IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

MATTHEW THOMAS and HIMANSHU PATEL, on their own behalf and on behalf of all others similarly situated,	§	**NO. 1:11-cv-4798** Honorable John W. Darrah
PLAINTIFFS,	§	**PLAINTIFFS' FIRST AMENDED CLASS ACTION COMPLAINT**
v.	§	**JURY TRIAL DEMANDED**
UBS AG,	§	
DEFENDANT.	§	

PLAINTIFFS' FIRST AMENDED CLASS ACTION COMPLAINT

Plaintiffs Matthew Thomas, Himanshu Patel, and Mathilde Guetta (hereinafter sometimes collectively referred to as the "Plaintiffs") file this First Amended Class Action Complaint, on their own behalf and on behalf of others similarly situated, against Defendant UBS AG (hereinafter referred to as the "Defendant" or "UBS"), seeking damages for claims arising out of Swiss bank accounts held by United States citizens as further described herein (the "Swiss Accounts"), and state:

I.

JURISDICTION AND VENUE

1. This is an action for malpractice/negligence, breach of fiduciary duty, breach of contract/unjust enrichment, declaratory relief/disgorgement, and fraud/constructive fraud. This Court has jurisdiction of this action under 28 U.S.C. §§ 1332(d), 1453, and 1711-1715 (the Class Action Fairness Act).

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

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

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

II.

PARTIES

5. Plaintiff Matthew Thomas is an individual and a citizen of California.

6. Plaintiff Himanshu Patel is an individual and a citizen of Arizona.

7. Plaintiff Mathilde Guetta is an individual and a citizen of New York.

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

9. UBS is subject to regulation by the U.S. Department of Treasury and entered into a QI Agreement (as hereinafter defined and discussed) pursuant to 1.1441-1(e)(5) of the income tax regulations.

III.

CLASS ALLEGATIONS

10. Plaintiffs bring this action on their own behalf and, pursuant to Rule 23(b)(1)(A), (b)(2), and/or (b)(3) of the Federal Rules of Civil Procedure, as a class action on behalf of themselves and the nationwide class of all persons (the "Class Members," the "alleged class" or the "Class") defined below against Defendant:

> All United States taxpayers who held and/or owned, whether held and/or owned individually or jointly with another, or beneficially owned an account in Switzerland with UBS at any time from 2002 through 2011 and who have paid or offered to pay the United States Internal Revenue Service ("IRS") or any other domestic taxing authority back-taxes and penalties and/or interest through the 2009 IRS Voluntary Disclosure Initiative, the 2011 IRS Voluntary Disclosure Initiative, a similar program, or otherwise, as a result of not disclosing or declaring such Swiss Account to the IRS or not paying income tax to the IRS derived from such Swiss Account.

11. Plaintiffs and the Class Members each and all have tangible and legally protectable interests at stake in this action.

12. The claims of Plaintiffs and the Class Members have a common origin and share a common basis.

13. Plaintiffs state claims for which relief can be granted that are typical of the claims of the Class Members. Thus, the class representatives have been the victims of the same illegal acts as each member of the class.

14. If brought and prosecuted individually, each of the Class Members would necessarily be required to prove the instant claim upon the same material and substantive facts, upon the same remedial theories and would be seeking the same relief.

15. The claims and remedial theories pursued by Plaintiffs are sufficiently aligned with the interests of the Class Members to ensure that the universal claims of the alleged class will be prosecuted with diligence and care by Plaintiffs as representatives of the Class.

16. The Class Members are so numerous that joinder of all members is impracticable. Based upon information and belief, the Defendant maintained thousands of the UBS Swiss Accounts for thousands, if not, tens of thousands of U.S. clients and, according to published IRS reports, over 15,000 persons have applied for the amnesty described in paragraph 10 above.

17. There are numerous questions of law and fact common to the alleged class. Such common questions include, *inter alia*:

a. Whether Defendant failed to (a) prepare and deliver to Plaintiffs and the Class Members the QI-agreed IRS Forms W-9 which would have identified each of them as someone who either needed to pay taxes on offshore assets or (b) withhold 28% of the profits of the accounts of any taxpayer who chose and informed UBS not to "declare" their Swiss Accounts;

b. Whether Defendant failed to inform Plaintiffs and the Class Members about the tax reporting requirements of the QI Agreement (as hereinafter defined) that UBS had signed with the Department of the Treasury and which had been established pursuant to 1.1441-1(e)(5) of the income tax regulations, including but not limited

to the requirement that Defendant prepare and deliver to Plaintiffs and the Class Members the QI-agreed IRS Forms W-9 which would have identified each of them as someone who either needed to pay taxes on offshore assets or (b) withhold 28% of the profits of the accounts of any taxpayer who chose and informed UBS not to "declare" their Swiss Account; and

c. Whether Defendant failed to inform Plaintiffs and the Class Members that Plaintiffs' and the Class Members' failure to disclose their respective Swiss Accounts to the U.S. government would result in a violation of U.S. law and would subject them to enormous penalties and interest.

d. Whether the QI Agreement (as hereinafter defined) that UBS signed with the Department of the Treasury, pursuant to 1.1441-1(e)(5) of the income tax regulations, established uniform tax reporting requirements to be administered by UBS and applied to the Class.

e. Whether Defendant owed the Class a fiduciary duty:

f. If so, whether Defendant violated the fiduciary duty owed to the Class:

g. Whether Defendant has been unjustly enriched through the activities described herein;

h. Whether Defendant's acts and practices constitute violations of applicable law for which equitable disgorgement of ill-gotten monies is appropriate; and

i. Whether Defendant has engaged in fraud or constructive fraud through the activities described herein.

18. Adjudications with respect to individual members of the Class would, as a practical matter, be dispositive of the interests of the other Class Members who are not parties to the action or could substantially impair or impede their ability to protect their interests.

19. Defendant has acted or refused to act on grounds generally applicable to the Class, making appropriate final relief with respect to the Class as a whole. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the alleged Class which would establish incompatible standards of conduct for the party opposing the Class. Such incompatible standards, inconsistent or varying adjudications on what, of necessity, would be the same essential facts, proof and legal theories, would create and allow to exist inconsistent and incompatible rights within the plaintiff Class. Further, the failure to permit this cause to proceed as a class action under Rule 23(b)(1)(A) would be contrary to the beneficial and salutary public policy of judicial economy in avoiding a multiplicity of similar actions. Plaintiffs also allege that questions of law and fact applicable to the Class predominate over individual questions and that a class action under Rule 23(b)(3) is superior to other available methods for the fair and efficient adjudication of the controversy. Failure to permit this action to proceed under Rule 23 would be contrary to the public policy encouraging the economies of attorney and litigant time and resources.

20. The named Plaintiffs allege that they are willing and prepared to serve the Court and proposed Class in a representative capacity with all of the obligations and duties material thereto.

21. The self-interests of the named Class representatives are co-extensive with and not antagonistic to those of the absent Class Members. The proposed representatives will undertake to well and truly protect the interests of the absent Class Members.

22. The named Plaintiffs have engaged the services of counsel indicated below. Plaintiffs' counsel are experienced in complex class litigation, and in particular class and other

litigation involving tax issues, and will adequately prosecute this action and will assert, protect and otherwise represent well the named Class representatives and absent Class Members.

23. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all members of the Class is impracticable. There will be no difficulty in the management of this action as a class action.

24. Plaintiffs will fairly and adequately protect the interest of the Class and have no interests adverse to or which directly and irrevocably conflict with the interests of other Class Members.

IV.

BACKGROUND FACTS

A. Introduction.

25. In the last decade, thousands of US taxpayers were targeted in an illegal scheme orchestrated by Defendant UBS. This well thought out plan resulted in hundreds of millions of dollars in damages to these taxpayers, all to the benefit of UBS's bottom line.

26. In connection with this plan, UBS undertook specific tax reporting duties with regard to Plaintiffs and the Class, failed to send them proper tax documents for tax filing purposes, intentionally withheld key information from Plaintiffs and the Class, and intentionally omitted telling them that UBS's actions were in direct contravention to U.S. reporting requirements in accordance with a 2001 agreement UBS had signed with the U.S. Government (the QI Agreement defined and discussed hereinafter) which had been established pursuant to 1.1441-1(e)(5) of the income tax regulations. Beginning in 2009, UBS has admitted publicly on several occasions its scheme to defraud the IRS; moreover, its former CEO, Defendant Raoul Weil, has been indicted as a result of his direct involvement in UBS's scheme and one of the UBS bankers, Bradley Birkenfeld, has been sentenced to 40 months in prison for his active role.

B. UBS Takes Aim at the United States Market.

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

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

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

techniques to avoid having their violations of U.S. law detected, exceeding their licenses, or triggering 1099 reporting requirements including:

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

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

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

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

e. Using coded spreadsheets and notes; and

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

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

> "The markets are growing fast, and our competition is catching up....The answer to guarantee our future is GROWTH. We have grown from CHF

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

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

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

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

31. In 2001, pursuant to 1.1441-1(e)(5) of the income tax regulations, the United States government established the Qualified Intermediary ("QI") Program to encourage foreign financial institutions to report and withhold tax on U.S. source income paid to foreign bank accounts. The U.S. established the QI Program based on a concern that foreign financial institutions were structuring the foreign accounts of U.S. taxpayers in a manner that resulted in the under-reporting and underpayment of taxes to the U.S. Thousands of foreign financial situations have become voluntary QI participants, including UBS.

32. As a participant in the QI Program, UBS signed a 65-page standardized agreement with the IRS (the "QI Agreement"), under which UBS agreed to act as the U.S. withholding agent and comply with U.S. tax withholding obligations for covered clients. As a participant in the QI Program, UBS was required to have its customers fill out IRS Forms W-8BEN or W-9; each of these forms required that the beneficial owner of a UBS account be identified on the form if UBS believed or knew that person to be a U.S. citizen or resident. The

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

purpose of this procedure was to ensure that the U.S. could identify its citizens' or residents' "offshore" account(s) for auditing and taxation purposes.

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

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

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

35. Not to be slowed down by the United States government's demands or UBS's obligations under the QI Agreement it voluntarily signed, UBS's executives and legal counsel devised an intricate scheme involving the executives within UBS's walls as well as outside

[4] UBS Senate Report at 14.

people and professional service companies to unlawfully avoid the terms and reporting requirements of the QI Agreement, which placed its unsuspecting U.S. clients (*i.e.*, the Class Members) in the cross-hairs of a multi-agency U.S. government investigation.

36. UBS made a company-wide statement to its wealth management executives that it was committed to providing absolutely secret private banking services to U.S. citizens ***notwithstanding the QI Agreement.*** UBS, through its Board of Directors and management, established written policies and guidelines to effectuate their dubious scheme in an effort to gain additional U.S. clients and investments without apprising these clients of their obligation to report these UBS Swiss Accounts to the IRS.

37. UBS did just that by withholding from its U.S. clients information about its duties under the QI Agreement. UBS was content to leave their U.S. clients with this inaccurate understanding as it ensured that no "red flags" would cause these U.S. clients to get insecure and move their substantial funds to a U.S.-based bank or, worse yet, expose UBS as the tax shelter haven it had become (unbeknownst to the Plaintiffs and Class Members).

38. Beginning in 2001 and continuing for the next several years, UBS directors and management directly authorized, encouraged and instructed its Swiss private bankers and other wealth management executives to regularly travel to the U.S. to solicit new clients while conducting banking for existing U.S. clients. Moreover, as explained in Paragraph 28 herein, UBS sponsored formal dinners and seminars, visiting art shows, sailing regattas, and other such events to facilitate contact with wealthy citizens. UBS trained its bankers in techniques to avoid questioning by U.S. law enforcement by (i) falsely stating their purpose of travel to be recreational rather than business on U.S. Customs entry forms and (ii) encrypting and coding information so that the business motive for their visits could not be detected. Additionally, executives were instructed not to be tracked by authorities while in the U.S. and on how to

conceal and transfer clients' account funds and assets overseas without detection. UBS directors and managers were aware of, encouraged, directed, authorized and commanded that UBS employees execute their fraudulent and unlawful scheme against U.S. citizens, including Plaintiffs and the Class.

39. All the while, UBS continued to feign compliance with the IRS QI Agreement, but failed to disclose this illegal activity to Plaintiffs or any of its clients. UBS made every effort to not raise any concerns on the part of its U.S. clients. Specifically, UBS failed to (a) prepare and deliver to these taxpayers the QI agreed IRS Forms W-9 which would have identified each of them as someone who either needed to pay taxes on offshore assets or (b) withhold 28% of the profits of the accounts of any taxpayer who chose and informed UBS not to "declare" their Swiss Accounts.

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

41. Despite the fact that UBS signed a QI Agreement and knew that the accounts in question were owned and/or held by U.S. clients, UBS never filed 1099 Forms, withheld taxes, or otherwise reported these accounts to the IRS, contending that these U.S.-client accounts fell outside its QI reporting obligations. Moreover, UBS never informed these U.S. clients that they were required to report the Swiss accounts to U.S. taxing authorities.

42. In some instances, UBS assisted U.S. clients in selling their U.S. securities and reinvesting in other types of assets that UBS falsely maintained did not trigger reporting obligations. In other instances, UBS suggested and then assisted U.S. clients with creating and structuring offshore entities that would assume ownership over the account, resulting in the account being "owned" by a non-U.S. individual or entity. At no time, were these U.S. clients told that they were nonetheless required to disclose the UBS Swiss Account and to pay taxes on all income derived therefrom.

E. UBS's Actions Result in Plaintiffs Failing to Report their Swiss UBS Accounts.

1. Matthew Thomas

43. In 2001, Plaintiff Matthew Thomas ("Thomas") was a U.S. citizen living in Israel and working in the high-tech industry. Thomas' work in Israel resulted in a higher income than he had been accustomed to and he sought to put his money in a safe bank that he would still be able to access while living overseas. This was the first time in his life that Thomas had accumulated this amount of money. During this time, Thomas traveled to Europe on occasion and he became interested in placing his money with a safe and secure Swiss bank. Thomas was impressed with the size of UBS and its reputation as a safe and secure financial institution filled with expert banking, investment and tax professionals.

44. Thomas' desire to open an account at UBS was in no way motivated by tax considerations. In fact, Thomas paid all income taxes due to the IRS on the funds that he deposited into his UBS Swiss Account.

45. Thomas opened his UBS Swiss Account in 2001 with a deposit of approximately $500,000. He was assigned an "account director" named Peter Brummer ("Brummer"). The investments in the account were initially limited to secure and stable money market investments,

but around mid-2005, Brummer suggested additional investments to Thomas and his investments expanded accordingly.

46. In the Summer of 2003, Thomas moved back to California, United States. After moving back to California, Thomas continued to have frequent communications with Brummer concerning his UBS Swiss Account. In the Fall of 2005 and again in the Fall of 2006, Brummer traveled to California to meet with Thomas. Brummer insisted that these meetings take place in Brummer's hotel room and not in public.

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

48. During all of his discussions with UBS employees, including most notably Brummer, Thomas was assured that there was nothing to be concerned about with respect to the UBS Swiss Account and that UBS would respect his privacy and not disclose it to the U.S. government. UBS boasted about their expertise in Swiss banking and tax laws. During their conversations with Thomas, these UBS bankers (including Brummer) never mentioned anything about the QI Agreement they had signed with the Department of the Treasury and the tax reporting requirements therein. Thomas was certainly never told that not disclosing the account to the U.S. government would result in a violation of U.S. law and would subject him to enormous penalties and interest. In fact, in 2005, when Brummer advised Thomas to expand his investments into the security market, Brummer specifically informed Thomas that all securities purchased in the UBS Swiss Account had to be non-U.S. securities. Brummer told Thomas that the reason for this was that the UBS Swiss Account was not permitted to purchase U.S. securities because of tax reasons. Brummer led Thomas to believe that this measure was intended to maintain the UBS Swiss Account in

compliance with U.S. tax law, not to avoid UBS's QI reporting obligations and subject Thomas to exposure to the IRS for back taxes, penalties, and interest.

49. Thomas first became aware that there was a reporting or tax obligation on the account in 2009 in connection with the IRS's announcement of the 2009 Offshore Voluntary Disclosure Program. Thomas elected to participate in the 2009 OVDP and as a result had to pay a penalty equal to 20% of the highest aggregate account balance during the period of 2002 to 2008. In Thomas' case, despite the fact that a significant percentage of that balance included the amounts on which Thomas had previously paid taxes, he was nonetheless required to pay the 20% penalty on the full highest aggregate account balance.

50. UBS never requested a W-9 from Thomas or withheld any taxes on his account.

2. Himanshu Patel

51. Plaintiff Himanshu M. Patel ("Patel") was born in India and later immigrated to the United States and became a naturalized United States citizen in the 1970s. He has a history of timely filing his tax returns and timely making payment of taxes due. In the late 1980s, Patel moved to Italy in furtherance of his employment. During those years, Patel filed and paid Federal income taxes as a United States citizen residing abroad. Beginning in 1990 and through 1997, Patel continued to work in Italy while residing in the United States. Due to the volatile nature of the Italian Lira, Patel wished to deposit and hold savings from his salary in U.S. currency. Patel discovered, however, that he could not open an account in U.S. currency in Italy, so he crossed the border to Switzerland and opened an account with Swiss Banking Corporation in the mid-1990s. On information and belief, Swiss Banking Corporation merged with UBS sometime in 1997. On account of the merger, Patel's account was assigned to UBS in 1997.

52. While Patel did pay U.S. taxes on his salary while working overseas, he was never informed by UBS that there were reporting requirements with regard to the account. When

Patel's overseas employment ended in 1997, approximately 75% of that amount represented savings deposits from his salary while working overseas (on which U.S. taxes were paid), with the remainder representing taxable interest income.

53. UBS entirely ceased U.S. correspondence with Patel between 2002 and 2006, requiring instead that Patel travel in person to a Swiss branch to review account documents or otherwise sending account documents to Patel's daughter in Canada. In early 2006, UBS contacted Patel (and other U.S. account holders) encouraging him to raise holdings in his account to over $1,000,000.00 in order to receive special investment treatments. UBS never requested a W-9 from Patel and never issued any yearly interest statements to Patel.

54. In 2008, a UBS agent by the name of Bernasconi contacted Patel and insisted that he travel to Switzerland before July 1, 2008 on an urgent basis. Patel traveled to the Lugano, Switzerland branch in June 2008 and was informed that UBS was closing all international business in that branch and that all funds would be transferred to another branch. Because UBS could not guarantee the availability of the funds after the transfer, Patel decided to withdraw the funds entirely and transfer them to another bank.

55. Patel first became aware that there was a reporting or tax obligation on the account in 2009 in connection with the IRS's announcement of the 2009 Offshore Voluntary Disclosure Program. Patel elected to participate in the 2009 OVDP and as a result had to pay a penalty equal to 20% of the highest aggregate account balance during the period of 2002 to 2008. In Patel's case, despite the fact that a significant percentage of that balance included the savings on which Patel had previously paid taxes, he was nonetheless required to pay the 20% penalty on the full highest aggregate account balance.

3. Mathilde Guetta

56. Plaintiff Mathilde Guetta ("Ms. Guetta") is 78 years old and inherited her Swiss Account from her late husband, Albert Guetta ("Mr. Guetta"), in 2000. Mr. Guetta opened the Swiss Account in the 1950's before Ms. Guetta ever met him. At the time Mr. Guetta opened the Swiss Account, he was living in Egypt and he opened the Swiss Account due to concerns over religious persecution taking place in Egypt during that time period. Mr. Guetta's Swiss Account was opened with a minimal deposit of approximately $5,000.

57. As it turned out, Mr. Guetta's concerns were realized when all of his assets and funds were seized by the Egyptian government in the early 1960's. Afterwards, he and Ms. Guetta married and the two of them fled to France to live with relatives to avoid further religious persecution. When the Guettas fled to France, the only assets they had were the Swiss Account (which they were unable to access from France) and 5 Egyptian Pounds (the equivalent to approximately ten U.S. dollars at the time).

58. In 1967, the Guettas moved from France to the United States. In 2000, Mr. Guetta passed away and the Swiss Account was inherited by Ms. Guetta and her son, Vivienien Guetta. At the time the Swiss Account was inherited, the balance had grown to approximately $1.5 million. However, during the entire period from 1967 through the present date during which Mr. and/or Ms. Guetta resided in the United States, no money or assets were added to the Swiss Account by Mr. or Mrs. Guetta other than UBS's reinvestment of dividends and interest.

59. In 2000, after the death of Mr. Guetta, Ms. Guetta and Vivien traveled to the UBS office in Geneva to make arrangements for the transition of the Swiss Account. During this meeting, UBS representatives asked Ms. Guetta and Vivien if they wanted a "sheltered" account held in the name of an entity. Ms. Guetta and Vivien declined this offer and indicated that they wanted a normal individually-held account just like the one Mr. Guetta originally opened in the

1950's. Between 2000 and 2008, Vivien traveled to Geneva on 5 or 6 more occasions to visit with the account manager and check on the Swiss Account.

60. During these subsequent trips to Geneva by Vivien, he acted both on his own behalf and as a representative of Ms. Guetta. The UBS bankers that Vivien dealt with during these trips were aware that he was acting as a representative of Ms. Guetta. In fact, the account was structured so that the signature of only one accountholder was necessary for authorization of account activity due to the fact that Ms. Guetta was not able to comfortably travel to Switzerland after the initial meeting in 2000 and would be relying on Vivien to conduct the business of the Swiss Account.

61. When the new account was opened and during these subsequent trips to Geneva, Vivien was informed by the UBS bankers assigned to the account that no U.S. securities could be held in the account and, in fact, transactions and account activity could only be conducted from outside of the United States. Vivien and Ms. Guetta also signed a document indicating that they would not purchase any U.S. securities for the account.

62. In addition to these trips to Geneva, Vivien was visited by a UBS banker named "David" in New York in approximately 2001 or 2002 regarding the Swiss Account. David contacted Vivien in the United States to set up the meeting, which took place at the Waldorf Astoria hotel in New York. During this meeting, David showed Vivien copies of bank statements, but Vivien was not permitted to keep them. This was consistent with UBS's practice of keeping all transactional documents and account statements in its own possession in Switzerland and not giving or sending any such documents to the Guettas in the United States.

63. During the initial meeting in 2000 and in the subsequent meetings discussed above, the UBS bankers intentionally never mentioned anything about the QI Agreement they had signed with the Department of the Treasury and the tax reporting requirements therein, and never

requested a W-9 from the Guettas. Neither Ms. Guetta nor Vivien were ever told that not disclosing the account to the U.S. government would result in a violation of U.S. law and would subject Ms. Guetta to enormous penalties and interest. Instead, Ms. Guetta was led to believe that this was perfectly legal and that she had no legal obligation to disclose the UBS Swiss Account due to the restrictions and limitations that UBS had placed on the account. UBS intentionally led Ms. Guetta to believe that these measures were intended to maintain her UBS Swiss Account in compliance with U.S. tax law and to legally remove any requirement that it be reported, not to avoid UBS's QI reporting obligations and subject Ms. Guetta to exposure to the IRS for back taxes, penalties, and interest.

64. Ms. Guetta first became aware that there was a reporting or tax obligation on the account in 2009 in connection with the IRS's announcement of the 2009 Offshore Voluntary Disclosure Program. Ms. Guetta elected to participate in the 2009 OVDP and as a result had to pay a penalty equal to 20% of the highest aggregate account balance during the period of 2002 to 2008. In Ms. Guetta's case, despite the fact that not a single dollar of U.S. source income had ever been deposited into the account and not a single deposit had been made in the account in almost half a century (other than the reinvestment of dividends and interest by UBS), she was nonetheless required to pay the 20% penalty on the full highest aggregate account balance, which penalty equaled approximately $422,000.

F. UBS Intentionally Fails to Disclose Material Information to Plaintiffs and the Class Members.

65. UBS never told Plaintiffs anything about the tax reporting requirements of the QI Agreement that UBS had signed with the Department of the Treasury. UBS also never told Plaintiffs that Plaintiffs' failure to disclose the account to the U.S. government would result in a

violation of U.S. law and would subject them to enormous penalties and interest. Based on information and belief, UBS failed to disclose this information to the Class Members as well.

G. The Numerous Admissions on the Part of UBS.

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

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

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

c. On or about February 18, 2009, UBS's acting Chairman, and former General Counsel during the 2000 — 2007 period, Peter Kurer publicly stated

that "UBS sincerely regrets the compliance failures in its U.S. cross-border business that have been identified by the various government investigations in Switzerland and the U.S., as well as our own internal review. We accept full responsibility for these improper activities." Marcel Rohner, group chief executive of UBS AG added, "it is apparent that as an organization we made mistakes and that our control systems were inadequate." Attached hereto as **Exhibit "C"** is a true and correct copy of the NY Times article quoting Messrs. Kurer and Rohner;

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

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

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

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

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

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

j. On August 12, 2009, the U.S. and UBS reached an agreement in principle, the terms of which include the revelation of approximately 4,450 UBS customer names.

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

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

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

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

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

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

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

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

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

69. In the DPA, UBS has admitted its participation in a fraudulent scheme to facilitate the evasion of US taxes and the requirements of the QI Agreement, including as follows[5]:

a. "Effective January 1, 2001, UBS entered into ...the 'QI Agreement'... with the Internal Revenue Service ("IRS"). The QI Agreement is designed to help ensure that ... U.S. persons are properly paying U.S. tax, in each case, with respect to U.S. securities held in an account with the QI.

b. "In general, a QI subject to such foreign-law restrictions must request that its U.S. clients either (a) grant the QI authority to disclose the client's identity or disclose himself by mandating the QI to provide an IRS Form W-9 completed by the account holder, or (b) grant the QI authority to sell all U.S. securities of the account holder (in the case of accounts opened before January 1, 2001) or to exclude all U.S. securities from the account (in the case of accounts opened on or after January 1, 2001).

c. "Beginning in 2000 and continuing until 2007, UBS, through certain private bankers and managers in the U.S. cross-border business, participated in a scheme to defraud the United States and its agency, the IRS, by actively assisting or otherwise facilitating a number of U.S. individual taxpayers in establishing accounts at UBS in a manner designed to conceal the U.S. taxpayers' ownership or beneficial interest in said accounts. In this regard, said private bankers and managers facilitated the creation of such accounts in the names of offshore companies, allowing such U.S. taxpayers to evade reporting requirements ... .

[5] Although UBS's admissions are binding on it, its allegations that the Class Members were also involved are not binding on the Plaintiffs and the Class and are simply unproved allegations. Moreover, even if those allegations of

d. "UBS private bankers and managers accepted and included in UBS's account records IRS Forms W-8BEN (or UBS's substitute forms) provided by the directors of the offshore companies which represented under penalty of perjury that such companies were the beneficial owners, for U.S. federal income tax purposes, of the assets in the UBS accounts. In certain cases, the IRS Forms W-8BEN (or UBS's substitute forms) were false or misleading in that the U.S. taxpayer who owned the offshore company actually directed and controlled the management and disposition of the assets in the company accounts and/or otherwise functioned as the beneficial owner of such assets in disregard of the formalities of the purported corporate ownership.

e. "In or about 2004, the UBS Wealth Management International business changed its compensation approach to take account of a number of factors, including net new money, return on assets, net revenue, direct costs and assets under management, with weightings varying depending on the particular geographic market involved. Thereafter, the managers of the U.S. cross-border business implemented this new compensation structure in a way that provided incentives for U.S. cross-border private bankers to expand the size of the U.S. cross-border business.

f. "In response to concerns expressed in 2002 by some clients of the U.S. cross-border business regarding the effect of UBS's then-recent acquisition of U.S.-based brokerage firm PaineWebber on UBS's ability to

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the participation of the Class were true (which is denied), because UBS has violated a duty that is imposed for the protection of the Class and because its culpability is greater, UBS would remain liable anyway.

keep client information confidential, UBS sought to reassure such clients that Swiss bank secrecy restrictions would continue to protect the confidentiality of their identities. Thus, on or about November 4, 2002, two managers in the U.S. cross-border business sent a form letter to U.S. clients of UBS, noting that UBS had been exposed to, and successfully challenged, attempts by U.S. authorities to assert jurisdiction over assets in accounts maintained abroad since it opened offices in the U.S. in 1939, and that the QI Agreement fully restricted client confidentiality and thus UBS would be able to maintain the confidentiality of client information.

g. "During the relevant period, UBS's U.S. cross-border business provided securities-related and investment advisory services to accounts of approximately 11,000 to approximately 14,000 U.S.-domiciled U.S. private clients who had chosen not to provide an IRS Form W-9 (or UBS's substitute form) to UBS or who were the underlying beneficial owners of offshore companies that maintained accounts with UBS.

h. "... For example, on August 17, 2004, certain managers in the U.S. cross-border business organized a meeting in Switzerland for certain UBS private bankers with outside lawyers and consultants to review options for the establishment of offshore entity structures in various tax-haven jurisdictions, including recommendations to U.S. clients who did not appear to declare income/capital gains to the IRS.

i. "... some private bankers and their managers came to believe that a certain degree of non-compliance with UBS policy was acceptable in connection with operating the U.S. cross-border business. Also, despite the above-

described policies prohibiting certain contacts with U.S. persons, UBS did not have an effective system to capture and record instances when private bankers in the U.S. cross-border business may have violated U.S. laws. As a result, UBS did not monitor such activity and thus was not able to determine whether or not such activity may have required tax information reporting and backup withholding for certain payments made to the accounts of such clients."

V.

DAMAGES AND DISGORGEMENT

70. As a consequence of UBS's conduct, Plaintiffs and the Class Members have sustained substantial losses in the form of, *inter alia*, unnecessary, exorbitant and excessive fees charged by UBS for the UBS Swiss Accounts, penalties and interest paid to the IRS as a result of not disclosing the UBS Swiss Accounts, and additional legal and accounting fees incurred as a result of dealing with the IRS and resolving their IRS situation. All members of the Class were affected in the same manner by UBS's wrongful conduct. The precise amount of damages in this case will be determined at a later date, but Plaintiffs allege that this amount greatly exceeds the $5 million jurisdictional amount under the Class Action Fairness Act for the thousands of US taxpayers that make up the Class. Moreover, Plaintiffs and the Class seek declaratory relief that the actions of UBS entitle them to the equitable remedy of disgorgement of all profits earned by UBS as a result of its fraudulent scheme (admitted by UBS in the DPA to be $380 million).

VI.

FRAUDULENT CONCEALMENT, EQUITABLE TOLLING AND CONTINUING VIOLATIONS

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

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

VII.

FIRST CLAIM

MALPRACTICE/NEGLIGENCE

73. Plaintiffs and the Class reallege and incorporate each and every allegation set forth in Paragraphs 1 through 72, inclusive, and incorporate them by reference herein as if fully set forth.

74. By entering into the QI Agreement, UBS undertook duties to the Plaintiffs and the Class Members to properly administer the tax reporting requirements of such agreement, to wit: to (a) prepare and deliver to these taxpayers the QI agreed IRS Forms W-9 which would have identified each of them as someone who either needed to pay taxes on offshore assets or (b) withhold 28% of the profits of the accounts of any taxpayer who chose and informed UBS not to "declare" these accounts.

75. UBS failed to meet those duties.

76. During the course of their representation of Plaintiffs, UBS, through its employees and agents, committed negligence with respect to Plaintiffs, including but not limited to:

a. Failing to (a) prepare and deliver to Plaintiffs and the Class Members the QI agreed IRS Forms W-9 which would have identified each of them as someone who either needed to pay taxes on offshore assets or (b) withhold 28% of the profits of the accounts of any taxpayer who chose and informed UBS not to "declare" these accounts.

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

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

77. The failures set forth above were negligent, grossly negligent, and reckless. Accordingly, UBS failed to exercise the standard of care required of it which it undertook pursuant to the QI Agreement.

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

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

80. As a proximate result of the foregoing, Plaintiffs and the Class Members have been injured in an actual amount to be proven at trial, and should be awarded punitive damages in accordance with the evidence, plus attorneys' fees and costs.

VIII.

SECOND CLAIM

BREACH OF FIDUCIARY DUTY

81. Plaintiffs and the Class reallege and incorporate each and every allegation set forth in Paragraphs 1 through 72, inclusive, and incorporate them by reference herein as if fully set forth.

82. UBS, by entering into the QI Agreement, UBS undertook a fiduciary duty to the Plaintiffs and the Class Members with respect to advising them about their duties to report income from their UBS accounts.

83. Further, with respect to the UBS Swiss Accounts, UBS entered into a confidential relationship with each of the Plaintiffs and the Class Members with respect to their accounts. In that regard, each of the Plaintiffs and the Class Members reposed confidence in the integrity of UBS, and UBS voluntarily accepted and assumed to accept that confidence.

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

85. In the DPA, UBS admitted that "[i]n or about 2004, the UBS Wealth Management International business changed its compensation approach to take account of a number of factors,

including net new money, return on assets, net revenue, direct costs and assets under management, with weightings varying depending on the particular geographic market involved. Thereafter, the managers of the U.S. cross-border business implemented this new compensation structure in a way that provided incentives for U.S. cross-border private bankers to expand the size of the U.S. cross-border business. This encouraged those private bankers to have increased contacts in the United States with U.S.-resident private clients via travel to the United States and contact with U.S. clients via telephone, fax, mail and/or e-mail."

86. UBS failed to (a) prepare and deliver to these taxpayers the QI agreed IRS Forms W-9 which would have identified each of them as someone who either needed to pay taxes on offshore assets or (b) withhold 28% of the profits of the accounts of any taxpayer who chose and informed UBS not to "declare" these accounts.

87. UBS breached the fiduciary duties owed to Plaintiffs and the Class Members by, *inter alia*, the following omissions:

a. Failing to inform Plaintiffs and the Class Members about the tax reporting requirements of the QI Agreement that UBS had signed with the Department of the Treasury pursuant to 1.1441-1(e)(5) of the income tax regulations; and

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

88. Based on information and belief, the omissions set forth above in Paragraph 87 are representative of the omissions UBS committed with respect to the Class Members. As a result of UBS's conduct set forth herein, Plaintiffs and the Class Members have suffered injury

inter alia in that they have been assessed and have paid back-taxes, penalties and interest to the IRS as a result of their ownership of the UBS Swiss Accounts; and have incurred and continue to incur additional legal and accounting fees to deal with the IRS situation that has arisen as a result of their ownership of the UBS Swiss Accounts.

89. As a proximate cause of the foregoing, Plaintiffs and the Class Members have been injured in an actual amount to be proven at trial, and should be awarded punitive damages in accordance with the evidence, plus attorneys' fees and costs. Further, the remedy of equitable disgorgement is appropriate.

IX.

THIRD CLAIM

BREACH OF CONTRACT OR IN THE ALTERNATIVE, UNJUST ENRICHMENT

90. Plaintiffs and the Class reallege and incorporate each and every allegation set forth in Paragraphs 1 through 72, inclusive, and incorporate them by reference herein as if fully set forth.

91. Plaintiffs and the Class Members entered into implied, oral and/or written contracts with UBS to provide Plaintiffs and the Class Members with professionally competent tax advice and services and investment advice and services. Further, by entering into the QI Agreement, UBS undertook such duties to the Plaintiffs and the Class Members who, as US taxpayers, were third party beneficiaries of such arrangement negotiated by the IRS to protect US citizens as well as US coffers.

92. In connection therewith, UBS was required and expected to meet all applicable standards of care, to meet the fiduciary duties of loyalty and honesty, and to comply with all applicable rules of professional conduct.

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

94. Plaintiffs allege, on behalf of themselves and the Class Members that these contracts are unenforceable and void due to lack of mutuality and unreasonable and oppressive terms. However, to the extent that these contracts are enforceable, UBS ignored its obligations and instead omitted to provide Plaintiffs and the Class Members with advice, opinions, recommendations, and instructions that UBS knew or reasonably should have known to be accurate. In addition, the failure to advise Plaintiffs and the Class Members of the omissions set forth above, was negligent, grossly negligent, and reckless. Accordingly, UBS breached its contracts with Plaintiffs and the Class Members.

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

96. As a proximate cause thereof, Plaintiffs and the Class Members have been injured in an actual amount to be proven at trial, and should be awarded punitive damages in accordance with the evidence, plus attorneys' fee and costs.

97. In the alternative, if no contract (or no enforceable or valid contract) existed between UBS and Plaintiffs and the Class Members, then UBS has been unjustly enriched by the

receipt of all fees, commissions, and premiums paid to UBS by Plaintiffs and the Class Members.

X.

FOURTH CLAIM

DECLARATORY RELIEF FOR EQUITABLE DISGORGEMENT OF PROFITS (OR ALTERNATIVELY FEES AND COMMISSIONS)

98. Plaintiffs and the Class reallege and incorporate each and every allegation set forth in Paragraphs 1 through 97, inclusive, and incorporate them by reference herein as if fully set forth.

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

100. The fees charged by UBS to Plaintiffs and the Class Members are unethically excessive and illegal. Moreover, because UBS did not disclose information it was required to disclose, its fee and/or compensation agreements with Plaintiffs and the Class Members are not enforceable. As a result, UBS was unjustly enriched and breached its fiduciary duties to the Class.

101. For all these reasons, Plaintiffs and the Class Members seek a declaration that the profits earned from such business, which UBS has judicially admitted is $380 million (or in the

alternative all fees or commissions received by UBS from Plaintiffs or the Class Members), must be disgorged.

XI.

FIFTH CLAIM

FRAUD AND CONSTRUCTIVE FRAUD

102. Plaintiffs and the Class reallege and incorporate each and every allegation set forth in Paragraphs 1 through 72, inclusive, and incorporate them by reference herein as if fully set forth.

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

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

b. Failing to (a) prepare and deliver to these taxpayers the QI agreed IRS Forms W-9 which would have identified each of them as someone who either needed to pay taxes on offshore assets or (b) withhold 28% of the profits of the accounts of any taxpayer who chose and informed UBS not to "declare" these accounts; and

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

104. Based on information and belief, the omissions set forth above in paragraph 103 are representative of the omissions UBS committed with respect to the Class Members.

105. UBS has admitted in the DPA it signed with the US Department of Justice the following acts of participation in a scheme to facilitate the evasion of US taxes and the requirements of the QI, including as follows[6]:

a. "Beginning in 2000 and continuing until 2007, UBS, through certain private bankers and managers in the U.S. cross-border business, participated in a scheme to defraud the United States and its agency, the IRS, by actively assisting or otherwise facilitating a number of U.S. individual taxpayers in establishing accounts at UBS in a manner designed to conceal the U.S. taxpayers' ownership or beneficial interest in said accounts. In this regard, said private bankers and managers facilitated the creation of such accounts in the names of offshore companies, allowing such U.S. taxpayers to evade reporting requirements and to trade in securities as well as other financial transactions (including making loans for the benefit of, or other asset transfers directed by, the U.S. taxpayers, and using credit or debit cards linked to the offshore company accounts).

[6] Again, although UBS's admissions are binding on it, its allegations that the Class Members were also involved are simply that--unproved allegations.

b. "UBS private bankers and managers accepted and included in UBS's account records IRS Forms W-8BEN (or UBS's substitute forms) provided by the directors of the offshore companies which represented under penalty of perjury that such companies were the beneficial owners, for U.S. federal income tax purposes, of the assets in the UBS accounts. In certain cases, the IRS Forms W-8BEN (or UBS's substitute forms) were false or misleading in that the U.S. taxpayer who owned the offshore company actually directed and controlled the management and disposition of the assets in the company accounts and/or otherwise functioned as the beneficial owner of such assets in disregard of the formalities of the purported corporate ownership.

c. "...UBS sought to reassure such clients that Swiss bank secrecy restrictions would continue to protect the confidentiality of their identities. Thus, on or about November 4, 2002, two managers in the U.S. cross-border business sent a form letter to U.S. clients of UBS, noting that UBS had been exposed to, and successfully challenged, attempts by U.S. authorities to assert jurisdiction over assets in accounts maintained abroad since it opened offices in the U.S. in 1939, and that the QI Agreement fully restricted client confidentiality and thus UBS would be able to maintain the confidentiality of client information.

d. "... For example, on August 17, 2004, certain managers in the U.S. cross-border business organized a meeting in Switzerland for certain UBS private bankers with outside lawyers and consultants to review options for

the establishment of offshore entity structures in various tax-haven jurisdictions, including recommendations to U.S. clients who did not appear to declare income/capital gains to the IRS.

e. "... some private bankers and their managers came to believe that a certain degree of non-compliance with UBS policy was acceptable in connection with operating the U.S. cross-border business. Also, despite the above-described policies prohibiting certain contacts with U.S. persons, UBS did not have an effective system to capture and record instances when private bankers in the U.S. cross-border business may have violated U.S. laws. As a result, UBS did not monitor such activity and thus was not able to determine whether or not such activity may have required tax information reporting and backup withholding for certain payments made to the accounts of such clients."

106. The foregoing acts of UBS constitute a scheme to defraud the Plaintiffs and the Class. In the alternative, these actions constitute constructive fraud.

107. In justifiable reliance on UBS's fraudulent scheme, Plaintiffs opened their UBS Swiss Accounts and/or continued to keep their UBS Swiss Accounts open and failed to disclose their UBS Swiss Accounts on their U.S. tax returns or pay tax on the income derived from the assets and transactions in the UBS Swiss Accounts. Such reliance was justified and reasonable in that Plaintiffs and the Class relied upon UBS's reputation, the loyalty they thought UBS had expressed to them, UBS's greater knowledge of the QI Agreement and the tax reporting requirements it imposed, and the actual or purported expertise of UBS in such matters.

108. But for Defendant's scheme of fraud, Plaintiffs and the Class Members would have disclosed their UBS Swiss Accounts on their U.S. tax returns and paid tax on the income derived from the assets and transactions in the UBS Swiss Accounts; would not have been assessed and have paid back-taxes, penalties and interest to the IRS as a result of their ownership of the UBS Swiss Accounts; and would not have incurred and continue to incur additional legal and accounting fees to deal with the IRS situation that has arisen as a result of their ownership of the UBS Swiss Accounts. As a result of Defendants' conduct set forth herein, Plaintiffs and the Class Members have suffered injury in that *inter alia* they have been assessed and have paid back-taxes, penalties and interest to the IRS as a result of their ownership of the UBS Swiss Accounts and have incurred and continue to incur additional legal and accounting fees to deal with the IRS situation that has arisen as a result of their ownership of the UBS Swiss Accounts.

109. As a proximate cause of the foregoing, Plaintiffs and the Class Members have been injured in an actual amount to be *proven at* trial, and should be awarded punitive damages in accordance with the evidence, plus attorneys' fee and costs. .

XII.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on their own b*ehalf and o*n behalf of the Class Members, demand judgmen*t against D*efendant as follows:

A. Determining that this action is properly maintainable as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;

B. Certifying Plaintiffs as the Class Representatives;

C. Awarding monetary damages against Defendant in favor of Plaintiffs and the other members of the Class for all losses and damages suffered as a result of the

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

D. A declaration that the profits earned from its fraudulent scheme, which UBS has judicially admitted to be $380 million (or in the alternative all fees or commission received by UBS from Plaintiffs or the Class Members), must be disgorged;

E. That Plaintiffs and the other members of the Class be awarded punitive, enhanced, and exemplary damages against Defendant;

F. That Plaintiffs and the other members of the Class have judgment against Defendant for their costs, attorneys' fees, and pre-judgment interest on all sums recovered; and

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

Dated: January 6, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served on all counsel of record via the ECF system on January 6, 2012.

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