

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW AND EQUITY SIDE
BETWEEN

2015/CLE/gen/No.01451
2014/CLE/gen/No.01620

JUNKANOO ESTATES LTD

First Plaintiff

YURI STAROSTENKO

Second Plaintiff

AND

IRINA STAROSTENKO

Third Plaintiff

AND

UBS (Bahamas) LTD (In Voluntary Liquidation)

Defendant

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

STATEMENT OF CLAIM

OVERVIEW

1. This is a new Statement of Claim issued pursuant to the Order of the Court which reads that ***"1. Action CLE/gen/No.01451 of 2015 be consolidated with the Counterclaim in Action CLE/gen/No.01620 of 2014 and that the said actions do proceed as one action." "3. The Plaintiffs in the consolidated action serve a new Statement of Claim."***
2. Action CLE/gen/No.01451 of 2015 is a genuine cross-claim to Action CLE/gen/No.01620 of 2014, they both stem from the same set of facts and the same transactions such as the same Investment Agreement and its parts such as the Commitment to Finance and the Indenture of Mortgage etc., and each of these Actions is entirely subservient to the context of the other.
3. The Plaintiffs used a single claim form to start all claims which are conveniently disposed of in the same proceedings, as follows:
 - 3.1. Claim No. 1 for breach of agreement;
 - 3.2. Claim No. 2 for specific performance for breach of statutory duty;
 - 3.3. Claim No. 3 for willful misfeasance;
 - 3.4. Claim No. 4 for repudiatory breach of agreement;
 - 3.5. Claim No. 5 for conspiracy to injure by unlawful means;
 - 3.6. Claim No. 6 for giving fraudulent preference and fraudulent trading;
 - 3.7. Claim No. 7 for breach of statute pursuant to the Fraudulent Dispositions Act;
 - 3.8. Claim No. 8 for conspiracy to defraud;
 - 3.9. Claim No. 9 for fraudulent misrepresentation;
 - 3.10. Claim No. 10 for the malicious institution of civil proceedings;
 - 3.11. Claim No. 11 for conspiracy to defraud public authority; and
 - 3.12. Claim No. 12 for malicious execution.

4. This Statement of Claim is issued with a genuine intention of pursuing the aforesaid claims for the following purposes of:
 - 4.1. recovering unliquidated damages against UBS in respect of losses, wasted expenditures, injuries, costs etc;
 - 4.2. giving an opportunity to UBS to repay the aforesaid heads of damages, wasted expenditures, injuries, costs etc;
 - 4.3. obtaining particulars of broker's contract notes and material proof of funds passing through UBS' hands under trading contracts of the Plaintiffs at the New York Stock Exchange (NYSE);
 - 4.4. obtaining documents under a specific disclosure order;
 - 4.5. enabling court orders for the purposes of investigations by prosecution and regulatory authorities;
 - 4.6. being used in The Bahamas, in the United States, in United Kingdom and elsewhere;
 - 4.7. commencing further proceedings, including criminal, class and group litigation proceedings;
 - 4.8. reporting attempts to mislead the civil court and the other parties, competing and conflicting public interests, the illegal or unlawful conduct to the relevant prosecuting authorities;
 - 4.9. recovering the penalty for perjury;
 - 4.10. promoting the public interest in the prosecution of crime that is unrelated to the conduct of the relevant civil proceedings that:
 - 4.10.1. a civil court should have all relevant information before it;
 - 4.10.2. consideration should be given to punishing persons who mislead a civil court;
 - 4.11. obtaining guidance:
 - 4.11.1. from the Court in cases such as the present to persons engaged in financial services activities; and
 - 4.11.2. from judicial decisions and legal writings on relevant aspects of the criminal law referred to perjuries in sections 426, 432 and 433 of the Penal Code of The Bahamas.
 - 4.12. The Plaintiffs expect to recover money in the sum of USD\$6 Million or about in respect of claims for detriment, losses and liabilities or potential expense capable of assessment in money terms, suffered by the Plaintiffs resulting from the Defendant's wrongs or defaults for which the Defendant is answerable.
5. The Court may grant any remedy to which the Plaintiffs are entitled even if that remedy is not specified in this Statement of Claim.
6. The Plaintiffs will rely on matters in support of their claims, which include the following:
 - 6.1. allegations of fraud;

- 6.2. allegations in conspiracy to defraud;
 - 6.3. allegations of fraudulent preference;
 - 6.4. allegations in conspiracy to injure by unlawful means;
 - 6.5. the facts of potential illegality;
 - 6.6. details of fraudulent misrepresentations;
 - 6.7. details of all breaches of trust;
 - 6.8. notices of knowledge of a fact;
 - 6.9. details of wilful defaults;
 - 6.10. details of perjuries; and
 - 6.11. facts relating to occurrence of losses or damages.
7. Notwithstanding the seriousness of the allegations made by the Plaintiffs against the Defendant in Action CLE/gen/No.01451 of 2015 endorsed on a Writ, which was served on the Defendant on 20 October 2015, and put forward by the Plaintiffs in the course of the proceedings in Action CLE/gen/No.01620 of 2014 during 2015-2017, the Defendant made no attempt to contact the Plaintiffs and dispute their claims before filing this Statement of Claim.
 8. The Defendant entered an appearance and delivered a defence, which was a mere denial and unfounded on the facts, deserving of an application for striking out not pursued by the Plaintiffs only because of the consolidating order.
 9. The appearance had been entered and the defence had been delivered by the Defendant solely for the purposes of delay, which is clear from the words of the defence alone, and further confirmed by the facts that:
 - 9.1. the Plaintiffs have undisputed claims in Action CLE/gen/No.01451 of 2015; and
 - 9.2. UBS procrastinated for about two (2) years over signing the consolidating order (copied and enclosed here in Appendix 1).

INTRODUCTION

10. This Statement of Claim:
 - 10.1. (a) principally relates to a loan, banking transactions, guarantees, debt security, dealing in securities, marketplaces' and clearing facilities' regulatory instruments, clearing and settlement of securities, reporting service;
 - 10.2. (b) requires particular expertise in the financial markets; and
 - 10.3. (c) raises issues of general importance to the financial markets;
 - 10.4. (d) is filed for the identification of documents, the issues, values of the claims and the extent of the dispute between the parties in order to ensure that statement of the facts, matters, circumstances and points of law on which the Plaintiffs rely is complete, and in order to avoid that the Defendant is taken by surprise by the particulars of any claims and reliefs sought at trial and interim remedies before the trial of claims;

- 10.5. (e) is a part of statement of the case containing only facts known to all parties to the proceedings and necessary for the purpose of formulating a cause of action, and it will be considered further in that context;
- 10.6. (f) makes clear the general nature of the case of the Plaintiffs, and together with copies of their witness statements, will make the detail of the nature of the case which UBS had to meet, obvious.
- 11. UBS deceived and induced the Plaintiffs into making a disastrous investment to their forbearance, detriment, responsibility, loss or damage as a result of fraudulent misrepresentations, conspiracies, fraudulent trading and illegality on the part of UBS.
- 12. The Plaintiffs had been systematically defrauded through agency and other agreements with UBS and through dishonest assistance of certain UBS officers or agents by means of the fraudulent representations, omissions and conspiracies causing substantial economic and moral losses to Messrs Starostenko, including damages to the childhood of their six (6) then minor children during the four (4) irrecoverable years and irreversible harm such as loss of life of a loved one.

BACKGROUND

- 13. The background to the case on facts alleged herein known to the parties is as follows.
- 14. In the conduct of business with the Plaintiffs, UBS was thoroughly dishonest from the outset, since July 2012, when UBS offered to Messrs Starostenko a financial product through issuance of a brochure called "introducing the UBS Real Estate Collateralized Loan" (or RECL), and more particularly:
 - 14.1. in offering an opportunity for an investment business and a loan for the purposes of that investment business for five (5) years at the time, when UBS was meditating an application for voluntary winding up in The Bahamas, which was pre-announced in the Curacao Chronicles in November 2012, announced in the Nassau Guardian and the Tribune in March 2014 and took place in March 2015;
 - 14.2. in offering services of UBS AG in an investment business in The Bahamas well knowing that they could not provide these financial services of UBS AG at their branch's facility on East Street in Nassau.
- 15. The Plaintiffs had been induced to enter into the Investment Agreement contained, inter alia, the Commitment to Finance for a loan mainly for purposes of the investment business for the term of five (5) years.
- 16. The loan was secured by the real estate property belonging to the Company worth twice as much as the loan itself and situated in one of the most prestigious communities in The Bahamas.
- 17. Originally, the general effect of the offered arrangement was to impose
 - 17.1. upon UBS:

- 17.1.1. the obligation of opening a credit in favour of the Company to the extent of USD\$1,400,000, to be secured by the property belonging to the Company worth of B\$2,800,000;
 - 17.1.2. the obligations regarding the investment business in the exchange trading of U.S. Securities; and
 - 17.2. upon the Plaintiffs:
 - 17.2.1. the obligations regarding the interest and repayment of loan for purposes of the investment business with UBS; and
 - 17.2.2. the obligation for minimum amount of trading capital, which on facts of supervening events was:
 - 17.2.2.1. an additional security for the loan, a makeweight to real estate security, obtained by UBS by means of fraudulent misrepresentation, omissions, non-disclosure;
 - 17.2.2.2. a device through which UBS held back more than half of the loan amount, giving themselves fraudulent preference in contravention of statutory provisions conferred by bankruptcy laws; and
 - 17.2.2.3. a disposition made by UBS with an intent to defraud and at undervalue voidable at the instance of the Company thereby prejudiced under Section 4 of the Fraudulent Dispositions Act.
18. Thus, more than 50% of the loan amount was siphoned by UBS on the basis of terms contained in the "Minimum invested assets under management" and the "Purpose" clauses of the Commitment to Finance, which in fact were terms for the additional security in cash for UBS, while the Plaintiffs were defrauded and induced to believe that that money are the trading capital which would be available for purposes of the investment business pursuant the Investment Agreement.
19. UBS failed to perform their obligations imposed under the Investment Agreement, Statute Laws and the applicable regulations of The Bahamas and the U.S.
20. The Plaintiffs claimed damages for the losses sustained by the Company due to the UBS' faults but UBS compensated the Company for only a small part of that losses and wrongfully repudiated the Investment Agreement with the Company four (4) years before expiration of its term for a period of five (5) years.
21. Certain UBS officers or agents had conspired to bring about the collapse of the Plaintiffs by engineering a "default" by the Company, with regard to its borrowings from UBS, and in fact injured the interests of the Plaintiffs by dishonestly forcing them out of the investment business four (4) years before expiration of the Investment Agreement, leaving Messrs Starostenko without funds for their business and for life.
22. UBS, without reasonable and probable cause, instigated legal proceedings where the unsubstantiated allegations against the Plaintiffs were motivated by malice, employing improper practices and equating persecution to intimidating and terrorising.

23. Certain UBS officers or agents agreed to bring about a situation which would or might deceive a public official performing public duties by filing a fraudulent affidavit with and by making false statements at a hearing before the Supreme Court.
24. The Plaintiffs started a fresh legal proceeding for these and other perjuries on the part of UBS and Attorneys for UBS contrary to sections 426, 432 and 433 of the Penal Code in the Supreme Court by filing an application, on 28 June 2017, for permission to make a committal application and by giving a notice to the Attorney General, on 27 October 2017, with a request that the Attorney General consider whether to bring proceedings for contempt of court concern allegations of interference with the course of justice be brought against UBS and Attorneys for UBS.

FACTS AND CHRONOLOGY

25. All the facts and the matters stated herein are known or must have been known to the Defendant and were previously stated by the Plaintiffs in the original action before this Honorable Court, the Court of Appeal of the Commonwealth of The Bahamas and the Judicial Committee of the Privy Council in written forms by way of affidavits, submissions and skeletons and orally during the hearings before these Courts.
26. In 2012, UBS offered a financial products in The Bahamas to retail customers through the issuance of a brochure called "Introducing the UBS Real Estate Collateralized Loan" communicating invitations or inducements to engage in investment activity and owing a fiduciary duty of loyalty and honesty by virtue of UBS' status as an issuer who:
 - 26.1. offers financial products to public; and
 - 26.2. enters or offers to enter an agreement the making or performance of which constitutes activities regulated by statutes.
27. Further, UBS offering financial products to public by publication of certain statements, was a person who occupies a position in which it is expected to safeguard, or not to act against, the financial interests of another person.
28. In July 2012, in the course of business, UBS made deliberate false statements which invited or induced Messrs Starostenko to enter the "Investment Agreement" in order to fund investments which would be carried out exclusively through trading facilities of UBS, UBS AG and UBS Financial Services Inc, as well as through UBS AG's electronic trading platforms with instant execution of trading orders.
29. A real estate mortgage was also a part of transactional arrangements under the Investment Agreement, and the purpose of the mortgage was strictly subordinate to and incidental to the Company's investment business with UBS.
30. In August 2012, in the course of business, UBS in conspiracy to defraud offered a loan for a period of five (5) years to the Plaintiffs for the main purpose an investment business under the Investment Agreement, a part of which was a written offer of UBS called Commitment to Finance and dated 23 August 2012 (or "Commitment to Finance") containing a term that the

50% of the loan amount would be available for exchange trading in U.S. Securities through UBS', UBS AG's and UBS Financial Services Inc's trading facilities, but actually it was an additional security for the loan in cash obtained by fraud, in violation of the provisions of bankruptcy laws and contrary to the provisions of the Fraudulent Dispositions Act, 1991.

31. On or about 28 September 2012 UBS gave a loan to the Company for a total of USD\$1,400,000 as a part of arrangements in the investment business pursuant the Investment Agreement.
32. The finance was secured against the real estate property of the Company valued at B\$2,800,000 at the time of the transaction.
33. At all material times and more particularly from June 2013 to April 2014 UBS carried or purported to carry on the trust services pursuant to both the Investment Agreement and the Statute Law of The Bahamas, the SIR, 2012 and the money on the investment account 32377 were held through UBS on trust for purposes of the investment business.
34. UBS carried out or purported to carry out sales or purchases of securities on behalf of the Company from or about 12 June 2013 to 18 September 2013 pursuant to the Investment Agreement, of which UBS failed to render substantial performance and the Plaintiffs sustained loss, as more particularly described in Claim No. 1 for breach of the Investment Agreement.
35. In the course of business, the Company had made net profit per month of USD\$30,694 in August 2013, while UBS only partially compensated the Company for loss of profits sustained due to UBS' faults in the investment business by way of two (2) compensation payments for a total of USD\$3,110, as evidenced by the relevant reports sent to Messrs Starostenko by email timed at 11:59 AM on 1 August 2013 and email timed at 5:31 PM on 4 September 2013.
36. On 18 September 2013, the Company demanded full compensation for the loss of profits in the amount of USD\$125,000 or about sustained by the Company due to UBS' faults until 18 September 2013 and UBS failed to compensate the Company in full.
37. In the response to that demand, on 19 September 2013, UBS unlawfully and in breach of its own terms and Conditions sent to the Plaintiffs a "margin call" and a "halt of trading", whilst the sum of USD\$589,362 was standing to the Company's credit in the investment account 32377, thereby wrongfully repudiating the Investment Agreement.
38. On 9 October 2013, by email timed to 11:35 and 11:41 AM, the Company proposed to pay in advance the amount of interest for the full term of the loan, i.e. upon 28 September 2017 from money in the sum of USD\$589,362 or about standing to the Company's credit in the investment account 32377; and that UBS failed to effect such payment;
39. In December 2013, Messrs Starostenko filed a complaint with UBS AG, and the latter, being a legal entity which holding 99.999975% of the issued shares in UBS and UBS AG legally appointing UBS to act as an agent on its behalf for purposes of their businesses:

39.1. confirmed their involvement in the principal-agent relationship with UBS as

principal, but

39.2. failed to resolve the complaint.

40. In February 2014, UBS wrote to Messrs Starostenko that they “proceed towards exploring possible resolutions” and confirmed a meeting with Messrs Starostenko on 12 March 2014 to review the position.
41. In the same time, on 28 February 2014, UBS declared, without reasonable and probable cause, the loan in “default” and demanded repayment of the whole outstanding balance along with “breakage penalty” of USD\$140,000 or vacate up possession of the property.
42. On 7 March 2014, UBS announced in the Nassau Guardian and the Tribune that they ***“winding down the banking side of its operations over the next year”*** making itself:
 - 42.1. no longer a going concern; and
 - 42.2. not available to be part of the investment business under the Investment Agreement, which was the root of the relationship between the parties.
43. On 10 March 2014, UBS declared its intention to seek orders for the sale, possession or foreclosure of the property, which was and still is a dwelling house let under a tenancy since 2008.
44. On or about 11 April 2014, UBS, unlawfully:
 - 44.1. entitled itself to the right of set-off which did not exist in law, under statute or in the Investment Agreement;
 - 44.2. having no right neither under common law or statute or agreement, debited the Company’s investment account with the sum of USD\$526,323.49 standing to its credit, which was under statute and agreement a trust property held by UBS on trust; and
 - 44.3. made a wrongful usurpation of that money of the Company under the Investment Agreement, Statute Laws of the Bahamas and in common law three (3) years and five (5) months before expiration of the term of the Investment Agreement.
45. On 3 October 2014, UBS instituted a court proceedings against the Plaintiffs, committing wilful and corrupt perjury contrary to section 433 of the Penal Code of The Bahamas, which reads: ***“Whoever fraudulently brings any action against another person in a false or fictitious name, having no ground for such action, is guilty of a misdemeanour”***, while certain UBS officers or agents were actuated by motives of malice or ill will towards Messrs Starostenko, and a month later, on 5 November, UBS applied for summary judgment.
46. In that common law action No. 01620 UBS (Bahamas) Ltd (In Voluntary Liquidation) (or UBS) sought possession of a residential property at Lyford Cay belonging to Junkanoo Estates Ltd (or Company) and tenanted by Messrs Starostenko since 2008, claiming that a default on a loan given for purposes of an investment business and secured by the property, was caused by the Company’s “failure”:

46.1. firstly, to keep at UBS a sum under management equal to 50% of the loan amount, subject to the Investment Agreement between the parties, which was:

46.1.1. an additional security for the loan, a makeweight to real estate security, obtained by UBS by means of fraudulent misrepresentation, omissions, non-disclosure;

46.1.2. a device through which UBS held back more than half of the loan amount, giving themselves fraudulent preference in contravention of statutory provisions conferred by bankruptcy laws; and

46.1.3. a disposition made by UBS with an intent to defraud and at undervalue voidable at the instance of the Company thereby prejudiced under Section 4 of the Fraudulent Dispositions Act, 1991;

46.2. secondly, to pay periodical interest under an agreement with UBS contained in a Commitment to Finance dated 23 August 2012 (or Commitment to Finance), which in fact was paid by UBS itself debiting to the Company's investment account 32377, as follows:

46.2.1. from 29 September 2012 to 11 June 2013, prejudicing interests of the Company in that it sustained loss, which was wasted expenditure made useless as a result of non-performance by UBS of its contractual obligations under the Investment Agreement, which caused an inactivity on the Company's investment account and a delay in commencement of the investment business for a period of eight (8) months and (15) fifteen days, having paid an excessive amount of USD\$31,721 or so of the interest during that period of delay and inactivity;

46.2.2. from 12 June to 18 September 2013, fairly;

46.2.3. from 19 September 2013 to 11 April 2014, prejudicing interests of the Company in that it sustained loss, which was wasted expenditure made useless as a result of repudiatory breach by UBS of its contractual obligations under the Investment Agreement, which caused an forced inactivity on the Company's investment account for a period of eight (4) months and (22) twenty days, having paid an excessive amount of USD\$16,000 or so of the interest during that period of forced inactivity;

46.3. the interest was not paid since 11 April 2014, when UBS made a wrongful usurpation of that money of the Company under the Investment Agreement, Statute Laws of the Bahamas and in common law three (3) years and five (5) months before expiration of the term of the Investment Agreement.

47. The allegations of UBS were never tested but were decided in a summary judgment proceedings by Evans J being defrauded by a fraudulent affidavit filed with and false statements made on behalf of UBS at a hearing before the Supreme Court.

48. On 23 March 2015, during an oral hearing a judgment was obtained by perjuries on the part of UBS acting in conspiracy to defraud public authority and an unless order was made for the debt claimed and for the possession of a dwelling house let under a tenancy since 2008 in the tenants', Messrs Starostenko, absence who, with good reason, were unable to attend the hearing, while no real attempt was made to present the Plaintiffs' (then Defendants) case at this hearing and the points of their defence were never tested.
49. On 9 April 2015, the Plaintiffs (the then Defendants) filed their application to set aside order of Evans J and, on 20 April 2015, they filed a notice of appeal against that order.
50. On 8 May 2015, at an oral hearing held before Evans J, the set aside application was dismissed on the ground that the Supreme Court was *functus*.
51. The matter was heard in the Court of Appeal and, on 6 June 2016, they dismissed the applications of the Defendants on the ground that the matter had been dealt with and the Court of Appeal was *functus*.
52. On 8 June 2016, the Plaintiffs (then Defendants) had applied for special leave to appeal to Her Majesty in Council from the decisions of the Court of Appeal of the Bahamas.
53. On 24 February 2017, an oral hearing was held before the Judicial Committee of the Privy Council (or Board) and a formal judgment was given in open court.
54. On 3 April 2017, the Board gave their judgment pronounced by Lord Sumption.
55. In the Board's judgment it was held, inter alia, that:
- 55.1. ***"it is important that the basis of the Board's decision should be understood both by the parties and by the courts who may have to deal with further applications;***
 - 55.2. ***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;***
 - 55.3. ***Counsel's concession*** [in reference to authorities such as *National Westminster Bank Plc 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.] ***meant that that*** [This may or may not have been a good point] ***was never decided;*** [square brackets added] and
 - 55.4. ***the Board is satisfied that the Court of Appeal was not purporting to dismiss a substantive appeal. It is tolerably clear that what the Court of Appeal meant was***

that they were functus in relation to the point that they had dealt with on 2 November 2015, namely that they could not make orders on an appeal which was not before them because leave to appeal had been neither sought nor obtained. That remained the position. The Court of Appeal was not of course functus in relation to the substantive appeal from Evans J's possession order, because no such appeal had been heard. Were leave to be sought from Evans J or, in the event of its being refused by him, from the Court of Appeal, neither court would be functus in relation to that application ..."

PARTICULARS OF PARTIES

56. The first Plaintiff (the "party", the "Company", the "Mortgagor", the "landlord", the "Representee", the "principal") is an international business company incorporated under the laws of the Commonwealth of The Bahamas.
57. The second and third Plaintiffs (the "parties", "Messrs Starostenko", "Mr and Mrs Starostenko", the "tenants", the "guarantors", the "Representees") are officers of the Company.
58. Messrs Starostenko are private persons, individuals, sole traders, members of the investing public, retail consumers within the meaning of the SIA 2011 and the SIR 2012.
59. Messrs Starostenko were at all material times subjects to the protection which they require as retail clients, dependent in practice on UBS, UBS AG, UBS Financial Services Inc for information about the financial products, against any abuses arising from financial crime, market misconduct and other unfair and improper practices for the purposes of Parts XIII, XV and XVI of the SIA 2012.
60. Messrs Starostenko, since 2008 and at all material times, are tenants and occupiers (along with their six (6) children, whose ages range from seven (7) to eighteen (18) years old) of the property, which is a dwelling house called "Jazz House" in Lyford Cay ("the Property") within the meaning of the Conveyancing and Law of Property Act under a tenancy, which granted a term of years for their joint lives and the life of the survivor and the exclusive possession, management, and control, which enabled them to exclude strangers, and the fine for that grant was their moneys to be paid for or invested in the Property, or any other benefit in the nature of a fine.
61. The Property, by which a loan of USD\$1,400,000 was secured, is a developed land owned by the Company valued at the Fair Market Value of B\$2,800,000 as of August 2012 and revalued at the Fair Market Value of B\$3,355,000 as of 29 April 2016.
62. The value of the Property has risen very significantly and continues to rise as a result of the improvements and developments within Lyford Cay community.
63. The Defendant (the "party", "UBS", the "Mortgagee", the "Trustee", the "agent for reward", the "agent") was at all material times:
 - 63.1. a company registered under the Companies Act, 1992, (as amended), carried on business as a bank;

- 63.2. a firm authorised or purportedly authorised to deal in securities;
 - 63.3. an agent legally appointed by UBS AG for purposes of all kind of their businesses;
 - 63.4. an agent for reward of the Company in the investment business pursuant the Investment Agreement;
 - 63.5. a Trustee for the Company pursuant to the provisions conferred by the Security Industry Regulations, 2012, the Statute law of the Bahamas;
 - 63.6. a wholly-owned subsidiary of UBS AG on the facts that UBS AG was the ultimate parent of UBS as to 99,99975% of the ownership.
64. The acts alleged were committed by people who represented UBS' directing mind and will, even though the contracts were with UBS, acting in a common design to make fraudulent misrepresentations to and conspiring against the Plaintiffs.
65. At all material times and more particularly from September 2012 UBS carried or purported to carry on the securities business of dealing in securities as the agent of UBS AG and the agent for reward of the Company at UBS House, East Bay Street, Nassau, Bahamas and abroad at Bahnhofstrasse 45, 8001 Zürich, Switzerland and at 1000 Harbor Blvd, Weehawken, NJ 07086, USA, which are the regulated activities in the Bahamas within the meaning of the Securities Industry Act, 2011 (SIA 2011) and the Securities Industry Regulations, 2012 (SIR 2012), and which constitute an integral part of any agreement between UBS and their principals, including the Company.
66. UBS was authorised or purported to be authorised to carry on these regulated activities by reason of an undisclosed registration with the Securities Commission of the Bahamas (the "Securities Commission") for the purposes of Part VI of the SIR 2012, and UBS had to ensure orderly, fair and equitable dealings in securities for the purposes of Section 12 of the SIA 2011.
67. In carrying on the aforesaid UBS was at all material times subject to the licensing, overseeing and other regulatory functions of the Securities Commission of the Bahamas conferred or imposed on it by securities laws or Parliament.
68. In particular, UBS owed and still owes a legal duty in the regulated relationship of dealing in securities with the first Plaintiff for the purposes of Section 78 of the SIR 2012 "Priority of client orders", which reads: ***"(1) A registered firm shall give priority to orders for the accounts of clients of the registered firm over all other orders for the same security at the same price. (2) In this regulation "orders for the accounts of clients of the registered firm" shall not include an order for an account in which the registered firm or an officer, director or employee of the firm has an interest, direct or indirect, other than an interest in a commission or fee charged."***
69. UBS owed and still owes a legal duty in the regulated relationship of dealing in securities with the Company for the purposes of Section 81 "Fair allocation of investment opportunities", which reads: ***"A registered firm must establish and maintain policies and procedures to ensure fairness in the allocation of investment opportunities among its clients."***

70. UBS went in voluntary liquidation in 2015 making itself unable to fulfill, in any capacity, its contractual obligations two (2) years and seven (7) months before expiration of the term of the Investment Agreement.
71. UBS, at all material times, was the agent of UBS AG and UBS Financial Services Inc in respect of the business of dealing in U.S. Securities listed on the major U.S. securities market, the New York Stock Exchange (NYSE) on and subject to their disclosures which formed contracts between UBS and their clients, including the Company.
72. A special feature of UBS' involvement in relationship with the Plaintiffs was that financial services for purposes of the investment business will be provided by UBS in accordance with a Disclosure of UBS Financial Services Inc called "important account related information" on the basis that:
- 72.1. UBS and UBS Financial Services Inc both are wholly-owned subsidiaries of UBS AG giving "access to products and services offered by the UBS Group as well as by selected third parties worldwide through our open architecture approach"; and
- 72.2. Head of UBS' Trading Desk, Mr Kevin L Price, according to the U.S. FINRA BrokerCheck Report KEVIN LEE PRICE CRD# 2159039 Report# 66539-83561, data current as of Friday, September 04, 2015, which reads, inter alia:
- 72.2.1. The broker previously was registered with the following firms:
- 72.2.1.1. ***"01/2010 - 10/2014 UBS FINANCIAL SERVICES INC. CRD# 8174 WEEHAWKEN, NJ;***
- 72.2.1.2. ***12/1994 - 08/1998 BERNARD L. MADOFF CRD# 2625 NEW YORK, NY"***; and
- 72.2.2. an individual broker's employment history as reported by the individual broker on the most recently filed Form U4:
- 72.2.2.1. ***"01/2010 - Present UBS FINANCIAL SERVICES INC. WEEHAWKEN, NJ***
- 72.2.2.2. ***12/2002 - Present UBS BAHAMAS LTD. NASSAU, BAHAMAS"***

SERVICE OF CLAIM

73. This New Statement of Claim to be served on the Defendant and non-parties, including those who are likely to be a party to proceedings:

- 73.1. *Attorneys for the Defendant* - Mr Marco Turnquest and Mrs Chizelle Cargill, Lennox Paton Chambers, 3 Bayside Executive Park, West Bay Street & Blake Road, Nassau, The Bahamas;
- 73.2. *Joint voluntary liquidator of UBS* - Mr John K F Delaney QC, Delaney Partners, Lyford Manor, Lyford Cay, PO Box CB-13007, New Providence, The Bahamas;
- 73.3. *Joint voluntary liquidator of UBS* - Mr Gowon N G Bowe, Chartered Accountant, PricewaterhouseCoopers Advisory (Bahamas) Limited, 2 Bayside Executive Park, West Bay Street & Blake Road, Nassau, The Bahamas;
- 73.4. *Parent and Principal of UBS* - Mr Sergio P Ermotti, Group CEO, UBS AG, Bahnhofstrasse 45, 8001 Zürich, Postfach 8098, Switzerland;
- 73.5. *Principal of UBS* - Mr Jason Richard Chandler CRD# 2382465, CEO, UBS Financial Services Inc, 1000 & 1200 Lincoln Harbor Boulevard, Weehawken, NJ 07086, USA;
- 73.6. *Principal of UBS* - Mr Robert Brooks Karofsky CRD# 1995080, President/CEO, UBS Securities LLC, 1285 Avenue of the Americas New York, NY 10019, USA;
- 73.7. *Former Head UBS Trade Desk* - Mr Kevin Lee Price CRD# 2159039, Gonet Bank & Trust Limited, Offices at Old Fort Bay, West Bay Street, Nassau, The Bahamas;
- 73.8. *Process Server* - Mr Patrick Wright, self-employed freelancer, PO Box N4355, Nassau, The Bahamas.

NOTICES

74. NOTE: -

- 74.1. If UBS wishes to defend all or part of the claim herein, they must file and serve a defence, accompanied by a form for defending the claim, within fourteen (14) days after the date of service of this New Statement of Claim, unless such time is extended by the Court.
- 74.2. The Plaintiffs' service addresses for receiving documents:
email: irastaro@gmail.com
mail: PO Box N7776-440, New Providence, The Bahamas
hand: 5 Clifton Bay Drive, Lyford Cay, New Providence, The Bahamas

75. FURTHER NOTE: -

- 75.1. If defence (or an admission and a defence if UBS admits a part of the claims) is not filed and served a defence or if a defence is a mere denial or does not satisfy the requirements set forth in the Rules of the Supreme Court of The Bahamas for the form for defending the claim, the Plaintiffs may:
 - 75.1.1. declare that the Plaintiffs' claims against UBS for unliquidated damages
 - 75.1.1.1. are undisputed by UBS; or
 - 75.1.1.2. are not disputed in good faith by UBS; or
 - 75.1.1.3. are not genuinely disputed by UBS on some substantial ground; and, after the expiration of the period fixed by or under the Rules of the Supreme Court for service of the defence,

- 75.1.1.4. enter interlocutory judgment against UBS for damages to be assessed and costs, and proceed with the action against the other defendants, if any.

CLAIM NO.1 CLAIM FOR BREACH OF AGREEMENT

BRIEF DETAILS OF CLAIM

76. The Company claims against UBS unliquidated damages (and interest thereon) for losses incurred by the Company by reason of UBS' defaults.
77. Claim No. 1 against UBS is for breach of contract, promise or breach of trust and for non-performance by UBS of its contractual obligations under an agreement, based on compensation of pecuniary loss of profits, resulting from UBS' breach of this agreement, according to which UBS acted as the agent for reward of the Company and carried out transactions of sale or purchase of securities on behalf of the Company at the New York Stock Exchange (NYSE).
78. Cumulatively, the Company claims against UBS special damages (and interest thereon) for the expenditure which has been thrown away or wasted by reason of UBS' default.
79. Cumulatively, the Company claims against UBS for money to be assessed by the Court, being interest accrued as set out in the Particulars of Claim:
 - 79.1. on damages from 18 September 2013 to 31 October 2017; and
 - 79.2. on wasted expenditure from June 2013 to 2013 to October 2017.
80. The damages were incurred by reason of UBS' breaches of its statutory and contractual obligations in relation to the funds invested by the Company under the Investment Agreement made between the Company and UBS, and more particularly of the contractual conditions attached to the investment business services which UBS agreed to provide to the Company as set out in the Particulars of Claim herein.
81. Sufficient allegations have been made and persuasive evidence would be presented, including verifiable data, namely, trade records and account statements, to enable the Court to make a fair and reasonable finding that damages were actually suffered and to reasonably ascertain actual lost profits.
82. In instant case, establishing loss of profits and the expenditure which has been thrown away or wasted is fairly straightforward and involves merely showing the profit the Company would have made in the investment business on trading in securities if it had been duly performed

by UBS, based on the records of the trading orders of the Company executed or purportedly executed by UBS and other transaction documents.

83. In order to obtain damages of this kind, the Company merely has to show a breach of the Investment Agreement on the part of UBS.

PARTICULARS OF INVESTMENT AGREEMENT

84. provisions in the Investment Agreement, which a binding and enforceable contract concluded between the Plaintiffs and UBS on the terms contained in the Investment Agreement, which govern the legal, credit and trading relationship between the parties in accordance with the financial industry standards and accepted market practices, regulatory instruments of the NYSE and statutory duties imposed on UBS, UBS AG and UBS Financial Services Inc under the law in course and the security industry regulations.
85. In the course of the business, on or about 10 August 2012, UBS entered into the Investment Agreement with the Company by which UBS was appointed and instructed by the Company to act as an agent for reward and carry out transactions of sale or purchase of U.S. Securities listed on the major U.S. securities market, the New York Stock Exchange (NYSE) on behalf of the Company, and UBS agreed.
86. The Company agreed pursuant to the Investment Agreement that it would buy then sell U.S. Securities in NYSE.
87. UBS agreed pursuant to the Investment Agreement that the transactions would be made via UBS AG's electronic trading platforms and the software, which would provide access to the bid/offer pricing data on the NYSE order book.
88. Under the Investment Agreement, the Company would make full payment of U.S. Securities for the execution of the purchase contract at a price received through the auction that takes place during trading hours of the NYSE paid by the selling participant, the process having had an equivalent debit on the investment account number 32377 at UBS. In case of a sale contract full payment to securities would met through an auction process at a price received through auction that takes place during trading hours of the NYSE paid by buying participant, the process having an equivalent credit on the investment account number 32377 at UBS.

89. UBS undertook pursuant the Investment Agreement to act as the agent for reward of the Company and carry out transactions of sale or purchase of U.S. Securities on behalf of the Company, and the Company agreed to the following terms and conditions that:

- 89.1. UBS must strictly execute the trading orders of the Company and take all reasonable steps and care to obtain the best possible result (or “best execution”) on behalf of the Company either when executing trading orders or receiving and transmitting orders for execution;
- 89.2. UBS must protect the Company’s economic interest in relation to pricing and other aspects of the transactions which would be affected by how UBS executed trading orders of the Company;
- 89.3. UBS must put in place effective execution arrangements and internal execution policy;
- 89.4. UBS must comply with any applicable rules and regulations that apply to the reception and transmission of trading orders of the Company as well as to the execution of such orders;
- 89.5. UBS must carry out transactions of any sale or purchase of securities on behalf of the Company in a lawful manner delivering fully-paid shares after the purchases, where there had been filed contract;
- 89.6. UBS must ensure:
 - 89.6.1. that any transaction is of the usual and normal type, and
 - 89.6.2. that all the conditions necessary for the legality of those transactions exist;

- 89.7. UBS must deliver to the Company a broker's contract note of each transaction of any sale or purchase of securities on its behalf in order to ensure the legality of those transactions;
- 89.8. UBS must exclude improper or harmful behavior of individuals associated with and shared premises with them; and
- 89.9. UBS must resolve complaints.
90. Under the Investment Agreement:
- 90.1. UBS was not appointed by the Plaintiffs to manage investments on behalf of the Company referred to below. Therefore, the Defendant had no discretionary authority over the Company's investment account 32377 for the purposes of Section 70 of the SIR 2012 called "Discretionary trading" which reads: ***"(2) A registrant that is registered to carry on the regulated activity of managing securities may only execute investment discretion over a client's account if - (a) the registered firm has entered into a written agreement with the client granting such authority;"***
- 90.2. UBS had no discretionary authority over the Company's investment account 32377 at UBS for the purposes of Section 70 of the SIR 2012 called "Discretionary trading" in deciding when to trade or at what price in that UBS was not appointed by the Plaintiffs to manage investments on behalf of the Company which was expressly claimed and the negative answer was cross-checked in the Account Application for Entities (or "Account Application");
- 90.3. UBS had no discretion as to:
- 90.3.1. how to perform the Investment Agreement; and
- 90.3.2. how to fulfill their statutory duties pursuant the Statute Laws of The Bahamas, the SIA, 2011 and the SIR, 2012; and

90.4. UBS had no choice between modes of carrying out their obligations under the Investment Agreement and the statutory duties.

PARTICULARS OF PRIME BROKERAGE SERVICES

91. In the course of business UBS was engaged by the Company in the provision of UBS AG's and UBS Financial Services Inc's prime brokerage services, which is the generic name for a package of services offered by major investment banks such as UBS AG to their clients which may need the ability to borrow securities and cash in order to be able to invest on a netted basis and achieve an absolute return.
92. Under the Investment Agreement, the role served by this prime brokerage was that of facilitating large, active trading operations such as were agreed upon with the Company, and UBS being the agent of UBS AG and UBS Financial Services Inc was a sort of central agent, facilitating and coordinating the extensive trading operations of the Company in U.S. Securities.
93. In particular, the services in question included the execution, clearing and settlement of securities trades, the reporting services, more particularly described in Claim No. 2 herein for specific performance for breach of statutory duty under the Statute Laws of The Bahamas.

EVIDENCE OF INVESTMENT AGREEMENT

94. The Investment Agreement which forms the basis of this claim was and is a client agreement and a complete discretion as to how to perform, it is valid and enforceable and the Plaintiffs will rely on it at trial for its full meaning, terms, conditions and effect.
95. The claim is based on written documents constituting and applying to the Investment Agreement, pre-contract representations in writing set out in Claim No. 8 herein for conspiracy to defraud, and in particular:

95.1. UBS' letter to the Plaintiffs dated 23 August 2012 called Commitment to Finance (or "Commitment to Finance"), which formed a contract with the Company and applies to this Investment Agreement in respect of:

- 95.1.1. the nature of the relationship in that the Investment Agreement shall constitute or imply agency in the investment business and fiduciary relationship between the parties cumulatively to the contractual relationship expressly provided for in the Commitment to Finance such as those in respect of:
- 95.1.1.1. the trading capital amount pursuant clause "Minimum invested assets under management", which reads: ***"The higher of USD\$500,000 (net of any Lombard financing) or 50% of the Facility Amount"*** (or USD\$700,000); and
- 95.1.1.2. the term of the Investment Agreement for a period of 5 years pursuant "Term" clause, which reads: ***"The Term of the facility shall be 5 years 0 months"*** (or 28 September 2017);
- 95.2. The Account Application for Entities (or "Account Application") constituting the agreement to take positions in Derivative products and in U.S. Securities was made in writing and signed on behalf of the Company on 18 July 2012 and by UBS on 10 August 2012.
- 95.3. The Clauses and Statements and Policies relating to investments, Investment Services, Fund Master Agreement, Additional Risk Information of the Terms and Conditions of UBS (Bahamas) Ltd. (or "Terms and Conditions") which formed a contract between UBS and their clients, including the Company, and apply to this Investment Agreement.
- 95.4. The "Liability and Use of Agents" Section of the Terms and Conditions which apply to the Agreement and reads: ***"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."***
- 95.5. The "Depreciation in the value of your portfolio" Section of the "Margin Call - Close Out Process" clause of the Terms and Conditions providing the condition

precedent regarding the "margin call", which formed a contract between UBS and their clients, including the Company, apply to this Investment Agreement and reads: ***"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."***

95.6. The "Termination" clause of the Terms and Conditions, which formed a contract between UBS and their clients, including the Company, apply to this Investment Agreement and reads: ***"Either party shall have the right to terminate the Collateral Loan Agreement at any time with immediate effect. Upon termination, overdrafts shall become due for immediate repayment and fixed advances upon the expiration of the agreed term."*** (or 28 September 2017).

95.7. UBS AG's disclosure "Information on the Order Execution Policy of UBS AG Switzerland" which formed a contract between UBS AG and their clients, including UBS and the Company, applies to this Investment Agreement and reads:

95.7.1. in the "Purpose" clause: ***"UBS AG Switzerland (UBS) will take all reasonable steps to obtain the best possible result (or "best execution") on behalf of its Clients either when executing client Orders or receiving and transmitting Orders for execution. To this end, UBS has put in place effective execution arrangements and an internal order execution policy."***; and

95.7.2. in the "Executing Orders "on a Client's behalf" clause: ***"UBS will be executing Orders "on a Client's behalf" where the Client legitimately relies on UBS to protect his or her interests in relation to the pricing or other aspects of the transaction that may be affected by how UBS executes the Order. For example, this will be the case when UBS: executes an Order by dealing as agent;"***.

- 95.8. UBS AG's "Terms and Conditions for Investment Business (Investment Bank)" which formed a contract between UBS AG and their clients, including UBS and the Company, applies to this Investment Agreement and reads in the "Guarantee" clause: ***"UBS AG has issued a guarantee in favour of each counterparty of UBS Limited by which it guarantees to each such counterparty the full payment of each and every obligation and liability which UBS Limited may have to such counterparty, upon and subject to the terms of the guarantee. A copy of the provisions of this guarantee is set out in the Schedule to these Terms."***
- 95.9. UBS Financial Services Inc's disclosure "Important account related information" which formed a contract between UBS Financial services Inc and their clients, including UBS and the Company, applies to this Investment Agreement and reads:
- 95.9.1. in "Highlights" Section: ***"As always, UBS will continue its best execution obligations along with regular and rigorous reviews of the firm's execution quality to ensure the best execution for you.";***
- 95.9.2. In "The execution process" Section:
- 95.9.2.1. ***"1. Execution speed is particularly important in volatile markets. The impact of volatile markets on order execution is discussed in Section II. The firm seeks to provide customer orders with the fastest execution reasonably possible under the existing market conditions.";*** and
- 95.9.2.2. ***"2. Price and size improvement. In equity markets in the United States and many other countries, firm quotations for stocks are published on a regular and continuous basis. The quotations consist of the prices and quantities at which market participants are willing to buy (bid) and sell (offer) stocks. The National Best Bid or Offer (NBBO) is the highest published bid and the lowest published offer for the quoted size (generally under 1,000 shares). UBS Financial Services Inc. seeks price and size improvement for***

its customers' orders by routing orders to execution venues that may execute trades at prices or sizes better than the NBBO."

95.10. The Fee Schedule UBS (Bahamas) Ltd. (or "Fee Schedule") by which UBS confirmed the provision of the "all-in-fee" time based transactions fee at flat rate of 0.4% of traded volume for a quarter or so, which formed a contract between UBS and their clients, including the Company, and applies to the Investment Agreement.

95.11. The U.S. legislative framework:

95.11.1. SEC Rule 605 (Formerly Rule 11Ac1-5) SEC Rule 11Ac1-5 Redesignated as Rule 605 of Reg NMS: On June 9, 2005, the SEC adopted Regulation NMS. Regulation NMS established new substantive rules designed to modernize and strengthen the regulatory structure of the U.S. equities markets. Regulation NMS, among other things, renumbers certain SEC rules, including SEC Rule 11Ac1-5. New SEC Rule 605 (formerly 11Ac1-5) requires FINRA to make available certain order execution information, facilitating the uniform public disclosure of order execution information by all market centers.

95.11.2. SEC Rule 605 (Best Execution) analysis
Report results High Speed Execution

1. Schwab – 0.12 seconds

2. TD Ameritrade – 0.20 seconds

3. Wells Fargo – 0.21 seconds

Percentage of Trades Price Improved

1. Wells Fargo – 88% of trades price improved

2. Schwab – 84% of trades price improved

3. E-trade – 79% of trades price improved

Amount of Price Improvement

1. Interactive Brokers – \$0.0144 average price improvement

2. Wells Fargo – \$0.0049 average price improvement

3. Scottrade – \$0.0044 average price improvement

Conclusion

The difference between the best and worst execution are only a fraction of a second

95.11.3. The U.S. FINRA Best Execution Rules reads, inter alia:

"5310. Best Execution and Interpositioning (a)(1) In any transaction for or with a customer or a customer of another broker-dealer, a member and persons associated with a member shall use reasonable diligence to ascertain the best market for the subject security and buy or sell in such market so that the resultant price to the customer is as favorable as possible under prevailing market conditions. Among the factors that will be considered in determining whether a member has used "reasonable diligence" are:

(A) the character of the market for the security (e.g., price, volatility, relative liquidity, and pressure on available communications);

(B) the size and type of transaction;

(C) the number of markets checked;

(D) accessibility of the quotation; and

(E) the terms and conditions of the order which result in the transaction, as communicated to the member and persons associated with the member.

(2) In any transaction for or with a customer or a customer of another broker-dealer, no member or person associated with a member shall interject a third party between the member and the best market for the subject security in a manner inconsistent with paragraph (a)(1) of this Rule.

(b) When a member cannot execute directly with a market but must

employ a broker's broker or some other means in order to ensure an execution advantageous to the customer, the burden of showing the acceptable circumstances for doing so is on the member.

(c) Failure to maintain or adequately staff an over-the-counter order room or other department assigned to execute customers' orders cannot be considered justification for executing away from the best available market; nor can channeling orders through a third party as described above as reciprocation for service or business operate to relieve a member of its obligations under this Rule.

(d) A member through which an order is channeled and that knowingly is a party to an arrangement whereby the initiating member has not fulfilled its obligations under this Rule, will also be deemed to have violated this Rule.

(e) The obligations described in paragraphs (a) through (d) above exist not only where the member acts as agent for the account of its customer but also where transactions are executed as principal. Such obligations are distinct from the reasonableness of commission rates, markups or markdowns, which are governed by Rule 2121 and its Supplementary Material.

.09 Regular and Rigorous Review of Execution Quality.

(a) No member can transfer to another person its obligation to provide best execution to its customers' orders. A member that routes customer orders to other broker-dealers for execution on an automated, non-discretionary basis, as well as a member that internalizes customer order flow, must have procedures in place to ensure the member periodically conducts regular and rigorous reviews of the quality of the executions of its customers' orders if it does not conduct an order-by-order review. The review must be conducted on a security-by-security, type-of-order basis (e.g., limit order, market order, and market on open

order). At a minimum, a member must conduct such reviews on a quarterly basis; however, members should consider, based on the firm's business, whether more frequent reviews are needed.

(b) In conducting its regular and rigorous review, a member must determine whether any material differences in execution quality exist among the markets trading the security and, if so, modify the member's routing arrangements or justify why it is not modifying its routing arrangements. To assure that order flow is directed to markets providing the most beneficial terms for their customers' orders, the member must compare, among other things, the quality of the executions the member is obtaining via current order routing and execution arrangements (including the internalization of order flow) to the quality of the executions that the member could obtain from competing markets. In reviewing and comparing the execution quality of its current order routing and execution arrangements to the execution quality of other markets, a member should consider the following factors:

- (1) price improvement opportunities (i.e., the difference between the execution price and the best quotes prevailing at the time the order is received by the market);*
- (2) differences in price disimprovement (i.e., situations in which a customer receives a worse price at execution than the best quotes prevailing at the time the order is received by the market);*
- (3) the likelihood of execution of limit orders;*
- (4) the speed of execution;*
- (5) the size of execution;*
- (6) transaction costs;*
- (7) customer needs and expectations; and*

(8) the existence of internalization or payment for order flow arrangements.

(c) A member that routes its order flow to another member that has agreed to handle that order flow as agent for the customer (e.g., a clearing firm or other executing broker-dealer) can rely on that member's regular and rigorous review as long as the statistical results and rationale of the review are fully disclosed to the member and the member periodically reviews how the review is conducted, as well as the results of the review."

96. Further, this claim is based on oral agreements constituting and applying to the Investment Agreement, oral pre-contract representations by UBS set out in Claim No. 8 herein for conspiracy to defraud, on which the Plaintiffs relied as on contractual words used and stated by UBS, and, in particular, an intention regarding electronic trading which was expressed orally by an officer or agent of UBS at the first meeting on 10 July 2012, who stated that "the electronic platform is on the way" offering the Plaintiffs an opportunity for their trading orders to be executed instantaneously upon receipt in accordance to current industry standards.
97. It is the case of the Plaintiffs that all of UBS' agents, with whom Messrs Starostenko met, recognized that execution speed is particularly important in volatile markets and confirmed UBS' intention to start the operation with online trading accounts in the near future on UBS AG's electronic trading platform to ensure instant executions of trading orders and to discontinue their usual manual execution procedures, which requires a maximum of 20 seconds.
98. Further, this claim is based on an agreement by conduct and the Plaintiffs relied on pre-contract representations by conduct set out in Claim No. 8 herein for conspiracy to defraud, and more particularly on the following acts constituting the conduct:
- 98.1. from 29 September 2012 UBS failed to provide the contracted-out investment business services, in accordance with the financial industry standards and accepted market practices;

98.2. from on or about 12 June 2013, UBS represented that UBS was the agent for reward who had a principal in the face of the Company by the acts of:

98.2.1. guaranteeing the performance of each transaction and sending through email bought and sold information to Messrs Starostenko; and

98.2.2. giving Messrs Starostenko printed trade advices on executed trades.

98.3. by email, sent on 15 February 2013 timed at 11:25 AM, UBS confirmed that the execution speed of trading orders would be 20 seconds or so, which amounted to UBS' offer and this offer was accepted by the Plaintiffs when Messrs Starostenko sent emails in response; and

98.4. by emails, sent on 21 June 2013 timed at 12:16 PM and on 26 June 2013 timed at 3:08 PM, with a delay of eight (8) months and (15) fifteen days caused wholly by the fault of UBS, it was confirmed that UBS would provide the Plaintiffs with direct access to the trading desk, Direct Market Access (DMA), which amounted to UBS' offer and this offer was accepted by the Plaintiffs when Messrs Starostenko sent emails in response.

99. By reason of the matters stated:

99.1. UBS was at all material times, aware of the nature of this Agreement and any risks involved in entering into it;

99.2. UBS should justly be regarded as having accepted responsibility for the consequences of nonperformance of its contractual obligations, since such extent of liability reflects the scope of the duties undertaken, including a legal duty to bring about a particular result, and at best giving effect to the express obligations assumed; and

99.3. UBS should justly be held, in entering into the Investment Agreement, to have accepted the risk.

100. The Plaintiffs will rely on the Investment Agreement at the trial of claims on its full meaning, terms, conditions and effect being entitled to the relief claimed and to any further relief the Court shall think fit.

PARTICULARS OF WASTED EXPENDITURE

101. UBS was in breach of the Investment Agreement made between the Plaintiffs and UBS in relation to the funds invested by the Company in the sum of USD\$729,749 in the investment account 32377, and more particularly of the contractual conditions attached to the investment business services which UBS agreed to provide to the Plaintiffs, namely:
- 101.1. direct access to the trading desk, Direct Market Access (DMA);
 - 101.2. electronic platform to execute trading orders instantaneously upon receipt, which is the industry-wide and a usual automatic execution procedure;
 - 101.3. the "all in fee" time based fee at flat rate of 0.4% of traded volume for a quarter, the only reasonable fee for daily trading activities;
 - 101.4. speed of execution of the trades at rate of twenty (20) seconds or about;
 - 101.5. dealing in futures contracts; and
 - 101.6. reporting service and delivery of broker's contract notes of the trades recorded through the Exchange.
102. From 29 September 2012 UBS did not provide the aforesaid contracted-out investment business services, in accordance with the financial industry standards and accepted market practices, which caused:
- 102.1. Messrs Starostenko to enter into lengthy negotiations and discussions with UBS over the price to be paid for executions (the transactions fee), speed of execution of the trades, and other important aspects of the investment business services, including reporting service and delivery of broker's contract notes of the trades recorded through the Exchange; and
 - 102.2. a delay in commencement of the investment business.
103. That delay was caused wholly by the fault of UBS and in consequence of breaches by UBS of the contractual conditions attached to the investment business services, which UBS agreed to provide to the Plaintiffs.

104. The Company would have incurred the expense as follows if the Investment Agreement had not been broken by UBS, but that expense, which might otherwise have borne fruit, had become wasted owing to the breach of UBS to fulfil the aforesaid contractual obligations under the Investment Agreement.
105. The Company sustained loss, which was wasted expenditure, owing from inactivity of the investment account 32377 and the delay in commencement of the investment business from about 29 September 2012 to 11 June 2013 (a delay of eight (8) months and (15) fifteen days) having paid the interest on the loan amount standing to the Company's credit in the investment account 32377 during the period of delay and inactivity.
106. By reason of the matters stated, the Company's expenditure which has been thrown away or wasted by reason of UBS' default as aforesaid:
- 106.1. USD\$31,721 of interest paid by the Company on the loan amount of USD\$729,749 held in the investment account 32377 by UBS as the additional security to the loan, debited to that investment account by UBS, made useless as a result of non-performance by UBS of contractual obligations under the Investment Agreement, in particular, not providing a time based "flat fee" at rate of 0.4% of trading capital per three months;
 - 106.2. USD\$4,350 of the brokerage and transaction based fee at rate of 1% per transaction paid by the Company and debited to the investment account 32377 by UBS on or about 14 June 2013; and
 - 106.3. USD\$2,812 of the brokerage and time based "flat fee" at rate of 0.4% of trading capital per three months for the period of October through December 2013 paid by the Company and debited to the investment account 32377 by UBS, while UBS issued "halt of trading" to that investment account since 19 September 2013.

PARTICULARS OF ACTUAL LOST PROFITS UBS

107. UBS was in breach of the Investment Agreement made between the Plaintiffs and UBS in relation to the funds invested by the Company in the sum of USD\$729,749 in the investment account 32377, and more particularly of the contractual conditions attached to

the investment business services which UBS agreed to provide to the Plaintiffs, namely, that:

- 107.1. UBS must strictly execute the trading orders of the Company and take all reasonable steps and care to obtain the best possible result (or "best execution") on behalf of the Company either when executing trading orders or receiving and transmitting orders for execution;
 - 107.2. UBS must protect the Company's economic interest in relation to pricing and other aspects of the transactions which would be affected by how UBS executed trading orders of the Company;
 - 107.3. UBS must put in place effective execution arrangements and internal execution policy.
108. Pursuant to the Investment Agreement, UBS carried out or purported to carry out sales or purchases of U.S. Securities listed on the NYSE on behalf of the Company from or about 12 June 2013 to 18 September 2013.
109. The behavior of UBS at all material times gave or was likely to give an impression as to its nature to have been both:
- 109.1. (a) for legitimate reasons; and
 - 109.2. (b) in conformity with the financial industry standards and accepted market practices on the NYSE.
110. UBS must have known that what they were doing was improper and not in conformity with accepted market practices.
111. In the course of the business, UBS demonstrated their inability to render substantial performance of the Investment Agreement and the intention no longer to be bound by it or to fulfil it only in a manner substantially inconsistent with its terms, and repeatedly admitted (verbally and in writing) their weakness in the carrying out transactions of sale or purchase of securities evidenced orally and in writing, in particular, by email sent to Messrs Starostenko on 16 July 2013 timed at 10:33 AM.

112. The Company, at all material times was clearly making orders to trade (or “trading orders”) and UBS failed to comply with certain trading orders of the Company and take all reasonable steps and care to obtain the best possible result (or “best execution”) on behalf of the Company either when executing trading orders or receiving and transmitting trading orders for execution, thereby breaching the conditions of the Investment Agreement, as evidenced by the following:

- 112.1. in the course of carrying on the securities business, on 2 August 2013, the Company sent by email timed at 2:00 PM a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having received for execution the trading order 19 minutes after it was sent and executed the trading order at a substantially different price from the quoted offer, as a result, loss of profit was incurred by the Company;
- 112.2. in the course of carrying on the securities business, on 6 August 2013, the Company sent by email timed at 12:41 PM a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having received for execution the trading order 12 minutes after it was sent and executed the trade at a substantially different price from the price set in the trading order, as a result, loss of profit was incurred by the Company;
- 112.3. in the course of carrying on the securities business, on 9 August 2013, the Company sent by email timed at 10:25 AM a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having received for execution trading order 2 minutes after it was sent and executed the trade at a substantially different price from the price set in the trading order, as a result, loss of profit was incurred by the Company;
- 112.4. in the course of carrying on the securities business, on 9 August 2013, the Company sent by email timed at 12:00 PM a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having received for execution the trading order 4 minutes after it was sent and executed the trade

at a substantially different price from the price set in the trading order, as a result, loss of profit was incurred by the Company;

- 112.5. in the course of carrying on the securities business, on 21 August 2013, the Company sent by email timed at 11:18 AM a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having executed the trade at a substantially different price from the price set in the trading order, as a result, loss of profit was incurred by the Company;
- 112.6. in the course of carrying on the securities business, on 26 August 2013, the Company sent by email timed at 9:29 AM a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having executed the trade at a substantially different price from the price set in the trading order, as a result, loss of profit was incurred by the Company;
- 112.7. in the course of carrying on the securities business, on 9 September 2013, the Company sent by email timed at 10:22 AM a trading order, and the Defendant failed to obtain the best possible result on behalf of the first Plaintiff, having executed the trade at a substantially different price from the price set in the trading order, as a result, loss of profit was incurred by the Company;
- 112.8. in the course of carrying on the securities business, on 10 September 2013, the Company transmitted by phone a trading order, timed at 10:12 AM, and the Defendant failed to obtain the best possible result on behalf of the Company, having executed the trade at a substantially different price from the price set in the trading order, as a result, loss of profit was incurred by the Company;
- 112.9. in the course of carrying on the securities business, on 11 September 2013, the Company sent by email timed at 10:59 AM a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having executed the trade at a substantially different price from the price set in the trading order, as a result, loss of profit was incurred by the Company;
- 112.10. in the course of carrying on the securities business, on 11 September 2013, the Company sent by email timed at 12:35 PM a trading order, and the Defendant

failed to obtain the best possible result on behalf of the Company, having executed the trade at a substantially different price from the price set in the trading order, as a result, loss of profit was incurred by the Company;

- 112.11. in the course of carrying on the securities business, on 11 September 2013, the Company sent by email timed at 2:05 PM a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having executed the trade at a substantially different price from the price set in the trading order, as a result, loss of profit was incurred by the Company;
- 112.12. in the course of carrying on the securities business, on 11 September 2013, the Company sent by email timed at 2:26 PM a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having executed the trade at a substantially different price from price set in the trading order, as a result, loss of profit was incurred by the Company;
- 112.13. in the course of carrying on the securities business, on 12 September 2013, the Company sent by email timed at 10:40 AM a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having executed the trade at a substantially different price from the price set in the trading order, as a result, loss of profit was incurred by the Company;
- 112.14. in the course of carrying on the securities business, on 13 September 2013, the Company sent by email timed at 10:52 AM a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having executed the trade at a substantially different price from the price set in the trading order, as a result, loss of profit was incurred by the Company;
- 112.15. in the course of carrying on the securities business, on 13 September 2013, the Company sent by email timed at 11:36 AM a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having executed the trade at a substantially different price from the price set in the trading order, as a result, a loss of profit was incurred by the Company;

- 112.16. in the course of carrying on the securities business, on 13 September 2013, the Company sent by email timed at 12:00 PM a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having executed the trade at a substantially different price from the price set in the trading order, as a result, loss of profit was incurred by the Company;
- 112.17. in the course of carrying on the securities business, on 13 September 2013, the Company sent by email timed at 12:52 PM a trading order, and Defendant failed to obtain the best possible result on behalf of the Company, having executed the trade at a substantially different price from the price set in the trading order, as a result, a loss of profit was incurred by the Company;
- 112.18. in the course of carrying on the securities business, on 13 September 2013, the Company sent by email timed at 1:51 PM a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having executed the trade at a substantially different price from the price set in the trading order, as a result, loss of profit was incurred by the Company;
- 112.19. in the course of carrying on the securities business, on 13 September 2013, the Company transmitted by phone a trading order, timed at 2:05 PM, and the Defendant failed to obtain the best possible result on behalf of the Company, having transmitted the trading order for execution 10 minutes after its receipt and executed the trading order at a substantially different price from the quoted bid, as a result, loss of profit was incurred by the Company;
- 112.20. in the course of carrying on the securities business, on 16 September 2013, the Company sent by email timed at 10:00 AM a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having executed the trade at a substantially different price from the price set in the trading order, as a result, loss of profit was incurred by the Company;
- 112.21. in the course of carrying on the securities business, on 16 September 2013, the Company sent by email timed at 10:49 AM a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having

executed the trade at a substantially different price from the price set in the trading order, as a result, loss of profit was incurred by the Company;

112.22. in the course of carrying on the securities business, on 16 September 2013, the Company sent by email timed at 12:28 PM a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having executed the trade at a substantially different price from the price set in the trading order, as a result, loss of profit was incurred by the Company;

112.23. in the course of carrying on the securities business, on 16 September 2013, the Company sent by email timed at 1:28 PM a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having executed the trade at a substantially different price from the price set in the trading order, as a result, loss of profit was incurred by the Company;

112.24. in the course of carrying on the securities business, on 17 September 2013, the Company sent by email timed at 9:47 AM a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having executed the trade at a substantially different price from the price set in the trading order, as a result, loss of profit was incurred by the Company;

112.25. in the course of carrying on the securities business, on 17 September 2013, the Company sent by email timed at 10:10 AM a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having executed the trade at a substantially different price from the price set in the trading order, as a result, loss of profit was incurred by the Company;

112.26. in the course of carrying on the securities business, on 17 September 2013, the Company sent by email timed at 10:17 AM a trading order, and the Defendant failed to obtain the best possible result on behalf of the Company, having executed the trade at a substantially different price from price set in the trading order, as a result, loss of profit was incurred by the Company;

112.27. in the course of carrying on the securities business, on 18 September 2013, the Company transmitted by phone a trading order, timed at 1:58 PM, and the

Defendant failed to obtain the best possible result on behalf of the Company, having executed the trading order at a substantially different price from the quoted bid, as a result, loss of profit was incurred by the Company;

112.28. in the course of carrying on the securities business, on 18 September 2013, the Company transmitted by phone a trading order, timed at 1:59 PM, and the Defendant failed to obtain the best possible result on behalf of the Company, having executed the trading order at a substantially different price from the quoted bid, as a result, a loss of profit was incurred by the Company.

113. By reason of the matters stated, on the basis of the records of trades set out as aforesaid, the Company suffered actual loss of profits in the total sum of USD\$137,977, which is the actual net profit which the Company lost due to the erosion of prices due to the faults of UBS either in executing trading orders or receiving and transmitting trading orders for execution, thereby breaching the conditions of the Investment Agreement during the period lasting from 2 August 2013 to 18 September 2013.

PARTICULARS OF PARTIAL COMPENSATION

114. In the course of business, UBS only partially compensated the Company by way of two (2) compensation payments for a total amount of USD\$3,110 partially compensating the Company for loss of profit due to UBS' faults to comply with certain trading orders of the Company and take all reasonable steps and care to obtain the best possible result (or "best execution") on behalf of the Company either when executing trading orders or receiving and transmitting trading orders for execution in August 2013, as evidenced by the relevant report of compensation payments sent to the Company by email timed at 5:31 PM on 4 September 2013.

DEMAND FOR FULL COMPENSATION

115. In the course of the investment business, on or about 18 September 2013 and 8 October 2013, orally, and, in writing, by email sent to UBS on 9 October 2013 timed at 11:35 AM, the Company demanded full compensation for losses, but UBS failed to compensate the Company fully and effect further compensation payments.

116. In response to this demand, certain UBS officers or agents had conspired to bring about the collapse of the Company by engineering a "default".
117. UBS wrongfully repudiated the Investment Agreement four (4) years before expiration of its term for a period of five (5) years, knowing that they had no power under common or statute or the Investment Agreement to do so.
118. If UBS would have compensated the Company in full for the loss of profits sustained it was entitled to claim the amount of the balance standing to the Company's credit in the investment account would have been at least USD\$722,820 or about, as more particularly described in Claim No. 4 herein for repudiatory breach of the Investment Agreement.

PARTICULARS

119. By reason of the matters stated, the Company had suffered loss of actual profits and wasted expenditures for which UBS is answerable.
120. The object of damages is to put the Company, so far as possible, into the same situation as if the Investment Agreement would have been duly performed by UBS.
121. The Company proved what its actual profits would have been.
122. The Company had suffered loss of actual profits through having relied on UBS' performance pursuant to the relevant terms and conditions of the Investment Agreement and statutory duties that were fairly, justly and reasonably imposed on UBS.
123. UBS entered into the Investment Agreement and wilfully failed to comply with their legal duty and obligations, as a result, by reason of UBS' defaults the Company has suffered the damages, the loss of actual profits.
124. The loss sustained by the Company was caused wholly by UBS' faults and it was not unlikely or reasonably foreseeable as a result of the breaches at the time the Investment Agreement was entered into by the parties, and therefore the loss of profits was a reasonably foreseeable result of UBS' failure to perform.
125. The Investment Agreement is valid and enforceable, the Company is entitled to the relief claimed and to any further relief the Court shall think fit.

126. By reason of the matters stated UBS was, at all material times, aware of the nature of the Investment Agreement and any risks involved in entering into it.
127. The damages for the lost profits claimed by the Company were direct losses because they were the natural or immediate losses caused by the inability of UBS to render substantial performance of the Investment Agreement and they were a result of non-performance by UBS of relevant legal duty and obligations under the Investment Agreement.
128. In the premises, UBS owed to the Company a contractual or statutory or tortious or fiduciary duty to exercise reasonable care and skill in and about executing trading orders of the Company to buy or sell U.S. Securities on the New York Stock Exchange (NYSE), thereby UBS' breaches as aforesaid entitle the Company to both general and special damages.
129. Cumulatively, prima facie every agent for reward is bound to exercise reasonable care and skill in carrying out the instructions of his principal.
130. In the premises, the Company is entitled to and claims the compensatory damages for the loss of actual profits incurred by the Company by reason of UBS' defaults or breaches by UBS of its statutory and contractual obligations as aforesaid, and consequently the Company is entitled to an order that the damages hereinafter or such other amount as may be determined by the Court, be paid by UBS.
131. Cumulatively, the Company is entitled to and claims the compensatory damages for the expenditure which has been thrown away or wasted by the Company by reason of UBS' default or breach by UBS of its contractual obligations as aforesaid, and consequently the Company is entitled to an order that the damages hereinafter or such other amount as may be determined by the Court, be paid by UBS.
132. This is on the basis that UBS was and remains liable in damages for not doing that which they were bound to do in the first place.
133. Further, the Company is entitled to and claims interest on any damages awarded pursuant to the Civil Procedure (Award of Interest) Act 1992 or interest at such a rate and for such period as the Court shall think fit.

PRAYER TO CLAIM NO. 1

134. AND the Company claims:

- 134.1. (1) an order for payment of USD\$137,977 of lost profits;
- 134.2. (2) an order for payment of USD\$31,721 of wasted expenditure;
- 134.3. (3) an order for payment of USD\$4,350 of wasted expenditure;
- 134.4. (4) an order for payment of USD\$2,812 of wasted expenditure; or
- 134.5. (5) in the alternative to (1), (2), (3) and (4), the like sums by way of compensatory damages and wasted expenditure for breach of the Investment Agreement;
- 134.6. (6) costs of suit; and
- 134.7. (7) interest thereon, as aforesaid at the above rate until judgment or sooner payment.

CLAIM NO. 2 FOR SPECIFIC PERFORMANCE FOR BREACH OF STATUTORY DUTY

135. The Plaintiffs re-allege and incorporate by reference the allegations of paragraphs 1 through 134 above in their entirety.

BRIEF DETAILS OF CLAIM

136. The second and thirds Plaintiffs claim against UBS specific performance for breach:
- 136.1. statutory duty and obligations, which were intended to confer rights of action upon a class of persons of whom the Plaintiffs are one and may suffer an injury or damage of a kind against which the statute was designed to give protection;
 - 136.2. contractual obligations under an agreement between the Company and UBS, according to which UBS acted as the agent for reward of the Company and carried out or purportedly carried out the sale or purchase transactions in the market on behalf of the Company related to dealings in U.S. Securities listed on the New York Stock Exchange (NYSE) and had to provide, inter alia, regulated markets data reporting service and deliver to the Company a Member Broker's or Designated Market Maker's (DMM) contract note of each transaction of any sale or purchase (or trade) executed by UBS and recorded through the New York Stock Exchange (NYSE).
137. It is alleged that the breach of statutory duty and obligations caused, or materially contributed to the risk of that injury or damage that is of a kind for which the law generally awards damages, as described more particularly in Claim No. 1 herein for breach of the Investment Agreement.
138. Claim No. 2 against UBS is a statement of case which is highly important element in deciding relevance. The NYSE's Member Broker's or Market Maker's contract notes are highly relevant to the matters in question and be disclosable.
139. Such importance is appropriate in the circumstances of this case, where there are allegations of fraud in this complex case relating to a loan, banking transactions, guarantees, debt security, dealing in securities, marketplaces' and clearing facilities' regulatory instruments,

clearing and settlement of securities, reporting service, requiring particular expertise in the financial markets and raising issues of general importance to the financial markets.

140. Cumulatively, Messrs Starostenko claim against UBS for a form of disclosure called 'specific disclosure', which consists of any documents or classes of documents, which:
- 140.1. UBS ought to have disclosed, but had failed to disclose;
 - 140.2. which the interests of justice require to be disclosed under statute; and
 - 140.3. which would be specified in an order for specific disclosure.
141. The second and third Plaintiffs' case is that acts done or omissions made by UBS in course of the business inducing the Plaintiffs to enter an investment agreement, in breach of duty and liability or contravention of right imposed or conferred by law or statute alleged herein may co-exist with a legal duty imposed for the benefit of the public, its section or an ascertainable class, breach of which may give rise to a criminal offence, e.g. where criminal intent was demonstrated or could be inferred in the limited field of activities such as wilful destruction or falsification of books and publication of false statements or accounts and where would be no difficulty in enlarging it in the context of any particular case, so as to enable the Court to bring fraudulent people to book.

LEGAL BASIS OF CLAIM

142. This claim is based on specific performance of both the relevant terms and conditions of the Investment Agreement and a statutory duty that were fairly, justly and validly imposed on UBS where breach of statutory duty is an independent tort recognised at common law.
143. The nature of the legal duty imposed by a statute is a matter of the construction of the provision in question and the obligation is absolute, that is to say, all that is necessary to prove a breach of the legal duty is to show that the requirements of the statute have not in fact been complied with.
144. It is alleged that:
- 144.1. (1) the breach of statutory duty occurred when UBS was not acting for the benefit of society or any of its members;

- 144.2. (2) UBS, in carrying out the activity in the course of which the breach of statutory duty occurred, demonstrated a predominantly cynical and irresponsible approach towards protecting the interests of their clients; and
- 144.3. (3) UBS is liable for their employee's breach of statutory duty because the legal duty is imposed on the employer, indicated expressly the statute law.

PARTICULARS OF STATUTORY PROVISIONS

145. The duty imposed on UBS by the Statute Law of The Bahamas, the Securities Industry Regulation, 2012, (or SIR, 2012) is an obligation in respect of the regulated relationship of dealing in securities for the purposes of Section 72 "Reporting to clients - contract note", which reads: ***"(1) Any registered firm that carries out any sale or purchase of securities on behalf of a client shall, within one business day after the sale or purchase was executed, make a contract note of the transaction.***

(2) Unless otherwise expressly directed by the client in writing, any registered firm that carries out any sale or purchase of securities on behalf of a client shall immediately after the sale or purchase was executed, transmit a contract note of the transaction to its client.

(3) A contract note shall set out –

(a) the quantity and description of the security;

(b) the price at which the transaction was effected and the commission and any other fees charged on the transaction;

(c) the settlement date of the transaction;

(d) the name of the registered firm involved in the transaction;

(e) whether the registered firm was acting as principal or agent;

(f) the marketplace, if any, on which the transaction took place, or, if applicable, a statement that the transaction took place on more than one marketplace or over more than one day; and

(g) any other information required by the Commission."

146. Under this Statute Law of The Bahamas, UBS owed and still owes a statutory duty in the business of dealing in securities with the Company for the purposes of Section 77 "Prompt

delivery", which reads: ***"A registered firm shall deliver funds or securities promptly to its clients and to other registered firms in accordance with the regulatory instruments of the applicable marketplace or clearing facility or as may be prescribed by the Commission."***

147. The U.S. legislative framework contains, inter alia, FINRA Rule 7440 Recording Order Information reads:

"(a) Procedures (1) Subject to the terms and conditions contained in Rules 7420 through 7460, each Reporting Member shall:

(A) immediately following receipt or origination of an order, record each item of information described in paragraph (b) of this Rule that applies to such order, and record any additional information described in paragraph (b) of this Rule that applies to such order immediately after such information is received or becomes available; and

(B) immediately following the transmission of an order to another member, or from one department to another within the same member, record each item of information

described in paragraph (c) of this Rule that applies with respect to such transmission; and

(C) immediately following the modification, cancellation, or execution of an order, record each item of information described in paragraph (d) of this Rule that applies with respect to such modification, cancellation, or execution.

(2) Each required record of the time of an event shall be expressed in terms of hours, minutes, and seconds; provided that the time of an event shall be expressed in hours, minutes, seconds, and milliseconds if the member's system captures time in milliseconds.

(3) Each Reporting Member shall, by the end of each business day, record each item of information required to be recorded under this Rule in such electronic form as is prescribed by FINRA from time to time.

(4) With respect to each order that is received or executed at its trading department, each Reporting Member shall record an identification of:

- (A) each registered person who receives the order directly from a customer;*
- (B) each registered person who executes the order; and*
- (C) the department that originated the order if the order is originated by the member and transmitted manually to another department.*

(5) Maintaining and Preserving Records

(A) Each Reporting Member shall maintain and preserve records of the information required to be recorded under this Rule for the period of time and accessibility specified in SEA Rule 17a-4(b).

(B) The records required to be maintained and preserved under this Rule may be immediately produced or reproduced on "micrographic media" as defined in SEA Rule 17a-4(f)(1)(i) or by means of "electronic storage media" as defined in SEA Rule 17a-4(f)(1)(ii) that meet the conditions set forth in SEA Rule 17a-4(f) and be maintained and preserved for the required time in that form.

(b) Order Origination and Receipt Unless otherwise indicated, the following order information must be recorded under this Rule when an order is received or originated. For purposes of this Rule, the order origination or receipt time is the time the order is received from the customer.

- (1) an order identifier meeting such parameters as may be prescribed by FINRA assigned to the order by the Reporting Member that uniquely identifies the order for the date it was received;*
- (2) the identification symbol assigned by FINRA to the security to which the order applies;*
- (3) the market participant symbol assigned by FINRA to the Reporting Member;*
- (4) the identification of any department or the identification number of any terminal where an order is received directly from a customer;*
- (5) where the order is originated by a Reporting Member, the identification of the department of the member that originates the order;*
- (6) where the Reporting Member is a party to an agreement described in Rule 7450(c), the identification of the Reporting Agent;*

- (7) the number of shares to which the order applies;***
- (8) the designation of the order as a buy or sell order;***
- (9) the designation of the order as a short sale or a short sale exempt order;***
- (10) the designation of the order as a market order, limit order, stop order or stop limit order;***
- (11) any limit or stop price prescribed in the order;***
- (12) the date on which the order expires, and, if the time in force is less than one day, the time when the order expires;***
- (13) the time limit during which the order is in force;***
- (14) any request by a customer that a limit order not be displayed, or that a block size limit order be displayed, pursuant to applicable rules; (15) special handling requests, specified by FINRA for purposes of this Rule;***
- (16) the date and time the order is originated or received by a Reporting Member;***
- (17) an identification of the order as related to a Program Trade or an Index Arbitrage Trade;***
- (18) the type of account, i.e., retail, wholesale, employee, proprietary, or any other type of account designated by FINRA, for which the order is submitted; ..."***

PARTICULARS OF REGULATORY INSTRUMENTS

- 148. In the instant case UBS carried out transactions in U.S. Securities represented an asset class called "exchange-traded funds" which took place at the NYSE, an American Stock Exchange on Wall Street in New York City, the world's largest stock exchange regulated by the Securities and Exchange Commission (or SEC).
- 149. The NYSE holds five regulated markets, including the New York Stock Exchange, Arca, MKT and Amex Options. On the NYSE, investors can trade several major asset classes: equities, options, exchange-traded funds (NYSE Arca) and bonds.
- 150. Listing of securities on the NYSE is done in accordance with the U.S. securities regulations and the financial industry standards, the Rules and the Byelaws of the NYSE and the regulatory

instruments of the U.S. clearing facilities, the Depository Trust Company (DTC) and the National Securities Clearing Corporation (NSCC).

151. At the NYSE, when the deal is struck, both Designated Market Maker (or "DMM") and broker make a contract note in their block books of the transaction, or enter into confirmation memos, setting out the uniform trade registration model, as follows:

151.1. After each order is executed, suitable entries are made in the concerned member's block book, or pass confirmation memos, duly authorised by the NYSE.

151.2. This book of transactions executed on the floor of the Stock Exchange and appropriate entries are made after every deal to record the number of shares traded, the prices of the purchase/sale, and the name or code number of the other member through whom the deal was finalised.

151.3. The prices of securities of both purchase and sale contracts would be the prices recorded in that script on the NYSE at the exact point of time in the settlement in which the concerned contract was entered into.

151.4. Each page of the block book taken to the floor of the Stock Exchange should be duly authorised by the NYSE authorities.

151.5. Under electronic trading the computer software is designed to give all the returns to be submitted to the NYSE and U.S. clearing facilities, the Depository Trust Company (DTC) and the National Securities Clearing Corporation (NSCC); and the accounts to be maintained forever by both the Designated Market Maker and the broker himself.

151.6. From the block book (where the transactions are sketchily written up), the details are transferred to the broker's (or DMM's) book (which gives complete details), from which the broker's (or DMM's) Contract Notes /Purchase or Sale Notes are drawn up (or "contract notes").

151.7. It is important to ensure that the broker's (or DMM's) contract note is written up by the broker or the DMM on the day of the deal and posted to the client. This is a proof that the contract was executed on that day not on any other day since prices fluctuate constantly.

- 151.8. The trades executed during the day would be settled, settlement is generally the term applied to the Stock Exchange of payment to the seller and the transfer of securities to the buyer of a trade. It's the final step in the lifecycle of a securities transaction.
- 151.9. The money movements of these transactions are recorded by NSCC. In most stock exchange transactions, the money is moved or "settled" three days after the actual purchase or sale is executed.
- 151.10. DTC is the central securities depository for equity securities, such as common stock, as well as municipal and corporate debt securities, including money market instruments. It's the central hub where all securities positions are held in the U.S. marketplaces.
- 151.11. DTC and NSCC transactions are settled collectively at the end of the day, combining the settlement balances a client has at both DTC and NSCC into a single obligation.
- 151.12. A broker's (or DMM's) contract note (known also Purchase or Sale Note, Closed Deal, etc.) is a legal document that confirms the trades done on a particular day on behalf of the client. ***It establishes a legally enforceable relationship between the client and brokerage house with respect to the settlement of the trades.***
- 151.13. The broker's (or DMM's) contract note provides for the recourse to the system of arbitrators for settlement of disputes arising out of transactions.
- 151.14. The NYSE is required to resolve all complaints. To resolve the dispute the complainant can also resort to arbitration as provided on the reverse of Contract Note/Purchase or Sale Note.

PARTICULARS OF CONTRACT NOTES

152. Member Broker's (or DMM's) contract notes are legal documents required by the Statute Law of The Bahamas, and, as soon as all transactions took place at the NYSE, the broker's (or DMM's) contract notes were by U.S. securities regulations and the financial industry standards, the Rules and the Byelaws of the NYSE.

153. The financial industry-wide standard is that only the Stock Broker or Market Maker can issue Contract Notes in the form specified by the Stock Exchange at which the trades were effectively executed and the prices of securities of both purchase and sale contracts were recorded in the scrip on the Stock Exchange at the exact point of time in the settlement in which the concerned contract was entered into.
154. In accordance with the regulatory instruments of the NYSE it is required that, where an intermediary (Member broker or Designated Market Maker) has entered into a relevant contract at the NYSE with or on behalf of a client in respect of a purchase or a sale of securities, said intermediary shall include in the Contract Note in respect of the relevant contract the following details:
- 154.1. Name, address and FINRA Registration number of the Member broker (or the Designated Market Maker (DMM)).
 - 154.2. Name of partner /proprietor /Authorised Signatory.
 - 154.3. Dealing Office Address/Tel No/Fax no, Code number of the member given by the Exchange.
 - 154.4. Unique Identification Number
 - 154.5. Contract number, date of issue of contract note.
 - 154.6. Settlement number and time period for settlement.
 - 154.7. Constituent (Client) name/Code Number.
 - 154.8. Order number and order time corresponding to the trades.
 - 154.9. Trade number.
 - 154.10. Indication if the client's account is a margin account;
 - 154.11. Indication where it relates to-
 - 154.11.1. a short selling order; or
 - 154.11.2. a borrowing or lending of securities under a securities borrowing and lending agreement; and

- 154.12. In the case of a purchase or sale, price per unit of the securities. Price should be the price recorded in that script on the Stock Exchange at the exact point of time in the settlement in which the concerned contract was entered into.
- 154.13. Receipt of scrip of the securities deposited directly with the scrip custodian of the Member broker or an associated entity; or
- 154.14. where securities in a scripless form, account maintained with a custodian of-
 - 154.14.1. the Member broker; or
 - 154.14.2. an associated entity of Member broker, on behalf of the client.
- 154.15. Time stamp, the exact time of trade accurate to one second. The requirement to timestamp transactions to one second means the trade needs to be stamped then and there, at the exact point it is transacted. This is the industry-wide standard for determining the point at which trade is effectively carried out, ensuring a high level of accuracy.
- 154.16. Quantity and Kind of Security brought/sold by the client.
- 154.17. Amount of consideration payable under the relevant contract.
- 154.18. Brokerage and Purchase /Sale rate are given separately.
- 154.19. Service rates and any other charges levied by the broker.
- 154.20. Signature of the Member broker/Authorized Signatory.

PARTICULARS OF BREACH OF STATUTORY DUTY

- 155. Pursuant to the Investment Agreement UBS carried out or purported to carry sales or purchases of U.S. Securities on behalf of Company at the NYSE.
- 156. At all material time, and more particularly from or about 12 June until 18 September 2013, more particularly described in Claim No. 1 herein for damages for breach of the Investment Agreement:
 - 156.1. UBS was not a member firm or license holder of the NYSE who deals with client orders or institutional orders, and therefore:

- 156.1.1. UBS was not permitted to trade electronically on the NYSE with the mainframe computer;
 - 156.1.2. UBS had not acted on the NYSE as Designated Market Maker (or "DMM") doing wholesale business, giving two-way quotations of bid and offer in selected securities (specializing in the scrips) or offering both purchase and sale prices (bid and offer) to the member brokers of the NYSE; and
 - 156.1.3. UBS had not acted on the NYSE as a Member broker doing retail business or purchase and sale transactions for the customers.
157. Therefore, UBS could not issue broker's (or DMM's) contract notes in the form specified by the NYSE at which the trades were effectively executed and the prices of securities of both purchase and sale contracts were recorded in the scrip on the NYSE at the exact point of time in the settlement in which the concerned contracts were entered into.
158. Pursuant the Investment Agreement, the Company made full payments of U.S. Securities for the execution of purchase contracts at a price received through the auctions that took place each time during trading hours of the NYSE paid by selling participants and, in case of sale contracts, full payment to U.S. Securities met through the auction processes at price received through auctions that took place each time during trading hours of the NYSE paid by buying participants. Once a trading order had been executed UBS would send a Member broker's (or DMM's) contract note to the Plaintiffs before the end of the trading day.
159. UBS was in breach of both the Investment Agreement and their statutory duty under the Securities Industry Act, 2011 (SIA 2011) and the Securities Industry Regulations, 2012 (SIR 2012), failing to provide to the Company broker's (or DMM's) contract notes of transactions of any sale or purchase of securities executed on the NYSE.
160. The non-transmission or non-provision of the broker's (or DMM's) contract notes was caused by the breach of statutory duties pursuant the SIR 2012 and the SIA 2011, on which the Plaintiffs rely as evidence of negligence of UBS.

161. Before making this claim, Messrs Starostenko made multiple requests to UBS, orally and in writing, for the broker's contract notes and other transaction documents. No response was made by UBS either by email or by formal reply.
162. In particular, since June 2013, Messrs Starostenko, orally, requested UBS to transmit or to provide otherwise the broker's contract notes of the sales and purchases executed on the NYSE but UBS failed to do so.

REQUESTS FOR DELIVERY

163. Messrs Starostenko filed the formal request for delivery of the broker's contract notes, by email sent to UBS on 30 January 2014 timed at 9:50 AM, and UBS acknowledged the request by email sent by Mr Fabian Jenny of UBS to Messrs Starostenko on 30 January 2014 timed at 10:30 AM, which reads: ***"Good Morning Irina, thank you for the reminder. We will be in touch with you shortly. best regards Fabian"***
164. Nevertheless, UBS failed to deliver any of broker's contract notes.
165. In March 2014, at meeting with the management of UBS, Messrs Starostenko, orally, requested UBS to provide the broker's contract notes, and Mr Fabian Jenny, to whom the request was redirected by CEO Mr Beat Paoletto, said that he had not received email with the formal request and promised to provide the broker's contract notes as soon as all the necessary data were received by UBS.

"TRADE ADVICES"

166. Improperly, instead of brokers' contract notes, UBS handed to Messrs Starostenko the so called "trade advices" which purported to be information on the trades executed or purportedly executed at the NYSE on behalf of the Company during the period from 12 June to 18 September 2013, which were actually:
- 166.1. not brokers' contract notes;
 - 166.2. not legal documents attesting the legality of the transactions.
167. "Trade advices" of UBS to the farthest reaches of what could be classified as post-trade advices to its clients on the potential instances of market behavior in the trading days when the Company made its trading orders.
168. This UBS' act may amount to the attempts:

- 168.1. to switch from being counterparty at the point of trade execution to the point where the trade advice had been given; and
 - 168.2. to take unfair and illegal advantage over the Company by colluding to abuse the Bahamian and the U.S. securities regulations, the financial industry standards and accepted market practices, the Rules and the Byelaws of the NYSE and the regulatory instruments of U.S. clearing facilities.
169. A director of UBS, Mr Maillis, orally, indicated to Messrs Starostenko that in order to deliver the broker's (or DMM's) contract notes in the form specified by the NYSE, they in UBS needed permission from the UBS legal department, and this was a position that has not changed since.
170. Ninety four (94) of these "trade advices" are included in an affidavit of one hundred ninety six (196) pages prepared for the purpose of the prosecution of the Plaintiffs filed with the Supreme Court on or about 5 December 2014, as more particularly described in Claim No. 11 herein for conspiracy to defraud public authority.

PARTICULARS

171. By reason of the breach of statutory duty of UBS, Messrs Starostenko had not received the NYSE's Member broker's (or DMM's) contract notes of the trades executed by UBS and recorded through the NYSE that represent a benefit of the reporting service under the Investment Agreement.
172. In the premises, UBS owed to the Company a contractual or statutory or tortious or fiduciary duty to exercise reasonable care and skill in and about executing trading orders of the Company to buy or sell U.S. Securities on the New York Stock Exchange (NYSE) with recording of the trades executed on the NYSE, thereby UBS' breaches as aforesaid entitle Messrs Starostenko to receive NYSE's Member broker's (or DMM's) contract notes of the trades recorded through the NYSE.
173. For purposes of the underlying proceedings which constitute the present litigation NYSE's Member broker's (or DMM's) contract notes are required:
- 173.1. to satisfy the conditions for the legality of transactions carried out or purportedly carried out by UBS under the Investment Agreement;

- 173.2. to ascertain the issues of value in dispute between the parties at an early stage;
 - 173.3. to create models, including cash flow models, and other evidence of projected profit, likewise, budgets, capital expenditures;
 - 173.4. to provide other additional guidance and evidence, that will help quantify and explain Claims No. 4 against UBS for repudiatory breach of the Investment Agreement; and
 - 173.5. to enable the Court to make a fair and reasonable finding that damages were actually suffered and to reasonably ascertain both actual and future lost profits.
174. By reason of the matters stated above, UBS, UBS AG or UBS Financial Services Inc are liable for breach of statutory duty.
175. In the premises, the Company is entitled to an order for specific performance by UBS in respect of the sales and purchases of securities executed or purportedly executed on the New York Stock Exchange in the period from 12 June 2013 to 18 September 2013 on behalf of the Company under the Investment Agreement, that UBS provides:
- 175.1. (1) the broker's (or Designated Market Maker's) contract notes produced by Member firms or license holders of the New York Stock Exchange in accordance with the regulatory instruments of the NYSE, referred to in Section 72 of the Securities Industry Regulations, 2012, the Statute Law of The Bahamas; and
 - 175.2. (2) material proof of funds passing through UBS' hands under trading contracts of the Plaintiffs at the New York Stock Exchange (NYSE) in consequence of purchase transactions executed on behalf of the Company from 12 June 2013 to 18 September 2013 and delivered the aforesaid Member firms or license holders of the New York Stock Exchange (NYSE) in accordance with the regulatory instruments of the NYSE and U.S. clearing facilities, the Depository Trust Company (DTC) and the National Securities Clearing Corporation (NSCC), referred to in Section 77 of the Securities Industry Regulations, 2012, the Statute Law of The Bahamas.
176. This is on the basis that UBS, UBS AG or UBS Financial Services Inc were and remain liable to fulfill this legal duty which they were bound to do in the first place.

177. The Supreme Court of The Bahamas has jurisdiction to entertain any suit to enforce the Investment Agreement between the parties and may order for the Company on the ground that provision of these Member broker's (or Designated Market Maker's) contract notes:
- 177.1. would be in the public interest since:
 - 177.1.1. it would a fulfilment of UBS' statutory duty pursuant the Statute Law of The Bahamas, the Securities Industry Regulations, 2012; and
 - 177.1.2. brokers' (DMM's) contract notes are the only documents to evidence of or attest to the existence of the conditions for the legality of transactions carried out by UBS under the Investment Agreement on the NYSE;
 - 177.2. would be a fulfilment of UBS' contractual duty under the Investment Agreement;
 - 177.3. would be fair and just, having regard to the significance of these legal documents to the Plaintiffs in relation to the matter herein referred to Court and potential prejudice to the commercial interests of the Company which would be caused by non-provision of these legal documents and non-performance by UBS of their owed contractual and statutory duties; and
 - 177.4. would be used for purposes of the proceedings which constitute the present litigation, so that the Court can do justice in this case.
178. In the premises, cumulatively, the Plaintiffs are entitled to an order for specific disclosure, being an order that UBS:
- 178.1. (1) disclose documents or classes of documents as specified in the order; and/or
 - 178.2. (2) carry out a search to the extent stated in the order; and/or
 - 178.3. (3) disclose any documents located as a result of the search, e.g.
 - 178.3.1. all documents, reviews, assessments, notes, recordings, messages (including instant messages on any commercial or internal proprietary applications);
 - 178.3.2. copies of all client communications (including but not limited to all written or oral communications including all phone/voice recordings/screen captures, emails or physical documents;

- 178.3.3. copies of all meeting notes with or regarding client (with or without client present);
- 178.3.4. copies of all committee (risk/suitability/complaints) reports, notes, files in all forms mentioning or relating to client;
- 178.3.5. all reports capturing client activity, risk profile, suitability analysis, pending or contemplated actions;
- 178.3.6. all performance reviews, warnings, feedback notes, commission/compensation discussions or communications related to client activity.

PRAYER TO CLAIM NO. 2

179. AND the Plaintiffs claim:

- 179.1. (1) an order for order for specific performance;
- 179.2. (2) an order for specific disclosure;
- 179.3. (3) costs of suit; and
- 179.4. (4) such other relief as the Court deems just.

CLAIM NO. 3 FOR WILFUL MISFEASANCE

180. The Plaintiffs re-allege and incorporate by reference the allegations of paragraphs 1 through 179 above in their entirety.

BRIEF DETAILS OF CLAIM

181. Claim No. 3 against UBS is for damages suffered by Messrs Starostenko in respect of non-pecuniary losses resulted to them through acts of misfeasance on the part of certain officers or agents of UBS.
182. The second and third Plaintiffs' case is that:
- 182.1. Messrs Starostenko, individuals, being members of the investing public, suffered loss or damage due to dishonesty, malpractice or other seriously improper acts, conduct or omissions by, or the unfitness or incompetence of, professional persons concerned in the provision of banking, investment or other financial services or in the management of body corporate;
 - 182.2. conduct of those persons demonstrated a number of breaches of a legal duty, including statutory and fiduciary duties;
 - 182.3. those persons done the acts or conduct (or omitted to do what was required to be done) known to be unlawful by them, either:
 - 182.3.1. intentionally (targeted malice); or
 - 182.3.2. recklessly, knowing both that they have no power to do the acts complained of and that the acts will probably injure the Plaintiffs; or
 - 182.3.3. recklessly, being indifferent that the Plaintiffs would suffer loss or damage; and
 - 182.3.4. damage caused to the Plaintiffs as a result of this tortious wrong.
183. Cumulatively, Claim No. 3 against UBS is for damages for moral losses, where the harmful events occurred and the harm was done in an unfair trading to the goodwill and business reputation and to conditions of life of Messrs Starostenko and their six (6) than minor children.

PARTICULARS OF CLAIM

184. In the course of business, a person concerned in the provision of banking, investment or other financial services or in the management of body corporate, who had been a director of UBS, Mr Kevin Price, acted dishonestly the standards of professional persons concerned in the provision of investment or other financial services when he made a statement contrary to the financial industry standards and accepted market practices and to disadvantage of the Plaintiffs, as evidenced by an internal email of UBS of 19 August 2013 timed at 4:52 PM, which reads, inter alia: ***"2) stop losses are only valid when the market is open 9:30 - 4p"***.
185. In the course of business, a person concerned in the provision of banking, investment or other financial services or in the management of body corporate, who had been a director of UBS, Mr George Maillis, acted improperly in a flagrant way and demonstrated his unfitness or incompetence by systematically obstructing Messrs Starostenko in their course of conducting the investment business with UBS, for most of the time, orally by phone, and in writing, as evidenced:
- 185.1. by email sent to Messrs Starostenko on 20 August 2013 timed at 15:56, which reads: ***"Irina, I suggest you call me before things get much more complicated for you. 4243024 George"***; and
- 185.2. by email sent to Messrs Starostenko on 22 August 2013 timed at 4:04 PM, which reads, inter alia: ***"Irina, This e-mail is to advise you that if you continue to send long, unintelligible e-maiis such as the below, I will reccommend that your e-mail order privilidges be revoked and your fees adjusted sufficiently to amply reflect the time you require us to spend servicing you as a client. Unfortunately, the entire business relationship has to be reviewed, including the mortgage."***
[grammar from the email]
186. The oppressive business practices and obstructive conduct on the part of certain individuals associated with UBS in relation to Messrs Starostenko were recognized by UBS, as evidenced by email sent to Messrs Starostenko on 20 August 2013 timed at 3:21 PM,

which reads: ***"IT ALL STARTS with A DREAM...ops meant NIGHTMARE !! Marsha Adderley Executive Director"***.

187. Messrs Starostenko complained to Mr George Maillis both orally and in writing, as evidenced:

187.1. by email sent to UBS on 19 August 2013, which read, inter alia: ***"Good morning George, please all communications when the market is close. Also would love to see you as client advisor and not obstacle maker, as you are doing since May 2013. I have feeling that all your energy now is busy to cancel flat fee - reason? If it is to hard for you we are absolutely fine to not have you in execution team"***; and

187.2. by emails sent to UBS on 22 August 2013, which read, inter alia: ***"Why you keep intimidate me? Just adjust stop loss, please. It's disturbing for everybody. As professional traders we have rights to the flat fees. As client advisor you knew from the first meeting - we are not long term investors and promise us Electronic access 'e' in programma", year ago ,..... Emails are long because you do not understand my emails so I am trying to explain it all to you. Please, my time is busy and have to be dedicated to other things. You are there to help us. And truly hope you can start to do so. Will follow with replay on your about DMA."*** and ***"I can not understand why you keep make our work so difficult, full of obstacles. If really there is good will from your side why don't we call tomorrow NY UBS and asking there technicians how really it function."*** [grammar from the email]

188. Messrs Starostenko filed a formal complaint with UBS by email sent on 22 August 2013 which reads: ***"Dear Marsha, this is really to much. Could you help, please. Please, explain me our rights. Is It possible legally, technically to not have more G.M. In our relationships with the bank? We had no problem till August 12. And our trades was less then 10 per week. You said, and It seems to me as well, everything was fine. Now, George made wrong stop loss execution and instead to ask us sorry and to put amount back, intimidates me with all possible tools. He Is constantly blackmailing and***

threatening me to remove flat fee. And now even to review the mortgage. And this is the all replay on my technical market scans at the time of stop loss due to be executed. Hope you agree - it is unacceptable and can not be the UBS quality of service, I believe. I have no time, no calm for market. I really put my trust on you and on UBS. I didn't make any question before, you know. Since he is back he made a lot of confusion, movement, mistakes, but till this stop loss we accepted it all and passed over. But it get too far ... Now he offer us to accept a loss of 1700 USD_ circa (almost 2% of the amount of that trade) which is technically, impossible, if only the stop loss was been placed. I will be very thankful to not have to include him in our orders, as well emails. And tomorrow for the meeting we can meet without him too. > If you want you can consider this as an official claim to change our reference person at the bank. Of course you are welcome to forward my email to George if it needed. There is always possibility in resurrection and rebuilding of nice collaboration, but _we place our trust and sign agreement with one of the first Institutions of the world, not with George Mallis in person. What a nightmare. I just want piece and calm and to think a bit more of markets." [grammar from the email]

189. And UBS did not attempt to resolve this complaint in part concerned with oppressive business practices and obstructive conduct, while resolved for two (2) compensation payments for total amount of USD\$3,110 partially compensating Company for loss of profit due to UBS' faults to comply with certain trading orders of Messrs Starostenko and take all reasonable steps and care to obtain the best possible result (or "best execution") on behalf of the Company either when executing trading orders or receiving and transmitting trading orders for execution in August 2013.
190. On 19 September 2013, in response to the Company's demands to compensate it fully for the loss of profits sustained due to UBS' faults, UBS in breach of the condition precedent contained in a document constituting the Investment Agreement called "Depreciation in the value of your portfolio" Section of the "Margin Call - Close Out Process" Clause of the Terms and Conditions, issued "halt of trading" in effect on the investment account 32377, with a balance of USD\$589,362, and, acting unlawfully, required the Plaintiffs to provide money to

bring the additional security in cash up to a sum of USD\$700,000 (margin call), as more particularly described in Claim No. 4 herein for repudiatory breach of the Investment Agreement.

191. On or about 11 April 2014, UBS, unlawfully:

- 191.1. having no right neither under common law or statute or agreement, debited as a set-off the Company's investment account with the sum of USD\$526,323.49 standing to the Company's credit, which was under statute and agreement a trust property held by UBS on trust; and
- 191.2. made a wrongful usurpation of that money of the Company under the Investment Agreement, Statute Laws of the Bahamas and in common law three (3) years and five (5) months before expiration of the term of the Investment Agreement.

PARTICULARS OF DAMAGES

192. By the reason of the matters stated, Messrs Starostenko suffered damages in respect of non-pecuniary losses resulting from the acts of misfeasance on the part certain officers or agents of UBS, as follows in a schedule herein:

- 192.1. damages for mental distress caused to Messrs Starostenko;
- 192.2. loss of congenial self-employment from September 2013 to the present in that they have been precluded from doing trading in securities that was a source of income they enjoyed due to their involvement into the Investment Agreement with UBS in consequence of their altering their positions under the inducement by fraudulent misrepresentation, being deprived from taking any steps to mitigate the loss sustained;
- 192.3. the loss of pride and pleasure in one's work;
- 192.4. loss in relation goodwill and reputation, harm and embarrassment, injury to their feelings and dignity, prejudice and disadvantage from September 2013 to the day of this claim;
- 192.5. loss of the amenities of life, distress, vexation and severe hardship from September 2013 to the present in that they are unable to pay utilities and other

bills, live without running electricity in their home since April 2015 and have to borrow from different relatives to pay the costs of living; and

192.6. loss in relation to difficulties with life events of six (6) then minor children of Messrs Starostenko have suffered partial loss of parental services, distress, vexation and severe hardship in that Messrs Starostenko, being starved of funds, were and still are not able to offer ongoing support on the health and wellbeing, healthy eating to their children and to give them a stable childhood, living with disadvantage and under stress where, in the circumstances, Messrs Starostenko were forced to make arrangements for education of their children, all homeschooled, switching from fee-paying web-based school for free of charge educational solutions and adopt other restrictions, combined with the inability to travel negatively and substantially affected the wellbeing of said children from September 2013 until the present; and more

192.7. Messrs Starostenko's experience of the afore said loss was aggravated by the facts that two of their children having received offers on admission to the Cabot University of Rome and King's College of London were unable to start their studies because of financial starvation created by UBS conspiring against and prosecuting maliciously the Plaintiffs.

PARTICULARS

193. The provisions of the common law or statute concerned with liability for misfeasance provide a summary mode of enforcing rights, including rights created by the winding up, which must otherwise have been enforced by the Court's discretionary jurisdiction.
194. In the premises, UBS owed to Messrs Starostenko statutory or tortious or fiduciary duty to exercise reasonable care and skill in and about executing trading orders of the Company to buy or sell U.S. Securities on the New York Stock Exchange (NYSE), thereby UBS' breaches as aforesaid entitle the Company to both general and special damages.
195. In the premises, Messrs Starostenko are entitled to the relief and claim for an order as a global award for recovery as damages for wilful misfeasance sums to be assessed by the Court in

respect of injuries and moral losses suffered in consequence of the misfeasance as aforesaid which were an effective cause of these damages.

196. In the premises, damages would be awarded for the facts of the deprivation, rather than for the awareness of them.

PRAYER TO CLAIM NO. 3

197. AND the Plaintiffs claim:

- 197.1. (1) compensatory damages for non-pecuniary losses to be assessed by the Court;
- 197.2. (2) interest pursuant thereon, as aforesaid at the above rate until judgment or sooner payment;
- 197.3. (3) costs of suit; and
- 197.4. (4) such other relief as the Court deems just.

CLAIM NO. 4 FOR REPUDIATORY BREACH OF AGREEMENT

198. The Plaintiffs re-allege and incorporate by reference to the allegations of paragraphs 1 through 197 above in their entirety.

BRIEF DETAILS OF CLAIM

199. The Company claims against UBS unliquidated damages for loss of profits incurred by the Company by reason of UBS' defaults and UBS' repudiatory breach of an agreement.
200. Claim No. 4 against UBS is for breach of contract, promise or breach of trust and for non-performance by UBS of its contractual obligations under an agreement, based on compensation of loss of actual and further profits, resulting from UBS' breach of this agreement, according to which UBS acted as an agent for reward of the Company and failed to carry out certain transactions of sale or purchase of securities on behalf of the Company at the New York Stock Exchange.
201. Cumulatively, the Company claims against UBS special damages (and interest thereon) for the expenditure which has been thrown away or wasted by reason of UBS' default.
202. Cumulatively, the Company claims against UBS for money to be assessed by the Court, being interest accrued as set out in the Particulars of Claim herein:
- 202.1. on damages for actual lost profits from 10 October 2013 to 31 October 2017; and
- 202.2. on wasted expenditure from April 2014 to 2013 to October 2017.
203. The damages were incurred by reason of UBS' breaches of its statutory and contractual obligations in relation to the funds invested by the Company under the Investment Agreement made between the Company and UBS, and more particularly of the contractual conditions attached to the investment business services which UBS agreed to provide to the Company as set out in the Particulars of Claim herein.
204. The Company's case is that:
- 204.1. UBS had never intended to perform the Investment Agreement for its term of five (5) years meditating an application for voluntary winding up in The Bahamas,

which was pre-announced in the Curacao Chronicles in November 2012, announced in the Nassau Guardian and the Tribune in March 2014 and took place in March 2015

204.2. UBS was in breach of:

204.2.1. their contractual obligations under the Investment Agreement;

204.2.2. their statutory obligations imposed on them by the Statute Laws of The Bahamas;

204.3. UBS, failing to render substantial performance of their obligations as aforesaid, wrongfully repudiated the Investment Agreement with the Company;

204.4. the repudiation was wrongful and unjustified; and

204.5. UBS is liable for actual and further lost profits sustained by the Company as a result of this repudiation.

205. Sufficient allegations have been made and evidence would be presented, including the most persuasive types of evidence as verifiable data, and more particularly, corroborated profit history, and comparative profit performance, to enable the Court to make a fair finding that damages were actually suffered by the Company and reasonably ascertain both actual and further lost profits.

PARTICULARS OF REPUDIATION

206. In the course of carrying on the securities business, UBS demonstrated their unwillingness or inability to render substantial performance of the Investment Agreement and the intention to no longer be bound by or to fulfil it only in a manner substantially inconsistent with its terms, and repeatedly admitted, orally and in writing, their weakness in the carrying out transactions of sale or purchase of securities, in particular by email sent to Messrs Starostenko on 16 July 2013 timed at 10:33 AM.

207. Such UBS' conduct amounted to an anticipatory repudiation of the Investment Agreement but the Plaintiffs had elected to keep it alive and continued to request orally and in writing for substantial performance of it for the remainder of the term of 5 years.

208. On or about 18 September 2013, in response to the Company's demand to compensate it fully for the loss of profits sustained due to UBS' faults, certain UBS officers or agents had conspired to bring about the collapse of the Plaintiffs by repudiating the Investment

Agreement and thereby engineering a "default" by the Company by dishonestly forcing the Plaintiffs out of the investment business.

209. In the course of the business, on or about 19 September 2013, in breach of condition precedent contained in document constituting the Investment Agreement, namely, the "Depreciation in the value of your portfolio" Section of the "Margin Call - Close Out Process" Clause of the Terms and Conditions, UBS issued "halt of trading" in effect on the investment account 32377, with a balance of USD\$589,362, and, acting unlawfully, required the Company to provide money to bring the additional security in cash up to a sum of USD\$700,000 (margin call); actions and conduct that amounted to wrongful repudiation of the Investment Agreement.
210. If UBS would have compensated the Company in full for the loss of profits sustained it was entitled to claim the amount of the balance standing to the Company's credit in the investment account would have been at least USD\$722,820 or about.
211. UBS did not rely on their own Terms and Conditions and demonstrated a firm intention to terminate the Investment Agreement and did so, being not entitled to do so (e.g. having the wrongfully formed view on the need for the additional security in cash and concealing the Plaintiffs' claim for payment of the sum of the loss, the lost profit from trading which had been repudiated).
212. The repudiatory breach of UBS went to the root of the Investment Agreement by depriving the Plaintiffs of virtually the whole benefit of it because the Company's investment account 32377 was the most important thing to the Investment Agreement.
213. Due to the facts that UBS held the money of the Company on investment account 32377 for carrying out transactions of sale or purchase of securities and that it was impossible to carry out the sale and purchase of securities with this money elsewhere, the Plaintiffs were not able to replace the Investment Agreement that they had with UBS and they were put in an impossible position to take any step to mitigate the loss.

SUBSEQUENT EVENTS

214. UBS being in repudiatory breach tried to escape liability where the loss suffered by the Company had arisen as a direct result of the breach of relevant terms and conditions of the Investment Agreement, and the Plaintiffs sue for profits lost through repudiation.
215. It is always open to the Court to take account of later events in determining what those profits would have been considering that the Plaintiffs' losses increased after the date of repudiation.
216. After the repudiation of the Investment Agreement had occurred, the Plaintiffs did not accept it and had elected to continue to perform, being ready and willing to perform the Investment Agreement on its proper interpretation.
217. In the course of carrying on the securities business, Messrs Starostenko continued to request UBS for substantial performance of the Investment Agreement, sent numerous e-mails and arranged several meetings with UBS' staff trying to restructure the deal, and more particularly, on 8 October 2013, they met with UBS' officers or agents, including Mr Maillis, Mr Paoletto, Mr Jenny and others.
218. In the course of carrying on the securities business, the Company by e-mail sent to UBS on 9 October 2013 timed at 11:41 AM filed a complaint with UBS containing the following:
 - 218.1. an allegation of breach of the Investment Agreement;
 - 218.2. a statement of loss of profits;
 - 218.3. Proposals:
 - 218.3.1. to restructure the securities business;
 - 218.3.2. to transfer the investment account 32377; and
 - 218.3.3. to fulfill the UBS' intention to start the operation with online trading accounts in the near future on an UBS AG's electronic trading platform to ensure instant executions of trading orders; and
 - 218.4. UBS had acknowledged the complaint by email sent to the Company on 10 October 2013 timed at 16:16 and the letter dated 12 November 2013.

219. In the course of carrying on the securities business, the Company filed the same complaint with UBS AG, by email sent on 20 December 2013 timed at 9:54 AM.
220. UBS AG, being a legal entity, which legally appointed UBS to act on its behalf, confirmed their involvement in the principal-agent relationship with UBS as principal by emails sent to the Company on 20 December 2013 timed at 12:40 and on 10 January 2014 timed at 14:07.
221. Thus, the Investment Agreement has never been abandoned, and the parties are mutually bound by the obligations to perform it until the time for performance, fixed by the term of 5 years, which would be passed on 28 September 2017.

PARTICULARS AND SCHEDULE OF ACTUAL LOST PROFITS

222. The damages include loss of profits in the amount of USD\$59,520, the actual net profit which the Company lost due to the trades not carried out by UBS during the period from 19 September 2013 to 10 October 2013.
223. These damages were incurred by reason of UBS' breach of the relevant legal duty and express obligations assumed by UBS under the Investment Agreement to strictly execute the trading orders of the Company and carry out the trades on behalf of the Company.
224. In particular, in the course of carrying on the securities business, UBS had deliberately failed to comply with the following trading orders of the Company and wilfully failed to carry out the following trades:
- 224.1. on 25 September 2013, the Company sent by email timed at 12:55 PM a trading order, and the Defendant failed to execute the trading order and to carry out the trade on behalf of the Company, as a result, the loss of profit of USD\$30,000 or so was incurred by the Company;
 - 224.2. on 9 October 2013, the Company sent by email timed at 10:59 AM a trading order, and the Defendant failed to execute the trading order and to carry out the trade on behalf of the Company, as a result, the loss of profit of USD\$19,520 or so was incurred by the Company;
 - 224.3. on 10 October 2013, the Company sent, by email timed at 10:02 AM, a trading order, and the Defendant failed to execute the trading orders and to carry out the

trade on behalf of the Company, as a result, a loss of profit of USD\$10,000 or so was incurred by the Company.

225. In instant case, establishing lost profits is fairly straightforward and involves merely showing the profit the Company would have made on trading in U.S. Securities if it would not have been wrongfully repudiated by UBS, based on the records of trading orders wrongfully not executed by UBS in the period from 19 September to 10 October 2013; and these damages were assessed by Messrs Starostenko at USD\$59,520.

PARTICULARS AND SCHEDULE OF FURTHER LOST PROFITS

226. Further, the damages include further or future lost profits in the amount of USD\$1,861,240, the gross profit which the Company has lost as a result of the Investment Agreement being wrongfully repudiated by UBS.
227. These damages were incurred by reason of UBS' repudiatory breach (or in other words the Company's loss of bargain).
228. The profits lost are precisely what the Company bargained for — the amount it would have profited on trading in securities for the remaining years of the Investment Agreement until its expiration on 28 September 2017.

BASIS FOR ESTIMATING FURTHER PROFITS

The nature of activity

229. The commercial activity damaged was a business of dealing in futures and other securities (transactions of sale or purchase) which is an established business activity regulated in The Bahamas in accordance with the SIA, 2011 and the SIR, 2012.

The relevant market

230. New York Stock Exchange (NYSE): NYSE is a stock exchange based in New York. In April 2007, New York Stock Exchange merged with a European stock exchange known as Euronext to form what is currently NYSE Euronext. NYSE Euronext also owns NYSE Arca (formerly the Pacific Exchange).

The impact of technology

231. The estimate of the lost profits can be made based on assumptions for advances in technology and transition from manual to electronic executions of trading orders following

an automatic execution procedure promised by UBS whose agents recognised that execution speed is particularly important in volatile markets.

The ability to make profit

232. Past experience of Messrs Starostenko is the proof of profitability, from which lost profits may be estimated. Messrs Starostenko have a history of profitability as evidenced by the Account Statement for the period from 03.07.08 to 20.04.09 to Account USD 01/008177.001 at Credit Suisse, Nassau branch in respect of trading track record of net profit in the amount of USD\$1,147,418 which is the difference between the initial account balance of USD\$360,374.77 on 29 January 2009 and an interim account balance of US\$1,507,730.00 on 27 March 2009 (copied and enclosed here in Appendix 2).
233. Further, despite multiple defaults on the part of UBS, the Plaintiffs made a profit of USD\$30,694, as evidenced by the relevant reports sent to Messrs Starostenko by email timed at 11:59 AM on 1 August 2013 and email timed at 5:31 PM on 4 September 2013.
234. Messrs Starostenko are a part of several trading communities in the world with more than 90 thousand members. They have made profits from their trading, whether in bull or bear markets, sometimes extraordinarily good profits despite the state of the world markets. The decline was caused by UBS's breaches of their duties in the investment business with the Company trading through UBS, in the period July 2013 to September 2013 (after which they were left by UBS without the trading capital) being victims of the continued fraud and conspiracies on the part of UBS and its officers or agents with which this claim is concerned.
235. Messrs Starostenko had the ability to grow the business during the damages period and acquire further expertise to sustain growth, being the right people in the right places.

The eligible capital

236. The experience and expertise of Messrs Starostenko was the eligible capital available for them as seasoned financial traders. The Plaintiffs were injured by UBS after being able to establish a career as traders in securities and predicting their future profits is not difficult. Possible sources of evidence include education records, the trading track record, as aforesaid, and average profits statistics.

The financial capital

237. The Plaintiffs' investment in the relationship with UBS in the form of a trust property in the amount of money of USD\$729,749 was the initial financial capital to sustain growth, and the projected profit was a ready source of additional financial capital.

The Business Plan

238. The Plaintiffs had a plan or the expectation interest which comport with the amount of lost profits claimed, and there were good reasons to expect an anticipated profit on trading in securities in the same or a larger amount, as aforesaid, having an account with an initial balance of US\$729,749. The Plaintiffs contracted with a view of obtaining not a performance itself but the financial equivalent of a notional increase in their overall wealth and, following breaches of the Investment Agreement, have not obtained the promised benefit, but had and still have the intention of obtaining it.

Probable certainty

239. The lost profits are general damages and the amount of the damages can be estimated with reasonable certainty. The estimates of lost profits are based on objective facts, figures, or data from which the amount of lost profits can be reasonably ascertained. The evidence relevant to projected profit is fact-intensive financial data which would enable the Court to make a fair and reasonable finding that the damages were actually suffered and a substantial pecuniary loss has occurred to the first Plaintiff. The Plaintiffs, being experienced participants in the well-established commercial activity of trading in securities and having a track record of actual profits, can qualify for recovery because such profits are probable or more likely than not to meet the legal standard of reasonable certainty.

Contemplation of the Parties

240. Key factors include the fact that the Plaintiffs' investment in the relationship with UBS was an enhancement to an existing successful business of trading in securities and there was testing to provide a predictable damage analysis. The future profits arising from the performance of the Investment Agreement or the loss resulting from its non-performance were within the contemplation of the parties, being the natural, primary and probable

consequence of the breach. The losses were within the parties' specific contemplation or may reasonably be supposed to have been in the contemplation of both parties as the probable result of the breach of the Investment Agreement, at the time they made it. The Plaintiffs wished for indemnity in respect of these losses and informed UBS of their likelihood in time, communicating and sharing special circumstances in advance; and giving UBS a chance to adopt protective measures, to decide whether they are prepared to fulfil or refuse the Investment Agreement.

241. Prior to the conclusion of the Investment Agreement and in the course of carrying on the securities business, Messrs Starostenko and UBS held meetings and exchanged correspondence where issues related to future profits were discussed, and more particularly Messrs Starostenko met and discussed these issues with UBS officers or agents, including Mr George Maillis, Mr Kevin Price and Mr Thibaud Halewyck.

Foreseeability

242. The parties were not entering a new or unfamiliar business and, being in the same business of dealing with securities, were expected to foresee the basic or normal circumstances prevailing within it, and they recognise that a breach is possible and reckon that these damages will or may flow from that breach.
243. Thus, the losses were in the assumed contemplation of both parties in the light of the general facts known to both parties, and more particularly UBS, on the information available when the Investment Agreement was made, should reasonably have realised that such losses were sufficiently likely to result from the breach of it, and the degree of relevant knowledge possessed by UBS at the time of contracting was sufficient to accept the contractual liability imposed on them by the Investment Agreement.

Acceptance

244. UBS could reasonably have been regarded as accepting responsibility for the consequences, since such an extent of liability reflects the scope of the duty undertaken, inclusive a duty to bring about a particular result, and at best giving effect to the express obligations assumed,

and they must fairly and reasonably be held, in entering into the Investment Agreement, to have accepted the risk.

245. Further, UBS agreed to be responsible for avoiding the specific risk of its happening contracting to pay damages if it occurred and paid damages for losses incurred by the Company due to UBS' faults in August 2013, as evidenced by the relevant report sent to Messrs Starostenko by email timed at 5:31 PM on 4 September 2013.

Conclusion

246. The future profits were both foreseeable and within the contemplation of the parties at the time of conclusion of the Investment Agreement and proofs of this were developed both through the Investment Agreement itself and admissions in writing by UBS.

ASSESSMENT OF FURTHER PROFITS

247. The purpose of damages is to compensate the Company for the lost actual and further unrealized profits, or the loss of bargain that it had suffered as a result of UBS' repudiatory breach and this should not be limited to the net profit that had been lost.
248. The Plaintiffs seek only what they bargained for — the amount they would have profited on trading in securities for the remaining years of the Investment Agreement, and only an award of damages equal to these profits will put the Company in the economic position it would have occupied had UBS not broken and had fulfilled the Investment Agreement.
249. The damages incurred are not unlikely or reasonably foreseeable as a result of the breach at the time the Investment Agreement was entered into by the parties, and both actual and further lost profits were a reasonably foreseeable result of UBS' failure to perform and wrongful repudiation of it.
250. Thus, the existence of damage is reasonably certain and the damages were both foreseeable and within the contemplation of the parties.
251. The primary point of assessment is the time during which performance of the relevant legal duty and express obligations assumed by UBS under the Investment Agreement was due which is the end of the term of it, or 28 September 2017.

252. The damages will be a matter of conjecture where the action is commenced before the date of performance, because the Court is obliged to predict what the position would be, had that future date already arrived. This conforms to the compensatory role of damages, which protects the innocent party's financial expectation by placing him in the position he would have occupied had the contract been performed.
253. On the basis that the Plaintiffs contracted with a view of obtaining not a performance itself but the financial equivalent of a notional increase in wealth it would have brought if forthcoming, the presumptive measure of damages is the making good of the loss to the Plaintiffs' overall wealth attributable to the breach (the 'diminution in value' measure).
254. Following breaches of the Investment Agreement, it was and still is now entirely impossible for the Company to obtain performance in the investment business and the Plaintiffs who have not obtained the promised benefit, but had and still have the intention of obtaining it.
255. The Court has the power to compensate the Company, being the victim of repudiatory breach of the Investment Agreement for non-receipt of a benefit, and can do so by making good the loss to the Plaintiffs' overall wealth attributable to the breach (the 'diminution in value' measure).
256. Following the "before and after" method as an accepted approach for showing the lost profits of an established business the Plaintiffs calculated lost profits by comparing profit history before and after the damaging events.
257. Another method used the proof of the investment business that was lost by the Plaintiffs, such as the Investment Agreement was wrongfully repudiated by UBS.
258. This damage analysis is prepared by the Plaintiffs to provide a stable basis for a reasonable estimate of the loss suffered by the Company as a result of the wrongful acts and conduct of UBS and for calculating damages for lost profits, which are general damages, and the Plaintiffs only have to show a reasonable basis for estimating the loss.
259. The loss claimed is the value of the benefit of which the company had been deprived as a result of UBS' repudiatory breach (or in other words the Plaintiffs' loss of bargain).

260. The loss claimed over the loss period that begins from the date of the wrongful repudiatory act of UBS, on 19 September 2013, and ends no earlier than the end of the term of the Investment Agreement, on 28 September 2017 and may extend to the date of the return of the business to customary levels.
261. The loss, including loss of expectation interest, was suffered by the Company, it was sufficiently predictable by UBS and was caused by the relevant breach of duty and obligations under the Investment Agreement.
262. The loss claimed flowed naturally from the breach, and it was within UBS' reasonable contemplation as a serious possible consequence of the breach.
263. The Plaintiffs establish both the actual and further or future lost profits incurred by the Company, based on the records of trading orders and other transaction documents within three (3) months from August 2013 to October 2013.
264. The amount of the further or future lost profits will be computed through the earlier average profit of securities business, inclusive profit from the trades which were not executed by UBS after the repudiation from 19 September to 10 October 2013, to the end of the term of the Investment Agreement, which is the 28 September 2017.
265. The further lost profits were assessed by Messrs Starostenko at USD\$1,861,240 as follows:
- 265.1. the time during which performance was due is three (3) years, eleven (11) months or forty seven (47) months and eighteen (18) days;
 - 265.2. actual net profit per month in August 2013 was USD\$30,694;
 - 265.3. actual net profit per month in September 2013 would have been USD\$27,339;
 - 265.4. actual net profit per month in October 2013 that would have been USD\$59,520;
 - 265.5. average actual net profit for three months was USD\$39,184; and
 - 265.6. average actual net profit computed by forty seven months (47) months and eighteen (18) day gives the further lost profits in the sum of USD\$1,861,240.

PARTICULARS OF WASTED EXPENDITURE

266. The Company would have incurred the expense as follows if the Investment Agreement had not been broken, but that expense, which might otherwise have borne fruit, had become

wasted owing to UBS' repudiatory breach of its contractual obligations under the Investment Agreement.

267. The Company sustained loss, which was wasted expenditure made useless as a result of repudiatory breach by UBS of its contractual obligations under the Investment Agreement, which caused a forced inactivity on the Company's investment account for the period of eight (4) months and (22) twenty days.
268. The Company's expenditure which had been thrown away or wasted by reason of UBS' default is USD\$16,000 or about of interest paid by the Company on the loan amount of USD\$729,749 held in the investment account 32377 by UBS as the additional security to the loan, debited to that investment account by UBS, made useless as a result of non-performance by UBS of contractual obligations under the Investment Agreement due to the wrongful repudiation of it on the part of UBS.

PARTICULARS

269. By reason of the matters stated, the Company had suffered loss of actual and further profits and wasted expenditure for which UBS is answerable.
270. The object of damages is to put the Company, so far as possible, into the same situation as if the Investment Agreement had been duly performed during the term of the Investment Agreement for the period of five (5) years and would not have been repudiated by UBS three (3) years, eleven (11) months and eighteen (18) days before its expiration.
271. The Company proved what its actual and further profits would have been.
272. UBS entered into the Investment Agreement and wilfully failed to comply with their legal duty and obligations and wrongfully repudiated it, as a result, by reason of this wrongful repudiation the Company has suffered the damages, the losses of actual and further unrealized profits, and these losses were caused wholly by UBS' faults.
273. The Company seeking for both the actual and further lost profits in the investment business with previous profit history of it officers and directing mind Messrs Starostenko is eligible for damages in this Investment Agreement which may be awarded to compensate the Company

for the losses enabling recovery for profits it would have derived had the Agreement been performed.

274. The Company is innocent party who did not accept repudiation and claims damages on account of the repudiatory breach by UBS, retain the right to damages that will restore its position had it received full performance; and the Company is entitled, so far as money can do it, to be put in the same position as if the Investment Agreement had been duly performed and would not have been broken by UBS.
275. In the premises, UBS owed to the Company a contractual or statutory or tortious or fiduciary duty to exercise reasonable care and skill in and about executing trading orders of the Company to buy or sell U.S. Securities on the New York Stock Exchange (NYSE), thereby UBS' breaches as aforesaid entitle the Company to both general and special damages.
276. Cumulatively, prima facie every agent for reward is bound to exercise reasonable care and skill in carrying out the instructions of his principal.
277. In the premises, the Company is entitled to and claims the compensatory damages for the loss of the actual and further profits incurred by the Company by reason of UBS' defaults or the repudiatory breach by UBS of its contractual obligations as aforesaid, and consequently the Company is entitled to an order that the damages hereinafter or such other amount as may be determined by the Court, be paid by UBS.
278. Cumulatively, the Company is entitled to and claims the compensatory damages for the expenditure which has been thrown away or wasted by the Company by reason of UBS' default or breach by UBS of its contractual obligations as aforesaid, and consequently the Company is entitled to an order that the damages hereinafter or such other amount as may be determined by the Court, be paid by UBS.

279. Further, the Company is entitled to and claims interest on any damages awarded pursuant to the Civil Procedure (Award of Interest) Act 1992 or interest at such rate and for such period as the Court shall think fit.

PRAYER TO CLAIM NO. 4

280. AND the Company claims:

- 280.1. (1) an order for payment of USD\$59,520 of actual lost profits;
- 280.2. (2) an order for payment of USD\$1,861,240 of further lost profits;
- 280.3. (3) an order for payment of USD\$16,000 of wasted expenditure; or
- 280.4. (4) in the alternative to (1), (2) and (3), the like sums by way of compensatory damages and wasted expenditure for breach of the Investment Agreement;
- 280.5. (5) costs of suit;
- 280.6. (6) interest thereon, as aforesaid at the above rate until judgment or sooner payment; and
- 280.7. (7) such other relief as the Court deems just.

CLAIM NO. 5 CLAIM FOR CONSPIRACY TO INJURE BY UNLAWFUL MEANS

281. The Plaintiffs re-allege and incorporate by reference the allegations of paragraphs 1 through 280 above in their entirety.
282. Claim No. 5 is going to be joined to Claims No. 3 and 4 herein in the alternative.

BRIEF DETAILS OF CLAIM

283. Claim No. 5 against UBS is for general damages as remedies for a conspiracy of certain UBS officers or agents, of which the intention and the purpose was to cause loss or injury to the Company and Messrs Starostenko in their investment business by the use of independently unlawful means.
284. Cumulatively, the Company claims against UBS special damages (and interest thereon) for the expenditure which has been thrown away or wasted by reason of injury suffered by the Company.
285. Cumulatively, the Company claims against UBS for money to be assessed by the Court, being interest accrued on wasted expenditure from April 2014 to 2013 to October 2017 as set out in the Particulars of Claim.
286. UBS systematically defrauded the Company by dishonestly forcing it out of the investment business and sought artificially to place its investment business in default, which is the actual harm that was intended pursuant to a conspiracy on the part of certain UBS officers or agents who had conspired to bring about the collapse of the Company.
287. Certain UBS officers or agents had in fact injured the interests of the Company when UBS, without just cause or excuse, deliberately unlawfully interfered with the investment business of the Company, with the intention to cause pecuniary or financial loss.
288. UBS' actions complained went to the root of the Investment Agreement by depriving the Company of virtually the whole benefit of the Investment Agreement due to the facts:
- 288.1. that UBS held on trust the money on the investment account 32377 for the Company's use for purposes of the investment business;

- 288.2. that it was impossible to the Company to carry out the investment business with this money elsewhere; and
- 288.3. the Company was not able to replace the Investment Agreement with UBS.
289. This claim is based on compensatory damages required to compensate the Company for the losses sustained as a result of conspiracy and of having parted with its moneys.
290. The Company's case is that acts done or omissions made by UBS in course of the investment business, inducing Plaintiffs to enter an investment agreement, in breach of duty and liability or contravention of right imposed or conferred by law or statute alleged herein may co-exist with a legal duty imposed for the benefit of the public, its section or an ascertainable class, breach of which may give rise to a criminal offence, e.g. where criminal intent was demonstrated or could be inferred in the limited field of activities such as wilful destruction or falsification of books and publication of false statements or accounts and where would be no difficulty in enlarging it in the context of any particular case, so as to enable the Court to bring fraudulent people to book.

PARTICULARS OF CLAIM

291. In August 2013, in the course of investment business, UBS only partially compensated the Company for the losses sustained as a result of breaches by UBS under the Investment Agreement and effected two (2) compensation payments for a total amount of USD\$3,110.
292. In September 2013, the Company demanded full compensation for damage suffered from UBS and for further compensation payments and UBS failed to make any payment in response to this demand.
293. In the same time, certain UBS officers or agents had conspired to bring about the collapse of the Company by engineering a "default" with regard to the investment business and borrowings from UBS for purposes of that business, thereby intending to institute court proceedings for possession of the property belonging to the Company.
294. On or about 18 September 2013, in response to the Company's demand to compensate it fully for the loss of profits due to UBS' faults in the investment business, certain UBS officers or agents conspired to bring about the collapse of the Company by repudiating the

Investment Agreement and thereby engineering a "default" by the Company by dishonestly forcing it out of the Investment Business.

295. In the course of the business, on or about 19 September 2013, in breach of condition precedent contained in document constituting the Investment Agreement, namely, the "Depreciation in the value of your portfolio" Section of the "Margin Call - Close Out Process" Clause of the Terms and Conditions, UBS issued "halt of trading" in effect on the investment account 32377, with a balance of USD\$589,362, and, acting unlawfully, required the Company to provide money to bring the additional security in cash up to a sum of USD\$700,000 (margin call); actions and conduct that amounted to injury by independently unlawful means.
296. Such a "default" was artificially created by the conspirators because if UBS would have compensated the Company in full for the loss of profits sustained until 18 September 2013 in the amount of USD\$125,000 or about, the Company was entitled to claim, the amount of the balance standing to the Company's credit in the investment account would have been at least USD\$722,820 or about, as more particularly described in Claim No. 4 herein for repudiatory breach of the Investment Agreement.
297. That "default" did not occur on the facts, nor was it attested to by evidence, thereby inducing the Company in a purported "breach" of its covenants under the Commitment to Finance, which is a part of the Investment Agreement and the aforesaid covenants were null and void being avoided *ab initio*, as more particularly described in Claim No. 8 herein for conspiracy to defraud.
298. On or about 11 April 2014, UBS, unlawfully, entitled itself to the right of set-off which did not exist in law, under statute or in the Investment Agreement.
299. UBS had no right under both common law and statute to set-off the money in the sum of USD\$526,323.49 standing to the Company's credit in the investment account 32377 which was under statute and the Investment Agreement the Company's trust property held by UBS on trust.

300. Acting so, UBS made a wrongful usurpation of that money of the Company under the Investment Agreement, Statute Laws of the Bahamas and in common law three (3) years and five (5) months before expiration of the term of the Investment Agreement.

LEGAL BASIS OF CLAIM

301. This claim is based on the knowledge of the unlawfulness in that:

301.1. They in UBS had knowledge of the facts which made the intended conduct unlawful, even if they did not appreciate the legal significance of those facts which, in the circumstances where it is immaterial if they acted on legal advice that they were doing nothing wrong; or

301.2. they in UBS knew:

301.2.1. that they had no power to do the acts complained of; and

301.2.2. that these acts will probably injure the Company and Messrs Starostenko.

302. This claim is also based on that:

302.1. the relevant acts were be done by unlawful means, the means of intentionally inflicting harm on the Company, and were wrong in law;

302.2. the unlawful acts in question were intended and committed by people who represented directing mind and will in that certain UBS officers or agents who:

302.2.1. made the representations; or

302.2.2. caused someone else to make it; or

302.2.3. were aware of the conspiracy and lend conspirators their assistance; or

302.2.4. participated in a joint design where someone else made the representation in tortious conspiracy; and

302.3. the overt acts of the conspirators done in execution of an agreement, the purpose of which was to injure, resulted in damage to the Plaintiffs.

PROVISIONS OF STATUTE LAWS

303. UBS was and still is a trustee for the Company's investment account 32377, in respect of the trust property on it, within the meaning of the Securities Industry Regulations (or SIR), 2012 providing the trust services pursuant to both the Investment Agreement and the Statute Law of The Bahamas, SIR, 2012, which reads in Section 88 "Segregation of client cash and assets":

“(1) A registered firm that holds client assets, including cheques and other similar instruments, must hold the assets separate and apart from its own property and in trust for the client.

(2) A registered firm that holds cash on behalf of a client must hold the cash separate and apart from the property of the firm in a designated trust account with a bank holding an unrestricted license under the Banks and Trust Companies Regulation Act (Ch. 316) or other deposit-taking institution outside The Bahamas as may be approved by the Commission for this purpose.”

304. UBS was not appointed by the Company to manage investments on behalf of the Company referred to below, therefore, UBS had no discretionary authority over the Company’s investment account 32377 for the purposes of the SIR, 2012.
305. Accordingly, UBS was not entitled to a set-off of the trust property in their hands.
306. UBS breached their statutory duties and obligations in relation to money of the trust property in the investment account 32377 held by UBS for purposes of the investment business under the Investment Agreement and the regulatory provisions of the Statute Laws of The Bahamas, SIA, 2011 and the SIR 2012.
307. UBS in breach of the Investment Agreement and in breach of their statutory duties under the Statute Laws of The Bahamas, wrongfully, entitled themselves to a set-off of the sum standing to the Company’s credit on the investment account 32377 and, on or about 11 April 2014, unlawfully, three (3) years and five (5) months before expiration of the term of the Investment Agreement, debited the investment account 32377 with the sum of USD\$526,323 or so standing to the Company’s credit.
308. So acting, certain UBS officers or agents conspired to induce the Company into a default to pay the interest on the loan compounded quarterly in that the interest was not paid, since 11 April 2014, when UBS made a wrongful usurpation of that money of the Company under the Investment Agreement, Statute Laws of the Bahamas and in common law three (3) years and five (5) months before expiration of the term of the Investment Agreement.

309. Further, UBS in breach of the said duties and without authority, from 19 September 2013 to or about 11 April 2014, unlawfully debited the investment account 32377 with the interest compounded quarterly upon the sum of USD\$729,749, prejudicing interests of the Company.

COMMON LAW

310. UBS acted unlawfully in common law in that the money in the investment account 32377 held by UBS on trust for a specific purpose which was not satisfied and continued to exist and, in circumstances of breach of fiduciary duty owed by UBS, this money continued to be excluded from the course of account between the parties and could not be the subject of a set-off.
311. UBS was not entitled to retain the money as payment for satisfying indebtedness where there had not been mutual dealings between the parties, and, therefore, UBS could not set-off a debt allegedly due to them from the Company.

PARTICULARS OF DAMAGES

312. The Plaintiffs rely on remedy in tort of conspiracy to injure where damages would be assessed on the assumption that the tort was not committed in order to place the Plaintiffs in the a position in which they would have been if the deceit had not been perpetrated.
313. Messrs Starostenko suffered damages in respect non-pecuniary moral losses resulting from injuries conspired by certain officers or agents of UBS, as follows in a Schedule:
- 313.1. damages for mental distress caused to Messrs Starostenko;
 - 313.2. loss of congenial self-employment from September 2013 to the present in that they have been precluded from doing trading in securities that was a source of income they enjoyed due to their involvement into the Investment Agreement with UBS in consequence of their altering their positions under the inducement by fraudulent misrepresentation, being deprived from taking any steps to mitigate the loss sustained;
 - 313.3. the loss of pride and pleasure in one's work;

- 313.4. loss in relation goodwill and reputation, harm and embarrassment, injury to their feelings and dignity, prejudice and disadvantage from September 2013 to the day of this claim;
- 313.5. loss of the amenities of life, distress, vexation and severe hardship from September 2013 to the present in that they are unable to pay utilities and other bills, live without running electricity in their home since April 2015 and have to borrow from different relatives to pay the costs of living; and
- 313.6. loss in relation to difficulties with life events of six (6) then minor children of Messrs Starostenko have suffered partial loss of parental services, distress, vexation and severe hardship in that Messrs Starostenko, being starved of funds, were and still are not able to offer ongoing support on the health and wellbeing, healthy eating to their children and to give them a stable childhood, living with disadvantage and under stress where, in the circumstances, Messrs Starostenko were forced to make arrangements for education of their children, all homeschooled, switching from fee-paying web-based school for free of charge educational solutions and adopt other restrictions, combined with the inability to travel negatively and substantially affected the wellbeing of said children from September 2013 until the present.

314. The Company suffered damages in respect of pecuniary or financial losses resulting from injuries conspired by certain officers or agents of UBS, as follows in a Schedule of loss:

- 314.1. expenses incurred by Messrs Starostenko in investigating and counteracting the machinations of UBS;
- 314.2. loss of further profits assessed by Messrs Starostenko at USD\$1,861,240 as more particularly described in Claim No. 4 herein for repudiatory breach of Investment Agreement, as follows:
 - 314.2.1. the time during which performance was due is three (3) years, eleven (11) months or forty seven (47) months and eighteen (18) days;
 - 314.2.2. actual net profit per month in August 2013 was USD\$30,694;

- 314.2.3. actual net profit per month in September 2013 would have been USD\$27,339;
- 314.2.4. actual net profit per month in October 2013 that would have been USD\$59,520;
- 314.2.5. average actual net profit for three months was USD\$39,184; and
- 314.2.6. average actual net profit computed by forty seven months (47) months and eighteen (18) day gives the further lost profits in the sum of USD\$1,861,240;
- 314.3. loss, which was wasted expenditure which had been thrown away or wasted by reason injury suffered by the Company of USD\$16,000 or about of interest paid by the Company on the loan amount of USD\$729,749 held in the investment account 32377 by UBS as the additional security to the loan, debited to that investment account by UBS from October 2013 to April 2014, made useless as a result of injury conspired by certain UBS officers or agents, which caused a forced inactivity on the Company's investment account for the period of eight (4) months and (22) twenty days;

PARTICULARS

- 315. In the case of pecuniary loss, such as loss of profits or earnings, the principle of *restitutio in integrum* applies, and so the Company and Messrs Starostenko are entitled to be put in the position in which he would have been if the injury had not occurred.
- 316. In the premises, the Company and Messrs Starostenko are entitled to recover both non-pecuniary and pecuniary or financial losses, whether past or future, sustained as a result of having suffered injuries.
- 317. Further the Plaintiffs are entitled to and claim interest on the sums found due pursuant to the Civil Procedure (Award of Interest) Act 1992 or interest at such other rate and for such period as the Court shall think just.
- 318. Cumulatively, UBS is liable to the Plaintiffs in that:
 - 318.1. (1) the misrepresentation was made in the course of business;

- 318.2. (3) such a misrepresentation was calculated to injure the business reputation or goodwill of the Plaintiffs, and conditions of life of Messrs Starostenko in the sense that such injury was a reasonably foreseeable consequence of the misrepresentation; and
- 318.3. (4) such a misrepresentation caused actual damage to the business reputation or goodwill of the Plaintiffs and conditions of life of Messrs Starostenko.
319. In the premises, the Plaintiffs are entitled to the relief and claim to recover as damages for conspiracy the sums set out the Schedules of loss as aforesaid or like sums to be assessed by the Court representing non-pecuniary and actual pecuniary or financial losses suffered in consequence of the conspiracy and consequently the Plaintiffs are entitled to an order that the damages hereinafter or such other amount as may be determined by the Court, be paid by UBS.
320. Cumulatively, the Company is entitled and claims against UBS for money to be assessed by the Court, being interest accrued on wasted expenditure from April 2014 to 2013 to October 2017.
321. Further, the Company is entitled to and claims interest on any damages awarded pursuant to the Civil Procedure (Award of Interest) Act 1992 or interest at such rate and for such period as the Court shall think fit.

PRAYER TO CLAIM NO. 5

322. AND the Plaintiffs claim:
- 322.1. (1) compensatory general and special damages suffered as a result of having suffered injuries as aforesaid according to the Schedules, and more particularly:
- 322.1.1. (1.1) compensatory damages for non-pecuniary losses;
- 322.1.2. (2.2) an order for payment of USD\$1,861,240 of further lost profits;
- 322.1.3. (3.3) an order for payment of USD\$16,000 of wasted expenditure; or
- 322.1.4. (4.4) in the alternative to (1.1), (2.2) and (3.3), the like sums by way of compensatory damages and wasted expenditure for breach of the Investment Agreement;
- 322.2. (2) interest pursuant thereon, as aforesaid at the above rate until judgment or sooner payment;
- 322.3. (3) costs of suit; and
- 322.4. (4) such other relief as the Court deems just.

CLAIM NO.6 FOR GIVING FRAUDULENT PREFERENCE AND FRAUDULENT TRADING

323. The Plaintiffs re-allege and incorporate by reference the allegations of paragraphs 1 through 322 above in their entirety.

BRIEF DETAILS OF CLAIM

324. Claim No. 6 against UBS is for rescission for illegality of certain clauses of a contract, the object of which would be to commit a tort, or a crime such as fraud on a third person or on the public, on the ground that they were giving UBS a fraudulent preference in that UBS retains, at all material times, the money of the Company as an additional security in cash as a makeweight to a security by a mortgage on real estate property in contravention of statutory provisions conferred by bankruptcy laws.
325. The Plaintiffs' case is that acts done or omissions made by UBS in course of business, giving UBS a fraudulent preference, in breach of duty or liability or contravention of right imposed or conferred by law or statute alleged herein may co-exist with a legal duty imposed for the benefit of the public, its section or an ascertainable class, breach of which may give rise to a criminal offence, e.g. where criminal intent was demonstrated or could be inferred in the limited field of activities such as wilful destruction or falsification of books and publication of false statements or accounts and where would be no difficulty in enlarging it in the context of this particular case, so as to enable the Court to bring fraudulent people to book.

PARTICULARS OF CLAIM

326. On or about 28 September 2012 UBS gave loan to the Company for a total of USD\$1,400,000 as a part of arrangements in the investment business pursuant the Investment Agreement.
327. The finance was secured against the real estate property of the Company valued at B\$2,800,000 at the time of transaction.
328. As part of arrangements in the transaction induced by misrepresentation, there was a preferential advantage secured to UBS by the provisions contained in the "Minimum invested assets under management" and "Purpose" clauses of the Commitment to Finance giving UBS

the additional security in cash in the amount of 50% of the loan for purposes of the investment business secured by the real estate property.

329. The transaction was disadvantageous to any other creditors and materially prejudicial to their interests in the event of the bankruptcy of the Company in that the effect of the aforesaid arrangements was that a larger part of the loan amount (or USD\$729,749) came back to UBS.
330. The arrangements had been entered into not for good business reasons and not genuinely for trading purposes, but with the purpose on the part of UBS of committing a fraud on a third person or on the public and with the object of giving UBS preferential treatment in any event and, including the event of the bankruptcy of the Company.
331. UBS acted in bad faith in the circumstances where the "Minimum invested assets under management" and "Purpose" clauses of the Commitment to Finance:
- 331.1. (a) were induced by misrepresentation;
 - 331.2. (b) had not been jointly drafted by the parties; and
 - 331.3. (c) their terms emerged as a result of a non-disclosure on the part of UBS and not of joint efforts of the parties.
332. And it is immaterial that the arrangements had been entered into not with a view to circumventing the insolvency legislation.
333. These arrangements, obviously, represent on its face the additional security in cash, giving UBS a fraudulent preference and a deliberate device to secure that the money shall come back to UBS.
334. The result of the whole transaction was that, UBS received not only a substantial sum by way of corpus, but also a large amount by way of interest.
335. The whole bargain between the parties in regard to the advances was bad, as being in violation of the provisions conferred by bankruptcy laws.
336. In the event of bankruptcy of the Company, UBS is then to get the additional advantage which prevents the property being distributed under the bankruptcy laws.
337. The arrangements contained in the "Minimum invested assets under management" and "Purpose" clauses of the Commitment to Finance was an obvious device to defeat the

bankruptcy laws, and is, therefore, bad, contrary to public policy and the general rules of the liquidation or winding up in insolvency.

338. Further, these arrangements had been entered into by misrepresentation and not for good business reasons, more particularly set out in Claim No. 8 herein for conspiracy to defraud.
339. Thus, the usurious terms of the advances contained in the “Minimum invested assets under management” and “Purpose” clauses of the Commitment to Finance, and the fact that the amount which UBS received in cash, on the advances, was a larger part of the loan, make the Commitment to Finance a contract, the object of which would be to commit a tort, or a crime such as fraud on a third person or on the public.
340. Cumulatively, to an allegation of the giving of a fraudulent preference, it is alleged that certain UBS officers or agents conspired to cheat and defraud the Plaintiffs and shareholders of the Company by fraudulently using its assets for purposes other than those of the Company and by fraudulently concealing such use.
341. The conduct alleged was that there had been an agreement to dishonestly take a deposit from the Company as an additional security in cash in contravention to the bankruptcy laws and in a manner to be to the Company’s detriment and to be prejudicial to its shareholders.
342. The Plaintiffs allege in respect of their claim for actual dishonesty involving, according to current notions of fair trading among commercial men, real moral blame that:
- 342.1. UBS committed a fraudulent act in respect of the carrying on business in that the act of insertion of certain clauses into a contract, was that which UBS would not, in any circumstances, be authorised by its constitution to commit, on the basis that no corporation is formed for the purpose of committing wrongs such as a fraud on a third person or on the public; and
- 342.2. UBS committed a fraud by abuse of position in which UBS was expected to safeguard, or not to act against, the financial interests of the Plaintiffs in that UBS dishonestly abused that position, with the intent to make a gain or to obtain a benefit.

PARTICULARS

343. The Plaintiffs rely on remedy of rescission of the "Minimum invested assets under management" and the "Purpose" clauses of the Commitment to Finance on the ground that an agreement to do that which is a crime or a tort is illegal or that a contract made with the purpose of committing a fraud on a third person or on the public cannot be enforced.
344. In the premises the "Minimum invested assets under management" and the "Purpose" clauses of the Commitment to Finance made with the object of giving UBS preferential treatment in the event of the Company's bankruptcy, such as the additional security in cash, are void as a fraud on the bankruptcy laws.
345. All that UBS, being the mortgagee, was entitled to do is to hold the real estate property as security for the loan.
346. In the premises the Plaintiffs are entitled to an order that the "Minimum invested assets under management" and the "Purpose" clauses of the Commitment to Finance be void as repugnant to the bankruptcy laws.
347. In the premises the Company is entitled to recover for its benefit for a period of five (5) years of money transferred to UBS under the "Minimum invested assets under management" and the "Purpose" clauses of the Commitment to Finance in the sum of USD\$729,749 and held, at all material time, by UBS as the additional security in cash minus the interest on the sum of USD\$670,251 actually advanced.

PRAYER TO CLAIM NO. 6

348. AND the Plaintiffs claim:
- 348.1. (1) an order for rescission for illegality of giving fraudulent preference, declaring that the "Minimum invested assets under management" and "Purpose" clauses of the Commitment to Finance be void as repugnant to the bankruptcy laws;
 - 348.2. (2) in the alternative to (1), a declaration that the parties have no validity of the mortgage;
 - 348.3. (3) compensatory damages for deceit for loss sustained as a result of having parted with the USD\$729,749;
 - 348.4. (4) costs of suit; and
 - 348.5. (5) such other relief as the Court deems just.

CLAIM NO. 7 FOR BREACH OF STATUTE PURSUANT TO THE FRAUDULENT DISPOSITIONS ACT

349. The Plaintiffs re-allege and incorporate by reference the allegations of paragraphs 1 through 348 above in their entirety.

BRIEF DETAILS OF CLAIM

350. Claim No. 7 against UBS is for rescission and for set aside of certain clauses of a contract providing of no consideration for dispositions made by UBS.
351. The Plaintiffs' case is that the following dispositions were made by UBS with intent to defraud the Plaintiffs and at an undervalue:
- 351.1. a transfer of the Company's money by UBS in the sum of USD\$729,749 giving UBS the additional security in cash for a loan as a makeweight to the security granted by Company by way of mortgage on real estate property; and
 - 351.2. personal guarantees from Messrs Starostenko guaranteeing the repayment of the loan.
352. Cumulatively, the Plaintiffs' case is that acts done or omissions made by UBS in course of the business, giving fraudulent dispositions, in breach of duty or liability or contravention of right imposed or conferred by law or statute alleged herein may co-exist with a legal duty imposed for the benefit of the public, its section or an ascertainable class, breach of which may give rise to a criminal offence, e.g. where criminal intent was demonstrated or could be inferred in the limited field of activities such as wilful destruction or falsification of books and publication of false statements or accounts and where would be no difficulty in enlarging it in the context of this particular case, so as to enable the Court to bring fraudulent people to book.

PARTICULARS OF CLAIM

353. On or about 28 September 2012 UBS gave loan to the Company for a total of USD\$1,400,000 as a part of arrangements in the investment business pursuant the Investment Agreement.
354. The finance was secured against the real estate property of the Company valued at B\$2,800,000 at the time of transaction.

355. As part of arrangements in the transaction induced by misrepresentation, there were dispositions at an undervalue made by UBS contained in the Commitment to Finance, and more particularly:

355.1. "Minimum invested assets under management" and "Purpose" clauses:

355.1.1. provide of no consideration for the disposition in that a larger part of the loan (USD\$729,749 or 52% of the loan amount) came back to UBS while the Company was paying the interest on this sum of USD\$729,749; and

355.1.2. provide a consideration for the disposition the value of which in money is significantly less than the value of the property pursuant "Amount" clause which reads: "**USD\$1,400,000 (the "Facility Amount")**", the subject of the disposition, in that UBS had in fact made to the Plaintiffs advances to the total amount of USD\$670,251 (or 48% of the Facility Amount); and

355.2. "Guarantor(s)" and "Guarantee" provide of no consideration for the disposition in that Messrs Starostenko received nothing for guarantees while being bound for the performance of the covenants, obligations, representations and warranties contained in the Commitment to Finance and no commissions or fees for guarantees were paid by UBS to Messrs Starostenko.

356. The transaction was disadvantageous to the Plaintiffs and materially prejudicial to their interests and the aforesaid dispositions made by UBS with intent to defraud of the Plaintiffs and at undervalue.

357. The aforesaid arrangements of the transaction had been entered into not for good business reasons and not genuinely for trading purposes.

358. UBS acted in bad faith with an intent and for the purpose to defraud the Plaintiffs in the circumstances where the "Minimum invested assets under management", "Purpose", "Guarantor(s)" and "Guarantee" clauses of the Commitment to Finance:

358.1. (a) were induced by misrepresentation;

358.2. (b) had not been jointly drafted by the parties; and

358.3. (c) their terms emerged as a result of a non-disclosure on the part of UBS and not of joint efforts of the parties.

359. UBS intended to wilfully defeat their obligation owed to the Company pursuant to "Amount" clause of the Commitment to Finance which reads: ***"USD\$1,400,000 (the "Facility Amount")."***

PARTICULARS

360. The Plaintiffs rely on remedy of set aside pursuant to the Statute Law of The Bahamas, the Fraudulent Dispositions Act, 1991, which reads in Section 4: ***"(1) Subject to the provisions of this Act, every disposition of property made with an intent to defraud and at an undervalue shall be voidable at the instance of creditor thereby prejudiced."***
361. In the premises the "Minimum invested assets under management", the "Purpose", the "Guarantor(s)" and the "Guarantee" clauses of the Commitment to Finance made by UBS with an intent to defraud and at an undervalue shall be set aside to the extent necessary to satisfy the obligations to the creditor, the Company to whom the aforesaid obligations are owed by UBS, together with such costs as the Court may allow.
362. In the premises the Plaintiffs are entitled to an order that the "Minimum invested assets under management", the "Purpose", the "Guarantor(s)" and the "Guarantee" clauses of the Commitment to Finance be set aside pursuant to the Statute Law of The Bahamas.

PRAYER TO CLAIM NO. 7

363. AND the Plaintiffs claim:

- 363.1. (1) an order for set aside the "Minimum invested assets under management", the "Purpose", the "Guarantor(s)" and the "Guarantee" clauses of the Commitment to Finance be set aside;
- 363.2. (2) in the alternative to (1), a declaration that the parties have no validity of the mortgage;
- 363.3. (3) compensatory damages for deceit for loss sustained as a result of having parted with the USD\$729,749;
- 363.4. (4) costs of suit; and
- 363.5. (5) such other relief as the Court deems just.

CLAIM NO. 8 FOR CONSPIRACY TO DEFRAUD

364. The Plaintiffs re-allege and incorporate by reference the allegations of paragraphs 1 through 363 above in their entirety.

BRIEF DETAILS OF CLAIM

365. Claim No. 8 against UBS is for rescission of certain clauses of a contract between the parties and restitution of money paid on the ground that the Plaintiffs were defrauded by conspiracy on the part of UBS inducing them to enter into the contract by pre-contract misrepresentations, omissions and non-disclosure of material facts.
366. Claim No. 8 against UBS contains allegations of conspiracy to defraud at common law based on that conspirators in UBS agreed by dishonesty to deprive the Company of the 50% of the loan amount, which was its or to which it would be entitled or to injure its proprietary right or economic interest, where the conspirators had foreseen that such loss or prejudice would or might result.
367. Parties to the agreement constituting the conspiracy, or their agents, made misrepresentations and omitted essential qualifying facts and matters relating to the additional security in cash for the loan.
368. UBS' act caused a loss to the Company, or exposed the Company to a risk of loss in that certain officers or agents of UBS agreed from the beginning on the fact that the surcharges imposed by the Company's liability to pay the interest on the additional security in cash were to be passed on to the Plaintiffs.
369. The Plaintiffs' case is that acts done or omissions made by UBS in course of the investment business, inducing the the Company to enter an investment agreement, in breach of duty or liability or contravention of right imposed or conferred by law or statute alleged herein may co-exist with a legal duty imposed for the benefit of the public, its section or an ascertainable class, breach of which may give rise to a criminal offence, e.g. where criminal intent was demonstrated or could be inferred in the limited field of activities such as wilful destruction or falsification of books and publication of false statements or accounts and where would be no difficulty in enlarging it in the context of this case, so as to enable the Court to bring fraudulent people to book.

PARTICULARS OF DISPOSITIONS

370. Originally, the general effect of the offered arrangement was to impose upon UBS:
- 370.1. the obligation of opening a credit in favour of the Company to the extent of USD\$1,400,000, to be secured by the property belonging to the Company worth of B\$2,800,000;
 - 370.2. the obligations regarding the investment business with Company in the exchange trading of U.S. Securities; and
 - 370.3. upon the Company:
 - 370.3.1. the obligations regarding the interest and repayment of loan for purposes of the investment business with UBS; and
 - 370.3.2. the obligation for minimum amount of trading capital, which, as it objectively appeared at the time of the supervening events, was:
 - 370.3.2.1. an additional security for the loan in cash, a makeweight to real estate security, obtained by UBS by means of fraudulent misrepresentation, omissions and non-disclosure;
 - 370.3.2.2. a device through which UBS held back more than half of the loan amount, giving themselves fraudulent preference in contravention of statutory provisions conferred by bankruptcy laws; and
 - 370.3.2.3. a disposition made by UBS with an intent to defraud and at undervalue voidable at the instance of the Company thereby prejudiced under Section 4 of the Fraudulent Dispositions Act, 1991.
371. The aforesaid dispositions were the price or consideration for which the offer of UBS contained in the brochure called "Introducing the UBS Real Estate Collateralized Loan" (or "RECL") was bought by the Plaintiffs.
372. UBS fraudulently made representations to Messrs Starostenko by falsehood inducing the state of their minds at the time of these representations, with intent to induce the Company to enter into the Commitment to Finance and to make a cash deposit on trust out of moneys to be placed by UBS to the Company's credit for the purposes contrary to the description

specified in Section 88 of the Securities Industry regulations, 2012, which reads: ***“Segregation of client cash and assets” of the SIR, 2012, which reads: “(1) A registered firm that holds client assets, including cheques and other similar instruments, must hold the assets separate and apart from its own property and in trust for the client. (2) A registered firm that holds cash on behalf of a client must hold the cash separate and apart from the property of the firm in a designated trust account with a bank holding an unrestricted license under the Banks and Trust Companies Regulation Act (Ch. 316) or other deposit-taking institution outside The Bahamas as may be approved by the Commission for this purpose”***; providing UBS with the additional security for the loan in cash as a makeweight to a real estate security in the face of the property belonging to the Company.

373. The true essence of contractual arrangements contained in the “Minimum invested assets under management” and the “Purpose” clauses of the Commitment to Finance was to deprive the Company of more than the 50% of the loan amount, making the Company a victim of conspiracy at common law.
374. Thus, the aforesaid disposition of the trust property was made by UBS with intent to defraud the Company and at an undervalue providing of no consideration for the disposition, making the disposition fraudulent and the contractual arrangements contained in the “Minimum invested assets under management” and the “Purpose” clauses of the Commitment to Finance unlawful.

BODY OF PLEADING

375. The Plaintiffs plead as grounds for rescission that:
- 375.1. fraud by false representations;
 - 375.2. dishonesty;
 - 375.3. non-disclosure or partial disclosure of material facts amounting to a misrepresentation;
 - 375.4. the misrepresentations were made in breach of fiduciary and statutory duties;
 - 375.5. an intent to make a gain, to cause a loss to another, or to expose another to a risk of loss;

- 375.6. UBS occupied a position as an issuer of a financial product in which they are expected to safeguard, or not to act against, the financial interests of their consumers;
- 375.7. UBS dishonestly abused that position, with the intent set out below to make a gain regardless interests of Plaintiffs;
- 375.8. the transaction was entered into as a result of misrepresentation by deceit and the "Minimum invested assets under management" and the "Purpose" clauses of the Commitment to Finance are voidable or unenforceable due to unconscionable conduct on the part of UBS;
- 375.9. the "Minimum invested assets under management" and "Purpose" clauses of the Commitment to Finance had been improperly procured by fraud and breach of fiduciary duty or analogous conduct that equity considers unconscionable;
- 375.10. negotiations on terms of the Commitment to Finance were not conducted between the parties;
- 375.11. neither UBS nor their lawyers had advised the Plaintiffs to seek independent legal advice and, consequently, they did not receive any advice;
- 375.12. UBS played an active part in the fraud;
- 375.13. UBS acted dishonestly;
- 375.14. UBS had a fraudulent intent to defraud the Plaintiffs;
- 375.15. they were defrauded by conspiracy on the part of UBS;
- 375.16. they were induced by the misrepresentation to enter into the "Commitment to Finance" on terms that were to their detriment;
- 375.17. fraud by false pre-contract misrepresentations on the part of UBS;
- 375.18. non-disclosure or partial disclosure of material facts on the part of UBS amounting to misrepresentations;
- 375.19. reliance on the misrepresentations;
- 375.20. the existence of a right to rescind;
- 375.21. they took steps to exercise the right to rescind;

- 375.22. acceptance of the rescission by UBS (who agreed to the rescission until when the Company claimed full compensation for loss of profits sustained due to UBS' faults and UBS failed to fully compensate the Company for the relevant faults);
- 375.23. alternatively, they are entitled to rescission; and
- 375.24. the relief sought as a consequence of rescission.

PARTICULARS OF CLAIM

- 376. UBS made pre-contract fraudulent misrepresentations inducing the Plaintiffs to enter the Investment Agreement and thereafter did not explain to Plaintiffs that terms and conditions of that Investment Agreement changed by a means of making a written offer called Commitment to Finance (the "Commitment to Finance") which did not make clear on its face that it is to be intended to be a deed, a document which purports to be a contract, in fact was informal and was not intended to be a binding agreement or it was not intended to contain terms, by operation of which UBS had in fact deprived the Plaintiffs of:
 - 376.1. more than the 50% of the loan amount;
 - 376.2. the opportunity of receiving profits; and
 - 376.3. a chance of obtaining another beneficial contract when UBS wrongfully repudiated the Investment Agreement, as more particularly described in Claim No. 4 herein for repudiatory breach of the Investment Agreement.
- 377. In fact, UBS invited or induced the Plaintiffs to sign the Commitment to Finance, defrauding or by deceit inducing the Plaintiffs to act to their detriment, loss, and responsibility, given or suffered because of contractual arrangements contained in the "Minimum invested assets under management" and the "Purpose" clauses of the Commitment to Finance made the terms of the principal contract, which was a mortgage facility on a parcel of land, materially different in the potentially disadvantageous respect to those which UBS originally proposed and the Plaintiffs might naturally expect.
- 378. The conduct of UBS was that there had been a deliberate intention to dishonestly take the 50% of the loan amount as the additional security in cash for the loan imposing harsh lending

terms on the Company and additional liabilities on all the Plaintiffs, which would cause detriment or prejudice to their proprietary rights or interest.

379. Actually, UBS conspired to defraud the Plaintiffs by fraudulently using its assets for purposes other than those of the Company and fraudulently concealing such use.
380. Thus, UBS defrauded the Plaintiffs and obtained a device through which UBS held back more than half of the loan amount, the USD\$729,749, for the entire duration of the loan without any conditions, while the Company in respect of this money was responsible for quarterly payments of interest for the same.
381. By its nature, the Commitment to Finance, being a separately signed declaration of pledge which must be considered with regard to the relevant Sections of the Terms and Conditions in the circumstances where the meaning of the "Minimum invested assets under management" and the "Purpose" clauses cannot, without absurdity, be construed strictly according to their grammatical construction and there was a doubt as to the construction.

PARTICULARS OF CONSPIRACY

382. Conspirators in UBS had dishonestly agreed and acted with deliberate dishonesty to the economic disadvantage and prejudice of the Plaintiffs' proprietary rights or interest.
383. The conduct of UBS was deliberately dishonest in that UBS' aim was to drive the transaction regardless of the Plaintiff's interest, whilst UBS knew that Messrs Starostenko could not sensibly enter into the Commitment to Finance if they had full knowledge of all material facts at the time of execution of the Commitment to Finance.
384. In particular, at the date of the Commitment to Finance's execution, the knowledge of UBS and Messrs Starostenko was substantially different regarding the additional security in cash contained within the document.
385. All that Messrs Starostenko knew at that time was that they had to sign a printed form when they will be asked for it, suspecting nothing and trusting UBS, being influenced by the misrepresentations regarding the investment business in U.S. Securities and the prestigious reputation of UBS, UBS AG and UBS Financial Services Inc.

386. Were officers or agents of UBS acting honestly they could not have thought that Messrs Starostenko would have agreed to the course which was taken with the assets of the Company.
387. UBS could not have believed that there was a legitimate commercial rationale for the Plaintiffs to allow the imposition of the requirement to keep the 50% of the loan amount in UBS, a term that is completely devoid of commercial logic for the purposes of the investment business pursued by the Plaintiffs relying upon the misrepresentations.
388. UBS' conduct was dishonest by the ordinary standards of reasonable and honest people; and UBS must have realised that what they were doing was dishonest by the ordinary standards of reasonable and honest people and involved, according to current notions of fair trading among commercial men, real moral blame.

INTENT TO DEFRAUD

389. First of all, an intent to defraud could be inferred from the fact that UBS had made continuing false representations on or about 10 July 2013 and in the interval between that date and the date of execution of the Commitment to Finance.
390. The intent to defraud is made out in that:
- 390.1. UBS intended that the Company shall never use the 50% of the loan amount, or
 - 390.2. UBS intended to obtain the additional security in cash for the loan; or
 - 390.3. UBS carried on obtaining the additional security in cash in the circumstances where there was risk of causing economic loss to the Company and of prejudicing its economic interests, in a way which conspirators knew is generally regarded as dishonest; and
 - 390.4. UBS knew that they were stepping beyond the bounds of what ordinary decent people engaged in the investment business would regard as honest in that:
 - 390.4.1. Direct Market Access (DMA) (available for trading capital of minimum USD\$5,000,000) will never be available for the trading capital of the Company arranged with UBS at USD\$700,000 or about;
 - 390.4.2. an electronic trading platform (which is the financial industry standard) will not be provided to the Company; and

- 390.4.3. the speed of execution of trading orders of twenty (20) seconds or about will never be performed by UBS.

PARTICULARS OF FRAUD

391. The fraudulent representations made by UBS were a part of conspiracy to defraud Messrs Starostenko by siphoning of more than the 50% of the loan amount by way of the "Minimum invested assets under management" and the "Purpose" clauses of the Commitment to Finance.
392. Representations attributable to UBS, UBS AG and UBS Financial Services Inc were relied upon by the Plaintiffs taking a loan from UBS for purposes of an investment business with UBS based representations by UBS and prestigious reputation and skills of UBS AG and UBS Financial Services Inc.
393. Actually, UBS had made a number of express and implied false representations to Messrs Starostenko, set out below, in form of:
- 393.1. statements, oral and in writing, or arising by implication from words or conduct, relating by way of affirmations and description or otherwise to matters of fact present or past which were totally unknown to Messrs Starostenko;
 - 393.2. statements which were misleading in that UBS was telling only part of the truth;
 - 393.3. omissions from a statement of reference to qualifying or supplementary facts and circumstances; and
 - 393.4. non-disclosure.
394. Further, UBS withheld or omitted the following material facts known to them, what made any statement of fact itself absolutely false, owing a legal duty to state the following matters and entitling Messrs Starostenko as against UBS to infer their non-existence from UBS' silence as to them:
- 394.1. that UBS had previously meditated on the winding up, which would be done much earlier than the proposed validity of the Investment Agreement for five (5) years, i.e. until 2017 (in fact UBS has gone into liquidation in 2015);
 - 394.2. that UBS, at the time of making this offer, was not authorized by the Central Bank of The Bahamas for mortgage lending to consumers;

394.3. That the Investment Agreement or Real Estate Collateral Loan (or RECL) was a new and unproven financial product;

394.4. that UBS had not previously made such a transaction;

394.5. that UBS was entering into the unknown to them markets in the Bahamas:

394.5.1. (a) financing the investments in the trading of securities and futures; and

394.5.2. (b) servicing the trading in securities and futures, and more particularly the financial services of the highest quality available in the marketplace, including fast and reliable executions of trading orders;

394.6. that UBS lacked experience and due diligence in these markets in the Bahamas as aforesaid and that success of a financial product called RECL is largely speculative and uncertain because of that lack; and

394.7. that UBS did not intend to provide the financial services in conformity with accepted market practices, precise standards of the financial industry, regulatory instruments of the New York Stock Exchange (NYSE) and statutory obligations in respect of the securities business and the financial services under the Statute Laws of The Bahamas, as described more particularly in Claims No.No. 1 and 6 or damages for breaches of the Investment Agreement and in Claim No. 2 for specific performance and for fulfilment of the statutory duty under a Statute Law of The Bahamas.

395. The omissions of fact, as aforesaid, are such as to make what is stated so absolute, a version of the entirety of the facts as to amount to a travesty, and the statement itself a lie in one of its most dangerous and insidious forms and of such a nature as to make what is actually stated a misrepresentation and, alone, a ground for damages.

396. On or about 10 July 2012, in The Bahamas at 5 Clifton Bay Drive of Lyford Cay on New Providence island certain agents of UBS proposed to Messrs Starostenko the Investment Agreement or Real Estate Collateral Loan (or RECL) and handed over the brochure "Introducing the UBS Real Estate Collateralized Loan" to them, in which UBS advertised, inter alia, ***"Leveraging Bahamas residential property to unlock the potential of your investment"***, ***"Unlock the potential of your Bahamas residential property"***, ***"Make your real estate work***

for you”, “UBS (Bahamas) Ltd. offers a world of advantages” and “A simple arrangement to meet your most ambitious plans”.

397. In particular, the brochure of UBS stated:

397.1. (i) ***"UBS is offering ... an opportunity to monetize up to 50% of the current appraised value of their Bahamas residential real estate";***

397.2. (ii) Opportunity...

397.2.1. ***"You... - are looking for an easy way to tap into the value of your real estate to provide additional funding for other investment opportunities...***

397.2.2. ***- may want to consolidate all of your assets and liabilities... with a single financial services provider...***

397.2.3. ***- believe that there are investment opportunities that will likely exceed the mortgage costs..."***

397.3. (iii) Solution... A UBS Real Estate Collateralized Loan...

397.3.1. ***- in the form of an uncommitted, short-term advance facility of up to 60 months (5 years)***

397.4. (iv) Benefits for you...

397.4.1. ***- Additional funds to achieve your financial goals and participate in investment opportunities"***

398. But the brochure of UBS did not state and withheld that:

398.1. personal guarantees were required from the officers of the Company borrowing from UBS; and

398.2. UBS sought:

398.2.1. to receive the additional security in cash;

398.2.2. to impose "certain constraints" on trading in securities in contradiction to relevant terms of the Terms and Conditions; and

398.2.3. to obtain the right to proceed against the Plaintiffs, which was originally restricted under relevant provisions of the Terms and Conditions, which provides:

398.2.3.1. in the "Liability and Use of Agents" Section:- ***"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."***;

398.2.3.2. in the Collateral Loan Clause:-

398.2.3.2.1. (a) ***"Where you have selected "Collateral Loan" in the Account Application, you hereby agree to all of the terms and conditions in the Basic Agreement for Collateral Loans (the "Collateral Loan Agreement") plus the additional terms and conditions set out in this "Collateral Loans" Section."***

398.2.3.2.2. (b) ***"This Collateral Loans Clause applies to all loans and transactions involving a financial commitment from us (such as overdrafts, fixed advances, guarantees, trading transactions that require a margin), (hereinafter referred to as "loan(s)") where your assets or those of a third party are pledged to us as collateral."***;

398.2.3.3. as to the entitlement to proceed against a borrower, the terms and Conditions reads in "Fall in the lending Value" Section of Collateral Clause:- ***"If the lending value of the pledged assets fails below all loans granted under the Account Application and any previously existing loans (including accrued and current interest), we shall be entitled to proceed ..."***;

398.2.3.4. as to entitlement to dispose of the collateral, the Terms and Conditions reads in "Fall in the Lending Value" Section of Collateral Loan Clause:- ***"If we have issued guarantees, then if the lending value falls below that of loans granted, we shall be entitled to***

dispose of the collateral automatically if, upon simple demand from us, you cannot provide additional security or have the guarantees taken over.”; and

398.2.3.5. as to “Fixed advances”, the Terms and Conditions reads in the “Conditions” Section of the Collateral Loan Clause:- ***“For any advance with a term of more than 12 months, interest shall be calculated and charged at the end of each calendar term. Principal and interest shall be calculated and charged on expiration of the term. Interest shall be debited to the relevant current account.”***

399. The statements, as aforesaid, amounted to a warranty in relation to:

399.1. the amount of the Investment Agreement of 50% of Property value;

399.2. expected profits that could reasonably have been anticipated; and

399.3. duration of the Investment Agreement for five (5) years.

400. In course of this meeting, other printed marketing materials and relevant documentation of UBS, inclusive a leaflet called "Welcome to UBS (Bahamas) Ltd.", were handed over to Messrs Starostenko where UBS, inter alia, describes themselves:

400.1. (a) ***"As a wholly-owned subsidiary of UBS AG, Switzerland" which "gives you access to the advantages of this outstanding offshore location, combined with the services of the entire global UBS Group";***

400.2. (b) ***"Our comprehensive range of products and services is matched only by our world-class advisory and execution expertise";***

400.3. (c) ***"With UBS (Bahamas) Ltd. you gain access to products and services offered by the UBS Group as well as by selected third parties worldwide through our open architecture approach"; and***

400.4. (d) Bahamas trading desk ***"Our experienced trading staff in The Bahamas can execute equity, bond, derivative products... Our excellent communication infrastructure ensures fast and efficient contact with every financial centre ...".***

401. Further, there had been made an express representation by agents of UBS from the words used in the context in which they were used as to effect on a reasonable person in positions of Messrs Starostenko and with their known characteristics would have understood, contained in the following statements:

401.1. that UBS will carry on business of dealing in securities and futures contract in accordance with:

401.1.1. (a) the Terms and Conditions of UBS;

401.1.2. (b) Fee Schedule of UBS (Bahamas) Ltd. (the "Fee Schedule");

401.1.3. (c) Information on the Order Execution Policy of UBS AG;

401.1.4. (d) UBS Order Executions Standards and Policies;

401.1.5. (e) "Important account information"; and

401.1.6. (f) applicable laws and regulations of The Bahamas and the United States;

401.2. that following statements at UBS AG's website are trustful:

401.2.1. (a) ***"Our comprehensive broker dealer offering gives you the tools you need to achieve best execution" ("Competitive edge" webpage);***

401.2.2. (b) ***"Our clearing and execution team is fully integrated international network";***

401.2.3. (c) ***"Our front-to-back technology gives you fast, direct access to over 70 global exchanges" ("Clearing and Execution" webpage);***

401.2.4. (d) ***"UBS Direct Market Access (DMA) offers access to major equity market around the world" ("Direct Market Access" webpage);***

401.3. that following statements as to the UBS AG's well-known worldwide branded financial services from a disclosure at UBS AG website "Information on the Order Execution Policy of UBS AG" are fully in force in respect to UBS' promise in question:

401.3.1. (a) ***"UBS AG will take all reasonable steps to obtain the best possible result (or "best execution") on behalf of its Clients either when executing client Orders or receiving and transmitting Orders for execution. To this***

end, UBS had put in place effective execution arrangements and an internal order execution policy”;

401.3.2. (b) *“UBS will comply with any applicable local rules and regulations that apply to the reception and transmission of Client Orders as well as to the execution of such Orders”;*

401.3.3. (c) *“UBS will be executing Orders “on a Client's behalf” where the Client legitimately relies on UBS to protect his or her interests in relation to the pricing or other aspects of the transaction that may be affected by how UBS executes the Order”;*

401.4. that the services offered by UBS are genuine well-known branded financial services of UBS AG that have acquired a goodwill in the financial markets and known worldwide by distinguishing names, e.g.:

401.4.1. UBS Direct Market Access (DMA);

401.4.2. UBS Direct Market Access plus (DMA+);

401.4.3. UBS Pinpoint;

401.4.4. KeyTrader;

401.4.5. KeyLink; and

401.5. that UBS was in position to provide UBS AG's warranty related to the financial services, including fast and reliable executions (“best executions”) of trading orders of the Plaintiffs.

402. The statements of the agents of UBS, as aforesaid, amounted to:

402.1. the condition of the Investment Agreement; and

402.2. an invitation or inducement to engage in investment activity by UBS in the status as an issuer who offers financial products to public and a person who enters or offers to enter an agreement the making or performance of which constitutes the following regulated activities:

402.2.1. accepting deposits;

402.2.2. dealing in investments as principal;

402.2.3. dealing in investments as agent;

- 402.2.4. arranging deals in investments;
- 402.2.5. managing investments;
- 402.2.6. activities in relation to debt;
- 402.2.7. safeguarding and administering investments;
- 402.2.8. sending dematerialised instructions in relation to a security or contractually based investment;
- 402.2.9. providing basic advice on stakeholder products;
- 402.2.10. advising on investments;
- 402.2.11. operating a multilateral trading facility; and
- 402.2.12. agreeing to carry on the above activities.

403. Further, in course of this meeting, the following statements were made by agents of UBS as to the existence of the intentions on the part of UBS, which is itself a present fact:

- 403.1. (a) to commence, in the near future, operations with an online trading accounts on an electronic trading platform with an instant execution of trading orders;
- 403.2. (b) to equip the Company with the Direct Market Access ("DMA");
- 403.3. (c) to grant all-in-fee "flat" time-based fee in order to implement instant and reasonably priced executions of trading orders if the Company opens an account with UBS and takes a loan;
- 403.4. (d) to enable the Company to trade in futures contracts across all CME (Chicago Mercantile Exchange) Group asset classes;
- 403.5. (e) to enable the Company to place with UBS night stop loss orders (***Orders that automatically close trade at specified prices and which are one of the oldest order types on Wall Street***) to potentially protect the Company's trading capital against a negative movement in its position in securities, that would provide the Company a fail-safe mechanism, vital for the protection of trading capital.

404. Later on, these statements were repeated by UBS at every successive moment during the intervening period both verbally and in writing in a series of interviews, telephone conversations and some of these statements are contained in a number of emails sent to Messrs Starostenko.

405. Such acts and conduct were employed by UBS as a means of maintaining, by periodically repeated representations, the deception once initiated on or about 10 July 2012.
406. Messrs Starostenko had discovered the actual true of facts only after they had altered their and the Company's positions on the faith of the representation when supervening events rendered, to their knowledge, the above-named statements, actually, untrue so as to render the representations a misrepresentation.

PARTICULARS OF REPRESENTORS

407. Both UBS and UBS AG are liable for the deceit in this claim in that their agents and certain officers or agents had acted in a common design to make fraudulent misrepresentations to Messrs Starostenko, with the Company in contemplation, even though the Investment Agreement and the RECL were with UBS.
408. UBS' agents who actually made false representations on behalf of UBS, were acting within the scope of their authority, or in the course of their duties of employment in the business of UBS or UBS AG, the persons who were the parties of the representations, are reasonable persons having all the background knowledge which would reasonably have been available to them, being bankers and agents of UBS when the representations were made, and therefore UBS, as well as UBS AG, being their employers and/or principals, are liable and jointly and severally responsible to the Plaintiffs for the consequences, since their acts or omissions were done in course of their employment as agents in agency or co-agency, or sub-agency, or intermediary agency.
409. These misrepresentations were made either in the course of UBS' business or on some other occasion on which it is clear that the representations were intended seriously and meant to be relied upon.
410. UBS, UBS AG and UBS Financial Services Inc were the subjects of these misrepresentations, therefore both are liable to this claim in respects of acts or omissions of their agents in that subsequent to the making of said representations, and they both intervened and adopted the benefit of the representations.
411. UBS, as well as UBS AG, have assumed responsibility for the information which these agents have tendered to Messrs Starostenko, directly or indirectly, in circumstances where they

knew that the information will be delivered to Messrs Starostenko, either specifically or as members of the public, or of a particular class, and likely to be relied upon by these members of public for the purpose for which the representations were made, provided the circumstances are such that Messrs Starostenko can reasonably rely on the skill and judgment of UBS and UBS AG.

PARTICULARS OF REPRESENTEES

412. Messrs Starostenko, to whom the representations were physically and directly made, the persons who were the parties of the representations, and, being individual members of the public, or of a particular class, who relied upon and acted on the faith of the representations of these agents and other representations addressed to the public or the ascertainable class of retail investors.
413. Messrs Starostenko are reasonable persons having all the background knowledge which had been available to them at the relevant time being born, grown and graduated in Soviet Union, living in Italy and Belgium, jurisdictions which do not follow the English common law system, who made a career in engineering in Europe and evolved since 2009 into self-directed traders in securities and futures.
414. In the situation in which they were at time of the alteration of their respective positions, the decision to enter into relationship with UBS was supported by consideration of profits from the exchange trading on US markets in which Messrs Starostenko had a proven trading track record of profit of US\$1,147,418 or about in an investment account at Credit Suisse Branch in Nassau with an initial balance of US\$360,312 in the period of two (2) months in 2009.
415. The Representees were put by UBS at an impossibility to take any step to mitigate the losses sustained in consequence of these fraudulent misrepresentations, and more particularly set out below in Claim No 4 for damages for repudiatory breach of the Investment Agreement and in Claim No. 5 for conspiracy to injure by unlawful means.

PARTICULARS OF FALSITY

416. The Plaintiffs were deceived or by falsehood induced to believe that things were true when they were false and UBS practicing the deceit knew them to be false and had no reasonable

grounds to believe that the contents of the representations set out above were true.

417. The representations made by UBS were false, and therefore a misrepresentation, in that at material date they were false in substance and in fact and not as stated, as more particularly described in Claim No. 8 for conspiracy to defraud.
418. Oral statements relating by way of affirmations and description to matters of fact, later on repeated in writing, were punctuated by details and qualified by figures and these facts have been misstated, e.g. UBS' expressed intentions were material proved by proof of UBS' emails sent to the Plaintiffs timed respectively at:
- 418.1. 11:25 AM on 15 February 2013;
 - 418.2. 12:16 PM on 21 June 2013; and
 - 418.3. 5:08 PM on 26 June 2013.
419. Said intentions of UBS were not merely unfulfilled, but supervening events and UBS' emails attest that these intentions never existed at all, making representation both fraudulent and false proved by proof of emails sent to Messrs Starostenko timed at:
- 419.1. 4:32 PM on 19 August 2013; and
 - 419.2. 10:14 AM on 23 August 2013.
420. Further, said representations were reasonably and naturally capable of bearing only one meaning which might reasonably be attached to each of them, and there were no surrounding circumstances of such nature as to suggest an artificial or special meaning.
421. Each statement, as aforesaid, had a clear and definitive meaning by itself, and that meaning was false so as to entitle Messrs Starostenko to rely on these falsities.
422. At the time said representations were made, Messrs Starostenko had no knowledge of their falsity, but, in fact, believed them to be true, and had no reasons to believe that said representations were untrue.

PARTICULARS OF INDUCEMENT TO ACT

423. The dominant purpose of the 10 July meeting, assessed from UBS' point of view, was to induce Plaintiffs to enter the Investment Agreement or sign up for RECL.

424. The actual and material inducement to act was both the object and the result of the misrepresentations made on or about 10 July 2013 in that:
- 424.1. the false representations or promises had been made to Messrs Starostenko by UBS; and
 - 424.2. in entering into the Investment Agreement the Company had relied on everything said or done by UBS beforehand.
425. Each of the representations and omission alleged were material in that of importance and their natural and probable result was to induce, and was intended to, and did, materially influence the minds of Messrs Starostenko so as to affect their conduct.
426. The representations and the omissions alleged, construed in a sense which was false, would influence a normal person to take just the steps which Messrs Starostenko did. They were calculated to influence Messrs Starostenko and employed entirely for the purpose of misleading, and have in fact misled them.
427. Further, the representations made were ones *dans locum contractui* in that the fraud or deceit, committed by UBS, was giving occasion for the Investment Agreement or RECL.
428. The previously respectable reputation of UBS and claimed goodwill in The Bahamas in the names "UBS" and "UBS Group" in relation to the financial services to private, corporate and institutional clients, Messrs Starostenko justifiably relied upon said representations.

PARTICULARS OF FRAUDULENT REPRESENTATIONS

429. UBS made to Messrs Starostenko statements falsely and fraudulently well knowing that they were false when made or without actual and honest belief in the truth of the same or, alternatively, recklessly or deliberately, not caring whether they were true or false and, proved by proof of emails sent by UBS to Messrs Starostenko timed at:
- 429.1. 4:32 PM on 19 August 2013; and
 - 429.2. 10:14 AM on 23 August 2013.
430. The statements complained of were made with the intent to defraud and to deceive Messrs Starostenko and to induce them and the Company to enter the Investment Agreement in order to make a profit for themselves regardless of their interest and in the hope or

expectation that the prospect of future business outweigh the risk of paying any or substantial damages.

431. Deliberate making of false statements on the part of UBS in fact deceived Messrs Starostenko into believing that promises and intentions stated during and after the meeting on 10 July 2012 are true, while UBS knew that there was no hope that these promises and intentions would become reality.
432. In August 2012, in the course of business UBS made a representation to Messrs Starostenko which was implied from an absolute representation, coupled with silence, regarding contractual terms relating to the additional security in cash contained in the Commitment to Finance.
433. This was a type of reticence or inaction which, in the circumstances, where negotiations of terms were not conducted, amounted to a representation of the non-existence of the matters relating to the additional security in cash contained in the Commitment to Finance, as to which silence had been observed.
434. The representation contained in the telephone conversation and in the email timed at 15:35 on 23 August 2012, accompanied the Commitment to Finance, was what that induced Messrs Starostenko to sign the Commitment to Finance without questioning it.
435. The representation consisted in that UBS did not tell Messrs Starostenko and failed to draw their attention otherwise to the fact that UBS had in fact sought:
 - 435.1. to receive the additional security in cash as a makeweight to a security, in the form of the real estate property belonging to the Company;
 - 435.2. to receive gratuitous guarantees from Messrs Starostenko in the sense that Messrs Starostenko received no right or benefit at law in return for the guarantees;
 - 435.3. to impose "certain constraints" on trading in securities in contradiction to relevant terms of the Terms and Conditions;
 - 435.4. to obtain the right to proceed against the Plaintiffs, which was originally restricted under relevant provisions of the Terms and Conditions; and

- 435.5. to provide third parties and the world with the appearance of creating legal rights and obligations which differ from those which UBS was to create.
436. UBS' omissions from a statement of reference to qualifying facts and circumstances, such as to make what was stated so absolute, a version of the entirety of the facts as to amount to travesty and lie in one of its most dangerous and insidious forms, where the circumstances raised a legal duty on UBS to state matters omitted, because they exist, and where, therefore, Messrs Starostenko were entitled to infer non-existence from UBS' silence as to said matters.
437. The representations so implied comprised direct assertion of untruth, amounted to a misrepresentation on the part of UBS as to the effect of the Clause "Minimum invested assets under management" and the "Purpose" Clause's requirement to keep the 50% of the loan amount in UBS and construed in a sense which was false were employed entirely for the purpose of misleading Messrs Starostenko and were calculated to induce the Company to give UBS an additional security for the loan in cash.
438. Further, when UBS had said something about the loan conditions to Messrs Starostenko, a legal duty at once arose to say more, and UBS failed to discharge this duty, therefore, UBS' reticence from that point became an implied misrepresentation.
439. This duty to say more arose in the present case of a continuing representation, especially in the circumstances, where:
- 439.1. negotiations on terms of the Commitment to Finance were not conducted between the parties;
 - 439.2. the Commitment to Finance had not been jointly drafted by the parties and its terms were emerged as a result of a non-disclosure and not of joint efforts of the parties;
 - 439.3. neither UBS nor their lawyers had advised the Plaintiffs to seek independent legal advice and, consequently, they did not receive any advice; and
 - 439.4. UBS was expected to pay regard to, inter alia, the degree of risk involved in the transaction, taking in account the sophistication and experience of the parties to the transaction, and the need of the Plaintiffs for advice and information.

440. UBS was deceiving Messrs Starostenko, by way of silence and non-action, into believing:
- 440.1. that the Commitment to Finance itself is not a contract, but simply a letter of intent from lender;
 - 440.2. that the requirement to keep the 50% of the loan amount in UBS is not a mandatory one, but merely a matter of good standing contained in the "Requirement for Opening Relationship", contained in the Fee Schedule, which reads: ***"Minimum requirement to open a relationship with UBS (Bahamas) Ltd. is USD\$500,000"; and "The bank requests all its clients to at least maintain this amount at all times";***
 - 440.3. that the requirement to keep the 50% of the loan amount in UBS does not contain anything new that may give UBS any additional right;
 - 440.4. that UBS would never commence any action against the Plaintiffs on the basis of a breach of this requirement; and
 - 440.5. that the Terms and Conditions are still a valid contract, and it will not be superseded and spent by the Commitment to Finance.
441. Messrs Starostenko believed in and asserted the true nature of these matters and UBS did not persuade them to believe in the contrary, whilst certain officers or agents of UBS knew that the contractual arrangements contained in the "Minimum invested assets under management" and "Purpose" clauses of the Commitment to Finance made the terms of original the Investment Agreement and the RECL materially different in disadvantageous respect from those originally proposed by UBS.
442. On the faith of these beliefs Messrs Starostenko signed the Commitment to Finance on 24 August 2012 without questioning it and without having previously obtained legal advice.
443. Further, Messrs Starostenko in entering into the Commitment to Finance have relied on everything said or done by UBS beforehand, being unaware of the true nature of it and having knowledge that was substantially different from that of UBS as to aspects of the additional security in cash contained in the "Minimum invested assets under management" and "Purpose" clauses of the Commitment to Finance.

PARTICULARS OF NON-DISCLOSURE

444. The non-disclosure was a part of conspiracy to defraud Messrs Starostenko by siphoning off more than the 50% of the loan amount by way of the requirement to keep the 50% of the loan amount in UBS contained in the "Minimum invested assets under management" and "Purpose" clauses of the Commitment to Finance.
445. UBS was in a position where their legal duty to disclose and their interest in obtaining further business with the Plaintiffs were in conflict.
446. It was the duty of UBS not to suppress:
- 446.1. the facts regarding terms related to the additional security in cash contained in the "Minimum invested assets under management" and the "Purpose" Clauses of the Commitment to Finance;
 - 446.2. the fact that the Real Estate Collateralized Loan (or "RECL") was a new and unproven product;
 - 446.3. the fact that UBS had not previously made such a transaction; and
 - 446.4. the fact that UBS was meditating an application for voluntary winding up in The Bahamas.
447. Non-disclosure or partial disclosure of material facts on the part of UBS amounted to a misrepresentation by UBS making an implied representation that the transaction is of the normal and usual type, and that nothing had been withheld which would show it to be otherwise.
448. In fact, UBS was aware or should have been aware that the loan offered was suspicious because:
- 448.1. it was an unusual arrangement;
 - 448.2. it was documented using non-standard documents;
 - 448.3. it was arranged significantly above commercial rates of interest, considering that more than the 50% of the loan amount was held by UBS during the term of the loan; and
 - 448.4. it was giving of a fraudulent preference to UBS by way of an additional security for the loan, more particularly described in Claim No. 8 for conspiracy to defraud and

for rescission of the "Minimum invested assets under management" and the "Purpose" Clauses of the Commitment to Finance.

449. Further, partial disclosure of the facts in itself amounts to misrepresentation, so that UBS' request for Messrs Starostenko to enter into the guarantee, amounts to a representation that there were no unusual risks attached to the transaction of which Messrs Starostenko ought to be made aware.
450. UBS was under a legal duty to Messrs Starostenko, as the guarantors, to disclose to them the material changes introduced and contractual arrangements made between the creditor and the principal debtor which made the terms of the principal Investment Agreement and the RECL materially different in a potentially disadvantageous respect from those which the guarantors might naturally expect.
451. Further, UBS that chose to give advice to the Plaintiffs on the effect of a mortgage document which they were about to sign in favour of UBS was under a duty of care not to misstate the effect of the document and a fiduciary duty as an advisor, especially in the circumstances, where:
- 451.1. negotiations on terms of the Commitment to Finance were not conducted between the parties;
 - 451.2. the Commitment to Finance had not been jointly drafted by the parties and its terms were emerged as a result of a non-disclosure and not of joint efforts of the parties; and
 - 451.3. neither UBS nor their lawyers had advised the Plaintiffs to seek independent legal advice and, consequently, they did not receive any advice.

PARTICULARS OF RELIANCE AND ALTERATION OF POSITIONS

452. UBS deliberate making of false statements was deceiving Messrs Starostenko and the Company into believing that promises and intentions, as aforesaid, are true, when UBS knew that there was no hope that these promises and intentions would become reality, and on the faith of that belief the Plaintiffs entered the Investment Agreement.
453. The Plaintiffs had been induced to change their legal positions in a way that cannot be immediately undone on discovering the truth.

454. The Plaintiffs acted to their detriment on the faith of said representations of UBS and by reason of their belief in the truth of the representations, so as to alter physically their positions and the position of the Company, in that the changes were effected in their material interest and situation and more particularly:
- 454.1. on 14 August 2012, Messrs Starostenko for a primary purpose and on the basis that it would facilitate investment, i.e. employment of UBS to carry on trading in securities and futures executed on behalf the Company the "Application for UBS Real Estate Collateralized Loan "RECL" with UBS (Bahamas) Ltd.", and the Company applied for "UBS Real Estate Collateralized Loan (RECL)"; and
- 454.2. later on, the Company physically altered its positions by the act of using real estate as a collateral, in reliance on said and other representations of UBS.
455. On or about 24 August 2012, on the express and implied representations and the absolute representation, coupled with silence and non-action, as aforesaid, the Plaintiffs had altered their positions by entering into the Commitment to Finance, where the Company had pledged to UBS its moneys as the additional security in cash and Messrs Starostenko gave gratuitous guarantees in favour of UBS for the loan for purposes of the investment business.
456. On 18 September 2012, the Company took a loan from UNBS and granted UBS a mortgage executed by Messrs Starostenko, having on that date knowledge as to the additional security for the loan in cash contained in the "Minimum invested assets under management" and "Purpose" clauses of the Commitment to Finance that was substantially different from that of UBS.
457. The aforesaid changes of positions of the Plaintiffs referable to UBS' representations were accompanied by harm, injuries, moral and pecuniary losses suffered by the Plaintiffs having suffered damages as a result of the erroneous beliefs engendered by the misrepresentation, which was a material inducement to them to act on it and they in fact altered their positions by the misrepresentation.

PARTICULARS OF INVESTMENT

458. The part of the Investment Agreement was a loan offered by UBS mainly for investment purpose and secured the propriety belonging to the Company of which Messrs Starostenko are officers and tenants since 2008.
459. A mortgage was formalised by a deed called the Indenture of Mortgage (or "Mortgage") a part of which was the Commitment to Finance signed by the Plaintiffs, being defrauded by conspiracy on the part of certain UBS officers or agents and by pre-contract misrepresentations and nondisclosure of material facts.
460. Both the Mortgage and the Commitment to Finance had not been jointly drafted by the parties and their terms were emerged as result of a non-disclosure.
461. By this investment the Company:
- 461.1. obtained a loan in the amount of USD\$1,400,000 mainly for purposes of the investment business under the Investment Agreement for five (5) years;
 - 461.2. pledged to UBS by way of collateral the property having "AS IS" Market Value in the amount of B\$2,800,000;
 - 461.3. bound itself to pay quarterly amount of interest every three months (quarterly payments) and to pay off all outstanding principal and interest due to the maturity date on or about 28 September 2017.
462. One part of the Investment Agreement, the Indenture of Mortgage, contains the "Severability" clause making the mortgage a severable contract composed of separate contracts, so that the party breached one part of such a 'severable' contract does not breach the whole contract, therefore, the other party must still honor the other subparts and cannot cancel the whole Investment Agreement.
463. The separate contracts contained in the Commitment to Finance, which is also a part of the Investment Agreement set out in the "Minimum invested assets under management" Clause of the Commitment Letter:
- 463.1. (a) agreement to carry out transactions in securities on behalf of the Company;
 - 463.2. (b) agreement to hold assets of the Company on trust.

464. Thus, the "Severability" clause allows aspects of the Commitment to Finance related to the additional collateral in cash contained in the "Minimum invested assets under management" and the "Purpose" clauses (the Requirement to keep the 50% of the loan amount at UBS) of the Commitment Letter (obtained by UBS by a misrepresentation and void *ab initio*) to be "severed" without affecting the validity of the rest of the Investment Agreement and the Mortgage, which is the part of the former.

PARTICULARS OF ADVANCES AND ADDITIONAL SECURITY IN CASH

465. On 28 September 2012, advances totaling USD\$670,251 (or 48% of the loan amount of USD\$1,400,000) were made to Messrs Starostenko and a deposit in the sum of USD\$729,749 (or 52% of the loan amount of USD\$1,400,000) was placed in the investment account 32377 in the name of the Company to be kept with UBS as the trading capital for purposes of the investment business according to knowledge, information and belief of Messrs Starostenko.
466. In fact, according to intent of UBS, the sum of USD\$729,749 was placed in the investment account 32377 as the additional security for the loan in cash.
467. The Plaintiffs were defrauded while intended to treat these money, remaining in the hands of UBS:
- 467.1. as the trading capital for the purposes of investment business;
 - 467.2. just as if these money had been a sum standing in UBS' books to the credit of the Company; and
 - 467.3. to be drawn upon by the Company in the same manner as the advances of the USD\$670,251 in case if the investment business with UBS would prove impossible.
468. By this investment, Messrs Starostenko, being influenced by fraudulent representations and induced by conspiracy on the part of UBS to sign the Commitment to Finance, unconsciously allowed UBS to obtain the additional security in the sum of USD\$729,749.
469. The material effect of the transaction is that the Company is to have advances of USD\$670,251 and it is to pay interest on the loan amount of USD\$1,400,000, inclusive the additional security in the sum of USD\$729,749.

470. As a result of this investment, the lending value of pledged assets was USD\$3,529,749, including the real estate value of B\$2,800,000, and the USD\$729,749 of the additional collateral in cash in the investment account 32377.
471. The lending value of pledged assets was five (5) times higher than all loans granted by way the advances totaling the USD\$670,251.

RIGHT TO RESCIND AND STEPS TAKEN

472. The "Minimum invested assets under management" and "Purpose" clauses of the Commitment to Finance, so far as it went, did not state the true nature of the contract between the parties where assets under management (50% of the loan amount or "The higher of USD\$500,000 (net of any Lombard financing) or 50% of the Facility Amount") were put to a use different from that contemplated by the Plaintiffs.
473. The "Minimum invested assets under management" and "Purpose" clauses of the Commitment to Finance had been improperly procured by fraud and breach of fiduciary duty or analogous conduct that equity considers unconscionable.
474. The circumstances relating to the formation of the Commitment to Finance, the "Minimum invested assets under management" and "Purpose" clauses rendered them voidable at the election of the Plaintiffs who had right to rescind.
475. By reason of misrepresentations and fraud, the Plaintiffs were entitled to rescind the "Minimum invested assets under management" and "Purpose" clauses of the Commitment to Finance, containing a requirement to keep the 50% of the loan amount in UBS, and they had in fact rescinded them.
476. The Plaintiffs took the following steps to exercise their right to rescind:
- 476.1. Messrs Starostenko elected to avoid to comply with the requirement to keep the 50% of the loan amount in the investment account 32377 at UBS; and
 - 476.2. Messrs Starostenko rescinded the "Minimum invested assets under management" and "Purpose" Clauses of the Commitment to Finance:
 - 476.2.1. orally, in the course of business, where there was made an oral agreement between the parties intended to rescind the requirement to keep the 50%

of the loan amount in the investment account 32377 at UBS, which was later proved in writing by an email sent by UBS to Messrs Starostenko on 22 August 2013 timed at 4:04 PM, which reads: ***“Unfortunately, the entire business relationship has to be reviewed, including the mortgage”***;

476.2.2. orally, at the meeting with certain UBS officers or agents on 18 September 2013;

476.2.3. orally, at the meeting with UBS’ management held on 8 October 2013; and

476.2.4. in writing, by email sent by Messrs Starostenko to UBS on 9 October 2013 timed at 11:35 AM.

477. UBS took note of that position by email sent to Messrs Starostenko on 10 October timed at 16:16 and by the letter to Messrs Starostenko dated 12 November 2013.

478. Therefore, for these reasons, the Commitment to Finance’s Clause “Minimum invested assets under management” and “Purpose” Clause’s requirement to keep the 50% of the loan amount at UBS had never come into being, had never been implemented and had not governed relations between the parties, being superseded by conduct of both parties on facts of avoidance by the Plaintiffs to comply with this requirement and of acceptance of that avoidance by UBS.

ACCEPTANCE OF RESCISSION BY UBS

479. The acceptance by UBS of this avoidance and the rescission is implied from their own acts and conduct in standing by and encouraging Messrs Starostenko in their trading in the course of investment business from April to September 2013, where there was made an oral agreement between the parties intended to rescind the requirement to keep the 50% of the loan amount in the investment account 32377 contained in the “Minimum invested assets under management” and “Purpose” clauses of the Commitment to Finance.

480. UBS was agreeing to the rescission until when the Company claimed full compensation for loss of profits sustained, as follows:

- 480.1. on 4 September or about, UBDS partially compensated the Company for the relevant breaches of Investment Agreement and made two (2) compensation payment for a total of USD\$3,110 for the loss of profits sustained by the Company due to UBS' faults in the investment business UBS partially compensated the Company for its breaches loss of profits due to UBS' faults in the investment business;
- 480.2. on 18 September 2013, UBS failed to compensate the Company in full when it demanded full compensation for loss of profits sustained until 18 September 2013 in the amount of USD\$125,000 or about; and
- 480.3. on 19 September 2013, only to escape that liability UBS demanded the Plaintiffs to provide money to bring the additional security for the loan in cash up to a sum of USD\$700,000 (margin call).

481. Therefore, rescission by election and its acceptance in these circumstances had the effect of dissolving the "Minimum invested assets under management" and "Purpose" Clauses of the Commitment to Finance from inception (*ab initio*).

STATUTORY RIGHT TO RESCIND

482. Additionally, by reason of the matters stated the "Minimum invested assets under management" and the "Purpose" clauses of the Commitment to Finance made the loan transaction harsh and unconscionable.
483. Therefore additionally, the right to rescind is found in the Statute Law of The Bahamas, the Money Lending Act, 1913, as a remedy in case if ***"the transaction is harsh and unconscionable, or is otherwise such that a court of equity would give relief,"*** including ***(d) set aside, either wholly or in part, or revise, or alter, any security given or agreement made in respect of money lent;"***.

PARTICULARS

484. By reasons of the matters stated, UBS, UBS AG, are liable to the Plaintiffs in that:
- 484.1. (1) the activities of UBS in offering the investment business services involved the making of the misrepresentations, either express or implied;

- 484.2. (2) the misrepresentation were made in the course of business to consumers or prospective consumers or readers of the publications of UBS, UBS AG and UBS Financial Services Inc; and
- 484.3. (3) the misrepresentation were made to consumers or prospective consumers or readers of the publications of UBS, UBS AG and UBS Financial Services Inc;
485. The Plaintiffs hereby have suffered detriment, loss, and responsibility because of contractual arrangements contained in the "Minimum invested assets under management" and the "Purpose" clauses of the Commitment to Finance, imposing harsh lending terms on the Company and additional liabilities on Messrs Starostenko, due to the fact that:
- 485.1. the Company was improperly deprived of the largest part of its assets, which caused detriment or prejudice to the Plaintiffs' proprietary rights or economic interest, and
- 485.2. Messrs Starostenko of the opportunity of receiving profits and of a chance of obtaining another beneficial contract, being defrauded by those in UBS who conspired against them and made the Plaintiffs victims of the conspiracy to defraud at common law.
486. The Plaintiffs rely on remedies in tort of conspiracy to defraud and misrepresentation by deceit where rescission of the "Minimum invested assets under management" and the "Purpose" clauses of the Commitment to Finance would be affirmed by the Court.
487. The representations, as aforesaid, had been made, and had been false and had been made fraudulently, and it was the legal duty of UBS not to suppress.
488. In the premises the Plaintiffs are entitled to regard the "Minimum invested assets under management" and "Purpose" clauses of the Commitment to Finance as rescinded and to such other relief flowing from fact of rescission.
489. In the alternative, the Company is entitled to an order discharging it from liability under the terms related to the additional security in cash contained in the "Minimum invested assets under management" and "Purpose" clauses of the Commitment to Finance in respect of the 50% of the loan amount to be kept all times at UBS, which:

- 489.1. (a) were induced by misrepresentation;
- 489.2. (b) had not been jointly drafted by the parties; and
- 489.3. (c) their terms emerged as a result of a non-disclosure on the part of UBS and not of joint efforts of the parties.

490. The "Minimum invested assets under management" and "Purpose" clauses of the Commitment to Finance had been improperly procured by fraud and breach of fiduciary duty or analogous conduct that equity considers unconscionable and, therefore, making the loan transaction harsh and unconscionable.

491. In the premises the "Minimum invested assets under management" and "Purpose" clauses of the Commitment to Finance are liable to be set aside under statutory provisions of the Money Lending Act, 1913, as a remedy in this case, where the loan transaction is harsh and unconscionable, or is otherwise such that a court of equity would give relief.

PRAYER TO CLAIM NO. 8

492. AND the Plaintiffs claim:

- 492.1. (1) a declaration that the Plaintiffs have validly rescinded the "Minimum invested assets under management" and "Purpose" clauses of the Commitment to Finance;
- 492.2. (2) in the alternative to (1), an order for rescission for misrepresentation by deceit and conspiracy to defraud, declaring that the "Minimum invested assets under management" and "Purpose" clauses of the Commitment to Finance are not in equity binding upon the parties;
- 492.3. (3) in the alternative to (1) and (2), a declaration that the parties have no validity of the mortgage;
- 492.4. (4) compensatory damages for deceit for loss sustained as a result of having parted with the USD\$729,749;
- 492.5. (5) costs of suit; and
- 492.6. (6) such other relief as the Court deems just.

CLAIM NO. 9 FOR FRAUDULENT MISREPRESENTATION

493. The Plaintiffs re-allege and incorporate by reference the allegations of paragraphs 1 through 492 above in their entirety.
494. Claim No. 9 is going to be joined to Claims No. 4 and 5 herein in the alternative.

BRIEF DETAILS OF CLAIM

495. Claim No. 9 against UBS is for damages recoverable for deceit, inclusive loss of potential investments and the loss of expected but not-realised profits resulting from misrepresentations, including those that have been fraudulent, and acts done or omissions made by UBS in the course of carrying on a regulated activity inducing individuals, its potential retail customers, to enter an agreement.
496. The second and third Plaintiffs' case is that:
- 496.1. they entered into the Investment Agreement as a result of both:
 - 496.1.1. fraudulent misrepresentations on the part of UBS; and
 - 496.1.2. breach by UBS of a fiduciary duty of loyalty and honesty to retail customers of financial services firms; and
 - 496.2. cumulatively, acts done or omissions made by UBS in course of the investment business, inducing individuals to enter an agreement, in breach of duty or liability or contravention of right imposed or conferred by law or statute alleged herein may co-exist with a legal duty imposed for the benefit of the public, its section or an ascertainable class, breach of which may give rise to a criminal offence, e.g. where criminal intent was demonstrated or could be inferred in the limited field of activities such as wilful destruction or falsification of books and publication of false statements or accounts and there would be no difficulty in enlarging it in the context of this particular case, so as to enable the Court to bring fraudulent people to book.

PARTICULARS OF CLAIM

497. In July 2012, in the course of business, UBS made deliberate false statements which invited or induced Messrs Starostenko to enter the "Investment Agreement" in order to fund

investments which would be carried out exclusively through trading facilities of UBS, UBS AG and UBS Financial Services Inc, as well as through UBS AG's electronic trading platforms with instant execution of trading orders.

498. Messrs Starostenko were induced to enter the Investment Agreement:

- 498.1. by UBS' brochure called "Introducing the UBS Real Estate Collateralized Loan";
- 498.2. by UBS' agents making false and fraudulent representations; and
- 498.3. by non-disclosure on the part of UBS where the circumstances raised a legal duty on them to state certain matters, if they exist, and where, therefore, Messrs Starostenko were entitled to infer non-existence from UBS' silence as to said matters, resulted in misrepresentation, and more particularly by an implied representation that the transaction is of the normal and usual type, and nothing had been withheld which would show it to be otherwise.

499. UBS deceived and induced the Plaintiffs into making a disastrous investment who relied on UBS' statements and conduct, complained of, to their forbearance, detriment, loss, and responsibility, given or suffered because of fraudulent misrepresentation.

500. As a result, the Plaintiffs entered the Investment Agreement, where the capital from the loan would in part be utilised as trading capital available for gainful investment business, of which the Plaintiffs were deprived because of the fraud and which otherwise would have been utilised profitably in a similar investment business.

501. The Plaintiffs suffered losses or damages as a result of being induced to enter the Investment Agreement with UBS.

502. Had Messrs Starostenko know the true facts or the whole truth, the Plaintiffs would not have entered the Investment Agreement with UBS and the Company would not have parted with its money if Messrs Starostenko had known that the representations made by UBS were false.

503. The Plaintiffs refer to and rely upon the material set out herein which are prima facie evidence that the allegation of fraud have a foundation in fact, providing sufficient support for the inference of fraud or dishonesty.

PARTICULARS OF FRAUD

504. The Plaintiffs re-allege the allegations contained in Claim No. 8 against UBS for conspiracy to defraud herein as to the pre-contract misrepresentations made by UBS in July 2012 inducing the Company and Messrs Starostenko to enter the Investment Agreement through which the Company would borrow money from UBS in order to fund the investment business to be carried out during a period of five (5) years exclusively through the trading facilities of UBS, UBS AG and UBS Financial Services Inc.

PARTICULARS OF LOSS OF INVESTMENT OPPORTUNITY

505. The Company had failed to earn expected profits from the investment business that is both the trading capital deprived of and the subsequent foregone profits.
506. The USD\$729,749 represented trading capital of the Company for purposes of the investment business pursuant to the Investment Agreement with UBS for a term of 5 years from 28 September 2012 to 27 September 2017.
507. By reason of the matters stated the Plaintiffs had lost, once and for all:
- 507.1. an opportunity which they would otherwise have taken of entering into a similar investment business in some other investment agreement; and
 - 507.2. the expected profits that could have been earned by the Company by trading in U.S. Securities for the same term of years.
508. The profits expected to be made by the Company were lost due to reliance on fraudulent representations of UBS.
509. The projections for loss of profits foregone are being put forward on a cautious and conservative basis since they represent a minimum amount that, on a balance of probabilities, the Company would have earned with the trading capital.
510. The Plaintiffs claim to have sustained substantial loss from their lost opportunity to have traded with the trading capital as they would otherwise have done during a term of 5 years from 28 September 2012 to 27 September 2017.
511. Had it not been for the fraud perpetrated on the Plaintiffs in the intervening, pre-contractual and post-contractual periods by UBS, the Company would have had a trading capital of USD\$5,113,000 on the date of 27 September 2017, more particularly described in the

Schedule of Loss of Investment Opportunity herein, instead of which it had only the depleted fund of USD\$526,323 in April 2014 unlawfully sequestered by UBS, as more particularly described in Claim No. 5 herein for conspiracy to injure by unlawful means.

512. Had the fraud not occurred, the Company through Messrs Starostenko would have gone on conducting its investment business of trading in U.S. Securities throughout the 2012-2017 period in a similar investment business and that trading would have been profitable overall.
513. The loss, being the damage recoverable for torts continued to have effect until trial, should have been assessed at the date of trial or, at latest, the termination of the Company's relationship with UBS or on 28 September 2017.

SCHEDULE OF LOSS OF INVESTMENT OPPORTUNITY

514. The Company was deprived of the trading capital for the investment business by UBS's tort, but otherwise it would have invested that money in September 2012 in U.S. securities, as here below, an evidence about the value of those potential investments and the would-be profit from these investments in the following Share Portfolio according to Yahoo Finance' Tesla, Inc. (TSLA) and Facebook, Inc. (FB) NasdaqGS data:

Historical Prices on 27 and 28 September 2012

Number	Company	Ticker	Purchase Price, Sep 2012	Invested, Sep 2012
10,000	Tesla, Inc.	TSLA	USD\$29.00	USD\$290,000
15,000	Facebook, Inc.	FB	USD\$21.00	USD\$315,000
Monies invested in purchase of Share Portfolio in 2012				USD\$605,000

Real Time Prices on 27 September 2017

Number	Company	Ticker	Sale Price, Sep 2012	Proceeds, Sep 2012
10,000	Tesla, Inc.	TSLA	USD\$345.00	USD\$3,450,000
15,000	Facebook, Inc.	FB	USD\$167.00	USD\$2,505,000
Proceeds of the sale of the Share Portfolio in 2017				USD\$5,955,000

515. This schedule of details of the Company's expenses and the expected profit for the period of five (5) years from 2012 to 2017 are assessed as follows:

- USD\$605,000 would have been invested in purchase of Share Portfolio in September 2012
- + USD\$124,749 would have been standing to the Company's credit
- USD\$281,400 or so for the interest due for five (5) years
- USD\$80,000 or so of insurance for five (5) years
- + USD\$5,955,000 of would have been received as proceeds of the sale of the Share Portfolio in September 2017

Net Expected Profit for 5 years: USD\$5,113,000 or USD\$5,100,000 or about

516. The Plaintiffs rely on remedy in tort of misrepresentation by deceit where damages would be assessed on the assumption that the tort was not committed in order to place the Plaintiffs in the positions in which they would have been if the deceit had not been perpetrated.

PARTICULARS

517. The representations, as alleged herein, had been made, and had been false and had been made fraudulently and UBS, as well as UBS AG, as tortfeasors, are liable for all losses caused by the commission of tort of deceit and suffered by the Plaintiffs as a direct result of said representations.

518. In the premises UBS, as well as UBS AG, are liable to the Plaintiffs in that:

- 518.1. (1) the proposed activities of UBS involved the making of the misrepresentation, either express or implied;
- 518.2. (2) the misrepresentation was made in the course of business to consumers or prospective consumers or readers of the publications of UBS, UBS AG and UBS Financial Services Inc;
- 518.3. (3) such a misrepresentation was calculated to induce the Plaintiffs into the Investment Agreement for a period of five (5) years; and

518.4. (4) such a misrepresentation caused actual damage in the sense that such loss of investment opportunity and expected profit was a reasonably foreseeable consequence of the misrepresentation.

519. In the premises the Company is entitled to the relief and claim to recover as damages for deceit representing the loss of investment opportunity flowing directly from its reliance and resulting from UBS' fraud, or loss of expected profit of USD\$5,100,000 or about that could have been earned by investing in a similar investment business until the trial.

520. In the alternative, the Plaintiffs are entitled to the relief and claim to recover as damages for fraudulent misrepresentation the sum to be assessed by the Court representing actual pecuniary losses suffered in consequence of the reliance and altering their legal positions under the inducement recoverable via tort.

PRAYER TO CLAIM NO. 9

521. AND the Plaintiffs claim:

521.1. (1) an order for payment of USD\$5,100,000 or about; or

521.2. (2) in the alternative to (1), compensatory damages for fraudulent misrepresentation in respect of the loss of investment opportunity and of expected but unrealised profits as aforesaid;

521.3. (3) costs of suit; and

521.4. (4) such other relief as the Court deems just.

CLAIM NO. 10 FOR THE MALICIOUS INSTITUTION OF CIVIL PROCEEDINGS AND MALICIOUS PROSECUTION

522. The Plaintiffs re-allege and incorporate by reference the allegations of paragraphs 1 through 521 above in their entirety.

BRIEF DETAILS OF CLAIM

523. Claim No. 10 against UBS is for damages, including general, aggravated and exemplary damages, in tort of malicious prosecution instituted by UBS where certain UBS officers or agents were actuated by motives of malice or ill will towards Messrs Starostenko, who suffered material and moral losses, including loss of loved one, as a result of the enormous pressure which had been unjustly and unfairly exerted by UBS actuated by motives of a malice alone upon minds of Messrs Starostenko and members of their family, including the mother of Mrs Starostenko who survived the holocaust, but did not survive the prosecution conducted by UBS.
524. Claim No. 10 against UBS is based on compensatory damages required to compensate the Plaintiffs for injuries to their economic interest.
525. Cumulatively, Claim No. 10 against UBS is for malicious process torts of the malicious use of civil process, including the malicious procurement of a writ of possession and attempts of execution of that writ.
526. Cumulatively, the Plaintiff claim that UBS was committing wilful and corrupt perjury contrary to sections 426, 432 and 433 of the Penal Code of The Bahamas.
527. The Plaintiff's case is that the institution of civil proceedings against and prosecution of the Plaintiffs were malicious being brought without reasonable and probable cause being instituted and pursued in bad faith using unlawful means, which was necessarily injurious to the Plaintiffs being used as a weapon with which UBS or its agents, unscrupulous and malicious, inflicted real injuries on the Plaintiffs.

PARTICULARS OF CLAIM

528. The Plaintiffs will rely upon the terms of the relevant Orders of the Rules of the Supreme Court, sections of the Terms and Conditions and sections 426, 432 and 433 of the Penal Code

of The Bahamas to hold UBS or its agents liable for the matters complained of in this claim.

529. UBS systematically defrauded the Plaintiffs by dishonestly forcing them out of the investment business and sought artificially to place the Company's investment business in default, thereafter instituting court proceedings for possession of the property belonging to the Company.
530. Certain UBS officers or agents had conspired to bring about the collapse of the Company by engineering a "default" with regard to its borrowings from UBS, more particularly described in Claim No. 5 herein for conspiracy to injure by unlawful means, thereby intending to institute court proceedings for possession of the property belonged to the Company.
531. Such a "default" was artificially created by conspirators in UBS, allegedly placing the Company in breach of its covenants under the Commitment to Finance, which was null and void being avoided *ab initio*, as more particularly described in Claim No. 8 for conspiracy to defraud.
532. Certain UBS officers or agents fabricated the accounts which were repeated by Counsel for UBS in his letters sent to former Counsel for the Plaintiffs (then Defendants) for purposes of pre-action protocols.
533. On 28 February 2014, UBS declared, without reasonable and probable cause, the loan in "default" and demanded repayment of the whole outstanding balance or possession of the property belonging to the Company.
534. On 7 March 2014, UBS announced in the Nassau Guardian and the Tribune that they ***"winding down the banking side of its operations over the next year"***.
535. On 10 March 2014, UBS declared its intention to seek orders for the sale, possession or foreclosure of the property.
536. On or about 11 April 2014, UBS wrongfully attributed to themselves a right of set-off which did not exist in common law, or under statute or the Investment Agreement, and debited the investment account 32377 with the sum of USD\$526,323.49 or so, held by UBS on trust, having no right under both common law and statute to set off these money and making

appropriation of that money, which was a wrongful usurpation contrary to the Investment Agreement, Statute Laws of the Bahamas and provisions of common law.

537. On 3 October 2014, UBS instituted a court proceedings against the Plaintiffs, committing wilful and corrupt perjury contrary to section 433 of the Penal Code of The Bahamas, which reads: ***"Whoever fraudulently brings any action against another person in a false or fictitious name, having no ground for such action, is guilty of a misdemeanour"***, while certain UBS officers or agents were actuated by motives of malice or ill will towards Messrs Starostenko.
538. A month later, on 5 November, UBS applied for summary judgment.
539. Certain UBS officer, Mr Maillis, committing wilful and corrupt perjury contrary to section 426 of the Penal Code of the Bahamas, which reads: ***"Whoever fabricates evidence, with intent to defeat, obstruct or pervert the course of justice in any proceeding, shall be liable to the same penalties as if he had committed perjury in that proceeding"***, fabricated the account which he gave in an affidavit prepared for the purpose of the prosecution of the Plaintiffs filed with the Supreme Court on or about 5 December 2014, as more particularly described in Claim No. 11 herein for conspiracy to defraud public authority.
540. The application came before Evans J on 23 March 2015, and an Order was made against the Plaintiffs during an oral hearing for payment of \$920,164.87 and for possession in default of payment, without prejudice to the Defendants' right to pursue their counterclaim, in Messrs Starostenko's absence, while no real attempt was made to present the Plaintiffs' (than Defendants') case at this hearing.
541. The UBS officers or agents so acted in the knowledge that the accounts in question were false and that the Plaintiffs would be prosecuted for the loan in "default" which they knew the Company had not incurred.
542. Counsel for UBS, Mr Marco Turnquest, committing wilful and corrupt perjury contrary to section 432 of the Penal Code of the Bahamas, which reads: ***"Whoever, with intent to defeat, obstruct or pervert the course of justice, or the due execution of the law, or to evade the requirements of the law, or to defraud or injure any person, endeavours to***

deceive any public officer acting in the execution of any public office or duty, by personation or by any false instrument, document, seal or signature, or by any false statement, whether verbal or in writing, is guilty of a misdemeanour", repeated the aforesaid fabricated accounts in the course of oral hearing held before Evans J at the Supreme Court on 23 March 2015.

543. The matter was heard in the Court of Appeal and in the Judicial Committee of the Privy Council on 24 February 2017.

NO REASONABLE AND PROBABLE CAUSE

544. The prosecution of UBS was brought without reasonable and probable cause as follows.

545. Firstly, UBS demanded full repayment of the principal along with interest and "breakage penalty" of USD\$140,000 or vacate up possession of the property wrongfully relying on their right to proceed or to a possession which was dependent on the alleged default of the Company of terms contained in the "Minimum invested assets under management" and the "Purpose" clauses of the Commitment to Finance which were introduced by UBS a conspiracy to defraud the Plaintiffs, thereby they were void *ab initio*, never came into being, never implemented and did not govern the relations between the parties, as more particularly described in Claim No. 8 herein for conspiracy to defraud.

546. Therefore, in March 2014, UBS had precluded themselves from relying on the alleged default by the Company of terms contained in the "Minimum invested assets under management" and the "Purpose" clauses of the Commitment to Finance, or UBS themselves stopped relying on the aforesaid terms and was estopped by its own conduct from relying on the relevant provisions of these terms.

547. Thus, UBS' demand for full repayment of the of the principal along with interest and "breakage penalty" of USD\$140,000 or vacate up possession of the property was wrongful and unlawful act of UBS, made intentionally, without just cause and in bad faith, actuated by motives of a malice alone.

548. Secondly, UBS' right to proceed against the Plaintiffs was restricted by the Terms and Conditions which is a valid contract still in force, covenants of which were continuously in existence even after the Plaintiffs were defrauded and induced to sign the Commitment to

Finance, was not spent when the Commitment to Finance was signed, it was not superseded or overtaken by the Commitment to Finance and shall endure to the benefit of and be binding upon the parties providing, *inter alia*, a condition precedent as to entitlement to proceed against a borrower in the "Fall in the Lending Value" Section of the Collateral Loan Clause, which reads: ***"If the lending value of the pledged assets fails below all loans granted under the Account Application and any previously existing loans (including accrued and current interest), we shall be entitled to proceed in accordance with the terms of the separately signed declaration of pledge"***.

549. Therefore, the Commitment to Finance, being a separately signed declaration of pledge which must be considered with regard to the relevant Sections of the Terms and Conditions.
550. UBS knowingly acted in breach of the provision contained in Section "Fall in the Lending Value" of the Collateral Loan Clause of the Terms and Conditions where, in fact, the lending value of pledged assets as of 28 February was USD\$3,326,323 or so, including USD\$2,800,000, property value and USD\$526,323 standing to the Company's credit in the investment account 32377.
551. Therefore, in March 2014, no event of default incurred by the Company, in the circumstances where lending value of the assets, at that time, was approximately five (5) times higher than all loans granted on 28 September 2012 totaling to USD\$670,251.
552. Thirdly, there would not have been any event of default if UBS would have compensated the Company in full for the losses sustained in the amount of USD\$197,497 or about due to UBS' faults in the investment business the Company was entitled to claim, as more particularly described in Claim No. 4 herein for repudiatory breach of the Investment Agreement, and more particularly:
- 552.1. the damages as of 19 September 2013 in the amount of USD\$137,977 or so which were due to UBS' faults in the investment business from 2 August 2013 up to 18 September 2013, as more particularly described in Claim No. 1 herein for breach of the Investment Agreement; and

552.2. the damages as of 10 October 2013 in the amount of USD\$59,520 or so which were due to UBS' faults in the investment business from 19 September 2013 to 10 October 2013, as more particularly described in Claim No. 4 herein for wrongful repudiation of the Investment Agreement.

553. If UBS would have compensated the Company in full for the losses as aforesaid the amount of the balance standing to the Company's credit in the investment account 32377 would have been at least USD\$722,820 or about, not including a profit in the total amount of USD\$153,470 or about estimated at a minimum rate of USD\$30,694 per month which would have been made by the Plaintiffs in the period of five (5) months from September 2013 to February 2014.

554. Fourthly, so called "default" does not create strict or absolute or no-fault liability on the part of the Company, provided that section 4.15 of the Indenture of Mortgage called "Commitment to Finance", which both (the Indenture of Mortgage and the Commitment to Finance) are parts of the Investment Agreement, strictly subordinate to and incidental to the Company's investment business with UBS, reads in respect of question of liability: ***"The Mortgagor will observe and perform all the terms, conditions, provisions and covenants of the Commitment to Finance, including payment of all monies at the time and in the manner therein provided."***

555. By reason of the matters stated, in March 2014, UBS ultimately precluded themselves from any action against the Plaintiffs, thereby the institution of civil proceeding against the Plaintiffs in Action CLE/gen/No.01620 of 2014 was malicious being brought without reasonable and probable cause committing wilful and corrupt perjury contrary to section 433 of the Penal Code of The Bahamas.

PARTICULARS OF BAD FAITH

556. UBS' conduct in the initiation of the litigation involved bad faith and was intentional and not careless causing the Plaintiffs to be prosecuted on the basis of an allegation known by UBS to be false.

557. UBS had acted in bad faith pursuing possession in that, in February 2014:

557.1. UBS wrote to Messrs Starostenko that they "proceed towards exploring possible

resolutions” and confirmed a meeting with Messrs Starostenko on 12 March 2014 to review the position making the appearance that they committed to find a solution in accordance with terms of the Investment Agreement; and

557.2. in the same time,

557.2.1. UBS declared, without reasonable and probable cause, the loan in “default” and demanded repayment of the whole outstanding balance or possession of the property;

557.2.2. UBS announced in the Nassau Guardian and the Tribune that they ***“winding down the banking side of its operations over the next year”*** making itself:

557.2.2.1. no longer a going concern; and

557.2.2.2. not available to be part of the investment business under the Investment Agreement, which was the root of the relationship between the parties; and

557.2.3. UBS declared its intention to seek orders for the sale, possession or foreclosure of the property belonging to the Company, which is a dwelling house let under a tenancy since 2008.

PARTICULARS OF NO-ADMISSION

558. UBS was wrong in paragraph 18 of their Writ of summons, relying on the fact that Messrs Starostenko ***“admitted inter alia that Junkanoo did breach its obligations to keep the higher of USD\$500,000 (net of any Lombard financing) or 50% of the Credit Facility under management with UBS during the term of the same.”***

559. In fact, in the letter of 5 March 2014 Messrs Starostenko pointed to UBS for its wrongs, as well as an error regarding the use of terms contained in the “Minimum invested assets under management” and the “Purpose” clauses of the Commitment to Finance that were invalid and not binding on the parties.

560. By this letter, Messrs Starostenko confirmed the fact that the Company constantly sought to annul the aforesaid terms and that they were excluded, invalid and not binding on the parties, also because UBS agreed to a new term regarding balances in the investment account 32377

in the amounts USD\$500,000 to USD\$700,000 evidenced e.g. by email sent to Messrs Starostenko on 17 May 2013 timed at 11:06 AM, which reads, inter alia: ***“Hi Irina, you can trade the security. Just let me or Marsha have your order whenever you are ready”***, when the cash balance standing to the credit of the Company in the investment account 32377 was reduced from USD\$729,749 to below USD\$700,000.

561. Further, the aforesaid letter contains a Manifest of Errors regarding so called “Breakage penalty” in the amount of USD\$140,000, erroneously calculated by UBS which, in fact, equals to USD\$171.
562. Later on, during the hearing held on 23 March 2015, a withholding of wrongly calculated so called “Breakage penalty” was fraudulently stated by Counsel for UBS as a set-off, as more particularly described in Claim No. 11 herein for conspiracy to defraud public authority.
563. By the matters stated, on facts, UBS cared more for pursuing possession than for justice and good fight.

PARTICULARS OF MALICIOUS PROSECUTION

564. Certain UBS officers or agents so acted intending that the Company should be ordered to pay or vacate up possession of the property belonging to the Company, which is a dwelling house let under a tenancy since 2008, declaring the loan in “default” which they knew the Company had not incurred.
565. Malice is to be inferred from the lack of reasonable and probable cause for the prosecution.
566. Certain UBS officers or agents so acted in purported performance of their duties, but Messrs Starostenko will contend that they so acted to conceal their incompetence:
- 566.1. in failing to strictly execute the trading orders of the Company and take all reasonable steps and care to obtain the best possible result (or “best execution”) on behalf of the Company either when executing trading orders or receiving and transmitting orders for execution;

- 566.2. in failing to protect the Company's economic interest in relation to pricing and other aspects of the transactions which would be affected by how UBS executed trading orders of the Company;
 - 566.3. in failing to put in place effective execution arrangements and internal execution policy;
 - 566.4. in failing to comply with any applicable rules and regulations that apply to the reception and transmission of trading orders of the Company as well as to the execution of such orders;
 - 566.5. in failing to carry out transactions of any sale or purchase of securities on behalf of the Company in a lawful manner delivering fully-paid shares after the purchases, where there had been filed contract;
 - 566.6. in failing to ensure that any transaction is of the usual and normal type, and all the conditions necessary for the legality of those transactions exist;
 - 566.7. in failing to deliver to the Company a broker's contract note of each transaction of any sale or purchase of securities on its behalf in order to ensure the legality of those transactions;
 - 566.8. in failing to exclude improper or harmful behavior of individuals associated with and shared premises with them; and
 - 566.9. in failing to resolve complaints.
567. The possession order was served of the property belonging to the Company, which is a dwelling house let under tenancy of Messrs Starostenko since 2008, at 6:30 AM on the Saturday 18 April 2015 by a process server engaged by UBS to use the service for the purposes of intimidating and terrorising not only those who were supposed to be obedient to that order but all the household, including six (6) than minor children and an elderly women, proved that this and other wrongful acts committed either intentionally or negligently by UBS in trespass, provided that UBS was not carried and thrown onto the tenants' land, failing to take reasonable care, caused that elderly woman harm and her sudden and unexpected death.

568. Counsel for UBS knew and appreciated that pressure on Messrs Starostenko and members of their family saying at an interview with me like: ***"Mr Wright knows his job! I know you are early birds, I recommend him."***
569. The Writ of Possession was obtained by UBS contrary to the provisions of Order 45 Rule 3(2) of the Rules of the Supreme Court, which reads: ***"A writ of possession to enforce a judgment or order for giving of possession of any land shall not be issued without the leave of the Court except where the judgment or order was given or made in a mortgage action to which Order 77 applies"*** because UBS' mortgage action was begun by Writ of Summons and proceeded by summons seeking a final judgment ***"for the amount claimed in the Writ of Summons with interest, as therein claimed, and costs and the other relief claimed in the Writ of Summons and in particular an order for possession"*** in a summary judgment proceeding under Order 14 rule 1 of the Rules of the Supreme Court.
570. UBS failed to comply with mandatory requirements set out in Order 77 of the Rules of the Supreme Court relating to Mortgages, for example, with those provided by rule 4 concerning the particulars that must be specified and outlined in the affidavits in support.
571. Under Order 45 of the Rules of the Supreme Court UBS could not issue its writ of possession without leave of the Court, therefore, the procurement of the writ of possession and UBS attempts to enforce it were malicious.
572. Nevertheless, on 17 February 2016 UBS maliciously and without reasonable or probable cause issued a Writ of possession directed to the enforcement officer Mr Jack Davis, the Deputy Provost Marshal, commanding him to take possession of real estate property of the Company.
573. On 6 June 2016, after a hearing in the Court of Appeal, Counsel for UBS acting maliciously threatened an invasion against their home and eviction against them for the purpose of securing entry into premises for UBS, saying like: ***"As soon as I reach my office I will send you the Provost Marshal"***, who is Mr Jack Davis, the Deputy Provost Marshal, who came to the property of the Company tenanted by Messrs Starostenko since 2008, and who

was told by them of the matters related to unlawfulness of the Writ of Possession in order to let him know that they being tenants within the meaning of the Conveyancing and Law of Property Act under a tenancy, which granted a term of years for their joint lives and the life of the survivor and the exclusive possession, management, and control, which enabled them to exclude strangers, oppose to any entry on this land non-authorised by them.

574. On 24 October 2017, Messrs Starostenko were frightened by the presence of Mr Jack Davis on chambers premises, at all time during oral proceedings held before Evans J, and when I spoke to Mr Jack Davis and said about such a state of mind after this hearing, he did not deny that they would have felt scared by his presence.

575. By reason of the matters stated, the Plaintiffs suffered loss and injury and they will rely on the following facts and matters in support of their claim for damages.

PARTICULARS OF GENERAL DAMAGES

576. The Plaintiffs sustained actual pecuniary and moral losses resulting from being prosecuted, including:

- 576.1. injury to economic interest, where expenses are incurred by the Plaintiffs in defending and counteracting the prosecution producing a substantial amount of litigation;
- 576.2. loss in relation goodwill and business reputation accompanied by professional embarrassment of themselves as traders in securities on U.S. securities markets where the prosecution begun and the harm was done in a prosecution instituted, without reasoned or probable cause, by UBS;
- 576.3. loss in relation to a severe event, a sudden and unexpected loss of a loved one to heart complications in fifteen (15) months after the outset of the prosecution instigated by UBS, and seven (7) months after the possession order service as aforesaid. Although, it will difficult to assess bereavement and nobody pretends that money can ever compensate Messrs Starostenko for the loss of a loved one;
- 576.4. Messrs Starostenko's experience of the loss was aggravated and intensified by the extremely stressful circumstances of death of Mrs Starostenko's mother and

by the facts that Mrs Starostenko was not able to stay with her mother in hospital in Germany before and after the surgical intervention, because of exhaustion and financial starvation, and participate in the funeral ceremony due to her air ticket return date's restrictions.

577. The Plaintiffs suffered loss and damage and will rely on the following facts and matters in support of their claim for aggravated damages.

PARTICULARS OF AGGRAVATED DAMAGES

578. The Plaintiffs were required to attend courts on eight (8) occasions where they were the subject of public attention and ridicule, and more particularly Messrs Starostenko were thereby gravely humiliated.
579. From 18 April 2015 until the day of this document the plaintiffs were and under threat of being wrongly adjudicated of a loan "default" based upon the fabricated evidence of certain UBS officers or agents.
580. From February 2016 Messrs Starostenko fear that they with their family would be evicted from their tenanted property belonging to the Company.
581. As a result the Plaintiff's' reputation had been damaged.
582. UBS has failed to apologise for the conduct of their officers or agents and continues to seek to defend their actions in these proceedings.
583. The actions of certain UBS officers or agents were arbitrary, oppressive and unfair.
584. The Plaintiffs claim that this is an appropriate case in which the Court should mark its disapproval or condemnation of those actions with an award of exemplary damages.
585. The Plaintiffs will rely upon the matters above and on the following facts and matters in support of their claim for exemplary damages.

PARTICULARS OF EXEMPLARY DAMAGES

586. Certain UBS officers or agents not only vigorously pursued their own false evidence against the Company, but also sought to put pressure on Messrs Starostenko and members of their family, than six (6) minor children and an elderly woman.
587. The Plaintiffs claim interest under the Civil Procedure (Award of Interest) Act 1992 *or* interest at such a rate and for such period as the Court shall think fit on the amount found to be due

to them.

PRAYER TO CLAIM. 10

588. And the Plaintiffs claim:

- 588.1. (1) damages, including general, aggravated and exemplary damages as aforesaid;
- 588.2. (2) dismissal or strike out of the Writ of possession issued on 17 February 2016;
- 588.3. (3) cost of suit; and
- 588.4. (4) such other relief as the Court deems just.

CLAIM NO. 11 FOR CONSPIRACY TO DEFRAUD PUBLIC AUTHORITY

589. The Plaintiffs re-allege and incorporate by reference the allegations of paragraphs 1 through 588 above in their entirety.

BRIEF DETAILS OF CLAIM

590. Claim No. 11 against UBS is for the purpose of recovering the penalty and for remedies on the ground that a public authority was defrauded by conspiracy on the part of UBS.

591. The Plaintiffs case is based on that:

591.1. conspirators in UBS agreed by dishonesty to deprive the authority of knowledge of existing facts and to bring about a situation which would or might deceive a public official performing public duties to act contrary to such a legal duty;

591.2. parties to the agreement constituting the conspiracy, or a party's agent:

591.2.1. acted in relation to the agreement before its formation;

591.2.2. made misrepresentations and omitted essential qualifying facts and matters in pursuance of it; and

591.2.3. actually knew that their evidence was likely to be relied upon by a public official, assuming all material averments to be true;

591.3. conspirators in UBS had foreseen that:

591.3.1. an unjust or unfair decision of a public official would or might result; or

591.3.2. a public official would be unable to discharge his duties to act fairly to all those affected in the fulfilment of statutory functions and his decision may be flawed for these reasons; and

591.4. there is risk of causing economic loss to the Plaintiffs or prejudicing economic interests of the Plaintiffs.

592. Cumulatively, the Plaintiffs' case is that acts done or omissions made by UBS in course of the proceedings, defrauding a public official, in breach of duty or liability or contravention of right imposed or conferred by law or statute may co-exist with a legal duty imposed for the benefit of the public, its section or an ascertainable class, breach of which may give rise to a criminal offence, e.g. where criminal intent was demonstrated or could be inferred in the limited field of activities such as wilful destruction or falsification of books and publication of false

statements or accounts and where would be no difficulty in enlarging it in the context of this case, so as to enable the Court to bring fraudulent people to book.

PARTICULARS OF CLAIM

- 593. In February - April 2014, certain UBS officers or agents fabricated the accounts which were repeated by Counsel for UBS in his letters for the purpose of pre-action protocols before the prosecution of the Plaintiffs.
- 594. In December 2014, certain UBS director fabricated the account he gave in an affidavit prepared by UBS for the purpose of the prosecution of the Plaintiffs.
- 595. Counsel for UBS repeated their fabricated accounts in the course of oral hearing held before Evans J at the Supreme Court on 23 March 2015.
- 596. The UBS officers or agents so acted in the knowledge that the accounts they gave were false and that the Plaintiffs would be prosecuted for the loan in "default" which they knew the Company had not incurred.
- 597. Parties to the agreement constituting the conspiracy, or their agents, made misrepresentations and omitted essential qualifying facts and matters in pursuance of it.
- 598. There was a party who was actuated by hatred or spite and greed while the others were aware of this and lend him their assistance, thereby became participants in the wrong.

PARTICULARS OF CONSPIRACY

- 599. Conspirators in UBS had dishonestly agreed and acted with deliberate dishonesty to the disadvantage and prejudice of a public official depriving him of knowledge of existing facts and bring about a situation which would or might deceive the public official.
- 600. The conduct of UBS was deliberately dishonest in that UBS' aim was to drive the possession proceedings, without reasonable and probable cause for the prosecution, in that conspirators in pursuance of conspiracy knew that the Court could not sensibly make an order for possession of a dwelling house let under a tenancy since 2008 in summary judgment proceedings if it had full knowledge of all material facts and matters omitted, provided that the Court would not have considered it reasonable to make an order for possession on the non-absolute ground for possession.

601. A possession order may not be granted on the non-absolute ground that there has been no fault on the part of the Company for a "default" alleged by UBS.
602. So called "default" does not create strict or absolute or no-fault liability on the part of the Company, provided that section 4.15 of the Indenture of Mortgage called "Commitment to Finance", which both (the Indenture of Mortgage and the Commitment to Finance) are parts of the Investment Agreement, strictly subordinate to and incidental to the Company's investment business with UBS, reads in respect of question of liability: ***"The Mortgagor will observe and perform all the terms, conditions, provisions and covenants of the Commitment to Finance, including payment of all monies at the time and in the manner therein provided."***
603. The question of liability under such a "will observe" term is within a jurisdiction of the Court:
- 603.1. deciding whether:
 - 603.1.1. an order should be made;
 - 603.1.2. the extent of the obligations which impose liability for the additional security for the loan in cash which was introduced by UBS:
 - 603.1.2.1. in conspiracy to defraud the Plaintiffs;
 - 603.1.2.2. in violation of the provisions conferred by bankruptcy laws;
 - 603.1.2.3. contrary to the provisions of the Fraudulent Dispositions Act; and
 - 603.1.3. the extent those obligations which the Company could not have avoided even by the exercise of all possible care;
 - 603.2. having also to balance:
 - 603.2.1. the interests of the mortgagee with those of the mortgagor; and
 - 603.2.2. the parties to the mortgage with those of the tenants and their family;
 - 603.3. because it would be intolerable if the mortgagor and the tenants were prosecuted having:
 - 603.3.1. no fault on their part; and
 - 603.3.2. no strict or absolute liability to the mortgagee.

INTENT TO DEFRAUD

604. First of all, an intent to defraud could be inferred from the fact that UBS had made continuing false representations in the interval between the date of commencement of the prosecution on 3 October 2014, where UBS was committing wilful and corrupt perjury contrary to section 433 of the Penal Code of The Bahamas, which reads: ***"Whoever fraudulently brings any action against another person in a false or fictitious name, having no ground for such action, is guilty of a misdemeanour"***, and the date of the oral hearing held before Evans J on 23 March 2015, where Counsel for UBS was committing wilful and corrupt perjuries contrary to section 432 of the Penal Code of The Bahamas, which reads: ***"Whoever, with intent to defeat, obstruct or pervert the course of justice, or the due execution of the law, or to evade the requirements of the law, or to defraud or injure any person, endeavours to deceive any public officer acting in the execution of any public office or duty, by personation or by any false instrument, document, seal or signature, or by any false statement, whether verbal or in writing, is guilty of a misdemeanour."***
605. The intent to defraud is made out in that:
- 605.1. UBS intended that the Plaintiffs shall never argue their case because the lack of funds artificially created by certain UBS officers or agents conspired to injure the Company in September 2013, as more particularly described in Claim No. 5 for conspiracy to injure by unlawful means;
 - 605.2. UBS intended to obtain a possession of the property belonging to the Company, which is a dwelling house let under a tenancy since 2008;
 - 605.3. UBS carried on obtaining the possession in the circumstances where there was risk of causing economic loss to the Plaintiffs and of prejudicing economic interests of the Plaintiffs, in a way which conspirators in UBS knew is generally regarded as dishonest; and
 - 605.4. UBS knew that they were stepping beyond the bounds of what ordinary decent people engaged in a legal action would regard as honest.

PARTICULARS OF FRAUD

606. The fraudulent representations done or omissions made by UBS were a part of conspiracy to defraud a public authority as follows.
607. A reticence was contributed in an absolute statement in writing when essential material qualifications were deliberately omitted from an affidavit which had been sworn on behalf of UBS, on 5 December 2014 and filed with the Supreme Court on 17 December 2014 (or "Affidavit") in support their summary judgment application against the Plaintiffs (than Defendants), committing wilful and corrupt perjury contrary to section 426 of the Penal Code of The Bahamas, which reads: ***"Whoever fabricates evidence, with intent to defeat, obstruct or pervert the course of justice in any proceeding, shall be liable to the same penalties as if he had committed perjury in that proceeding"***, as the Affidavit omits the following facts:
- 607.1. that in the course of the business, on or about 10 August 2012, UBS entered into an agreement with the Company (the "Investment Agreement") by which UBS was appointed and instructed by the Company to act as the agent for reward and carry out transactions of sale or purchase of securities listed on the major U.S. securities markets on behalf of the Company, and UBS agreed and would lend cash to the Company for a total of USD\$1,400,000 as a part of these transactional arrangements;
- 607.2. that a real estate mortgage was also a part of transactional arrangements under the Investment Agreement, and the purpose of the mortgage was strictly subordinate to and incidental to the Company's investment business with UBS;
- 607.3. that on 14 August 2012 than Defendants applied for UBS Real Estate Collateralized Loan (or "RECL"), a loan product of UBS that would release the equity of a residential property for primary purpose to facilitate investments, i.e. to employ UBS to carry on the business of dealing in securities, executing the sales or purchases on behalf of the Company following trade orders of the Company;
- 607.4. that the RECL was a new product of UBS, and they did not have and still does not

- have a history of successful use of the RECL;
- 607.5. that on 20 August 2012 a valuer of UBS have inspected the property and ascertained exactly who is in occupation and on what terms, and prepared an Appraisal Report dated on 22 August 2012 and delivered to Mr Kevin Price;
- 607.6. that UBS was not authorised by the Central Bank of The Bahamas to carry out mortgage transactions at the date of the Commitment to Finance offering loan to be secured against a real estate property of the Company, which is a dwelling house let under a tenancy since 2008, and the money of the Company to be held through UBS;
- 607.7. that Messrs Starostenko gave gratuitous guarantees at an undervalue in favour of UBS for repayment;
- 607.8. that on 28 September 2012 advances of USD\$670,251 (48% of the loan amount) was made to Messrs Starostenko and an amount of USD\$729,749 (52% of the loan amount) was placed in the investment account 32377 in the name of the Company to be kept with UBS as the additional security for the loan in cash;
- 607.9. that UBS retained the amount of USD\$729,749 for the entire life of the credit facility without any conditions and at an undervalue, while the Company in respect of this money was responsible for quarterly interest payments for the entire duration of the facility;
- 607.10. that UBS gave undertaking to keep the assets of the Company in the amount of USD\$729,749 on trust for purposes of the investment business of trading in securities pursuant the provisions the Securities Industry Regulations, 2012;
- 607.11. that for purposes of the investment business the Company did not need to deposit money in the investment account 32377 to cover the securities value but only to cover the securities margin under disclosure contained in the Additional Risk Information of the Terms and Conditions, which reads in Section "Lombard Loan":
"The Lombard loan is a loan collateralized by securities (capital market investments such as equities, bonds, fund units, etc.) which are pledged and deposited with the Lender. Because securities are subject to fluctuations in value,

loans are not granted for 100% of the value deposited. The bank calculates a security margin. The maximum loan-to-value ratio for the securities deposited is the market value of the securities minus the securities margin";

607.12. that the "Minimum invested assets under management" and the "Purpose" clause of the Commitment to Finance in respect to terms providing requirement to keep the 50% of the loan amount at UBS, which:

607.12.1. had never came into being;

607.12.2. had never been implemented; and

607.12.3. had never governed relations between the parties, being superseded by conduct of the both parties during whole term of the Investment Agreement on facts:

607.12.3.1. of avoidance by then Defendants to comply; and

607.12.3.2. of acceptance of that avoidance by UBS implied from their own acts and conduct in standing by and encouraging Messrs Starostenko in their course of action in the investment business since April 2013, precluding UBS from relying on the alleged default by the Company of these terms;

607.13. that the aforesaid avoidance by then Defendants was in compliance with the requirement to maintain USD\$500,000 contained in Section "Requirements for Opening Relationship" of the Fee Schedule;

607.14. that then Defendants chose to avoid the Commitment to Finance's requirement to keep 50% of loan with UBS; and

607.15. that then Defendants had, by word and act, definitely elected to not adhere to it and negotiated with UBS until its affirmation of a new term for purposes of the securities business where a balance should be over USD\$500,000 evidenced e.g. by email sent to Messrs Starostenko on 17 May 2013 timed at 11:06 AM, which reads, inter alia: ***"Hi Irina, you can trade the security. Just let me or Marsha have your order whenever you are ready"***, when the cash balance standing to the

credit of the Company in the investment account 32377 was reduced from USD\$729,749 to below USD\$700,000.

608. There was another type of reticence which amounts to a representation of the non-existence of the matters also contrary to section 426 of the Penal Code:

- 608.1. that UBS, a registered firm with the Securities Commission of the Bahamas, that actually carried on a securities business with the Company and carried out sales or purchases of securities on behalf of the Company, executing the sales or purchases following trade orders of the Company and delivering fully-paid shares after the purchases, where there had been filed contract and warranted that any transaction is of the usual and normal type and all the conditions necessary for the legality of those transactions exist; and
- 608.2. that pursuant to the Investment Agreement, UBS carried out or purported to carry out sales or purchases of securities on behalf of the Company not earlier or about that on 12 June 2013 and until 18 September 2013;
- 608.3. that UBS was obliged to provide a broker's contract note of each transaction and carry out transactions of any sale or purchase of securities on behalf of the Company in lawful manner, made by a Member Broker or license holder of the New York Stock Exchange (NYSE);
- 608.4. that in the course of carrying on securities business, in July 2013, the Company suffered losses, the profits that it lost due to the erosion of prices of the trades and which were incurred by reason of the breaches by the Defendant, namely, breach of duty and their obligations under the Investment Agreement to strictly execute the trading orders of the Company and take all necessary steps and care to obtain the best result (or "best execution") on behalf of the Company, either when executing trading orders, or when receiving and transmitting orders for execution;
- 608.5. that the Company filed complaints and demanded UBS to compensate the Company for the losses sustained due to UBS' inability to render substantial performance of the Agreement or due to UBS' fulfillment of it in a manner

substantially inconsistent with UBS' obligations under the Investment Agreement and their statutory duties under the Securities Industry Act, 2011 (the "SIA 2011") and the Securities Industry Regulations, 2012, (the "SIR 2012") and failure to resolve the issues;

- 608.6. that there were disputes between UBS and the Company of commercial strength in relation issues in securities business, purpose trust and administrative matters and contractual the disputes in relation validity of the "Minimum invested assets under management" and the "Purpose" clauses of the Commitment to Finance;
- 608.7. that the Company numerous emails to UBS complaining and requesting that the breaches be remedied and insisted that UBS compensated the Company in full for the losses sustained due to UBS' faults;
- 608.8. that UBS acknowledged (verbally and in writing) their weakness in the provision of financial services and the inability to render substantial performance of the Investment Agreement and only partially compensated the Company for loss of profits in the amount of USD\$3,110 by way of two (2) compensation payments;
- 608.9. that UBS failed to compensate the Company in full when it demanded full compensation for loss of profits sustained until 18 September 2013 in the amount of USD\$125,000 or about and only to escape that liability issued "halt of trading" in effect on the investment account 32377, with a balance of USD\$589,362 and requested than Defendants to provide additional collateral (margin call) in breach of the Terms and Conditions' provision contained in the Additional Risk Information in Section "Depreciation in the value of your portfolio", which reads: ***"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"***, as more particularly described in Claim No. 4 for repudiatory breach of the Investment Agreement;
- 608.10. that the Investment Agreement has never been abandoned by the Company;
- 608.11. that the parties are mutually bound by the obligations to perform the Investment

Agreement until the time for performance will be passed;

608.12. that in the course of business, on 9 October 2013, the Company, by email timed at 11:41, ordered UBS to pay in advance the amount of the interest for the full term of the loan until 28 September 2017 from money in the sum of USD\$589,362 or about standing to the Company's credit in the investment account 32377; and that UBS failed to effect such payment;

608.13. that in December 2013, the Company filed a complaint with UBS AG, and the latter, being a legal entity that holding 99.999975% of the issued shares in UBS and UBS AG legally appointing UBS to act as agent on its behalf in any kind of their businesses:

608.13.1. confirmed their involvement in the principal-agent relationship with UBS as principal acknowledging and answering; but

608.13.2. failed to resolve the complaint.

609. The aforesaid Affidavit contains an untrue statement in (1) Rule 77 (2) as to no defence while, on 4 November 2014, then Defendants filed a defence and counterclaim for damages from negligence, costs, interest, further and other relief.

610. The entire representation in the Affidavit was a faithless picture or transcript of the essential facts of such kind and by a concealment so great as to make that which was stated so one-sided, as that the withholding of that which is not stated makes that which is stated absolutely false and in effect a misrepresentation of facts.

611. As a result, the impression conveyed by the Affidavit was fallacious and false as to render the representation a misrepresentation and the Affidavit a fraudulent.

612. UBS wilfully and corruptly perjured and made the aforesaid omissions as regards the Court having no notice of the matters omitted at the time when it was filed and thereafter, in the circumstances where an affidavit in reply prepared on behalf of than Defendants was still in the process of filling and was not before the Court.

613. Evans J made his order after having said ***"Like I said, in any event, I would be obligated to make the decision based on the affidavit. The affidavit is the evidence"***, giving a judicial decision being misled by and wholly on the faith of the Affidavit which was at his unknown

fraudulent by reason of the aforesaid omissions due to UBS' conspiracy to defraud a public authority and UBS' wilful fault to comply with the duty to disclose all matters of fact before the Court.

PARTICULARS OF FRAUD DURING HEARING

614. The particulars of fraud through false oral statements during the hearing held before Evans J on 23 March 2015 are as follows.

615. Counsel for UBS, Mr Marco Turnquest, committed perjury contrary to section 432 of the Penal Code of the Bahamas, which reads: ***"Whoever, with intent to defeat, obstruct or pervert the course of justice, or the due execution of the law, or to evade the requirements of the law, or to defraud or injure any person, endeavours to deceive any public officer acting in the execution of any public office or duty, by personation or by any false instrument, document, seal or signature, or by any false statement, whether verbal or in writing, is guilty of a misdemeanour"***, and more particularly he said during that hearing: ***"This is a matter where my learned friend's clients have been in default of the loan now for over two years, from 2013."*** (Page 2, lines 16 to 19 of the transcript), which was a lie because:

615.1. the alleged default of the Company under the clauses of the Commitment Letter which were void *ab initio*, never came into being, never implemented and did not govern the relations between the parties. UBS, knowingly, acted in breach of provision contained in the "Fall in the Lending Value" Section of the Collateral Loan Clause of their own Terms and Conditions where, in fact, the lending value of pledged assets as of 28 February was USD\$3,326,323 or so, including USD\$2,800,000, property value and USD\$526,323 in current account 32377, while UBS wrongfully failed to compensate the Company for the losses it was entitled to claim in the amount of USD\$197,497 or about;

615.2. there would have been no event of default if UBS would have paid the damages, as of 19 September 2013, in the sum of USD\$137,977 or so, that were due to the UBS' own breaches of terms of the Investment Agreement;

615.3. no event of default incurred by the first Defendant according to the Terms and

Conditions of UBS: the lending value of the assets, at that time, was approximately five (5) times higher than all loans granted amounted to USD\$670,251, which were advanced on 28 September 2012.

616. Further, Counsel for UBS said during the hearing:

616.1. ***"My learned friend have validity of the mortgage."*** (Page 3, lines 5, 6 of the transcript); and

616.2. ***"If you look at their admission, they are in breach of the terms."*** (Page 3, lines 6,7 of the transcript), and both statements above were false because:

616.2.1. actually, in the letter dated 5 March 2014 (to which apparently attorney for Plaintiff referred) Messrs Starostenko that UBS was mistaken relying on the term that was void and not binding on the parties and its invalidity was implied by conduct of both parties to the Investment Agreement;

616.2.2. by this letter Messrs Starostenko confirmed the fact that the Company constantly sought to annul the Commitment to Finance's requirement to keep 50% of the loan in UBS, and the latter was excluded, invalid and not binding on the parties because UBS impliedly confirmed a new term regarding balances on the investment account 32377 and what was implicit from the fact that a new term governed the relationship since April 2013.

617. Counsel for UBS said during the hearing: ***"The difference is because my learned friend would know there was a set-off. That's why there is a slight distinction between what's in the pleadings. If my learned friend would see in the writ, it says the amount due as of the 11th of April. But since then there was a set-off, that is how we came to the figures in the affidavit."*** (Page 6, lines 1 to 7 of the transcript), which was a lie because, in fact, the letter mentioned above also contained the Manifest of Errors regarding the Breakage penalty in the amount of USD\$140,000, erroneously calculated by the Plaintiff, and a withholding of that wrongly calculated, thereby Breakage penalty was misrepresented as a set-off.

618. There was fraud on the part of Counsel for UBS through concealments during the hearing held before Evans J on 23 March 2015 in that he concealed from the Court the fact that UBS, on 19 March 2015, or four (4) days before the hearing, resolved by resolution passed by the member, UBS AG, holding 99.999975% of its issued shares, that UBS be wound up voluntarily commencing 1 April 2015.
619. Perjuries on the part of Attorneys for UBS contrary to section 432 of the Penal Code of the Bahamas, with intent to defeat, obstruct or pervert the course of justice, or to evade the requirements of the law, or to injure the Company and Messrs Starostenko, endeavored to deceive a justice of the Supreme Court, in the execution of public office or duty, by false statements in writing contained in a document called UBS' submissions opposing the Company's and Messrs Starostenko's application for leave to appeal in Action 2014/CLE/gen/01620 served on Counsel for the Company and Messrs Starostenko on 23 October 2017, or one (1) day before an oral hearing of said application appointed to 24 October 2017, and more particularly:
- 619.1. in ground (i) ***"The Defendants' proposed appeal is hopeless as their former counsel conceded this application"***, which is a lie or a false statement used intentionally for the purpose of deception contrary to the Judicial Committee of the Privy Council judgment given on 3 April 2017 by Lord Sumption, which reads in para 4: ***"[4] ... 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"***;

619.2. in ground (iv) ***"The Plaintiff would greatly prejudiced if the Court allowed the Defendants to pursue their frivolous appeal as they have been in breach of the Mortgage terms since 16 April 2013, notwithstanding the Plaintiff having an order for possession and judgment in the amount of \$920,164.87, from 23 March 2015, it has been unable to execute on the same for over two and a half years"***, which is a lie because:

619.2.1. firstly, the Company's and Messrs Starostenko's appeal is not frivolous, as the judgment of the Judicial Committee of the Privy Council reads in para 9: ***"[9] ... the Board is satisfied that the Court of Appeal was not purporting to dismiss a substantive appeal. It is tolerably clear that what the Court of Appeal meant was that they were functus in relation to the point that they had dealt with on 2 November 2015, namely that they could not make orders on an appeal which was not before them because leave to appeal had been neither sought nor obtained. That remained the position. The Court of Appeal was not of course functus in relation to the substantive appeal from Evans J's possession order, because no such appeal had been heard. Were leave to be sought from Evans J or, in the event of its being refused by him, from the Court of Appeal, neither court would be functus in relation to that application, and if leave were granted the appeal would be competent"***;

619.2.2. secondly, the Company and Messrs Starostenko had not been in breach of the Mortgage terms since 16 April 2013 having constantly sought to annul terms contained in the "Minimum invested assets under management" and the "Purpose" clauses of the Commitment to Finance, which were introduced in the Mortgage as a result of:

619.2.2.1. conspiracy to defraud on the part of certain UBS directors or whom who were aware of the conspiracy and lend conspirators their assistance or participated in a joint design where someone else made the representation in tortious conspiracy inducing the

Company and Messrs Starostenko to enter into the Commitment to Finance by pre-contract fraudulent misrepresentations, omissions and non-disclosure of material facts, when conspirators in UBS agreed by dishonesty to deprive the Company and Messrs Starostenko of 50% of the loan amount, which was their, and to injure their proprietary right or economic interest, where the conspirators had foreseen that such loss or prejudice would or might result;

619.2.2.2. a dishonest attempt with a deliberate intention on the part of UBS to dishonestly take 50% of the loan amount as the additional security in cash for the loan, as a makeweight to real estate security, imposing harsh lending terms and additional liabilities on the Company and Messrs Starostenko, which UBS knew would cause detriment or prejudice to the Company's and Messrs Starostenko's proprietary rights or interest;

619.2.2.3. practices in fraudulent trading through which UBS held back at all material times more than half of the loan amount (or USD\$729,749), giving themselves fraudulent preference in contravention of statutory provisions conferred by bankruptcy laws; and

619.2.2.4. a disposition made by UBS with an intent to defraud and at undervalue voidable at the instance of the Company thereby prejudiced under Section 4 of the Fraudulent Dispositions Act, 1991; and

619.2.3. the "Minimum invested assets under management" and the "Purpose" clauses of the Commitment to Finance:

619.2.3.1. were null and void *ab initio*, invalid and not binding on the parties because of the aforesaid;

619.2.3.2. were excluded, never implemented or never came into being and had not governed relations between the parties, being superseded by conduct of both parties on facts of avoidance by the Company and Messrs Starostenko to comply with them and of acceptance of that avoidance by UBS, and more particularly:

619.2.3.2.1. UBS agreed to a new term, which was materially different to the terms contained in the "Minimum invested assets under management" and the "Purpose" clauses of the Commitment to Finance, evidenced e.g. by email sent to Messrs Starostenko on 17 May 2013 timed at 11:06 AM, which reads, inter alia: ***"Hi Irina, you can trade the security. Just let me or Marsha have your order whenever you are ready";***

619.2.3.2.2. UBS themselves stopped relying on the aforesaid terms evidenced by their own acts and conduct in standing by and encouraging the Company and Messrs Starostenko in their trading in the course of investment business from April to September 2013; and

619.2.3.2.3. UBS demanded the Company and Messrs Starostenko to provide money to bring the additional security in cash up to a sum of USD\$700,000 (margin call) only after and in response to the Company's and Messrs Starostenko's claim for damages for loss of profit sustained by them in August - September 2013 due to UBS's own breaches of their obligations in relation to the investment business as the judgment of the Judicial Committee of the Privy Council reads in para 3: ***"[3] The defendants say that they have a defence. This is that the alleged defaults were due to UBS's own breaches of their obligations in relation to the***

management of the invested funds, in particular in failing to provide an electronic trading platform for the investment of the funds under management and failing to carry out certain trades. It is also said that there is a cross-claim for damages flowing from the same breaches. It is unnecessary to examine these points in greater detail. ...”;
and

619.2.4. thirdly, said Evans J’s possession order was obtained:

619.2.4.1. by perjury the part of certain UBS directors acting:

619.2.4.1.1. in conspiracy to defraud public authority agreeing by dishonesty to deprive the authority of knowledge of existing facts and to bring about a situation which would or might deceive a public official performing public duties to act contrary to such a legal duty, where parties to the agreement constituting the conspiracy, or their agents, made misrepresentations and omitted essential qualifying facts and matters in pursuance of it and where there was a party who was actuated by hatred or spite and greed while the others were aware of this and lend him their assistance, thereby became participants in the wrong, even if they did not appreciate the legal significance of those facts which, in the circumstances where it is immaterial if they acted on legal advice that they were doing nothing wrong;

619.2.4.1.2. in the knowledge that the accounts they gave and the evidence are false and were likely to be relied upon by a public official, assuming all material averments to be true;

619.2.4.1.3. foreseeing that:

619.2.4.1.3.1. an unjust or unfair decision of a public official

- would or might result; or
- 619.2.4.1.3.2. a public official would be unable to discharge his duties to act fairly to all those affected in the fulfilment of statutory functions and his decision may be flawed for these reasons; and
- 619.2.4.1.3.3. these acts will probably cause economic loss to the Company's and Messrs Starostenko's or prejudice their economic interests;
- 619.2.4.1.4. said Evans J's possession order was obtained by wilful perjury on the part of certain UBS directors and Attorneys for UBS in that:
- 619.2.4.1.4.1. in February - April 2014, certain UBS directors fabricated the accounts they gave in the letters of Attorneys for UBS for the purpose of pre-action protocols before the prosecution of the Company and Messrs Starostenko;
- 619.2.4.1.4.2. in December 2014, certain UBS director fabricated the account he gave in an affidavit prepared by UBS for the purpose of the prosecution of the Company and Messrs Starostenko, the only one affidavit produced by UBS in course of this action on which Evans J's was based on facts which are so partially and fragmentarily stated, as that the withholding of that which is not stated makes that which is stated absolutely false;
- 619.2.4.1.4.3. Attorneys for UBS repeated their fabricated accounts in the course of oral hearing held before Evans J at the Supreme Court on 23 March 2015 by

way of false oral statements and concealments as
aforesaid in paragraph 10 herein; and

619.2.5. also thirdly, said Evans J's possession order was obtained by UBS in Messrs Starostenko's absence who, with good reason, were unable to attend the hearing, while no real attempt was made to present their case at this hearing and the points of their defence were never tested;

619.3. In para 19 of their submissions Attorneys for UBS say, inter alia: "[19] ... ***The Defendants ... have failed to initiate any fresh proceedings to set aside the Summary Judgment Order***" [based on allegations that it obtained by wilful and corrupt perjury, knowing that it is not true because the Company and Messrs Starostenko, on 28 June 2017, had applied to the Supreme Court, serving a copy on UBS:

619.3.1. "1. ***for permission of the court that a committal application in relation to both false statements of truth or disclosure statements and other interference with the due administration of justice in connection with proceedings in the Supreme Court herein be made by the Defendants; or***

619.3.2. 2. ***alternatively, for any direction by the court that the matter be referred to the Attorney General with a request that the Attorney General consider whether to bring proceedings for contempt of court concern allegations of interference with the course of justice be brought against the Plaintiff who caused to be made, without an honest belief in their truth:***

619.3.3. (a) ***omissions and false statements in an affidavit verified by a statement of truth made on behalf of the Plaintiff and filed with the Supreme Court in support their summary judgment application against Defendants;***

- 619.3.4. (b) ***false oral statements made on behalf of the Plaintiff by their attorney during the hearing of said application held before Evans J on 23 March 2015.***
- 619.3.5. The Company and Messrs Starostenko made this application in their believe that the rules embodied in the law of contempt of court are intended to uphold and ensure the effective administration of justice although this law does not exist, as the phrase 'contempt of court' might misleadingly suggest, to protect the personal dignity of the judiciary nor does it exist to protect the private rights of parties or litigants.
- 619.3.6. Notwithstanding the seriousness of the allegations made by the Company and Messrs Starostenko, which can be proved on facts and were already put forward by them in the course of the previous proceedings during 2015-2017, UBS made no attempt to answer to the complaints by way of a witness statement or other evidence.
- 619.3.7. On 24 October 2017, Evans J refused to hear this application during oral proceedings in his chambers, without giving the ground for such a refusal to use the means by which the law vindicates the public interest in the due administration of justice and manifestly relying exclusively on the UBS' submissions;
- 619.4. In para 21 of their submissions Attorneys for UBS say, inter alia: ***"[21] ... the Defendants counsel consented to the Plaintiff's summary judgment application. ..."***, and this is a lie or a false statement used intentionally for the purpose of deception because said counsel:
- 619.4.1. conceded only one point of law as the judgment of the Judicial Committee of the Privy Council reads in para 4, inter alia: [former Counsel for the Company and Messrs Starostenko, Mr Mackay] ***"[4] ... 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 Plc 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"; and again "Counsel for the defendants observed that "to that extent" the application for summary judgment was opposed"; and

619.5. In paragraph 35 of their submissions Attorneys for UBS say, inter alia: ***"[35] ... the Court should not grant the Defendants leave to appeal as to do so will only drag out these proceedings , which works to the prejudice of the Plaintiff in terms of costs and diminishment of its security"***, and again, they state a lie because:

619.5.1. the property, by which the loan for purposes of the investment business was secured, is a developed land valued at the Fair Market Value of B\$2,800,000 as of August 2012 and revalued at the Fair Market Value of B\$3,355,000 as of 29 April 2016; and

619.5.2. the value of the property has risen very significantly and continues to rise as a result of the improvements and developments within Lyford Cay, which a historical and cultural heritage of the Bahamas, being place of residence of a such people like Count Ilya Tolstoy, grandson of the great writer Count Leo Tolstoy, and many others.

PARTICULARS

620. The Plaintiffs will rely on remedies in tort of conspiracy to defraud public authority where an absolute statements, in writing, when essential material qualifications were deliberately omitted from an affidavit sworn on behalf of UBS on 5 December 2014 and filed with the

Supreme Court on 17 December 2014, and orally, when Counsel for UBS made false statements and fraud through concealment during the hearing held in Supreme Court on 23 March 2015.

621. Cumulatively, the Plaintiffs will rely on the provisions offered by The Penal Code of the Bahamas in sections 423, 424, 426, 432 and 433 in order to assist the civil Court in its course of promotion of the public interest in the prosecution of crime that is unrelated to the conduct of the relevant civil proceedings for the purpose to punishing persons who mislead a civil Court, and more particularly:

621.1. (a) for making any false statement or false representation punishable under the Penal Code; or

621.2. (b) for unlawfully, wilfully, falsely, fraudulently, deceitfully, maliciously, or corruptly taking, making, signing, or subscribing any oath, affirmation, solemn declaration, statutory declaration, affidavit, deposition, notice, certificate, or other writing, where it is sufficient to set forth the substance of the offence charged, and before which court or person the offence was committed without setting forth the proceedings or any part of the proceedings in the course of which the offence was committed, and without setting forth the authority of any court or person before whom the offence was committed.

622. It is therefore in such a situation such in the Action CLE/gen/01620 of 2014 in the overall public interest if someone who has lied to the Court, or has not provided full and frank information, he should make a full confession and provide full and frank disclosure to the Court, otherwise the Court would report their attempts to mislead the Court and the other parties to the relevant prosecuting authorities.

623. In the circumstances, when the civil Court has no power similar to that of the criminal Court, or the relevant public authority, to deal with the illegal or unlawful conduct that it is satisfied exists, in such a situation in addition to the public interests that a civil Court should have all relevant information before it and that consideration should be given to punishing persons who mislead a civil Court, the competing public interest relating to the illegal or unlawful conduct arises for consideration (e.g. the prosecution of crime).

624. This is because the only effective course open to the Court to promote the public interest in the prosecution of crime that is unrelated to the conduct of the relevant civil proceedings, is to report the illegal or unlawful conduct to the relevant public authority.
625. In the premises, in such a situation the Court is faced with competing and conflicting public interests and unless it reports the illegal or unlawful conduct it can be said to be condoning it.
626. In the premises, the Plaintiffs are entitled and clam:
- 626.1. for permission of the Court that a committal application in relation to both false statements of truth or disclosure statements and other interference with the due administration of justice in connection with proceedings in the Supreme Court herein be made by the Plaintiffs; or
 - 626.2. alternatively, for any direction by the Court that the matter be referred to the Attorney General with a request that the Attorney General consider whether to bring proceedings for contempt of Court concern allegations of interference with the course of justice be brought against UBS and Attorneys for UBS for the purposes of:
 - 626.2.1. recovering the penalty;
 - 626.2.2. promoting the public interest in the prosecution of crime.

PRAYER TO CLAIM NO. 11

627. And the Plaintiffs claim:
- 627.1. (1) a declaration that an affidavit sworn on behalf of UBS on 5 December 2014 and filed with the Supreme Court on 17 December 2014 is fraudulent;
 - 627.2. (2) in the alternative to (1), an order that the affidavit sworn on behalf of UBS on 5 December 2014 and filed with the Supreme Court on 17 December 2014, be taken off the file of this Court;
 - 627.3. (3) a permission that a committal application be made by the Plaintiffs; or
 - 627.4. (4) in the alternative to (3), a direction that the matter be referred to the Attorney General with a request that the Attorney General consider whether to bring proceedings for contempt;
 - 627.5. (5) costs of suit; and
 - 627.6. (6) such other relief as the Court deems just.

CLAIM NO. 12 FOR MALICE EXECUTION

628. The Plaintiffs re-allege and incorporate by reference the allegations of paragraphs 1 through 627 above in their entirety.

BRIEF DETAILS OF CLAIM

629. Claim No. 12 against UBS is for damages for the malicious execution and the unlawful issue of a writ of possession by UBS together with interest thereon.

PARTICULARS OF CLAIM

630. On 23 March 2015, UBS obtained in a summary judgment proceeding under Order 14 rule 1 of the Rules of the Supreme Court in Action CLE/gen/No.01620 of 2014, an interlocutory Judgment against the Plaintiffs in the sum of \$920,164.87 and for possession in default of payment, without prejudice to the Defendants' right to pursue their counterclaim.

631. The irregularity complained of exists in the judgment itself and the Plaintiffs have applied in Action CLE/gen/No.01620:

631.1. to set aside that Judgment in the Supreme Court; and

631.2. for leave to appeal against that Judgment to the Supreme Court.

632. Said Judgment required the leave of the Court to proceed to execution for it pursuant to the provisions of Order 45 Rule 3(2) of the Rules of the Supreme Court, which reads: ***"A writ of possession to enforce a judgment or order for giving of possession of any land shall not be issued without the leave of the Court except where the judgment or order was given or made in a mortgage action to which Order 77 applies"*** because:

632.1. UBS' mortgage action was begun by Writ of Summons and proceeded by summons seeking a summary judgment ***"for the amount claimed in the Writ of Summons with interest, as therein claimed, and costs and the other relief claimed in the Writ of Summons and in particular an order for possession"*** in a summary judgment proceeding under Order 14 rule 1 of the Rules of the Supreme Court;

632.2. UBS failed to comply with mandatory requirements set out in Order 77 of the Rules of the Supreme Court relating to Mortgages, for example, with those provided by rule 4 concerning the particulars that must be specified and outlined

in the affidavits in support.

633. The aforesaid fault on the part of UBS was material being a failure to meet the criteria set by Order 77 of the Rules of the Supreme Court relating to mortgage actions.
634. That failure was a matter affecting the judgment that render it wrongful to proceed to execution for it without the leave of the Court.
635. Nevertheless, on 17 February 2016 UBS maliciously and without reasonable or probable cause issued a Writ of possession directed to the enforcement officer Mr Jack Davis, Deputy Provost Marshal, commanding him to take possession of Jazz House in Lyford Cay, belonging to the Company, which is the dwelling house let under a tenancy within the meaning of the Conveyancing and Law of Property Act granted to Messrs Starostenko, which provided *inter alia* the exclusive possession, management, and control, enabling them to exclude strangers.
636. The Plaintiffs will rely on the following facts why it is said that the procurer of the Writ did not have a honest belief in the grounds relied upon in issuing it without the leave of the Court, and why there were not reasonable grounds for the Writ on the basis of the information known to UBS procuring it.

PARTICULARS OF ABSENCE OF REASONABLE AND PROBABLE CAUSE

637. UBS knew or must have known that:
- 637.1. Action CLE/gen/01620 of 2014 was begun contrary to mandatory requirements set out in Order 77, rule 2 which reads *inter alia* in paragraph (1): ***“The plaintiff in a mortgage action begun by originating summons, on applying for an appointment under Order 28, rule 2(1), must produce the originating summons and leave in chambers – (a) a copy of the originating summons; and (b) the copy memorandum of appearance, stumped in accordance with Order 12, rule 3, of any defendant to the action or, if any defendant has failed to enter an appearance, a certificate of his non-appearance. ...”*** by Writ of Summons and proceeded by summons seeking a summary judgment in a summary judgment proceeding under Order 14 rule 1 of the Rules of the Supreme Court;
- 637.2. the summary judgment or order made during hearing on 23 March 2015 was:

- 637.2.1. an interlocutory judgment;
- 637.2.2. a judgment acknowledged by former Counsel for the Plaintiffs (then Defendants) Mr Charles Mackay committing wilful and corrupt perjury contrary to section 430 of the Penal Code of the Bahamas, which reads:
“Whoever acknowledges or consents to any judgment or confession of a cause of action, or acknowledges any deed to be enrolled or registered, or enters into any recognisance or bail (whether the same to be filed or not), in the name of any other person without his consent, is guilty of felony”;
- 637.3. UBS failed to comply with mandatory requirements set out in Order 77 of the Rules of the Supreme Court relating to Mortgages;
- 637.4. that failure was a matter which could not be cured;
- 637.5. UBS had no discretion in relation to the question of whether or not to apply for the leave of the Court before issuing a Writ of possession;
- 637.6. UBS went in voluntary liquidation on 1 April 2015 making itself unable to fulfill, in any capacity, its contractual obligations two (2) years and seven (7) months before expiration of the term of the Investment Agreement and the loan for the purposes of investment business under that agreement;
- 637.7. a counterclaim in Action CLE/gen/01620 of 2014 was pending and cross-claim in Action CLE/gen/No.01451 for damages was issued by the Plaintiffs in 2015 claiming sums exceeding \$2,054,000;
- 637.8. by issuing a Writ of possession without the leave of the Court they failed to meet the criteria set by 45 Rule 3(2) of the Rules of the Supreme Court;
- 637.9. the Writ of possession was issued unlawfully; and
- 637.10. the execution, if completed and possession of the Plaintiffs’ land and dwelling house is taken, it would have paid to UBS, but it would have caused to the Plaintiffs:
 - 637.10.1. the damage in respect of the land seized unlawfully;
 - 637.10.2. the financial loss after the determination of both counterclaim and cross-

claim as a result of most likely, unrecoverable debts due from UBS went into liquidation (most likely, dissolved after being paid); and

637.10.3. substantial injustice and prejudice as a result.

638. Further, the issue of the Writ of possession and UBS attempts to enforce it were malicious.

639. In support of their claim for malicious execution the Plaintiffs will rely on the following and matters.

PARTICULARS OF MALICE

640. UBS had no grounds for a mortgage action against the Plaintiffs for payment of moneys secured by the mortgage or delivery of possession, committing wilful and corrupt perjury contrary to section 433 of the Penal Code of The Bahamas, which reads: ***"Whoever fraudulently brings any action against another person in a false or fictitious name, having no ground for such action, is guilty of a misdemeanour"*** because there were no circumstances to show under which the right to possession arises, and more particularly the amount of the interest in arrear would have been paid if:

640.1. UBS had not failed to effect an advance payment of the interest in the amount of the interest for the full term of the loan for the purposes of investment business, i.e. upon 28 September 2017 from moneys in the sum of USD\$589,362 or about standing to the Company's credit in the investment account 32377 at UBS, as it was proposed by the Company in email sent to UBS on 9 October 2013 timed to 11:35 and 11:41 AM, which *inter alia* reads: ***"The possible solutions we propose to consider: A. Modifying of credit agreement and release of all 50% of mortgage amount to Junkanoo estates. The UBS can retain the future fees for the credit [the interest], insurance rates till the end of our rapport, 4 years from now, October 2017"***;

640.2. UBS, on or about 11 April 2014, unlawfully, having no right neither under common law or statute or agreement, debited as a set-off the Company's investment account with the sum of USD\$526,323.49 standing to the Company's credit, which was under statute and agreement a trust property held by UBS on trust, had not made a wrongful usurpation of that money of the Company under the Investment

Agreement, Statute Laws of the Bahamas and in common law three (3) years and five (5) months before expiration of the term of the Investment Agreement.

641. Pursuant to the Writ of possession, the enforcement officer came twice to Jazz House in Lyford Cay with attempts to take possession of the land.
642. On 6 June 2016, Counsel for UBS threatened an invasion against the dwelling house of Messrs Starostenko and eviction against them for the purpose of securing entry into premises for UBS after a hearing in Court of Appeal, saying like: ***"As soon as I reach my office I will send you the Provost Marshal"***.
643. The enforcement officer Mr Jack Davis, Deputy Provost Marshal, was told by Messrs Starostenko of the matters of malice related to unlawfulness of the Writ of Possession:
- 643.1. for the first and second times during his attempts to take possession; and
 - 643.2. for the third time, on 24 October 2017, after an oral proceedings held before Evans J, when Messrs Starostenko were frightened by his presence on chambers premises, at the Supreme Court, a state of mind, which he did not deny that they would have felt scared by his presence.
644. By reason of the matters complained of, Messrs Starostenko along with their six children have suffered mentally and had suffered loss and injury caused by the malice.

PARTICULARS OF INJURY

645. Messrs Starostenko and some of their children suffered depression, headaches, shortness of breath and palpitations caused by stress and anxiety as a result of the execution.
646. They have experienced injury to their feelings and dignity.
647. By reason of the facts and matters above, Messrs Starostenko's reputation has been harmed, they have suffered mental anguish, they were prevented from attending to their welfare, they have been put to considerable inconvenience and expense and they have suffered loss and damage.

PARTICULARS OF SPECIAL DAMAGE

648. Damage to reputation.
- 648.1. Messrs Starostenko were embarrassed by visits of the enforcement officer and their dignity were damaged.

648.2. They became the laughing stock of the social environment and community where they live.

649. Damage to property.

649.1. The Plaintiffs were put to the expense of objecting the execution.

649.2. The Plaintiffs, even if they were to sell Jazz House in Lyford Cay would not be able to get the property's fair market value. As a result of the execution persons have visited the property and offered amounts far below the market value of it, which is the damage which the Plaintiffs may suffer in respect of (1) the potential loss, (2) loss of trade or (3) business that could arise from the execution.

650. In support of their claim for aggravated damages Messrs Starostenko will rely on the following facts and matters.

PARTICULARS OF AGGRAVATED DAMAGES

651. The execution was aggravated by the circumstances in which the execution was brought, namely, on 1 April 2015, UBS went into liquidation and most likely, will be dissolved once the possession of the Plaintiffs' land is taken and Jazz House in Lyford Cay is sold.

652. In the circumstance, the Plaintiffs risk to face the damages in respect of:

652.1. the land seized unlawfully;

652.2. financial loss after the determination of both counterclaim and cross-claim as a result of most likely, unrecoverable debts due from UBS went into liquidation (most likely, dissolved after being paid upon the execution).

653. As a result there is risk that the Plaintiffs would suffer substantial injustice and prejudice.

PARTICULARS

654. In the premises, the damages pleaded and implied as a matter of law are necessarily involved where a Writ of possession is unlawfully issued by UBS.

655. UBS wrongfully proceeded to execution for a summary Judgment without the leave of the Court maliciously attempting to take possession of the Plaintiffs' land.

656. In respect of damages the Plaintiffs have suffered they are liable to recover:

656.1. (1) damages for injury to Messrs Starostenko's good name and reputation;

656.2. (2) any financial loss which is a result of UBS' wrong;

- 656.3. (3) aggravated damages because the wrong was aggravated by the circumstances in which the execution was brought, or by the exceptional degree of malice shown by the Plaintiffs.
657. Further, Messrs Starostenko are entitled to and claim interest on any damages awarded pursuant to the Civil Procedure (Award of Interest) Act 1992 or interest at such rate and for such period as the Court shall think fit.
658. AND the Plaintiffs claim:
- 658.1. (1) damages, including aggravated and exemplary damages;
 - 658.2. (2) interest pursuant thereon, as aforesaid at the above rate until judgment or sooner payment;
 - 658.3. (3) costs of suit; and
 - 658.4. (4) such other relief as the Court deems just.

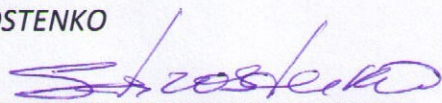
DATED this 14 day of November, A.D., 2017

STATEMENT OF TRUTH

I believe that the facts stated in these Particulars of Claims from 1 to 12 are true.
I am duly authorised by the first and third Plaintiffs to sign this Statement.

YURI STAROSTENKO

Signature.....



*Second Plaintiff acting in person
on behalf of the Plaintiffs*

[Appendix 1]

COMMONWEALTH OF THE BAHAMAS

2015/CLE/gen/No.01451

IN THE SUPREME COURT

COMMON LAW & EQUITY SIDE

BETWEEN

SUPREME COURT

NOV 06 2017

Nassau, Bahamas

JUNKANOO ESTATES LTD

First Plaintiff

AND

YURI STAROSTENKO

Second Plaintiff

AND

IRINA TSAREVA-STAROSTENKO

Third Plaintiff

AND

UBS (BAHAMAS) LTD

Defendant

ORDER

DATED the 4th November, 2015.

BEFORE His Lordship the Honourable Mr Justice Milton Evans.

UPON APPLICATION by the Defendant by Summons filed herein on 28th October, 2015.

AND UPON HEARING Mr Marco M. Turnquest and Ms Chizelle Cargill of Counsel for the Defendant; and, Ms Crystal S. Rolle of Counsel for the Plaintiffs.

AND UPON THE Defendant electing not to proceed with the relief sought in clauses two and three of its Summons.

IT IS HEREBY ORDERED THAT:

1. Action CLE/gen/No.01451 of 2015 be consolidated with the Counterclaim in Action CLE/gen/No.01620 of 2014 and that the said actions do proceed as one action.

2. The Plaintiffs be the Plaintiff and that the Defendant be the said Defendant in the consolidated action which is to be prosecuted under the title set out in the schedule hereto.
3. The Plaintiffs in the consolidated action serve a new Statement of Claim within 14 days hereof and the Defendant file a new Defence within 14 days of the service of the Statement of Claim on it.
4. The costs of all the parties to the above-mentioned actions including therein their costs of and incidental to this application be costs in the said consolidated action.

BY ORDER OF THE COURT

REGISTRAR

This Order was drawn by Lennox Paton, 3 Bayside Executive Park, West Bay Street & Blake Road, Nassau, New Providence, The Bahamas, attorneys for the Defendant.

SCHEDULE

COMMONWEALTH OF THE BAHAMAS

**2015/CLE/gen/No.01451
2014CLE/gen/No.01620**

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

Defendant

(Actions and Counterclaims consolidated by Order dated 4th November, 2015)

**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

Defendant

ORDER

2015/CLE/gen/No.01451

LENNOX PATON
Chambers
3 Bayside Executive Park
West Bay Street
Nassau, New Providence
The Bahamas.

Attorneys for the Defendant

[Appendix 2]

Client 8177
 JUNKANOO

Period From 03.07.08 to 20.04.09

Account USD 01/008177.001
 JUNKANOO

Account Statement

Date	Transaction	Debit	Credit	Value Date	Balance
	Opening balance				0.00
31.07.08	Account Maintenance Fee	-62.50		31.07.08	-62.50
18.08.08	CASH DEPOSIT DEPOSIT SLIP 0014		750.00	18.08.08	687.50
29.08.08	Account Maintenance Fee	-62.50		31.08.08	625.00
30.09.08	Account Maintenance Fee	-62.50		30.09.08	562.50
30.09.08	Debit Interest	-0.23		01.10.08	562.27
31.10.08	Account Maintenance Fee	-62.50		31.10.08	499.77
28.11.08	Account Maintenance Fee	-62.50		30.11.08	437.27
31.12.08	Account Maintenance Fee	-62.50		31.12.08	374.77
29.01.09	Incoming SWIFT / STAROSTENKO YURI		360,000.00	26.01.09	360,374.77
30.01.09	Account Maintenance Fee	-62.50		31.01.09	360,312.27
02.02.09	Purchase 5200 DIREXION SHARE ETF TRUST @ USD 48.261719	-253,470.55		04.02.09	106,841.72
05.02.09	Buy CAD 21400.00 Sell USD 17662.59 @1.2116	-17,662.59		05.02.09	89,179.13
05.02.09	Outgoing SWIFT / PT BAHARI CAHAYA RAYA INDONESIA	-1,126.00		06.02.09	88,053.13
05.02.09	Sale 3000 DIREXION SHARE ETF TRUST @ USD 53		157,012.50	06.02.09	245,065.63
05.02.09	Sale 2200 DIREXION SHARE ETF TRUST @ USD 52.7741		114,651.73	06.02.09	359,717.36
05.02.09	Purchase 20000 DIREXION FINANCIAL BULL 3X SHARES @ USD 9.2902	-187,662.04		09.02.09	172,055.32
05.02.09	Purchase 10000 DRYSHIPS INC @ USD 7.02	-70,902.00		09.02.09	101,153.32
06.02.09	Sale 15000 DIREXION FINANCIAL BULL 3X SHARES @ USD 7.9786666		118,483.20	10.02.09	219,636.52

Date	Transaction	Debit	Credit	Value Date	Balance
06.02.09	Purchase 2100 DIREXION SHARE ETF TRUST @ USD 57.543333	-122,049.41		10.02.09	97,587.11
10.02.09	Sale 5000 DIREXION FINANCIAL BULL 3X SHARES @ USD 10		49,500.00	11.02.09	147,087.11
11.02.09	Purchase 1800 DIREXION SHARE ETF TRUST @ USD 45.34775	-82,442.21		11.02.09	64,644.90
11.02.09	Purchase 300 DIREXION SHARE ETF TRUST @ USD 41.3967	-12,719.01		11.02.09	51,925.89
11.02.09	Outgoing SWIFT / YURI STAROSTENKO	-50,050.00		13.02.09	1,875.89
17.02.09	Outgoing SWIFT / YURI STAROSTENKO	-10,050.00		19.02.09	-8,174.11
18.02.09	Sale 100 DIREXION SHARE ETF TRUST @ USD 61		5,800.00	20.02.09	-2,374.11
18.02.09	Sale 1000 DIREXION SHARE ETF TRUST @ USD 57.59		57,014.10	20.02.09	54,639.99
18.02.09	Sale 1000 DIREXION SHARE ETF TRUST @ USD 58.5		57,915.00	20.02.09	112,554.99
19.02.09	Sale 1000 DIREXION SHARE ETF TRUST @ USD 62.3276		61,704.32	23.02.09	174,259.31
19.02.09	Sale 2000 DIREXION SHARE ETF TRUST @ USD 63.3009		125,335.78	23.02.09	299,595.09
19.02.09	Purchase 1000 DIREXION SHARE ETF TRUST @ USD 60.25	-60,852.50		23.02.09	238,742.59
19.02.09	Purchase 800 DIREXION SHARE ETF TRUST @ USD 63	-50,904.07		23.02.09	187,838.52
19.02.09	Purchase 2100 DIREXION SHARE ETF TRUST @ USD 62	-131,502.00		23.02.09	56,336.52
19.02.09	Purchase 1000 PROSHARES TRUST @ USD 77.4	-78,174.00		23.02.09	-21,837.48
25.02.09	Sale 3000 DRYSHIPS INC @ USD 3.8		11,250.00	27.02.09	-10,587.48
27.02.09	Buy USD 10602.78 Sell CAD 13382.56 @1.262174637		10,602.78	27.02.09	15.30
27.02.09	Account Maintenance Fee	-62.50		28.02.09	-47.20
27.02.09	Retained Mail Fee	-350.00		28.02.09	-397.20
03.03.09	Purchase 3000 DRYSHIPS INC @ USD 3	-9,090.00		05.03.09	-9,487.20
03.03.09	Sale 1000 DIREXION SHARE ETF TRUST @ USD 73.81		73,071.90	05.03.09	63,584.70
03.03.09	Sale 1000 DIREXION SHARE ETF TRUST @ USD 74.414		73,669.86	05.03.09	137,254.56

Date	Transaction	Debit	Credit	Value Date	Balance
03.03.09	Sale 1000 DIREXION SHARE ETF TRUST @ USD 75.6		74,844.00	05.03.09	212,098.56
03.03.09	Sale 500 PROSHARES TRUST @ USD 89.91		44,505.45	05.03.09	256,604.01
03.03.09	Sale 500 PROSHARES TRUST @ USD 85.516		42,330.42	05.03.09	298,934.43
04.03.09	Purchase 10000 DRYSHIPS INC @ USD 2.79	-28,179.00		06.03.09	270,755.43
05.03.09	Purchase 3500 DIREXION SHARE ETF TRUST @ USD 74.0461	-261,752.96		09.03.09	9,002.47
05.03.09	Purchase 1000 DIREXION SHARE ETF TRUST @ USD 79.05	-79,840.50		09.03.09	-70,838.03
05.03.09	Purchase 1000 DIREXION SHARE ETF TRUST @ USD 78.3	-79,083.00		09.03.09	-149,921.03
05.03.09	Purchase 1000 DIREXION SHARE ETF TRUST @ USD 75.533	-76,288.33		09.03.09	-226,209.36
05.03.09	Purchase 4500 DIREXION SHARE ETF TRUST @ USD 75.3899	-342,647.10		09.03.09	-568,856.46
05.03.09	Purchase 3500 DIREXION SHARE ETF TRUST @ USD 78.5365	-277,626.53		09.03.09	-846,482.99
05.03.09	Sale 3500 DIREXION SHARE ETF TRUST @ USD 77.4		268,191.00	09.03.09	-578,291.99
05.03.09	Sale 1000 DIREXION SHARE ETF TRUST @ USD 84.109		83,267.91	09.03.09	-495,024.08
05.03.09	Sale 1000 DIREXION SHARE ETF TRUST @ USD 84.6		83,754.00	09.03.09	-411,270.08
05.03.09	Sale 1000 DIREXION SHARE ETF TRUST @ USD 83.687		82,850.13	09.03.09	-328,419.95
05.03.09	Sale 1000 DIREXION SHARE ETF TRUST @ USD 84.936		84,086.64	09.03.09	-244,333.31
06.03.09	Sale 3500 DIREXION SHARE ETF TRUST @ USD 93.6		324,324.00	10.03.09	79,990.69
06.03.09	Sale 5000 DIREXION SHARE ETF TRUST @ USD 97.0478		480,386.61	10.03.09	560,377.30
06.03.09	Sale 3500 DIREXION SHARE ETF TRUST @ USD 96.5433		334,522.53	10.03.09	894,899.83
06.03.09	Purchase 10000 DIREXION FINANCIAL BULL 3X SHARES @ USD 2.63	-26,563.00		10.03.09	868,336.83
06.03.09	Purchase 10000 DRYSHIPS INC @ USD 3.55	-35,855.00		10.03.09	832,481.83

Date	Transaction	Debit	Credit	Value Date	Balance
10.03.09	Purchase 90000 DIREXION FINANCIAL BULL 3X SHARES @ USD 2.9404	-267,282.36		11.03.09	565,199.47
10.03.09	Sale 1000 DIREXION SHARE ETF TRUST @ USD 115.234		113,793.57	11.03.09	678,993.04
10.03.09	Sale 500 DIREXION SHARE ETF TRUST @ USD 111.53		54,789.11	11.03.09	733,782.15
10.03.09	Sale 500 DIREXION SHARE ETF TRUST @ USD 114.3736		56,186.03	11.03.09	789,968.18
10.03.09	Sale 1000 DIREXION SHARE ETF TRUST @ USD 115.053		113,614.84	11.03.09	903,583.02
10.03.09	Purchase 1000 DIREXION SHARE ETF TRUST @ USD 110.9652	-112,352.27		11.03.09	791,230.75
10.03.09	Purchase 4000 DIREXION SHARE ETF TRUST @ USD 111.8611	-451,918.84		11.03.09	339,311.91
10.03.09	Sale 50000 DIREXION FINANCIAL BULL 3X SHARES @ USD 2.64		130,680.00	11.03.09	469,991.91
10.03.09	Purchase 50000 DIREXION FINANCIAL BULL 3X SHARES @ USD 2.4802	-125,560.13		11.03.09	344,431.78
10.03.09	Sale 100000 DIREXION FINANCIAL BULL 3X SHARES @ USD 2.84		281,160.00	12.03.09	625,591.78
10.03.09	Sale 50000 DIREXION FINANCIAL BULL 3X SHARES @ USD 2.77		137,115.00	12.03.09	762,706.78
10.03.09	Sale 50000 DIREXION FINANCIAL BULL 3X SHARES @ USD 2.7		133,650.00	12.03.09	896,356.78
10.03.09	Sale 100000 DIREXION FINANCIAL BULL 3X SHARES @ USD 2.87		284,130.00	12.03.09	1,180,486.78
10.03.09	Purchase 100000 DIREXION FINANCIAL BULL 3X SHARES @ USD 2.79	-281,790.00		12.03.09	898,696.78
10.03.09	Purchase 100000 DIREXION FINANCIAL BULL 3X SHARES @ USD 2.78	-280,780.00		12.03.09	617,916.78
10.03.09	Purchase 200000 DIREXION FINANCIAL BULL 3X SHARES @ USD 2.75	-555,500.00		12.03.09	62,416.78
10.03.09	Sale 1000 DIREXION SHARE ETF TRUST @ USD 97.1785		96,206.71	12.03.09	158,623.49
10.03.09	Sale 1000 DIREXION SHARE ETF TRUST @ USD 97.1825		96,210.67	12.03.09	254,834.16

Date	Transaction	Debit	Credit	Value Date	Balance
10.03.09	Purchase 20000 RENESOLA LTD @ USD 2.1412	-43,252.24		12.03.09	211,581.92
10.03.09	Sale 10000 DRYSHIPS INC @ USD 3.8291		37,908.09	12.03.09	249,490.01
11.03.09	Purchase 3000 DIREXION SHARE ETF TRUST @ USD 66.1707	-200,130.20		13.03.09	49,359.81
11.03.09	Sale 100000 DIREXION FINANCIAL BULL 3X SHARES @ USD 3.33		329,334.13	13.03.09	378,693.94
11.03.09	Sale 100000 DIREXION FINANCIAL BULL 3X SHARES @ USD 3.32		328,342.13	13.03.09	707,036.07
11.03.09	Sale 18000 RENESOLA LTD @ USD 2.3458		41,706.36	13.03.09	748,742.43
12.03.09	Sale 3000 DIREXION SHARE ETF TRUST @ USD 56		166,625.05	16.03.09	915,367.48
12.03.09	Purchase 300000 DIREXION FINANCIAL BULL 3X SHARES @ USD 4.23	-1,282,164.86		16.03.09	-366,797.38
12.03.09	Purchase 100000 DIREXION FINANCIAL BULL 3X SHARES @ USD 4.025	-406,724.29		16.03.09	-773,521.67
12.03.09	Purchase 100000 DIREXION FINANCIAL BULL 3X SHARES @ USD 4.19	-423,356.29		16.03.09	-1,196,877.96
12.03.09	Purchase 200000 DIREXION FINANCIAL BULL 3X SHARES @ USD 4.079	-824,334.97		16.03.09	-2,021,212.93
12.03.09	Sale 100000 DIREXION FINANCIAL BULL 3X SHARES @ USD 4.22		417,625.00	16.03.09	-1,603,587.93
12.03.09	Sale 200000 DIREXION FINANCIAL BULL 3X SHARES @ USD 4.14		819,377.99	16.03.09	-784,209.94
13.03.09	Sale 100000 DIREXION FINANCIAL BULL 3X SHARES @ USD 4.99		494,005.43	17.03.09	-290,204.51
13.03.09	Sale 100000 DIREXION FINANCIAL BULL 3X SHARES @ USD 4.41		436,469.43	17.03.09	146,264.92
13.03.09	Sale 100000 DIREXION FINANCIAL BULL 3X SHARES @ USD 4.5		445,397.43	17.03.09	591,662.35
13.03.09	Sale 100000 DIREXION FINANCIAL BULL 3X SHARES @ USD 4.42		437,461.43	17.03.09	1,029,123.78

Date	Transaction	Debit	Credit	Value Date	Balance
16.03.09	Outgoing SWIFT / YURI STAROSTENKO	-61,050.00		18.03.09	968,073.78
16.03.09	Purchase 150000 DIREXION FINANCIAL BULL 3X SHARES @ USD 4.85	-734,820.00		18.03.09	233,253.78
16.03.09	Purchase 50000 DIREXION FINANCIAL BULL 3X SHARES @ USD 5.13	-259,052.00		18.03.09	-25,798.22
16.03.09	Purchase 50000 DIREXION FINANCIAL BULL 3X SHARES @ USD 5.29	-267,116.00		18.03.09	-292,914.22
16.03.09	Purchase 50000 DIREXION FINANCIAL BULL 3X SHARES @ USD 5.3	-267,620.00		18.03.09	-560,534.22
16.03.09	Sale 50000 DIREXION FINANCIAL BULL 3X SHARES @ USD 5.18		256,424.88	18.03.09	-304,109.34
16.03.09	Sale 50000 DIREXION FINANCIAL BULL 3X SHARES @ USD 5.2396		259,381.04	18.03.09	-44,728.30
16.03.09	Sale 50000 DIREXION FINANCIAL BULL 3X SHARES @ USD 5.17		255,928.88	18.03.09	211,200.58
17.03.09	Sale 50000 DIREXION FINANCIAL BULL 3X SHARES @ USD 5.85		289,658.36	19.03.09	500,858.94
17.03.09	Purchase 100000 DIREXION FINANCIAL BULL 3X SHARES @ USD 5.48	-553,384.00		19.03.09	-52,525.06
17.03.09	Purchase 50000 DIREXION FINANCIAL BULL 3X SHARES @ USD 5.45	-275,180.00		19.03.09	-327,705.06
17.03.09	Purchase 50000 DIREXION FINANCIAL BULL 3X SHARES @ USD 5.48	-276,692.00		19.03.09	-604,397.06
17.03.09	Purchase 50000 DIREXION FINANCIAL BULL 3X SHARES @ USD 5.61	-283,244.00		19.03.09	-887,641.06
18.03.09	Sale 50000 DIREXION FINANCIAL BULL 3X SHARES @ USD 5.4924		271,921.55	20.03.09	-615,719.51
18.03.09	Sale 50000 DIREXION FINANCIAL BULL 3X SHARES @ USD 5.35		264,858.51	20.03.09	-350,861.00
18.03.09	Sale 50000 DIREXION FINANCIAL BULL 3X SHARES @ USD 5.25		259,898.51	20.03.09	-90,962.49

Date	Transaction	Debit	Credit	Value Date	Balance
18.03.09	Sale 50000 DIREXION FINANCIAL BULL 3X SHARES @ USD 5.13		253,946.51	20.03.09	162,984.02
19.03.09	Purchase 50000 DIREXION FINANCIAL BULL 3X SHARES @ USD 6.78	-342,213.67		23.03.09	-179,229.65
19.03.09	Purchase 50000 DIREXION FINANCIAL BULL 3X SHARES @ USD 6.6615	-336,241.27		23.03.09	-515,470.92
19.03.09	Purchase 50000 DIREXION FINANCIAL BULL 3X SHARES @ USD 6.9215	-349,345.27		23.03.09	-864,816.19
19.03.09	Sale 50000 DIREXION FINANCIAL BULL 3X SHARES @ USD 5.7		282,218.21	23.03.09	-582,597.98
19.03.09	Sale 50000 DIREXION FINANCIAL BULL 3X SHARES @ USD 5.85		289,658.21	23.03.09	-292,939.77
19.03.09	Sale 50000 DIREXION FINANCIAL BULL 3X SHARES @ USD 6.03		298,586.21	23.03.09	5,646.44
19.03.09	Sale 50000 DIREXION FINANCIAL BULL 3X SHARES @ USD 6.69		331,322.21	23.03.09	336,968.65
19.03.09	Sale 50000 DIREXION FINANCIAL BULL 3X SHARES @ USD 6.99		346,202.21	23.03.09	683,170.86
19.03.09	Sale 50000 DIREXION FINANCIAL BULL 3X SHARES @ USD 7.11		352,154.21	23.03.09	1,035,325.07
20.03.09	Sale 20000 DRYSHIPS INC @ USD 4.9598		98,201.89	24.03.09	1,133,526.96
20.03.09	Purchase 10000 DRYSHIPS INC @ USD 5.09	-51,407.20		24.03.09	1,082,119.76
20.03.09	Purchase 100000 DIREXION FINANCIAL BULL 3X SHARES @ USD 6.5709	-663,346.72		24.03.09	418,773.04
20.03.09	Purchase 50000 CITIGROUP INC. @ USD 2.88	-145,651.31		24.03.09	273,121.73
20.03.09	Purchase 50000 CITIGROUP INC. @ USD 3.37	-170,347.31		24.03.09	102,774.42
20.03.09	Purchase 100000 CITIGROUP INC. @ USD 3.47	-350,774.61		24.03.09	-248,000.19
24.03.09	Purchase 10000 DIREXION FINANCIAL BULL 3X SHARES @ USD 6.49	-65,519.20		26.03.09	-313,519.39

Date	Transaction	Debit	Credit	Value Date	Balance
24.03.09	Sale 50000 DIREXION FINANCIAL BULL 3X SHARES @ USD 6.44		318,920.49	26.03.09	5,401.10
24.03.09	Sale 10000 DIREXION FINANCIAL BULL 3X SHARES @ USD 7.12		70,529.70	26.03.09	75,930.80
25.03.09	Sale 10000 DIREXION FINANCIAL BULL 3X SHARES @ USD 7		69,339.60	27.03.09	145,270.40
25.03.09	Purchase 20000 DIREXION FINANCIAL BULL 3X SHARES @ USD 6.3	-127,207.33		27.03.09	18,063.07
25.03.09	Purchase 10000 DIREXION FINANCIAL BULL 3X SHARES @ USD 6.54	-66,022.87		27.03.09	-47,959.80
25.03.09	Purchase 10000 DIREXION FINANCIAL BULL 3X SHARES @ USD 6.69	-67,534.87		27.03.09	-115,494.67
25.03.09	Purchase 20000 DIREXION FINANCIAL BULL 3X SHARES @ USD 6.82	-137,690.53		27.03.09	-253,185.20
30.03.09	Safekeeping Fees Fee Posted from 200812 to 200902	-249.21		27.03.09	-253,434.41
26.03.09	Sale 40000 DIREXION FINANCIAL BULL 3X SHARES @ USD 6.69		265,056.87	30.03.09	11,622.46
26.03.09	Sale 50000 DIREXION FINANCIAL BULL 3X SHARES @ USD 6.2179		307,904.93	30.03.09	319,527.39
26.03.09	Purchase 20000 DIREXION FINANCIAL BULL 3X SHARES @ USD 6.84	-138,094.40		30.03.09	181,432.99
26.03.09	Purchase 40000 DIREXION FINANCIAL BULL 3X SHARES @ USD 6.28	-253,609.60		30.03.09	-72,176.61
26.03.09	Purchase 40000 DIREXION FINANCIAL BULL 3X SHARES @ USD 6.02	-243,126.40		30.03.09	-315,303.01
26.03.09	Sale 50000 CITIGROUP INC. @ USD 3.1		153,260.83	30.03.09	-162,042.18
26.03.09	Sale 50000 CITIGROUP INC. @ USD 2.98		147,308.83	30.03.09	-14,733.35
26.03.09	Sale 50000 CITIGROUP INC. @ USD 2.91		143,836.83	30.03.09	129,103.48
26.03.09	Dividend payment 0.01562 % DIREXION FINANCIAL BULL 3X SHARES		1,093.40	31.03.09	130,196.88

Date	Transaction	Debit	Credit	Value Date	Balance
27.03.09	Sale 40000 DIREXION FINANCIAL BULL 3X SHARES @ USD 6.379		252,718.57	31.03.09	382,915.45
27.03.09	Sale 40000 DIREXION FINANCIAL BULL 3X SHARES @ USD 6.5		257,519.85	31.03.09	640,435.30
27.03.09	Sale 40000 DIREXION FINANCIAL BULL 3X SHARES @ USD 6.46		255,932.65	31.03.09	896,367.95
27.03.09	Sale 30000 DIREXION FINANCIAL BULL 3X SHARES @ USD 6.8		202,067.89	31.03.09	1,098,435.84
27.03.09	Sale 20000 DIREXION FINANCIAL BULL 3X SHARES @ USD 6.9		136,695.92	31.03.09	1,235,131.76
27.03.09	Sale 20000 DIREXION FINANCIAL BULL 3X SHARES @ USD 6.84		135,505.52	31.03.09	1,370,637.28
27.03.09	Sale 10000 DIREXION FINANCIAL BULL 3X SHARES @ USD 6.89		68,248.76	31.03.09	1,438,886.04
27.03.09	Sale 10000 DIREXION FINANCIAL BULL 3X SHARES @ USD 6.95		68,843.96	31.03.09	1,507,730.00
27.03.09	Purchase 10000 DIREXION FINANCIAL BULL 3X SHARES @ USD 6.5169	-65,790.19		31.03.09	1,441,939.81
27.03.09	Purchase 20000 DIREXION FINANCIAL BULL 3X SHARES @ USD 6.5137	-131,515.87		31.03.09	1,310,423.94
27.03.09	Purchase 20000 DIREXION FINANCIAL BULL 3X SHARES @ USD 6.72	-135,674.88		31.03.09	1,174,749.06
27.03.09	Purchase 20000 DIREXION FINANCIAL BULL 3X SHARES @ USD 6.65	-134,263.68		31.03.09	1,040,485.38
27.03.09	Purchase 20000 DIREXION FINANCIAL BULL 3X SHARES @ USD 6.68	-134,868.48		31.03.09	905,616.90
27.03.09	Purchase 20000 DIREXION FINANCIAL BULL 3X SHARES @ USD 6.65	-134,263.68		31.03.09	771,353.22
27.03.09	Purchase 20000 DIREXION FINANCIAL BULL 3X SHARES @ USD 6.69	-135,070.08		31.03.09	636,283.14
27.03.09	Purchase 40000 DIREXION FINANCIAL BULL 3X SHARES @ USD 6.3196	-255,205.65		31.03.09	381,077.49

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

JUNKANOO ESTATES LTD

First Plaintiff

YURI STAROSTENKO

Second Plaintiff

AND

IRINA STAROSTENKO

Third Plaintiff

AND

UBS (Bahamas) LTD (In Voluntary Liquidation)

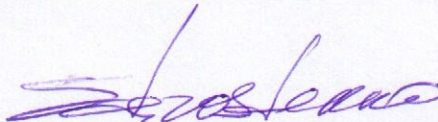
Defendant

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

STATEMENT OF CLAIM

2015/CLE/gen/No.01451

2014/CLE/gen/No.01620



Yuri Starostenko

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*Second Plaintiff acting in person
on behalf of the Plaintiffs*