

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RAMSEY PERSONAL TRUST by LAURIN D.
RAMSEY, TRUSTEE, On Behalf of Itself and All
Those Similarly Situated,

Plaintiff

v.

UBS FINANCIAL SERVICES, INC. d/b/a UBS
WEALTH MANAGEMENT U.S. and UBS AG d/b/a
UBS WEALTH MANAGEMENT AMERICAS,

Defendants.

Civil Action No.

ECF Case

VERIFIED
CLASS ACTION COMPLAINT
JURY TRIAL DEMANDED

Plaintiff Ramsey Personal Trust by Laurin D. Ramsey, Trustee, on behalf of itself and all others similarly situated, by its attorneys, Schoengold & Sporn, P.C., for its class action complaint against defendants UBS Financial Services, Inc. d/b/a UBS Wealth Management U.S. ("UBS FS") and UBS AG d/h/a UBS Wealth Management Americas ("UBS AG"), alleges as follows, upon knowledge as to itself and upon information and belief based upon review and analysis of public documents, interviews with former employees and consultations with experts.

NATURE OF THE ACTION AND BACKGROUND

1. This action alleges violations of Section 349-a of the New York State General Business Law ("GBL") and Section 2-313 of the New York Uniform Commercial Code ("UCC"), common law breaches of contract and fiduciary duty, fraud, unjust enrichment and negligent misrepresentation. The action is brought by Plaintiff individually and on behalf of all those who entered into contracts to purchase precious metals, from and through Paine, Webber Jackson & Curtis, Incorporated ("PWJC"); Paine Webber Incorporated ("PWI"); UBS FS; and/or UBS AG; and, who paid fictitious storage fees for those purported precious metals purchases (the "Class").

2. In 1984, PWI was formed through the merger of PWJC and Blyth Eastman Paine Webber Inc. Thereafter, on November 3, 2000, PWI underwent a merger to become UBS PaineWebber, Inc. ("UPI"), a subsidiary of UBS AG, until it was renamed UBS Financial Services, Inc. in 2003. UBS FS operations in

the United States have been conducted under the service names UBS Wealth Management USA until UBS Wealth Management U.S., referred herein interchangeably as "UBS Wealth Management U.S."

3. PWJC and PWI are collectively referred to herein as "Paine Webber."

4. UBS FS, its parent UBS AG and their predecessors Paine Webber and UPI are collectively referred to herein as "UBS".

5. Plaintiff Ramsey Personal Trust by Laurin D. Ramsey, Trustee is referred to herein as "Plaintiff" or the "Trust".

6. Investment in precious metals has long been considered a "safe haven" from the risks associated with "paper" investments issued in the debt and equity markets. The financial security associated with the purchase of precious metals derives largely from the fact that it provides the investor with something of physical value which the investor owns and physically holds (or has held on their behalf) as opposed to debt or equity investments whose value is derived from the financial solvency of the issuing institutions.

7. In the precious metals market, there is a clear distinction between "allocated" and "unallocated" precious metal purchases. "Allocated precious metal" is metal that is purchased, owned, segregated and held for the investor and for which the investor may pay storage charges. The investor holds full title to allocated metal and thus is fully secured. The institution placing the allocated trade cannot use that metal for its own investment purposes, but serves only as its custodian. "Unallocated metal" is dramatically different. The unallocated precious metal investor receives only an unsecured promise for the precious metal. Further, the institution placing an unallocated trade does so in its own name and is free to use that unallocated metal for its own investment purposes and is even free to not purchase any metal at all, but rather to hedge its commitment by merely purchasing an option or a commodities contract (at far less cost). As defined by the London Bullion Market Association ("LBMA"), the unallocated metal investment renders the investor an "unsecured creditor" of the trading institution -- "backed by" the assets of the metal dealer. Unallocated precious metal purchases may not incur storage charges because the unallocated purchase is merely an unsecured promise to deliver the metal at some future point in time. A storage charge can only be imposed if there is an actual setting aside of a precious metal, owned by the investor, safe from a bankruptcy of the trading house and immune from creditor claims of the trading house.

8. Throughout the Class Period, UBS purported to facilitate the precious metals purchases on an allocated basis, representing it would segregate and store the metal on behalf of its clients. UBS went so far as to

charge the clients storage fee charges for its purported storage services. Based on these representations, including those represented at the time of purchase from UBS, the Plaintiff maintained an investment in the form of silver bullion from UBS and was erroneously charged and paid storage fee charges in connection with Plaintiffs purported holdings of silver bullion, measured in Troy Ounces ("Troy Oz."). Throughout the Class Period, the Defendants actively concealed from Plaintiff and the Class members that they did not own allocated metals, that the storage fees were fictitious, and that the storage fees were increased from \$25 to \$50 without Plaintiffs affirmation or consent.

9. On or about February 4, 2010, Plaintiff learned, after repeated inquiries, that in point of fact, no specific, designated silver had ever been purchased, segregated and stored for Plaintiff.

10. On or about March 29, 2010, UBS provided the following response to an inquiry by Laurin D. Ramsey ("Mr. Ramsey"):

In order for you to have silver in bar format, you would have to sell your unallocated position and buy a bar position. The cost would be \$350, or 35 cents an ounce. You can buy them in 100-ounce bars; however, the 100 ounce bars do not have serial numbers. If you want a bar with a serial number, you would need to purchase a 1000 ounce bar. Please note that 1000 ounce bars are not exactly 1000 ounces.

The bars are manufactured by Johnson Matthey, one of the largest silver bar manufacturers in the United States. Additionally, the bars, if held at UBS, would be stored at:

Delaware Depository 3601 N. Market Street Wilmington, DE

This depository is a COMEX/NYNEF-approved storage facility.

Lastly, if you want to take delivery of your bar/bars, they would be mailed to you via U.S. Mail, and the cost of mailing is included in the \$350 fee. You should discuss with your tax advisor the tax implications of the sale of the unallocated position and the purchase of the new position.

Thus, UBS never purchased, segregated or stored silver on Plaintiff's behalf or on behalf of members of the Class. Instead, UBS conceded, in a purposefully obfuscated response, that, at best, "the position"- as opposed to Plaintiffs holdings - was merely "unallocated". UBS thus committed and has been committing a classic "bait and switch": inducing investors to provide funds to UBS believing they were making one type of investment - the purchase of precious metals which the investor would fully own and have stored - when, in fact, UBS was actually making either no investment specifically on behalf of its clients or an entirely different "unallocated" investment of lesser value and security for which there was actually no storage - while the investor was charged for and paid for fictitious storage fees.

11. By definition, these unallocated purchases were directly contrary to UBS's sales representations to Plaintiff and the Class.

12. UBS generated and continues to generate ill-gotten profits from storage "fee charges" and arbitrary increases employed on or around the time of issuing the November 2007 statement. UBS fraudulently converted the funds which were to be used to purchase precious metals which the investor would wholly own and for which UBS would only be a custodian - so that UBS could then trade and profit without the investor's knowledge or consent. To the extent that UBS also purchased unallocated metal, it had the ability to obtain enoinious profits by not making any physical precious metal purchase at all, but rather by only purchasing an option or commodities contract which could be obtained at a substantially lower price than the cost of purchasing physical precious metal. Further, the "storage" and "handling" fees charged to Plaintiff and to members of the Class for these unallocated purchases were fictitious and being "pocketed" without incurring real storage costs. Finally, as a powerful international silver and other precious metals trader itself, UBS's purchase, at best, of unallocated metal in its own name which it could then trade to support its own investments without the knowledge or consent of the Class members only served to provide lucrative support for its other precious metals positions and thus afforded it the ability to potentially control or influence the precious metals markets pricing and trading. Throughout the Class Period and to date, UBS fraudulently concealed these misrepresentations and misconduct to the damage and detriment of Plaintiff and the other Class members.

JURISDICTION AND VENUE

13. The claims asserted herein arise under and pursuant to alleged violations of violations of Section 349-a of the GBL; Section 2-313 of the UCC; and, common law breaches of contract and fiduciary duty, fraud, unjust enrichment and negligent misrepresentation.

14. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(d) (diversity). Plaintiff and many other Class members are citizens of states different than that of defendants, and the matter in controversy exceeds the sum of \$5.000,000, exclusive of interests and costs.

15. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b). Many of the acts and transactions alleged herein, including the preparation and dissemination of materially false and misleading material including, inter alia, documents, statements, storage fee bills and other information, occurred in this District. These acts and transactions include the preparation and issuance of written communications by UBS to investors concerning their "purchases" and "storage" of precious metal in UBS precious metal accounts, including but not limited to statements made in Customer Disclosure Statements, monthly

brokerage statements, annual precious metal storage fee notifications and other public statements. UBS's monthly Statements of Account specifically advised those investors wishing to lodge a complaint to do so by contacting its Law Division located in this District. Additionally, UBS maintains its principal executive offices in this District.

PARTIES

16. Plaintiff Ramsey Personal Trust, by Laurin D. Ramsey, Trustee, is a resident of the State of Michigan. The Trust was previously administered by Mr. Ramsey and his late spouse Doris E. Ramsey ("Mrs. Ramsey") prior to her passing in January 2009. The Trust's precious metal assets were continuously maintained by financial advisors employed by Paine Webber and UBS since 1991. Prior to the Trust's creation, the Trust's precious metal assets were held in joint tenancy by Mr. Ramsey and Mrs. Ramsey (collectively "the Ramseys"), who paid in full for the purchase of a 1,000 Troy Oz. of silver from and through UBS.

Defendants:

17. Defendant UBS Financial Services, Inc. d/b/a UBS Wealth Management U.S. is a Delaware corporation with its principal executive offices designated at 800 Harbor Blvd., Weehawken, New Jersey 07086. UBS FS operates primarily from its corporate headquarters at 1285 Avenue of the Americas, New York, New York 10019. UBS FS is a wholly owned subsidiary of UBS AG and functions within UBS AG's business division UBS Wealth Management Americas to offer commodities, securities, trading, brokerage and related products and services in the United States.

18. Defendant UBS AG d/b/a UBS Wealth Management Americas is a publicly-held corporation organized under the laws of Switzerland with its principal executive offices located at Bahnhofstrasse 45, Zurich, Switzerland and Aeschenvorstadt 1, Basel, Switzerland. UBS AG was formed as a result of the 1998 merger of Schweizerische Bankgesellschaft a/k/a Union Bank of Switzerland and Schweizerischer Bankverein a/k/a Swiss Bank Corporation. Today, UBS AG operates as one of the world's largest global financial services firm and provides wealth management, asset management, and investment banking services to private, corporate, and institutional clients worldwide. UBS AG operates in the United States and Canada through various business units, including UBS Wealth Management Americas, with its principal office located at 1285 Avenue of the Americas, New York, New York 10019. UBS AG is the

parent corporation of Defendant UBS FS. UBS AG common stock is publicly traded on the SIX Swiss Exchange (Ticker Symbol: UBSN) and the New York Stock Exchange (Ticker Symbol: UBS).

PLAINTIFF'S CLASS ACTION ALLEGATIONS

19. Plaintiff brings this action as a class action pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who entered into contracts to purchase precious metals, from and through UBS FS from May 11, 1984 through October 18, 2010 and who paid storage fees for those purported precious metals purchases. Excluded from the Class are UBS, its officers and directors at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which UBS has or had a controlling interest.

20. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are thousands of Class members. Class members may be identified from records maintained by UBS.

21. Plaintiffs claims are typical of the claims of the Class, as all Class members were and are similarly affected by UBS's wrongful conduct in violations of the GBL, UCC and common laws that are complained of herein. Plaintiff and each of the Class members entered into contracts to purchase what was represented to be physical precious metals from UBS, and incurred improper storage charges for precious metals that were not bought and did not physically exist in their names. This practice was suppressed and concealed from the Class by UBS, which made affirmative representations throughout the Class Period that physical precious metals, in fact, had been purchased for and were being stored for Plaintiff and the other Class members, were not subject to lien and were not being used for any other purpose. Plaintiff and the other Class members have sustained monetary damages resulting from UBS's improper practices.

22. Plaintiff will fairly and adequately represent and protect the interests of the other Class members and has retained counsel competent and experienced in class action litigation.

23. Common questions of law and fact exist as to all Class members and predominate over any questions solely affecting individual Class members. Among the questions of law and fact common to the Class are:

- (a) whether the GBL, the UCC and the common laws were violated by UBS's conduct as alleged herein;
- (b) whether representations and/or omissions to state material facts made by UBS to Plaintiff and the Class members in its customer agreements, precious metal purchase "buy" slips, precious metal storage fee

notifications and account statements during the Class Period were materially false and misleading and misrepresented material facts in that: no physical precious metals were, in fact, purchased, segregated and stored on behalf of Plaintiff and the Class members; the unallocated precious metals were not owned by Plaintiff and the Class members; and the unallocated precious metals were subject to lien and being used for other investment purposes without the their knowledge or consent;

(c) whether UBS breached its contractual agreements with Plaintiff and the other Class members by failing to purchase specific physical precious metals on their behalf and by charging storage fees when, in fact, no specific physical precious metals had been purchased, segregated and stored;

(d) whether UBS had a duty to disclose material facts concerning its precious metals purchase and storage practices to its customers;

(e) whether UBS should be enjoined from engaging in such storage practices with respect to its precious metals account customers;

(f) to what extent the Class has sustained damages; and

(g) to what extent UBS was unjustly benefited by and should be held to account for its wrongful conduct.

24. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

SUBSTANTIVE ALLEGATIONS

Background Facts

25. On or about May 11, 1984, the Ramseys intended to purchase 1,000 Troy Oz. of Silver for \$8,725.00 from PWJC. At the time, the Ramseys understood that the purchase included a storage charge for the physical storage of the 1,000 Troy Oz. of Silver. In 1991, the Ramseys, through the assistance of their Paine Webber financial advisor, established a personal trust account to create the Trust. The Ramseys' 1,000 Troy Oz. of Silver was transferred to possession of the Trust, and the Ramseys served as co-trustees and co-beneficiaries of the Trust from 1991 until January 2009. After Mrs. Ramsey passed away in January 2009, Mr. Ramsey became the sole trustee and sole beneficiary of the Trust.

26. During the Class Period, the Plaintiff acquired title to the 1,000 Troy Oz. Silver purchased by the Ramseys on May 11, 1984 for a net price of \$8,969.40. The net price included the \$8,7525.00 gross price for 1,000 Troy Oz. of silver, a \$199.50 commission, and an additional \$44.90 for which the "Net Amount Includes Storage Charge" for the 1,000 Troy Oz. of silver they ostensibly purchased.

27. Each of the Class members purchased precious metals from Paine Webber and/or UBS and received a confirmation of purchase indicating that the "Amount Includes Storage Charge" and were presented with substantively uniform disclosures concerning the purchase and maintenance of physical precious metals through Paine Webber and/or UBS.

28. UBS charged a storage fee for the precious metal purchased clearly implying and leading the Plaintiff and members of the Class to believe that actual, specific and physical metals were being purchased, stored and handled on behalf of the customers with each purchase.

29. UBS sent monthly statements for the UBS accounts held by the Plaintiff and members of the Class. The Plaintiff and members of the Class were each charged storage fees of \$25 per month in consideration for the holding of the physical silver which they each purchased. Beginning on or about the time of issuing the November 2007 statement, UBS increased the storage fee charge two-fold from \$25 per month to \$50 per month. At no time did UBS notify the customer of a change in terms of service with the customer.

Materially False and Misleading Statements Issued During the Class Period

30. The May 11, 1984 Transaction Confirmation with Paine Webber implied and led Plaintiff and members of the Class to believe that actual physical precious metals were being purchased and the "Net Amount Includes Storage Charge."

31. The statements set forth in the preceding paragraphs were materially false and misleading since they clearly conveyed that precious metals were owned by the investor and being physically held for the investor in a separate inventory.

32. By letter dated March 29, 2010, Plaintiff was informed that in fact the silver position never truly existed, and that he would therefore need to "buy a bar position" at a cost of \$0.35 per ounce, or \$350, whereupon silver bars manufactured by Johnson Matthey plc then "would be stored" or "would be mailed" at Plaintiffs option at time of purchase.

33. Further, UBS's legal department represented to Plaintiff that any acquisition of silver which Plaintiff purchased would be available only if Plaintiff were to purchase additional silver bullion bars. To this end,

UBS indicated by letter dated May 6, 2010 that any decision to sell Plaintiffs current "position" might create tax implications for the Plaintiff. Therefore, before Plaintiff could make such a decision, it was "strongly suggest[ed]" by UBS counsel that Plaintiff first "confirm with a CPA or tax adviser to discuss any tax implications the sale of your silver position may have."

34. Throughout the Class Period, in each monthly Fee Notice sent by UBS to Plaintiff, the false picture of specific, identifiable precious metal being owned, segregated and stored for Plaintiff was reinforced by stating the quantity in weight ("TROY OZ. SILVER") of silver kept in storage. Monthly Fee Notices also emphasized the physicality of precious metal purchased and maintained were forwarded by UBS to the other Class members.

35. UBS clearly knew or was reckless in not knowing that "hidden charges" for storage should not have been incurred on Plaintiffs and Class Members' accounts inasmuch it controlled and managed Plaintiffs and Class Members' accounts and knew that there was not physical storage of the precious metals and that the "storage" charges were fictitious.

36. UBS's monthly account statements issued and received by Plaintiff throughout the Class Period also acknowledged and emphasized the ownership of specific precious metals purchased on May 11, 1984 by identifying the "Quantity/Face value purchased." (Emphasis added.) The specific weight of the silver holdings "1,000 TROY-OZ. SILVER" was also listed. Monthly account statements forwarded by UBS to the other Class Members also acknowledged and emphasized the ownership of specifically described precious metals.

37. UBS did not fully and truthfully disclose the true nature of its purchase and storage practices regarding precious metals to its customers. As a result, Plaintiff and the other Class Members did not, in fact, purchase specific, identifiable precious metal, but rather at best, an unallocated precious metal investment - for which there may have been no physical metal purchase at all - of less value than what they contracted to purchase; were fraudulently induced to enter into a fraudulent agreement which permitted UBS to amass enormous ill-gotten profits, including under the guise of "fee charges"; and otherwise were induced to act to their damage and detriment by "buying" and "storing" precious metals with UBS.

MISREPRESENTATIONS AND UNDISCLOSED ADVERSE FACTS

38. As a result of these materially false and misleading statements and failures to disclose, Plaintiff and other Class members opened precious metals cash accounts with UBS and paid storage and handling "fees,"

believing themselves to be purchasing precious metals to which they held title that could not be traded by UBS but which would be stored by UBS on their behalf as a custodian.

39. During the Class Period, UBS materially misled Plaintiff and the Class by issuing false and misleading statements and omitting to disclose material facts necessary to make UBS's statements, as set forth herein, not false and misleading. These statements and omissions failed to disclose material adverse information and misrepresented the truth about UBS's purchase and storage practices for precious metals, as alleged herein, including that the investors did not have title to and did not own specific precious metal; the investors were only an unsecured creditor of UBS or HSBC with respect to its precious metal investment; UBS could and did use their precious metals investment for "other purposes" without the investors' knowledge or consent; and the investors should not have been charged any "storage fees" for unallocated metal.

40. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the damages sustained by Plaintiff and other Class members. As described herein, during the Class Period, UBS made or caused to be made a series of materially false or misleading statements about UBS's precious metals cash accounts, including purchase and storage. These material misstatements and omissions had the cause and effect of inducing conservative investors into opening precious metals cash accounts and paying fraudulent storage fees on the belief that UBS was acting as custodian for precious metals to which the investor held title, when, in fact, UBS was, at best, making only unallocated precious metal investments for which the investors held no title and were unsecured creditors and for which there should have been no storage charges. The unallocated precious metal investments instead afforded UBS the opportunity to use Plaintiffs and other Class members' precious metal investments for UBS's own benefit. UBS's materially false and misleading statements during the Class Period resulted in Plaintiff and other Cass members purchasing and paying "storage fees", instead of for precious metals to which they held title, only for an unsecured "promise to deliver precious metal" - effectively a futures contract - thus causing the damages complained of herein.

UBS's Fraudulent Concealment

41. Throughout the Class Period, UBS wrongfully and actively concealed from Plaintiff and other Class members the true nature of its purchase and storage practices regarding precious metals, specifically that:

UBS had never purchased, segregated or stored "physical" precious metal on their behalf, and that the "storage fees" charged by UBS were not for storage. UBS's continuous representations - to Class members in monthly account statements, annual storage fee notices, and other reports throughout the Class Period - that physical precious metal had been purchased and emphasizing the storage, purity, weight and quality of the precious metals precluded Plaintiff and other Class members from discovering the nature of the fraud. Additionally, by charging storage fees, UBS led Plaintiff and the other Class members to believe that physical metal to which they held title was being stored for their benefit. These representations were reasonably relied upon by Plaintiff and the other Class members.

42. UBS acted as a fiduciary to Plaintiff and the other Class members in completing orders made to purchase precious metals, and in maintaining those metals on their behalf. UBS actively concealed from Plaintiff and the other Class members that it had not purchased physical metals, and that, contrary to its representations, no metal had been physically segregated or stored.

FIRST CLAIM
Violation of the New York General Business Law § 349

43. Plaintiff repeats and reiterates the allegations as set forth above as if set forth fully herein.

44. Section 349-a of the New York's General Business Law states:

Deceptive acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful.

45. As set forth at paragraph, supra, false representations made by UBS to Plaintiff and the other Class members concerning their purchase and storage of precious metals in UBS precious metal accounts were prepared and disseminated from New York, including but not limited to all of the statements made in Customer Disclosure Agreements, monthly brokerage statements, annual precious metal storage fee notifications and other public statements.

46. Also, precious metal purchase transactions were made by and through UBS at its precious metal trading desks in New York.

47. UBS made the above described misrepresentations, concealment and omissions of material facts in its brochures, CDS, "buy" slips and storage fee notices concerning precious metals purchases and storage with full knowledge or recklessness that they were false and misleading. Contrary to all of the above express language that UBS was, in fact, UBS had only made, at best, unallocated precious metal investments,

which meant that there was no metal segregated and stored which the investor owned or had title to - in fact, the investor held only an unsecured promise to deliver metal in the future.

48. UBS's conduct and actions, as described above, constitute deceptive business practices in violation of the GBL.

49. As a result of UBS's actions, Plaintiff and other Class Members have been injured and damaged in an amount to be determined at trial.

SECOND CLAIM
Breach of Contract

50. Plaintiff repeats and reiterates the allegations set forth above as though fully set forth herein.

51. Throughout the Class Period, UBS offered to sell and store a physical 1,000 Troy Oz. (.999) silver bar for Plaintiff and to sell and store other physical precious metals to the other Class members. Plaintiff and the other Class members agreed to such offers by paying UBS the full purchase price for each purchase of precious metal at the time of purchase, and thereafter paid "storage fees."

52. In consideration of UBS's offers, Plaintiff paid \$8,775 to UBS for the purchase of the silver bar, and was charged paid over \$8,000 in fictitious storage "fees", for precious metals which UBS had represented it was holding. After Plaintiff challenged the practice, UBS offered to refund a portion of those charges. Other Class members likewise paid UBS for what they believed to be the purchase of their physical precious metals and additionally for what was represented to be its custodial storage by UBS.

53. UBS breached these contracts by not purchasing any precious metal for Plaintiff and the Class on an allocated basis. UBS also breached its contracts for storage by assessing "storage fees" when, in fact, there was no precious metal purchased and stored for each Class member.

54. As a result of UBS's actions upon which Plaintiff and the other Class members relied, Plaintiff and the other Class members suffered damages in connection with improperly assessed and paid storage fees and other consequential damages, all in the millions of dollars.

55. UBS's conduct was willful, wanton, and reckless. Based on the intentionally dishonest nature of UBS's conduct, which was directed at the Class and at the public generally, it should be held liable to the Class for actual damages as well as punitive damages in an amount to be determined at trial.

THIRD CLAIM
Breach of Contract Under the New York Uniform Commercial Code

56 Plaintiff repeats and reiterates the allegations set forth above as though fully set forth herein.

57. The Express Warranty provision of the UCC, Section 2-313, provides:

(1) Express warranties by the seller are created as follows:

(a) Any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

(b) Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

(c) Any sample or model which is made part of the basis of the bargain creates an express warranty that the whole of the goods shall conform to the sample or model.

(2) It is not necessary to the creation of an express warranty that the seller use formal words such as "warrant" or "guarantee" or that he have a specific intention to make a warranty, but an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

58. Throughout the Class Period, UBS offered to sell and store physical 1,000 Troy Ounces of silver purchased by Plaintiff and to sell and store other physical precious metals to the other Class members. Plaintiff and the other Class members agreed to such offers by paying UBS the full purchase price for each purchase of precious metal at the time of purchase, and thereafter paid "storage fees."

59. In consideration of UBS's offers, Plaintiff paid over \$8,969.40 to UBS for the purchase of 1,000 Troy Oz. of Silver, which "Net Amount Includes Storage Charge", and also paid over \$8,000 in recurring monthly storage charges for silver that UBS represented Plaintiff purchased and UBS was maintaining on Plaintiffs behalf. Other Class members likewise paid UBS for what they believed to be the purchase of physical precious metals and additionally for what was represented to be the custodial storage of precious metals by UBS.

60. UBS breached these contracts by not purchasing any precious metal for Plaintiff and the Class on an allocated basis. UBS also breached its contracts for storage by assessing "storage fees" when, in fact, there was no precious metal purchased and stored for each Class member.

61. As a result of UBS's actions upon which Plaintiff and members of the class reasonably relied, Plaintiff and the other members of the Class suffered damages in connection with improperly assessed and paid storage fees and other consequential damages, all in the millions of dollars.

62. UBS's conduct was willful, wanton, and reckless. Based on the intentionally dishonest nature of UBS's conduct, which was directed at the Class and at the public generally, it should be held liable to the Class for actual damages as well as punitive damages in an amount to be determined at trial.

FOURTH CLAIM
Common Law Fraud

63. Plaintiff repeats and reiterates the allegations as set forth above as if set forth fully herein.
64. The above described conduct and actions constitute common law fraud by way of misrepresentations, concealment and omissions of material facts made by UBS.
65. UBS, upon information and belief, made the above described misrepresentations, concealment and omissions of material facts concerning its purchase and storage practices with full knowledge that they were false and misleading and that there were no physical precious metals purchased and stored for Plaintiff and the Class, and that Plaintiff and the other Class members were mere unsecured creditors.
66. The above described actions were committed by UBS willfully, wantonly and with reckless disregard for the rights of Plaintiff and the members of the Class.
67. UBS intended that the Plaintiff and the other members of the Class rely upon the above-described misrepresentations, concealment and omissions.
68. UBS's misrepresentations concerning the physicality of the precious metals were material in Plaintiffs and the other Class member's decision to execute a CDS with UBS, purchase precious metals from UBS and render "storage fee" payments.
69. The Plaintiff and other Class members justifiably relied upon such misrepresentations, concealment and omissions to their damage and detriment.
70. As a result of UBS's actions, Plaintiff and the other Class members have been damaged and injured in an amount to be determined at trial.

71. UBS's conduct was willful, wanton, and reckless. Based on the intentionally dishonest nature of UBS's conduct, which was directed at the Class and at the public generally, it should also be held liable to the Class for punitive damages in an amount to be determined at trial.

FIFTH CLAIM
Breach of Fiduciary Duty

72. Plaintiff repeats and reiterates the allegations as set forth above as if set forth fully herein.
73. UBS representatives held themselves out as financial advisors to plaintiff and as such owed fiduciary duties to Plaintiff and the other members of the Class. UBS also owed fiduciary duties to Plaintiff and the

other members of the Class in purchasing and maintaining physical precious metals for their accounts, and in reporting to Plaintiff and the other Class members concerning these activities.

74. UBS breached its fiduciary duties by failing to purchase physical precious metals, by assessing "storage/handling" fees on precious metals that were illusory and by misrepresenting that precious metals had been purchased and were being maintained in the accounts of Plaintiff and the other Class Members.

75. UBS also breached its fiduciary duties by representing that the precious metal investment would be subject to "no other use" when in fact UBS used the investors' funds for its own use, including the possible purchase of undisclosed unallocated precious metal investments in its own name. Such unallocated precious metal investments would have then permitted UBS to buy and sell the metals for its own accounts without disclosure to the investor class in violation of its fiduciary duties.

76. As a result of UBS's actions, Plaintiff and the other members of the Class have been damaged and injured, and UBS has been unjustly benefited, in an amount to be determined at trial.

77. UBS's conduct was willful, wanton, and reckless. Based on the intentionally dishonest nature of UBS's conduct, which was directed at the Class and at the public generally, it should also be held liable to the Class for punitive damages in an amount to be determined at trial.

SEVENTH CLAIM Unjust Enrichment

78. Plaintiff repeats and reiterates the allegations as set forth above as if set forth fully herein.

79. Plaintiff and the other Class members entered into contracts with UBS (a) for the purchase of precious metals for their accounts; and (b) for the storage of precious metals that UBS represented it maintained on Plaintiffs and on the other Class members' behalf. For the reasons set forth herein, these contracts with UBS are voidable due to UBS's fraud.

80. Throughout the Class Period, UBS, by not purchasing and storing physical precious metal on an allocated basis for Plaintiff and the Class, benefited from its access to a substantial amount of cash or precious metal without having to purchase actual precious metal or pay interest or provide storage.

81. UBS owed Plaintiff and the Class a duty to execute the trades as agreed to pursuant to their contracts and to fully and accurately report compliance with those contracts. UBS's failure to purchase and store physical precious metal was to the damage and detriment of Plaintiff and the Class.

82. UBS has been unjustly enriched at the expense of and to the detriment of Plaintiff and each member of the Class by collecting money to which it is not entitled. Specifically, by failing to purchase and store the precious metals as it represented it would, UBS used the investors' funds for profit to its own accounts, and for its own benefit, including, *inter alia*, by purchasing options or commodities contracts or by otherwise "covering" its financial exposure to the investor class, all of which yielded enormous ill-gotten profits at far less cost than would have been expended had they acquired the allocated precious metals for Plaintiff and the Class as was their obligation.

83. UBS should be required to disgorge this unjust enrichment.

EIGHTH CLAIM Negligent Misrepresentation

84. Plaintiff repeats and reiterates the allegations as set forth above as if set forth fully herein.

85. That the purchase of precious metal on behalf of the investor would be segregated and stored by UBS for a storage fee; and that the metal was physically held in all material terms of the agreement between UBS and the Class, including Plaintiff.

86. UBS's negligent misrepresentations of these material terms induced Plaintiff and other members of the Class to enter into an agreement to purchase and store precious metals by and through UBS.

87. UBS's negligent misrepresentations that there was segregated and stored precious metal owned by the members of the Class which justified storage fees and which were not subject to lien were false.

88. Plaintiff and the Class justifiably relied on UBS's misrepresentations in executing a CDS, placing orders to purchase precious metals and making storage fee payments.

89. As a result of UBS's misrepresentations, Plaintiff and the Class have paid to purchase, segregate and store precious metals that were neither purchased, segregated nor stored by UBS.

90. As a result of UBS's actions, Plaintiff and other members of the Class have been damaged and injured in an amount to be determined at trial.

WHEREFORE, Plaintiff prays for relief and judgment against Defendants as follows:

(a) Determining that this action is a proper class action, designating Plaintiff as Lead Plaintiff and Plaintiffs counsel as Lead Counsel, and certifying Plaintiff as a Class representative under Rule 23 of the Federal Rules of Civil Procedure;

- (b) Awarding compensatory and punitive damages in favor of Plaintiff and the other Class members against defendants for all fictitious storage fees and the damages sustained as a result of their wrongdoing, in an amount to be determined at trial, including interest thereon;
- (c) Requiring defendants to account for and/or pay in damages to Plaintiff and the Class the amounts by which defendants benefited due to their wrongful conduct;
- (d) The issuance of an Order and Judgment enjoining Defendants from charging fictitious storage fees and rescinding and/or reforming their customer agreements to properly reflect their investments in precious metals;
- (f) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and
- (e) Such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Dated:

Plaintiff hereby demands a trial by jury.

Respectfully submitted,
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