hong Kong in early 2000. JEFFREY
24 CHERNICK's UBS Hong Kong account was opened under SIMBA. In 2001, Hirsch
25 began managing the UBS Hong Kong account, then containing approximately \$1 million
26 with no U.S. securities. Hirsch advised JEFFREY CHERNICK to buy and hold U.S.
27 securities in the Hong Kong account without disclosing that JEFFREY CHERNICK
28

1 would have to report such holdings to the U.S. or otherwise advising him of the QI
2 Agreement terms.

3 87. In 2004, JEFFREY CHERNICK transferred additional funds from his Bank
4 of Bermuda and Butterfield SIMBA accounts to his UBS AG in Hong Kong SIMBA
5 account. In so doing, JEFFREY CHERNICK closed his account with Bank of Bermuda.
6 In June 2004, Hirsch retired from UBS and Pang replaced Hirsch as JEFFREY
7 CHERNICK's financial advisor. Pang at all times continued recommending holding
8 U.S. securities as Hirsch had previously recommended.

9 88. In 2001, Thomann, along with Bigger, caused JEFFREY CHERNICK to
10 transfer his SHAMBA account from the Cayman Islands to UBS AG in Zurich.
11 Thereafter, Thomann briefly became the primary advisor on JEFFREY CHERNICK's
12 UBS AG Zurich accounts until Bigger relocated to Zurich at which time Thomann co-
13 managed the accounts with Bigger.

14 89. In 2002, Beda Singenberger at Sinco Truland AG was hired by UBS AG to
15 set up a trust for JEFFREY CHERNICK. Singenberger was purportedly fired shortly
16 thereafter and replaced by Rickenbach. Rickenbach, with the authorization of UBS AG,
17 replaced Beda Singenberger and caused the setup of a sham entity to hold SHAMBA
18 and SIMBA.

19 90. In May 2003, Rickenbach recommended that JEFFREY CHERNICK
20 transfer some of the SHAMBA account assets he held at the Bank of Bermuda to
21 Kantonalbank where Schumacher and NZB would manage them. In April 2003,
22 Thomann called JEFFREY CHERNICK informing him that he resigned from UBS AG
23 to work for Delta.

24 91. In 2003, Beeler took over for managing JEFFREY CHERNICK's
25 SHAMBA Account at UBS AG in Thomann's place. Beeler only served as JEFFREY
26 CHERNICK's UBS AG investment advisor for approximately one and a half years. In
27 October 2004, JEFFREY CHERNICK had a meeting with Beeler and Benz about his
28 accounts. JEFFREY CHERNICK had no further dealings with Benz after this meeting.

1 92. In or around 2004, JEFFREY CHERNICK transferred some of the assets in
2 his SHAMBA Account with UBS AG to Wegelin. JEFFREY CHERNICK maintained
3 his Wegelin account and continued to work with Thomann until 2009.

4 93. In 2006, Bigger caused JEFFREY CHERNICK to close his SIMBA
5 Account at UBS Hong Kong and transfer the assets therein, including U.S. securities,
6 into his SHAMBA account at UBS Zurich.

7 94. In approximately June of 2008, Bigger told JEFFREY CHERNICK that
8 from then on he would neither handle North American accounts nor travel to the United
9 States. Bigger informed JEFFREY CHERNICK that if he wanted to maintain his
10 SHAMBA Account, UBS Zurich would only manage it in a pool of like-accounts.
11 JEFFREY CHERNICK did not agree to this arrangement.

12 95. When Bigger informed JEFFREY CHERNICK that he could no longer
13 manage his SHAMBA Account at UBS AG, JEFFREY CHERNICK asked Rickenbach
14 to recommend someone who could handle those assets.

15 96. On OR ABOUT June 4, 2008, JEFFREY CHERNICK met with two
16 referrals. After this meeting, JEFFREY CHERNICK sought Schumacher's advice on
17 these two referrals to which Schumacher recommended against transferring assets to
18 Baer accounts.

19
20 **CARRYING OUT THE SCHEME**

21 97. Starting out with Plaintiffs' assets held in general accounts, UBS AG and
22 regularly traded securities on behalf of Plaintiffs. In each instance, said Defendants
23 misrepresented their proper licensure to make each transaction legally prior to and at the
24 time of each transaction. Because their employees were not properly licensed, each of
25 these transactions was improper at the time of transacting and in violation of U.S.
26 Securities Regulations as well as California, Washington, New York, and Florida state
27 statutes. Additionally, UBS AG, between 2001 and 2010, consistently and regularly sent
28

1 statements to Plaintiffs at their respective locations, including Kern County as to the
2 ROBERTS.

3 98. Importantly, throughout the relationship between the UBS AG Defendants
4 and Plaintiffs, the UBS Defendants and their co-conspirators repeatedly assured
5 Plaintiffs that the management scheme and structure of their investments had been
6 reviewed by UBS AG attorneys and were authorized by and in compliance with U.S.
7 reporting laws.

8
9 **Intentional Omissions and UBS AG's Duplicity**

10 99. Leading up to this, and thereafter, the UBS AG Defendants, regularly met
11 with Plaintiffs, the illegality of UBS AG's scheme, any problems related to the tax and
12 investment advice, and/or the likelihood that each Plaintiff would be subject to tax
13 penalties, interest, and criminal investigation as a result of UBS AG's scheme, all the
14 while continuing to manage Plaintiffs' respective funds in accordance with the scheme.

15 **ADMISSIONS BY UBS TO DATE**

16 100. As has been widely publicized, UBS had been engaged in a heated battle
17 with the IRS and DOJ regarding UBS's intentional acts dating back to the QI Agreement
18 in 2001 and continuing through 2009. The following is a brief chronology of the events
19 and admissions by UBS and/or its directors and officers:

- 20 a. In November 2008, the U.S. filed an indictment against Weil
21 further outlining Executives, Managers, Desk Heads, and Bankers
22 as knowing participants in the scheme to defraud the IRS of taxes
23 due by its customers.
- 24 b. On February 18, 2009, UBS and the U.S. entered a Deferred
25 Prosecution Agreement ("DPA") in which UBS admitted, among
26 other things, that beginning in 2000 and continuing until 2007 it
27 had "participated in a scheme to defraud the United States and its
28 agency, the IRS by actively assisting or otherwise facilitating a

1 number of United States individual taxpayers in establishing
2 accounts at UBS in a manner designed to conceal the United
3 States taxpayers' ownership or beneficial interest in these
4 accounts."

5 c. On or about February 18, 2009, UBS's acting Chairman, and
6 former General Counsel during the 2000 – 2007 period, Peter
7 Kurer publicly stated that "UBS sincerely regrets the compliance
8 failures in its U.S. cross-border business that have been identified
9 by the various government investigations in Switzerland and the
10 U.S., as well as our own internal review. We accept full
11 responsibility for these improper activities." Marcel Rohner,
12 group chief executive of UBS AG added, "it is apparent that as an
13 organization we made mistakes and that our control systems were
14 inadequate."

15 d. On February 18, 2009 the Securities Exchange Commission
16 ("SEC") filed a complaint against UBS for acting as an
17 unregistered broker-dealer and investment adviser to thousands of
18 U.S. cross-border clients.

19 e. On February 19, 2009, the IRS filed a civil action against UBS to
20 enforce a "John Doe" summons seeking names of UBS's U.S.
21 customers.

22 f. On March 4, 2009, at a U.S. Senate Subcommittee hearing, UBS's
23 Chief Financial Officer, Mark Branson, admitted UBS AG was
24 intent on keeping wealthy investors with UBS while scheming to
25 defraud the IRS of taxes.

26 g. Between April and July 2009, UBS and the DOJ, as well as U.S.
27 and Swiss politicians, wrangled over the privacy/secretcy issues as
28 trial approaches in July 2009;

- 1 h. On June 30, 2009, the IRS filed a Memorandum of Law in
2 Support of Petition to Enforce “John Doe” Summons which
3 details UBS’s violations, its acknowledgment that it would be
4 subject to U.S. jurisdiction and the scheme as provided in the
5 instant Complaint.
- 6 i. On July 12, 2009, the U.S. District Court in Miami suspended the
7 July 13, 2009 hearing on the Motion to Enforce for 30 days,
8 anticipating a settlement between UBS and the IRS/DOJ;
- 9 j. On August 12, 2009, the U.S. and UBS reached an agreement in
10 principle the terms of which include the revelation of
11 approximately 4,450 UBS customer names.

12 Additionally, on or about July 29, 2009, it was revealed that documents exist to
13 show that UBS tried to entice wealthy Latin Americans to use a program designed to
14 result in tax evasion problems for these Latin Americans, some of whom were taxable in
15 the U.S. The “Referral Program,” cited to a “success model” showing \$200 million to
16 be moved to Switzerland, referring to another U.S. customer’s account.

17 Further, on August 21, 2009, former UBS AG banker Bradley Birkenfeld was
18 sentenced to 40 months in prison for his participation in the scheme that cost the IRS
19 billions in tax losses. Notably, this was a reduction in the 60-month term he would have
20 received had he not admitted to his illegal conduct and given the DOJ information that
21 corroborates the facts and charges against UBS AG by the IRS, DOJ, as well as
22 Plaintiffs in this complaint.

23 **Criminal Liability for Defendants’ Scheme**

24 101. By 2010, the IRS and Department of Justice approached each
25 Plaintiff and advised him or her that the “investments” from 2001 forward were indeed
26 subject to taxation. Each Plaintiff eventually faced criminal investigation relating to the
27 shell company structure set up and carried out by Defendants. They agreed to pay
28 millions of dollars in tax penalties, plus interest, on top of related costs and professional

1 fees. Although each was a pawn and victim of a greedy scheme by the aforementioned
2 Defendants, each Plaintiff had no choice but to take this course of action. In the end,
3 they would be labeled as “tax cheat” subjecting them and their business to unfair
4 discrimination.

5 102. On April 10, 2008, one UBS banker and third party co-conspirator
6 were indicted on charges of conspiracy to defraud the United States and the IRS in
7 violation of Title 18, United States Code, Section 371. The indictment includes the
8 following charges, which are incorporated herein, as follows:

- 9 a. “It was part of the conspiracy that Birkenfeld, Staggl and
10 others would and did market the advantages of Swiss and
11 Liechtenstein bank secrecy to United States clients by claiming
12 that said secrecy was impenetrable;
- 13 b. Birkenfeld, Staggl, and others would and did travel to the
14 United States to market investments including United States
15 securities to United States clients which they were not licensed
16 to market;
- 17 c. That said marketing also took place via mail, emails and
18 telephone calls to and from the United States;
- 19 d. That said defendants would and did travel to the United States
20 to conduct banking with United States clients;
- 21 e. That said defendants would and did conduct banking with
22 United States clients from Switzerland, Liechtenstein, and
23 elsewhere via mailings, emails, and telephone calls to and from
24 the United States;
- 25 f. That said defendants would and did prepare Swiss and
26 Liechtenstein bank account applications, and IRS Forms W-
27 8BEN, which falsely and fraudulently concealed that United
28 States Taxpayers were the beneficial owners of offshore bank

1 and financial accounts maintained in foreign countries,
2 including Switzerland and Lichtenstein;

3 g. That said defendants would and did cause shell companies to
4 be set up and used as the nominee owners for the Swiss Bank
5 and Liechtenstein bank accounts in order to conceal United
6 States citizens' beneficial ownership of the bank accounts;

7 h. That said defendants would and did cause to be prepared and
8 filed with the IRS income tax returns that purposefully and
9 intentionally falsely and fraudulently omitted income earned
10 by United States clients from their Swiss bank and
11 Liechtenstein bank accounts;

12 i. That said defendants would and did cause to be prepared and
13 filed with the IRS income tax returns that purposefully and
14 intentionally falsely and fraudulently reported that United
15 States clients did not have an interest in, and a signature and
16 authority over, financial accounts located in a foreign country.”

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

23 104. Based on the foregoing, and as more fully detailed herein below, each
24 of the Plaintiffs are entitled to recover their respective lost and converted assets, all of
25 the fraudulent and/or unnecessary fees, tax penalties and interest, compensatory damages
26 for the loss of personal and professional reputation and punitive damages from each and
27 all of the Defendants who worked in concert for years to defraud both the IRS and each
28

1 Plaintiff of millions of dollars, collectively causing tens of millions of dollars in
2 damages.

3 **COUNT I**

4 (Fraudulent Misrepresentation and Concealment Against the UBS AG Defendants;
5 and DOES 1 through 10, inclusive)

6 105. Plaintiffs repeat and reallege each and every prior allegation, as if
7 fully set forth herein.

8 106. For the purposes of inducing Plaintiff to transfer the their account
9 investments to UBS AG and to pay millions of dollars in aggregate fees while also
10 allowing themselves to advertise and report higher account values and superior status
11 versus competitors, each of the previously specifically identified individual Defendants
12 made numerous knowingly false affirmative representations and/or intentional
13 omissions/concealments of material facts to each Plaintiff, continuously between 2000
14 and 2009, including but not limited to:

- 15 a. UBS AG and its third party affiliates would prepare proper and
16 legal documentation for the formation of, and form, shell
17 corporations with the representation that said formations were
18 permitted by the IRS;
- 19 b. That Plaintiffs would not need to be a named signatory on
20 certain accounts due to the need to maintain the high level of
21 legal privacy;
- 22 c. That each Plaintiff should follow the estate planning and tax
23 opinions and advice rendered by UBS AG and its third party
24 affiliates pertaining to lawful requirements for report of off-
25 shore assets as required by the IRS from 2002 through 2009;
- 26 d. That the method by which UBS AG and its third party
27 affiliates titled the ownership of the accounts would be fully
28

1 compliant with all U.S. reporting requirements while
2 repeatedly omitting what the actual requirements were;

3 e. That UBS AG and its third party affiliates would prepare all
4 the necessary and proper forms to be submitted to the Internal
5 Revenue Service to report all income and accounts required to
6 be reported to the Internal Revenue Service to ensure each
7 Plaintiff would comply with all U.S. tax reporting
8 requirements;

9 f. That each Plaintiff's financial information would be protected
10 and held in confidence;

11 g. That the Defendants would manage each Plaintiff's respective
12 assets in a lawful and prudent manner and use the care and
13 expertise of a fiduciary with respect thereto;

14 h. Repeatedly representing to each Plaintiff that UBS AG bankers
15 were properly licensed, or, in the alternative repeatedly
16 omitting the fact that they were *not* licensed, and thus,
17 permitted to provide banking services, offer investment advice
18 and management of funds and to solicit the purchase or sale of
19 securities to U.S. citizens, including Plaintiffs; and

20 107. The above intentional omissions of material fact and/or affirmative
21 misrepresentations and concealments made by each Defendant were false when made
22 and said Defendants knew these representations to be false when made and that said
23 concealments were necessary to disclose. Moreover, they were made with the intention
24 that all of UBS AG's U.S. customers, including each Plaintiff, would rely upon them in
25 transferring funds to Defendants' accounts, or maintaining pre-existing accounts, and for
26 Defendants' use so that said customers, including Plaintiffs, would pay them millions of
27 dollars in fees and costs and giving them access to Plaintiffs' funds for their personal
28 and collective profit motives.

1 108. The true facts are that:

- 2 a. The documentation prepared by the UBS AG Defendants and
3 co-conspirators for the formation of shell corporations was not
4 a permissible tax deferment scheme under the QI Agreement
5 nor under U.S. tax reporting laws;
- 6 b. The UBS AG Defendants and co-conspirators prepared
7 documentation for opening off-shore bank and investment
8 accounts, represented that each Plaintiff would not need to be a
9 named signatory on certain accounts due to the need to maintain
10 the high level of legal privacy, and then failed to report each
11 Plaintiff's information to the IRS pursuant to the QI agreement;
- 12 c. The UBS AG Defendants scheme, as described above, was not
13 lawful and permitted by the IRS pursuant to the QI Agreement;
- 14 d. The UBS AG Defendants provided and/or caused to be
15 provided erroneous legal and tax advice by, among other things,
16 intentionally preparing wrongful and misleading documents and
17 sending them to each respective Plaintiff from 2002 through
18 2009;
- 19 e. The UBS AG Defendants continuously concealed from each
20 Plaintiff that they not only owed taxes on their investments with
21 the IRS but would face criminal investigation for the
22 management structure of their respective accounts set up by the
23 UBS AG Defendants; and
- 24 f. The UBS AG Defendants were not properly licensed and thus,
25 not permitted to provide banking services, offer investment
26 advice manage funds and/or solicit the purchase or sale of
27 securities to U.S. citizens, including each Plaintiff.
- 28

1 109. In reasonable reliance on said Defendants' false affirmative
2 representations and intentional omissions of material facts regarding taxes, rules,
3 liabilities, proceeds, privacy and investment results, Plaintiffs each paid anywhere from
4 thousands to hundreds of thousands of dollars to Defendants for flawed tax and
5 investment advice, to execute transactions, purchase unnecessary "investments" to
6 effectuate useless transactions, false investment and/or tax savings opportunities, and
7 file tax returns that reflected control and beneficial ownership of their assets held by the
8 offshore entities created by Defendants.

9 110. But for Defendants' intentional misrepresentations and material
10 omissions described above, each Plaintiff would never have: participated in the transfers
11 of funds and transactions or otherwise maintained their accounts, purchased unnecessary
12 investments, allowed the opening of shell corporations and/or failed to avail themselves
13 of legitimate investment and/or tax savings opportunities, failed to pay their meager tax
14 bills each year, nor would he have incurred millions in penalties, and interest.

15 111. As a result of Defendants' conduct, described above, each Plaintiff
16 has suffered injury in that they each:

- 17 a. Paid Defendants thousands to hundreds of thousands of dollars
18 in fees and costs which they should not have paid;
 - 19 b. Had portions of their accounts converted by Defendants;
 - 20 c. Purchased unnecessary investments to effectuate the
21 recommended transactions;
 - 22 d. Incurred severe and unnecessary tax penalties and interest;
 - 23 e. Spent time in prison, for some Plaintiffs;
 - 24 f. Suffered personal and professional embarrassment and
25 tarnished family and business names; and
 - 26 g. Consequently missed legitimate investment and/or tax savings
27 opportunities.
- 28

1 112. As a proximate cause of the foregoing, each Plaintiff has been injured
2 in a separate amounts to be proven at trial, but each in excess of \$1 Million dollars.

3 113. The aforementioned actions and omissions of Defendants and DOES
4 1 through 10, and each of them, were committed with the intent to misrepresent, deceive,
5 and/or conceal material facts known to each of the defendants so that the Defendants,
6 and each of them, could deprive each Plaintiff of property, legal rights and/or otherwise
7 cause injury to each Plaintiff. The aforementioned actions and omissions of Defendants
8 and DOES 1 through 10, and each of them, amounted to despicable conduct that
9 subjected each Plaintiff to cruel and unjust hardship and all in a conscious and utter
10 disregard of said Plaintiffs' rights, so as to justify an award of exemplary and punitive
11 damages. Further, Plaintiffs are entitled to rescind any contract and/or transaction and to
12 recover restitution for all fees paid to each and any of Defendants, plus reasonable
13 attorney's fees and costs.

14 **COUNT II**

15 (Constructive Fraud Against the UBS AG Defendants; and DOES 1 through 10,
16 inclusive)

17 114. Plaintiffs repeat and reallege each and every prior allegation, as if
18 fully set forth herein.

19 115. Defendants, and each of them, maintained a confidential and
20 fiduciary relationship in their capacities as advisors and even signatories to the Olen
21 accounts or created "investments."

22 116. As such, all Defendants, and each of them, owed a duty to manage
23 each Plaintiffs' assets properly, to advise them of any IRS requirements, report and
24 withhold taxes consistent with IRS requirements and the QI Agreement, to avoid each
25 Plaintiffs' suffering of any U.S. tax-related penalties, interest, and criminal investigation
26 related thereto, to invest their assets in proper vehicles such that all costs and fees were
27 minimized and in accordance with their promised fee structure, to invest the assets in a
28 reasonably prudent manner within the scope of the promised goals and return rate, to

1 ensure proper licensure of all persons soliciting and/or conducting transactions with each
2 Plaintiff, and to avoid unauthorized usage of funds and payments to themselves vis-à-vis
3 corporate shells and other third party companies, plus other conversions of money.

4 117. Each Defendant owed each Plaintiff an additional duty of
5 confidentiality and privacy, which served as the other main basis for investing with said
6 Defendants.

7 118. Each Plaintiff reasonably relied on the misrepresentations and
8 omissions of Defendants as the purpose of the account transfers was to ensure better and
9 lawful savings than he was already achieving with funds already accounted for with the
10 IRS and the acknowledged purpose of confidentiality and privacy. Such reliance is
11 actually presumed pursuant to *Edmunds v. Valley Circle Estates*, 16 Cal.App.4th 1290,
12 1302, 20 Cal.Rptr.2d 701, 708 (1993).

13 119. As previously alleged, said duties were breached when Defendants:
14 prepared documentation for the formation of, and did so form, shell corporations with
15 the representation that said formations were permitted by the IRS; prepared
16 documentation for and opened off-shore bank and investment accounts, including the
17 fact that they were not properly licensed to do so; represented that each Plaintiff would
18 not need to be a named signatory on certain accounts due to the need to maintain the
19 high level of legal privacy; failed to properly report each Plaintiff's information to the
20 IRS or withhold taxes pursuant to the QI agreement; knowingly provided erroneous tax
21 opinions; concealed from each Plaintiff that each would face criminal investigation for
22 the management structure of their respective accounts set up by the UBS AG
23 Defendants; formed shell corporations and/or invested in corporations utilizing
24 Plaintiffs' assets without advising Plaintiffs, all of which were caused by Defendants
25 advice and proactive misrepresentations and concealments.

26 120. Additionally, UBS AG breached its duties of confidentiality by
27 providing information to the IRS in violation of Swiss Law and in violation of its own
28 protocols for when to properly do so.

1 121. Within the last three years of the date of this complaint, each Plaintiff
2 became aware of the aforementioned breaches of fiduciary and confidentiality duties.

3 122. As a result of said breaches of fiduciary duties and confidentiality,
4 Defendants gained an advantage by receiving between tens of thousands and hundreds of
5 thousands of dollars in fees, costs, and converted funds from each Plaintiff from 2000
6 through 2009.

7 123. Based on the foregoing breaches of fiduciary and confidentiality
8 duties, each Plaintiff has been damaged by the amounts improperly gained by
9 Defendants in the amount of at least \$1 million dollars each, subject to proof. Each
10 Plaintiff is further entitled to recoup out-of-pocket damages, including all fees, costs, tax
11 penalties, and interest, plus attorneys' fees and costs.

12 124. The aforementioned conduct of the UBS AG Defendants and DOES
13 1 through 10, and each of them, was an intentional misrepresentation, deceit, or
14 concealment of a material fact known to each of the Defendants with the intention on the
15 part of the Defendants of thereby depriving each Plaintiff of property or legal rights or
16 otherwise causing injury, and was despicable conduct that subjected each Plaintiff to a
17 cruel and unjust hardship and all in a conscious and utter disregard of each Plaintiff's
18 rights, so as to justify an award of exemplary and punitive damages. Further, Plaintiffs
19 are entitled to rescind any contract and to recover restitution for all fees paid to
20 Defendants, plus reasonable attorney's fees and costs.

21 COUNT III

22 (Negligent Misrepresentation Against the UBS AG Defendants; and DOES 1 through 10,
23 inclusive)

24 125. Plaintiffs repeat and reallege each and every prior allegation, as if
25 fully set forth herein.

26 126. The representations described above were false or misleading when
27 made by Defendants, as described above, were made without a reasonable basis for
28 believing it to be true, and were made with intent to mislead and deceive all of UBS

1 AG's U.S. customers, including Plaintiffs. The representations were made with the
2 intent to induce each Plaintiff's reliance and to invest in the investment schemes as
3 herein alleged.

4 127. Each of the Defendants had a duty to disclose the true information
5 and documentation on the grounds that said information and documentation were
6 material to the asset transfers and investments alleged herein and that Defendants were
7 required to abide by the QI Agreement.

8 128. Defendants' failures to disclose these material facts and present
9 proper documentation to each Plaintiff, therefore, constitute fraud and/or negligent
10 misrepresentation.

11 129. Had each Plaintiff known of the true facts, that Defendants were
12 manipulating them to open or maintain accounts, intending to and did breach the QI
13 Agreement, failing to present proper documentation to each Plaintiff, charging
14 unnecessary fees, causing each Plaintiff to incur tax penalties and interest for failing to
15 properly file documents with the IRS, converting assets, and perpetuating this scheme
16 against the IRS and 52,000 other customers, each Plaintiff would not have transferred
17 and/or maintained their respective assets into UBS AG accounts, engaged with third
18 party service providers, or otherwise dealt with any UBS AG representatives or third
19 party service providers.

20 130. As a proximate result of the fraudulent conduct of Defendants as
21 herein alleged, each Plaintiff has incurred damages in that each Plaintiff was induced to
22 invest with UBS AG as unwitting pawns in Defendants' collective schemes to reap
23 millions of dollars annually, maintain their superior reputations in the industry and
24 convert millions of dollars, all by reason of which each Plaintiff has been damaged in at
25 least a sum in excess of \$1 million dollars, and additional amounts according to proof at
26 time of trial, including interest, attorneys' fees and costs. Further, Plaintiffs are entitled
27 to rescind any contract and to recover restitution for all fees paid to Defendants, plus
28 reasonable attorney's fees and costs.

1 COUNT IV

2 (Fraud in Connection With the Purchase or Sale of Securities Violations of Section 10(b)
3 of the Exchange Act and Rule 10b-5 There under Rule 10(b) 5 Against All Defendants;
4 and DOES 1 through 10, inclusive)

5 131. Plaintiffs repeat, reallege and reincorporate each and every allegation
6 contained in the General Allegations and all previous paragraphs of all previous sections
7 and Claims for Relief this Complaint, inclusive, as though fully set forth herein.

8 Throughout Years 2000 through 2010, Defendants, each by engaging in the
9 conspiratorial conduct described above, directly or indirectly, in connection with the
10 purchase or sale of a security, by the use of means or instrumentalities of interstate
11 commerce, of the mails, or of the facilities of a national securities exchange, with
12 scienter: (1) employed the previously described conspiratorial devices, schemes, or
13 artifices to defraud; (2) made untrue statements of material facts *and* omitted to state
14 material facts necessary in order to make the statements made, in the light of the
15 circumstances under which they were made, not misleading; and (3) engaged in acts,
16 practices, or courses of business which operated or would operate as a fraud or deceit
17 upon each Plaintiff, and as time will reveal, many others.

18
19 132. By engaging in the conduct described above, Defendants, and each of
20 them, violated, and unless restrained and enjoined will continue to violate, Section 10(b)
21 of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 there under, 17 C.F.R. §
22 240.10b-5.

23 133. As a proximate result of the fraudulent conduct of Defendants as
24 herein alleged, each Plaintiff has incurred damages in that he was induced to transfer
25 assets and/or maintain and invest in the above-described scheme, has suffered losses in
26 the values of improper and unauthorized securities purchased and held, has incurred tens
27 of thousands of dollars in self-dealing fees and costs, and been subjected to transactions
28 for which none of the Defendants were properly licensed. Accordingly Plaintiffs have

1 been damaged in at least the sum in excess of \$1 million dollars, and additional amounts
2 according to proof at time of trial, including interest, attorneys' fees and costs.

3 **COUNT V**

4 (Damages for Sales of Securities by Means of Communications Containing False
5 Statements and Omissions - Violations Of Section 25401 and 25501 of California
6 Corporations Code Against All Defendants; And DOES 1 through 10, Inclusive)

7 134. Plaintiffs repeat, reallege and reincorporate each and every allegation
8 contained in the General Allegations and all previous paragraphs of all previous sections
9 and Claims for Relief in this Complaint, inclusive, as though fully set forth herein.

10 135. Defendants, and each of them, by engaging in the conspiratorial
11 conduct described above, offered and sold securities, without proper licensure, in the
12 state of California, continuously between 2000 and 2009, by means of both written and
13 oral communications which included untrue statements of material facts and omissions
14 of material facts necessary in order to make the statements made, in light of the
15 circumstances under which they were made, not misleading. The false affirmative
16 representations and intentional omissions/concealments of material facts to each Plaintiff
17 that the UBS AG Defendants did, including, but not limited to:

- 18 a. That UBS AG and/or its third party affiliates would prepare
19 proper and legal documentation for the formation of, and form,
20 shell corporations with the representation that said formations
21 were permitted by the IRS;
- 22 b. Representing that each Plaintiff would not need to be a named
23 signatory on certain accounts due to the need to maintain the
24 high level of legal privacy;
- 25 c. Representing that each Plaintiff should follow the estate
26 planning and tax opinions and advice rendered by Defendants
27 pertaining to lawful requirements for report of their off-shore
28

1 assets as required by the IRS from 2001 through 2009, or 2010
2 in some instances;

3 d. Representing to each Plaintiff that the method by which
4 Defendants titled the ownership of the accounts with
5 Defendants would be fully compliant with all U.S. reporting
6 requirements;

7 e. Representing that the Defendants would prepare all the
8 necessary and proper forms to be submitted to the Internal
9 Revenue Service to report all income and accounts required to
10 be reported to the Internal Revenue Service to ensure each
11 Plaintiff would comply with all U.S. tax reporting
12 requirements;

13 f. Representing that each Plaintiff's financial information would
14 be protected and held in confidence;

15 g. Representing to each Plaintiff that the Defendants would
16 manage their respective assets in a lawful and prudent manner
17 and use the care and expertise of a fiduciary with respect
18 thereto; and

19 h. Representing to each Plaintiff that Defendants were properly
20 licensed and thus, permitted to provide banking services, offer
21 investment advice and management of funds and to solicit the
22 purchase or sale of securities to U.S. citizens, including each
23 Plaintiff;

24 136. As a proximate result of the fraudulent conduct of Defendants as
25 herein alleged, each Plaintiff has incurred damages in that he or she was induced to
26 transfer assets and/or maintain them and invest in the above-described scheme, has
27 suffered losses in the values of securities purchased and held, has had their account
28 wrongfully frozen, thereby resulting in loss of value, has incurred thousands to hundreds

1 of thousands in self-dealing fees and costs, and been subjected to transactions for which
2 none of the Defendants were properly licensed.

3 137. Accordingly each Plaintiff has been damaged in at least the sum in
4 excess of \$1 million dollars, and additional amounts according to proof at time of trial,
5 including interest, attorneys' fees and costs.

6 138. The aforementioned conduct of Defendants, and each of them, was
7 an intentional misrepresentation, deceit, or concealment of material facts known to each
8 of the Defendants with the intention on the part of the Defendants of thereby depriving
9 each Plaintiff of property or legal rights or otherwise causing injury, and was despicable
10 conduct that subjected each Plaintiff to a cruel and unjust hardship and conscious
11 disregard of his or her rights, so as to justify an award of exemplary and punitive
12 damages.

13 **COUNT VI**

14 (Breach of Fiduciary Duty Against the UBS Defendants; and DOES 1 through 10,
15 inclusive)

16 139. Plaintiffs repeat and reallege each and every prior allegation and
17 Claim for Relief, as if fully set forth herein.

18 140. Defendants held and continue to hold themselves out to the public,
19 and held themselves out to U.S. customers, including Plaintiffs, as experts with
20 particular competence in investment and tax matters, who were properly licensed to
21 provide banking services, offer investment advice, manage funds and solicit and execute
22 the purchase and sale of securities to and for U.S. citizens. Defendants each made
23 promises of return rates on investments and further opined and directed each Plaintiff,
24 verbally and in writing, regarding his tax filing requirements and asset disclosure
25 requirements.

26 141. Defendants further improperly and inappropriately "managed" each
27 Plaintiff's assets by opening and/or maintaining accounts, creating entities, investing in
28 stocks, bonds, funds, and corporate entities. Moreover, each Defendant charged fees,

1 froze accounts, and/or otherwise converted each Plaintiff's assets such that the assets did
2 not grow as they would have had they managed his assets in a reasonably prudent
3 manner within the scope of authority provided to Defendants.

4 142. In connection with the investment scheme, each Defendant, as
5 connected to each Plaintiff as previously described hereinabove, was one of each
6 Plaintiffs' fiduciaries and, thus, owed him or her the undivided duties of honesty,
7 loyalty, care and compliance with the applicable codes of professional responsibility.
8 Each Plaintiff relied on each respective Defendant to act as Plaintiffs' respective
9 fiduciary and to advise him or her as to the legitimacy of his or her transactions, the
10 propriety of the tax disclosures, claims related to the ownership scheme, and to refrain
11 from arbitrarily freezing each Plaintiffs' account for any period of time.

12 143. In truth, the investment scheme lacked economic substance, was
13 designed to generate millions in revenue to Defendants and was contrary to the Internal
14 Revenue Code, Treasury Regulations, policies of the IRS, and the QI Agreement, all of
15 which were known to each Defendant, or which should have been known to each of
16 them upon the exercise of reasonable professional research and judgment.

17 144. Defendants breached their respective fiduciary duties to each Plaintiff
18 by, *inter alia*, the following acts and/or omissions:

- 19 a. Taking advantage of a relationship of trust and confidence and
20 using their respective and collective knowledge of each
21 Plaintiff's confidential information to solicit him or her to
22 transfer assets to, or maintain accounts with, UBS AG, and to
23 give control to the UBS AG Defendants;
- 24 b. Charging and collecting unreasonable, excessive, and unethical
25 fees;
- 26 c. Failing to disclose and comply with the QI Agreement and
27 other disclosure and tax law requirements;
- 28 d. Breaching the QI Agreement;

- 1 e. Planning and implementing a scheme by which Defendants
2 could manipulate and trick their U.S. clients, including each
3 Plaintiff, into keeping their assets with UBS AG and held by
4 specific trusts;
- 5 f. Advising each Plaintiff that the transactions were legitimate,
6 proper, and in accordance with all applicable tax laws, rules,
7 and regulations;
- 8 g. Failing to advise each Plaintiff that the Defendants were not
9 properly licensed to provide banking services, offer investment
10 advice, manage funds and solicit and execute the purchase and
11 sale of securities to and for U.S. citizens which said licensing
12 was specifically avoided so that the illegal activities of the
13 Defendants would go undetected by U.S. regulating
14 authorities;
- 15 h. Recommending, advising, instructing, and assisting each
16 Plaintiff in the formation of unnecessary business entities and
17 incurring unnecessary fees, penalties and criminal
18 investigations related thereto;
- 19 i. Transferring assets to the names of said "shell" entities thereby
20 causing additional unnecessary fees;
- 21 j. Promoting and selling unregistered and ineffective tax shelters;
- 22 k. Failing to obtain and ensure licensure of UBS AG's bankers,
23 and others regarding the provision of banking services,
24 investment advice and/or soliciting the purchase or sale of
25 securities through contact with clients in the U.S.;
- 26 l. Failing to ensure that the advised transactions complied with
27 applicable federal rules and regulations;
- 28

- 1 m. Failing to comply with their respective ethical obligations to
2 each Plaintiff and violating their respective professional rules
3 of conduct;
- 4 n. Providing erroneous legal and tax opinions and advice;
- 5 o. Providing personal financial information as well as erroneous
6 financial information to third parties while maintaining that
7 such information would be held in strict confidence and/or that
8 each Plaintiff would be advised of any intent to disclose such
9 information;
- 10 p. Each individual banker, director, board member and third party
11 service provider breached his respective fiduciary duties to
12 each Plaintiff by, *inter alia*, taking advantage of a relationship
13 of trust and confidence and using his respective and collective
14 knowledge of each Plaintiff's confidential information by
15 providing personal financial information, as well as erroneous
16 financial information, to the IRS and DOJ while maintaining
17 that the structures of each Plaintiffs' respective accounts was
18 fully compliant with all U.S. laws, such information would be
19 held in strict confidence and/or that each Plaintiff would be
20 advised of any intent to disclose such information;
- 21 q. Defendant UBS AG breached its fiduciary duties to each
22 Plaintiff by, *inter alia*, failing to properly manage and
23 supervise its representatives in an appropriate manner resulting
24 in the aforementioned consequences to each Plaintiff.

25 145. As a result of Defendants' respective conduct, each Plaintiff has
26 suffered injury in that, among other things, each Plaintiff:
27
28

- 1 a. Paid Defendants thousands to tens of thousands of dollars
2 annually in unearned management fees and transaction fees
3 which amounts should not have been charged to him;
4 b. Incurred and paid millions of dollars in tax penalties and
5 interest for ignorantly failing to pay meager taxes on meager
6 profits over an approximate 8-year period;
7 c. Has incurred, and will continue to incur, substantial additional
8 costs in hiring tax and legal advisors to address their respective
9 injuries;
10 d. Has lost the opportunity to engage in legitimate tax savings
11 opportunities;
12 e. Was criminally investigated by the Department of Justice for
13 the tax shelter scheme devised by Defendants ; and
14 f. Has suffered, and will continue to suffer, constant and
15 relentless negative press, regulatory and/or business
16 association penalties associated with the Defendant's scheme
17 causing each Plaintiff and his or her family great personal and
18 professional embarrassment and affecting their respective
19 business reputations.

20 146. As a proximate cause of the foregoing, each Plaintiff has been injured
21 in an actual amount to be proven at trial, but at least \$1 Million dollars, and should
22 further be awarded punitive damages in accordance with the evidence, plus attorneys'
23 fees and costs.

24 **COUNT VII**

25 (Violation of 18 U.S.C. § 1962(c) – Federal RICO Against All Defendants; and DOES 1
26 through 10, inclusive)

27 147. Plaintiffs repeat and reallege each and every prior allegation, as if
28 fully set forth herein.

1 148. At all times relevant to this complaint, all Defendants were “persons”
2 within the meaning of 18 U.S.C. § 1961(3).

3 149. At all times relevant to this complaint, the foregoing Defendants
4 directly or indirectly maintained an interest in or participated in the operation of UBS
5 AG which are “enterprises” within the meaning of 18 U.S.C. § 1961(4).

6 150. As set forth more fully above in the factual allegations, the foregoing
7 Defendants corrupted each of the entities and enterprises and caused each Plaintiff
8 damage through a pattern of racketeering activity. At all times relevant to this
9 Complaint, the foregoing Defendants conducted or participated, directly or indirectly, in
10 the operation and management of the numerous entity defendants through a pattern of
11 racketeering activity within the meaning of 18 U.S.C. §§ 1961(1) and (5) and § 1962(c).
12 As set forth in detail in the factual allegations, and incorporated herein by reference, this
13 pattern of racketeering activity entailed at least two of the following predicate acts of
14 racketeering activity per each of the foregoing Defendants:

- 15 a. Embezzlement by the UBS AG Defendants and the third party affiliates
16 who set up improper trusts continuously and repeatedly between 2000
17 and 2008 and who further took money from Plaintiffs under false
18 pretenses between 2008 and 2010;
- 19 b. Fraudulent misrepresentation and concealment by the previously
20 described individuals on behalf of UBS AG continuously and repeatedly
21 between 2000 and 2010 relating to fund management, tax legalities,
22 liabilities, and filing requirements, privacy, quality of securities, true
23 price of securities, misappropriation of funds, and true use of assets;
- 24 c. Securities fraud continuously and repeatedly between 2000 and 2010,
25 including intentional statutory and governmental violations of selling
26 securities without proper licensure, and ignoring non-licensure of
27 employees and third party securities promoters.
- 28

1 d. These activities took place by mail and/or wire by way of monthly
2 statements sent to each Plaintiff from approximately 2001 through 2010,
3 plus letters of correspondence in 2010 regarding account closure
4 matters.

5
6 151. The aforementioned pattern of racketeering consisted of a multitude
7 of acts that are indictable under 18 U.S.C. §§ 1341, 1343, and 1346 and are within the
8 scope of 18 U.S.C. § 1961(a)(A) and (1)(B). As set out more fully herein, the
9 commission of at least two of those related predicate acts over the last 10 years
10 constituted a continuous and related pattern of racketeering activity as defined in 18
11 U.S.C. §§ 1961(1) and (5).

12 152. As part of, and in further of, the fraudulent schemes and artifices
13 previously described, said Defendants made repeated use of, or had reason to believe
14 that others would use, the U.S. Postal Service, interstate overnight couriers, and the
15 interstate wires to transmit various documents, including, without limitation, letters,
16 financial statements, account statements, contracts, and miscellaneous records.

17 153. Each transmission constituted either the transmittal by means of wire
18 communication in interstate commerce of signals, sounds or writings; the use of the U.S.
19 Postal service; or the use of interstate overnight couriers for the purpose of executing or
20 in connection with the aforementioned schemes and artifices to defraud Plaintiffs, and
21 other third parties. The foregoing Defendants knew, or had reason to believe, that these
22 transmissions were in furtherance of advancing the aforementioned corrupt enterprises
23 or were incidental to an essential part of the aforementioned corrupt enterprise.

24 154. As described in Paragraph 151, said Defendants made or caused these
25 transmissions to be made with the specific intent of defrauding Plaintiffs and other
26 investors and potential investors in UBS AG. Each of these transmissions furthered the
27 aforementioned schemes and artifices to defraud, which were intended to, and did,
28 proximately cause injury to Plaintiffs and others in their business and property. Those

1 acts constituted offenses indictable as crimes under, the “mail fraud” and “wire fraud”
2 statutes, 18 U.S.C. §§ 1341, 1343 and 1346.

3 155. Plaintiffs reasonably relied upon the oral and written statements made
4 to them by said Defendants in connection with the aforementioned schemes or artifices
5 to defraud.

6 156. As a result of the foregoing, each Plaintiff has sustained substantial
7 damages and/or irreparable harm in an amount to be proven at trial, but in excess of \$1
8 Million per Plaintiff.

9
10 **COUNT VIII**

11 (Violation of 18 U.S.C. § 1962(d) – Federal RICO Conspiracy Against All Defendants;
12 and DOES 1 through 10, inclusive)

13 157. Plaintiffs repeat and reallege each and every prior allegation, as if
14 fully set forth herein.

15 158. As more specifically set forth in the factual allegations above, since
16 2000, through and including 2010, Defendants unlawfully and willfully combined,
17 conspired, confederated and agreed between and amongst each other to jointly violate 18
18 U.S.C. § 1962(c), i.e. to conduct and participate, directly and indirectly, in the affairs of
19 UBS AG and its affiliated professional service providers and other yet-to-be identified
20 entities through a pattern of racketeering, all in violation of 18 U.S.C. § 1962(d).

21 159. As part of this conspiracy, each of the foregoing Defendants
22 personally agreed to commit and, in fact, committed two or more predicate racketeering
23 acts within the last 10 years, including, but not limited to, embezzlement, fraud, and
24 securities fraud, and agreed to conduct and, in fact, conducted the affairs of UBS AG
25 and third party affiliated service providers, and other yet-to-be identified entities through
26 a pattern of racketeering activity in violation of U.S.C. § 1962(c). More specifically,
27 Defendants engaged in the following:
28

- 1 a. Embezzlement by the UBS AG Defendants and the third party affiliates
2 who set up improper trusts continuously and repeatedly between 2000
3 and 2008 and who further took money from Plaintiffs under false
4 pretenses between 2008 and 2010;
- 5 b. Fraudulent misrepresentation and concealment by the previously
6 described individuals on behalf of UBS AG continuously and repeatedly
7 between 2000 and 2010 relating to fund management, tax legalities,
8 liabilities, and filing requirements, privacy, quality of securities, true
9 price of securities, misappropriation of funds, and true use of assets;
- 10 c. Securities fraud continuously and repeatedly between 2000 and 2010,
11 including intentional statutory and governmental violations of selling
12 securities without proper licensure, and ignoring non-licensure of
13 employees and third party securities promoters.
- 14 d. These activities took place by mail and/or wire by way of monthly
15 statements and correspondence from approximately 2001 through 2010.
16

17 160. As a result, each Plaintiff has sustained substantial damages and has
18 been irreparably harmed in an amount to be proven at trial, but at least \$1 Million per
19 Plaintiff.

20 **COUNT IX**

21 (Professional Malpractice Against All Defendants; and DOES 1 through 10, inclusive)

22 161. Plaintiffs repeat and reallege each and every prior allegation, as if
23 fully set forth herein.

24 162. As investment and tax advisers to each respective Plaintiff,
25 Defendants and DOES 1 through 10, and each of them, owed said Plaintiffs undivided
26 duties of care, loyalty and honesty, a duty to comply with the applicable standards of
27 care, and a duty to comply with the applicable provisions of their codes of professional
28 responsibility.

1 163. Said Defendants also owed a duty to each Plaintiff to meet the
2 applicable standard of care for accountants and financial advisors. Said Defendants
3 failed to meet the applicable standards of care, which proximately caused damages to
4 each Plaintiff as set forth elsewhere in this Complaint.

5 164. During the course of their representation of each Plaintiff, in
6 furtherance of the above-described scheme, said Defendants each made numerous
7 knowingly or negligently false affirmative representations, and intentional or negligently
8 misleading omissions of material fact and gave numerous recommendations, advice,
9 instructions, and opinions to each Plaintiff, including, but not limited to, the following:

- 10 a. Planning and implementing a scheme by which Defendants
11 could manipulate their clients, including each Plaintiff, into
12 transferring and/or keeping their assets in UBS AG;
- 13 b. Taking advantage of a relationship of trust and confidence and
14 using their respective and collective knowledge of each
15 Plaintiff's confidential information to solicit him or her to
16 transfer assets to, or otherwise maintain an account with, UBS
17 AG;
- 18 c. Charging and collecting unreasonable, excessive, and unethical
19 fees;
- 20 d. Failing to disclose the QI Agreement and other disclosure and
21 tax requirements;
- 22 e. Breaching the QI Agreement;
- 23 f. Advising each Plaintiff that the investments and transactions
24 were legitimate, proper, and in accordance with all applicable
25 tax laws, rules, and regulations;
- 26 g. Recommending, advising, instructing, and assisting each
27 Plaintiff in the formation of unnecessary business entities and
28

1 incurring unnecessary fees and criminal investigation related
2 thereto;

3 h. Transferring assets to the names of said "shell" entities thereby
4 causing additional unnecessary fees;

5 i. Promoting and selling unregistered and illegal tax shelters;

6 j. Failing to obtain and ensure licensure of its bankers and third
7 party affiliates regarding the provision of banking services,
8 investment advice and/or soliciting the purchase or sale of
9 securities through contact with clients in the U.S.;

10 k. Failing to ensure that the advised transactions complied with
11 applicable federal rules and regulations;

12 l. Failing to comply with their respective ethical obligations to
13 each Plaintiff and violating their respective professional rules
14 of conduct;

15 m. Providing erroneous legal and tax opinions and advice;

16 n. Providing personal financial information as well as erroneous
17 financial information to third parties while maintaining that
18 such information would be held in strict confidence and/or that
19 Each Plaintiff would be advised of any intent to disclose such
20 information; and

21 o. Permitting or participating in embezzlement.

22 165. By virtue of the scheme, Defendants either knew or reasonably
23 should have known their representations, recommendations, advice, instructions, and
24 opinions to be false. In addition, the rendering of such representations,
25 recommendations, advice, instructions and opinions, as well as the failure to advise each
26 Plaintiff of the omissions set forth above, was intentional, negligent, grossly negligent,
27 and reckless. Accordingly, said Defendants failed to exercise the requisite standard of
28 care for tax advisers and/or financial advisors.

1 (Disgorgement of Unethical Excessive & Illegal Fees Against All Defendants; and DOES
2 1 through 10, inclusive)

3 171. Plaintiffs repeat and reallege each and every prior allegation, as if
4 fully set forth herein.

5 172. Defendants charged each Plaintiff for "management" services of their
6 respective accounts and other necessary "services," including those of third parties,
7 which had no true value and expended little, if any, additional time or effort in providing
8 necessary, useful and/or productive advice, products, opinions and/or services to Each
9 Plaintiff. These charges were not customary, but were excessive, especially in light of
10 the alleged scheme. Additionally, said Defendants were not licensed to conduct any of
11 the transactions, give advice, sell, and/or invest his assets.

12 173. In addition to the meritless advice, opinions and document
13 preparation provided to each Plaintiff, Defendants' respective fees, which he paid out of
14 his assets, are unethically excessive and in violation of both federal and state statutes.

15 174. Moreover, because Defendants did not disclose information they
16 were required to disclose, as provided hereinabove, their fee and/or compensation
17 agreements with each Plaintiff are not enforceable.

18 175. Accordingly, all fees, profits, commissions, received by Defendants
19 either directly from each Plaintiff or from any and all other Defendants and/or third
20 parties, in the preparation of and formation of business entities, and "salaries" obtained
21 from entities using the Olen assets, must be disgorged.

22 **COUNT XI**

23 (Civil Conspiracy Against All Defendants and DOES 1 through 10, inclusive)

24 176. Plaintiffs repeat and reallege each and every prior allegation, as if
25 fully set forth herein.

26 177. Between 2000 and 2010, Defendants engaged in several civil
27 conspiracies with each other which consisted of:

28 (a) an agreement between and amongst Defendants to

1 (b) misrepresent to all U.S. customers, including each Plaintiff,
2 and similarly situated existing and prospective customers, the true nature of
3 the investment scheme and to defraud each Plaintiff into paying
4 unnecessary and excessive fees for a fraudulent product and fraudulent
5 services and to convert assets from each Plaintiff,

6 (c) which agreement resulted in injury to each Plaintiff.

7 178. As previously described in detail above, Defendants knowingly acted
8 in concert to market and implement the fraudulent and manipulative scheme. In doing
9 so, Defendants acted with full knowledge and awareness that the concealment of
10 information, asset transfers, investments, entity formations and unauthorized transfers
11 were designed to give the false impression that a well-planned and complex series of
12 transactions were legitimate business transactions which had economic substance from a
13 tax-savings, privacy and investment standpoint, when in fact they lacked those and other
14 features necessary for a successful tax and investment strategy and were further in direct
15 contravention to the QI Agreement and designed to skirt each Plaintiff's best interests
16 for their collective gain.

17 179. Prior to the marketing and consummation of the asset transfers and/or
18 account maintenance and investment scheme, Defendants entered into an agreement,
19 association and union associated, in fact, to devise, design, facilitate, promote, and
20 manage the asset transfers and investments of each Plaintiff for the express purpose of
21 generating and sharing in millions of dollars in fees and converted monies.

22 180. Not only did Defendants know that their expressly marketed
23 strategies were abusive and illegal tax shelters, but they expressly stated to each Plaintiff
24 that the transactions were going to net each Plaintiff better investment results while
25 providing additional privacy and security. This was patently false as the Defendants
26 knew.

1 181. Defendants further knew, or were reckless in not knowing, that they
2 were charging each Plaintiff excessive, unnecessary and/or imaginary fees for all
3 transactions conducted, as described above.

4 182. The acts of the Defendants violated both federal and state law, as
5 well as rules governing professional standards.

6 183. The Defendants acted in their respective roles as described above
7 according to a predetermined and commonly understood and accepted plan of action all
8 for the sole purposes of obtaining professional fees and converting monies from each
9 Plaintiff, and other customers, all in contravention to the QI Agreement and/or U.S. Tax
10 laws.

11 184. As co-conspirators, each of the Defendants, and DOES 1 through 10,
12 during the previously-described time periods, aided the other in the implementation and
13 execution of said Defendants' joint deceptive scheme by causing each Plaintiff to invest
14 their funds with them and/or by taking advantage of their powers over said funds. A
15 meeting of the minds existed between and amongst said Defendants to commit the
16 unlawful acts alleged herein. These conspiracies to commit said unlawful, overt acts,
17 proximately caused and continue to cause each Plaintiff damages as previously set forth
18 herein.

19 185. As a consequence of Defendants' conduct, each Plaintiff has suffered
20 injury to himself, the business and assets in that each has paid Defendants hundreds of
21 thousands of dollars in fees and actual damages and losses in an amount to be proven at
22 trial; has incurred tax penalties and interest and disallowance of certain other deductions;
23 has incurred and will continue to incur substantial additional fees and costs in hiring new
24 tax and legal advisors to rectify the situation; has foregone legitimate tax savings and
25 investment opportunities; has been criminally investigated by the Department of Justice;
26 and has suffered, and will continue to suffer, relentless negative press causing each of
27 them and their respective families great personal and professional embarrassment and
28 effecting their business reputation and opportunities.

1 securities without proper licensure, and ignoring non-licensure of
2 employees and third party securities promoters.

3 190. Accordingly, each California Plaintiff is entitled to restitution in an
4 amount to be proven at trial, but at least \$1 million dollars as to all Defendants.

5 **COUNT XIII**

6 (Violation of the Texas Deceptive Practices Act,
7 Tex. Bus. & Com. Code §§17.41, et. seq., by the Gubsters ,
8 Against All Defendants; and DOES 1 through 10, inclusive)

9 191. Plaintiffs repeat and reallege each and every prior allegation, as if
10 fully set forth herein.

11 192. Based on the wrongful act of Defendants, and DOES 1 through 10,
12 and each of them, as set forth full in the factual allegations above and incorporated
13 herein by this reference, both against each Texas Plaintiff and in violation of federal and
14 state laws, each Plaintiff has suffered, and will continue to suffer, substantial pecuniary
15 losses as well as irreparable injury to each Plaintiff's business reputation and goodwill.

16 193. By reason of said wrongful acts, including, but not limited to, fraud,
17 embezzlement and securities fraud, said Defendants have violated Tex. Bus. & Com.
18 Code §§17.41, et. seq., by consummating an unlawful, unfair, and fraudulent business
19 practice designed to deprive each Plaintiff of money and investment profits. More
20 specifically, Defendants engaged in the following:

- 21 a. Embezzlement by the UBS AG Defendants and their third party co-
22 conspirators continuously and repeatedly between 2000 and 2010;
- 23 b. Fraudulent misrepresentation and concealment by the previously
24 described individuals on behalf of UBS AG continuously and repeatedly
25 between 2000 and 2010 relating to fund management, tax legalities,
26 liabilities, and filing requirements, privacy, quality of securities, true
27 price of securities, and true use of assets;
- 28

1 c. Securities fraud continuously and repeatedly between 2000 and 2010,
2 including intentional statutory and governmental violations of selling
3 securities without proper licensure, and ignoring non-licensure of
4 employees and third party securities promoters.

5 194. Accordingly, each Texas Plaintiff is entitled to restitution in an
6 amount to be proven at trial, but at least \$1 million dollars as to all Defendants.

7 **COUNT XIV**

8 (Violation of N.Y. Gen. Bus. Law § 349, et. seq., Deceptive Acts and Practices Unlawful,
9 by Anton Ginzburg and Jeffrey Chernick Against All Defendants;
10 and DOES 1 through 10, inclusive)

11 195. Plaintiffs repeat and reallege each and every prior allegation, as if
12 fully set forth herein.

13 196. Based on the wrongful act of Defendants, and DOES 1 through 10,
14 and each of them, as set forth full in the factual allegations above and incorporated
15 herein by this reference, both against each New York Plaintiff and in violation of federal
16 and state laws, each Plaintiff has suffered, and will continue to suffer, substantial
17 pecuniary losses as well as irreparable injury to each Plaintiff's business reputation and
18 goodwill.

19 197. By reason of said wrongful acts, including, but not limited to, fraud,
20 embezzlement and securities fraud, said Defendants have N.Y. Gen. Bus. Law § 349, et.
21 seq., by consummating an unlawful, unfair, and fraudulent business practice designed to
22 deprive each Plaintiff of money and investment profits. More specifically, Defendants
23 engaged in the following:

- 24 a. Embezzlement by the UBS AG Defendants and their third party co-
25 conspirators continuously and repeatedly between 2000 and 2010;
26 b. Fraudulent misrepresentation and concealment by the previously
27 described individuals on behalf of UBS AG continuously and repeatedly
28 between 2000 and 2010 relating to fund management, tax legalities,

1 liabilities, and filing requirements, privacy, quality of securities, true
2 price of securities, and true use of assets;

- 3 c. Securities fraud continuously and repeatedly between 2000 and 2010,
4 including intentional statutory and governmental violations of selling
5 securities without proper licensure, and ignoring non-licensure of
6 employees and third party securities promoters.

7 198. Accordingly, each New York Plaintiff is entitled to restitution in an
8 amount to be proven at trial, but at least \$1 million dollars as to all Defendants.

9 **COUNT XV**

10 (Unfair Business Practices, Rev.Code.Wash. §19.86.020, et. seq., by Arthur Joël
11 Eisenberg Against All Defendants; and DOES 1 through 10, inclusive)

12 199. Plaintiffs repeat and reallege each and every prior allegation, as if
13 fully set forth herein.

14 200. Based on the wrongful act of Defendants, and DOES 1 through 10,
15 and each of them, as set forth full in the factual allegations above and incorporated
16 herein by this reference, both against each Washington Plaintiff and in violation of
17 federal and state laws, each Plaintiff has suffered, and will continue to suffer, substantial
18 pecuniary losses as well as irreparable injury to each Plaintiff's business reputation and
19 goodwill.

20 201. By reason of said wrongful acts, including, but not limited to, fraud,
21 embezzlement and securities fraud, said Defendants have violated Rev.Code.Wash.
22 §19.86.020, et. seq., by consummating an unlawful, unfair, and fraudulent business
23 practice designed to deprive Each Plaintiff of money and investment profits. More
24 specifically, Defendants engaged in the following:

- 25 a. Embezzlement by the UBS AG Defendants and their third party co-
26 conspirators continuously and repeatedly between 2000 and 2010;
27 b. Fraudulent misrepresentation and concealment by the previously
28 described individuals on behalf of UBS AG continuously and repeatedly

1 between 2000 and 2010 relating to fund management, tax legalities,
2 liabilities, and filing requirements, privacy, quality of securities, true
3 price of securities, and true use of assets;

4 c. Securities fraud continuously and repeatedly between 2000 and 2010,
5 including intentional statutory and governmental violations of selling
6 securities without proper licensure, and ignoring non-licensure of
7 employees and third party securities promoters.

8 202. Accordingly, each Washington Plaintiff is entitled to restitution in an
9 amount to be proven at trial, but at least \$1 million dollars as to all Defendants.

10 **COUNT XVI**

11 (Breach of Contract Against the UBS AG Defendants; and DOES 1 through 10,
12 inclusive)

13 203. Plaintiffs repeat and reallege each and every prior allegation, as if
14 fully set forth herein.

15 204. Each Plaintiff entered into implied, oral and written contracts with
16 Defendants to provide him with professionally competent investment advisory and
17 execution services, tax and legal advice and services, and accounting services. In
18 connection therewith, Defendants were required and expected to meet all applicable
19 standards of care, to meet the fiduciary duties of loyalty and honesty, and to comply with
20 all applicable rules of professional conduct. Moreover, as previously stated, each
21 Plaintiff gave specific guidelines regarding the quality of investment vehicles and the
22 overall goals for growth, and that parties agreed that any fees paid would be based on a
23 “transparent system” and that each Plaintiff would only be charged a periodic fee.

24 205. Defendants ignored their obligations and each Plaintiff’s guidelines
25 and instead materially breached their contracts by, among other things, providing each
26 Plaintiff with advice, opinions, recommendations, representations, instructions, and
27 services that Defendants either knew or reasonably should have known to be wrong and
28 in furtherance of the conduct described above. Additionally, the rendering of such

1 210. Defendants wrongfully interfered with each Plaintiff's interests in his
2 investment assets by undertaking the following acts:

- 3 a. Defendants UBS AG, charged thousands of dollars in
4 excessive and unauthorized fees against each Plaintiff's
5 accounts;
- 6 b. Defendants UBS AG and its co-conspirators created
7 unnecessary "shell" corporations and/or charged unnecessary
8 transaction fees and referral fees to all parties involved;
- 9 c. Defendants, and each of them, wrongfully froze accounts and
10 otherwise charged improper "fees" upon closing each
11 Plaintiff's account and transferring the funds back to each
12 Plaintiff.

13 211. Defendants conspired with each other to convert the above-listed
14 property, so that the activities of one are attributable to all.

15 212. As a result of Defendants' acts of conversion, each Plaintiff has been
16 damaged in an amount to be proven at trial, but at least \$1,000,000 as to all Defendants,
17 including all compensatory damages.

18 213. In doing the acts herein alleged, Defendants acted with oppression,
19 fraud, malice, and in conscious disregard of the rights of each Plaintiff, and each
20 Plaintiff is therefore entitled to punitive damages according to proof at the time of trial.

21 214. Each Plaintiff is further entitled to the imposition of a constructive
22 trust on the converted assets and their fruits and is entitled to a tracing and accounting
23 with respect to said funds.

24 215. Each Plaintiff is further entitled to the imposition of an equitable lien
25 on the converted goods.

26 **COUNT XVIII**

27 (Breach of Confidentiality by the Roberts, Ginzburg, Eisenberg and Chernick Against
28 the UBS AG Defendants; and DOES 1 through 10, inclusive)

1 216. Plaintiffs repeat and reallege each and every prior allegation, as if
2 fully set forth herein.

3 217. Defendants violated Swiss Civil Code, Article 28 and Swiss Banking
4 Law, Article 47 which prohibits a bank and any bank representative from revealing a
5 customer's private information to any third party. While there are exceptions to these
6 codes, the facts as it pertained to the allegations against Plaintiffs Nadia and Sean
7 Roberts, Ginzburg, Eisenberg, and Chernick did not give rise to the exception.

8 218. Moreover, UBS AG created its own list of threshold items which
9 would trigger the release of a U.S. customer's name to third parties, such as the DOJ.
10 Unfortunately, UBS AG did not follow its own standard when it released the names of
11 specific customers.

12 219. Consequently, each of the aforementioned Plaintiffs was not able to
13 apply for voluntary disclosure being afforded by the IRS. In fact, UBS AG released
14 these names before any of these Plaintiffs had even been made aware of the Voluntary
15 Disclosure program. While said Plaintiffs would still have been penalized, the penalties
16 under the Voluntary Disclosure program were and continue to be much less severe,
17 which would have saved each Plaintiff millions of dollars in penalties and interest.

18
19
20
21 **COUNT XIX**

22 (Accounting Against the UBS AG Defendants; and DOES 1 through 10, inclusive)

23 220. Plaintiffs repeat and reallege each and every prior allegation, as if
24 fully set forth herein.

25 221. As a result of the foregoing breaches, conversions, unnecessary fees,
26 and unauthorized transactions, Defendants have received money, a portion of which is
27 still due to each Plaintiff.

1 228. Pursuant to 28 U.S.C. § 2201, each Plaintiff is entitled to a
2 declaration that Defendants are liable to him for such penalties, interest, costs,
3 professional fees, expenses and damages. There exists an actual, justiciable controversy
4 between the parties as Defendants have denied such liability.

5 229. Pursuant to 28 U.S.C. § 2201, each Plaintiff is also entitled to a
6 declaration that the agreements entered into with Defendants are void and unenforceable
7 and are, in any event, inapplicable in all respects to the claims asserted herein.

8
9 **JURY DEMAND**

10 Plaintiffs herein demand trial by jury.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, each Plaintiff demands judgment against all Defendants, and each
13 of them, as follows:

14 **AS TO COUNTS I THROUGH XVIII:**

- 15 1. For rescission of any and all contracts, plus all compensatory damages
16 proximately caused by the wrongful acts and/or omissions of each
17 defendant
- 18 2. For reasonable attorney's fees and costs pursuant to California Corporations
19 Code § 25501.5, et seq., where applicable;
- 20 3. For exemplary and punitive damages in an amount to be proven at trial;
- 21 4. For the disgorgement of all fees paid to each of the Defendants for all
22 transactions according to proof, but no less than \$1 million per Plaintiff;
- 23 5. For restitution of all monies converted by all Defendants, plus all fees paid
24 for services, in an amount to be determined at trial, but at least \$100
25 Thousand dollars as to each Plaintiff;
- 26 6. For compensatory damages for lost investment opportunities in amount to
27 be determined at trial, but not less than \$100,000 per Plaintiff;
- 28

1 7. For compensatory damages in accordance with Swiss Civil Code Article 28
2 as to each of Plaintiffs Nadia and Sean Roberts, Ginzburg, Eisenberg, and
3 Chernick in an amount to be determined at trial, but at least \$1 million per
4 Plaintiff;

5 **AS TO COUNT XIX:**

6 8. For an order requiring Defendants UBS AG to provide a full and complete
7 accounting of all transactions, all fees charged, and all commissions paid;

8 **AS TO COUNT XX:**

9 9. For a declaration that, pursuant to 28 U.S.C. § 2201, each Plaintiff is
10 entitled to a declaration that each defendant is jointly and severally liable to
11 him or her for all tax penalties, interest, costs, professional fees, expenses
12 and damages related to the tax assessments levied against each Plaintiff;

13
14 **AS TO ALL COUNTS:**

- 15 10. For attorneys fees as permitted by statute;
16 11. For costs of suit incurred herein; and
17 12. For such other and further relief as the court may deem proper.

18 DATED: May 3, 2012

19 **RESPECTFULLY SUBMITTED,**

20
21 /s/ William J. King
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