

Amended the 14 of December, A.D. 2018, pursuant to the Order of the Honourable Mr Justice Ian Winder dated 10 December 2018

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

COMMON LAW & EQUITY SIDE

BETWEEN



2015/ CLE/gen/No.01451

2014/CLE/gen/No.01620

JUNKANOO ESTATES LTD

First Plaintiff

AND

YURI STAROSTENKO

Second Plaintiff

AND

IRINA TSAREVA-STAROSTENKO

Third Plaintiff

AND

UBS (BAHAMAS) LTD. (In Voluntary Liquidation)

Defendant

(Actions and Counterclaim consolidated by Order of the Judge dated 4 November 2015)

AMENDED DEFENCE

1. The Defendant contends that the Plaintiffs' Statement of Claim filed herein on 14 November 2017 is extremely prolix and (a) does not disclose a reasonable cause of action (b) is scandalous, frivolous and vexatious (c) is designed to prejudice and embarrass the Defendant and (d) is an abuse of process of the court. The Defendant further contends that a large amount of this Statement of Claim is embarrassing, confusing and amounts to legal submissions. This Defence is thus filed without prejudice to the Defendant's right to apply to the court to have this action struck out under RSC Order 18 Rule 19 and/or under the inherent jurisdiction of the court. This Defence is also filed without prejudice to the Defendant's right to demand that the Plaintiffs confirm that all filing fees for commencing action 2015/ CLE/gen/No.01451 have been properly paid. In this regard the Defendant reserves all of its rights.

2. The Defendant further avers that the Plaintiffs' Statement of Claim is intentionally pleaded in a way to injure the reputation of the Defendant, its affiliates, its attorney and the Deputy Provost Marshall, and in this regard all of its rights are reserved against the Plaintiffs.
3. The Defendant further reserves its right to:
 - a. apply to amend its Defence in light of the Plaintiffs unreasonable conduct in failing to agree to allow the Defendant a 30 day extension of time to file its Defence to the Plaintiffs' 176 page Statement of Claim;
 - b. seek further and better particulars of the Plaintiffs Statement of Claim; and,
 - c. to seek security for costs from the Plaintiffs for this action.
4. Unless stated otherwise, references to numbered paragraphs in this Defence are references to the paragraphs in the Statement of Claim, and the terms defined in the Statement of Claim bear the same meaning in this Defence.
5. The Defendant admits paragraph 1.
6. The Defendant neither admits nor denies paragraph 2 and requires the Plaintiffs to strictly prove the same.
7. The Defendant neither admits nor denies paragraphs 3 and 4 and requires the Plaintiffs to strictly prove the same.
8. Paragraph 5 is not admitted. The Defendant does not make any further pleading with respect to paragraph 5 on the basis that it is a legal submission.
9. The Defendant neither admits nor denies paragraph 6 and requires the Plaintiffs to strictly prove the same.
10. Paragraph 7 is denied and the Plaintiffs are required to strictly prove the same. The Defendant avers that on 17 November 2014 the Defendant filed a Reply and Defence to Counterclaim disputing the Plaintiffs claim in action CLE/gen/No.01620 of 2014 and on 3 November 2015 the Defendant filed a Defence to the Plaintiffs' claim in Action CLE/gen/No.01451 of 2015.
11. Save that it is admitted that the Defendant entered an appearance and delivered a Defence to the Plaintiffs' claim in Action CLE/gen/No.01620 of 2014 and also in Action CLE/gen/No.01451 of 2015, paragraph 8 is denied and the Plaintiffs are required to strictly prove the same.
12. Paragraph 9 is denied and the Plaintiffs are required to strictly prove the same.

13. Paragraph 10 is neither admitted nor denied. The Plaintiffs are required to strictly prove the same.
14. Paragraphs 11 and 12 are denied and the Plaintiffs are required to strictly prove the same. The Defendant avers that at all times it acted appropriately and in accordance with its contractual obligations. The allegations made by the Plaintiffs claiming to have been defrauded etc. by the Defendant are denied in their entirety and the Defendant reserves its right to strike out the same.
15. The Defendant makes no admission as to paragraphs 13 and 14 and requires the Plaintiffs to strictly prove the same. The Defendant avers that the RECL product was a local product offered by UBS and not by UBS AG. This product was also approved by the Central Bank of The Bahamas. The Defendant expressly denies that it acted dishonestly toward the Plaintiffs or improperly induced them into entering into any financial arrangements with the Defendant. The Plaintiffs are experienced business persons and were well aware of the risks involved in the transactions they entered into with the Defendant. Further, the Defendant avers that the said brochure in question specifically provided that:

“Borrowing using real estate as collateral entails risks and may not be appropriate for your needs. All loans are subject to credit approval. For a full discussion of the risks associated with borrowing using real estate as collateral, you should review the loan disclosure statement that will be included in your RECL application package. UBS does not provide legal or tax advice. You should contact your legal and tax advisors regarding the legal and tax implications of using real estate as collateral for a loan.”

16. Save that it is admitted that the Plaintiffs and Defendant entered into a “Commitment to Finance” letter dated on or about 23.08.2012 (“Commitment Letter”) for a term of 5 years, paragraph 15 is denied and the Plaintiffs are required to strictly prove the same. The Defendant will rely on this Commitment Letter at trial for its full force and effect. Further, the Plaintiffs opened a corporate account with the Defendant to provide a credit facility to it in the amount of USD \$1,400,000.00 (“the Credit Facility”). The Defendants will rely on these documents at trial for the full force and effect.
17. Save that it is admitted that the Credit Facility was secured by a mortgage (“the Mortgage”) dated 18 September 2012 over Lot 5 in Block Number 7 of the Number 1 Subdivision in Lyford Cay in Nassau, The Bahamas (“the Property”) which Mortgage is recorded in the Registry of Record at Volume 11712 at pages 87 to 98, paragraph 16 is denied and the Plaintiffs are required to strictly prove the same. The Defendant will rely on this Mortgage at trial for its full force and effect.

18. The Defendant makes no admission as to paragraph 17 and requires the Plaintiffs to strictly prove the same. In particular, it is denied that UBS gave itself a fraudulent preference or that it acted in contravention of any bankruptcy laws.
19. The Defendant denies paragraph 18 and requires the Plaintiffs to strictly prove the same. The Defendant avers that the banking arrangements provided by UBS, along with the Terms and Conditions, were approved by the Central Bank and were in accordance with accepted industry practice. The Defendant avers that it was an express term of the Commitment Letter that the First Plaintiff would keep the higher of USD\$500,000.00 or 50% of the Credit Facility amount under management with the Defendant for the five year term. The Defendant further avers that on 22 August, 2012, at the very beginning of the relationship between the Plaintiffs and the Defendant, George Maillis, an employee of the Defendant, in an email to the Third Plaintiff reaffirmed this requirement. The Defendant intends to rely on this email at trial for its full force and effect. In default of its obligations owing to the Defendant under the Commitment Letter, the First Defendant failed to keep the higher of USD\$700,000 or 50% of the Credit Facility under management with the Defendant and also failed to pay the amounts of interest outstanding when due. As a consequence, the First Defendant was in breach of its covenants and obligations under the Mortgage and further in default of its obligations under the terms of the Commitment Letter
20. The Defendant denies paragraph 19 and requires the Plaintiffs to strictly prove the same. The Defendant avers that at all times it acted appropriately and in accordance with its contractual obligations and the industry standards.
21. The Defendant denies paragraph 20 and requires the Plaintiffs to strictly prove the same. The Defendant avers that the First Plaintiff was in default of its obligations owing to the Defendant under the Commitment Letter and Mortgage and as a result the Defendant was entitled to bring the "Investment Agreement" to an end. The Defendant, without limitation, will rely on the following clause from its Terms and Conditions which are binding on the Plaintiffs:

"Non-Performance/Events of Default

In the event of default on your part (e.g. failure to comply with a margin call), we are entitled to terminate this Agreement prematurely and with immediate effect, together with all transactions carried out under it that are open at the time in question. We also have this right if you fail to meet any other obligations towards us within due time or if it comes to our knowledge that your financial situation has deteriorated in such a manner that, in our assessment, the fulfillment of your obligations arising from this Agreement may be at risk. In the event that bankruptcy, insolvency, payment moratorium or reconstruction proceedings should be instigated against you, or should your assets be seized in whole or in part, then this Agreement shall be understood to have been terminated immediately prior to

the occurrence of the event concerned ('close-out'). In the event of premature termination of this Agreement or of individual transactions carried out hereunder, the obligations not yet due for performance in connection with the transactions concerned shall be cancelled and replaced by the obligation to provide liquidation value in USD or in another currency acceptable to us. The liquidation values of the transactions concerned shall be calculated by us and set off against one another so that in the end one single amount is due either to us or to you ('close-out netting'). In the event of a loss, we are entitled to set this off against the margin cover or other assets held by us, for which purpose we may freely dispose over these assets. Any excess funds generated in this way are credited to you; you remain liable for any shortfall. "

22. The Defendant denies paragraph 21 and requires the Plaintiffs to strictly prove the same. In particular, this paragraph is embarrassing for the lack of particulars in the alleged conspiracy and the Defendant reserves all its rights to strike the same out.
23. The Defendant denies paragraph 22 and requires the Plaintiffs to strictly prove the same. The Defendant avers that at all times it acted appropriately in instituting legal proceedings against the Plaintiffs based on the breach of their contractual obligations to the Defendant.
24. The Defendant denies paragraph 23 and requires the Plaintiffs to strictly prove the same. In particular, the Defendant denies that it attempted to or did in fact deceive any "public officials" or that it filed any "fraudulent affidavit" before the Supreme Court. Further, the Defendant avers that the claims made in Paragraph 23 are scandalous and vexatious and it reserves all its rights to strike the same out.
25. The Defendant makes no admission as to paragraphs 24 and 25 and requires the Plaintiff to strictly prove the same.
26. Save that the Defendant formally carried on business as a regulated bank and offered various services to its former customers, paragraph 26 is denied and the Plaintiffs are put to strict proof of the same. In particular, the Defendant denies that it owed the Plaintiffs or any other former customer a fiduciary duty of loyalty and honesty as alleged or at all. At no time did the Defendant ever assume any fiduciary obligations toward the Plaintiffs.
27. Paragraph 27 is not admitted and the Defendant requires the Plaintiffs to strictly prove the same. In any event this paragraph is embarrassing as it is a legal submission.
28. Paragraph 28 is denied and the Defendant requires the Plaintiffs to strictly prove the same. In particular, it is denied that the Defendant made "deliberate false statements" as alleged or at all.

29. Save that the Plaintiffs and Defendant entered into the Mortgage as set out above, paragraph 29 is denied and the Defendant requires the Plaintiffs to strictly prove the same. Moreover, this paragraph is embarrassing and amounts to legal submission.
30. The Defendant denies paragraph 30 and requires the Plaintiffs to strictly prove the same. In particular, the Defendant denies that it “conspired to defraud” the Plaintiffs as alleged or at all or that it violated the Fraudulent Dispositions Act 1991 as alleged or at all.
31. Save that it is admitted that the Defendant provided the First Plaintiff with the Credit Facility in the amount of US\$1,400,000.00, which was personally guaranteed by the Second and Third Defendants, and that the same was secured by the Mortgage over the Property, paragraphs 31 and 32 are neither admitted nor denied and the Plaintiffs are required to strictly prove the same.
32. Paragraph 33 is denied and the Plaintiffs are required to strictly prove the same. In particular it is denied that the Defendants held any funds, as alleged or at all, “on trust” for the Plaintiffs. The Defendant avers that any funds held for the Plaintiffs were held pursuant to the terms of the contractual arrangements between the Parties.
33. Save that it is admitted that the Defendant carried out sales and purchases of securities on behalf of the First Defendant, Paragraph 34 is denied. The Defendant avers that at all times it acted in accordance with contractual obligations in executing the Plaintiffs’ instructions. The Defendant further avers that in so far as the Plaintiffs suffered any loss, which is not admitted, it was not caused by or contributed to by any acts or omissions on behalf of the Defendant.
34. ~~Pending discovery~~ Paragraphs 35 –40 are neither admitted nor is denied and the Plaintiffs are required to strictly prove the same. ~~However, to the extent that the same alleges any unlawful act or breach of any contractual arrangements on the Defendant’s behalf, the same is denied. In particular, it is denied that the Defendant compensated the Plaintiffs for any loss of profits as alleged or at all and it is denied that any such losses were caused by the default of the Defendant. The Defendant avers that on 21 August 2013 it cancelled a sale of 1,000 shares of Direxion Shs ETF Trust Daily Gold Miners that it executed on behalf of the Plaintiffs at a price of 90.87 and resold those shares at a price of 92.50. Also on 26 August 2013 the Defendant cancelled a sale of 2,000 shares Direxion Shs ETF Trust Daily Gold Miners, executed on behalf of the Plaintiffs at a price of 95.947848 and resold those shares at 96.68. Both cancellations were done in order to ensure that the Defendant obtained the best execution possible on behalf of the Plaintiffs. The sales at the increased prices were reflected on the First Plaintiff’s account statements for the period of July –December 2013. The deposits made to the First Plaintiffs account merely reflected the shares being resold at the increased prices. The Defendant will rely on the First Plaintiffs Statement of Accounts and the relevant Trade Slips, as well as the email exchange with the Plaintiffs in relation to the cancellations, at trial for their full force and effect. In any event, the Defendant, without limitation, will also rely on the following clause from its Terms and Conditions which are binding on the Plaintiffs:~~

"Liability and Use of Agents

We shall not be liable for any losses in your account except those arising out of our own willful misfeasance, bad faith, gross negligence, or reckless disregard of our obligations under this Agreement or our own willful neglect, default or failure to comply with applicable laws with respect to your account. We may use the services of any broker, dealer, bank, agent, or other counterparty selected in good faith as we may deem advisable in connection with your account. Such counterparty is deemed to be your agent. We will not in any circumstances be responsible or liable to you by reason of any act or omission or inability to perform on the part of such counterparty, affiliated or unaffiliated, however caused in the performance or failure to perform such services or by reason of the loss, theft, destruction or delayed delivery of any document while in transit to or from or in the possession of such bank or agent. In no event will we be liable for incidental, consequential or punitive damages for any loss or damage to you resulting from an act or event beyond our control regarding the property in your account."

35. Save that it is admitted that the Third Plaintiff purported to make a proposal to the Defendant on 9th October 2013, Paragraphs 36-38 are denied and the Plaintiffs are required to strictly prove the same. In any event the Defendant avers that on 12 November, 2013, UBS wrote to the Second and Third Plaintiffs advising that UBS had undertaken an investigation of the complaints raised by them and that UBS was satisfied that it had acted appropriately. By this letter UBS reaffirmed its position to maintain the 'halt trading' status that was in effect for the First Plaintiff's account. The Defendant will rely on this letter at trial for its full force and effect.
36. Save that the Plaintiffs filed a complaint with UBS AG, which is neither admitted nor denied, paragraph 39 is denied and the Plaintiffs are required to strictly prove the same. Notwithstanding that the Defendant admits that it is a wholly owned subsidiary of UBS AG, it is denied that the Defendant was appointed by UBS AG to act as its agent or that UBS AG is the principle of the Defendant. The Defendant avers that pursuant to its Terms and Conditions, the extent of the relationship with UBS AG, in relation to the investment services offered by the Defendant in The Bahamas, was that UBS AG was retained by the Defendant as a broker to execute securities and/or portfolio transactions on behalf of its clients which included the First Plaintiff. The Defendant will rely without limitation on its Terms and Conditions at trial for its full force and effect.
37. Save that it is admitted that in February 2014 the Defendant did correspond with the Third Plaintiff, paragraph 40 as pleaded is denied. The Defendant avers that on 12 February 2014 it wrote to the Third Plaintiff requesting that the Plaintiffs provide an updated declaration of their financial status. The Plaintiffs did not provide the requested information. On 21 February

2014 in an email to the Third Plaintiff, the Defendant again stressed the importance of the Plaintiffs providing their updated financial information, however again this was not done. The Defendant will rely on these emails at trial for their full force and effect.

38. Save that on or about 28th February, 2014, the Defendant sent a letter to the First Defendant describing the defaults under the Commitment Letter and Mortgage and outlining the particulars of the Plaintiffs indebtedness to UBS, paragraph 41 is denied and the Plaintiffs are put to strict proof. The Defendant further avers that by their letter dated 5th March, 2014, the Plaintiffs admitted to being in breach of the terms of the Commitment Letter. The Defendant will rely on the aforesaid documents at trial for their full force and effect.
39. Save that the Defendant announced in the local newspapers that it would be winding down its operations and entering into voluntary liquidation, paragraph 42 is denied and the Plaintiffs are put to strict proof.
40. Paragraph 43 is neither admitted nor denied. However, the Defendant avers that it advised the Plaintiffs on numerous occasions that unless they complied with their contractual obligations it would exercise all its rights available to it in relation to the Property.
41. Save that it is admitted that on or about 11th April 2014 the Defendant sent the Plaintiffs a letter advising them that it was exercising its contractual right of set off, as is set out in the letter, paragraph 44 is denied and the Plaintiffs are put to strict proof. The Defendant will rely on its letter at trial for its full force and effect. Further, the Defendant avers that this paragraph is embarrassing and amounts to legal submission, in relation to which it reserves its right to strike out. In any event, the Defendant avers that its right of set off is expressly provided for by the Commitment Letter, the Defendant's Terms and Conditions to which the Plaintiffs agreed to be bound, and common law.
42. Save that it is admitted that the Defendant commenced legal proceedings against the Plaintiffs on 3rd October, 2014, and that section 433 of the Penal Code does in fact state that "whoever fraudulently bring any action against another person in a false or fictitious name, having no ground for such action, is guilty of a misdemeanor", paragraph 45 is denied and the Plaintiffs are required to strictly prove the same. In particular, the Defendant expressly denies that it committed willful and corrupt perjury or that its officers were actuated by motives of malice or ill will towards the Plaintiffs. The Defendant avers that these claims are scandalous and it reserves all its rights in relation to the same.
43. Save that it is admitted that the Defendant sought vacant possession of the Property, paragraph 46 is denied. The Defendant avers that it was acting in accordance with its lawful rights in halting trading and seeking possession of the Property. Further, the Defendant denies the specific sub-allegations in paragraph 46. At all times, the Defendant acted appropriately in relation to the Plaintiffs and further in accordance with rights expressly provided for by the

Commitment Letter and the Defendant's Terms and Conditions to which the Plaintiffs agreed to be bound. In particular the Defendant avers that:

- a. As to sub paragraph 46.1 the requirement under the Commitment Letter was to keep "a sum equal to 50% of the facility amount" under management with UBS at all times. The 50% did not have to be comprised of 50% percent of the loan amount but could have included any other assets, including securities.
 - b. As to sub paragraph 46.2, the Plaintiffs agreed that the interest payments on the credit facility would be debited from the First Plaintiff's account. At no time did the Plaintiffs object to the interest payments being debited from the account. Further the Defendant denies that it prevented the Plaintiffs from trading during the period of 29 September 2012 to 11 June 2013. The Defendant avers that during this time it had suggested a number of product opportunities to the Plaintiffs. The Plaintiffs however chose not to pursue any of the opportunities suggested by the Defendant. Ultimately the Plaintiffs did not meet the credit requirements to allow them to trade in futures. Any delay in commencing trading was as a result of the Plaintiffs' inaction and was not caused by the Defendant.
 - c. As to sub paragraph 46.3, this is denied and the Plaintiffs are required to strictly prove the same.
44. Save that it is admitted that the Defendant obtained an Order granting summary judgment before Evans J, paragraph 47 is denied. In particular, it is denied that the Defendant relied on a "fraudulent affidavit" with "fraudulent statements" in support of its application.
45. Save that it is admitted that the Defendant obtained judgment against the Plaintiffs on 23rd March 2015 and the Second and Third Defendants were not present, paragraph 48 is denied. The Defendant avers that at the summary judgement hearing before Evans J. in Action CLE/gen/01620 of 2014 on 23rd March, 2015 (the "23rd March hearing"), the Plaintiffs' then counsel, Mr. Charles Mackay, expressly consented to the Summary Judgment application by conceding that the Plaintiffs had no defence to the Defendant's claim for payment of the sum due under the Credit Facility and for vacant possession of the Property. The Defendant intends to rely on the Supreme Court Transcript of the 23rd March hearing, at trial for its full force and effect.
46. Paragraphs 49 and 50 are admitted.
47. Paragraph 51 as pleaded is denied. The Defendant avers that on 15th May 2015 the Defendant filed a Notice of Preliminary Objection against the Plaintiffs' purported Notice of Appeal on the basis that the Plaintiffs had first failed to obtain leave to appeal from the Supreme Court and had also failed to first apply for a stay in the Supreme Court. On 2nd November 2015 the Court of Appeal allowed the Defendant's preliminary objections and struck out the Plaintiffs' purported Notice of Appeal and application for a stay with costs to the Defendant. On 5th

November 2015 the Plaintiffs filed a Summons in the Court of Appeal seeking an extension of time to file a Notice of Appeal and a stay. On 2nd June 2016 the Plaintiffs again filed a Notice of Motion in the Court of Appeal seeking an extension of time to file a Notice of Appeal and a stay. On 6th June 2016 the Court of Appeal dismissed the Plaintiffs' 5th November 2015 Summons and 2nd June 2016 Notice of Appeal Motion and held that it was *functus* in relation thereto.

48. Paragraph 52, 53 and 54 are admitted. Further, the Defendant avers that on 24th February 2016 the Privy Council dismissed the Plaintiffs application for special leave to appeal.
49. Save that the Privy Council handed down a written Ruling on 3 April 2016, paragraph 55 is denied and the Plaintiffs are put to strict proof. The Defendant avers that paragraph 55, as currently pleaded is misleading. In particular, the Defendant avers that, by its Ruling the Privy Council acknowledged that the Plaintiffs' counsel conceded the Summary Judgment application before Evans J. The Defendant avers that in the Ruling of the Privy Council, given by Lord Sumption, the Board at paragraph 4 provided as follows:

"The action was begun in the Supreme Court on 3 October 2014, and a month later, on 5 November, UBS applied for summary judgment. The application came before Evans J on 23 March 2015. It is apparent from the transcript of the hearing, which has been put before the Board that no real attempt was made to present the defendants' case at this hearing. Counsel for the defendants had by mistake put the hearing into his diary for 25 March, as a result of which Mr and Mrs Starostenko were not present and Counsel was not properly prepared. An affidavit had been sworn on behalf of the defendants which, when read with the voluminous correspondence exhibited, could be said to support the defence to which the Board has referred. However, it was still in the process of being filed and was not before the court. Counsel for the defendants observed that "to that extent" the application for summary judgment was opposed. But he added that Counsel for the Bank had drawn his attention to certain authorities to which, he said, he had no answer. This appears to have been a reference to authorities such as National Westminster Bank Pie v Skelton [1993] 1 All ER 242, 246 (per Slade LJ) to the effect that a counterclaim was not normally a sufficient basis for resisting a mortgagee's summary application for possession. It appears not to have been appreciated that the defence which the defendants wished to raise was not just that the debt was abated by the cross-claim, which might in some circumstances have amounted to an equitable set-off, but that the event of default which was said to have made the debt payable was brought about by UBS's breaches of duty. This may or may not have been a good point, but Counsel's concession meant that that was never decided. Evans J gave judgment for the debt claimed and for possession in default of payment, without prejudice to the defendants' right to pursue their counterclaim.

50. The Defendant makes no admission as to paragraph 56. The Defendant avers that in January 2017 the First Plaintiff was struck off the Companies Register. The Defendant will rely on this fact for its full force and effect.
51. The Defendant makes no admission as to paragraph 57 and requires the Second and Third Plaintiffs to strictly prove the same.
52. Paragraphs ~~59-58~~ and ~~through~~ 60 are not admitted and the Plaintiffs are required to strictly prove the same.
53. Save that it is admitted that the Credit Facility in the amount of USD\$1,400,000.00 was secured by the Property, paragraph 61 is not admitted and the Plaintiffs are required to strictly prove the same. In any event, the Defendant avers that the Second and Third Plaintiffs have, since filing their Statement of Claim, been lawfully removed from the Property.
54. The Defendant makes not admission as to paragraph 62 and requires the Plaintiffs to prove the same.
55. Save that the Defendant was a company incorporated under the Companies Act 1992 and is now in voluntary liquidation and operated a licensed bank and held all appropriate licenses, the Defendant make no admission as to paragraph 63 and requires the Plaintiffs to prove the same.
56. Paragraph 64 is denied and the Plaintiffs are required to strictly prove the same. The Defendant specifically denies that there was any conspiring on behalf of its staff against the Plaintiffs or that it made any “fraudulent misrepresentations” in relation to the Plaintiff.
57. Paragraphs 65, 66 and 67 are denied and the Plaintiffs are required to prove the same. In particular, as to paragraph 65, it is denied that UBS acted as agent for UBS AG. Further, as to paragraphs 66 and 67 the Defendant avers that at all material times, it had all appropriate licenses as required by all appropriate regulatory bodies to carry out is business.
58. Save that it is admitted that Section 78 of the Securities Industry Regulations, 2012, includes the terms as set out at paragraph 68, paragraph 68 is denied and the Plaintiffs are required to strictly prove the same.
59. Save that it is admitted that Section 81 of the Securities Industry Regulations, 2012, includes the terms as set out at paragraph 69, paragraph 69 is denied and the Plaintiffs are required to strictly prove the same.
60. Save that it is admitted that the Defendant entered into voluntary liquidation in 2015, paragraph 70 is denied and the Plaintiffs are required to strictly prove the same. Further the Defendant avers that as of 16th April, 2013, the First Plaintiff was in default of its obligations

owing to UBS under the Commitment Letter and Mortgage, as set out above. As a consequence of this default, the Defendant was entitled, pursuant to the terms of the Commitment Letter and Mortgage, to demand repayment in full of all amounts due and owing under the Credit Facility, notwithstanding that the 5 year term of the Credit Facility had not yet elapsed.

61. The Defendant makes no admission as the paragraph 71 and requires the Plaintiffs to strictly prove the same.
62. Save that Kevin Lee Price was an employee of the Defendant, which is admitted, the Defendant makes no admission as to paragraph 72 and requires the Plaintiffs to prove the same. The Defendant avers that UBS was under no obligation to provide the Plaintiffs access to products and services offered by the UBS Group of companies in other jurisdictions. Further, at no time did UBS make any representation to the Plaintiffs that they would have access to all of the products offered by the UBS Group of companies throughout the world.
63. The Defendant makes no admission as to paragraph 73 and requires the Plaintiffs to prove the same. Further the Defendant avers that this pleading is embarrassing to the extent that the Plaintiffs purport to give notice of its intention to exercise rights against persons who are not a party to these proceedings.
64. The Defendant makes no admission as to paragraphs 74 and 75 and requires the Plaintiffs to strictly prove the same.

Claim No. 1- Breach of Agreement

65. Save that it is denied that the Defendant has caused the Plaintiffs loss or damages as alleged or at all, paragraph 76 is not admitted and the Plaintiffs are required to strictly prove the same.
66. Paragraphs 77, 78 and 79 are denied and the Plaintiffs are required to strictly prove the same. In particular, the Defendant denies that it breached any of its contractual obligations to the Plaintiffs as alleged or at all.
67. Paragraph 80 is denied and the Plaintiffs are put to strict proof of the same. In particular, the Defendant denies that it was in breach of its obligations to the First Plaintiff or that its actions, at all, caused the Plaintiffs any loss or damage as alleged or at all. The Defendant avers that at all times it acted appropriately and in accordance with its contractual obligations and the industry standard in executing the Plaintiffs' instructions.
68. Paragraphs 81, 82 and 83 are not admitted and are embarrassing. The Defendant avers that these paragraphs as pleaded are devoid of any factual allegations, but rather amount to legal submissions. The Defendant reserves all its rights in relation to same.

69. ~~Pending discovery~~ Paragraphs 84 – 88 are neither admitted nor denied and the Plaintiffs are required to strictly prove the same. The Defendant admits that in or about August 2012 it agreed to provide trading services to the Plaintiffs pursuant to the terms of the “Contractual Documents” as executed between the Parties. This included the following documents:

- a. The Account Application for Entities;
- b. The Defendant’s standard Terms & Conditions (as amended);
- c. The Commitment to Finance letter (“Commitment Letter”); and,
- d. The Mortgage.

The Defendant will rely on the terms of these documents, collectively known as the Contractual Documents, at trial for their full force and effect. The Defendant will also rely, without limitation, on the following documents at trial for their full force and effect:

- a. UBS (Bahamas) Ltd Direct Access Client (DAC) Review Form;
- b. UBS (Bahamas) Ltd Dealing Procedure Manual;
- c. UBS (Bahamas) Ltd Agreement on Direct Access to UBS Transaction Products;
and,
- d. UBS Real Estate Collateralized Loan – Terms and Conditions.

70. Paragraph 89 is denied and the Plaintiffs are required to strictly prove the same. In particular, it is denied that these terms formed part of the ‘Investment Agreement’ between the Plaintiffs and the Defendant. Pending discovery paragraphs 89–93 are neither admitted nor denied and the Plaintiffs are put to strict proof of the terms of alleged.

71. Save that it is admitted that Section 70 of the Securities Industry Regulations do contain the terms as expressed at paragraph 90 of the Statement of Claim and further that that UBS was not appointed to manage investments on behalf of the Plaintiffs, paragraph 90 is neither admitted nor denied and the Plaintiffs are required to strictly prove the same.

72. Save that it is admitted that the Defendant retained UBS AG as a broker to execute certain securities and/or portfolio transactions on behalf of its clients generally, paragraphs 91 - 93 are denied. The Plaintiffs are required to strictly prove the same. In particular, it is denied that the Defendant is an agent of UBS AG or UBS Financial Services. Further it is denied that UBS agreed to provide the Plaintiffs with any ‘prime brokerage services’ similar to that offer by UBS AG or any other subsidiary in the UBS Group of Companies. At no time did the Defendant either expressly or impliedly agree to provide the Plaintiffs with trading services similar to that offered by UBS AG, UBS Financial Services Inc. or any other UBS affiliate.

73. Save that the documents executed between the Parties identified at paragraph 66 above, constitute valid and enforceable agreements, paragraph 94 is neither admitted nor denied.

74. Save that it is admitted that the Commitment Letter, the Account Application and the Terms and Conditions apply to the relationship between the Parties, paragraph 95, inclusive of its sub paragraphs, is denied and the Plaintiffs are put to strict proof. Though the Defendant, without limitation, will rely on the following clauses from its Terms and Conditions which are binding on the Plaintiffs:

“Discharge

We shall not be liable for decisions left to our discretion, or otherwise in the absence of our fraud and dishonesty. You shall indemnify and hold us harmless against all loss, damage, liability and expenses (including but not limited to legal fees) as we may suffer or incur as a result of the relationship otherwise than as a result of our fraud or dishonesty and we may debit any account of yours for the purposes of such indemnity.

Liability and Use of Agents

We shall not be liable for any losses in your account except those arising out of our own willful misfeasance, bad faith, gross negligence, or reckless disregard of our obligations under this Agreement or our own willful neglect, default or failure to comply with applicable laws with respect to your account. We may use the services of any broker, dealer, bank, agent or other counterparty selected in good faith as we may deem advisable in connection with your account. Such counterparty is deemed to be your agent. We will not in any circumstances be responsible or liable to you by reason of any act or omission or inability to perform on the part of such counterparty, affiliated or unaffiliated, however caused in the performance or failure to perform such services or by reason of the loss, theft, destruction or delayed delivery of any document while in transit to or from or in the possession of such bank or agent. In no event will we be liable for incidental, consequential or punitive damages for any loss or damage to you resulting from an act or event beyond our control regarding the property in your account.

Risk Disclosure, Advice

You hereby acknowledge and agree that the transactions carried out with us on your account under this Agreement are carried out exclusively at your own risk. You expressly release us from any monitoring obligations and responsibilities in this respect.

You confirm that you have studied and understood the applicable version of the “Special Risks in Securities Trading” brochure which explains the structure and the risks of the product categories tradable under this Agreement. You hereby acknowledge and agree that trading in derivatives markets is subject to unlimited potential capital loss and certify that trading in the derivative products contemplated by the Agreement is suitable for your financial situation. For products issued by us, you can also ask us for detailed written information (terms

of issue, term sheet, marketing brochure, etc.) prior to issuing an instruction for an individual transaction; this information includes references to the specific risks associated with the product concerned.

You expressly release us from any liability arising from missing or insufficient information and risk disclosure if you did not request product-specific information before issuing an instruction for an individual transaction involving a product issued by us. For products issued by third parties, you acknowledge that before issuing the instruction for a transaction to us you should obtain product-specific information from the issuer concerned; you hereby release us from any liability in this regard. You acknowledge and confirm that you conduct all transactions under this Agreement on the basis of your own assessment of market conditions and developments. You also confirm that you have the necessary investment knowledge for the product categories and specific individual transactions concerned. You are aware that we provide you with no advice about any potential legal and/or tax implications of the transactions concerned, and that where necessary you will have to address yourself to a financial or other professional advisor who specializes in legal and/or tax matters for the relevant advisory services. You acknowledge that you have made an independent decision to enter this Agreement and have not relied upon any communications, advice, or recommendation; written or otherwise from us. You also acknowledge that the information and explanations related to the terms and conditions of the Agreement shall not be considered investment advice or recommendation to enter this Agreement."

75. Paragraph 96 is denied and the Plaintiffs are required to strictly prove the same. The Defendant denies that it or anyone on its behalf made any of the alleged representations or made any representation in the nature of or equivalent to the alleged representations at all, or that the Defendant was part of a conspiracy to defraud the Plaintiffs. The Defendant avers that at no time did any of its employees or agents represent to the Plaintiffs that they would have access to electronic trading once they became clients of UBS. The Defendant avers that the Plaintiffs were informed that the trading platform that was available to the Defendant was determined by the Defendant's location and was not within the Defendant's control. The trading platform available in The Bahamas was the Client Advisor Trading or the Direct Access Client ("DAC") platform, not the Direct Market Access ("DMA") platform. Client Advisor Trading allowed client to place trading orders through its client advisor, whereas DAC allowed clients to have direct access to a trader at the trading desk. Neither of these platforms are electronic trading. The Plaintiffs were Non DAC Clients as they did not meet the requirements to qualify for direct access to a trader. The Defendant, without limitation, will rely on the following criteria to qualify as a DAC client, which is set out in the UBS (Bahamas) Ltd Direct Access Clients (DAC) Review form:

"Client satisfies the following criteria:

1. Client has adequate risk tolerance and degree of sophistication
2. AUM (Assets under management) of USD 5mio

3. Trading commission USD 50K
4. Minimum transaction size USD 25K
5. Client trades in non-portfolio context (i.e. on a per transaction basis, not a portfolio basis)”

76. Paragraph 97 is denied and the Plaintiffs are required to strictly prove the same.

77. Save that it is admitted that the Defendant would confirm the Plaintiffs’ trade requests through email, paragraph 98 is denied and the Plaintiffs are required to strictly prove the same. Pending discovery The Defendant avers that at all times it carried out all trades according to the standards prescribed by the Parties’ Contractual Documents and in accordance with industry standards. In particular:

- a. As to sub paragraph 98.3 the Defendant denies it ever confirmed to the Plaintiffs that it would execute trading orders in 20 seconds or less as this was virtually impossible either by using a Client Advisor or through DAC. Each trade instruction had to be verified by a client advisor before being executed. This process was explained in the email from George Maillis to the Third Plaintiff on 21 June 2013 at 12:16pm.
- b. As to sub paragraph 98.4 The Defendant denies confirming to the Plaintiffs, on 21 June 2013, that they would be provided direct access to the trading desk by DMA. The DMA platform referred to by the Plaintiffs was not offered by the Defendant. As stated at paragraph 75 herein, the trading platform offered by the Defendant was the Client Advisor Trading or DAC. The Third Plaintiff was informed that if their trading volumes are increased in the future then they would be given access to the trading desk via DAC. Trading volume meant the size and dollar value of the trade and not the frequency of trading. In the email from George Maillis to the Third Plaintiff on 21 June 2013 at 12:16pm, Mr. Maillis stated as follows:

“HI Irina,

regarding the best process....phone is the best to ensure your order is received in a timely manner, but remember, there will always be a little delay regardless.

E-mail does not guarantee that either Marsha or I are around or seeing the order.

“If, in the future your trading volume is high, we will give you direct access to the trading desk, after which you can trade by mail directly with the traders, and someone is always there during trading hours.”

For the time being, the best methodology is as follows:

When you are ready to place a trade, call 394 9367.

Always have your account number 32377 Junkanoo Estates Ltd. ready.

Always have the Symbol, ISIN number, limit price (or market), limit validity and amount ready.

Someone from our team will take the phone if I or Marsha are not there. We all answer each other's phone.

These lines are recorded, and we are permitted to take the order by phone.

We need your order to be very clear with all the details mentioned above.

Whoever you speak to will want to briefly verify who you are, and then you can give I them your trade instructions.

They will enter the order and either you can wait for confirmation, or they will call you back with the execution price.

Hope this is clear,

Best

George”

The Plaintiffs never met the criteria to make them eligible for the DAC platform. Further with regard to the delay in trading, the Defendant repeats the averments made at paragraph 43.

78. Paragraph 99 is denied and the Plaintiffs are required to strictly prove the same.

79. The Defendant makes no admission as to paragraph 100 and requires the Plaintiffs to prove the same.

80. Paragraph 101 is denied and the Plaintiffs are required to strictly prove the same. In particular, the Defendant denies that it breached the terms of the “Investment Agreement” as alleged or at all. In particular, the Defendant avers that:

- a. As to sub paragraph 101.1 is denied that the Defendant agreed to provide the Plaintiffs with direct access to the trading desk via the DMA platform, as this platform was not offered by the Defendant.
- b. As to sub paragraph 101.2 it is denied that the Defendant had a contractual obligation to execute the Plaintiffs’ trading instructions instantaneously.

- c. Sub paragraph 101.3 is denied.
 - d. As to sub paragraph 101.4 it is denied that the Defendant agreed to execute the Plaintiffs trading instructions within 20 seconds.
 - e. As to sub paragraph 101.5 it is denied that the Defendant agreed to allow the Plaintiffs to trade in futures. At no time did the Plaintiffs make a formal application to trade in futures.
 - f. As to paragraph 101.6 it is denied that the Defendant was in breach of its obligation to deliver broker contract notes. Further, in its account opening documents, the First Plaintiff selected the 'retained mail option' authorizing the Defendant to refrain from mailing to the Plaintiffs all documents, statements, advices and other materials in relation to the First Plaintiffs account, including any contract notes or trade advice. The Defendant will rely on the 'retained mail' clause in the First Plaintiffs Account Opening Documents for its full force and effect at trial. In any event the Plaintiffs had access to electronic banking which allowed them to review their account at any time.
81. Paragraph 102 is denied and the Plaintiffs are required to strictly prove the same. The Defendant avers that at all times it carried out all its contractual obligations according to industry standards and accepted market practices, and executed trades within a reasonable amount of time. The Defendant further avers that there was no delay in the commencement of the investment business. Any failure to commence any investment business solely the Plaintiff's fault.
82. Paragraph 103 is denied and the Plaintiffs are required to strictly prove the same. The Defendant denies that it caused any delay as alleged or at all. At all times, any delay or losses were caused exclusively by the Plaintiffs who habitually changed trade orders or failed to provide adequate information to facilitate said trade orders.
83. Paragraph 104 is denied and the Plaintiffs are required to strictly prove the same.
84. Save that it is admitted that the Defendant exercised its contractual right to issue a halt trading on the First Plaintiff's account with the Defendant as a result of the Plaintiffs failing to comply with their contractual obligations owed to the Defendant, paragraphs 105 and 106 are denied and the Plaintiffs are required to strictly prove the same. The Defendant avers that any purported loss the Plaintiffs suffered was as a result of its own actions. At no time were the Plaintiffs prevented from trading. Any interest payments debited from the First Plaintiffs account was for the payment of interest on the entire \$1.4m credit facility given to the First Plaintiff in accordance with the Contractual Documents. The Defendant further avers that any and all fees debited from the First Plaintiff's account with the Defendant was done pursuant to the terms of the Contractual Documents.

85. Paragraph 107 is denied and the Plaintiffs are put to strict proof of the same. In particular, the Defendant denies that it breached the “Investment Agreement” or any other contractual obligations as alleged or at all. The Defendant avers that at all times it acted in accordance with its contractual obligations and industry standards and it at all times exercised reasonable care in executing the Plaintiffs’ trading requests within a reasonable period of time.
86. Paragraph 108 is admitted, save that the Defendant was acting pursuant to an “Investment Agreement” with the Plaintiffs, which is not admitted. denied-and The Plaintiffs are put to strict proof of the same. The Defendant avers that it facilitated the sales and purchase of U.S. Securities listed on the NYSE, through brokers, on behalf of the First Plaintiff during the period of June 2013 – September 2013.
87. Paragraph 109 is denied and the Plaintiffs are put to strict proof of the same. The Defendant avers that this paragraph as pleaded, is embarrassing and raises no allegation of fact capable of being responded to.
88. Paragraph 110 is denied and the Plaintiffs are put to strict proof of the same. The Defendant avers that at all times it the acted in accordance with industry standards and its contractual obligations toward the Plaintiffs.
89. Paragraph 111 is denied and the Plaintiffs are put to strict proof of the same. Pending discovery the Defendant makes no admission as to the purported email of 16 July 2013. The Defendant avers that in fact the email to the Third Plaintiff on 16 July 2013 timed 10:33, warned the Third Plaintiff against constantly changing the trade orders every few minutes, as this presented the risk that the frequent changes would not be seen immediately by the client advisor. The Defendant will rely on this email at trial for its full force and effect. The Defendant will further rely on the follow clauses in its terms and conditions that provide:

“Authority & Indemnity for E-Mail Instructions

You hereby declare that you wish to communicate and exchange information and data with us via unsecured (i.e. unencrypted) electronic means, even though you are aware of the security risks associated with unsecured electronic communications and acknowledge that we offer secure communication options.

You hereby further request and authorize us to accept and execute instructions for the operation of your account(s) which we may receive by e-mail from provided e-mail address(es) and which purport to emanate from you including, by way of example and not by way of limitation, instructions for the payment of funds or the free delivery of any other assets which you may hold now, or at any time in the future, to third parties. You acknowledge that, as a rule, we do not accept any orders (in particular payment/stock exchange orders, subscriptions for issues),

contract conclusions, revocations (in particular revocations or orders/powers of attorney), blocking of banking services and changes of personal data or master data, via unsecured email.

You acknowledge and agree that any and all instructions sent via e-mail shall not be deemed to have been received/acted upon by us unless and until you receive an express acknowledgement of such receipt/action and not merely an automatic receipt return. You acknowledge and accept that any e-mail received by us shall be deemed to have been written by the person whose e-mail address is shown, regardless of whether the E-mail was actually written and sent by this person or received by us with its content unchanged. You further acknowledge that instructions via e-mail are at particular risk of being intercepted, altered or otherwise subject to fraud by third party action which even acting with reasonable care and skill we may not detect.

Depending on your selection in the Account Application you are requesting that e-mails containing non-sensitive, respective sensitive information about your banking relationship with us be forwarded to the e-mail address (es) provided.

You hereby undertake to ratify all such e-mail instructions upon which we may act and in consideration of our acting as herein requested and/or in consideration of our continuing to provide banking services to you. You hereby undertake to hold us harmless and indemnified from all losses, costs, damages and expenses, which we incur, or which we may sustain in consequence of our so acting as herein described."

90. Save that it is admitted that the Plaintiffs sent trading orders to the Defendant, Paragraph 112 is denied and the Plaintiffs are put to strict proof of the same. The Defendant avers that at all times it executed all trade orders to the best of its ability and in accordance with its contractual obligations and industry standards. On receiving trading instructions from the Plaintiffs the Defendant was required to carry out all necessary due diligence in order to verify that the trades were legitimate before execution. In any event, the Defendant relies on the Authority & Indemnity for E-mail Instructions clause set out in its General Terms and Conditions, which provides that an email is not to be treated as having been received unless and until an express acknowledgement of such receipt and not merely an automatic receipt return is received by the client. Further the Defendant will rely on the email correspondence with the Third Plaintiff regarding the trade orders, as referenced in the sub paragraphs to paragraph 112 at trial for their full force and effect. The Defendant avers that paragraph 112, inclusive of its sub paragraphs, is embarrassing and has not been pleaded with sufficient particularity to enable the Defendant to adequately respond to the same. The Defendant reserves the right to amend its Defence to address this paragraph or to strike out the same.

91. Paragraph 113 is denied and the Plaintiffs are required to strictly prove the same. The Defendant avers at all times it acted reasonably and in accordance with its contractual

obligations and industry standards in executing trades on behalf of the Plaintiffs. In any event, the Defendant repeats the averments made at paragraph 34 herein. Any purported losses the Plaintiffs suffered was as a result of their own actions and not the Defendants.

92. Pending discovery Save that the Defendant did exchange emails with the Third Plaintiff on 4 September 2013 and on 9 October 2013, paragraphs 114 and 115 are denied and the Plaintiffs are required to strictly prove the same. The Defendant paragraphs 114 and 115 and requires the Plaintiffs to strictly prove the same. In particular, it is denied that the Defendant compensated the Plaintiffs for any loss of profit as alleged or at all. In this regard, the Defendant relies on the averments made at paragraph 34 herein.
93. Paragraph 116 is denied. The Defendant avers that the contents of this paragraph are scandalous and vexatious and it reserves all its rights to strike the same out.
94. Paragraph 117 is denied and the Plaintiffs are required to strictly prove the same. The Defendant avers that it acted within its lawful rights in declaring the Plaintiffs in default of its contractual obligations to the Defendant, as was accepted by the Plaintiffs' former counsel Mr. Charles Mackay, and the Plaintiffs themselves.
95. Paragraph 118 to 134 are denied and the Plaintiffs are required to strictly prove the same. The Defendant avers that the aforesaid paragraphs are embarrassing and amount to legal submission and it reserves it right to strike the same out. Further, so far as the Plaintiffs have alleged to have suffered any loss stemming from the "Investment Agreement," or any other contractual obligations with the Defendant, the same are denied. If the Defendant did cause the Plaintiffs any loss and damages, which is denied, the Plaintiffs failed to mitigate their losses. Further, the Defendant denies that the Plaintiffs are entitled to any of the relief sought at paragraph 134 as alleged or at all. In any event, the Defendant, without limitation, will also rely on the Liability/Indemnity clause from its Terms and Conditions, as set out at paragraph 34 herein, which are binding on the Plaintiffs.

Claim No.2 – Specific Performance for breach of statutory duty

96. Paragraph 135 is neither admitted nor denied and the Plaintiffs are required to prove the same.
97. Paragraph 136 is denied and the Plaintiffs are required to specifically prove the alleged obligations pleaded.
98. Paragraphs 137 is denied. In particular the Defendant denies that it breached any of the duties as alleged or at all.
99. The Defendant is unable to admit or deny paragraphs 138 - 140 and puts the Plaintiffs to strict proof. Further, these paragraphs are embarrassing, confusing and amounts to submissions. In relation to paragraph 140 in particular, the Defendant avers that the Plaintiffs attempt to make

an application for specific disclosure by way of its pleadings is wholly inappropriate and the Defendants reserves its right to strike the same.

100. Paragraph 141 is denied and the Plaintiffs are put to strict proof of the same. Further, the Defendant avers that this paragraph is embarrassing, amounts to submissions, and has not been pleaded with sufficient clarity to enable the Defendant to adequately respond to the same. The Defendant reserves its right to strike the same.
101. Paragraph 142 is neither admitted nor denied and Plaintiffs are put to strict proof of the same.
102. Paragraph 143 is denied and the Plaintiffs are put to strict proof. The Defendant further avers that this paragraph as pleaded is devoid of any factual allegations, and amounts to legal submission. As such, the Defendant is unable to respond to the same and reserves its right to strike the same.
103. Paragraph 144 is denied and the Plaintiffs are put to strict proof. In particular, the Defendant denies that it breached any of the alleged statutory or legal duties as alleged or at all. The Defendant maintains that at all times it acted in accordance with its statutory and contractual obligations and in accordance with industry standards in carrying out the Plaintiffs' instructions.
104. Save that it is admitted that Sections 72 and 77 of the Securities Industry Regulation, 2012, contain the terms as expressed in paragraph 145 and 146, paragraphs 145 and 146 are denied.
105. The Defendant is unable to admit or deny paragraph 147 and requires the Plaintiffs to prove the same.
106. Paragraph 148 is neither admitted nor denied and the Plaintiffs are required to prove the same. The Defendant admits however that it, through various brokers and agents, facilitated the Plaintiffs in carrying out various sales and purchases of securities on the NYSE.
107. The Plaintiff Defendant is unable to admit or deny paragraphs 149-154 and requires the Plaintiffs to strictly prove the same.
108. The Defendant admits that it, through various brokers and agents, facilitated the Plaintiffs in carrying out various sales and purchases of securities on the NYSE, otherwise paragraph 155 is denied.
109. Paragraphs 156 and 157 are denied and the Plaintiffs are required to strictly prove the same. The Defendant avers that at all times it facilitated the Plaintiffs in trading various securities, it and the associated brokers and agents had all appropriate licenses and acted according to industry standards. The Defendant further avers that at all times it acted in accordance with

local legal requirements and compliance regulatory framework and further in accordance with local execution requirements.

110. Save that the Plaintiffs made various trades that the Defendant facilitated on the NYSE, Paragraph 158 is neither admitted nor denied and the Plaintiffs are put to strict proof.
111. Paragraphs 159 and 160 are denied and the Plaintiffs are required to strictly prove the same. In particular, the Defendant denies that it breached the "Investment Agreement" or its statutory duty as alleged or at all. in paragraphs 159 and 160 or at all and denies said paragraphs and puts the Plaintiffs to strict proof. The Defendant avers that it complied with all its contractual and statutory duties and acted in accordance with industry standards in facilitating the said trades. The Defendant further avers that it did produce contract notes, also referred to as Trade Slips or Trade Advice for the Plaintiffs' trades which were provided to the Plaintiffs. The Defendant avers that in its Account Opening Documents, the First Plaintiff selected the 'retained mail option' authorizing the Defendant to refrain from mailing to the Plaintiffs all documents, statements, advices and other materials in relation to the First Plaintiffs account. Any documents retained by the Defendant in this manner is regarded as having been duly received by the Plaintiffs. The Defendant will rely on the 'retained mail' clause in the First Plaintiffs Account Opening Documents for its full force and effect at trial. The Defendant will also rely, without limitation, on the following clause in the Terms and Conditions:

"Distribution of Transactional Advices and other Mailing

Client correspondence hereby includes all written communication which is to be sent from UBS to you, such as account/custody account statements, credit and debit notifications, confirmations or certifications, product documentations, any kind of Client letters, announcements, etc [and all of them including enclosed physical devices such as e-banking tools or other mailing, if applicable] (hereinafter all referred to as "Correspondence"). Any Correspondence retained in this manner is regarded as having been duly received by you and has the same legal effect as if it had been sent by post. Unless otherwise specified, the date on the document concerned shall be regarded as the date of receipt by you.

UBS shall be liable to you only for direct damages caused by UBS by a failure to exercise the appropriate standard of care and diligence customary in the business. Correspondence not claimed within 5 years of receipt may be destroyed."

112. Save that it is admitted that the Plaintiffs did request contract notes, the Defendant is unable to admit paragraphs 161 and 162 are denied. The Plaintiffs are required to strictly prove the same. and requires the Plaintiffs to prove the same. The Defendant avers that it did create Trade Slips for the Plaintiffs' trades which conformed to the requirements set out under the Securities Industry Regulations. These Trade Slips were provided to the Plaintiffs in

accordance with the “Distribution of Transactional Advices and other Mailing” clause set out in the Defendant’s Terms and Conditions.

113. ~~Pending discovery, the Defendant is unable to admit~~ Paragraph 163 is ~~neither~~ admitted. ~~or denied and requires the Plaintiffs to prove the same.~~
114. Paragraph 164 is denied. The Defendant avers it did provide the Plaintiffs with contract notes in the form of Trade Slips in accordance with the “Distribution of Transactional Advices and other Mailing” clause set out in the Defendant’s Terms and Conditions, and the Plaintiffs are put to strict proof.
115. Save that it is admitted that the Defendant’s representatives did meet with the Second and Third Defendants on 18 March 2014, paragraph 165 is denied and the Plaintiffs are required to prove the same. The Defendant will wholly rely on the Minutes taken at this meeting on 18 March 2014, at trial for its full force and effect.
116. Paragraph 166 is denied and the Plaintiffs are put to strict proof of the same. In particular the Defendant denies that it acted improper. The Defendant avers that it provided the Plaintiff with contract notes in the form of Trade Slips and that at all times it complied with its contractual and statutory obligations to the Plaintiffs.
117. Paragraph 167 is denied. The Plaintiffs are required to ~~The Defendant is unable to admit paragraph 167 and requires the Plaintiffs to~~ strictly prove the same. Moreover, the Defendant avers that this paragraph is incomprehensible and it reserves it right to strike the same.
118. Paragraph 168 is denied and the Plaintiffs are put to strict proof. Moreover, the Defendant avers that this paragraph is scandalous and vexatious and the Defendant reserves its right to strike the same.
119. Save that Mr Maillis spoke to the Second and Third Plaintiffs over the course of the Parties’ relationship, paragraph 169 is denied and the Plaintiffs are required to prove the same.
120. Save that it is admitted that the Trade Slips for the trades effected on behalf of the Plaintiffs are exhibited to the Affidavit of George Maillis filed on 17 December 2014 ~~Pending discovery~~ paragraph 170 is ~~neither admitted nor~~ denied and the Plaintiffs are required to strictly prove the same. In particular, the Defendant denies that this Affidavit was prepared for the purpose of prosecuting the Plaintiffs and further denies the implication that it participated in any conspiracy to defraud public authority.
121. Paragraph 171 is denied and the Plaintiffs are required to strictly prove the same. The Defendant avers that it complied with all its contractual and statutory obligations owed to the Plaintiffs.

122. Paragraph 172 is denied. The Defendant denies that it owes the Plaintiffs any duties over and above what is stated in the Parties' Contractual Documents and owing under any applicable statute. The Defendant in particular denies that it owed the Plaintiffs any tortious or fiduciary duties as alleged or at all.
123. The Defendant is unable to admit or deny paragraph 173 and requires the Plaintiff to prove the same.
124. Paragraph 174 is denied and the Defendant requires the Plaintiffs to strictly prove the same. In particular, the Defendant denies that it breached any statutory duty as alleged or at all. Further, the Defendant avers that this paragraph as pleaded is embarrassing as the Plaintiffs seeks to claim that UBS AG and/or UBS Financial Services Inc. are liable for breach of a statutory duty, when neither entities are parties to this Action.
125. Paragraphs 175 and 176 are denied and the Plaintiffs are required to strictly prove the same. Moreover, these paragraph are embarrassing as it is difficult to ascertain what the Plaintiffs claim is. The Defendant reserves its right to strike out the same. The Defendant further avers that at all times it has complied with its contractual and statutory obligations to provide all contract notes to the Plaintiffs.
126. Save that the Supreme Court has jurisdiction over the Parties, paragraph 177 is denied and the Plaintiffs are put to strict proof. Moreover, this paragraph is embarrassing as this is a legal submission.
127. The Defendant denies that the Plaintiffs are entitled to any of the relief claimed in paragraphs 178 and 179 as alleged or all and requires the Plaintiffs to strictly prove the same.

Claim No. 3 – Willful Misfeasance

128. The Defendant is unable to admit or deny paragraph 180 and requires the plaintiff to prove the same.
129. Paragraphs 181-183 are denied and the Plaintiffs are put to strict proof. In particular, the Defendant avers that the Second and Third Defendants are not entitled to recover damages for any "moral losses", as such a claim is unknown in law. In any event, the Defendnat wholly relies on the averments made at paragraph 34 herein, with respect to liability.
130. Save that it is admitted that Kevin Price was an employee of the Defendant, paragraph 184 is denied and the Plaintiffs are put to strict proof. The Defendant avers that Mr Price at all material times acted honestly and in accordance with industry standards toward the Plaintiffs. Pending discovery, the Defendant is unable to admit or deny the existence or contents of the purported email referenced in this paragraph.

131. Save that it is admitted that Mr. George Maillis was an employee of the Defendant and did email the Plaintiffs on 20 August 2012 at 3:56pm and on 22 August 2013 at 4:04pm ~~would have communicated from time to time with the Plaintiffs by email, phone and in writing,~~ paragraph 185 is denied. ~~Pending discovery, the Defendant is unable to admit or deny the existence or contents of the purported email referenced in this paragraph.~~ The Defendant avers that the personal attacks on Mr. Maillis levied by the Plaintiffs are scandalous, vexatious and lack any factual basis and as such, the Defendant reserves the right to have the same struck out. The Defendant avers that at all material times Mr Maillis acted honestly and in accordance with the Defendants contractual obligations and industry standards toward the Plaintiffs.
132. ~~Save that it is admitted that the email dated 20 August 2013 timed at 3:21pm was forwarded to the Third Plaintiff,~~ paragraph 186 is denied and the Plaintiffs are required to strictly prove the claims made herein. In particular, the Defendant denies that at any time it exercised any oppressive business practices or obstructive conduct toward the Plaintiffs, either individually or at all. ~~This email was not addressed to or intended for the Third Plaintiff. Further, pending discovery, the Defendant is unable to admit or deny the existence or contents of the purported email referenced in this paragraph.~~
133. ~~Save that it is admitted that Mr Maillis and the Second and Third Plaintiffs communicated by email and orally, paragraph 187 and 188 are denied. Pending discovery the Defendant is unable to admit or deny the existence or contents of the purported emails referenced in these paragraphs and requires the Plaintiffs to prove the same. As to paragraph 187 the Defendant states as follows:~~
- a. ~~The Defendant admits that the Third Plaintiff did send the email set out at sub paragraph 187.1 to Mr. Maillis on 19 August 2013 at 10:20am. The Defendant avers however that this so called "complaint" was in response to Mr. Maillis' email to the Third Plaintiff on 19 August 2013 at 9:31am, where he informed the Third Plaintiff of their unsustainable trading activity and further advised that they were in breach of their obligations under the Contractual Agreement. The Third Plaintiff however ignored the concerns raised by Mr. Maillis and stated that all communications between the two should take place when the market closed. The Defendant will rely on these emails at trial for their full force and effect. Save that it is admitted that Mr Maillis and the Second and Third Plaintiffs communicated by email and orally, paragraph 187 and 188 are denied. Pending discovery the Defendant is unable to admit or deny the existence or contents of the purported emails referenced in these paragraph and requires the Plaintiffs to prove the same.~~
 - b. ~~The Defendant admits that the Third Plaintiff did send the email set out at sub paragraph 187.2 to Mr. Maillis on 22 August 2013 at 4:30pm. The Defendant avers however that this email was sent by the Third Plaintiff in response to the email from Mr. Maillis sent on 22 August 2013 at 4:04pm, the contents of which are set out at subparagraph 185.2 of the Plaintiffs' Statement of Claim. The Defendant advised~~

the Plaintiffs on multiple occasions that it did not offer the DMA trading platform and further advised that the initial flat fee offered to the Plaintiffs was on the basis that the Plaintiffs would execute up to 1-2 trades per day. The Plaintiffs however insisted on executing up to 10 trades and sending up to 20 emails per day to the Defendant. The initial flat fee was therefore unsustainable. The Defendant will rely on the email correspondence with the Plaintiffs at trial for their full force and effect.

134. As to paragraph 188, the Defendant admits that the Third Plaintiff sent the email dated 22 August 2013 time 5:13pm to Marsha Adderley at UBS. However, the Defendant denies the claims set out therein and maintains that at all times it acted in accordance with its statutory and contractual obligations and in accordance with industry standards in carrying out the Plaintiffs' instructions. In any event, the Defendant wholly relies on the averments made at paragraph 34 herein, with respect to liability.
135. Paragraph 189 is denied. The Defendant avers that this paragraph is confused and further has not been pleaded with sufficient clarity to enable the Defendant to adequately respond to the same. In any event, the Defendant denies that it paid the Plaintiffs any "compensation payments" as alleged or at all. The Defendant avers that on 23 August 2013 at 10:14 am Marsha Adderley responded by email to the Third Plaintiff's so called "complaint" refuting the claims made by the Third Plaintiff. The Defendant will rely on the said email at trial for its full force and effect.
136. Save that it is admitted that on 19 September 2013 the Defendant did issue a halt trading on the First Plaintiff's account due to the Plaintiffs being in breach of their contractual obligations with the Defendant, paragraph 190 is denied and the Plaintiffs are required to strictly prove the same. Further, this paragraph is embarrassing as it is difficult to ascertain the nature of the claim and as such the Defendant cannot plead to the same. Notwithstanding this however, the Defendant avers that the halt trading was issued because the Plaintiffs' assets under management with the Defendant had dropped below the required 50% threshold as set out in the Contractual Documents. The reason for the halt trading was explained in the email dated 19 September 2013 at 9:34am, from George Maillis to the Third Defendant and again in a letter to the Plaintiffs from Marsha Adderley on 12 November 2013. The Defendant will rely on these correspondences at trial for their full force and effect.
137. Paragraph 191, as pleaded, is denied and the Plaintiffs are required to strictly prove the same. The Defendant avers that, on giving written notice to the First Plaintiff on or about 11 April 2014, it lawfully exercised its right of set-off and applied the USD\$525,323.49 that the First Plaintiff had on account with the Defendant, to partially satisfy the indebtedness owed to the Defendant under the Credit Facility. This right of set off is provided for in the Commitment Letter, and the Terms and Conditions to which the Plaintiffs agreed to be bound, and under common law.

138. Paragraph 192 is denied and the Plaintiffs are required to strictly prove the same. In particular, the Defendant denies that it caused any of the Plaintiffs any of the loss and damages as alleged or at all.

139. Paragraph 193 - 197 are denied and the Plaintiffs are required to strictly prove the same. In particular, the Defendant denies that the Plaintiffs are entitled to recover damages for any alleged misfeasance as alleged, or at all, on the part of the Defendant.

Claim No. 4 – Repudiatory Breach of Agreement

140. The Defendant is unable to admit or deny paragraph 198 and requires the Plaintiffs to prove the same.

141. Paragraph 199 is denied and the Plaintiffs are required to strictly prove the same.

142. Paragraph 200 is denied and the Plaintiffs are required to strictly prove the same.

143. Paragraph 201 is denied and the Plaintiffs are required to strictly prove the same. The Defendant avers that the Plaintiffs, either individually or cumulatively, are not entitled to recover any special damages as alleged or at all, as at no time was the Defendant in default of its obligations under the “Investment Agreement” and always acted in accordance with the Plaintiffs’ instructions to the best of its ability and industry standards.

144. Paragraphs 202 - 205 are denied and the Plaintiffs are required to strictly prove the same. The Defendant avers that the Plaintiffs are not entitled to recover any of the damages as alleged or at all. Moreover, the Defendant avers that at all times it intended to and did in fact perform its contractual obligations towards the Plaintiffs. Further, the Defendant avers that it was the default of the First Plaintiff that triggered the demand under the Commitment Letter and Mortgage with regard to the Credit Facility, notwithstanding that the 5 year period had not yet elapsed. In light of the Plaintiffs material and substantial breaches of the Parties Contractual Documents, the Defendant had no obligation to continue to provide services to the Plaintiffs. This is especially in light of the fact that the Plaintiffs failed or refused to cure their defaults. In any event, the Defendant avers that these paragraphs are not pleaded with sufficient clarity to enable the Defendant to adequately respond to the same.

145. Paragraph 206 is denied and the Plaintiffs are put to strict proof. The Defendant avers that at all times the Defendant was is was ready and willing to perform its obligations and did in fact perform the same, but that the Plaintiffs repeatedly breached the terms of the contractual arrangements between the Parties. In particular, the Defendant denies that it admitted any “weakness” in carrying out the Plaintiffs transactions. The Defendant will rely on the email of 16 July timed at 10:33am for its full force and effect at trial.

146. Paragraph 207 is denied and the Plaintiffs are required to strictly prove the same. In particular, the Defendant denies any anticipatory repudiation of the contractual terms between the parties as alleged or at all.

147. Paragraph 208 is denied and the Plaintiffs are put to strict proof. In particular, it is denied that any of the Defendant's employees, officers or agents conspired to bring about the collapse of the Plaintiffs. This claim is scandalous and the Defendant reserves its right to strike out the same.

148. ~~Pending discovery~~ Save that it is admitted that the Defendant issued a "Halt Trading" on the First Plaintiff's account on 19 September, 2013, paragraph 209 is denied. In particular, the Defendant denies that it acted in breach of the "Investment Agreement" The Defendant is unable to admit or deny paragraph 209 and requires the Plaintiffs to strictly prove the same. The Defendant avers that on 19 September 2013, it advised the Plaintiffs, by email sent at 9:34am, that as a result of the Assets Under Management (AUM) on the First Plaintiff's account having dropped below the required 50%, the Defendant's credit department implemented a mandatory "Halt Trading" on the account. Though The Defendant further avers that in accordance with the Terms and Conditions, to which the Plaintiffs have agreed to be bound, the Defendant was authorized, as set out at Appendix 3 of the Terms and Conditions, to issue a margin call to ensure that sufficient collateral is on the investment account to cover all loans outstanding on the account. In this regard Appendix 3 paragraph 2 provides:

"You are obliged to ensure that there is sufficient collateral to cover all loans outstanding on your account. If UBS observes that the value of the collateral securing the loan has declined, your UBS client advisor will contact you and request you to provide additional collateral (margin call) or to undertake other risk-mitigating measures."

149. Paragraphs 210 - 2012 are denied and the Plaintiffs are required to strictly prove the allegations made in these paragraphs.

150. The Defendant ~~is unable to admit or deny~~ denies paragraph 213 and puts the Plaintiffs to strict proof. The Defendant avers that it was an expressed term of the contractual agreement between the parties that the Plaintiffs keep a sum equal to 50% of the loan amount under management with the Defendant. The proceeds of the loan placed on the First Plaintiffs account was available to the Plaintiffs to do with as they wished so long as they maintained the required amount of assets under management with the Defendant.

151. Paragraphs 214 -216 are denied and the Plaintiffs are required to strictly prove the same. In particular the Defendant denies that it was in repudiatory breach of the Investment Agreement as alleged or at all or that any such breach resulted in a loss to the Plaintiffs as alleged or at

- all. The Defendant avers that the Plaintiffs were in breach of their contractual obligation to keep a sum equal to 50% of the loan amount under management with the Defendant.
152. Save that it is admitted that the Second and Third Plaintiffs met with the Defendant on 8 October 2013 and further that the Plaintiffs sent numerous emails to the Defendant, Paragraphs 217 – 221 are is neither admitted nor denied and the Plaintiffs are required to strictly prove the same. The Defendant avers that over the course of 2013 the Parties had numerous correspondence. However, pending discovery, the Defendant is unable to make any admission with respect to the same.
153. Save that it is admitted that the Third Plaintiff sent an Email to the Defendant on 9 October 2013 at 11:41, purportedly attaching a document that it described as its “Trading History” and a “Proposal” by the First Plaintiff, and further admitted that an acknowledgement of receipt of this email was sent to the Third Plaintiff on 10 October 2013 at 4:16, paragraph 218 is neither admitted nor denied. The Plaintiffs are required to prove the same.
154. Save that it is denied that the Defendant acted as an agent of UBS AG in its contractual relationship with the Plaintiffs, Paragraphs 219-220 are neither admitted nor denied. The Plaintiffs are required to strictly prove the same.
155. Paragraph 221 is denied. The Plaintiffs are required to strictly prove the same. The Defendant avers that the Plaintiffs were in breach of the terms of their Contractual Obligations. The Defendant was therefore well within its contractual rights to terminate the agreement prior to the term coming to an end.
156. Paragraphs 222 and 223 280 are denied and the Plaintiffs are put to strict proof. The Defendant in particular denies that it caused any of the alleged loss and damage to the Plaintiffs as alleged or at all. If the Defendant did cause the Plaintiffs any loss and damages, which is denied, the Plaintiffs failed to mitigate their losses. The Defendant avers that at all times it acted in accordance with its contractual obligations and industry standards. Further, pending discovery, the Defendant is unable to admit or deny any of the alleged email correspondence and requires the Plaintiffs to prove the same. Moreover, the Defendant avers that Paragraphs 222 – 280 are embarrassing convoluted and it reserves its right to strike the same out.
157. Save that it is admitted that the Defendant received trade requests by email from the Third Plaintiff on 25 September, 2013 at 12:55, 9 October, 2013 at 10:59, and on 10 October 2013 at 10:02am paragraphs 224 and 225 are denied and the Plaintiffs are required to strictly prove the same. The Defendant avers that as of 19 September, 2013 it had issued a Halt Trading on the First Plaintiff’s account in accordance with the terms of the Contractual Documents. The Defendant was therefore under no obligation to carry out any trade requests made by the Plaintiffs’.

158. Paragraphs 226-232 are denied and the Plaintiffs are put to strict proof. The Defendant in particular denies that it caused any of the alleged loss and damage to the Plaintiffs as alleged or at all. If the Defendant did cause the Plaintiffs any loss and damages, which is denied, the Plaintiffs failed to mitigate their losses. Further the Defendant avers that paragraphs 229-232 are legal submissions and the Defendant reserves its right to strike the same.
159. Save that it is denied that the Defendant was in default of its contractual obligations or at all, paragraph 233 is neither admitted nor denied. The Plaintiffs are required to strictly prove the same.
160. Paragraphs 234 to 280 are denied and the Plaintiffs are put to strict proof. The Defendant in particular denies that it caused any of the alleged loss and damage to the Plaintiffs as alleged or at all. If the Defendant did cause the Plaintiffs any loss and damages, which is denied, the Plaintiffs failed to mitigate their losses. In any event the Defendant wholly relies on the averments made at paragraph 34 herein. Moreover the Defendant avers that paragraphs amount to legal submissions and the Defendant reserves its right to strike the same.

Claim No. 5 – Conspiracy to injure by unlawful means

161. The Defendant is unable to admit or deny paragraphs 281 and 282 and requires the Plaintiffs to prove the same.
162. Paragraphs 283- 285 are denied and the Plaintiffs are put to strict proof.
163. Paragraphs 286 and 287 are denied and the Plaintiffs are put to strict proof. In particular, the Defendant denies that it “systematically defrauded” the Plaintiffs as alleged or at all. The Defendant avers that at all times it acted honestly and professionally to the Defendants and in accordance with its contractual obligations and industry standards. The Defendant avers that these paragraphs are scandalous and vexatious and the Defendant reserves its right to strike the same out.
164. Paragraph 288 is denied and the Plaintiffs are required to strictly prove the same. The Defendant denies that at any time it held any funds on trust for the Plaintiffs and avers that all funds held for the Plaintiffs were held pursuant to the terms of the Contractual Documents executed between the Parties.
165. Paragraphs 289 and 290 are denied. The Defendant further avers that these paragraphs are embarrassing as they are scandalous and vexatious. Moreover, these paragraphs are confused and have not been pleaded with sufficient particularity to enable the Defendant to respond in any greater detail. The Defendant reserves its right to strike the same out.
166. Paragraphs 291 and 292 are denied and the Plaintiffs are required to strictly prove the same. Further the Defendant repeats the averments made at paragraph 34 herein.

167. Paragraphs 293 and 294 are denied and the Plaintiffs are required to strictly prove the same. The Defendant denies the existence of any alleged conspiracy to engineer a default. The Defendant avers that on 5th March, 2014 the Plaintiffs wrote to Counsel for the Defendant and admitted that the First Plaintiff did breach its obligations under the Commitment Letter and Mortgage. The Plaintiffs allegations that the Defendant engineered the default is baseless and in direct contradiction of the previously admitted of default.
168. Save that it is admitted that the Defendant did halt the Plaintiffs trading in ~~or about~~ September 2013, paragraph 295 is denied and the Plaintiffs are required to strictly prove the same. In particular, it is denied that the Defendant acted unlawfully. The Defendant avers that the Plaintiffs were in breach of their obligations under the Contractual Agreements and as such the Defendant was entitled to act as it did. pending discovery, the Defendant is unable to admit or deny paragraph 295 and requires the Plaintiffs to prove the same.
169. Paragraphs 296 and 297 are denied and the Plaintiffs are required to strictly prove the same. The Defendant avers that the Plaintiffs were in fact in default of their contractual obligations to it, so as to enable it to exercise its rights under the Mortgage and the terms of the Commitment Letter.
170. Paragraphs 298 - 300 are denied and the Plaintiffs are required to strictly prove the same. The Defendant avers that its right of set off is expressly provided for by the Commitment Letter and the Terms and Conditions, and under the law to which the Plaintiffs agreed to be bound. ~~and~~ The Defendant further avers it was well within its lawful right to exercise its right of set off.
171. Paragraphs 301 – 302 are denied and the Plaintiffs are required to strictly prove the same. In particular, the Defendant denies that it acted unlawfully as alleged or at all. The Defendant avers that these paragraphs as pleaded are embarrassing and/or lacking in particularity, and therefore the Defendant is unable to adequately respond to the same. The Defendant further avers that these paragraphs are scandalous and it reserves its right to strike out the same.
172. Save that it is admitted that Section 88 of the Securities Industry Regulations 2012 does include the terms as set out at paragraph 303 of the Statement of Claim, paragraph 303 is denied and the Plaintiffs are required to strictly prove the same. In particular, the Defendant denies that it was or is a trustee for the Plaintiffs. At all times the Plaintiffs and Defendant's relationship was only that of banker and customer and at no time did the Defendant owe the Plaintiffs any fiduciary duties as alleged or at all.
173. Paragraph 304 is neither admitted nor denied and the Plaintiffs are required to strictly prove the same. The Defendant avers that its obligations were set out in the Parties Contractual Documents.

174. Paragraph 305 is denied. The Defendant denies that the funds held on account for the First Plaintiff should be regarded as trust property. Moreover, the Defendant avers that the Contractual Documents and common law granted it a right of set off against the Plaintiffs assets.
175. Paragraphs 306 - 309 are denied and the Plaintiffs are required to strictly prove the same. The Defendant avers that at all times it acted in accordance with its contractual rights in setting off the funds in the First Plaintiffs account in ending the "Investment Agreement" due to the Plaintiffs breach of their Contractual Obligations thereunder.
176. Paragraphs 310 – 311 are denied and the Plaintiffs are required to strictly prove the same. Further, the Defendant avers that this paragraph as pleaded is embarrassing and/or lacking in due and proper particularity, and therefore the Defendant is unable to adequately respond to the same. Moreover, these paragraphs amount to submissions. The Defendant reserves its right to strike these out. The Defendant denies that it held any funds on trust for the Plaintiffs or that it owed the Plaintiffs any fiduciary duties as alleged or at all. Further, at all times the Defendant was entitled to set off funds in the Plaintiffs account to satisfy the Plaintiffs' contractual liabilities.
177. Paragraphs ~~311~~ 312 – 322 are denied and the Plaintiffs are put to strict proof. In particular, the Defendant denies that it caused any of the alleged loss and damages suffered by the Plaintiffs as alleged or at all. Further if, which is denied, the Defendant caused any loss or damage, the Plaintiffs failed to properly mitigate its loss or damages.

Claim No.6 – Fraudulent Preference and Fraudulent Trading

178. The Defendant is unable to admit or deny paragraph 323 and requires the Plaintiffs to prove the same.
179. Paragraphs 324 and 325 are denied and the Plaintiffs are required to prove the same. Further, the Defendant avers that these paragraphs as pleaded are embarrassing and/or lacking in particularity, and therefore the Defendant is unable to adequately respond to the same. The Defendant reserves its right to strike the same out.
180. Saved that it is admitted that the Defendant loaned the First Plaintiff USD\$1,400,000.00 which was personally guaranteed by the Second and Third Plaintiffs as per the terms of the Contractual Documents executed between the Parties, paragraph 326 is denied and the Plaintiffs are required to prove the same.
181. Save that it is admitted that the loan was secured by the Mortgage against the Property, paragraph 327 is denied and the Plaintiffs are required to prove the same.

182. Paragraph 328 is denied and the Plaintiffs are required to specifically prove the same. The Defendant avers that at all times the Plaintiffs, as experienced business persons, were aware of the risks of entering into the transactions. The Defendant denies that it made any misrepresentations to the Plaintiffs.
183. Paragraphs 329 - 330 are denied and the Plaintiffs are required to strictly prove the same. Further, the Defendant avers that this paragraph is embarrassing as it is confusing and has not been pleaded with sufficient clarity to enable the Defendant to adequately respond to the same. The Defendant reserves the right to strike out the same. Notwithstanding this, the Defendant avers that the RECL mortgage product was approved by the Central Bank.
184. Paragraphs 331 – 342 are denied and the Plaintiffs are required to strictly prove the same. The Defendant denies that at any time it acted in bad faith toward the Plaintiffs. The Defendant avers that the entirety of these paragraphs are embarrassing and have not been pleaded with sufficient clarity to enable the Defendant to adequately respond to the same. Moreover, these paragraphs amount to legal submissions and the Defendant reserves its right to strike the same. Though for the avoidance of doubt, the Defendant denies all of the allegations of fraud, misrepresentation, fraudulent preference, conspiracy and dishonesty as alleged or at all. The Defendant avers that at all times it acted honestly towards the Plaintiffs, in accordance with its contractual obligations and industry standards. Further, the Defendant avers that the RECL mortgage product was approved by the Central Bank.
185. Paragraphs 343 and 344 are denied and the Plaintiffs are put to strict proof. The Defendant avers that these paragraphs are legal submissions and reserves its right to strike the same.
186. Save that it is admitted that the Defendant was entitled to hold the Property as security for the Plaintiffs' loan, paragraph 345 is denied and the Plaintiffs are put to strict proof. The Defendant avers that in addition to holding the Property as security for the Credit Facility, that on the First Plaintiff's default, it was entitled to, *inter alia*, exercise its power of sale over the Property in accordance with the Mortgage terms.
187. Paragraphs 346 -348 are denied and the Plaintiffs are put to strict proof. The Defendant denies that the Plaintiffs are entitled to the order or relief claim.

Claim No. 7 – Breach of Statute pursuant to the Fraudulent Dispositions Act

188. The Defendant is unable to admit or deny paragraph 349 and requires the Plaintiffs to strictly prove the same.
189. Paragraphs 350 - 352 are denied and the Plaintiffs are put to strict proof. The Defendant avers that the entirety of these paragraphs are embarrassing and not pleaded with sufficient clarity to enable the Defendant to adequately respond to the same. Moreover, these paragraphs amount to legal submissions and the Defendant reserves its right to strike the same.

190. Save that in or about August 2012 the Defendant provided the First Plaintiff with the Credit Facility of USD\$1,400,000.00, paragraph is 353 denied and the Plaintiffs are required to prove the same.
191. Save that the Credit Facility was secured by the Mortgage over the Property, the Defendant is unable to admit or deny paragraph 354 and requires the Plaintiffs to prove the same.
192. Paragraph 355 is denied and the Plaintiffs are required to prove the same. The Defendant avers that at no time did it make any misrepresentations as alleged or at all. It is denied that the Defendant provided no consideration for the loan. The Defendant avers that all times the Plaintiffs had access to the \$1,400,000 credit facility subject to them maintaining a sum equal to 50% of the loan facility amount on account with UBS. The Defendant further avers that, as experienced business persons, who have described themselves as seasoned professional traders, the Plaintiffs were aware of the risks of entering into the Contractual Documents. At no time was the transaction between the Parties “a disposition at undervalue” as alleged or at all. This allegation is embarrassing and void of any factual or legal basis and the Defendant reserves it right to strike the same. In any event, the Defendant, without limitation, will also rely on the following clause from Commitment Letter at page 5, which is binding on the Plaintiffs:

“Suitability waiver:

The Borrower and each Guarantor is aware that financial leverage increases the risk and volatility of their overall portfolio and investments in general and that mortgages and financial leverage in general amplify the risk of loss over their total investments. The Borrower and each Guarantor acknowledges that this is an uncommitted/demand mortgage that the Bank may call at any time, requiring repayment of accrued interest and loan principal at any time, regardless of their own financial situation at said time, which may, depending on the circumstances, lead to financial losses, and the Borrower and each Guarantor indemnifies the Bank of any resulting Liability.”

193. Paragraphs 356 and 357 are denied and the Plaintiffs are required to strictly prove the same. The Defendant avers that at no time was the transaction entered into between the Parties prejudicial to the Plaintiffs as alleged or at all. At all times, the Plaintiffs were experienced business persons who were well aware of the risks of the transaction.
194. Paragraphs 358 and 359 are denied and the Plaintiffs are required to strictly prove the same. The Defendant avers that there is no requirement to have the terms of the Commitment Letter jointly drafted by the Parties. The Plaintiffs were experienced business persons and at all times were aware of the terms and risks of the Commitment Letter and accepted the same. At no

time did the Defendant induce the Plaintiffs by misrepresentations to enter into the Credit Facility.

195. Save that it is admitted that Section 4(1) of the Fraudulent Dispositions Act 1991 do include the terms as set out at paragraph 360 of the Statement of Claim, paragraph 360 is denied. The Defendant avers that the Plaintiffs have failed to plead any credible facts that support a claim of fraudulent disposition and it reserves its right to strike out the same. Paragraphs 361- 363 are denied and the Plaintiffs are required to strictly prove the same.

Claim No. 8 – Conspiracy to Defraud

196. The Defendant is unable to admit or deny paragraph 364 and requires the Plaintiffs to strictly prove the same.
197. Paragraphs 365 - 369 are denied and the Plaintiffs are required to strictly prove the same. Further, the Defendant avers that the same are embarrassing and amount to legal submissions. The Defendant reserves its right to strike the same out.
198. The Defendant ~~makes not admission as to~~ denies paragraph 370 and requires the Plaintiffs to strictly prove the same.
199. Paragraph 371 is denied. Further, the Defendant avers that the said brochure specifically provided that:

“Borrowing using real estate as collateral entails risks and may not be appropriate for your needs. All loans are subject to credit approval. For a full discussion of the risks associated with borrowing using real estate as collateral, you should review the loan disclosure statement that will be included in your RECL application package.”

200. Paragraph 372 is denied, save that it is admitted that Section 88 of the Securities Industry Regulations 2012 do include the terms as set out at paragraph 372 of the Statement of Claim. In particular, the Defendant denies that it made any fraudulent representations as alleged or at all in this paragraph.
201. Paragraphs 373 - 374 are denied and the Plaintiffs are required to strictly prove the same.
202. Paragraph 375 is denied and the Plaintiffs are required to strictly prove the same. In particular and without prejudice to the generality of the forgoing, the Defendant denies that it was required to negotiate the terms of the Commitment Letter with the Plaintiffs. The Plaintiffs having held themselves out to be experienced business professionals accepted the terms contained therein and agreed to be bound by the same. Further the Defendant denies that it was required to advise the Plaintiffs to seek independent legal advice. The Defendant avers

that it owed no such duty to the Plaintiffs. Notwithstanding this, the Defendant avers that the Plaintiffs were represented by the law firm of Ginton Sweeting O'Brian in the mortgage transaction. Further, the Defendant avers that the Terms and Conditions, at page 16 under the heading Risk Disclosure Advice, expressly provide that:

"You acknowledge that you have made an independent decision to enter this Agreement and have not relied upon any communications, advice, or recommendation; written or otherwise from us. You also acknowledge that the information and explanations related to the terms and conditions of the Agreement shall not be considered investment advice or recommendation to enter this Agreement."

203. Paragraph 376 is denied and the Plaintiffs are required to strictly prove the same. The Defendant avers that it was always made clear to the Plaintiffs that it was to be bound by the Terms as set out in the Commitment Letter and other Contractual Documents. In particular at page 3 of the Commitment Letter, under the heading 'Representations and Warranties', it was provided that:

*"The borrower hereby represents and warrants to the Lender that:
The Obligations of the Borrower under this Commitment to Finance and the Security constitute legal, valid and binding obligations, enforceable against the Borrower in accordance with their respective terms."*

204. Paragraphs 377 - 379 are denied. The Defendant avers that the contents of these paragraphs are scandalous, vexatious and lacking any factual foundation. The Defendant reserves the right to strike out the same.

205. Paragraphs 380 - 381 are denied and the Plaintiffs are put to strict proof. The Defendant avers that at all times the Plaintiffs accepted the terms of the Commitment Letter and the obligations under the Terms and Conditions and agreed to be bound by the same. The requirement to keep a sum equal to 50% of the loan amount on account with the Defendant was, from the beginning of the relationship between the Parties, known by the Plaintiffs and accepted by them.

206. Paragraphs 382 – 388 are denied and the Plaintiffs are put to strict proof. The Defendant avers that the contents of these paragraphs are scandalous, vexatious and lacking any factual foundation. The Defendant reserves the right to strike out the same. The Defendant avers that at all times the Plaintiffs held themselves out to be experienced business persons. At all times the Plaintiffs were aware and agreed to the risks outlined in the Contractual Documents. At no time did the Defendant or any of its employees, servants or agents conspire against the Plaintiffs or acted dishonestly as alleged in these paragraphs or at all.

207. Paragraphs 389 – 390 are denied and the Plaintiffs are required to strictly prove the same. The Defendant denies that it ever intended to defraud the Plaintiffs as alleged or at all and avers that at all times it fulfilled its contractual obligations to them. In particular:

- a. Sub paragraph 390.1 is denied. The Defendant avers that the First Plaintiff was only required to keep a sum equal to 50% of the loan amount on account with UBS.
- b. Sub paragraph 390.2 is denied. The Defendant avers that the 50% requirement could have been met by cash being kept on account or by securities being kept on account. The requirement was met so long as the total assets under management with UBS was a sum equal to 50% of the loan amount at minimum.
- c. Sub paragraph 390.3 is denied.
- d. Sub paragraph 390.4 is denied. The Defendant avers that the Plaintiffs have clearly confused the DMA platform with the DAC platform offered by UBS. The DAC platform was not an electronic trading platform but only offered direct access to a trader at the trading desk. In any event the Plaintiffs did not qualify for the DAC platform. The Defendant denies that it represented to the Plaintiffs that their trading orders would be executed in 20 seconds.

208. Paragraphs 391 – 393 ~~5~~ are denied and the Plaintiffs are required to strictly prove the same. The Defendant denies that at any time it acted fraudulently, as alleged or at all, toward the Plaintiffs. Further, the Defendant avers that these paragraphs have not been pleaded with sufficient clarity to enable the Defendant to adequately respond to the same and are embarrassing as they are scandalous and vexatious. The Defendant reserves the right to strike the same out. For the avoidance of doubt, the Defendant avers that the loan transaction was legal.

209. Paragraph 394 is denied and the Plaintiffs are put to strict proof of the same. In particular, the Defendant denies that the RECL product was a speculative investment. The RECL product was approved by the Central Bank and at all times the Defendant did provide financial services in conformity with accepted market practices. The Defendant avers that it has extensive experience in trading in securities.

210. The Defendant makes no admission as to paragraphs 396 – 401 and requires the Plaintiffs to strictly prove the same. Though the Defendant avers however, that the said brochure specifically provided that:

“Fixes- a mortgage where the interest rate is the same for the entire term of the loan. Credit lines are provided by UBS Bahamas Limited and are subject to credit approval. Prepayment of Credit Lines will be subject to administrative fee and may result in a prepayment fee. Borrowing using real estate as collateral entails risks and may not be appropriate for your needs. All loans are subject to credit approval.”

For a full discussion of the risks associated with borrowing using real estate as collateral, you should review the loan disclosure statement that will be included in your RECL application package. UBS does not provide legal or tax advice. You should contact your legal and tax advisors regarding the legal and tax implications of using real estate as collateral for a loan

The Defendant will rely on this clause at trial for its full force and effect.

211. Paragraph 402 is denied and the Plaintiffs are required to strictly prove the same. The Defendant denies that any statements of the Defendant's gave rise to any of the obligations alleged or at all.

212. Paragraph 403 is denied and the Plaintiffs are required to strictly prove the same. The Defendant makes no admission as to paragraphs 403–406 and requires the Plaintiffs to strictly prove the same. In particular the Defendant states that:

- a. Sub paragraph 403.1 is denied. The Defendant avers that it did not give the Plaintiffs any guarantees that online trading would be made available to them in the near future or that there would be "instant execution of trading orders".
- b. Sub paragraph 403.2 is denied. The Defendant avers that it made no representations that the Plaintiffs would have access to the DMA platform.
- c. Sub paragraph 403.3 is denied. The Defendant denies that it agreed to grant a flat fee to the Plaintiffs outright. The ultimate fee applied to the First Plaintiff depended on the nature of the account ultimately entered into by the Plaintiffs.
- d. Sub paragraph 403.4 is denied. The Defendant avers that the First Plaintiff would have been able to trade futures provided that it met UBS' requirements to do so, which it did not.
- e. Sub paragraph 403.5 is denied. The Defendant denies that it made any representations to the Plaintiffs allowing for night stop loss orders to be placed.

213. Paragraphs 404-406 are denied and the Plaintiffs are required to strictly prove the same.

214. Paragraphs 407 - 411 are denied and the Plaintiffs are put to strict proof. The Defendant further avers that these paragraphs are embarrassing and scandalous and it reserves its right to strike the same. Further, neither UBS Financial Services nor UBS AG are party to these proceedings and as such any claims in relation thereto are inappropriate and should be struck out.

215. The Defendant makes no admission as to paragraphs 412 – 414 5 as the allegations made therein are within the sole knowledge of the Plaintiffs and the Defendant requires the Plaintiffs to strictly prove the same.
216. Save that it is admitted that emails set out at paragraphs 418 and 419 do exist dated 21 June 2013 timed 12:16pm and 26 June 2013 timed 5:08pm, paragraphs 415 6 – 422 are denied and the Plaintiffs are put to strict proof. The Defendant avers that while its employees had numerous conversations with the Plaintiffs both orally and in writing, at no time did they make any false representations to the Plaintiffs as alleged or at all. The Defendant will rely on these emails at trial for their full force and effect. Further, pending discovery, the Defendant is unable to admit or deny the existence or content of the alleged emails mentioned in these paragraphs and the Plaintiffs are required to strictly prove the same.
217. Paragraphs 423 - 428 are denied and the Plaintiffs are required to strictly prove the same. In particular, the Defendant denies that either it made any fraudulent representations as alleged or at all.
218. Paragraphs 429 – 434 443 are denied and the Plaintiffs are required to strictly prove the same. The Defendant avers that its employees corresponded with the Plaintiffs by email, however pending discovery the Defendant is unable to admit the existence or content of the emails alleged. Moreover, the Defendant admits that its employees did communicate with the Plaintiffs, however, it denies that they made any false or fraudulent statements to the Plaintiffs as alleged or at all. The Defendant does not however have in its possession the email dated 23 August 2012 timed 15:35. The Defendant denies that it had a legal or other obligation to bring to the Plaintiffs any of the facts alleged or at all. The Plaintiffs are experienced business persons and knew full well the risks they were assuming in entering into the Contractual Documents.
219. Paragraph 435 is denied and the Plaintiffs are required to strictly prove the same. In particular:
- a. Sub paragraph 435.1 is denied. The Defendant only required that the Plaintiffs keep a sum equal to 50% of the loan amount on account with the Defendant. This 50% minimum requirement could have comprised cash and/or securities.
 - b. Sub paragraph 435.2 is denied. The Second and Third Plaintiffs provided personal guarantees which was part of the requirement for the First Plaintiff to receive the loan facility.
 - c. Sub paragraph 435.3 is denied.
 - d. Sub paragraph 435.4 is denied. The Defendant avers that it was incumbent upon the Plaintiffs to review the terms and conditions before signing the same.

- e. Sub paragraph 435.4 is denied.
220. Paragraphs 436-438 are denied and the Plaintiffs are required to strictly prove the same.
221. Paragraph 439 is denied and the Plaintiffs are required to strictly prove the same. In particular:
- a. Sub paragraph 439.3 is denied. The Defendant avers that it had no legal duty to advise the Plaintiffs to seek independent legal advice. In any event the terms of the Brochure as set out at paragraph 210 herein advises the Plaintiffs to seek independent legal advice. Further the Defendant avers that the Plaintiffs were represented by Glinton Sweeting O'Brian in the mortgage transaction.
 - b. Sub paragraph 493.4 is denied. The Defendant avers that the Plaintiffs at all times represented themselves as sophisticated business persons.
222. Paragraph 440 is denied and the Plaintiffs are required to strictly prove the same. In particular the Defendant denies that by its silence it allowed the Plaintiffs to believe that the Commitment to Finance Letter was not a contract. The Defendant further denies that it allowed the Plaintiffs to believe that the 50% minimum requirement was not mandatory. In any event, the requirement was to keep a sum equal to 50% of the loan facility on account with the Defendant.
223. Paragraphs 441-443 are denied and the Plaintiffs are required to strictly prove the same.
224. Paragraphs 444 – 451 are denied and the Plaintiffs are required to strictly prove the same. The Defendant avers that at no time did it conceal, deliberately or otherwise, any information relevant to the “Investment Agreement” from the Plaintiffs as alleged or at all. At all times the Defendant acted in accordance with its obligations under the Contractual Documents. The terms of the “Investment Agreement” were known to the Plaintiffs and agreed by them. Further, the Defendant denies that it had any legal obligations as alleged or at all in these paragraphs. The Defendant avers that there was nothing unusual or suspicious about the Contractual Documents between the Parties as alleged or at all. The Plaintiffs as experienced business individuals knew full well the risks they were assuming at all times. The Defendant also avers that the loan was a normal loan arrangement as approved by the Central Bank and similar to that offered by other local banks.
225. Save that the Plaintiffs entered into the Contractual Documents, paragraphs 452 – 457 are denied and the Plaintiffs are put to strict proof of the same.
226. Save that it is admitted that the Plaintiffs entered into the Contractual Documents, the Defendants makes not admissions as to paragraphs 458 – 464 and requires the Plaintiffs to prove the same.

227. The Defendant makes not admissions as to paragraphs 465 - 471 and requires the Plaintiffs to prove the same. However, the Defendant denies that it at any time made any fraudulent representations as alleged or at all to Plaintiffs.

228. Save that it is admitted that the Plaintiffs did meet with UBS and did send emails to UBS on 9 October 2013 and 10 October 2013, paragraphs 472 - 478 are denied and the Plaintiffs are required to strictly prove the same. The Defendant denies that the Plaintiffs are entitled to recession as alleged or at all. The Defendant avers that on 12 November, 2013, UBS did write to the Second and Third Plaintiffs advising that UBS had undertaken an investigation of the complaints raised by them and that UBS was satisfied that it had acted appropriately. By this letter UBS reaffirmed its position to maintain the 'halt trading' status that was in effect for the First Plaintiff's account. The Defendant will rely on this letter at trial for its full force and effect. Pending discovery, the Defendant is unable to admit the existence or content of the alleged emails referred to in these paragraphs.

229. Paragraphs 479 -481 are denied and the Plaintiffs are put to strict proof. In particular the Defendant denies that any such compensation for loss of profits was ever paid to the Plaintiffs or that the Defendant acknowledged that the Plaintiffs were entitled to receive the same. Further, the Defendant denies that it accepted any purported rescission by the Plaintiffs as alleged or at all.

230. Paragraph 482 is denied and the Plaintiffs are required to strictly prove the same.

231. Save that it is admitted that Section 3 of the Money Lending Act does, in part, include the terms as set out at paragraph 483, the Defendant avers that this paragraph, as pleaded, is misleading and is not admitted.

232. Paragraphs 484 - 492 are denied and the Plaintiffs are required to strictly prove the same. The Defendant denies that it caused the Plaintiff any loss as alleged or at all. Further, if, which is denied, the Defendant caused the Plaintiffs any loss, they failed to properly mitigate the same.

Claim No.9 – Fraudulent Misrepresentation

233. The Defendant ~~is unable to admit or deny~~ denies paragraphs 493 - 496 and requires the Plaintiffs to strictly prove the same.

234. Paragraphs 497 – 504 are denied and the Plaintiffs are required to strictly prove the same.

235. The Defendant avers that at all material times the Plaintiffs, who are experienced business persons, knew the terms of the “Investment Agreement”, which included *inter alia* the terms of the Commitment Letter, the Mortgage and the Terms and Conditions. At no time did the Defendant conceal terms of the “Investment Agreement” or made any misrepresentations to

the Plaintiffs as alleged or at all. Further, the Defendant denies that it caused the Plaintiffs any loss and damages as alleged or at all.

236. Paragraphs 505- 521 are denied and the Plaintiffs are required to strictly prove the same. In particular, the Defendant denies that it caused the Plaintiffs any loss or damage as alleged or at all. Moreover, if, which is denied, the Defendant caused the Plaintiffs loss and damage, the Plaintiffs failed to mitigate the same.

Claim No.10 – Malicious Institution of Civil Proceedings and Malicious Prosecution

237. The Defendant is unable to admit or deny paragraphs 522 – 527 and requires the Plaintiffs to prove the same.
238. Paragraph 528 is neither admitted nor denied, and the Defendant requires the Plaintiffs to prove the same.
239. Paragraphs 529 – 532 are denied and the Plaintiffs are put to strict proof.
240. Save that on or about 28 February 2014 the Defendant, through its counsel, advised that Plaintiffs that they were in default of the Commitment Letter, paragraph 533 is denied and the Plaintiff is put to strict proof. The Defendant will rely on its counsel's letter at trial for its full force and effect.
241. Further, in response to the Defendant's counsel 28 February, 2014, letter on 5 March, 2014 the Plaintiffs wrote to the Defendant's counsel admitting that the First Plaintiff did breach its obligation to keep the higher of USD\$700,000 or 50% of the Credit Facility under management with the Defendant during the term of the Credit Facility as was required. In its Statement of Claim at paragraph 476, the Plaintiffs have again admitted that they were in breach of these terms of the Contractual Documents. Therefore the Plaintiffs' claims made in paragraph 533 are denied. The Defendant intends to rely on the aforementioned documents at trial for their full force and effect.
242. Save that the Defendant has entered into voluntary liquidation, the Defendant required the Plaintiff to prove paragraph 534.
243. Paragraph 535 is neither admitted nor denied and the Plaintiffs are required to strictly prove the same. The Defendant avers that on or about 23 April 2014 the Defendant's counsel advised the Plaintiffs that the Defendant had elected to exercise its right to sell the Property,
244. Paragraph 536 is denied, save that it is admitted that on or about 11 April 2014 the Defendant, through its counsel advised the Plaintiffs that it had elected to exercise its right of set off and applied the USD\$525,323.49 held on the account of the First Plaintiff with the Defendant, to partially satisfy the Plaintiffs' indebtedness to the Defendant. The Defendant avers that its

right of set off is expressly provided for by the Commitment Letter, the Terms and Conditions to which the Plaintiffs agreed to be bound, and also at common law.

245. Save that it is admitted that on 3 October 2014 the Defendant commenced an action against the Plaintiffs and further that Section 433 of the Penal Code do contain the terms set out at paragraph 537, paragraph 537 is denied and the Plaintiffs are required to strictly prove the same.
246. Paragraph 538 is admitted.
247. Save that it is admitted that Mr Maillis swore an affidavit on 5 December 2014 in this Action which was filed on 17 December 2014 and that Section 426 of the Penal Code do contain the terms set out at paragraph 539, paragraph 539 is denied and the Plaintiffs are required to strictly prove the same. Moreover, the Defendant avers that the allegations contained therein are scandalous and vexatious and the Defendant reserves the right to strike out the same.
248. Save that it is admitted that at the hearing on 23rd March 2015 Evans J granted the Defendant judgment on its summary judgment application, that the Second and Third Plaintiffs were not present, and the Plaintiffs' counsel conceded the application while reserving the Plaintiffs right to pursue their counterclaim, paragraph 540 is denied. The Defendant avers that at this hearing the Plaintiffs were all represented by counsel.
249. Paragraph 541 is denied and the Plaintiffs are required to strictly prove the same.
250. Save that it is admitted that Section 432 of the Penal Code do include the terms as set out at paragraph 542, this paragraph is denied. The Defendant avers that the Plaintiffs' allegations against its counsel are scandalous and vexatious and are intended to damage his reputation. The Defendant reserves the right to strike out the same.
251. Paragraph 543, as pleaded, is neither admitted nor denied. The Defendant avers that the true sequence of events are as follows: Plaintiffs filed a purported Notice of Appeal in the Court of Appeal against the 23rd March Ruling of Evans J ("Summary Judgment Ruling"). The Defendant subsequently filed a Notice of Preliminary Objection against the Plaintiffs' purported Notice of Appeal on the basis that the Plaintiffs had first failed to obtain leave to appeal from the Supreme Court and had also failed to first apply for a stay in the Supreme Court. On 2 November 2015 the Court of Appeal allowed the Defendant's preliminary objections and struck out the Plaintiffs' purported Notice of Appeal and application for a stay, with costs to the Defendant. On 5 November 2015 the Plaintiffs filed a Summons in the Court of Appeal seeking an extension of time to file a Notice of Appeal and a stay. On 2 June 2016 the Plaintiffs again filed a Notice of Motion in the Court of Appeal seeking an extension of time to file a Notice of Appeal and a stay. On 6 June 2016 the Court of Appeal dismissed the Plaintiffs' 5 November 2015 Summons and 2 June 2016 Notice of Appeal Motion. The Plaintiffs subsequently made an application to the Judicial Committee of Her Majesty's Privy

Council for leave to appeal the 6th June Court of Appeal Ruling. On 24 February, 2017, the Board gave an oral ruling dismissing the Plaintiffs' application, which was subsequently placed in to a written ruling on 3 April 2017.

252. Paragraphs 544 – 555 are denied and the Plaintiffs are required to strictly prove the same. The Defendant avers that the Plaintiffs' counsel at the 23 March hearing expressly accepted that they were in default and consented to judgment being granted against them. Hence, the Plaintiffs new attempt to re-litigate this matter is an abuse of process and the Defendant reserves its right to strike the same out.
253. Paragraphs 556 -557 are denied and the Plaintiffs are required to strictly prove the same. The Defendant denies that the litigation commenced by UBS was done in bad faith as alleged or at all. Though, the Defendant admits that it is in voluntary liquidation.
254. Paragraph 558 is denied, save that it is admitted that the quote from the Defendants Writ of Summons is correct.
255. Paragraphs 559 – 563 are denied and the Plaintiffs are required to strictly prove the same. The Defendant avers that the Plaintiffs 5 March 2014 letter is self-evident. In any event, the Plaintiffs' counsel conceded that the Plaintiffs were in breach of their contractual obligations and consent to judgment being awarded against them at the 23 March hearing. Moreover, the Defendant avers that the Plaintiffs stated in the letter of 5 March 2014 that:

"We did accepted on August 23, 2012 the terms of the Commitment to Finance of UBS Bahamas, and we did breach of our obligation to keep a sum equal to 50% or USD \$700,000.00 having a sum of USD \$543,127.71 on account with UBS..."

256. Paragraphs 564 - 575 are denied and the Plaintiffs are required to strictly prove the same. The Defendant avers that the allegations made in these paragraph are scandalous, vexatious and entirely unsubstantiated. The Defendant reserves its right to have these claims struck out. The Defendant avers that at all times its counsel and Mr Jack Davis acted appropriately towards the Plaintiffs in executing the Writ of Possession. Moreover, the Defendant denies that its Writ of Possession was improperly issued or in any way invalid or in breach of Order 77.
257. Paragraphs 576 - 588 are denied and the plaintiff are put to strict proof. The Defendant denies that it caused the Plaintiffs any loss and damages as alleged or at all. Moreover, if, which is denied, the Defendant caused the Plaintiffs loss and damages, the Plaintiffs failed to mitigate the same. In any event the Defendant repeats the averments made at paragraph 34 herein.

Claim No.11 – Conspiracy to Defraud Public Authority

258. The Defendant is unable to admit or deny paragraphs 589 -592 and requires the Plaintiffs to strictly prove the same.

259. Paragraphs 593 – 598 are denied and the Plaintiffs are required to strictly prove the same. The Defendant denies that it fabricated any accounts or was involved in any conspiracy against the Plaintiffs as alleged or at all. The Defendant avers that at all times it provided the Plaintiffs with complete and accurate accounts. Moreover, the validity of the said accounts were never challenged by the Plaintiffs or their counsel prior to the summary judgment application and the Plaintiffs' counsel conceded the accuracy of the Defendant's accounts and that the Plaintiffs were in default.
260. Paragraphs 599 - 603 are denied and the Plaintiff are put to strict proof. The Defendant avers that these paragraphs, as pleaded, are embarrassing as they are scandalous, vexatious and amount to legal submissions and the Defendant reserves its right to have these allegations struck out.
261. Save that it is admitted that Sections 432 and 433 of the Penal Code do contain the terms as set out at paragraph 604, this paragraph is denied and the Plaintiffs are required to strictly prove the same.
262. Paragraph 605 is denied and the Plaintiffs are required to strictly prove the same.
263. Paragraphs 606 - 613 are denied and the Plaintiffs are put to strict proof. The Defendant avers that these paragraphs are both scandalous and vexatious and it reserves its right to strike out the same. Further, the Defendant avers that the affidavit filed in support of its summary judgment application was at all times true and correct. Moreover, the Plaintiffs and their counsel failed to take any objection to the same for over three months and in fact consented to the summary judgment application without taking any objection to the affidavit. To this extent the Plaintiffs waived or abandoned any objection to the same.
264. Paragraph 614 is denied and the Plaintiffs are put to strict proof.
265. Save that it is admitted that Section 432 of the Penal Code does contain the terms as set out at paragraph 615, paragraph 615 is denied. In particular the Defendant avers that the allegations made against Mr Marco Turnquest claiming that he committed perjury are denied entirely and the Defendant reserves the right to strike the same.
266. Save that it is admitted that at the hearing before Evans J on 23 March 2015 the Defendants counsel did rely on the valid Mortgage granted by the First Plaintiff to the Defendant and on the Plaintiffs' admission of having breached the obligation under the Commitment Letter and the Mortgage, paragraph 616 is denied and the Plaintiffs are required to strictly prove the same.

267. Paragraph 617 is denied and the Plaintiffs are put to strict proof. The Defendant further avers that this paragraph is irrelevant to the Plaintiffs claim and relates primarily to the Summary Judgement Ruling, which has not been set aside.
268. Paragraph 618 is denied and the Plaintiffs are required to strictly prove the same. Further the Defendant avers that the allegations contained therein against the Defendant's counsel are scandalous and vexatious and the Defendant reserves the right to strike out the same. The Defendant avers that the Plaintiffs' counsel duly conceded the summary judgment application before Evans J. at the 23rd March hearing and that the Plaintiffs are bound by this concession. The Defendant admits that it is in voluntary liquidation.
269. Paragraphs 619 – 627 are denied and the Plaintiffs are put to strict proof. The Defendant avers that these paragraphs are embarrassing as they are confused, scandalous and vexatious and the Defendant reserves it right to strike out the same. The Defendant avers that the Plaintiffs are attempting to re-litigate the summary judgment application notwithstanding the fact that their then counsel conceded the same. In the circumstances, this claim is an abuse of process and lacking any legal merit. The Defendant avers that at all times its officers, directors and employees, and its counsel acted appropriately and honestly with the Court and the Plaintiffs and at no time attempted to or did commit perjury, fraud or the tort of conspiracy to defraud a public authority, as alleged or at all. The Defendant further denies that the Plaintiffs are entitled to the relief as claim or any relief at all.

Claim No.12 – Malice of Execution

270. The Defendant makes no admission as to paragraphs 628 - 629 and requires to the Plaintiffs to prove the same.
271. Paragraph 630 is admitted. Further, it is averred that the Plaintiffs' counsel consented to this summary judgment order.
272. Paragraph 631 is denied, save that it is admitted that the Plaintiffs have applied in the Supreme Court to set aside the Summary Judgement Ruling and for leave to appeal. The Defendant has opposed both applications. Further, Evans J. has refused the Plaintiffs application to set aside the summary judgment order.
273. Save the it is admitted that Order 45 Rule 3(2) of the Rules of the Supreme Court do contain the terms as set out at paragraph 632, paragraph 632 is denied and the Plaintiffs are required to strictly prove the same. The Defendant denies that at any time was it obligated to obtain leave of the Court to obtain a Writ of Possession. Further, the Defendant avers that this paragraph is embarrassing as it contain legal submissions and it reserves its right to strike the same out.
274. Paragraphs 633 and 634 are denied and the Plaintiffs are required to strictly prove the same.

275. Save that it is admitted that a Writ of Possession was issued by the Defendant for possession of the Property, paragraph 635 is denied and the Plaintiffs are required to strictly prove the same.
276. Paragraphs 636 – 637 are denied and the Plaintiffs are put to strict proof. The Defendant avers that at all times it acted reasonably and pursuant to a lawful possession order, as issued by Evans J. at the 23rd March hearing, when it issued the Writ of Possession and at no time was it obligated to obtain leave of the Court prior to issuing the same. Further, the Defendant avers that these paragraphs are embarrassing as they are scandalous and confusing and as such it reserves its right to strike out the same.
277. Paragraphs 638 and 643 are denied and the Plaintiffs are required to strictly prove the same. The Defendant denies that at any time it acted maliciously towards the Plaintiffs as alleged or at all. The Defendant avers that it was lawfully entitled to obtain possession of the Property under the terms of the summary Judgment Order, which the Plaintiffs' counsel consented to. Moreover, the Defendant avers that the Deputy Provost Marshal at all times acted professionally toward the Plaintiffs.
278. Paragraphs 644 – 658 are denied and the Plaintiffs are put to strict proof. The Defendant denies that it caused the Plaintiffs any loss and damage as alleged or at all. Further, to the extent the Defendant caused the Plaintiffs any loss and damages, they failed to mitigate the same.
279. Save as herein before expressly admitted, the Defendant deny each and every allegation of fact contained in paragraphs 1 through 658 of the Plaintiffs' Statement of Claim as if the same were set forth herein and specifically traversed.

Dated the 28th day of November, A.D. 2017 and Amended on 14th December, A.D. 2018


LENNOX PATON

Chambers

No.3 Bayside Executive Park
West Bay Street and Blake Road
Nassau, New Providence
The Bahamas

Attorneys for the Defendant by Counterclaim

**COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW & EQUITY SIDE**

BETWEEN

JUNKANOO ESTATES LTD

First Plaintiff

AND

YURI STAROSTENKO

Second Plaintiff

AND

IRINA TSAREVA-STAROSTENKO

Third Plaintiff

AND

UBS (BAHAMAS) LTD. (In Voluntary Liquidation)

Defendant

**(Actions and Counterclaim consolidated by Order of
the Judge dated 4 November 2015)**

AMENDED DEFENCE

2015/CLE/gen/No.01451

2014/CLE/gen/No.01620

Lennox Paton
LENNOX PATON

Chambers

**No.3 Bayside Executive Park
West Bay Street and Blake Road
Nassau, New Providence
The Bahamas**

Attorneys for the Defendant