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CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES

8 *Attorneys for Defendants UBS AG,
9 UBS Financial Services Inc., and Peter Weintraub*

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION

13 CV 08-03624 JFW (RCX)

14 CHRIS PARNASS, and on behalf of
15 others similarly situated,

Civil Action No. _____

16 Plaintiff,

[Los Angeles Superior Court
Case No. BC390220]

17 vs.

18 UBS AG, UBS FINANCIAL
SERVICES, INC., PETER
19 WEINTRAUB, and DOES 1-20,
inclusive,

**NOTICE OF REMOVAL OF
ACTION**

[28 U.S.C. §§ 1441, 1446 and
15 U.S.C. § 78bb(f)(2)]

20 Defendants.

[Request for Judicial Notice, and
Declarations of Tamara McCrossen-Orr
and Peter Weintraub Filed Concurrently
Herewith]

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1 of such securities....” *Id.* ¶ 6(c). Plaintiff alleges that Defendants misrepresented
2 to investors that “auction rate securities were the same as cash and were highly
3 liquid, safe investments for short-term investing.” *Id.* ¶¶ 12, 35. Plaintiff further
4 alleges that Defendants failed to disclose that auction rate securities

- 5 • “were not cash alternatives,”
- 6 • “were only liquid at the time of sale because UBS and other broker-
7 dealers in the auction market were artificially supporting and
8 manipulating the market to maintain an appearance of liquidity and
9 stability”, and
- 10 • “were not short-term investments...and that the short-term nature of
11 the securities and the ability of investors to quickly convert their
12 auction rate securities into cash depended entirely on the perpetuation
13 of the artificial auction market.”

14 *Id.* ¶¶ 14, 15, 35, 40.¹

15 4. This action is being removed pursuant to the Securities Litigation
16 Uniform Standards Act of 1998 (“SLUSA”), Pub. L. No. 105-353, 112 Stat. 3227
17 (1998), which became effective on November 3, 1998. SLUSA amended Section
18 28 of the Securities Exchange Act of 1934, 15 U.S.C. § 78bb,² by adding, *inter alia*,
19 paragraph (f)(2) – “Removal of covered class actions.” This paragraph provides:

20 Any covered class action brought in any State court
21 involving a covered security, as set forth in paragraph (1),
22 shall be removable to the Federal district court for the
23 district in which the action is pending, and shall be
24 subject to paragraph (1).

25 Paragraph (f)(1), referred to in the preceding removal provision, provides:

26 No covered class action based upon the statutory or

27 ¹ Defendants dispute the material allegations of the Complaint, and note these
28 allegations in this Notice of Removal solely for the purpose of demonstrating that
Plaintiff’s allegations bring the case within the scope of the Securities Litigation
Uniform Standards Act of 1998 (“SLUSA”).

² The Federal Securities Act of 1933 was likewise amended by SLUSA at 15 U.S.C.
§ 77p.

1 common law of any State or subdivision thereof may be
2 maintained in any State or Federal court by any private
3 party alleging – (A) a misrepresentation or omission of a
4 material fact in connection with the purchase or sale of a
covered security; or (B) that the defendant used or
employed any manipulative or deceptive device or
contrivance in connection with the purchase or sale of a
covered security.

5 5. This action is a “covered class action” within the meaning of 15 U.S.C.
6 § 78bb(f)(5)(B) because (i) Plaintiff seeks recovery of damages on behalf of
7 himself and a prospective class of similarly situated persons who allegedly owned
8 funds that were invested in auction rate securities; and (ii) damages are sought on
9 behalf of more than 50 prospective class members, and Plaintiff alleges that
10 questions of law or fact common to those members of the prospective class
11 predominate over any questions affecting only individual members, without
12 reference to issues of individualized reliance on an alleged misrepresentation or
13 omission. *See* Compl. ¶¶ 4, 5, 6.

14 6. This action involves a “covered security” within the meaning of 15
15 U.S.C. § 78bb(f)(5)(E). Under SLUSA, a “covered security” includes any security
16 that, “at the time during which it is alleged that the misrepresentation, omission, or
17 manipulative or deceptive conduct occurred,” is: (i) nationally traded, listed or
18 authorized for listing on the New York Stock Exchange, the American Stock
19 Exchange, or the NASDAQ Stock Market; or, (ii) a security of the same issuer that
20 is equal in seniority or that is a senior security to a security listed or authorized for
21 listing on the national securities exchanges; or, (iii) issued by an investment
22 company that is registered, or that has filed a registration statement, under the
23 Investment Company Act of 1940. 15 U.S.C. § 77r(b); 15 U.S.C. § 77p(f)(3); 15
24 U.S.C. § 78bb(f)(5)(E); *see also Falkowski v. Imation Corp.*, 309 F.3d 1123, 1128-
25 29 (9th Cir. 2002) (stock options, although themselves not listed on a national
26 securities exchange, nevertheless satisfy the “covered security” requirement to the
27 extent the optioned stock is a “covered security.”).

1 7. Here, Plaintiff complains of purchases of auction rate securities by
2 Landwin Management in its account at UBS Financial Services, Inc. Compl. ¶¶ 1,
3 3. The auction rate securities purchased and held in Landwin Management's
4 account are securities issued by the Cohen & Steers Worldwide Realty Income
5 Fund, Inc., DNP Select Income Fund, PIMCO Corporate Opportunity Fund, and
6 Nuveen Diversified Dividend and Income Series. See accompanying Declaration of
7 Peter Weintraub and Request for Judicial Notice ("RJN"), Exhibit A (Landwin
8 Management account statement);³ see also *Horattas v. Citigroup Financial*
9 *Markets, Inc.*, 532 F. Supp. 2d 891, 898-99 (W.D. Mich. 2007) (although plaintiff's
10 allegations did not identify the particular securities contained in trust account at
11 issue, the securities in the trust account were listed on national exchanges and were
12 "covered securities" under SLUSA). Thus, Plaintiff's complaint concerns "covered
13 securities" under SLUSA, because: (i) the DNP, PIMCO, and Nuveen funds are
14 traded on the New York Stock Exchange and the auction rate securities upon which
15 Plaintiff bases his complaint are comprised of shares of preferred stock that are
16 senior to the funds' registered and traded common shares; and, (ii) the DNP,
17 PIMCO, and Nuveen funds which issued the auction rate securities upon which
18 Plaintiff bases his complaint are registered under the Investment Company Act of
19 1940. See RJN Exhibits B, C, D, and E (Registration Statements); see also
20 *Falkowski*, 309 F.3d at 1128-29; *Horattas*, 532 F. Supp. 2d at 898-99.

21 8. As reflected in the Complaint, Plaintiff alleges, *inter alia*,
22 misrepresentations or omissions of material fact by Defendants in connection with
23 the purchase or sale of covered securities, and/or that Defendants used or employed
24 a manipulative or deceptive device or contrivance in connection with the purchase
25 or sale of such securities. Plaintiff's allegations fall within the scope of SLUSA.
26 15 U.S.C. § 78bb(f)(1); see 15 U.S.C. § 77p(b).

27 ³ These excerpts of the account statement identify the specific issues of auction rate
28 securities that are referenced in the Complaint and are the subject of Plaintiff's
allegations. A full copy of the account statement can be submitted upon request.

1 9. For example, Plaintiff alleges that:⁴

- 2 • “[S]tatements made by Defendants to the investing public
3 misrepresented or omitted material facts about the liquidity risks
4 associated with auction rate securities and the market for such
5 securities, and pursued market manipulation intended to create a false
6 appearance of active trading of such securities[.]” Compl. ¶ 6(c).
- 7 • “In order to perpetuate the auction market and sell as many auction
8 rate securities as possible, UBS represented to investors in its sales
9 presentations by financial advisors that auction rate securities were the
10 same as cash and were highly liquid, safe investments for short-term
11 investing.” Compl. ¶ 12.
- 12 • “UBS failed to disclose that auction rate securities were not cash
13 alternatives, like money market funds, and were instead, complex,
14 long-term financial instruments with 30 year maturity dates, or
15 longer.” Compl. ¶ 14.
- 16 • “UBS failed to disclose that auction rate securities it was selling were
17 only liquid at the time of sale because UBS and other broker-dealers in
18 the auction market were artificially supporting and manipulating the
19 market to maintain an appearance of liquidity and stability.” Compl. ¶
20 14.
- 21 • “UBS failed to disclose that auction rate securities it was selling were
22 not short-term investments...and that the short-term nature of the
23 securities and the ability of investors to quickly convert their auction
24 rate securities into cash depended entirely on the perpetuation of the
25 artificial auction market...” Compl. ¶ 15.
- 26 • “UBS failed to disclose that without this manipulation of the auction
27 market, many auctions likely would have failed and as a result
28 investors would have had the ability to determine the true risk and
absences of liquidity features of such auction rate securities.” Compl.
¶ 16.

10. Congress exempted from SLUSA’s purview certain types of class
actions “based upon the statutory or common law of the State in which the issuer is
incorporated (in the case of incorporation) or organized (in the case of any other
entity).” 15 U.S.C. §78bb(f)(3)(A) (“Actions under State law of incorporation”);
see 15 U.S.C. § 77p(d)(1). This exemption applies only where the action is a “State
law” action within the meaning of the statute and only if it involves:

I. the purchase or sale of securities by the issuer or an
affiliate of an issuer exclusively from or to holders of

⁴ As noted above, Defendants dispute the material allegations of the Complaint, and cite such allegations in this Notice of Removal solely for the purpose of demonstrating that Plaintiff’s allegations bring the case within the scope of SLUSA.

1 equity securities of the issuer; or

2 II. any recommendation, position, or other
3 communication with respect to the sale of securities of an
4 issuer that –

5 (aa) is made by or on behalf of the issuer or an
6 affiliate of the issuer to holders of equity
7 securities of the issuer; and

8 (bb) concerns decisions of such equity holders
9 with respect to voting their securities, acting in
10 response to a tender or exchange offer, or
11 exercising dissenters' or appraisal rights.

12 15 U.S.C. § 78bb(f)(3)(A)(ii); *see* 15 U.S.C. § 77p(d)(1)(B). Plaintiff's action does
13 not satisfy any of these requirements and therefore is not exempt from SLUSA.

14 11. Accordingly, this is a civil action over which this Court has
15 jurisdiction pursuant to 15 U.S.C. §§ 77p and 78bb(f) and 28 U.S.C. § 1331,
16 without regard to the amount in controversy or citizenship of the parties, and which
17 is properly removable pursuant to 15 U.S.C. §§ 77p(c) and 78bb(f)(2) and 28 U.S.C.
18 §§ 1331 and 1441.

19 12. This Notice of Removal is timely filed under 28 U.S.C. § 1446(b).

20 13. All defendants named in the Complaint – UBS AG, UBS FS, and Peter
21 Weintraub – join in this Notice of Removal.

22 14. Venue in this District is proper under 15 U.S.C. § 78bb(f)(2) and/or 28
23 U.S.C. § 1441(a) because the State Court Action is pending in a state court located
24 within this District.

25 15. Pursuant to 28 U.S.C. § 1446(a), Defendants have removed this action
26 to “the district court of the United States for the district and division within which
27 such action is pending...” As the state court action was pending in Los Angeles,
28 Defendants have removed the action to the Western Division of the United States
District Court for the Central District of California.

16. By filing this Notice of Removal, Defendants do not waive any
defenses, claims or rights of any kind.

1 17. A copy of this Notice of Removal will be filed with the Clerk of the
2 Superior Court of the State of California, County of Los Angeles, in conformity
3 with 28 U.S.C. § 1446(d).

4 18. Written notice of the filing of this Notice of Removal will be given to
5 all adverse parties in conformity with 28 U.S.C. § 1446(d).

6 19. A true and correct copy of all process, pleadings, and orders filed,
7 delivered to or served upon Defendants in the State Court Action are submitted,
8 pursuant to 28 U.S.C. § 1446(a), as attached to the Declaration of Tamara
9 McCrossen-Orr as Exhibits G through K.

10 WHEREFORE, Defendants remove this entire action, and all claims and
11 causes of action included therein, from the Superior Court of the State of California,
12 County of Los Angeles, to the United States District Court for the Central District
13 of California.

14 DATED: June 3, 2008

PAUL, HASTINGS, JANOFSKY & WALKER LLP

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16 By: 

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Los Angeles Superior Court

Complaint – Case No. BC390220

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OF ORIGINAL FILED
Los Angeles Superior Court

MAY 05 2006

John A. Clarke, Executive Officer/Clerk
BY MARY GARCIA, Deputy

SUPERIOR COURT LOS ANGELES COUNTY
CENTRAL DISTRICT

11 CHRIS PARNASS, and on behalf of
12 others similarly situated,

13 Plaintiff,

14 vs.

15 UBS AG, UBS FINANCIAL
16 SERVICES, INC., PETER
17 WEINTRAUB, and DOES 1-20,
18 inclusive.

19 Defendants.

CASE NO. BC390220

COMPLAINT

Causes of action based on:

1. Money Had and Received
2. Statutory Market Manipulation
3. Statutory Fraud
4. Fraud by Concealment

CLASS ACTION

[UNLIMITED JURISDICTION]

20 Plaintiff alleges:

Introduction and Parties

21 1. Plaintiff, Chris Parnass is one of numerous individuals whose monies are held by
22 Defendants' UBS Financial Services, Inc. in an account set up by Landwin Management LLP on
23 behalf of the individuals with their money to be so held for them, as acknowledged by Defendant
24 UBS Financial through its representative Defendant Peter Weintraub. The account was
25 established and kept at Defendants' branch office, 131 South Rodeo Drive, Beverly Hills.

26 2. Defendant UBS AG is a Swiss corporation headquartered in Zurich and Basil
27 Switzerland, it is one of the world's leading financial firms and does business in the United
28 States through its subsidiary, Defendant UBS Financial Services Inc. (collectively "UBS").

1 Defendants are a broker-dealer or employee thereof who materially aided the transaction
2 contributing to the causes herein.

3 3. The subject monies provided to Defendants by Landwin Management were first
4 placed by Defendants in liquid "Federal funds". The monies were later reinvested by
5 Defendants without the approval or consent to Plaintiff, in auction rate securities; some of which
6 were underwritten and sold by UBS. When it was discovered that the monies were transferred
7 from Federal funds to auction rate securities, Landwin instructed Defendant to reinvest in
8 "Federal funds or better" as originally held and as originally instructed. Defendants did not do
9 so.

10 Class Action

11 4. Plaintiffs brings this cause as a class action for all persons and entities who
12 provided funds for the account named Landwin Management, from which Defendants purchased
13 and now hold auction rate securities. These securities are not listed on any National Securities
14 Exchange.

15 5. The members of the Class are 211 or greater in number and thereby so numerous
16 that joinder of all members is impracticable. Members of the Class may be notified of the
17 pendency of this action by mail, using the form of notice similar to that customarily used in
18 securities class actions. Defendants through their representative Peter Weintraub were aware that
19 the account as arranged by Landwin consisted of numerous individuals. Peter Weintraub was
20 himself one of numerous investors in a project managed by Landwin Management.

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

24 (a) Whether Defendants breached the instruction that monies were to be held
25 in liquid Federal funds;

26 (b) Whether once it was discovered that the monies were reinvested in
27 auction rate securities the Defendants violated instructions that such securities be replaced by
28 Federal funds;

1 (c) Whether statements made by Defendants to the investing public
2 misrepresented or omitted material facts about the liquidity risks associated with auction rate
3 securities and the market for such securities, and pursued market manipulation intended to create
4 a false appearance of active trading of such securities; and,

5 (d) Whether Defendants are obligated to return to the account for the Class
6 liquid withdrawable cash monies.

7 7. Plaintiff's claims are typical of the claims of the members of the Class as all
8 members of the Class are similarly affected by Defendants' wrongful conduct. Plaintiff will
9 fairly and adequately protect the interests of the members of the Class and has retained competent
10 counsel to do so.

11 8. A class action is superior to other available methods for the fair and efficient
12 adjudication of this controversy since joinder of all members is impracticable. Furthermore,
13 return of cash monies for the benefit of the Class is this principal relief sought and if not
14 immediately performed the expense and burden of individual litigation makes it impossible for
15 members of the Class to individually redress the wrongs done to them. Defendants have acted or
16 refused to act on grounds generally applicable to the Class, thereby making appropriate
17 injunctive relief with respect to the Class as a whole. There will be no difficulty in the
18 management of this action as a class action.

19 Auction Rate Securities

20 9. The term "auction rate security" typically refers to either municipal or corporate
21 debt securities which pay interest at rates set at periodic "auctions." Auction rate securities have
22 generally had long-term maturities, typically 30 years, and in the case of preferred stock, no
23 maturity date.

24 10. Auction rate securities are auctioned at par value, so the return on the investment
25 to the investor, and the cost of financing to the issuer at auction are determined by the interest
26 rate or dividend yield set through the auction. The method is described in the prospectus by
27 which the securities were offered; though the formula was substantially similar for all auction
28

1 rate securities. The number of days between each auction was set by the prospectus. Generally,
2 the auctions were held every 7, 28, or 35 days, with interest paid at the end of the auction period.

3 11. Auction rate securities were extremely profitable for UBS and for the UBS
4 financial advisors who sold the securities. As the second largest underwriter of auction rate
5 securities, UBS received significant underwriting fees from the issuers of these securities. As
6 one of the largest broker-dealers, UBS also entered into broker-dealer agreements with the
7 issuers and was paid an annualized broker-dealer fee for operating the auction process greater
8 than for auction rate securities. In doing so, UBS also acted as a principal for its own account,
9 using its access to inside information about the auction process to buy and sell auction rate
10 securities for its own account. Individual UBS financial advisors, such as Defendant Peter
11 Weintraub, had a significant financial incentive to sell auction rate securities, as they were
12 compensated by UBS for each auction rate security sold and at much higher compensation than
13 for placement in Federal funds.

14 Misconduct

15 12. In order to perpetuate the auction market and sell as many auction rate securities
16 as possible, UBS represented to investors in its sales presentations by financial advisors that
17 auction rate securities were the same as cash and were highly liquid, safe investments for short-
18 term investing. Pursuant to uniform sales materials and top-down management directives, UBS
19 financial advisors represented to current and potential UBS clients that the auction rate securities
20 sold by UBS were equivalent to cash or money market funds and were safe, highly liquid short-
21 term investment vehicles.

22 13. The monies belonging to the Class were originally to be invested in Federal funds
23 which could be readily liquidated, in accordance with the instructions of Landwin, their
24 representative. Sometime thereafter Defendants made an unauthorized transfer of such Federal
25 funds to auction rate securities while misrepresenting that such securities were the same as cash.

26 14. UBS failed to disclose that auction rate securities were not cash alternatives, like
27 money market funds, and were instead, complex, long-term financial instruments with 30 year
28 maturity dates, or longer. UBS failed to disclose that the auction rate securities it was selling

1 were only liquid at the time of sale because UBS and other broker-dealers in the auction market
2 were artificially supporting and manipulating the market to maintain the appearance of liquidity
3 and stability. In fact, at all relevant times the ability of holders of auction rate securities to
4 liquidate their positions depended on the maintenance of an artificial auction market maintained
5 by UBS and other broker-dealers.

6 15. UBS failed to disclose that the auction rate securities it was selling were not
7 short-term investments, but rather long term bonds or preferred stocks with maturities sometimes
8 exceeding 30 years. UBS failed to disclose that the short-term nature of the securities and the
9 ability of investors to quickly convert their auction rate securities into cash depended entirely on
10 the perpetuation of the artificial auction market being maintained by UBS and other broker-
11 dealers.

12 16. UBS failed to disclose that without this manipulation of the auction market, many
13 auctions likely would have failed and as a result investors would have had the ability to
14 determine the true risk and absence of liquidity features of such auction rate securities. UBS
15 continued to aggressively market auction rate securities after it had determined that it and other
16 broker dealers were likely to withdraw their support for the periodic auctions and that a "freeze"
17 of the market for auction rate securities would result. In the Summer of 2007, Defendants were
18 specifically instructed in a phone conference with Landwin on behalf of the individual investors,
19 to dispose of all auction rate securities and reinvest all proceeds in "Federal Funds or better."
20 Defendant Weintraub stated the Defendants would do so. Defendants failed to do so. Plaintiff is
21 informed and believes that by leaving the monies in auction rate securities, greater income for
22 Defendants was generated and that Defendants used the securities to artificially support their own
23 market.

24 Market Collapse

25 17. In the Summer of 2007, some auctions for auction rate securities backed by sub-
26 prime debt began to fail, but the securities represented only a small part of the entire auction rate
27 securities market.

1 18. In the Fall-Winter of 2007, more auctions began to fail. Even though some of the
2 auctions that failed initially were conducted by UBS, it continued to encourage investors to
3 purchase auction rate securities and continued to represent to investors that these securities were
4 the same as cash or money market securities and were highly liquid, safe investments for short-
5 term investing, without any disclosure of the risks associated with the securities. Plaintiff is
6 informed and believes and thereon alleges that Defendants eventually informed certain "favored"
7 clients of UBS of the liquidity risks and facilitated the sale of the auction rate securities to the
8 benefit of such clients, but did not inform Plaintiff or its representative Landwin Management
9 Ltd.

10 19. In February 2008 UBS and other broker-dealers stopped artificially supporting and
11 manipulating the auction market resulting in an immediate collapse and the auction rate
12 securities sold by UBS became illiquid and unsaleable. On February 13, 2008, all auctions of
13 auction rate securities failed when all of the major broker-dealers, including UBS, refused to
14 continue to support the auctions.

15 20. That same day, UBS notified its 8,200 brokers and investment advisors that UBS
16 was no longer supporting the market for auction rate securities. This information was not
17 released to UBS investors or to the public, but was leaked to the press and publicly reported the
18 next day. As a result of the withdrawal of support by all of the major broker-dealers, the market
19 for auction rate securities collapsed.

20 21. The collapse of the auction rate securities market was a direct result of
21 Defendants' unilateral decision to no longer artificially support the auction rate securities market
22 and the nature and extent of Defendants' fraud was finally revealed to investors.

23 22. Defendant UBS, after acknowledging the circumstances in which investors such
24 as Plaintiff and the Class have been placed, offered as a solution to their misconduct and the
25 damages caused, to lend money to persons so damaged against the market rate securities held by
26 the Defendant, charging the customer interest for such loan and requiring the investors to assume
27 obligation for any deficiency if the loan becomes "under-collateralized" as the market rate
28 securities lose value over time.

COMPLAINT

1 Preservation of Records

2 23. Demand is hereby made that Defendants preserve all electronically stored
3 information ("ESI"), as well as documents and tangible things, potentially relevant to the facts
4 and issues plead in this complaint, and be prepared to produce them in the discovery. ESI
5 includes by the way of example information electronically, magnetically or optically stored such
6 as digital communications, word processed documents, accounting application data, calendar and
7 diary application data, backup and archival files, all as stored on Defendants' current or former
8 computer systems or other media and devices, such as personal digital assistants, voice-
9 messaging systems, on-line repositories and cell phones. It is further demanded that Defendants'
10 management and counsel pursue immediate intervention to prevent loss due to routine
11 operations, to initiate a litigation hold for potentially relevant ESI, and in order to prevent
12 degradation and the ability to search ESI by electronic means. The litigation hold is to secure
13 ESI on office work stations and servers, home and portable systems, to anticipate that employees
14 may seek to delete or destroy information that they regard as confidential or embarrassing, and
15 for documents which are required to access, interpret or search relevant ESI (including logs,
16 control sheets, specifications, naming protocols, diagrams, and user ID and password rosters).

17 General Allegations

18 24. Defendants, and DOES 1-20, inclusive, are sued hereunder pursuant to the
19 provisions of 474 of the California *Code of Civil Procedure*. Plaintiff will amend this Complaint
20 accordingly when the true names and capacities of said Defendants are known.

21 25. At all times herein mentioned, Defendants and each of them, were the agents,
22 servants, and employees of all other Defendants or were acting within the course and scope of
23 their agency, service, and employment, and each Defendant has ratified and approved the acts of
24 each of the remaining Defendants.

25 26. At all times herein mentioned, Defendants and each of them initiated the subject
26 transactions and carried on activities associated with those transactions in Los Angeles County,
27 and are subject to suit in equity as well as at law in the jurisdiction of this Court.
28

1 FIRST CAUSE OF ACTION

2 (Money Had and Received)

3 27. Plaintiff incorporates Paragraphs 1 through 26 above.

4 28. Within 4 years last past, Defendant and certain of the Does 1-20 became indebted to
5 Plaintiff and the Class for money received by Defendant for their use or benefit and thereby became
6 indebted and obligated to repay the monies received by Defendant and/or derived from Plaintiff and
7 the Class.

8 29. Demand is made for Defendants to pay over to their account in cash monies the funds
9 held for benefit of the Class, as such monies are due, together with legal interest thereon.

10 SECOND CAUSE OF ACTION

11 (Statutory Market Manipulation)

12 30. Plaintiff incorporates paragraph 1-26 above.

13 31. Defendants and certain of the Does 1-20 made statements to effect a series of
14 transactions in market rate securities creating actual or apparent active trading in such securities,
15 in violation of California Corporations Code § 25400(b), in that Defendants willfully made or
16 participated in acts of market manipulation to create a false appearance that active trading would
17 at all times take place.

18 32. As a direct and proximate result of the conduct complained of, Plaintiff and the
19 Class are entitled to damages, plus interest at the legal rate from date of each purchase, pursuant
20 to Corporations Code § 25500, whether or not Defendants intended to deceive or induce reliance,
21 or whether or not there was reliance, by Plaintiff and the Class.

22 THIRD CAUSE OF ACTION

23 (Statutory Fraud)

24 33. Plaintiff incorporates Paragraphs 1 through 26 above.

25 34. Defendants and certain of the Does 1-20 while acting as broker-dealer or other
26 person selling or offering for sale, or purchasing or offering to purchase market rate securities or
27 for the purpose of inducing the purchase or sale of such securities by others, made statements
28 which at the time and in the light of the circumstances under which made were false or

COMPLAINT

1 misleading with respect to material facts, or which omitted to state material fact necessary in
2 order to make the statement made not misleading, and which Defendants knew or had reasonable
3 ground to believe was false or misleading, and did so in violation of California Corporations
4 Code § 25400(d) and § 25401.

5 35. Among the false or misleading untrue statements of material facts made by
6 Defendants were the following:

- 7 (a) That auction rate securities were the same as cash.
8 (b) That auction rate securities could be sold at any time.
9 (c) That auction rate securities were a short term investment.

10 36. Among the material facts known to Defendants, which Defendants omitted to
11 state, and which were necessary in order to make the statements and representations in light of
12 the circumstances under which they were made, not misleading, were the following:

- 13 (a) Auction rate securities are not a cash alternative.
14 (b) Auction rate securities were only liquid at time of sale, because UBS and
15 other brokers artificially supported and manipulated the market to maintain the appearance of
16 liquidity and stability.
17 (c) That auction rate securities were a complex, long term financial
18 investment.

19 37. As a result, Plaintiff and the Class are entitled to rescission or damages, plus
20 interest at the legal rate from the date of each purchase, pursuant to Corporations Code § 25500
21 and § 25501, whether or not Defendants intended to deceive or induce reliance, or whether or
22 not there was reliance, by Plaintiff and the Class.

23 **FOURTH CAUSE OF ACTION**

24 **(Fraud by Concealment)**

25 38. Plaintiff incorporates Paragraphs 1 through 26 above.

26 39. Defendants and certain of the Does 1-20 made the representations and/or promises
27 with the intent to defraud Plaintiff and the Class by concealment of the true facts.
28

1 40. Among the material facts known to Defendants, which Defendants omitted to
2 state, and which were necessary in order to make the statement and representations, in light of the
3 circumstances in which they were made, not misleading, were the following:

- 4 (a) Auction rate securities are not a cash alternative.
- 5 (b) Auction rate securities were only liquid at time of sale, because UBS and
6 other brokers artificially supported and manipulated the market to maintain the appearance of
7 liquidity and stability.
- 8 (c) That auction rate securities were a complex, long term financial
9 investment.

10 41. At the time that the Defendants concealed these facts they were bound under their
11 fiduciary obligation to disclose this information, and their intended course of action. At the same
12 time, they misinformed and mislead Plaintiff's representative Landwin from discovering the true
13 facts.

14 42. Plaintiff was unaware of and did not discover Defendant's intentions. Plaintiff
15 acted in justifiable reliance on the representations of Defendants and believed they would be
16 fulfilled. As a result, defendants have damaged Plaintiff in an amount not yet fully ascertained,
17 proof of which will be offered at trial.

18 43. The conduct of Defendants was willful, oppressive, malicious and fraudulent,
19 such that Plaintiff is entitled to punitive and exemplary damages in an amount as will punish
20 Defendants and make an example of them.

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COMPLAINT

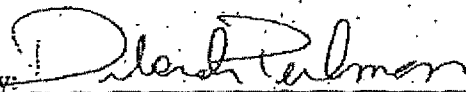
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WHEREFORE, Plaintiff prays for:

- (a) Compensatory damages in an amount which is not yet ascertained but proof of which shall be offered at trial and within the jurisdiction of this Court;
- (b) Rescission of the purchase of the auction rate securities;
- (c) A Court order that Defendants return the cash monies originally invested to the account of the Plaintiff and the Class;
- (d) Punitive damage on the fourth cause of action;
- (e) Legal interest according to law; costs of suit, including attorneys' fees; and
- (f) For such other and further relief as the Court deems just and proper

DATED: May 5, 2008

PERLMAN LAW, INC.

By: 
Deborah Perlman
Attorney for Plaintiff
CHRIS PARNASS

1 PROOF OF SERVICE BY MAIL

2 I am a citizen of the United States and employed in Los Angeles County, California. I am
3 over the age of eighteen years and not a party to the within-entitled action. My business address
4 is 515 South Flower Street, Twenty-Fifth Floor, Los Angeles, California 90071-2228. I am
5 readily familiar with this firm's practice for collection and processing of correspondence for
6 mailing with the United States Postal Service. On June 3, 2008, I placed with this firm at the
7 above address for deposit with the United States Postal Service a true and correct copy of the
8 within document(s):

9 NOTICE OF REMOVAL OF ACTION


10 in a sealed envelope, postage fully paid, addressed as follows:

11 Deborah Kate Perlman
12 433 N. Camden Drive
13 Suite 970
14 Beverly Hills, CA 90210
(310) 551-0155

15 Following ordinary business practices, the envelope was sealed and placed for collection
16 and mailing on this date, and would, in the ordinary course of business, be deposited with the
17 United States Postal Service on this date.

18 I declare that I am employed in the office of a member of the bar of this court at whose
19 direction the service was made.

20 Executed on June 3, 2008, at Los Angeles, California.

21 
22 _____
23 Marie Clarey
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