

No. \_\_\_\_-\_\_\_\_

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IN THE  
**Supreme Court of the United States**

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KATHLEEN K. JOHNSON and JUDITH WOODARD,  
Individually and as Trustees of  
The Annabell M. Palmer Family Trust,  
*Petitioners,*

*v.*

UBS AG,  
*Respondent.*

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*On Appeal from the United States Court of Appeals  
for the Second Circuit*

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**PETITION FOR A WRIT OF CERTIORARI**

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February 4, 2020

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## QUESTIONS PRESENTED FOR REVIEW

1. Should this Court address and resolve the conflicts and inconsistencies among the Federal Circuits and the State Courts on the issue of general jurisdiction under long arm statutes over a non-resident corporation and non-domiciliaries conducting business in this country in order to provide a US based local forum for resolution of commercial, banking and financial disputes and victims of tortious or unlawful conduct?

2. Is it reasonable for a non-domiciliary to be subjected to general jurisdiction of our courts where its affiliations within the State are so continuous and systematic as to render it at home in that State?

3. Was the dismissal of the Amended Complaint for lack of personal jurisdiction over UBS justified where sworn statements by UBS in court filings attested to it being a New York corporation with offices in New York City and where for decades UBS has maintained a general presence on a regular and continuous basis within the United States, specifically in New York and California, and where UBS has consistently and voluntarily appeared in lawsuits as Plaintiff and Defendant, and admitted it was subject to *in personam* jurisdiction of the Courts in New York and California?

**PARTIES TO THE PROCEEDING**

All of the parties to the proceeding are identified in the case caption.

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## **RELATED CASES**

1. In the Matter Of The Application Of KATHLEEN K. JOHNSON and JUDITH WOODARD, Individually and As Trustees Of The Annabell M. Palmer Family Trust to Examine Certain Records of UBS AG and to Obtain Deposition Upon Oral Examination to Aid Preparation Of A Complaint; Supreme Court of the State of New York, County of New York, Index No. 150457/2016, Date of Entry of Order of denial: August 24, 2016, affirmed, Supreme Court of the State of New York, Appellate Division, First Department, Matter of Johnson v. Union Bank of Switzerland, AG, 150 A.D. 3d 436 (1st Dept. 2017), NY Slip Op 3624, 51 N.Y.S.3d 417. (Pet. App. D).

2. KATHLEEN K. JOHNSON and JUDITH WOODARD, Individually and As Trustees Of The Annabell M. Palmer Family Trust v. AON RISK SERVICES NORTH-EAST, INC.; Supreme Court of the State of New York, County of New York, Index No. 653611/2016, Date of Entry of Order to Quash Subpoena for records granted and to Adjudge UBS in contempt, which was denied: April 12, 2018, is reported at 2018 NY Slip Op 30677(u) (Pet. App. E).

3. KATHLEEN K. JOHNSON and JUDITH WOODARD, Individually and As Trustees Of The Annabell M. Palmer Family Trust v. Union Bank of Switzerland; Supreme Court of the State of New York, County of New York, Index No. 653606/2016, Process never served and action discontinued December 19, 2016.

KATHLEEN K. JOHNSON and JUDITH WOODARD petition for a writ of certiorari to review the Summary Order of the United States Court of Appeals For the Second Circuit, which affirmed the judgment of the United States District Court, Southern District of New York, dated September 26, 2018, based upon the Decision and Order of the Honorable Alvin K. Hellerstein dated September 18, 2018, which ruled that the District Court lacked personal jurisdiction over UBS and that the claims were untimely; affirmed, United States Court of Appeals for the Second Circuit, November 7, 2019. (Pet. App. A)<sup>1</sup>.

### OPINIONS BELOW

The Decision and Order of the United States District Court for the Southern District of New York, dated September 18, 2018 (Pet. App. B) and the Judgment entered therein, dated September 26, 2018 (Pet. App. C). The District Court Decision and Order, and the Summary Order of the United States Court of Appeals, dated November 7, 2019, are not officially reported. (Pet. App. C).

The decision of the Supreme Court of the State of New York, Appellate Division, dated May 4, 2017 is reported at 150 A.D. 3d 436, 51 N.Y.S.3d 417 (1st Dept. 2017), (Pet. App. D).

The Order of the Supreme Court of the State of New York, County of New York (Pet. App. E) in the

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<sup>1</sup> Pet. and App. refer to Petitioner's Appendix.

case of KATHLEEN K. JOHNSON and JUDITH WOODARD, Individually and As Trustees Of The Annabell M. Palmer Family Trust v. AON RISK SERVICES NORTHEAST, INC. dated April 12, 2018, is 2018 NY Slip Op 30677(E).

The Order of the Supreme Court of the State of New York, County of New York, dated August 24, 2016 (Pet. App. F) is the proceeding to Examine Records And to Obtain Deposition Upon Oral Examination of UBS to Aid of Preparation of Complaint is not reported and the Order granting reargument dated November 23, 2016, which adhered to the prior decision is not reported (Pet. App. G).

### **JURISDICTION**

The Summary Order of the United States Court of Appeals for the Second Circuit was dated November 7, 2019. Pursuant to 28 U.S.C. 2101 and Rule 13 of this Court, this Petition for a Writ of Certiorari was filed within ninety days after entry of the Summary Order, which affirmed the Judgment of the District Court, which dismissed the Amended Complaint for lack of personal jurisdiction over UBS and for failing to meet the Statutes of Limitations for the various claims under New York Law. The statutory provision believed to confer jurisdiction upon this Court to review this writ of certiorari is 28 U.S.C. 1257.



**STATUTORY PROVISIONS INVOLVED**

NY CPLR § 301:

**“§ 301. Jurisdiction over persons, property or status**

A court may exercise such jurisdiction over persons, property, or status as might have been exercised heretofore.”

NY CPLR § 306-b:

**“§ 306-b. Service of the summons and complaint, summons with notice, third-party summons and complaint, or petition with a notice of petition or order to show cause**

Service of the summons and complaint, summons with notice, third-party summons and complaint, or petition with a notice of petition or order to show cause shall be made within one hundred twenty days after the commencement of the action or proceeding, provided that in an action or proceeding, except a proceeding commenced under the election law, where the applicable statute of limitations is four months or less, service shall be made not later than fifteen days after the date on which the applicable statute of limitations expires. If service is not made upon a defendant within the time provided in this section, the court, upon motion, shall dismiss the action without prej-

udice as to that defendant, or upon good cause shown or in the interest of justice, extend the time for service.”

NY CPLR § 503(a) and (c):

**“§ 503. Venue based on residence**

**(a) Generally.** Except where otherwise prescribed by law, the place of trial shall be in the county in which one of the parties resided when it was commenced; or, if none of the parties then resided in the state, in any county designated by the plaintiff. A party resident in more than one county shall be deemed a resident of each such county.

. . .

**(c) Corporation.** A domestic corporation, or a foreign corporation authorized to transact business in the state, shall be deemed a resident of the county in which its principal office is located; except that such a corporation, if a railroad or other common carrier, shall also be deemed a resident of the county where the cause of action arose.”

NY CPLR § 3211(a) 7 and 8:

**“§ 3211. Motion to dismiss**

**(a) Motion to dismiss cause of action.** A party may move for judgment dismissing one or more causes of action asserted against him on the ground that: . . .

7. the pleading fails to state a cause of action; or

8. the court has no jurisdiction of the person of the defendant; . . .

NY CPLR § 3214(b):

**“§ 3214. Motion heard by judge supervising disclosure; stay of disclosure**

**(b) Stay of disclosure.** Service of a notice of motion under rule 3211, 3212, or section 3213 stays disclosure until determination of the motion unless the court orders otherwise. If the motion is based solely on the defense that the summons and complaint, summons with notice, or notice of petition and petition was not properly served, disclosure shall not be stayed unless the court orders otherwise.”

FED.R.CIV.P. 12(b)(2) and 12(b)(6):

**(b) HOW TO PRESENT DEFENSES.** Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

2. lack of personal jurisdiction; . . .”

6. failure to state a claim upon which relief can be granted; . . .”

**THE FACTS GIVING RISE  
TO THIS ACTION**

**I. THE 1998 TRANSFER OF FOUR MILLION  
DOLLARS TO UBS**

In 1998, Annabell Palmer (“the Decedent”) age 83, deposited Four Million Dollars with Union Bank of Switzerland (“UBS”) by a SWIFT wire transfer (Pet. App. H). The Plaintiffs, Trustees of the Annabell M. Palmer Family Trust (“Trust”), as assignees of the Decedent (Pet. App. I), seek to recover these funds and to learn of the disposition of that money. UBS has admitted that the money was transferred to it and placed in a numbered account. UBS has opposed and stonewalled every effort by the Decedent and the Plaintiffs to secure information, as to the existence, location and return of these funds entrusted to it. UBS was designated to act as the investment advisor for Ms. Palmer for the purchase and sale of Middle Term Bank Notes from banks in Europe with AA or better ratings. UBS as her investment advisor was a fiduciary to Ms. Palmer. The refusal by UBS to furnish information about, and to return, these funds, constitutes a breach of its fiduciary obligations to the Decedent. UBS is guilty of misappropriating the money by conversion, along with its breach, breach of contract, and breach of the covenant of good faith.

UBS has not provided an accounting of the investment of the Decedent’s money and claimed

that it was not obligated to deal with Ms. Palmer, or the Plaintiffs.

## II. THE PRESENCE OF THE PARTIES IN NEW YORK AND CALIFORNIA FOR JURISDICTIONAL PURPOSES

Kathleen Johnson is a New York resident. Official filings reflect that UBS AG is both a New York and Swiss corporation with multiple offices in New York and California (Pet. App. J—pages 57a to 63a) and pages 64a to 73a respectively). UBS has admitted it has authority from the New York State Banking Department to engage in the banking business in New York. UBS voluntarily availed itself of the Courts in New York State. It brought an action as Plaintiff against *Highland Capital Management* in the New York County Supreme Court, Index No. 650094/2010 and availed itself of the jurisdiction of the courts in New York (Pet. App. K—pages 76a, 78a and 79a). UBS owns real property which consists of a large multi-story commercial office building in Manhattan at 1285 Avenue of the Americas. UBS filed a Certiorari Proceeding to reduce taxes on its New York office building in the Supreme Court, New York County, and twice alleged in a Verified Petition by its Managing Director and its attorney, that it was a domestic corporation (Pet. App. L—pages 82a and 90a). UBS voluntarily submitted to general jurisdiction by the courts in New York in its Answer to the Summons and Complaint against it, in the New York Supreme Court. (See, *Financial Structures Ltd. v. UBS*, Index No.

601159/2008) (Pet. App. M—pages 94a, 95a, and 96a; Pet. App. R—pages 161a and 162a; Pet. App. S—pages 164a and 165a).

The singular issue on this Appeal is whether the lower courts failed to recognize that UBS has such a major presence in New York and California subjecting it to general jurisdiction and whether it is reasonable to require it to defend the lawsuit against it brought in the Southern District in New York.

### **III. UBS HAS REFUSED TO ACCOUNT FOR THE MISSING FOUR MILLION DOLLAR DEPOSIT**

UBS has refused to disclose what happened to the money! UBS received the money on August 24, 1998, by a Swift international wire transfer to it for deposit into an account for the benefit of Annabell Palmer as beneficiary (Pet. App. H). This was officially documented and presented to the lower courts. UBS investment personnel in the United States and Switzerland were to act jointly with Vincent Ellis Brown, a Solicitor in the United Kingdom, in the selection and purchase of the Medium Term Bank Notes. UBS and Solicitor Brown were to act as financial advisors when UBS received Ms. Palmer's funds and, thus, were fiduciaries of Ms. Palmer.

UBS asserted bogus defenses in its motion to dismiss that the U.S. District Court lacks jurisdiction to entertain this lawsuit and that disclosure of information would violate Swiss criminal statutes.

It also argued that the Statute of Limitations bars any action and that Ms. Palmer wrote off the loss of the money on her tax return. The District Court accepted these defenses and granted UBS' motion under FRCP 12(b)(2) and 12(b)(6) to dismiss the Complaint. This was a reversible error.

UBS asserts that the money went into a numbered account and it was not obligated to deal with Ms. Palmer or the Plaintiffs, who had her Power of Attorney, and who are the Successor Trust beneficiaries (Pet. App. N—pages 98a to 101a). The unchallenged authenticity of the Assignment was the legal basis which required UBS to turn the money over to the Trustees. UBS was aware of this Assignment. It was an exhibit to its Motion to Dismiss (Pet. App. I—page 55a).

This lawsuit represents the culmination of years of frustration by Ms. Palmer and her Trustees in their attempts to recover the family money. By UBS having failed to return and account for these funds; it is guilty of misappropriation.

#### **IV. THE FACTS UNDISPUTED BY UBS**

1. Annabell Palmer, at age 83, transferred Four Million Dollars to UBS by a Wire Transfer Confirmation (Pet. App. H).

2. Annabell Palmer was named and described in the Wire Transfer Confirmation as the beneficiary of the account established by UBS (Pet. App. H).

3. The Plaintiffs are the Successor Trustees of the Palmer Family Trust (Pet. App. O–page 113a).

4. The Plaintiffs have an Assignment of Annabell Palmer’s interest in her deposit with UBS (Pet. App. I).

5. Kathleen Johnson is a New York resident and Judith Woodard is a resident of Idaho (Pet. App. P–page 137a–Summons and Complaint).

6. UBS AG is both a Swiss corporation (Pet. App. K–page 76a and M–pages 94a, 95a, 96a and 96aa) and a New York corporation with multiple offices in New York (Pet. App. J–pages 57a to 63a) and California (pages 64a to 73a), and conducts a multi-billion dollar business in the United States of America.

7. UBS has alleged in a Verified Petition in the New York Supreme Court, it is a New York “domestic corporation” (Pet. App. L–pages 82a and 90a).

8. UBS has a certificate to engage in the banking business in New York.

## **SUMMARY OF ARGUMENT**

### **I. JURISDICTION IS PROPER AGAINST UBS**

UBS is subject to general jurisdiction in New York and California based upon multiple grounds, inclusive of its major presence in the United States and, specifically, New York and California. UBS has, on multiple occasions, voluntarily submitted



to *in personam* jurisdiction in several court proceedings, both in California and New York. These admissions were not recognized or addressed by the Circuit Court, the United States District Court, or the New York State Supreme Court. UBS has been found by various courts to be subject to general jurisdiction of the courts in New York and California and it is reasonable that it should be required to defend the instant lawsuit.

UBS' Motion to Dismiss for Lack of Jurisdiction, should have been denied.

## **II. THE DEFENSE OF THE STATUTE OF LIMITATIONS IS NOT VIABLE**

UBS is guilty of a continuing wrong as a bar to the Defendant's Statute of Limitations defense.

### **REASONS FOR GRANTING THE PETITION**

#### **I. TO RESOLVE THE CONFLICT AND INCONSISTENCIES IN THE COURTS, OF WHETHER A NON-DOMICILIARY OF NEW YORK OR A FOREIGN CORPORATION CONDUCTING BUSINESS IN NEW YORK, IS SUBJECT TO GENERAL JURISDICTION IN NEW YORK**

The prior Lower Court decisions reflect an unsettled disparity among various federal and state courts with respect to the criteria to determine whether long arm statutes are uniformly applied on the issue of general jurisdiction over non-domi-

ciliaries. See *SPV OSUS Ltd. v. UBS AG*, 882 F. 3d 333 (2d Cir. 2018); *Chew v. Dietrich*, 143 F. 3d 24, 29 (2d Cir. 1998); *Sonterra Capital Master Funding Ltd. v. Credit Suisse Group AG*, 277 F. Supp. 3d 521, 584, 585 (SDNY 2017);

With respect to general jurisdiction over UBS, it is a fiction to insulate UBS from general jurisdiction by the Courts in New York by seeking to apply the rule from the case of *Daimler AG v. Bauman et al*, 571 U.S. 117 (2017) that a foreign corporation and its principal place of business is not in New York. UBS should be subject to general jurisdiction because (1) it owns property in New York, (2) for years it has had a major and permanent presence in New York with multiple New York City based offices, (3) conducts extensive banking and securities business in New York, which extends to hundreds of millions of dollars, (4) it has alleged in multiple legal documents sworn to and filed in the New York courts, both as a plaintiff and defendant, that it is subject to the jurisdiction of the courts and is present in New York. In one instance, in the filing of a sworn petition signed by an officer and managing director of UBS, it was stated that UBS is a domestic corporation with its principal offices located at 1285 Avenue of the Americas in Manhattan; see *Application of UBS AG v. the Tax Commission of the City of New York and the Commissioner of Finance of the City of New York*; 2015-16 (Supreme Court, N.Y. Co.) (Pet. App. L–pages 82a, 89a and 90a). Based upon this document alone, general jurisdiction is founded squarely upon the criteria promulgated by the provisions of CPLR

§ 301 that a court in New York may exercise such jurisdiction over persons, property, or status as might have been exercised heretofore. This includes service of process against UBS personally, or by service upon the Secretary of State of New York pursuant to the New York Business Corporation Law.

On the other hand, if UBS maintains it is a Swiss corporation, general jurisdiction may be definitely exercised over it, based upon the provisions of CPLR § 302(a)(1), § 302(a)(2), § 302(a)(3) and § 302(a)(4), as detailed below. The relevant provisions of these statutes are as follows:

The long arm statute in New York is formalized in the New York Civil Practice Law and Rules (CPLR) Section 302, which provides in pertinent part as follows:

**“§ 302. Personal jurisdiction by acts of non-domiciliaries**

**(a)** Acts which are the basis of jurisdiction. As to a cause of action arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any non-domiciliary, or his executor or administrator, who in person or through an agent:

1. transacts any business within the state or contracts anywhere to supply goods or services in the state; or
2. commits a tortious act within the state, except as to a cause of action for defamation of character arising from the act; or

3. commits a tortious act within the state causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act, if he

(i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or

(ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce; or

4. owns, uses or possesses any real property situated within the state.

A similar statute is in effect in California, which is based upon a broad approach in the California Code of Civil Procedure § 410.10 and reads as follows:

“A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.”

Under both the New York and California statutes general jurisdiction is exercised over corporations based upon (1) Incorporation in the State, (2) Consent, (3) Appointment of Agent, (4) Appearance, (5) Doing Business in State, (6) Doing an Act in the State, (7) causing damages in the State by an act or

omission elsewhere, (8) Ownership, Use or Possession of thing in the State, (9) other relationships.

In New York, all of the elements for jurisdiction over UBS are reasonable under contemporary standards and comply with the Fourteenth Amendment of the due process clause of the United States Constitution; *Daimler* at 762; *Burger King Corp. v. Rudzewicz*, 471 US 462, 475-478 (1985).

With general jurisdiction, the question would be whether it would be unreasonable to have UBS defend this action under the circumstances; *Burger King*, *supra*. The Courts of Appeal have uniformly held that the issue of reasonableness is considered in the application of general jurisdiction; *Metropolitan Life Insurance Co. v. Anderson Ceco Corp.*, 84 F.3d 560, 573 (CA2 1996). This has been the case in every circuit. *Lakin v. Prudential Securities, Inc.*, 348 F.3d 704, 713 (CA8 2003); *Base Metal Trading, Ltd. v. OJSC "Novokuznetsky Aluminum Factory"*, 283 F.3d 208, 213-214 (CA4 2002); *Trierwelier v. Croxton & Trench Holding Corp.*, 90 F.3d 1523, 1533 (CA10 1996); *Amoco Egypt Oil Co. v. Leonis Navigation Co.*, 1 F.3d 848, 851, n. 2 (CA9 1993); *Donnatelli v. National Hockey League*, 893 F.2d 459, 465 (CA1 1990); *Bearry v. Beech Aircraft Corp.*, 818 F.2d 370, 377 (CA5 1987).

Annabell Palmer made a wire transfer of Four Million Dollars from her Citibank account in Long Beach, California, where she resided, to UBS in Biel, Switzerland, on August 24, 1998 by a SWIFT money transfer "for the account of Annabell Palmer

as beneficiary.” This money transfer constituted a U.S. based transaction (Pet. App. H).

However, based upon the New York residence of Kathleen Johnson, and the Palmer Trust being located in New York, Ms. Johnson opted to initiate proceedings in New York for discovery and depositions of UBS, to aid in framing a complaint. New York was her venue of choice (Pet. App. F). There were extensive prior submissions by UBS in New York Courts sufficient to confer general jurisdiction over UBS, as follows:

1. It owns for several years a multi-million dollar skyscraper office building at 1285 Avenue of the Americas (Pet. App. L.).

2. It filed a Verified Petition with the New York Supreme Court for certiorari to reduce taxes on its property where it alleged it was a domestic corporation and the owner of real property in Manhattan at 1285 Avenue of the Americas (Pet. App. L–page 82a).

3. In a complaint by UBS in the Supreme Court, New York County, *UBS AG v. Highland Capital Management L.P.* Index No. 650094/2010 (Pet. App. K–pages 76a and 78a) it alleged:

- i) “UBS is a corporation organized under the laws of the Country of Switzerland with an office located at 1285 Avenue of the Americas, New York, New York.”; (Pet. App. K–page 76a); and

- ii) Venue is proper in this Court pursuant to N.Y. CPLR § 503, because UBS resides in this County. (Pet. App. K–page 79a).

4. UBS states in its summons, it resides at 1285 Avenue of the Americas, New York, New York 10019; *UBS AG v. Highland Capital*, Supreme Court, New York County, Index No. 650094/2010 (Pet. App. K–page 76a).

5. In its answer to a complaint filed against it in the Supreme Court, New York County, Index No. 601159/08, UBS admitted that it is “a Swiss corporation with its principal place of business in the State of New York, in New York County, including 101 Park Avenue, and 299 Park Avenue, New York, New York 10171. UBS does business in the State of New York. (Pet. App. M–pages 96a and 96aa).

6. The conversion by UBS of the Four Million Dollars as alleged by the Plaintiffs in the Seventh cause of action took place in Switzerland, which is outside of the State of New York. This falls within the provisions of CPLR § 302(a)(1) and (3); *LaMarca v. Pak-Mov Mfg. Co.*, 95 N.Y.2d 210, 214 (2000); *Peterson v. Spartan Industries, Inc.*, 33 N.Y.2d 463 (1974); *HBK Master Fund L.P. v. Troika Dialog USA, Inc.*, 85 A.D.3d 665 (1st Dept. 2011); *Banco Nacional Ultramarino, S.A. v. Chan*, 169 Misc. 2d 182, 188 (Sup.Ct. NY Co. 1966), *affirmed*, 240 A.D.2d 253 (1st Dept. 1997) since the loss from the wrongful conduct by UBS was suffered in New York where the trust *res.* is located.

UBS has cherry picked its submission to, or invocation of, jurisdiction in New York to suit its convenience as it has in the various litigations described above, where it pleaded its state or country of origin inconsistently and untruthfully. The causes of action pleaded in the instant action in the District Court are of a transitory nature. Kathleen Johnson is a New York resident which justifies New York as her venue of choice. The absence of honesty and candor by UBS in its purported defense of lack of general jurisdiction over it in New York is manifested by its failure to disclose in prior proceedings in the New York Supreme Court, the Federal District and Circuit Courts that jurisdiction over it was affirmed by the Second Circuit Court of Appeals in 2018 in *Charles Schwab Corporation v. Bank of America Corporation*, 883 F. 3d 68, 90 (2d Cir. 2018). It was held that the Plaintiff established a *prima facie* case of personal jurisdiction in New York over UBS, for claims concerning transactions in California. Under the New York CPLR, the Plaintiffs had jurisdiction over UBS under CPLR §302(i), (3)(i), (3)(ii), and 4. In various court filings listed on page 8 herein, jurisdiction over UBS has already been found, but never previously disclosed by it; *Sonterra Capital Master Funding Ltd. v. Credit Suisse Group AG*, 277 F. Supp. 3d at 584, 585 (SDNY 2017); *Deutsche Zentral-Genossen-Schaftsbank AG v. UBS AG*, 2014 Slip Op 31019(U) (N.Y. Co. 652575/2012). When it suited its purposes, UBS submitted to jurisdiction in New York. The failure by UBS to make these disclosures should be construed against it in any argu-



ment proffered by it objecting to jurisdiction in New York. This is pure dishonesty by UBS and such conduct cannot be countenanced.

Under these circumstances, UBS should have been judicially estopped from asserting any defense of lack of jurisdiction. This action could also have been brought in a State or Federal Court in California, because Annabell Palmer lived in California and transferred her money to UBS from her account in California. The elements for sustaining jurisdiction there were equally available. Thus, the California contacts are as follows:

1. Annabell M. Palmer was a citizen of and lived in Long Beach, California (Pet. App. H).
2. Annabell M. Palmer had a bank account in Long Beach, California from which she transferred her money to UBS (Pet. App. H).
3. Representations were made to Ms. Palmer in California by third-parties, including a fraudster, William Herisko, a California resident, to forward her money to UBS for investment.
4. Annabell M. Palmer suffered the loss in California.
5. UBS has a major voluntary presence in California, as it does in New York.
6. UBS has repeatedly invoked and consented to jurisdiction in California as well as in New York.
7. UBS has appeared voluntarily in actions in California as well as New York.

The State and Federal Judges in New York have precluded the Plaintiffs from any relief in the Courts in New York State. The Plaintiffs would be forced to sue UBS in Switzerland with respect to the transactions from the U.S. based bank account of Ms. Palmer. That would be an unfair burden.

The same holds true for jurisdiction over UBS in California based upon factual circumstances at that venue; *Vons Companies, Inc. v. Seabest Foods, Inc.*, 14 Cal.4th 434, 445, 58 Cal.Reptr.2nd 899, 926 P. 1025 (1996), and where general jurisdiction has been consented to by UBS by its voluntary appearance; *Jimena v. UBS AG Bank, Inc.*, 2009 W.L. 10691159 (U.S.Dist.Ct.E.D.Calif. 2009), where by having appeared, it submitted to personal jurisdiction; *Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 703 (1982); Rule 12(h)(i) FRCP.

Based upon the foregoing facts, UBS is subject to general jurisdiction both in New York and California. UBS's contacts are so "continuous and systematic" as measured against its national activities that it is "essentially at home" in these two states; *Daimler AG v. Bauman*, 134 S. Ct. 746 (2014). On this basis, the conclusion must be made that UBS is subject to general jurisdiction in New York.

In New York, UBS has attested in a Verified Petition filed in the New York Supreme Court, that it is a domestic corporation and the owner of real property in Manhattan (Pet. App. L). This falls squarely within the provisions of CPLR 301. Never-

theless, if UBS claims it is a Swiss corporation, it is subject to general jurisdiction under CPLR 302(4), since it admittedly owns property in New York at 1285 Avenue of the Americas in Manhattan and has voluntarily submitted to jurisdiction in various litigations filed in New York (Pet. App. K and M). Either way, UBS should be subject to general jurisdiction. The Lower Courts in New York, both federal and state, erred when they overlooked or failed to consider these highly significant facts. The essence of general personal jurisdiction is the ability to entertain “any and all claims” against an entity based solely on the entity’s activities in the forum, rather than on the particulars of the case before the court. See, *Daimler*, supra, at 134 S.Ct. at 762 n.20 (deciding that “[w]hen a corporation is genuinely at home in the forum” the district court need not “assess the reasonableness of entertaining the case”). If a court has general jurisdiction over an entity, it is subject to both suit and judicial orders.

In the present proceeding, all factors being considered, both the New York State and the Federal District and Circuit Courts in New York erred in failing to find general jurisdiction over UBS. The overwhelming presence of UBS in New York is confirmed by its ownership of property in New York, by its sworn statement of being a domestic corporation, by admitting jurisdiction in multiple suits by and against it, and by its general presence in the United States, in New York and California. That issue mandates revisitation by this Court of the

decisions of the District and Circuit Courts with a reversal of the dismissal of the Complaint; *Daimler*, supra, at 134; CPLR § 301.

UBS' contacts with the United States are so pervasive that the exercise by this Court of general jurisdiction is warranted, necessary and reasonable. Not only does UBS operate branches in California, Connecticut, Illinois, Florida, and New York, but it also maintains state and federally chartered trust companies and other limited purpose banks in the United States which are subject to state regulations and the Controller of the Currency. In April 2000, UBS AG was designated a "financial holding company" under the Bank Holding Company Act of 1956. It engages in a broad spectrum of activities, including underwriting and dealing in securities. Its United States wealth management unit alone (where it employs nearly 7000 financial advisors), has recorded pre-tax profits of hundreds of millions of dollars. UBS AG is "at home" in the United States and "does business" here. These activities are binding on the issue of general jurisdiction over it. See *In re Hellas Telecommunications (Luxembourg) II SCA*, 524 B.R. 488, 507-08 (Bankr. S.D.N.Y. 2015) (finding general jurisdiction over Deutsche Bank AG on basis of substantial headquarters function and significant assets). The facts in the above cited decision are analogous to those with UBS. With respect to UBS, these facts are documented by filings in court cases in which UBS was a party.

The Plaintiffs have made a *prima facie* showing that UBS has the requisite minimum contacts. The exercise of jurisdiction can only be defeated by a “compelling case that the presence of some other considerations would render jurisdiction unreasonable”; *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985) “. . . the Defendant’s contacts within the forum state must be such that maintenance of the suit does not offend traditional notions of fair play and justice.” *World Wide Volkswagen v. Woodson*, 446 U.S. 286, 292 (1980). UBS should have contemplated that disputes relevant to deposits and investments from the United States “might find their way into a United States Court;” *Olenicoff v. UBS AG*, 2010 WL 8530286 (C.D. Cal. 2010); *Picard v. Igo*, 2015 W.L. 603209 (Bankr.S.D.N.Y 2015).

The presence of UBS in the United States and specifically in New York and California is pervasive and overwhelming. It is indeed “at home” in these states and general jurisdiction over it should be finalized once and for all. UBS has burdened courts all over the country with selective defenses of lack of jurisdiction to suit its purpose which in many courts have been upheld on specious arguments by UBS. These defenses have not been asserted in good faith in view of multiple instances where jurisdiction against it has been upheld and on other occasions where jurisdiction has been admitted or invoked voluntarily. UBS should be judicially estopped from asserting any jurisdictional defenses especially where it voluntarily appeared;

*Roberts v. UBS AG*, 2013 WL 1499341(D.C. E.D. Calif. 2013).

## **II. UBS IS GUILTY OF A CONTINUING WRONG AND THE STATUTE OF LIMITATIONS IS NOT A VIABLE DEFENSE TO THIS ACTION**

Neither of the opinions from the Circuit or District Court have addressed the continuing wrongful conduct of UBS, which date from the original deposit by Ms. Palmer in 1998 up to the present. The refusal by UBS to return, or account for, the money, compounded by its refusal to even provide information of the disposition of the deposit, is a continuing violation of law.

There is abundant precedent which tolls the Statute of Limitations under these circumstances; *United States v. Riviera-Ventura*, 72 F.3d 277 (2nd Cir. 1995); *Banco Nacional de Cuba*, 658 F.2d 875 (2nd Cir. 1981); *Leonard v. United States*, 633 F.2d 599 (2nd Cir. 1980); *Boder v. Banque Paribas*, 114 F.Supp. 117 (EDNY 2000). This was the case with many suits by holocaust survivors dating back to World War II. The continuing tortious conduct of UBS is significant and tolls any statute of limitations.

The efforts by the Plaintiffs to recover their family money were reflected by their personal visit to Switzerland where they received a rejection letter from UBS (Pet. App. Q—pages 155a to 157a). They sought pre-action discovery in two proceedings in

the New York State Supreme Court. They filed a Summons and Complaint in the District Court. With the issue of jurisdiction being firmly addressed within this Petition, the issue of the Statute of Limitations should not be a factor in the resolution of the Plaintiffs' request for a review of the Circuit Court decision. The Statute of Limitations not being a *bona fide* defense in this case, this Court should disregard any diversion from its primary consideration of general jurisdiction over UBS.

### CONCLUSION

This case represents an ideal, necessary, timely and straightforward opportunity to finally put at rest the evasive tactics of UBS on the issue of general jurisdiction over it, where it has conducted extensive business transactions in the United States, and specifically in New York and California, but has declined to answer for its wrongful conduct causing losses to citizens in this Country.

The decisions in the Second Circuit, the District Court and in the New York State Supreme Court have so far departed from the settled principles which govern the elements of finding general jurisdiction over a non-domiciliary or foreign person or entity that they represent a manifest disregard of the facts, a misapplication of the law and most of all a gross injustice upon the Petitioners. In view of the inconsistencies, it is incumbent upon this Court to exercise its power to rectify this egregious wrong. The abuse of the defense of lack of jurisdic-

tion by UBS and others like must be addressed and abated. It is bad faith litigation which amounts to another form of bad faith defense pleading.

This Petition for a Writ of Certiorari should be received favorably and granted.

Respectfully submitted,

THE DWECK LAW FIRM, LLP

By: \_\_\_\_\_  
Jack S. Dweck (0659)  
*Counsel of Record*



## **APPENDIX**

1a

**Exhibit A**

2a

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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No. 18-2906  
Mandate Issued on December 3, 2019

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**SUMMARY ORDER**

**Rulings by summary order do not have precedential effect. Citation to a summary order filed on or after January 1, 2007, is permitted and is governed by Federal Rule of Appellate Procedure 32.1 and this court's Local Rule 32.1.1. When citing a summary order in a document filed with this court, a party must cite either the Federal Appendix or an electronic database (with the notation "summary order"). A party citing a summary order must serve a copy of it on any party not represented by counsel.**

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 7th day of November, two thousand nineteen.

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PRESENT:

ROBERT A. KATZMANN,  
*Chief Judge,*

DENNY CHIN,  
CHRISTOPHER F. DRONEY,  
*Circuit Judges.*

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KATHLEEN JOHNSON and JUDITH WOODARD,  
individually and as Trustees of the  
Annabell M. Palmer Family Trust,  
*Plaintiffs-Appellants,*

v.

UBS AG,  
*Defendant-Appellee,*

UNION BANK OF SWITZERLAND,  
*Defendant.*

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For Plaintiffs-Appellants  
Kathleen Johnson and  
Judith Woodard:

JACK S. DWECK, The Dweck Law Firm,  
LLP, New York, NY.

For Defendant-Appellee  
UBS AG:

DAVID L. GOLDBERG, Katten Muchin  
Rosenman LLP, New York, NY.

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Appeal from a judgment of the United States District Court for the Southern District of New York (Hellerstein, *J.*).

**UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that the judgment of the district court is **AFFIRMED**.

Plaintiffs-appellants Kathleen Johnson and Judith Woodard, individually and as trustees of the Annabell M. Palmer Family Trust (“the Trustees”), brought suit against defendant-appellee UBS AG (“UBS”) for conduct arising from decedent Ann Palmer’s 1998 transfer of \$4 million from an account in the United States to UBS in Switzerland. The Trustees appeal from a judgment of the United States District Court for the Southern District of New York (Hellerstein, *J.*) dismissing their amended complaint for lack of personal jurisdiction over UBS and for failing to meet the statutes of limitations for their various claims under New York law. We assume the parties’ familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.

“We review de novo a district court’s decision to grant motions under Rule 12(b)(2) and 12(b)(6).” *Charles Schwab Corp. v. Bank of Am. Corp.*, 883

F.3d 68, 81 (2d Cir. 2018).<sup>1</sup> “[I]n deciding a pretrial motion to dismiss for lack of personal jurisdiction a district court has considerable procedural leeway. It may determine the motion on the basis of affidavits alone; or it may permit discovery in aid of the motion; or it may conduct an evidentiary hearing on the merits of the motion.” *Dorchester Fin. Sec., Inc. v. Banco BRJ, S.A.*, 722 F.3d 81, 84 (2d Cir. 2013) (per curiam). Courts may consider materials outside the pleadings on a motion to dismiss for lack of personal jurisdiction without converting it into a summary judgment motion. *Id.* at 86. “Where. . . the district court relies on the pleadings and affidavits, and does not conduct a full-blown evidentiary hearing, we review the district court’s resulting legal conclusions *de novo*,” construing the pleadings and affidavits in favor of the plaintiffs. *Id.* at 85.

Three requirements must be met to exercise personal jurisdiction over a defendant: service of process must have been procedurally proper, “there must be a statutory basis for personal jurisdiction,” and “the exercise of personal jurisdiction must comport with constitutional due process principles.” *Waldman v. Palestine Liberation Org.*, 835 F.3d 317, 327 (2d Cir. 2016). We agree with the district court that the Trustees have not plausibly alleged facts to meet the due process requirements for jurisdiction and that they therefore have not

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<sup>1</sup> Unless otherwise indicated, in quoting cases, all internal quotation marks, alterations, emphases, footnotes, and citations are omitted.

made “a prima facie showing that jurisdiction exists.” *Charles Schwab*, 883 F.3d at 81.

To establish that the exercise of personal jurisdiction comports with the due process clauses of the Fifth and Fourteenth Amendments, courts must determine both “whether a defendant has sufficient minimum contacts with the forum to justify the court’s exercise of personal jurisdiction over the defendant” and “whether the assertion of personal jurisdiction over the defendant comports with traditional notions of fair play and substantial justice under the circumstances of the particular case.” *Waldman*, 835 F.3d at 331. In analyzing the minimum contacts requirement, courts have distinguished between two bases for personal jurisdiction: specific jurisdiction and general jurisdiction. *Id.* Neither version is present in this case.

First, the Trustees do not allege facts to plead specific jurisdiction. To establish specific jurisdiction, a “defendant’s suit-related conduct must create a substantial connection with the forum State.” *Walden v. Fiore*, 571 U.S. 277, 284 (2014). The Trustees attempt to meet the minimum contacts standard through a simple equation: a case arising out of UBS’s “contacts within the U.S.,” plus UBS’s continuing presence in New York through its branch offices, equals specific jurisdiction. Appellants’ Br. 13. But these components do not add up. The Trustees’ method of establishing jurisdiction is similar to a “sliding scale approach,” in which “the strength of the requisite connection between the forum and the specific claims at issue is relaxed if the defendant has extensive forum con-

tacts that are unrelated to those claims”—an approach the Supreme Court has rejected as “a loose and spurious form of general jurisdiction.” *Bristol-Myers Squibb Co. v. Superior Court of Cal.*, 137 S. Ct. 1773, 1781 (2017). “For specific jurisdiction, a defendant’s general connections with the forum are not enough.” *Id.*<sup>2</sup> And neither the complaint nor any of the other documents in the record suggest that UBS’s connections with New York relate to the circumstances of this case. The complaint fails to allege which state Palmer was in when she wired the \$4 million, and it also fails to indicate where she was convinced to transfer the funds. It states only that she transferred the funds from “her account at Citibank in the United States.” Compl. ¶8. The documents the Trustees entered into the record below indicate that her account was based in California, not New York. UBS’s New York presence cannot make up for the utter lack of any alleged connection between that presence and the events in this case.

The Trustees also assert that specific jurisdiction exists because “UBS has availed itself of the Courts in New York” in other cases. Appellants’ Br. 14; *see* Reply Br. 3-4. This argument, too, fails. “Courts typically require that the plaintiff show some sort

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<sup>2</sup> For similar reasons, the district court is also correct that Johnson’s New York citizenship is irrelevant to the personal jurisdiction analysis. *See Walden*, 571 U.S. at 284 (“We have consistently rejected attempts to satisfy the defendant-focused ‘minimum contacts’ inquiry by demonstrating contacts between the plaintiff (or third parties) and the forum State.”).



of causal relationship between a defendant's U.S. contacts and *the episode in suit*, and *the plaintiff's claim* must in some way arise from the defendants' purposeful contacts with the forum." *Charles Schwab*, 883 F.3d at 84 (emphases added). UBS's involvement in other cases in New York does not create specific jurisdiction because "a defendant's relationship with a third party, standing alone, is an insufficient basis for jurisdiction," and those other cases create no "connection between the forum and the specific claims at issue" here. *Bristol-Myers Squibb*, 137 S. Ct. at 1781. For a court to have specific personal jurisdiction, there must be an "adequate link between the State and the nonresidents' claims." *Id.* The Trustees have identified no such link.

Nor do the Trustees make a prima facie showing of general jurisdiction. Courts "may assert general jurisdiction over foreign (sister-state or foreign-country) corporations to hear any and all claims against them when their affiliations with the State are so continuous and systematic as to render them essentially at home in the forum State." *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014). "Aside from the truly exceptional case, a corporation is at home and subject to general jurisdiction only in its place of incorporation or principal place of business." *SPV Osus Ltd. v. UBS AG*, 882 F.3d 333, 343 (2d Cir. 2018). As this Court has previously noted—and as UBS's uncontested declaration filed below attests—"UBS AG's place of incorporation and principal place of business is in Switzerland." *Id.* While the Trustees' reply brief appears to indirect-

ly contest UBS's Swiss citizenship, their amended complaint itself alleges that UBS AG is a citizen of Switzerland.

The Trustees nevertheless assert that the district court could exercise general jurisdiction over UBS because UBS "provides banking and investment services in New York" and "is subject to the regulations of the New York State Department of Financial Services . . . and the New York State Banking Authority." Appellants' Br. 13. However, this Court, "in interpreting *Daimler*, noted that the case expressly cast doubt on previous Supreme Court and New York Court of Appeals cases that permitted general jurisdiction on the basis that a foreign corporation was doing business through a local branch office in the forum." *SPV Osus*, 882 F.3d at 343. As this Court has held in another similar suit, UBS AG's contacts with New York do not "render this an exceptional case" in which general jurisdiction can be exercised in New York. *Id.*

While the Trustees argue that jurisdictional discovery should have been granted, they have not made the "prima facie showing of personal jurisdiction" required to surpass a motion to dismiss, see *Dorchester Fin. Sec.*, 722 F.3d at 86, and they have not identified any additional information they would hope or expect to obtain that would change the result.<sup>3</sup>

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<sup>3</sup> As we find the due process element of personal jurisdiction a sufficient basis for affirming, we need not address the district court's determinations that the New York long-arm statute provides no basis for personal jurisdiction or that the Trustees' claims are untimely.

10a

We have considered all of the Trustees' contentions on appeal and have found in them no basis for reversal. For the reasons stated herein, the judgment of the district court is **AFFIRMED**.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

[SEAL]

/s/ CATHERINE O'HAGAN WOLFE

A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

[SEAL]

/s/ CATHERINE O'HAGAN WOLFE

11a

**Exhibit B**

12a

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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18 Civ. 4372 (AKH)  
Date Filed: September 26, 2018

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KATHLEEN K. JOHNSON AND JUDITH WOODBARD,  
Individually and as Trustees of  
The Annabell M. Palmer Family Trust,  
*Plaintiff,*

—against—

UBS AG,  
*Defendant.*

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**ORDER DISMISSING COMPLAINT  
AND CLOSING CASE**

ALVIN K. HELLERSTEIN, U.S.D.J.:

Plaintiffs Trustees of the Annabell M. Palmer Family Trust filed this action on June 16, 2018, amending their complaint on July 24, 2018, *see* Dkt. No. 8,<sup>1</sup> for declaratory judgment (Count I), breach of fiduciary obligations (Count II), breach of contract (Count III), money had and received (Count IV), breach of covenant of good faith (Count

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<sup>1</sup> Pursuant to the Court's order, *see* Dkt. No. 20, the Court considers Defendant's motion to dismiss as applied to the amended complaint.

V), accounting (Count VI), conversion (VII). The Amended Complaint alleges that, on August 24, 1998, Ann Palmer, then 83 years old, was fraudulently induced to cause her bank, Citibank, to transfer \$4,000,000 to a bank account at Defendant UBS AG, and seeks information about, or a return of, these funds. *See* Amended Complaint at ¶ 1, 7-9.<sup>2</sup> Federal subject matter jurisdiction is based on diversity of citizenship. *See* 28 U.S.C. § 1332. The Trustees are citizens of New York, and UBS is a citizen of Switzerland. *See* Amended Complaint at ¶ 3.

Defendant moves to dismiss pursuant to Fed. R. Civ. P. 12(b)(2), (6), *see* Dkt. No. 15, arguing that the court lacks personal jurisdiction over UBS and that the claims are not timely. I grant the motion and dismiss the complaint.

### *Personal Jurisdiction*

“In order to survive a motion to dismiss for lack of personal jurisdiction, a plaintiff must make a prima facie showing that jurisdiction exists.” *Thomas v. Ashcroft*, 470 F.3d 491, 495 (2d Cir. 2006). This prima facie showing “must include an

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<sup>2</sup> The Amended Complaint does not describe the circumstances surrounding Palmer’s transaction, including who induced Palmer’s transfer and the location where the transfer occurred. The parties, however, submit various declarations giving context to the claims. Apparently a man name William Herisko fraudulently induced Palmer to authorize the \$4 million transaction, and in 2003 Palmer’s counsel discovered Herisko’s fraud and initiated claims against him. Herisko was also criminally prosecuted and convicted for his fraud.

avermment of facts that, if credited by the ultimate trier of fact, would suffice to establish jurisdiction over the defendant.” *Chloe v. Queen Bee of Beverly Hills, LLC*, 616 F.3d 158, 163 (2d Cir. 2010) (brackets omitted). Federal courts must satisfy three requirements in order to exercise personal jurisdiction over an entity: (1) the entity must have been properly served, (2) the court must have a statutory basis for exercising personal jurisdiction, and (3) the exercise of personal jurisdiction must comport with constitutional due process. *See Licci ex rel. Licci v. Lebanese Canadian Bank, SAL*, 673 F.3d 50, 59-60 (2d Cir. 2012). As a suit premised on diversity of citizenship, *see* 28 U.S.C. § 1332, personal jurisdiction is determined by the law of the forum in which the court sits. *CutCo Indus., Inc. v. Naughton*, 806 F.2d 361, 365 (2d Cir. 1986). New York’s long arm statute, N.Y. C.P.L.R. § 302, applies.

Under the New York long-arm statute, “a court may exercise personal jurisdiction over any non-domiciliary . . . who in person or through an agent . . . transacts any business within the state or contracts anywhere to supply goods or services in the state.” N.Y. C.P.L.R. § 302(a)(1). “[T]wo requirements must be met: (1) The defendant must have transacted business within the state; and (2) the claim asserted must arise from that business activity.” *Sole Resort, S.A. de C. V. v. Allure Resorts Mgmt., LLC*, 450 F.3d 100, 103 (2d Cir. 2006). The “overriding criterion” in determining whether an entity “transacts any business” in New York is whether the entity “purposefully avails itself of the

privilege of conducting activities within New York.” *Paterno v. Laser Spine Inst.*, 24 N.Y.3d 370, 377, 998 N.Y.S.2d 720, 23 N.E.3d 988 (2014). Furthermore, Section 302(a)(3) of the New York long-arm statute provides an additional basis for jurisdiction where “(1) The defendant committal a tortious act outside the state; (2) the cause of action arose from that act; (3) the act caused injury to a person or property within the state; (4) the defendant expected or should reasonably have expected the act to have consequences in the state; (5) the defendant derives substantial revenue from interstate or international commerce.” *Sole Resort*, 450 F.3d at 106.

Here, the Complaint fails to allege any connection to New York to make out a prima facie case of jurisdiction under the New York long-arm statute. According to the Complaint, Palmer, located in California,<sup>3</sup> initiated a transfer to a Swiss bank amount held by Defendant UBS, a foreign corporation organized under Swiss law. The Amended Complaint contains no further factual allegations about Palmer’s or UBS’s actions. Since no part of the claims arise from activity occurring in New York, jurisdiction under § 302(a)(1) is inapplicable. Furthermore, since there are no allegations that

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<sup>3</sup> The Complaint in fact fails to allege where Palmer was located when she initiated the transaction. This failure alone is sufficient for the Court’s holding that personal jurisdiction is lacking in New York. The parties represent, and include various declarations indicating, that Palmer was in fact a resident of California and located there at the time she initiated the transfer.



defendant acted outside New York with the expectation that such acts will cause injury to a person or property located in New York, jurisdiction under § 302(a)(3) is also inapplicable. That Plaintiffs Trustees are citizens of New York is not relevant.

The exercise of personal jurisdiction would also run afoul of the constitutional requirement of “minimum contacts.” “To determine whether a defendant has the necessary ‘minimum contacts,’ a distinction is made between ‘specific’ and ‘general’ personal jurisdiction. *In re Terrorist Attacks on Sept. 11, 2001*, 714 F.3d 659, 673 (2d Cir. 2013). Here, UBS is neither subject to specific nor general jurisdiction. For specific jurisdiction, courts “evaluate the quality and nature of the defendant’s contacts with the forum state under a totality of the circumstances test. Where the claim arises out of, or relates to, the defendant’s contacts with the forum—i.e., specific jurisdiction is asserted—minimum contacts necessary to support such jurisdiction exist where the defendant purposefully availed itself of the privilege of doing business in the forum and could foresee being hauled into court there.” *Licci ex rel. Licci Lebanese Canadian Bank, SAL*, 732 F.3d 161, 170 (2d Cir. 2013) (internal quotations marks and citation omitted). Here, none of the events relating to the claims in the Amended Complaint occurred in New York. Specific jurisdiction therefore is not supported.

General jurisdiction is also not appropriate here. General jurisdiction is “based on the defendant’s general business contacts with the forum . . . and permits a court to exercise its power in a case

where the subject matter of the suit is unrelated to those contacts.” *In re Terrorist Attacks on Sept. 11*, 2001, 714 F.3d 659, 673 (2d Cir. 2013). “Unlike specific personal jurisdiction, general jurisdiction is not related to the events giving rise to the suit, and thus, courts impose a more stringent minimum contacts test, requiring the plaintiff to demonstrate the defendant’s ‘continuous and systematic general business contacts’ with the forum at the time the initial complaint was filed.” *Id.* at 674 (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 416 (1984)). The Supreme Court noted that “[f]or an individual, the paradigm forum for the exercise of general jurisdiction is the individual’s domicile; for a corporation, it is an equivalent place, one in which the corporation is fairly regarded as at home.” *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 924 (2011). “Aside from ‘an exceptional case,’ the [Supreme] Court explained, a corporation is at home (and thus subject to general jurisdiction, consistent with due process) only in a state that is the company’s formal place of incorporation or its principal place of business. *Gucci Am., Inc. v. Weixing Li*, 768 F.3d 122, 135 (2d Cir. 2014) (quoting *Daimler AG v. Bauman*, 571 U.S. 117, 139 (2014)). In *Daimler*, “the [Supreme] Court expressly cast doubt on previous Supreme Court and New York Court of Appeals cases that permitted general jurisdiction on the basis that a foreign corporation was doing business through a local branch office in the forum.” *Id.*

Here contrary to Plaintiffs' contentions, there is no basis for the assertion of general jurisdiction over UBS. UBS is a Swiss corporation, and the Amended Complaint contains no allegations that UBS has 'continuous and systematic general business contacts' with the forum such that New York can "fairly regarded as at home." The exercise of jurisdiction over UBS would be inconsistent with the Due Process requirements of the U.S. Constitution.

*Statute of Limitations*

The Amended Complaint alleges that Palmer's transaction occurred in 1998, and contains no further allegations about any activity occurring afterwards. These 20 year old claims are barred by the relevant statute of limitations. *See* N.Y. C.P.L.R. § 213 (six-year limitations for breach of contract and any "action for which no limitation is specifically provided by law"); § 213 (three year limitations for property and conversation claims).

Palmer in fact contacted defendant about the claims in suit at least 15 years before filing this action. Plaintiffs made "inquiries and demands of UBS personally, and in Court proceedings for information as to the disposition of said monies, and the return of said monies." *See* Amended Complaint at ¶ 11. The Amended Complaint does not allege when these inquiries occurred, but declarations provided by UBS show that as early as 2005 counsel for Palmer was in contact with UBS about the disputed funds. A defendant bears the burden of estab-

lishing that a claim is prima facie time-barred, but, having done so, the burden shifts to a plaintiff to “aver evidentiary facts” supporting an exception. *Philip F. v. Roman Catholic Diocese of Las Vegas*, 894 N.Y.S.2d 125, 127 (2d Dep’t 2010). Plaintiffs have failed to aver any facts, in the Amended Complaint or otherwise, to support an exception to the statute of limitations.

*Conclusion*

For the reasons stated above, I hold that the Court lacks personal jurisdiction over UBS, and that the claims are untimely. Whether the Complaint otherwise states plausible claims for relief is a moot question.

The Amended Complaint is dismissed. The Clerk shall terminate the motion (Dkt. No. 15) and mark the case closed.

SO ORDERED.

Dated: September 18, 2018  
New York, New York

/s/ ALVIN K. HELLERSTEIN  
ALVIN K. HELLERSTEIN  
United States District Judge

20a

**From:** NYSD\_ECF\_Pool  
<NYSD\_ECF\_Pool@nysd.uscourts.gov>  
**To:** CourtMail  
<CourtMail@nysd.uscourts.gov>  
**Subject:** Activity in Case 1:18-cv-04372-AKH  
Johnson et al v. Union Bank of  
Switzerland Order on Motion to Dismiss  
**Date:** Wed, Sep 26, 2018 11:02 am

---

**This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.**

**\*\*\*NOTE TO PUBLIC ACCESS USERS\*\*\***  
Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

21a

**U.S. District Court  
Southern District of New York**

**Notice of Electronic Filing**

The following transaction was entered on 9/26/2018  
at 11:01 AM EDT and filed on 9/26/2018

**Case Name:** Johnson et al v.  
Union Bank of Switzerland

**Case Number:** 1:18-cv-04372-AKH

**Filer:**

**Document Number:** 29

**Docket Text:**

**ORDER DISMISSING COMPLAINT AND  
CLOSING CASE** granting [15] Motion to  
Dismiss. For the reasons stated above, I hold  
that the Court lacks personal jurisdiction  
over UBS, and that the claims are untimely.  
Whether the Complaint otherwise states plau-  
sible claims for relief is a moot question. The  
Amended Complaint is dismissed. The Clerk  
shall terminate the motion (Dkt. No. 15) and  
mark the case closed. **SO ORDERED.** (Signed  
by Judge Alvin K. Hellerstein on 9/18/2018)  
(ne) Transmission to Orders and Judgments  
Clerk for processing.

**1:18-cv-04372-AKH Notice has been electronically mailed to:**

David L Goldberg [david.goldberg@kattenlaw.com](mailto:david.goldberg@kattenlaw.com),  
[nycclerks@kattenlaw.com](mailto:nycclerks@kattenlaw.com)

Jack S. Dweck [asa2fly@aol.com](mailto:asa2fly@aol.com)

Matthew Paul Celano [matthew.celano@kattenlaw.com](mailto:matthew.celano@kattenlaw.com),  
[nycclerks@kattenlaw.com](mailto:nycclerks@kattenlaw.com)

**1:18-cv-04372-AKH Notice has been delivered by other means to:**

The following document(s) are associated with this transaction:

**Document description:**

**Original filename:**

**Electronic document Stamp:**

Main Document n/a [STAMP dceefStamp\_ID=1008  
691343[Date=9/26/2018][FileNumber=20882684-0]

[ab0ead05f3e3fbba61c58064dee045c60d3b8f34d48  
d942e65eae936dabb63f36a3dd37ce8a0d1883794f  
5754e6711a7be7ff5930dfa209fc6a378f5be676fee]]

23a

**Exhibit C**



24a

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

---

18 CIVIL 4372 (AKH)  
Date Filed September 26, 2018

---

KATHLEEN K. JOHNSON AND JUDITH WOODBARD,  
Individually and as Trustee of  
The Annabell M. Palmer Family Trust

*Plaintiffs,*

—against—

UBS AG,

---

*Defendant.*

**JUDGMENT**

It is hereby **ORDERED, ADJUDGED AND DECREED:**  
That for the reasons stated in the Court's Order  
dated September 18, 2018, the Court lacks personal  
jurisdiction over UBS, and that their claims are  
untimely; Whether the Complaint otherwise states  
plausible claims for relief is a moot question;  
Defendant's motion is granted and the Amended  
Complaint is dismissed; accordingly, the case is  
closed.

**Dated:** New York, New York  
September 26, 2018

25a

RUBY J. KRAJICK

---

Clerk of Court

By: /s/ [ILLEGIBLE]

---

Deputy Clerk

THIS DOCUMENT WAS ENTERED  
ON THE DOCKET ON SEPTEMBER  
26, 2018

26a

**Exhibit D**

27a

SUPREME COURT, APPELLATE DIVISION,  
FIRST DEPARTMENT, NEW YORK.

---

May 4, 2017.

---

In re KATHLEEN K. JOHNSON, et al.,  
*Petitioners-Appellants,*  
v.

UNION BANK OF SWITZERLAND, AG  
*Respondent-Respondent.*

---

**Attorneys and Law Firms**

The Dweck Law Firm, LLP, New York (Jack S. Dweck of counsel), for appellants.

Katten Muchin Rosenman, LLP, New York (David L. Goldberg of counsel), for respondent.

**Opinion**

Order, Supreme Court, New York County (Geoffrey D. Wright, J.), entered on or about August 24, 2016, which denied petitioners' motion pursuant to CPLR 3102(c) for pre-action disclosure, unanimously affirmed, with costs. Order, same court and Justice, entered November 29, 2016, which, upon reargument, adhered to the determination on the original motion, unanimously affirmed, without costs.

Petitioners also failed to demonstrate that they have a meritorious cause of action and that the information they seek is “material and necessary to the actionable wrong” (*Holzman v. Manhattan & Bronx Surface Tr. Operating Auth.*, 271 A.D.2d 346, 347, 707 N.Y.S.2d 159 [1st Dept. 2000] ). Rather, they seek broad discovery to determine whether they may have a valid cause of action against Union Bank of Switzerland or other possible wrongdoers (*see Bishop v. Stevenson Commons Assoc., L.P.*, 74 A.D.3d 640, 905 N.Y.S.2d 29 [1st Dept.2010], *lv. denied* 16 N.Y.3d 702, 2011 WL 135160 [2011] ).

Supreme Court properly exercised its discretion in denying petitioners’ motion for pre-action discovery on the ground that, while the motion was pending, petitioners commenced an action, i.e., filed a summons and complaint (*see Matter of Goldstein v. New York Daily News*, 106 A.D.2d 323, 482 N.Y.S.2d 768 [1st Dept. 1984] ). Disclosure may only be obtained under CPLR 3102(c) “[b]efore an action is commenced.”

RICHTER, J.P., ANDRIAS, MOSKOWITZ, FEINMAN, KAPNICK, JJ., concur.

29a

**Exhibit E**

<b>Johnson v AON Risk Servs. Northeast, Inc.</b>
2018 NY Slip Op 30677(U)
April 12, 2018
Supreme Court, New York County
Docket Number: 653611/2016
Judge: Kathryn E. Freed
Cases posted with a “30000” identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System’s eCourts Service.
This opinion is uncorrected and not selected for official publication.

31a

SUPREME COURT OF THE  
STATE OF NEW YORK  
NEW YORK COUNTY

---

PRESENT: HON. KATHRYN E. FREED  
*Justice*

PART 2  
INDEX NO. 653611/2016  
MOTION SEQ. NO. 001

---

KATHLEEN K. JOHNSON AND JUDITH WOODARD,  
INDIVIDUALLY AND AS TRUSTEES OF  
THE ANNABELL M. PALMER FAMILY TRUST,  
*Plaintiffs,*

—v—

AON RISK SERVICES NORTHEAST, INC.,  
*Defendant.*

---

**DECISION AND ORDER**

The following e-filed documents, listed by NYSCEF document number 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45 were read on this motion to/for CONTEMPT

In June 2017, plaintiffs' counsel served non-party UBS AG with a subpoena duces tecum and a notice to take deposition upon oral examination. Plaintiffs now move, by order to show cause, to hold



UBS AG in contempt for failure to comply with the subpoena and notice of deposition. UBS AG cross-moves to quash the subpoena and notice of deposition. For the reasons that follow, the cross motion is granted and the motion is denied.

Plaintiffs allege that, in August 1998, Annabell Palmer (hereinafter decedent), caused \$4 million to be deposited in an account maintained in Switzerland by non-party UBS AG, to be used by Solicitor Ellis Brown for the purchase of medium-term notes. The papers contain a document evincing a wire transfer to a UBS AG account bearing decedent's name. Brown's name appears nowhere on the documents relating to the wire transfer itself. Plaintiffs have not come forward with documentary evidence or an explanation as to how they know that the wire transfer or the account was for Brown's use for the purchase of medium-term notes. They claim that the money has never been properly accounted for. However, they have not come forward with any correspondence relating to requests for an accounting either from decedent or any other individual, nor do they claim that any such correspondence or proof exists.

Plaintiffs claim that the alleged losses incurred by decedent are covered by an insurance policy issued by defendant that allegedly covered Brown's activities, and they seek a judicial declaration to that effect. The only proof in support of the existence of the insurance policy is a single-page fax dated January 8, 1998, apparently from a person named Robin Bailly, who appears to have worked for defendant, to Brown. The actual insurance pol-

icy and its terms are not in any of the documents before the court, and plaintiffs have not explained why they think that the policy would have covered the losses or, indeed, that the policy bears any relationship to decedent. Nothing in the papers even alleges how decedent and Brown came to know one another.

Plaintiffs claim to be decedent's assignees or authorized by a power of attorney to make this claim on behalf of decedent. They do not support this contention with any documentation. The papers before this Court do not contain the trust documents or any documentation reflecting such an assignment or power of attorney, much less one that could survive decedent's death. (*See* General Obligations Law § 5-1511 [1] [a].) It is particularly puzzling, and plaintiffs have not explained, how this action can proceed in the absence of decedent's estate.

Turning to the instant application, plaintiffs' contention that UBS AG's cross motion is untimely is without merit, since UBS AG provided adequate objections to the subpoena, and the burden is on the party serving the subpoena to initiate a judicial enforcement mechanism—not on the party seeking to avoid enforcement to move to quash. (*See* CPLR 3122 [a] [1]; *Rubino v 330 Madison Co., LLC*, 39 Misc 3d 450, 451-452 [Sup Ct, NY County 2013, Ling-Cohan, J.]; Siegel, NY Prac § 362 at 685 [6th ed 2018].)

“An application to quash a subpoena should be granted only where the futility of the process to uncover anything legitimate is inevitable or obvi-

ous . . . or where the information sought is utterly irrelevant to any proper inquiry.” (*Matter of Kapon v Koch*, 23 NY3d 32, 38 [2014] [internal quotation marks, brackets and citations omitted]; see *Alpert v Alpert*, 151 AD3d 541, 542 [1st Dept 2017]; *State of N.Y. ex rel. Murray v Baumslag*, 134 AD3d 451, 452 [1st Dept 2015].) Since this Court can discern nothing resembling a timely cause of action on the face of the pleadings, or any relationship between the alleged 1998 transfer, the alleged defalcations, the alleged insurance policy, or, indeed, that plaintiffs have a right to collect on behalf of decedent, it finds that the subpoenas are utterly irrelevant to any proper inquiry.<sup>1</sup> The Court therefore has no occasion to turn to UBS AG’s alternative arguments and, in the absence of a valid subpoena to enforce, the motion for contempt must be denied.

Accordingly, it is hereby:

ORDERED that the cross motion by UBS AG to quash the subpoena and notice of deposition is granted; and it is further

ORDERED that the motion to hold non-party UBS AG in contempt is denied, as moot.

---

<sup>1</sup> This Court notes that the Appellate Division, First Department has previously found, on plaintiffs’ prior application for pre-action discovery against UBS AG, that they “failed to demonstrate that they have a meritorious cause of action and that the information they seek is material and necessary to an actionable wrong.” (*Matter of Johnson v Union Bank of Switzerland, AG*, 150 AD3d 436 [1st Dept 2017] [internal quotation marks and citation omitted].)

35a

April 12, 2018  
Date

/s/ KATHRYN E. FREED  
Kathryn E. Freed, J.S.C.

Check One:

- ☐ Case Disposed ☒ Non-Final Disposition  
☐ Granted ☐ Denied ☐ Granted in Part ☒ Other

Application:

- ☐ Settle Order ☐ Submit Order

Check if Appropriate:

- ☐ Do Not Post ☐ Fiduciary Appointment  
☐ Reference

36a

SUPREME COURT OF THE  
STATE OF NEW YORK  
COUNTY OF NEW YORK

---

Index No.: 653611/2016

---

KATHLEEN K. JOHNSON AND JUDITH WOODARD,  
Individually and as Trustees of  
The Annabell M, Palmer Family Trust,  
*Plaintiffs,*  
—against—

AON RISK SERVICES NORTHEAST, INC.  
(formerly known as Aon Risk Services, Inc.),  
*Defendant.*

---

**SUBPOENA DUCES TECUM AND  
FOR PERSONAL APPEARANCE**

**The People of the State of New York**

**To: UBS AG  
299 Park Avenue  
New York, NY 10171**

**IT IS HEREBY ORDERED**, that all business and  
excuses being laid aside, you appear and attend  
before The Dweck Law Firm, 10 Rockefeller Plaza,  
Suite 1015, New York, New York, on the 12th day  
of July, 2017 at 10:00 o'clock in the forenoon, and  
at any recessed or adjourned date to give testimony

in this action on the part of the Plaintiffs, and that you bring with you, and produce at the time and place aforescribed the following:

All documents concerning any dealings, communications, emails, texts, correspondence, memoranda or writings of any and every kind with, concerning, about or having to do with an account or accounts at UBS, a/k/a Union Bank of Switzerland, of the late Annabell Palmer, and/or Vincent Ellis Brown, and/or K.S. Harrison, and/or William Herisko, and/or J.G. Minniece.

**FAILURE**, to comply with this subpoena is punishable as a contempt of Court and shall make you liable to the person on whose behalf this subpoena was issued for a penalty not to exceed fifty dollars and all damages sustained by reason of your failure to comply.

**WITNESS**, Honorable Carol Edmead, one of the Justices of said Court at the Courthouse located at 60 Centre Street, New York, New York 10007, on the 22nd day of June, 2017,

THE DWECK LAW FIRM, LLP  
Attorneys for Plaintiffs

By:       /s/ JACK S. DWECK        
          JACK S. DWECK  
10 Rockefeller Plaza, Suite 1015  
New York, NY 10020  
212-687-8200

38a

Index No. 653611/2016 Year 20

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

KATHLEEN K. JOHNSON AND JUDITH WOODARD, Individually  
and as Trustees of The Annabell M. Palmer Family Trust,

Plaintiffs,

-against-

AON RISK SERVICES NORTHEAST, INC.  
(formerly known as Aon Risk Services, Inc.),

Defendant.

SUBPOENA DUECES TECUM AND  
FOR PERSONAL APPEARANCE

THE DWECK LAW FIRM, LLP

Attorneys for Plaintiffs

10 ROCKEFELLER PLAZA  
NEW YORK, N.Y. 10020  
TELEPHONE: (212) 687-8200  
FACSIMILE: (212) 697-2521

Pursuant to 22 NYCRR 130-1.1-a, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, (1) the contentions in the annexed document are not frivolous and that (2) if the annexed document is an initiating pleading, (i) the matter was not obtained through illegal conduct, or that if it was, the attorney or other persons responsible for the illegal conduct are not participating in the matter or sharing in any fee earned therefrom and that (ii) if the matter involves potential claims for personal injury or wrongful death, the matter was not obtained in violation of 22 NYCRR 1200.41-a.

Dated: 6/25/17

Signature: *[Signature]*

Print Signer's Name: Sivan Rinat

Service of a copy of the within

is hereby admitted.

Dated:

Attorney(s) for

PLEASE TAKE NOTICE

Check Applicable Box  
☐ NOTICE OF ENTRY that the within is a (certified) true copy of a entered in the office of the clerk of the within-named Court on 20  
☐ NOTICE OF SETTLEMENT that an Order of which the within is a true copy will be presented for settlement to the Hon. one of the Judges of the within-named Court, at 20, at M.

Dated:

THE DWECK LAW FIRM, LLP

Attorneys for

To:

10 ROCKEFELLER PLAZA  
NEW YORK, N.Y. 10020

39a

**Exhibit F**



40a

SUPREME COURT OF THE  
STATE OF NEW YORK  
NEW YORK COUNTY

---

PRESENT: GEOFFREY D.S. WRIGHT  
*Justice*

PART 47  
INDEX NO. 150457/16  
MOTION DATE \_\_\_\_  
MOTION SEQ. NO. 1  
MOTION CAL. NO. \_\_\_\_

---

IN THE MATTER OF,

THE APPLICATION OF KATHLEEN K. JOHNSON AND  
JUDITH WOODWARD, Individually And As Trustees  
Of The Annabell W, Palmer Family Trust To  
Examine Certain Records Of The Union Bank Of  
Switzerland And To Obtain Deposition Upon Oral  
Examination To Aid In Preparation Of Complaint

---

The following papers, numbered 1 to 2 were read on  
this motion to/for ore-complaint discovery

PAPERS NUMBERED

Notice of Motion/ Order  
to Show Cause —  
Affidavits — Exhibits

1

Answering Affidavits —  
Exhibits

41a

Replying Affidavits

Memoranda

Other 2

Supporting affidavit

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion by the Petitioners for pre-complaint discovery is denied. The Petitioners have already composed and filed a complaint against the bank in question, under index #693606/16, and can obtain any further discovery in that action.

Dated: Aug 24, 2016 /s/ GEOFFREY D. WRIGHT  
A.J.S.C.

Check one:

☐ FINAL DISPOSITION

☒ NON-FINAL DISPOSITION

Check if appropriate:

☐ DO NOT POST

42a

**Exhibit G**

43a

SUPREME COURT OF THE  
STATE OF NEW YORK  
NEW YORK COUNTY

---

PRESENT: GEOFFREY D.S. WRIGHT  
*Justice*

---

PART 47  
INDEX NO. 150457/16  
MOTION DATE \_\_\_\_  
MOTION SEQ. NO 2  
MOTION CAL. \_\_\_\_

---

In The Matter Of The Application Of KATHLEEN K.  
JOHNSON and JUDITH WOODWARD, Individually And  
As Trustees Of The Annabell M. Palmer Family  
Trust To Examine Certain Records of UBS AG And  
To Obtain Deposition Upon Oral Examination To  
Aid Preparation Of A Complaint

---

The following papers, numbered 1 to 4 were read on  
this motion to/for reargue prior determination

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause —	
Affidavits – Exhibits	1
Answering Affidavits —	
Exhibits	2

44a

Replying Affidavits

Memoranda 3, 4

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, it is ordered that this motion to by the Petitioner reargue the denial of their petition for pre-complaint discovery pursuant to CPLR 3102, is granted solely to the extent of granting reargument, and on reargument I adhere to the prior decision, a/p/o.

Dated: Nov 23, 2016 /s/ GEOFFREY D. WRIGHT  
A.J.S.C.

Check one:

☐ FINAL DISPOSITION

☒ NON-FINAL DISPOSITION

Check if appropriate:

☐ DO NOT POST

45a

SUPREME COURT OF THE  
STATE OF NEW YORK  
COUNTY OF NEW YORK: Part 47

---

Index #150457/16  
Motion Cal. #  
Motion Seq. #2

---

In The Matter If The: APPLICATION OF KATHLEEN K.  
JOHNSON AND JUDITH WOODWARD, Individually And  
As Trustees Of The Annabel M. Palmer Family  
Trust To Examine Certain Records Of UBS AG And  
To Obtain Deposition Upon Oral Examination To  
Aid In Preparation Of A Complaint

---

**DECISION/ORDER**

Pursuant To Present:

Hon. Geoffrey Wright Judge, Supreme Court

Recitation, as required by CPLR 2219(a), of the  
papers considered in the review of this Motion to:  
reargue prior decision

PAPERS

NUMBERED

Notice of Petition/Motion,  
Affidavits & Exhibits Annexed

1

Order to Show Cause,  
Affidavits & Exhibits

Answering Affidavits & Exhibits Annex	2
Replying Affidavits & Exhibits Annexed	
Cross-motion & Exhibits Annexed	
Supporting Affidavits Memoranda	3, 4

Upon the foregoing cited papers, the Decision/Order on this Motion is as follows:

The Petitioner moves to reargue my decision of August 24, 2016<sup>7</sup>, which denied its petition for pre-complaint discovery, pursuant to CPLR 3102. That decision was based in part on notification received from the Respondent that the Petitioners had commenced a separate action against the Respondent UBS AG. This motion is supported by a letter written by counsel for UBS AG, in which he promised to move to dismiss the complaint.

The potential of summary dismissal is a risk of all complainants and petitioners take. In this case, however, the original petition does not set out what facts that it does not already has, and what is needed to determine if it has a claim against the bank. For instance, the Petitioners know that name of the original depositor of the account in question [Ann Palmer]. They know when the deposit was made [August 24, 1998], and know the account number [CQUE 266.630]. They have an acknowledgment of receipt of the deposit by the bank, and a dispute in

that acknowledgment of the purpose of the transfer of funds (see ex. 4, to the petition). There is, of course, a disagreement regarding the purpose of the transfer. The Petitioners have not identified any fact they might need beyond what is recited above in order to compose a complaint, or what information will not be preserved for trial.

In the *MATTER OF UDDIN V. NEW YORK CITY TR. AUTH.*, 27 A.D.3d 265, 810 N.Y.S.2d 198 (1st Dep't 2006), the Appellate Division of this Department ruled "pre-action disclosure may be appropriate to preserve evidence or to identify potential defendants, it may not be used to ascertain whether a prospective plaintiff has a cause of action worth pursuing."

The dispute here is the purpose of the acknowledged deposit, and the Respondent appears to be in possession of whatever documents exist to demonstrate the fact of the account and its number. Therefore, any further discovery should take place in the context of the pending law suit, once the complaint is served.

The motion is granted solely to the extent of permitting reargument, and on such reargument, I adhere to my prior determination.

Dated: November 23, 2016 /s/ GEOFFREY D. WRIGHT  
A.J.S.C.



48a

**Exhibit H**

49a

RYAN WIRTH  
8-24-98

**Name of Bank:**     **Union Bank of Switzerland.**  
**Bank address:**    **CH-2501 Biel**  
                          **Switzerland**  
**Clearing number**   **[REDACTED]**  
**Account number**   **[REDACTED]**  
**SWIFT Code**       **[REDACTED]**

RYAN WIRTH  
PLEASE WIRE TRANSFER \$4,000,000.00 FOUR  
MILLION DOLLARS TO SUBJECT BANK  
ABOVE.  
MY ACCOUNT NUMBER IS [REDACTED]  
MY SOCIAL SECURITY NUMBER IS [REDACTED]  
BIRTH DATE 1-2-16

/s/ ANN PALMER

TELEPHONE HUNBER 562-494-7002  
PLEASE FAX COPY OF SWIFT WIRE INSTRUC-  
TIONS

DR: 138 08/24/98	INTERNATIONAL MONEY TRANSFER(US DOLLARS) CITIBANK REFERENCE NUMBER	BUS: 013 [REDACTED]
ORIGINATOR INFORMATION	ANN PALMER 270 ST JOSEPH LONG BEACH CA 90803-1720  310-434-1654	
BENEFICIARY INFORMATION	ANN PALMER ACCOUNT: [REDACTED]	
BENEFICIARY BANK	UNION BANK OF SWITZERLAND CH-2501 BIEL SWITZERLAND SWIFT ACCOUNT: [REDACTED]	

PAGE 1 OF 2

INTERMEDIARY BANK ABA:  
SPECIAL INSTRUCTIONS:  
  
  
  
  
  
SOURCE ACCOUNT: [REDACTED] CHECKING  
AMOUNT OF WIRE: 4000000.00 BANK FEES: 0.00  
DATE OF REQUEST: 00/24/90 CITIDANK REF NUM: [REDACTED]  
  
BANKER: P5530928WIRTH, RYAN A  
PAGE 2 OF

[illegible]

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CITIBANK		CITIGOLD®		ADVICE	
D	F	T	DATE	DATE OF ORIG. ENTRY	VALUE DATE
			8/24/98		
WE HAVE DEBITED YOUR CHECKING ACCOUNT			ACCOUNT NO. [REDACTED]		
			AMOUNT		
			\$4,000,000.00		
			ANN PALMER 270 ST. JOSEPH LONG BEACH CA 90803-1720		
[REDACTED]					

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[LETTERHEAD OF CITIBANK]

---

July 22, 2005

Ann Palmer  
82 Park Avenue  
Long Beach, CA 90803

Reference # [REDACTED] AYW/  
ACCOUNT # [REDACTED]

Dear Ann Palmer:

Thank you for your inquiry on July 21, 2005, regarding your account number 50071000. We have completed our research and the results are as follows:

Our records indicate that an outgoing wire transfer was sent on August 24, 1998, for \$4,000,000.00. The funds were sent to Union Bank of Switzerland for the benefit of Ann Palmer account number CQUE 266.630. The Global identification number for the transfer is [REDACTED].

If you have any questions, please call CitiPhone Customer Service at 1-800-627-3999. In the Puerto Rico area, please call 1-800-360-2484. Speech or hearing impaired customers may call our text telephone service at 1-800-945-0258. Representatives are available to assist you 24 hours a day, 7 days a week. You may also access your account information online at [www.citibankonline.com](http://www.citibankonline.com).

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Thank you for banking with Citibank. We appreciate the opportunity to serve you.

Sincerely,

/s/ D. GRANADOS

D. Granados  
Client Research

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**Exhibit I**

55a

**ASSIGNMENT OF INTEREST**  
**IN BANK ACCOUNT**

ANN PALMER, as Assignee, does hereby assign, transfer, convey and set over unto ANNABELL M. PALMER, as Trustee of The Annabell M. Palmer Family Trust, under Trust Agreement dated March 12, 1986, as Assignee, all of the Assignor's right, title and interest in and to that Bank Account/Deposit at Union Bank of Switzerland, Beil Switzerland, being account number [REDACTED] which deposit was originally in the sum of \$4,000,000 U.S., together with all interest accrued thereon.

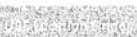
Dated: January 14, 2003

/s/ ANN PALMER  
Ann Palmer



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**Exhibit J**

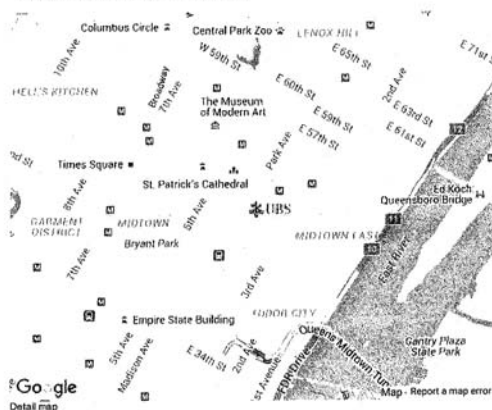


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- UBS Securities LLC
- UBS Forex Inc.
- UBS (USA) Inc.
- UBS AG Private Bank
- UBS Financial Services Inc., Private Wealth Management
- UBS Financial Services Inc.
- UBS Asset Management (Americas) Inc.

**Street Address:**  
299 Park Avenue  
New York NY 10171

**Telephone:**  
+1-212-821 3000



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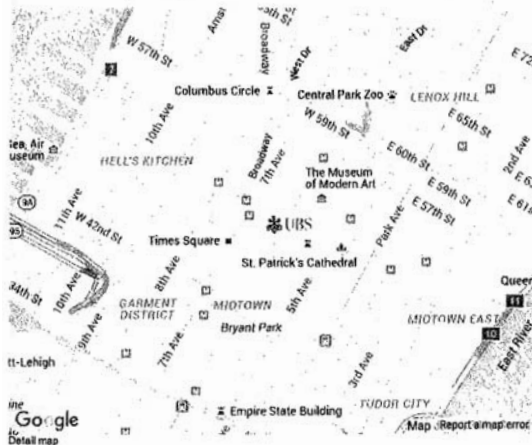
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#### UBS Financial Services Inc. in New York, 1251 Avenue of Americas



**Street Address:**  
1251 Avenue of Americas  
2nd Floor  
New York NY 10020

**Telephone:**  
+1-212-626 8500

**Internet:**  
[www.ubs.com/branch/newyorkwe](http://www.ubs.com/branch/newyorkwe)

**Branch Manager:**  
Mara Glassel

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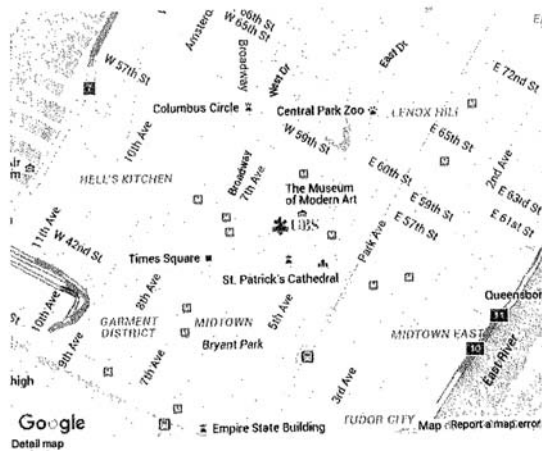
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**UBS Asset Management (Americas) Inc. in New York, 1285 Avenue Of The Americas**



**Street Address:**  
1285 Avenue Of The Americas  
12th Floor  
New York NY 10019

**Telephone:**  
+1-212-713 2000

**Business Hours:**  
Mo-Fr 8am-5pm

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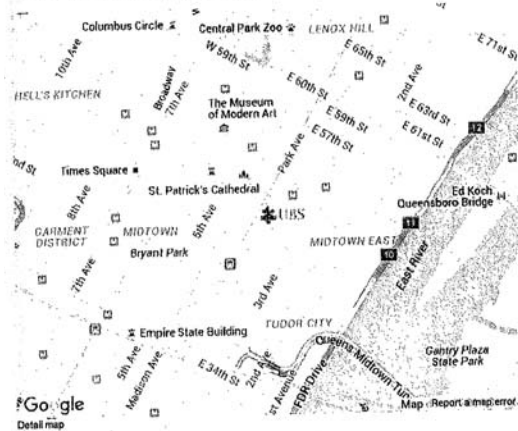
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#### UBS in New York , 299 Park Avenue



- UBS AG New York Branch
- UBS Securities LLC
- UBS Forex Inc.
- UBS (USA) Inc.
- UBS AG Private Bank
- UBS Financial Services Inc., Private Wealth Management
- UBS Financial Services Inc.
- UBS Asset Management (Americas) Inc.

**Street Address:**  
299 Park Avenue  
New York NY 10171

**Telephone:**  
+1-212-821 3000

Short URL of this website: [www.ubs.com/locations](http://www.ubs.com/locations)

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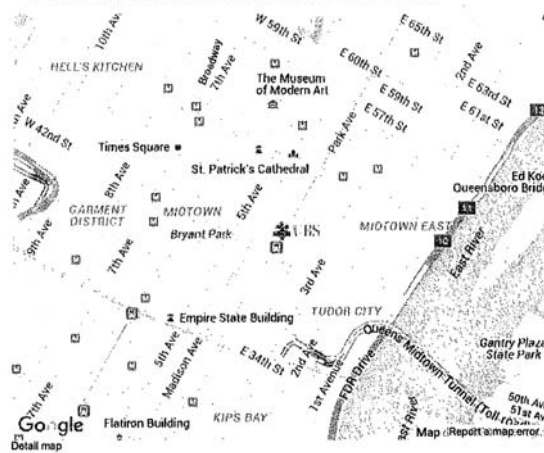
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#### UBS Financial Services Inc. in New York, 200 Park Avenue



**Street Address:**  
200 Park Avenue  
New York NY 10166

**Telephone:**  
+1-212-309 3000

**Internet:**  
[www.ubs.com/branch/newyorkts](http://www.ubs.com/branch/newyorkts)

**Business Hours:**  
Mo-Fr 8.30am-5pm

**Branch Manager:**  
Erich Frank

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


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**UBS Financial Services Inc. in New York, 590 Madison Avenue**


**Street Address:**  
590 Madison Avenue  
23rd Floor  
New York NY 10022

**Telephone:**  
+1-212-333 8800


**Internet:**  
[www.ubs.com/branch/newyorkut](http://www.ubs.com/branch/newyorkut)

**Branch Manager:**  
David Hallman

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**D. Scott Hallman**  
Executive Director  
Complex Director

590 Madison Avenue  
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- **Fresno**

Fig Garden Financial Center, Fresno CA  
93704

34.24 km

- Only branch available here

- **Merced**

860 W Olive Street, Merced CA 95348

112.07 km

- Only branch available here

- **Bakersfield**

9201 Camino Media, Bakersfield CA 93311

162.14 km

- Only branch available here

- **Carmel**

200 Clock Tower Place, Carmel CA 93923

223.5 km

- Only branch available here

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- **San Jose**

50 West San Fernando Street, San Jose CA  
95113

227.88 km

- Only branch available here

- **Los Gatos**

750 University Ave., Los Gatos CA 95032

232.64 km

- Only branch available here

- **Palo Alto**

- Only branch available here

- **San Francisco**

455 Market Street, San Francisco CA 94105

286.76 km

- Only branch available here

- **San Francisco**

555 California Street, San Francisco CA  
94104

287.21 km

- Only branch available here

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- **Westlake Village / T**  
3011 Townsgate Road, Westlake Village / T  
CA 91361  
296.94 km
  - Only branch available here
- **Mill Valley**  
2 Belvedere Place, Mill Valley CA 94941  
300.58 km
  - Only branch available here
- **Reno**  
6900 South McCarran Boulevard, Reno NV  
89509  
301.92 km
  - Only branch available here
- **Encino**  
15821 Ventura Boulevard, Encino CA 91436  
303.79 km
  - Only branch available here
- **Napa**  
703 Trancas Street, Napa CA 94558  
306 km
  - Only branch available here

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- **Pasadena**  
200 South Los Robles Avenue, Pasadena CA  
91101  
315.14 km
  - Only branch available here
- **Beverly Hills**  
131 South Rodeo Drive, Beverly Hills CA  
90212  
315.3 km
  - Only branch available here
- **Century City**  
1999 Avenue of the Stars, Century City CA  
90067  
315.7 km
  - Only branch available here
- **Century City**  
2000 Avenue of the Stars, Century City CA  
90067  
315.7 km
  - Only branch available here

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- **Los Angeles**

2000 Avenue of the Stars, Los Angeles CA  
90067

315.7 km

- Only branch available here

- **Los Angeles**

515 South Flower Street, Los Angeles CA  
90071

320.9 km

- Only branch available here

- **Brea**

One Pointe Drive, Brea CA 92821

346.24 km

- Only branch available here

- **Seal Beach**

3030 Old Ranch Parkway, Seal Beach CA  
90740

355.4 km

- Only branch available here

- **Riverside**

3390 University Avenue, Riverside CA 92501

362.27 km

- Only branch available here

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- **Redlands**  
300 East State Street, Redlands CA 92373  
364.34 km
  - Only branch available here
- **Las Vegas**  
10801 W Charleston Boulevard, Las Vegas NV 89135  
371.98 km
  - Only branch available here
- **Newport Beach**  
888 San Clemente Drive, Newport Beach CA 92660  
377.81 km
  - Only branch available here
- **Irvine**  
20 Pacifica, Irvine CA 92618  
379.35 km
  - Only branch available here
- **Henderson**  
2475 Village View Drive, Henderson NV 89074  
395.83 km
  - Only branch available here

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- **Indian Wells**

75-280 Highway 111, Indian Wells CA 92210

439.11 km

- Only branch available here

- **San Diego**

17180 Rancho Bernardo Center, San Diego CA  
92128

468.78 km

- Only branch available here

- **San Diego**

12275 El Camino Real, San Diego CA 92130

470.64 km

- Only branch available here

- **San Diego**

12220 El Camino Real, San Diego CA 92130

471.07 km

- Only branch available here

- **La Jolla**

1200 Prospect Street, La Jolla CA 92037

478.77 km

- Only branch available here

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- **San Diego**  
600 West Broadway, San Diego CA 92101  
496.2 km
- Only branch available here



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Name	RSSD ID	City	State/ Country	Institution Type	Status
UBS AG SAN FRANCISCO BR [UBS AG] (/npw/Institution/Profile/747060?dt=19980629)	747060	SAN FRANCISCO	CA	Uninsured Federal Branch of an FBO	Active
UBS AG TAMPA BRANCH CENTURY CITY LOAN PRODUCTION OFFICE [UBS AG] (/npw/Institution/Profile/4473787?dt=20170901)	4473787	CENTURY CITY	CA	Representative Office	Active
UBS AG TAMPA BRANCH LONG BEACH LOAN PRODUCTION OFFICE [UBS AG] (/npw/Institution/Profile/4026594?dt=20170901)	4026594	LONG BEACH	CA	Domestic Entity Other	Active
UBS AG TAMPA BRANCH LOS ANGELES (725 S. FIGUEROA STREET) LOAN PRODUCTION OFFICE [UBS AG] (/npw/Institution/Profile/4222042?dt=20170901)	4222042	LOS ANGELES	CA	Representative Office	Active
UBS AG TAMPA BRANCH NEWPORT BEACH LOAN PRODUCTION OFFICE [UBS AG] (/npw/Institution/Profile/4901347?dt=20170901)	4901347	NEWPORT BEACH	CA	Representative Office	Active
UBS AG TAMPA BRANCH SAN FRANCISCO BRANCH LOAN PRODUCTION OFFICE [UBS AG] (/npw/Institution/Profile/4473835?dt=20170901)	4473835	SAN FRANCISCO	CA	Representative Office	Active
UBS AG STAMFORD BR [UBS AG] (/npw/Institution/Profile/2618801?dt=20181217)	2618801	STAMFORD	CT	Uninsured Federal Branch of an FBO	Active

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**Exhibit K**

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SUPREME COURT OF THE  
STATE OF NEW YORK  
COUNTY OF NEW YORK

---

Index No. \_\_\_\_/2010 E

Date Purchased: February 8, 2010

Plaintiff designates New York County  
as the place of trial.

---

UBS AG,

*Plaintiff,*

—against—

HIGHLAND CAPITAL MANAGEMENT L.P. and  
HIGHLAND CREDIT STRATEGIES MASTER FUND, L.P.,

*Defendants.*

---

**SUMMONS**

TO THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on Plaintiff's Attorneys within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York); and in

case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of the venue designated is the residence of Plaintiff, who resides in New York County, at 1285 Avenue of the Americas, New York, New York 10019.

Dated: New York, New York  
February 8, 2010

SCHINDLER COHEN & HOCHMAN LLP

By: /s/ JONATHAN L. HOCHMAN  
Jonathan L. Hochman  
Scott W. Bulcao  
100 Wall Street, 15th Floor  
New York, New York 10005  
(212) 277-6300 (phone)  
(212) 277-6333 (facsimile)

*Attorneys for Plaintiff UBS AG*

Address of Defendants:

Highland Capital Management L.P.  
9 West 57th Street  
New York, New York 10019

Highland Credit Strategies Master Fund, L.P.  
52 Reid Street  
Hamilton HM12, Bermuda

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SUPREME COURT OF THE  
STATE OF NEW YORK  
COUNTY OF NEW YORK

---

Index No. \_\_\_\_\_

---

UBS AG,

*Plaintiff,*

—against—

HIGHLAND CAPITAL MANAGEMENT L.P. and  
HIGHLAND CREDIT STRATEGIES MASTER FUND, L.P.,

*Defendants.*

---

**COMPLAINT**

Plaintiff UBS AG (“UBS”), by its attorneys Schindler Cohen & Hochman LLP, for its Complaint against Highland Capital Management L.P. (“Highland”) and Highland Credit Strategies Master Fund, L.P. (“Highland Credit”) (with Highland, “Defendants”) alleges as follows upon knowledge as to its own acts and upon information and belief as to all other matters:

**NATURE OF THE ACTION**

1. UBS comes before this Court because Defendants breached an agreement to purchase a distressed loan from UBS’ Stamford Branch. On November 29, 2007, UBS and Highland entered

into a binding and enforceable agreement pursuant to which Highland agreed to purchase from UBS a distressed loan made to Gainey Corporation. The material terms of the agreement were memorialized in an industry-standard Loan Syndications and Trading Association (“LSTA”) trade confirmation (the “Trade Confirmation”), which was executed by Defendants, but which Defendants refused to honor. Rather than adhere to their contractual obligation and settle their trade with UBS, Defendants delayed closing as the value of the loan dropped substantially, ultimately compelling UBS to mitigate its damages by selling the loan to another buyer at a substantial loss—a loss which should be borne by Defendants.

2. As a result of Defendants’ breach, UBS has suffered damages of no less than \$2.1 million.

### **PARTIES**

3. UBS AG is a corporation organized under the laws of the country of Switzerland, with an office located at 1285 Avenue of the Americas, New York, New York.

4. Highland is a limited partnership organized under the laws of the State of Delaware, with an office located at 9 West 57th Street, New York, New York. Highland is the sole member of Highland Credit.

5. On information and belief, Highland Credit is a hedge fund limited partnership organized under the laws of Bermuda.

## **JURISDICTION AND VENUE**

6. The Court has jurisdiction over Defendants pursuant to N.Y. CPLR §§ 301 and 302 because Highland is physically present in the State and, on information and belief, Defendants regularly conduct business in this State and County.

7. Venue is proper in this Court pursuant to N.Y. CPLR § 503 because UBS resides in this County.

## **FACTUAL BACKGROUND**

### **A. UBS And Highland Orally Enter Into A Binding Agreement To Execute A Trade**

8. On November 29, 2007 (the “Trade Date”), UBS and Highland entered into an oral agreement pursuant to which Highland agreed to purchase from UBS a distressed loan made to Gainey Corporation (the “Agreement”).

9. As is customary in the secondary market for distressed loans, the Agreement was entered into on the Trade Date telephonically. By phone, UBS and Highland agreed to all of the



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**Exhibit L**

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Attorney Group No. 135

Index No.                      Year 2015

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SUPREME COURT OF THE  
STATE OF NEW YORK  
COUNTY OF NEW YORK

---

In the Matter of the Application of

UBS AG

*Petitioner,*

—against—

THE TAX COMMISSION OF THE CITY OF NEW YORK  
and THE COMMISSIONER OF FINANCE OF THE CITY OF  
NEW YORK

*Respondents.*

---

**PETITION**

**Taxes of 2015-16**

<u>Block</u>	<u>Lot</u>	<u>Address</u>
73043	35	1285 Avenue of the Americas

**TO THE SUPREME COURT OF THE  
STATE OF NEW YORK:**

The Petitioner above named respectfully shows  
and alleges that:

1. At all times hereinafter mentioned, the petitioner was and still is a domestic corporation and the Owner of certain real property in the Borough of Manhattan, City of New York, which real property is described in Schedule A hereto annexed and made part of hereof, by block and lot number by which the said property was designated on the tax maps of the City of New York for the fiscal year July 1, 2015 to June 30, 2016.

UBSREUC

2. During the time provided for by law one of the assessors of the Property Division of the Department of Finance of the City of New York, an agency under the jurisdiction of the Commissioner of Finance, in accordance with law, did assess the said real property described in Schedule A and caused the assessed valuations to be entered in detail in the books kept in the office of said Property Division as shown in columns "3" and "4" of Schedule A.

3. Between January 15, 2015 and March 1, 2015, the time that said books were open for public inspection, or such further period as provided by law, petitioner, claiming and being aggrieved by said assessed valuation of said real property, duly made application in writing under oath to the Tax Commission of the City of New York as provided by law to have such assessments corrected, said Tax Commission having been duly constituted by law to review and correct all assessments of real property for taxation in the City of New York. In said application petitioner claimed that the assessments

were erroneous by reason of overvaluation (excessive), misclassification, inequality (unequal) and illegality (unlawful) and demanded appropriate relief.

4. Thereafter, on or about May 25, 2015, the Tax Commission, by operation of law, duly rendered a final determination on said application, and the assessments were confirmed as final in the amounts shown in columns "3" and "4" of Schedule A hereof.

5. Thereafter, upon information and belief, the assessment rolls of the real property subject to taxation in the City of New York for the fiscal year July 1, 2015 to June 30, 2016 were prepared, certified and delivered to the City Council of the City of New York as required by law, which assessment rolls contained the said assessments upon petitioner's said real property as shown in columns "3" and "4" of Schedule A and the City Council proceeded thereon for the levying and collection of taxes.

6. The said assessments are excessive in that (a) the assessed valuation exceeds the full value of the real property and the correct full value and the sum for which the said real property would sell under ordinary circumstances on the statutory taxable status date is shown as the claimed value in Column "5" of Schedule A and the extent of overvaluation is the total actual assessment specified for each tax lot (Column "4" of Schedule A) less the claimed correct full value specified for each tax lot (as set forth in Column "5" of Schedule A); (b) the

actual assessment and/or transition assessment is excessive in that the taxable assessed value fails to comply with the limitations of increases and methods of computation set forth in Real Property Tax Law Section 1805; (c) the assessments are excessive in that said real property failed to receive all or a portion of an exemption to which said real property or the owner thereof is entitled pursuant to the law authorizing the exemption; and (d) the assessments are excessive in that the property failed to receive a land only “progress assessment” as a building in the course of construction pursuant to Administrative Code Section 11-209.

7. Where the subject property is fully or partially exempt from taxation under RPTL Section 489 and the Administrative Code of the City of New York, Section 11-243, the assessment has been unlawfully increased in excess of the assessment of the previous existing dwelling appearing on the assessment rolls after the taxable status date immediately preceding the commencement of the alteration and improvements plus the value of the land and any improvements, other than those made under the provisions of RPTL Section 489 and Administrative Code Section 11-243.

8. The said assessments are erroneous by reason of inequality and are unequal in that they have been made at a higher proportionate valuation than the assessed valuations of (a) other real property on the assessment rolls of the city for the same year, and/or (b) other real property within the same class on the same roll by the same officer. The

extent of such inequality, and the extent to which said assessments are unequal is equal to the difference between the actual total assessed value as set forth in Column "4" of Schedule A, and 15% of the amount specified as the claimed value for each tax lot set forth in Column "5" of Schedule A.

9. RPTL Section 720(3) is unlawful, improper and unconstitutional in that it improperly limits the scope of evidence to be adduced by petitioner.

10. The assessments are illegal and unlawful in that they were made contrary to law.

11. The assessments are illegal and unlawful in that the property should have been wholly or partially exempt from taxation.

12. The assessments are illegal and unlawful in that where a notice increasing the assessments of the subject property was sent during or subsequent to the time the books of the annual record of assessed valuation remained open for public inspection, the notice purporting to increase the assessments is unlawful, improper, defective and void in that it fails to comply with New York City Charter Section 1512 and Administrative Code Section 11-211; Charter Section 1512 is unlawful, improper and unconstitutional in that it discriminates in favor of residential versus commercial property and fails to provide adequate notice of an increased assessment, and unconstitutionally vague in that it fails to adequately define what is meant by residential real estate.

13. At all times herein relevant the Constitution of the State of New York, Article 8, Section 10, provides that real estate tax revenues of the City of New York in any fiscal year, exclusive of debt service requirements, shall not exceed 2-1/2% of the average full value of its taxable real estate for the latest five fiscal years. That by discriminating between types of properties, respondents have reduced the value of "taxable" real estate so that the tax rate exceeds the constitutional limitations by reason of their having effectively granted exemptions from taxation to certain premises. By reason thereof, petitioner has been compelled to pay more than the constitutionally permissible tax rate.

14. Where petitioner's property is a cooperative or condominium, the assessment has been made contrary to RPTL Section 581 and/or RPTL Section 339-y.

15. These assessments and all of the assessments on the assessment rolls of the City of New York are illegal and unlawful in that Section 305(2) of the Real Property Tax Law requires that all real property in each assessing unit shall be assessed at a uniform percentage of value and that the assessments on said roll are not assessed at such uniform percentage.

16. Where the assessment of the subject parcel has been set based on 45% of gross sales price, the assessment is unlawful in that parcels whose assessment is based on 45% of gross sales price

constitute an unlawful and separate class of real property which is not assessed at a uniform percentage of value required by RPTL Section 305(2), and which class is not authorized by RPTL Section 1802, and the Constitution of the State of New York and of the United States.

17. The assessments are illegal and unlawful in that respondents have wrongfully denied petitioner a hearing to correct the assessment in question pursuant to Administrative Code, Section 11-208.1. Such denial is unconstitutional on its face and as applied herein.

18. Petitioner's property has been misclassified as being in class 2, 2A, 2B, 2C, 3, 4 or 4A instead of the appropriate class for petitioner's property; the class designation of petitioner's parcel results in an incorrect allocation of the parcel's assessed valuation between two or more classes; the criteria used by respondents for determination of tax class is arbitrary, capricious and unlawful.

19. The denial of full and appropriate amount of exemption under RPTL Section 421-A and/or RPTL Section 489 or any applicable statute granting exemption to the subject property is arbitrary, capricious, contrary to law and makes the assessment unequal, unlawful and excessive.

20. The Tax Commission has arbitrarily and capriciously issued forms and rules of procedure and has denied required hearings of petitioner's property in violation of Section 163, 164 and 1041 of the New York City Charter and Section 11-216 of



the New York City Administrative Code. Therefore the assessment should be declared null and void and stricken from the assessment roll nunc *pro tunc*.

21. By reason of the aforesaid excessive, unequal, erroneous, unlawful, and illegal assessments, petitioner has been aggrieved and will be injured thereby, and will be compelled to pay more than its proper share of the taxes of the City of New York.

22. Reference herein to “petitioner” shall be deemed to include the petitioner named herein and all of said petitioner’s predecessors and/or successors in interest.

23. The property’s transition assessments are excessive in that they have been (a) calculated in a manner inconsistent with the provisions of Real Property Tax Law, and/or (b) calculated in a manner inconsistent with the transitional assessment calculation of other properties in the City of New York.

24. No previous application has been made for the relief herein sought to this or any other Court or Judge.

WHEREFORE, your petitioner requests that the Supreme Court review and correct on the merits the aforementioned final determination of the Tax Commission on the grounds set forth in this petition, and that the Court take evidence to enable your petitioner to show the unjust, erroneous, illegal, unlawful, excessive and unequal assessments of said real property and its misclassification to the

end that the said assessments may be reduced to the sum for which the said property would sell under ordinary circumstances for land and improvements, and to a valuation proportionate to the assessments of other real property assessed on the same rolls and/or other real property of the same class assessed on the same rolls for the same year, so that equality of assessments will result, and that all properties shall be assessed at a uniform percentage so that said assessments will not be unequal, and that equality of assessments will result, and so that the assessments not be contrary to law, and so that any excessive transition assessments for subsequent tax years be reduced in accordance with law and for such other and further relief as the Court may deem proper, together with costs.

Dated: New York, N.Y., August 5, 2015

Petitioner: UBS AG

By: /s/ GEORGE CONOMOS

George Conomos, Managing Director (Title)

Marcus & Pollack LLP, Attorneys for Petitioner  
708 Third Avenue, 11th Floor, New York, NY 10017  
(212) 490-2900

By: /s/ Joel R. Marcus

Joel R. Marcus, Attorney

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STATE OF Connecticut     )  
COUNTY OF FAIRFIELD    ) ss:

George Conomos, being duly sworn, deposes and says:

That deponent is Managing Director (Title) of UBS AG, the Petitioner herein; that deponent has read the foregoing Petition and knows the contents thereof; and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true.

This verification is made by deponent because said Petitioner is a domestic corporation, and deponent an officer thereof, to wit its Managing Director (Title).

Sworn to before me this

25 day of September, 2015.   /s/ GEORGE CONOMOS  
George Conomos

Notary Signs /s/ YARA BETANCOURT  
Notary Public or Commissioner  
of Deeds

YARA BETANCOURT  
NOTARY PUBLIC OF NEW JERSEY  
I.D. # 2415574  
My Commission Expires 12/16/2016

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**SCHEDULE A**

For the period commencing July 1, 2015 and ending  
June 30, 2016

1	2	3	4	5
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**ASSESSMENT**

Block	Lot	Land ( \$ )	Land & Improvements ( \$ )	Claimed Value ( \$ )
73043	35	0	5,130,000	1

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Attorney Group No. 135

Index No. Year 2015

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SUPREME COURT OF THE  
STATE OF NEW YORK  
COUNTY OF NEW YORK

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In the Matter of the Application of

UBS AG

*Petitioner,*

–against–

THE TAX COMMISSION OF THE CITY OF NEW YORK  
and THE COMMISSIONER OF FINANCE OF THE CITY OF  
NEW YORK

*Respondents.*

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**PETITION FOR REVIEW OF REAL  
PROPERTY ASSESSMENTS**

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Marcus & Pollack LLP  
Attorney for Petitioner  
Office & P.O. Box  
708 Third Avenue, 11th Floor  
New York, NY 10017  
(212) 490-2900

M-73043-35

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**Exhibit M**

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SUPREME COURT OF THE  
STATE OF NEW YORK  
COUNTY OF NEW YORK

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Index No.  
Date Purchased: April \_\_\_, 2008  
Filed April 17, 2008

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FINANCIAL STRUCTURES LIMITED and  
ARROWOOD INDEMNITY COMPANY,

*Plaintiffs,*

*—against—*

UBS AG and UBS SECURITIES LLC,

*Defendants.*

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**SUMMONS**

Plaintiffs designates New York County as the place of trial. Each defendant maintains its principal New York place of business in New York County. CPLR § 503(a),(c).

**TO THE ABOVE NAMED DEFENDANTS:**

**YOU ARE HEREBY SUMMONED** to answer the Complaint in this action and to serve a copy of your Answer, or if the Complaint is not served with this Summons, to serve a notice of appearance, on the Plaintiffs' Attorneys within 20 days after the serv-

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ice of this Summons, exclusive of the day of service (or within 30 days after the service is complete if this Summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: New York, New York  
April 17, 2008

SONNENSCHEN NATH & ROSENTHAL LLP

By: /s/ MICHAEL H. BARR

Michael H. Barr  
Richard M. Zuckerman  
Douglas B. Brasher

1221 Avenue of the Americas

New York, NY 10020

Phone: (212) 768-6700

Fax: (212) 768-6800

*Attorneys for Plaintiffs  
Financial Structures Limited and  
Arrowood Indemnity Company*

To:

UBS AG  
299 Park Avenue  
New York, New York 10171.



96a

UBS Securities LLC  
299 Park Avenue  
New York, New York 10171

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**Exhibit N**

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

**DURABLE POWER OF ATTORNEY**

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT (CALIFORNIA PROBATE CODE SECTIONS 4400-4465). IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTHCARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I, ANNABELL M. PALMER, Trustee under Trust Agreement dated March 12, 1986. The Annabell M. Palmer Family Trust, appoint KATHLEEN K. JOHNSON as my agent (attorney-in-fact) to act for me in any lawful way with respect to the following initialed subjects:

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS.

TO GRANT ONE OR MORE, BUT FEWER THAN ALL, OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF EACH POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF IT. YOU MAY, BUT NEED NOT, CROSS OUT EACH POWER WITHHELD.

INITIAL

- \_\_\_\_ (A) Real property transactions.
- \_\_\_\_ (B) Tangible personal property transactions.
- \_\_\_\_ (C) Stock and bond transactions.
- \_\_\_\_ (D) Commodity and option transactions.
- \_\_\_\_ (E) Banking and other financial institution transactions.
- \_\_\_\_ (F) Business operating transactions.
- \_\_\_\_ (G) Insurance and annuity transactions.
- \_\_\_\_ (H) Estate, trust, and other beneficiary transactions.
- \_\_\_\_ (I) Claims and litigation.
- \_\_\_\_ (J) Personal and family maintenance.
- \_\_\_\_ (K) Benefits from social security, medicare, medicaid, or other governmental programs, or civil or military service.
- \_\_\_\_ (L) Retirement plan transactions.
- \_\_\_\_ (M) Tax matters.
- \_\_\_\_ (N) To direct, negotiate, settle and/or dismiss any and all claims and litigation she has against William Joseph (Bill) Herisko now pending in Los Angeles County Superior Court and United States District Court.
- \_\_\_\_ (O) ALL OF THE POWERS LISTED ABOVE

YOU NEED NOT INITIAL ANY OTHER LINES IF YOU INITIAL LINE (O).

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SPECIAL INSTRUCTIONS:

ON THE FOLLOWING LINES YOU MAY GIVE  
SPECIAL INSTRUCTIONS LIMITING OR  
EXTENDING THE POWERS GRANTED TO  
YOUR AGENT.

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UNLESS YOU DIRECT OTHERWISE ABOVE,  
THIS POWER OF ATTORNEY IS EFFECTIVE  
IMMEDIATELY AND WILL CONTINUE UNTIL  
IT IS REVOKED.

This power of attorney will continue to be effective even though I become incapacitated.

I agree that any third party who receives a copy of this document may act under it. Revocation of the power of attorney is not effective as to a third party until the third party has actual knowledge of the revocation. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney.

Signed this 29th day of April, 2004

/s/ ANNABELL M. PALMER  
Annabell M. Palmer, Trustee

BY ACCEPTING OR ACTING UNDER THE  
APPOINTMENT, THE AGENT ASSUMES THE  
FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES  
OF AN AGENT.

ACCEPTANCE BY ATTORNEY IN FACT:

[illegible]

WITNESS my hand and official seal.

NORMAN RASMUSSEN  
COMM. # 1266267  
NOTARY PUBLIC, CALIFORNIA  
LOS ANGELES COUNTY  
My Comm. Expires June. 26, 2004

(SEAL)

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**Exhibit O**

**TRUST AGREEMENT  
OF  
THE ANNABELL M. PALMER FAMILY TRUST**

THIS TRUST AGREEMENT is entered into this 12th day of March, 1986, at Long Beach, California,

BETWEEN    ANNABELL M. PALMER, herein referred  
                 to as

“Trustor”

AND            ANNABELL M. PALMER, herein referred  
                 to as

“TRUSTEE”.

The Trustor has transferred, conveyed, assigned, and delivered to the Trustee by appropriate instruments, duly executed and absolute in form, all of the property described in Exhibit A, attached hereto and made a part hereof, which property is, together with any other property which may hereafter be transferred to the Trustee, to be held under this Trust, designated in this Trust Agreement as the “Trust Estate”.

No consideration was or will be given by the Trustee for the transfer to it of any of the Trust Estate. The Trustee accepts such title to the Trust Estate as is conveyed to it hereunder, without liability or responsibility for the condition or validity of such title, and the same has been or will be transferred to the Trustee, IN TRUST, WITH POWER OF SALE, for the purposes of holding, managing, controlling and disposing of the same and all



income or other proceeds derived therefrom in the manner, and for the use and purposes, and upon the terms, trusts and conditions here in provided;

## ARTICLE 1

This Trust shall be known as “THE ANNABELL M. PALMER FAMILY TRUST”.

## ARTICLE 2

The Trustor specifically reserves the following rights and privileges:

### A. RIGHT TO ADD PROPERTY TO TRUST

The Trustor, or any other person may, from time to time, with the consent of the Trustee, add further property, real, personal, or mixed, to the Trust Estate, or any part thereof, by transferring such property to the Trustee hereunder by deed, assignment, bequest, or devise, and if so added, such property shall be subject to the provisions hereof, the same as if originally included hereunder.

### B. RIGHT TO AMEND OR REVOKE TRUST

At any time, or times, by written notice to the Trustee and upon payment of all sums due to it, the Trustor may change any beneficiary, amend any provisions hereof to such extent as may be acceptable to the Trustee, and/or revoke this Trust, in whole or in part, or withdraw all or any of the Trust Estate upon indemnifying the Trustee to its satisfaction. Following the death of the Trustor,

this Trust Agreement and the Trust or Trusts created herein, shall be irrevocable, and may not be altered, amended, or modified in any way.

#### C. RIGHT TO DIRECT TRUSTEE IN INVESTMENTS

The Trustor, during her lifetime, may direct the Trustee, in writing, to invest the Trust Estate in specific securities, properties, or investments and/or retain as part of the Trust Estate, any securities, properties or investments, at any time held hereunder, for such lengths of time as such directions may provide. While the Trustor is also serving as Trustee, it shall not be necessary for the Trustor to provide written directions with respect to investments or otherwise. The Trustor may also direct the Trustee, in writing, with respect to the sale, encumbrance, lease, management, control, or disposition of any property of the Trust Estate. The Trustee shall not be liable for any loss sustained or incurred by reason of its compliance with any written directions of Trustor. However, the Trustee shall regularly review the Trust investments and submit recommendations and/or suggestions to the Trustor for consideration.

### ARTICLE 3

The Trustee shall apply and distribute the net income and principal of the Trust Estate in the following manner:

A. DURING THE LIFETIME OF THE TRUSTOR

During the lifetime of the Trustor, the Trustee shall make the following payments from the Trust Estate:

1. The Trustee shall pay to or apply for the benefit of the Trustor all of the net income from the Trust Estate, together with such portion of the principal of the Trust Estate as may be requested in writing by the Trustor.
2. If at any time the Trustor should be or become incompetent, or should for any other reason be unable to act on her own behalf, the Trustee may, in its absolute discretion, pay to or apply for the benefit of the Trustor, such amounts of the principal of the Trust Estate, up to the whole thereof, as the Trustee may from time to time deem necessary or advisable;

B. UPON THE DEATH OF TRUSTOR

1. Upon the death of the Trustor, the successor Trustee is authorized to reserve for and pay any estate, inheritance, or other death taxes due by reason of the Trustor's death, and attributable to taxable property contained in the Trust Estate, and any expenses of last illness and funeral and the just debts of Trustor, if any. Thereafter, the successor Trustee shall hold, administer, and distribute the income and principal of the Trust Estate as herein provided. All references herein to "Trustee" shall include a successor Trustee or Co-Trustees.

2. The Trustee shall divide the then remaining balance of the Trust Estate (principal and accumulated income, if any) into separate trusts of equal value (without being required to make a physical segregation thereof) creating one such Trust of each of Trustor's daughters, namely KATHLEEN KAY JOHNSON and JUDITH ANN WOODARD. In setting aside property of which the various trusts will be comprised, the Trustee may select cash, other property in kind, partly in cash and partly in kind, individual assets or groups of assets, or individual interests, or other rights or ownership in common, or jointly with others, including the trusts hereunder, all in the Trustee's discretion. The Trustee shall distribute and deliver to the Trustor's daughters, in equal shares, all of the Trustor's personal effects, household furniture and furnishings, automobiles, pictures, books, works of art, jewelry, watches, silverware, wearing apparel, sporting goods, and all other articles of household or personal use or ornament.

3. The Trustee shall pay to or apply for the benefit of each beneficiary all of the net income of her Trust Estate, in monthly or other convenient installments.

4. This Trust shall terminate on the earlier of (a) ten (10) years following the date of death of the Trustor, or (b) on the sale by the Trustee of all of the shares of stock of Park International Corp., or upon the dissolution of that corporation. At the termination, after the payment of all taxes and administrative expenses, the Trustee shall then

distribute and deliver the then remaining balance of the Trust Estate to the Trustor's daughters, in equal shares.

5. In the event KATHLEEN KAY JOHNSON is then deceased, her share shall go and be distributed to JUDITH ANN WOODARD.

6. In the event JUDITH ANN WOODARD is then deceased, her share shall be retained by the Trustee upon the uses, trusts, purposes and conditions as herein provided for the benefit of Trustor's grandchildren, STEPHANIE ANN WOODARD and WILLIAM A. WOODARD, JR.

(a) The Trustee shall divide that portion of the Trust Estate that would have been distributed to JUDITH ANN WOODARD into separate trusts of equal value (without being required to make a physical segregation thereof) creating one such trust for each living grandchild. In setting aside property of which the various trusts will be comprised, the Trustee may select cash, other property in kind, partly in cash and partly in kind, individual assets or groups of assets or individual interests or other rights or ownership in common or jointly with others, including the trusts created hereunder, all in the Trustee's discretion.

(b) The Trustee shall accumulate, use, pay and apply, to and for the proper care, maintenance, support and education of each beneficiary such portion of the net income and/or principal of his or her respective Trust Estate which, in the sole discretion of the Trustee, is necessary or advisable; Any

income not so distributed shall become a part of the principal of the Trust Estate.

(c) Upon the attainment by each grandchild of age 30, the Trustee shall deliver and distribute to each such beneficiary the then remaining balance of his or her respective Trust Estate.

(d) In the event a beneficiary should die prior to receiving complete distribution of his or her Trust Estate as herein provided, then the remaining principal of the Trust Estate set aside for the deceased beneficiary shall thereupon go to augment the surviving grandchild's share of the trust.

7. Upon any division or distribution of the Trust Estate, in whole or in part, the Trustee may set aside for or assign, transfer, or deliver to the person then entitled thereto, any part of the Trust Estate, or any undivided interest in the Trust Estate, or any portion thereof, in cash, or in kind, or partly in cash and partly in kind, at such valuation as the Trustee may establish as the then fair market value, or may, within a reasonable time, convert the Trust Estate, or any portion thereof, into cash and distribute the net proceeds to such person, in the absolute discretion of the Trustee.

#### C. TERMINATION OF TRUST

The Trusts created hereunder, unless sooner terminated in accordance with the provisions hereof, shall, in any event, cease and terminate twenty-one (21) years from and after the death of the last survivor of all of the Trustor's lineal descendants liv-

ing at the date of the creation of this Trust. Upon such termination, the shares of the entire Trust Estate (principal and any income accrued or held undistributed) shall be distributed and paid over to the persons for whose benefit (income beneficiary) such shares are then held.

## ARTICLE 4

### POWERS AND DISCRETION OF TRUSTEE

The Trustee shall have the following powers, duties and discretion:

#### A. GENERAL POWERS

The Trustee shall have, subject always to the discharge of the Trustee's fiduciary obligations, all such power and is authorized to exercise all such rights and privileges in the management of the Trust Estate as if the absolute owner thereof, including without limiting the generality of the terms, the right:

1. To retain any property transferred, devised, or bequeathed to the Trustee, or any undivided interest therein, regardless of any lack of diversification, risk, or nonproductivity;
2. To invest and reinvest the Trust Estate in any property or undivided interests therein, wherever located, including bonds, notes secured or unsecured, stocks of corporations, real estate or any interest therein and interests in Trusts, including Common Trust Funds,

without being limited by any statute or rule of law concerning investments by Trustee;

3. To lease, release, or to sell any trust property, for cash or on credit, at public or private sale; to exchange any trust property for other property; to grant options to purchase or acquire any trust property; and to determine the prices and terms of sales, leases, exchanges and options; to buy and/or sell options on securities; and to purchase and sell securities on margin;

4. To borrow money and to mortgage or pledge any trust property; and to guarantee the debts of the Trustor or any other person or corporation;

5. To keep any property in the name of a nominee with or without disclosure of any fiduciary relationship;

6. To employ agents, attorneys, auditors, depositories and proxies, with or without discretionary powers;

7. To employ investment counsel and/or manager, and to delegate authority to such an investment counsel/manager to purchase, sell, convey, convert or exchange any asset or assets of the Trust Estate; the Trustee is further authorized to utilize a brokerage firm to obtain brokerage services and to allow the investment counsel/manager to authorize the broker to hold securities of the Trust Estate in street name or in the name of a nominee; the Trustee



is further authorized to purchase securities on margin account and to pledge securities of the Trust Estate as collateral therefor;

8. To make any distribution or division of the trust property in cash or in kind, or both, and to allot different kinds or disproportionate shares of property or undivided interests in property.

#### B. TRANSACTIONS WITH ESTATE OF TRUSTOR

Upon the death of Trustor, the Trustee may, within its discretion, purchase assets from the estate of the deceased Trustor at a fair value. The propriety of the purchase, the amount of such assets purchased, and the ascertainment of fair value, shall be solely within the discretion of the Trustee, and the Trustee shall incur no liability as a result of such purchases, whether or not such assets constitute investments which may legally be made by the Trustee, or at its discretion, the Trustee may loan money to the estate of a deceased Trustor upon such terms as the Trustee and personal representative of the deceased Trustor may agree.

#### C. PAYMENT OF TAXES

The Trustee may in its discretion pay out of the Trust Estate any and all estate, inheritance and other taxes (including interest and penalties thereon) arising by reason of Trustor's death. Such taxes

which are a charge against any beneficiaries hereunder shall be deducted from the interest of the beneficiaries, respectively. The Trustee is authorized and directed to present for redemption in payment of Federal Estate Taxes any United States government bonds held by the Trustee for such purpose.

#### D. RESIGNATION OF TRUSTEE AND TRANSFER OF TRUST

1. Any Trustee may resign at any time upon giving written notice to the Trustor, or to all adult beneficiaries and/or to the guardians of the estates of any minor or incompetent beneficiaries who may then be receiving income hereunder.

2. Upon the death of the original Trustee, a board of Trustees shall be appointed for the purpose of administering the Trust Estate and, in particular, voting the shares of stock of PARK INTERNATIONAL CORP., a California corporation. The successor Co-Trustees are JUDITH ANN WOODARD, KATHLEEN KAY JOHNSON, WILLIAM A. WOODARD, ROBERT L. CHAPUT and NORMAN RASMUSSEN. In the event that JUDITH, KATHLEEN or WILLIAM fail to qualify or cease to act, for any reason, there shall be no one appointed to replace them as Co-Trustees. The survivors shall serve as the Co-Trustees. In the event either ROBERT L. CHAPUT or NORMAN RASMUSSEN, or their successors, should fail to qualify or cease to act, for any

reason, then the remaining or surviving of those two shall nominate and appoint an independent, professional person to serve as a Co-Trustee to fill the vacancy.

3. It is the Trustor's intention that the Trust and the voting of the shares of stock of the corporation shall be administered by Co-Trustees which will also be the Board of Directors of the corporation of five. The voting provisions will be such that a majority of three will always be required in order to take any action or to refrain from taking action. It is the Trustor's intention and hope that this system will be to the benefit of perpetuating the business of the corporation for the ultimate benefit of Trustor's family and will avoid disagreements and misunderstandings with respect to the management and operation of the corporation and the Trust Estate.

4. A resigning Trustee shall transfer to its successor the entire Trust Estate and shall, thereupon, be discharged as Trustee of this Trust. A successor Trustee shall succeed to all of the rights, powers and trusts, and shall assume all the obligations of a prior Trustee, provided, however, that any successor Trustee taking office hereunder shall have no responsibility for the acts or omissions of any prior Trustee, and no duty to audit or investigate the accounts or administration of any prior Trustee, nor, unless in writing it is requested so to do by any person having a present or

future beneficial interest under this Trust, shall it have any duty to take action or obtain redress for any breach of trust. After acceptance by the successor Trustee, the prior Trustee shall promptly deliver all trust assets in its possession to the successor Trustee together with an accounting for all accounts affecting the Trust since the date of its last prior accounting.

5. At any time when a corporate Trustee is acting as Trustee of this Trust Estate, a majority of the adult income beneficiaries and the guardians of the Estates of any minor or incompetent beneficiaries who may then be receiving income may, by thirty (30) days' written notice to the Trustee, remove such Trustee, and designate a successor corporate Trustee authorized to act in the State of California whose gross resources exceed \$10,000,000.

6. A Trustee who becomes incapacitated shall cease to act as Trustee. The determination that a Trustee is incapacitated and unable to act properly as Trustee shall be made by a Court of competent jurisdiction or by the filing with any Co-Trustee, and the successor Trustee, of certification in writing by two licensed doctors of medicine that the particular Trustee is unable, because of then physical or mental condition, to continue to act properly as a Trustee of this Trust. In the event a Trustee has been so determined to be incapacitated, such Trustee may upon regaining his capacity be restored as

Trustee, in place of his successor Trustee in the same manner in which he was determined to be incapacitated.

7. The Trustees shall be entitled to reasonable compensation for their services and reimbursement for expenses incurred while acting as Trustee.

## ARTICLE 5

### GENERAL PROVISIONS

#### A. COMPROMISE OF CLAIMS

The Trustee may, at its option, at any time in connection with its management of the Trust Estate, or the collection of any monies due or payable to it as Trustee hereunder, compromise any claims existing in favor of it or against the Trust Estate.

#### B. BOND-LIABILITY OF TRUSTEE

No bond, or other security shall be required of any Trustee in any jurisdiction. No individual Trustee acting hereunder shall be liable or responsible for any mistake or error of judgment in the administration of the Trust Estate resulting in loss to the estate by reason of investment or otherwise, save only for willful misconduct or fraud. A corporate Trustee acting hereunder shall be liable or responsible only to the extent required by law.

### C. SPENDTHRIFT PROVISION

The interest of any beneficiary in the principal or income of this Trust shall not be subject to the claims of his or her creditors, or others, or liable to attachment, execution, or other process of law, and no beneficiary shall have any right to encumber, hypothecate, or alienate his or her interest in the Trust in any manner. The Trustee may, however, deposit to any bank designated by the beneficiary to his or her credit, income, or principal payable to such beneficiary.

### D. INCOME ON TRUST PROPERTY

Income accrued or unpaid on trust property shall, when received into the Trust, be treated as any other income. Income accrued or in the hands of the Trustee for payment to an income beneficiary at the termination of his interest or estate under this. Trust shall go to the beneficiaries entitled to the next succeeding interest in the proportions in which they take such interest. The Trustee shall not be required to prorate taxes and other current expenses to the date of termination.

### E. PAYMENTS FOR BENEFIT OF A BENEFICIARY

The Trustee may apply payments for the benefit of any beneficiary, or make payments to any beneficiary under disability to the guardian of the person of the beneficiary or to the parent of the beneficiary, if a minor. Sums necessary for support and education may be paid directly to minor bene-

ficiaries, who, in the judgment of the Trustee, have attained sufficient age and discretion to render it probable that the monies will be properly expended.

#### F. PRINCIPAL AND INCOME LAW

Ascertainment of income and principal shall be determined in accordance with the California Uniform Principal and Income Act from time to time existing except to the extent that such is silent, and then such matter shall be determined by the Trustee.

#### G. ALLOCATION OF CHARGES

The Trustee may pay out of principal or income, or partially out of each in such shares as it may determine, property taxes, assessments, charges, attorneys' fees and expenses incurred in the administration or protection of this Trust. This discretion may be exercised not only in the interest of the Trust Estate, but for the benefit of any beneficiary. The income remaining after such expenditures as the Trustee shall elect to pay therefrom shall constitute net income.

#### H. DEFINITIONS OF ISSUE AND CHILDREN

In this instrument, the term "issue" shall refer to lawful lineal descendants of all degrees, and the terms "child", "children", and "issue" shall include adopted children who were minors at the date of adoption.

I. NUMBER AND GENDER

All references herein to the singular number and neuter gender shall be deemed to include the plural number and the masculine or feminine gender when the context so indicates and vice versa.

J. CALIFORNIA LAW

This Trust has been accepted by the Trustee and will be administered in the State of California, and its validity, constructions, and all rights thereunder, will be governed by the laws of that State.

K. SEVERABILITY CLAUSE

If any provision of this trust instrument is unenforceable, the remaining provisions shall nevertheless be carried into effect.

L. NOTICE OF EVENTS

Unless the Trustee shall have received actual written notice of the occurrence of an event affecting the beneficial interests of this Trust, the Trustee shall not be liable to any beneficiary of this Trust for distribution made as though the event had not occurred.

M. NO CONTEST CLAUSE

Trustor affirms that she has made provision herein for all her relatives and legal heirs for whom she desires to make provision. If any beneficiary under this Trust Agreement shall contest it or any of its parts or provisions, or Trustor's Last Will, or



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any of its parts or provisions, any share or interest given to, or provided for, that person shall be revoked and shall pass proportionately to or through the respective Trusts of which such person was a beneficiary as if that person has predeceased the Trustor, leaving no issue surviving, excluding all such contestants and/or those voluntarily assisting them.

IN WITNESS WHEREOF, the Trustor and Trustee have executed this Trust Agreement to be effective on the day and year first above written.

TRUSTOR

/s/ ANNABELL M. PALMER  
ANNABELL M. PALMER

TRUSTEE

/s/ ANNABELL M. PALMER  
ANNABELL M. PALMER

APPROVED AS TO FORM:

RAMSEY AND RASMUSSEN

/s/ NORMAN RASMUSSEN  
NORMAN RASMUSSEN  
Attorneys for Trustor

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STATE OF CALIFORNIA       )  
  ) ss  
COUNTY OF LOS ANGELES    )

On this 12 day of March, in the year 1986, before me, the undersigned, a Notary Public in and for said State, personally appeared ANNABELL M. PALMER, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed it.

WITNESS my hand and official seal.

/s/ NORMAN RASMUSSEN  
Notary Public in and for said State

(SEAL)

OFFICIAL SEAL  
NORMAN RASMUSSEN  
Notary Public-California  
PRINCIPAL OFFICE IN  
LOS ANGELES COUNTY  
MY COMMISSION EXPIRES JUNE 7, 1988

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PROPERTY OF TRUSTOR  
ANNABELL M. PALMER  
TRANSFERRED PURSUANT TO  
TRUST AGREEMENT OF  
THE ANNABELL M. PALMER FAMILY TRUST

Dated: March 12, 1986

<u>Item No.</u>	<u>Description</u>
1.	296,134 shares of the capital stock of PARK INTERNATIONAL CORP., a California corporation.
2.	All articles of personal, domestic or household use, jewelry and similar articles, furniture, books, pictures, silverware, and all household articles, which are in, about, and used in connection with Trustor's home at 270 St. Joseph Street, Long Beach, California 90803.

EXHIBIT A

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**FIRST AMENDMENT TO  
TRUST AGREEMENT  
OF  
THE ANNABELL M. PALMER FAMILY TRUST**

This First Amendment to Trust Agreement of the Annabell M. Palmer Family Trust is made this 8th day of August, 1995, at Long Beach, California,

BETWEEN    ANNABELL M. PALMER, herein referred  
                 to as

“TRUSTOR”

AND           ANNABELL M. PALMER, herein referred  
                 to as

“TRUSTEE”.

Trustor desires to amend and modify that Trust Agreement dated March 12, 1986, creating The Annabell M. Palmer Family Trust. Pursuant to the power reserved to the Trustor to alter and amend as contained in Paragraph B, Article 2 thereof, this First Amendment is hereby adopted.

**TERMS AND PROVISIONS:**

1. This First Amendment shall be effective as of the date first appearing on page one above.
2. The provisions of Paragraph B of Article 3 are deleted in their entirety and there is substituted in lieu thereof, new Paragraph B which will read in full as follows:

“B. UPON THE DEATH OF TRUSTOR

1. Upon the death of the Trustor, the successor Trustee is authorized to reserve for and pay any estate, inheritance, or other death taxes due by reason of the Trustor’s death, and attributable to taxable property contained in the Trust Estate, and any expenses of last illness and funeral and the just debts of Trustor, if any. Thereafter, the successor Trustee shall hold, administer, and distribute the income and principal of the Trust Estate as herein provided. All references herein to “Trustee” shall include a successor Trustee or Co-Trustees.

2. The Trustee shall distribute and deliver the Trustor’s personal effects, household furniture and furnishings, automobiles, jewelry, watches, silverware, pictures, books, works of art, wearing apparel and all other items of household or personal use or ornament to the Trustor’s children, KATHLEEN KAY JOHNSON and JUDITH ANN WOODARD, in equal shares, to be divided between them as they may agree. If either child is then deceased, then the share of the deceased child shall be distributed to the Trustor’s surviving child.

3. The Trustee shall distribute and deliver the entire remaining balance of the Trust Estate to the following named beneficiaries, in the percentages set opposite the name of each, subject to the limitation set forth in section 4 below:

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KATHLEEN KAY JOHNSON	40%
JUDITH ANN WOODARD	40%
STEFANIE WOODARD	10%
WILLIAM A. WOODARD, JR.	<u>10%</u>
TOTAL	<u>100%</u>

4. Notwithstanding the foregoing provisions, no distribution shall be made to any grandchild of the Trustor until he or she shall have attained age 35. Subject to the foregoing provisions, when the oldest living grandchild of the Trustor has attained age 35, then in that event, if KATHLEEN JOHNSON, JUDITH A. WOODARD and STEFANIE WOODARD (or the survivors of them if any are then deceased) all agree in writing to terminate this Trust, they may do so and distribute the principal to the beneficiaries in their respective shares. Following a date which is two years after the death of Grantor, Trustee may distribute all or any portion of the shares of KATHLEEN JOHNSON and JUDITH A. WOODARD to them respectively.

5. In the event that JUDITH ANN WOODARD should survive the Trustor, then notwithstanding the foregoing provisions, the gifts to STEFANIE WOODARD and WILLIAM A. WOODARD, JR., shall not exceed \$500,000 in value each. If there is any amount in excess of \$500,000 in value each, such amount shall be added equally to the shares of KATHLEEN KAY JOHNSON and JUDITH ANN WOODARD.

6. In the event KATHLEEN JOHNSON should predecease the Trustor, her share of the Trust Estate shall be distributed to the other beneficiaries as follows: 50% to the share of JUDITH A. WOODARD, 25% to the share of STEFANIE WOODARD and 25% to the share of WILLIAM A. WOODARD, JR.
7. In the event JUDITH A. WOODARD should predecease the Trustor, her share of the Trust Estate shall be distributed to the other beneficiaries as follows: 50% to the share of KATHLEEN JOHNSON, 25% to the share of STEFANIE WOODARD and 25% to the share of WILLIAM A. WOODARD, JR.
8. In the event STEFANIE WOODARD should predecease the Trustor, her share of the Trust Estate shall be distributed to WILLIAM A. WOODARD, JR.
9. In the event WILLIAM A. WOODARD, JR. should predecease the Trustor, his share of the Trust Estate shall be distributed to STEFANIE WOODARD."
3. The provisions of Paragraph C of Article 3 are deleted in their entirety and there is substituted in lieu thereof, new Paragraph C which will read in full as follows:

"C.       TERMINATION OF TRUST

The Trusts created hereunder, unless sooner terminated in accordance with the provisions hereof, shall in any event cease and terminate

ninety (90) years from and after the date of creation of this Trust which appears on page one. Upon such termination, the shares of the entire Trust Estate (principal and any income accrued or held undistributed) shall be distributed and paid over to the persons for whose benefit (income beneficiary) such shares are then held.”

4. The provisions of Section 2 of Paragraph D of Article 4 are deleted in their entirety and there is substituted in lieu thereof, new Section 2 which shall read in full as follows:

“2. In the event the original Trustee named herein resigns, refuses to act, or by reason of death, disability, or other incapacity becomes unable to act as Trustee, then JUDITH ANN WOODARD and KATHLEEN KAY JOHNSON are appointed as successor Co-Trustees hereunder. In the event of the death, disability, resignation or failure to act of a named Co-Trustee, then the surviving or remaining Co-Trustee shall serve as Co-Trustee with STEFANIE WOODARD who is appointed as a successor Co-Trustee. In the event either of the Co-Trustees should fail to qualify or cease to act for any reason, then the surviving or remaining Co-Trustee shall serve with WILLIAM A. WOODARD, JR. who is appointed as a successor Co-Trustee. All references herein to “Trustee” shall include “Co-Trustees.”



5. The provisions of Paragraph M of Article 5 are deleted in their entirety and there is substituted in lieu thereof, new Paragraph M which shall read in full as follows and shall be applicable to this Amendment and to any and all other amendments of the Trust Agreement:

“M. NO CONTEST CLAUSE

Trustor affirms that she has made provision in the Trust Agreement for all her relatives and legal heirs for whom she desires to make a provision, and for the administration of this Trust by the appointment of successor Trustees. If any beneficiary under this Trust Agreement, or any amendment thereof, shall contest it or any of its parts or provisions, or Trustor's Last Wills, or any of their parts, provisions or amendments, including the appointment of a successor Trustee or Co-Trustees, of the Trustors' Wills, or any parts or provisions thereof, or any Codicils thereto, or object or contest the appointment of any Trustee, Co-Trustee, Executor or Co-Executor named in such documents, then any share or interest given to, or provided for such person shall thereupon be revoked, and the interest of such person shall pass to or through the respective trust of which such person was a beneficiary as if that person has predeceased the Trustor, leaving no issue surviving, including all such contestants and/or those voluntarily assisting them.”

6. There shall be added to Article 5, new Paragraph N which will read in full as follows:

**“N. PROVISION OF CARE FOR TRUSTOR**

The Trustee is directed by the Trustor to provide complete and comprehensive medical, dental and personal care for the Trustor, which shall include but not be limited to 24 hour supervision in the Trustor’s home if necessary, and care in an acute hospital, preferably Memorial Medical Center of Long Beach. Such care is to be provided without restriction due to cost or expense. Trustor authorizes the invasion of principal to the fullest extent necessary to provide for the care, comfort of the Trustor, if necessary.”

7. There shall be added to Paragraph 4 of Article 4, new Section 9 which will read in full as follows:

“9. The Trustee is authorized to give and grant powers of attorney from time to time and to name one or more persons to act as the attorney-in-fact for the Trustee or Co-Trustees; said power of attorney shall have all of the power and may perform any act that a Trustee could take with respect to the Trust Estate and the properties of the Trust Estate as if the action were taken by the duly appointed Trustee or Co-Trustees. Any person or entity dealing with the Trust Estate may rely on the signature and authority of the duly appointed attorney-in-fact and the Trust Estate shall be bound by the action of such attorney-in-fact. This power of

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attorney may include signature authority over any and all accounts in the name of the Trust or Trustee including savings accounts, time certificates of deposit, stock brokerage accounts, mutual fund accounts or other investments.”

8. Except as modified by this First Amendment, the Trust Agreement dated March 12, 1986, as amended, is ratified and confirmed in all particulars.

IN WITNESS WHEREOF, the Trustor and Trustee have executed this First Amendment to Trust Agreement to be effective on the day and year first above written.

TRUSTOR

/s/ ANNABELL M. PALMER  
ANNABELL M. PALMER

TRUSTEE

/s/ ANNABELL M. PALMER  
ANNABELL M. PALMER

APPROVED AS TO FORM:

/s/ NORMAN RASMUSSEN  
NORMAN RASMUSSEN  
Attorney for Trustor

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STATE OF CALIFORNIA       )  
  ) ss  
COUNTY OF LOS ANGELES    )

On August 8, 1995 before me NORMAN RASMUSSEN, personally appeared ANNABELL M. PALMER personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

/s/ NORMAN RASMUSSEN

[SEAL]  
NORMAN RASMUSSEN  
COMM. #967153  
Notary Public–California  
LOS ANGELES COUNTY  
MY COMMISSION EXPIRES JUNE 26, 1996

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**ASSIGNMENT OF INTEREST  
IN BANK ACCOUNT**

ANN PALMER, as Assignee, does hereby assign, transfer, convey and set over unto ANNABELL M. PALMER, as Trustee of The Annabell M. Palmer Family Trust, under Trust Agreement dated March 12, 1986, as Assignee, all of the Assignor's right, title and interest in and to that Bank Account/Deposit at Union Bank of Switzerland, Beil Switzerland, being account number CQUE 266.630, which deposit was originally in the sum of \$4,000,000 U.S., together with all interest accrued thereon.

Dated: January 14, 2003

/s/ ANN PALMER  
ANN PALMER

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**Exhibit P**

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UNITED STATES DISTRICT COURT  
FOR THE  
SOUTHERN DISTRICT OF NEW YORK

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Civil Action No. 18-cv-4372

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KATHLEEN K. JOHNSON AND JUDITH WOODARD,  
Individually and as Trustees of  
The Annabell M. Palmer Family Trust,  
*Plaintiff(s)*

v.

UNION BANK OF SWITZERLAND  
*Defendant(s)*

---

**SUMMONS IN A CIVIL ACTION**

To: *(Defendant's name and address)*  
Union Bank of Switzerland  
299 Park Avenue  
New York, New York 10171

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it)—or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3)—you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of

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the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

The Dweck Law Firm, LLP  
10 Rockefeller Plaza, Suite 1015  
New York, NY 10020

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Date: 05/16/2018

*CLERK OF COURT*

/s/ D. Howie

*Signature of Clerk or  
Deputy Clerk*

[SEAL]



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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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Docket No.:  
Date Purchased:

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KATHLEEN K. JOHNSON AND JUDITH WOODARD,  
Individually and as Trustees of  
The Annabell M. Palmer Family Trust,  
*Plaintiffs,*  
—against—

UNION BANK OF SWITZERLAND  
*Defendants.*

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**COMPLAINT  
JURY TRIAL DEMANDED**

Plaintiffs complain of the Defendant, by their attorneys, The Dweck Law Firm, LLP, and respectfully allege as follows:

**NATURE OF ACTION**

1. This action brought by the Plaintiffs, as Trustees of the Annabell M. Palmer Family Trust (the “Trust”), arises from the deposit by Ann Palmer, who at age 83, having been exposed to undue influence by third parties, forwarded Four Million (\$4,000,000.00) Dollars to the Union Bank of Switzerland (“UBS”). The money so deposited

was to be held and specifically used for the establishment of an account for the purchase of Middle Term Notes by and through the efforts of investment officers of the Defendant, Union Bank of Switzerland. The claims by the Plaintiffs are for a Declaratory Judgment, breach of fiduciary obligations, breach of confidence and trust placed in the Defendant UBS by the late Ann Palmer, whether by conversion, misappropriation, negligence, recklessness, or carelessness of the Defendant UBS, which has benefitted from its illegal conduct in failing to give any information or to return, or account for, the monies of Ann Palmer. This action seeks to obtain information and to remedy the wrongful conduct of the Defendant, and restore to the Plaintiffs, as Assignees of Ann Palmer, and Trustees of the Annabell M. Palmer Family Trust, the monies wrongfully taken and withheld from her, which now belong to and are sought to be recovered by the Trust.

### **THE PARTIES**

2. At all times hereinafter mentioned, the Plaintiffs, Kathleen K. Johnson and Judith Woodard, (The Trustees) are natural persons who are citizens of the States of New York and Nevada, respectively.

3. Upon information and belief, the Defendant Union Bank of Switzerland ("UBS") is a foreign corporation, a citizen of Switzerland, with offices within the City and State of New York, where it conducts the business of banking and financial investment management as authorized by the

State of New York, and/or the United States Government, and/or the United States Securities and Exchange Commission, and otherwise conducts business in the State of New York on a regular and continuous basis.

### **JURISDICTION AND VENUE**

4. This Court has personal jurisdiction over the Defendant UBS since it is a citizen of Switzerland and pursuant to New York Civil Practice Law and Rules § 301, the Defendant UBS is authorized to conduct the business of banking, securities and investment management within the State of New York, and that the Defendant UBS has previously confirmed its presence and activities within the State of New York, which said Defendant has acknowledged within legal filings and admissions which subject it to personal jurisdiction by the Courts of the United States and the State of New York. In addition, pursuant to the provisions of CPLR § 302, this court has jurisdiction since the Defendant has committed and is guilty of tortious and illegal conduct outside of the State of New York which has caused damages to the Plaintiffs, which the Plaintiffs have sustained both individually, and as Trustees of the Annabell M. Palmer Family Trust, within the State of New York.

5. Venue is proper within New York County based upon the New York County residences and offices of the Plaintiff, Kathleen Johnson and UBS respectively.

**AS AND FOR A FIRST CAUSE OF ACTION  
(DECLARATORY JUDGMENT)**

6. Prior to the commencement of this action, Ann Palmer, (the Decedent) assigned and transferred to the Plaintiffs, who are her daughters, and Trustees of the Annabell Palmer Family Trust, all of her right, title and interest in and to her claims against UBS and others for the recovery of Four Million (\$4,000,000.00) Dollars, which she deposited with UBS into an account to be held for her benefit, and use, and, following the assignment, the Trust beneficiaries.

7. Upon information and belief, and in or about August 1998, prior to the transfer of any monies by the Decedent or her engaging in any business transactions with UBS, the Decedent, then an elderly woman in her eighties, living alone and having been exposed to undue influence by third parties, had an understanding of some banking, business and investment practices and requirements for investments. At that time the plaintiff was approached by various individuals, who made representations to her which included, without limitation, the following statements in word or substance:

- i. If the Decedent transferred Four Million (\$4,000,000.00) Dollars to UBS in the name of the Decedent, the same would be held for the Decedent by UBS pursuant to her written instructions for the disposition of the same by investment or otherwise.

- ii. If the Decedent would deposit at least Four Million (\$4,000,000.00) Dollars into at account at UBS, in her name, in conjunction with an authorized and qualified investment advisor from UBS, her money would be invested in the purchase of Middle Term Notes of highly rated banks in Europe who would issue such notes in AA or better S&P rated banks.
- iii. Any monies to be invested by the Decedent would be kept on deposit with UBS, whose investment personnel would act to preserve the capital of the Decedent so as to insure that the Decedent would have a regular source and flow of income.
- iv. In consideration of the transfer by the Decedent of Four Million (\$4,000,000.00) Dollars to UBS, a UBS Trust Officer and Trading Coordinator at UBS, would establish an account for the Decedent for investment purposes as above described for the purchase and sale of Middle Term Notes.
- v. After each of the Medium Term Notes had been paid, UBS Investment Management personnel would sell or redeem the same for the account and benefit of the Decedent.

8. In reliance upon the representations, statements, warranties and promises made to the Decedent as aforescribed, the Decedent furnished to

UBS, Four Million (\$4,000,000.00) Dollars, by transfer from her account at Citibank in the United States, to UBS in Beil, Switzerland, to establish an account in her name as sole owner and signatory.

9. The monies were transferred by wire by Ann Palmer to UBS on or about the August 24, 1998, evidenced by written confirmations to UBS from the Decedent's account at Citibank.

10. By virtue of the deposit of monies as afore-described, Ann Palmer was in a fiduciary relationship with UBS as her investment advisor or manager. In addition, she became a depositor/creditor of UBS Bank in the sum of Four Million Dollars, and was, and is entitled to the return of said sum from the UBS Bank, together with all accrued interest.

11. The Plaintiffs, as successors in interest of the benefits of said deposit by Ann Palmer, have made inquiries and demands of UBS personally and in Court proceedings for information as to the disposition of said monies, and the return of said monies, which UBS has failed and refused to do, but has opposed the same with claims that such release of the information demanded would violate Swiss criminal statutes.

12. A genuine controversy exists between the Plaintiff and the Defendant with respect to the rights and obligations of the Defendants to the delivery and disposition of the Four Million (\$4,000,000.00) Dollars, heretofore deposited by the Decedent with UBS.

13. UBS has retained the monies of the Decedent and the Plaintiffs, as set forth within this complaint, which is believed to have been done in violation of the law, and the rights of Decedent and the Plaintiffs, existing legal and ethical practices and customs, as well as in violation and understandings of, the Decedent as set forth within Paragraph 7 of this Complaint and, in addition, has willfully failed to furnish any information with respect to the disposition of said funds.

14. The Plaintiffs seek a declaratory judgment which sets forth the rights of the Plaintiffs as against the Defendant, together with the appropriate, additional judgment and declaration by this Court, that the Plaintiffs are entitled to the return of the sum of Four Million (\$4,000,000.00) Dollars heretofore deposited with the Defendant UBS by the Decedent, along with any accretions or accumulations attributable to those funds and interest according to the law.

15. By virtue of all of the foregoing, the Plaintiffs request declaratory judgment which sets forth the rights of the Plaintiffs, with respect to the monies deposited with and delivered to UBS, together with such other and further relief as to this court may seem just and proper.

**AS AND FOR A SECOND CAUSE OF ACTION  
(BREACH OF FIDUCIARY OBLIGATIONS)**

16. Plaintiffs repeat and reallege each and every allegation of paragraphs of the Complaint, numbered “1” through “15” inclusive, with the same force and effect as if more fully set forth at length herein.

17. The obligations of UBS as a fiduciary, financial advisor and investment manager, carry duties of care, loyalty, candor, disclosure and good faith upon those entities acting as investment and financial advisors such as UBS. Such legal duties prohibit UBS from refusing to make a full disclosure of all transactions conducted in and for the account of the Decedent and the Plaintiffs, or from otherwise withholding the information which pertain to the same and the return of the monies properly belonging to the Decedent and the Plaintiffs as Trustees.

18. As the investment advisors, and administrative agents of the Decedent, UBS undertook to act as a Fiduciary agent of the Decedent. By virtue of the fiduciary relationship which arose between the Decedent and UBS, there arose, and Plaintiff was owed, duties of good faith, due care, loyalty, full disclosure to, and due, diligence on behalf of, UBS and the Plaintiffs as her successors-in-interest.

19. The Decedent did transfer and deliver to UBS the sum of Four Million (\$4,000,000.00) Dollars, upon the express reliance and belief by the Decedent that UBS would act as a fiduciary for her, as



a result of which she thereby refrained from pursuing other financial investments and alternatives.

20. The Defendant has unjustifiably and inexcusably breached its fiduciary duties to the Decedent and continues to breach such duties to the Plaintiffs by having excluded the Decedent, and presently excluding the Plaintiffs, respectively, from the management, or any information with respect to the account of the Decedent and denying them access to information concerning the account of the Decedent and the Plaintiffs. Since August 1998, up to and including the present time, UBS has failed and/or refused to furnish any information concerning the disposition of the Plaintiffs' monies in the sum of Four Million (\$4,000,000.00) Dollars or to account for the same.

21. By virtue of all of the foregoing, and since the Decedent intended to, and did in fact, rely on her relationship with UBS, as aforescribed, UBS has breached its fiduciary duties and obligations to the Decedent which caused serious and substantial injury and harm to the Decedent, which has continued to be suffered to date since the death of the Decedent, by the Plaintiffs, both individually, and as Trustees of the Annabell Palmer Family Trust, and on behalf of the beneficiaries of said Trust as well.

22. The breach of its fiduciary obligations and duties by UBS was committed knowingly, willfully and deliberately, for which the Plaintiffs seek an award of exemplary damages in addition to com-

pensatory damages.

23. The Plaintiffs seek to recover an award of actual damages in the sum to be determined upon a trial of this action, but in no event less than Four Million (\$4,000,000.00) Dollars, together with interest according to law and the costs and disbursements of this action.

24. As a direct and proximate result of this breach of duty by UBS, the Decedent and the Plaintiffs have been greatly damaged and continue to face significant losses for the Trust and the Trust Beneficiaries. Such harm cannot be adequately redressed at law, and the Plaintiffs will continue to suffer irreparable harm unless UBS, is enjoined from engaging in the illegal and unlawful conduct described within this Complaint.

25. In addition, UBS has engaged in such conduct and activity as constitutes a breach of its obligations as a fiduciary to and with the Decedent and the Plaintiffs, as Assignees of the Decedent, including without limitation, having failed to furnish a statement of the account of the Decedent, failed to account for any purchases or sales of securities or Medium Term Notes to or for the benefit of the Decedent and/or the Plaintiffs, utilizing the funds of the Decedent and the Plaintiffs, without reporting or including the same in any statements, to the Decedent or the Plaintiffs, and, upon information and belief, UBS misappropriated or converted monies or securities from the account of the Decedent, for its own uses and purposes, and such other

similar conduct as constitutes a breach by UBS of its fiduciary obligations to the Decedent and to the Plaintiffs.

26. As a direct and proximate result of this breach of its fiduciary duties by UBS, the Decedent and the plaintiffs have been greatly damaged and continue to face significant losses for the Trust and the Trust Beneficiaries.

27. Such harm cannot be adequately redressed at law, and the Plaintiffs will continue to suffer irreparable harm unless UBS is compelled to disclose the details of the illegal and unlawful conduct described within.

**AS AND FOR A THIRD CAUSE OF ACTION  
(BREACH OF CONTRACT)**

28. Plaintiffs repeat and reallege each and every allegation of paragraphs of the Complaint numbered “1” through “27” inclusive, with the same force and effect as if more fully set forth at length herein.

29. By virtue of the deposit of Four Million (\$4,000,000,00) Dollars by the Decedent into an account in her name at the UBS bank in Switzerland, there arose between the Plaintiff and the Defendant UBS, a relationship of Debtor and creditor, wherein and whereby the UBS Bank became a Debtor of the Decedent and the Plaintiffs, as her successors-in-interest, by virtue of which UBS was

and is indebted to the Decedent, and thereafter the Plaintiffs, of all of the monies on deposit with UBS.

30. UBS has unjustifiably breached this contractual relationship by failing to remit and return the monies due the Decedent and thereafter to the Plaintiffs.

31. As a direct and proximate result of this breach of duty, the Decedent and thereafter the Plaintiffs have suffered monetary damages in the amount of not less than Four Million (\$4,000,000.00) Dollars for which the Defendant UBS is liable.

**AS AND FOR A FOURTH CAUSE OF ACTION  
(MONEY HAD AND RECEIVED)**

32. Plaintiffs repeat and reallege each and every allegation of paragraphs of the Complaint numbered "1" through "31" inclusive, with the same force and effect as if more fully set forth at length herein.

33. Upon information and belief, UBS received the monies of Ann Palmer for the purchase of Medium Term Notes, with respect to which UBS was to select and advise the Decedent as to suitability for the benefit of the Decedent.

34. Upon information and belief, the Defendant failed to purchase any Medium Term Notes for the benefit of the Decedent and has retained, or otherwise misappropriated, said monies to the exclusion of the Decedent and the Plaintiffs as her successors-in-interest.

35. By virtue of all of the foregoing there is due and owing from UBS to the Plaintiffs the sum of Four Million (\$4,000,000.00) Dollars, together with interest according to law.

**AS AND FOR A FIFTH CAUSE OF ACTION  
(BREACH OF COVENANT OF GOOD FAITH)**

36. Plaintiffs repeat and reallege each and every allegation of paragraphs of the Complaint numbered “1” through “35” inclusive, with the same force and effect as if more fully set forth at length herein

37. UBS has materially breached the covenant of good faith in its dealings with the Decedent and the Plaintiffs in:

- a. Having failed to invest the monies of the Decedent in Medium Term Notes, as afore-described.
- b. In having failed to account to the Decedent, and to the Plaintiffs, of the disposition of all monies of the Decedent from the date the Monies were transferred by the Decedent to UBS, to the date of the commencement of this action.
- c. In having refused to allow the Decedent, her representatives or her accountants, respectively, to examine the financial records of UBS with respect to the monies transferred by the Decedent to UBS.

- d. In having failed to live up to the terms of the agreement between the Decedent and UBS, and in UBS having failed to fulfill its obligations and the representations made to the Decedent, as more fully set forth in paragraph 7 of this complaint,
- e. In having forced and compelled the Plaintiffs to commence this action, delay discovery proceedings and to incur legal fees and expenses in their attempts to secure information and to recover monies lawfully due to the Decedent and the Plaintiffs as Trustees of the Annabell M. Palmer Family Trust.

38. As a result of the Defendant's breaches of the covenant of good faith as set forth herein, the Plaintiffs have suffered particular money damages in an amount to be determined at trial but in no event less than the sum of Four Million (\$4,000,000.00) Dollars.

#### **AS AND FOR AN SIXTH CAUSE OF ACTION (ACCOUNTING)**

39. Plaintiffs repeat and reallege each and every allegation of paragraphs of the Complaint numbered "1" through "38" inclusive, with the same force and effect, as if more fully set forth at length herein.

40. UBS, has collected and retained the sum of Four Million (\$4,000,000.00) Dollars which was and is the property of the Decedent, and the Plaintiffs as her successors-in-interest, who forwarded said sum to UBS based upon the statements, as more fully set forth in Paragraph 7 hereof as well as the legal requirements with respect to deposits and transfers to banks and investment managers.

41. UBS has collected, retained and utilized the funds of the Decedent, and the Plaintiffs, as successors-in-interests to the Decedent, unlawfully and illegally.

42. The Plaintiffs do not know, and cannot ascertain, the disposition of the monies forwarded to UBS as alleged herein, and hereby demand that UBS render to the Plaintiffs, a full, true and just Accounting of the monies heretofore delivered to it as hereinabove set forth.

43. The Plaintiffs have no means of ascertaining the exact amount of money to which they are entitled as Trustees of the Annabell M. Palmer Trust which at a minimum is \$4,000,000,00 and which amount can only be determined by a full and complete account by UBS of all of the monies delivered to it by the Decedent.

44. By virtue of all of the foregoing, the Plaintiffs demand a full and true accounting by UBS of all of the monies, investments, dividends, interests and other benefits which accrued or would have accrued to the Decedent and the Plaintiffs as her successors-in-interest, and to which the Plaintiffs are

entitled from the date that the Decedent delivered the sum of Four Million (\$4,000,000.00) Dollars to UBS to the date of any judgment issued in this action.

45. The Plaintiffs have no adequate remedy at law.

**AS AND FOR AN  
SEVENTH CAUSE OF ACTION  
(FOR CONVERSION)**

46. Plaintiffs repeat and reallege each and every allegation of paragraphs of the Complaint numbered “1” through “45” inclusive, as if more fully set forth at length herein.

47. Upon information and belief, UBS received and retained, appropriated and/or paid the sum of Four Million (\$4,000,000.00) Dollars to a third-party or parties without any authorization or signature from the Decedent, or from the Plaintiffs, and then debited the sum of Four Million (\$4,000,000.00) Dollars from the account of Ann Palmer, without any subsequent ratification by her or the Plaintiffs as her successors-in-interest.

48. UBS failed to give the Decedent or the Plaintiffs any notice of the payment of the said monies from her account before having made such payment.

49. UBS has converted the sum of Four Million (\$4,000,000.00) Dollars which it debited from the account of the Decedent.



50. UBS owes the Plaintiffs Four Million (\$4,000,000.00) Dollars, together with interest according to law for which the Plaintiffs demand judgment.

**WHEREFORE**, the Plaintiffs demand judgment against UBS as follows:

(a) on the First Cause of Action for a Declaratory Judgment that the Plaintiffs are entitled to an award of money due to them from UBS in such sum as is found to be due to the Plaintiffs

(b) on the Second Cause of Action for damages against UBS for breach of its fiduciary obligations in the sum of Four Million (\$4,000,000.00) Dollars compensatory damages and exemplary damages of an additional Five Million (\$5,000,000.00) Dollars;

(c) on the Third Cause of Action for damages for breach of contract in the sum of Four Million (\$4,000,000.00) Dollars;

(d) on the Fourth Cause of Action for damages for Money Had and Received in the sum of Four Million (\$4,000,000.00) Dollars;

(e) on the Fifth Cause of Action for damages for breach of the covenant of Good Faith in the sum of Four Million (\$4,000,000.00) Dollars;

(f) on the Sixth Cause of Action for a judgment which compels and directs UBS and to render a full, true and just account to the Plaintiffs, and upon such accounting for judg-

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ment for such amount found to be due to the Plaintiffs;

(g) on the Seventh Cause of Action for a judgment for damages due to the Plaintiffs for conversion in the sum of Four Million (\$4,000,000.00) Dollars;

(h) interest according to the law;

(i) together with attorney's fees for the prosecution of this action;

(j) the costs and disbursements of this action;

(k) such other and further relief as to this Court may seem just and proper.

THE DWECK LAW FIRM LLP

By: /s/ JACK S. DWECK

Jack S. Dweck  
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**Exhibit Q**

Translation of the letter of UBS AG of October 20,  
2005 to Dr. W. Dietschi October 21, 2005/D/sa

UBS AG

Reber Rechtsanwaite  
Dr. Will Dietschi  
Dufourstrasse 43  
Postfach 926  
8034 Zurich

October 20, 2005

Ann Palmer, Account No. [REDACTED]

Dear Mr. Dietschi,

We refer to your letter of October 7, 2005.

In the name of your client, you claim that she transferred in August 1998 through the services of Citibank the amount of USD 4 million to an account at UBS AG, assuming that this amount would subsequently be at her disposal. This assumption was based on the fact that the transferring Citibank mentioned expressly Ann Palmer as beneficiary of the transfer. You further wrote that the holder of the account was not Ann Palmer. However, you claim that by making the transfer, Mrs. Palmer submitted a proposal for the conclusion of an agreement regarding the deposit of the transferred amount which proposal was accepted by UBS AG.

We totally contest your claims and statements.

The facts which you describe in your letter have to be qualified as order of the type which are given routinely by bank clients [order according to art. 466 et seq. CO]. There is absolutely no basis for your claim that the giving of an order to transfer a certain amount to a bank account is also a proposal for the conclusion of an agreement regarding the deposit of the transferred sum.

Your client instructed Citibank to transfer the amount of USD 4 million in favour of a numbered account at UBS in Biel; your client knew that this account was not in her name. The mention of the name "Ann Palmer" besides the number of the numbered account is therefore nothing else than an information for the holder of the account that the transferred amount had been paid in by Ann Palmer.

The intention of Ann Palmer to transfer the amount not to an own account and not to submit a proposal for the conclusion of an agreement regarding the deposit of the transferred sum but rather to transfer the amount to the account of a third person results also from a brief, which is accessible through the internet, of the lawyer of Ann Palmer, William F. Swearingen, against a person by the name of William J. Herisko. It results from this brief, page 4, that Ann Palmer, in order to make an investment, apparently transferred the amount of USD 4 million to pay the acquisition costs for a "Special Trading Account".

Summarizing the above, we conclude that UBS has acted entirely according to the instructions of your client. The order to transfer a certain amount to a numbered account at UBS in Biel has been executed according to the instructions. Your client does not and did not have an account, neither at UBS in Biel nor at another branch office and, consequently, cannot claim that she wanted to make a transfer to an own account. She cannot claim either that, by giving an order to transfer a certain amount to a certain numbered account, a proposal for the conclusion of an agreement regarding the deposit of the transferred amount was made.

Sincerely yours,

UBS AG

[signature]

**The Union Bank of Switzerland Fraud**

The USBT was not the first time that Herisko victimized Ms. Palmer through a fraudulent “prime bank scheme.” In or about August 1998, Herisko convinced then-83 year old Ms. Palmer to transfer \$4 million to a bank account at Union Bank of Switzerland [“the Swiss Bank”] in Biel, Switzerland. In plain violation of the court order requiring Herisko and Global Link to stop offering fraudulent “prime bank instruments,” Herisko faxed numerous documents to Ms. Palmer on August 18 and 19, 1998 in an effort to induce her to “invest” in the Swiss Bank scheme. Some of these documents are annexed hereto as Exhibit B.

Herisko represented to Ms. Palmer that the purpose of her “investment” was to “fund the acquisition cost of a Special Trading Account to accommodate Global Link Capital Markets, Ltd.’s participation in a major Swiss Bank’s private placement of medium term notes.” *See* Exhibit B at p. 7. Specifically, Herisko represented that Global Link:

. . . has access to a Trading Account in Union Bank of Switzerland (UBS). Said Account carries a special number that identifies said Account as a United States Federal Reserve approved Trading Account. Said Account is recognized by said Bank as one of a few, select, existing accounts that have been designated by said Bank to handle the Private Placements of Medium Term Notes issued by AA or better S&P rated banks on behalf of

said bank's most creditworthy Clients on a confidential basis.

*See* Exhibit B at p. 9.

Relying on Herisko's representations about the nature of the Swiss Bank "investments" and his additional representations that her funds were safe and would yield a high rate of return, Ms. Palmer transferred \$4 million to the Swiss Bank. *See* Exhibit B at 1. We believe Herisko's representations were intentionally and materially false. Similar to the government's allegation in the USRBT case, it is our belief that the bank trading program purportedly involved in the Swiss Bank transaction simply does not exist.

To date, Ms. Palmer has not received a penny from the Swiss Bank transaction, although Herisko repeatedly promised to return the money to her. Her \$4 million was deposited in Switzerland where secrecy laws prevent us from tracing the funds.



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**Exhibit R**

**PARTIES**

15. Plaintiff Financial Structures Limited is an insurance company organized under the laws of Bermuda, with an office at 44 Church Street, Hamilton HM12, Bermuda.

16. Plaintiff Arrowood Indemnity Company, formerly known as Royal Indemnity Company, is a Delaware corporation, with its principal place of business at 3600 Arco Corporate Drive, Charlotte, North Carolina 28273. Arrowood Indemnity Company is licensed as an insurer in the State of New York.

17. Defendant UBS AG is a Swiss corporation, with registered offices in Zurich, Switzerland and Basel, Switzerland. UBS AG's Articles of Association state that "The purpose of the Corporation is the operation of a bank. Its scope of operations extends to all types of banking, financial, advisory, trading and service activities in Switzerland and abroad."

18. UBS AG has offices in the United States. UBS AG's principal place of business in the State of New York is in New York County, including at 101 Park Avenue, New York, New York 10178 and 299 Park Avenue, New York New York 10171. UBS AG does business in the State of New York.

19. UBS states that it "is the leading global wealth manager, a leading global investment banking and securities firm, and one of the largest global asset managers."

20. Defendant UBS Securities LLC, which was formerly known as UBS Warburg LLC, is a Delaware limited liability company. UBS Securities' principal place of business in the State of New York is in New York County, including at 1285 Avenue of the Americas, New York, New York 10019 and 299 Park Avenue, New York, New York 10171. UBS Securities is an indirect wholly-owned subsidiary of UBS AG, and serves as UBS AG's broker-dealer in the

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**Exhibit S**

7. UBS denies the allegations in Paragraph 7 of the Complaint.

8. UBS denies the allegations in Paragraph 8 of the Complaint.

9. UBS denies the allegations in Paragraph 9 of the Complaint.

10. UBS denies the allegations in Paragraph 10 of the Complaint.

11. UBS denies the allegations in Paragraph 11 of the Complaint.

12. UBS denies the allegations in Paragraph 12 of the Complaint.

13. UBS denies the allegations in Paragraph 13 of the Complaint.

14. UBS admits that, in bringing this action, Plaintiffs are seeking money damages and injunctive relief as set forth in the Complaint. The allegations in Paragraph 14 of the Complaint are otherwise denied.

15. UBS admits that FSL is an insurance company. UBS otherwise denies knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15 of the Complaint.

16. UBS admits the allegations in Paragraph 16 of the Complaint.

17. UBS admits the allegations in Paragraph 17 of the Complaint.

18. UBS admits the allegations in Paragraph 18 of the Complaint.

19. UBS admits that UBS has described itself in the language quoted in Paragraph 19 of the Complaint.