

UNITED STATES DISTRICT COURT
for the
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

R. Lance Flores,
Vicki Clarkson,

Plaintiffs,

v.

Scott Anthony Koster, *et al.*

Defendants.

CIVIL ACTION

Nº 3:11-cv-00726-M -BH

In the matter of:
Hongkong and Shanghai Banking
Corp. Ltd., TI Hong Kong

**REPLY TO NOMINAL DEFENDANT'S MOTION TO DISMISS, and
REPLICATION TO HSBC's PLEA TO THE JURISDICTION, and
MEMORANDUM OF LAW**

Now comes the Plaintiffs, Vicki Clarkson and R. Lance Flores ("Plaintiffs") in their individual capacities and in behalf of the *Nation's economic system and public interest* as pled,¹ and file their reply to the motion to dismiss &c.,² of Nominal Defendant³ HONGKONG AND SHANGHAI BANKING CORP. LTD., TI HONG KONG (the "Defendant" or "HSBC" inclusive of its wholly owned subsidiaries), and move the Court strike Defendant's motion to dismiss. In support of the aforesaid, Plaintiffs incorporate by

¹ The Congressional Statement of Findings and Purpose underlying RICO explains that, among other things, RICO was designed to combat activities that "weaken the stability of the Nation's economic system, harm innocent investors and competing organizations, interfere with free competition, seriously burden interstate and foreign commerce, threaten the domestic security, and undermine the general welfare of the Nation and its citizens ..." Pub. L. No. 91-452, 84 Stat., at 922, 923.

Congress found that "organized" criminal "activity" used "fraud" to "drain" "dollars" from the American economy [*248] and to "harm innocent investors." *Lewis v. United States*, 445 U.S. 55, 61 (1980) ("obvious breadth of the language may well reflect the expansive legislative approach revealed by Congress' express findings and declarations.").

² DEFENDANT HSBC, (Defendant's "Motion to Dismiss") (doc. 142)

³ In consideration of individual cases of *sensus communis defectubus inordinatio*, the term referring to the *Nominal Defendant* shall, throughout this document, mean the organization or otherwise the commercial group known as Hongkong and Shanghai Banking Corp. Ltd., TI Hong Kong, and its status as a nominal (relief) defendant as defined in *CFTC v. Kimberlynn Creek Ranch, Inc.*, *infra*, unless specifically identified by a conditional modifier appended to the term (e.g., Nominal Defendant Alicorn Capital Management, LLC).

reference their Brief in Support of Plaintiffs' Replication to Defendant's Plea to the Jurisdiction, and show:

§ I. Introduction

Plaintiffs' Preliminary Statement

1. HONGKONG AND SHANGHAI BANKING CORP. LTD., TI, inclusive of HSBC Group,⁴ its subsidiaries, shelf registrations, and entities which are controlled directly by HSBC Group policy (hereinafter "HSBC"), is not accused of any RICO violation and do not provide the Court with subject matter jurisdiction over a separate cause of action against them. No such cause of action is pursued. The Plaintiffs' claims are against the RICO Defendants; the Nominal (Relief) Defendant(s) are brought into the suit as nominal defendants only. The purpose for bringing HSBC into this action is for the recovery of funds enmeshed in the RICO Defendants' particular acts of money laundering, transportation of stolen securities and monies, sale and receipt of stolen securities and monies by disgorgement, as well as non-RICO predicate crimes related to RICO Defendants' tax evasion related crimes, selecting HSBC for its well-know vulnerability for money laundering of funds derived from criminal activity.⁵ Afore

⁴ See footnote 7 at ①.

⁵ The Subcommittee also **examined HSBC because of its weak AML program**. In September 2010, the OCC issued a lengthy Supervisory Letter citing HBUS for violating federal AML laws, including by maintaining an inadequate AML program. In October 2010, the OCC issued a Cease and Desist Order requiring HSBC to strengthen multiple aspects of its AML program.[7] **The identified problems included a once massive backlog of over 17,000 alerts identifying possible suspicious activity that had yet to be reviewed; ineffective methods for identifying suspicious activity; a failure to file timely Suspicious Activity Reports with U.S. law enforcement; a failure to conduct any due diligence to assess the risks of HSBC affiliates before opening correspondent accounts for them; a 3-year failure by HBUS, from mid-2006 to mid-2009, to conduct any AML monitoring of \$15 billion in bulk cash transactions with those same HSBC affiliates, despite the risks associated with large cash transactions; poor procedures for assigning country and client risk ratings; a failure to monitor \$60 trillion in annual wire transfer activity by customers domiciled in countries rated by HBUS as lower risk; inadequate and unqualified AML staffing; inadequate AML** (continued...)

considered, Plaintiffs may seek injunctive relief for the benefit of the general public acting as a *private attorney general*.⁶ divestiture, clawback through, *inter alia*, turn-over orders. (See, U.S. Vulnerabilities to Money Laundering, *supra*.)

2. This case arises out of an alleged multi-million-dollar hybrid fraud, grand larceny, and Ponzi operation, operated by a number of individuals in a racketeering scheme, perpetrated through a conglomeration of companies, corporations and association-in-fact enterprises. This multi-level network of criminal enterprises initial count of not less than thirty (30) persons (entities, including financial institutions and natural persons) in eight countries; a number expected to increase to over one hundred or greater following the Plaintiffs' discovery and a Department of Justice criminal investigation of these matters.

3. This is an action for, *inter alia*, actual damages in excess of Two Hundred Twenty Million Dollars (\$220,000,000) actually calculated to be greater than Three Hundred Fifty-seven Million, Fourteen Thousand, Five Hundred and Fifty-eight Dollars (\$357,014,558) arising from multiple violations by the Defendants of the Racketeer Influenced and Corrupt Organization Act (RICO), 28 U.S.C. § 1961 et. seq., involving

⁵ (...continued)

resources; and AML leadership problems. Since many of these criticisms targeted severe, widespread, and longstanding AML deficiencies, they also raised questions about how the problems had been allowed to accumulate and why the OCC had not compelled corrective action earlier. *id.* at 3

⁶ If Plaintiffs obtain injunctions, they do so not for themselves alone but also as a "private attorney general," *vindicating a policy that Congress considered of the highest priority*. The United States Congress has passed laws with "private attorney general" provisions that provide for the enforcement of laws prohibiting RICO predicate crimes.

HOLMES v. SECURITIES INVESTOR PROTECTION CORPORATION et al., 503 U. S. 258 (1992) at 283 Opinion of O'Connor, J. :

Obviously there is no requirement that the Government be party to a sale before it can bring a RICO prosecution predicated on "fraud in the sale of securities." Accordingly, any argument that the offense itself embodies a standing requirement must apply only to private actions. That distinction is not tenable, however. By including a private right of action in RICO, Congress intended to bring "the pressure of 'private attorneys general' on a serious national problem for which public prosecutorial resources [were] deemed inadequate." *Agency Holding Corp. v. Malley-Duff & Associates, Inc.*, 483 U. S. 143, 151 (1987). Although not everyone can qualify as an appropriate "private attorney general," the prerequisites to the role are articulated, not in the definition of the predicate act, but in the civil action provisions of § 1964(c)—a plaintiff must allege "injur[y] in his business or property by reason of " a RICO violation.

predicate acts of extortion, mail and wire fraud, money laundering, obstruction of justice, witness tampering, theft, obstruction of justice, frauds and swindles, financial institutional fraud, retaliating against a witness, victim, or informant, Hobbs Act violations, interstate and foreign travel or transportation in aid of racketeering enterprises, money laundering, engaging in monetary transactions in property derived from specified unlawful activity, transportation of stolen goods, securities, monies, &c., and the sale of receipt of stolen goods, securities, monies, &c., as more fully alleged in the Plaintiffs' First Amended Complaint.

4. These acts were committed by the Defendants within and without the District with the assistance of other co-conspirators and third-parties aiding and abetting their criminal activities, known and unknown, with the singular purpose of stealing for themselves the investments and fortunes of the Plaintiffs and numerous other victims both nationally and internationally, further inflicting substantial and ancillary harm to many others. Defendants' wrongdoings caused great harm to individual and family livelihoods, communities as well as bringing damage to the Nation's economic system that continues into and past the actions in this case. The money laundering, tax evasion, distribution, and transport of stolen monies and securities obtained by various fraud schemes of the RICO Defendants were facilitated by the use of domestic commercial financial institutions and banks, as well as foreign private and commercial banks, and other financial institutions.⁷ RICO Defendants also used their stolen, tainted, or ill-gotten funds to purchase various financial instruments through institutions such as Bank of America Corporation, HSBC and Deutsche Bank, their related holding companies, and wholly owned subsidiaries.⁸

⁷ Table of Financial Accounts Related to RICO Claims (*q.v.*), ¶ [II.14](#).

⁸ *id.*

§ II. ***Facts Related to Financial Transactions of the RICO Defendants***

Relevant History Related to the Associated Money Laundering, Financial Institutional Fraud, Engagement in Monetary Transactions in Property Derived from Specified Unlawful Activity, Transportation of Stolen Goods, Securities, Monies, etc., and Sale or Receipt of Stolen Goods, Securities, Monies, etc.

1. “Upon information and belief, in or about late July and early August 12, 2009, Divens and IDA opened securities brokerage account number [REDACTED] 94 13 with CISC entitled "Law Office of Jon [Aubrey] Divens Associates LLC" (the "Account"). CISC is a broker-dealer that carries brokerage accounts and assists customers with respect to investments and trading in securities.” *Chase Investment Services Corp. v. Law Offices of Jon Divens & Associates, LLC, et al.*, 2:09-cv-09152-SVW-MAN (U.S. Dist. Ct. WD Cal. 12/14/09) Doc. 1 at 5.

2. “On or about February 3, 2009, BGI and BGGE transferred the CW Capital Bond to Divens in trust, at the request of Up Right Holdings, LLC, that Divens act as escrow while Up Right arranged the financing to buy the CW Capital Bond ... Divens's February 2009 account statement at UBS Financial Services will confirm that he received the CW Capital Bond in his account on February 3, 2009.” *Id.* Doc. 99 at 3.

Stolen Cobalt CMO Interest Payments

3. “The interest generated by the CW Capital Bond from February 2009 through April 2010 was \$396,763.54, broken down as follows: ⁹

⁹ Transfer of the fifteen (15) stolen interest payments not all individually are accounted for, nor accumulated in the First Amended Complaint (doc. 36) predicate crimes claims: 18 U.S.C. §1344. Financial Institution Fraud; 18 U.S.C. §1956. Laundering of Monetary Instruments; 18 U.S.C. §1957. Engaging in monetary transactions in property derived from specified unlawful activity; 18 U.S.C. § 2314. Transportation of stolen goods, securities, moneys, &c.; and 18 U.S.C. § 2315. Sale or receipt of stolen goods, securities, moneys, &c.; as well as, other overt criminal acts in furtherance of the conspiracy & racketeering including: 18 U.S.C. § 1343 *Aggravated Wire Fraud* (affecting a financial institution, max fine \$1MM, max 30 years

(continued...)

February 2009	24,117.71
March 2009	24,087.06
April 2009	30,657.93
May 2009	24,002.04
June 2009	30,557.22
July 2009	23,926.76
August 2009	30,444.08
September 2009	30,387.14
October 2009	23,800.49
November 2009	30,264.31
December 2009	23,711.89
January 2010	23,663.60
February 2010	23,622.43
March 2010	23,582.93
April 2010	29,937.95

Chase, supra, Doc. 99 at 5.

Unlawful Transfer of Cobalt CMO – JP Morgan Series CMO & FNMA CMO (Fannie Mae)

4. “Initially, the Account [account number [REDACTED] 94 13] held no assets.

However, after two transfers in September 2009, the Account held securities representing interests from three Collateralized Mortgage Obligations (collectively, “the CMOs”).¹ The securities in the Account included: (1) a CMO designated as the Cobalt CBMS Series 2007-CS Class IO 00.02840 05/15/2046, CUSIP [REDACTED]DAG6, with a face value of \$1,008,402,393 (hereinafter, “the Cobalt CMO”); (2) a CMO designated as the JPMCC Series 2007-CB19 Class X 00.01240 02/12/2049 MTG SEC, CUSIP [REDACTED]VAG7, with a face value of \$235,250,000 (hereinafter, “the JPMCC Series CMO”); and (3) a CMO designated as the FNMA Series 2003-W19, Class 1IO-1 0.33048% 11/25/2043 GTD Remic Pass Thru CTF Whole Loan, CUSIP [REDACTED]UA86, with a face value of \$305,000,000 (hereinafter, the “FNMA Series CMO”). The three CMOs are interest-only CMOs, which provide the right to receive a portion of the interest payments on the mortgages owned

⁹

(...continued)
imprisonment, or both); 26 U.S.C. § 7201 Tax Evasion; 26 U.S.C. § 7206(4) Tax - Removal or Concealment with Intent to Defraud; 26 U.S.C. § 7206(5) Tax - Compromises & Closing Agreements. (see also, doc. 36 at 175-82)

by the CMO. The CMOs earn interest payments on a monthly basis. While the CMOs were in the CISC Account these interest payments were automatically deposited into the Account.” *Id.* Doc. 120 at 2.¹⁰

5. “Divens testified that the Cobalt CMO was in the JDA UBS Account in approximately March 2009. From there, the Cobalt CMO was transferred to a Smith Barney account where it remained for 2 months. In the Spring of 2009, the Cobalt CMO was transferred to an account with a company called Capstone, and then it was transferred again in the summer of 2009 to an account with a company called Asset Enhancement Management. In the late summer, Divens transferred the Cobalt CMO to an account with a firm called Matrix. Finally, in September 2009, Divens transferred the Cobalt CMO to the CISC Account.” (See Divens’s Depo., dated April 8, 2010, at 114:14-121:23.) *Id.* Doc. 120 at 10 [FN 4].

6. “While the Cobalt CMO was in the CISC Account, the incoming interest payments generated by the CMO were automatically reinvested in a money market mutual fund in the CISC Account. (Divens’s Tr. Exh. 28 [Declaration of Michele Fanner ¶ 9].) Divens frequently instructed Michele E. Fanner, a Financial Advisor and Vice President of Investments at CISC, to liquidate the money market funds and wire the cash balance to Divens’s outside account at Bank of America. (*Id.*) The last of such wire transfers took place on October 27, 2009. (*Id.*)” See *Chase, supra*, doc. 120 at 10 [FN 5] (*emphasis added*)

7. “Divens testified that the FNMA Series CMO was transferred to the JDA UBS Account in January 2009. Between February and March 2009, Divens transferred the FNMA Series CMO to an account in JDA’s name at JP Morgan. In March or April 2009, Divens once again transferred the FNMA Series CMO to an account at Smith Barney. In

¹⁰ Every instance of unlawful transfer or transaction made by each RICO Defendant was not individually accounted for, nor accumulated in the First Amended Complaint (doc. 36) predicate crimes claims. *Cf.* associated predicate crimes FN [12](#), pg. [6](#).

the summer of 2009, Divens transferred the FNMA Series CMO twice more – first to a Capstone account, and shortly thereafter, to an account with a brokerage firm called Matrix. Finally, in or about September 2009, Divens transferred the FNMA Series CMO to the CISC Account. (See Trial, 06/25/10, at 95:18-97:5.)”¹¹ *Id.* at 21 [FN 11]

Stolen Fannie Mae CMO Interest Payments

8. The FNMA Series CMO continued to earn interest income in each account while it was in JDA’s possession, as follows:¹²

Month	Interest
January 2009	\$16,847.29
February 2009	\$16,677.63
March 2009	\$16,458.13
April 2009	\$16,182.34
May 2009	\$15,975.53
June 2009	\$15,653.59
July 2009	\$15,377.44
August 2009	\$15,069.34
September 2009	\$14,738.15
October 2009	\$14,464.92
November 2009	\$14,321.64
December 2009	\$14,166.64
January 2010	\$13,960.47
February 2010	\$13,712.60
TOTAL	\$213,605.70
<i>Id.</i> at 22 ¹³	

9. “The majority of investors’ funds [identified in the SEC lawsuit only] in the trust account were transferred as follows:

- Approximately \$2,170,000 was paid to over 30 different intermediaries, advisors, and business consultants for the purpose of 20 acquiring purported bank instruments. None of the monies were used to purchase any legitimate bank instruments;
- Over \$1,500,000 went to pay for Wilde’s personal expenses, including:
 - Approximately \$800,000 to the bank account of Wilde’s wife, Maureen Wilde;

¹¹ See FN [13](#), pg. [8](#).

¹² *id.*

¹³ *id.*

- \$323,500 to Shillelagh Capital Corporation, another corporate entity under Wilde's control;
- \$200,000 to Wilde's bank account in Europe;
- \$152,500 to law firms that represented Wilde and/or other Defendants;
- \$55,000 to the assisted living facility of Wilde's parents;
- \$1,150,000 in fees to Gelazela (to a bank account in the name of IBalance LLC, a corporate entity for which Gelazela serves as a managing member);
- \$565,000 in fees to Woods, which equaled roughly half of the total investor money Woods brought in to the scheme; and
- \$472,500 in fees to Haglund."

United States Securities and Exchange Commission v. Wilde, et al.,
8:11-cv-00315-DOC -AJW (U.S. Dist. Ct. CD Cal. 05/13/11) Doc. 1 ¶ 81

10. ¶103. "Instead of disassociating himself with such activities, Haglund collaborated with Wilde and used much of the \$472,500 he took from the trust account in 2009 and 2010 to repay investors from the failed 2007 scheme that had led to the lodging of the State Bar complaint against him.

¶104. Further, Haglund knew that amounts representing a substantial portion of the investments flowing into the trust account were being paid out in fees, not for purchases of financial instruments.

¶105. Haglund was aware that his own \$472,500 take, purportedly for 'legal fees,' bore no rational relationship to the value of services he was rendering (setting up an account and wiring funds from it).

¶106. For instance, Haglund transferred \$35,000 in fees to himself for sending out seven wire transfers (mostly to Wilde, Woods and Gelazela) on a single day (October 30, 2009).

¶107. Wilde knew he was being paid to give an attorney's imprimatur to the program, helping the Defendants to mask the fraud.

¶108. Haglund has admitted he knowingly wired funds to old investors using new investor money in March 2010, a practice he conceded was typically called, in his words, '[a] Ponzi scheme.' Haglund made these transfers even after having received a subpoena from the SEC in connection with the investigation that led to this Complaint." *id.*

11. Bank Guarantee on a Deutsche Bank SBLC and HSBC SBLC:

"The international private placement program incorporated financial transactional funding²⁰ with an estimated twenty or more principals according to Koster. The said transactional funding platform and related financial instruments were created within an association-in-fact business enterprises in which Defendants Woods, Linder, Gelazela, Reynolds, Koster, Childs, Emre and others including

Melissa Shapiro presented security for investment funds based on a stated written bank guarantee on a Deutsche Bank SBLC instrument and monetization of that SBLC through HSBC Hong Kong. Koster's Alicorn Capital Management LLC company was used as a funneling tool overseen by Koster to move funds into the IDLYC/BMW investment platform. The Defendants used a complex network of their companies and other indirect network resources to accomplish their theft of money, frauds and criminal activities." (doc. 36 at 41, PID 839)

12. HSBC Preadvice MT999 Transaction Related to RICO Claims:
Pla. Ex. 25, doc. 1-4 at 21.

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----- Instance Type and Transmission -----
Notification (Transmission) of Original sent to SWIFT (ACK)
Network Delivery Status : Network Ack
Priority/Delivery : Normal
Message Input Reference : 1010 091 [REDACTED] 46579
----- Message Header -----
Swift Input : FIN 999 Free Format Message
Sender : [REDACTED]
Receiver : HSBCHKHCHKH
HONGKONG AND SHANGHAI BANKING CORPORATION LIMITED, THE
(ALL HK OFFICES AND HEAD OFFICE)
HONG KONG HK
----- Message Text -----
20: Transaction Reference Number
[REDACTED] BCL/A011/09
21: Related Reference
PART 1
79: Narrative
WE CONFIRM RELAY OF THE FOLLOWING MESSAGE
THROUGH OUR CORRESPONDENT SWIFT [REDACTED] FOR
YOUR BRANCH ADDRESS QUEEN'S ROAD, CENTRAL, HONG
KONG, SWIFT: HSBCHKHCHKH FOR ATTENTION OF BANK
OFFICER [REDACTED] E-MAIL [REDACTED] (AT)
HSBC.COM PHONE/FAX 852 8204 [REDACTED] 852 2288 [REDACTED]
FOR FURTHER ADVISE TO MR. [REDACTED] ACCOUNT
NUMBER [REDACTED] AT THEIR BANK.
QUOTE
AT THE REQUEST OF OUR CLIENT [REDACTED]
AND ON BEHALF OF [REDACTED] WE ADVISE
THAT WE ARE READY TO DELIVER VIA SWIFT MT760 THE
INSTRUMENT TO BE ISSUED BY [REDACTED]
[REDACTED] -ISIN CODE: US50[REDACTED] TO THE
ACCOUNT OF YOUR CLIENT ACCOUNT NAME: [REDACTED]
[REDACTED] ACCOUNT NUMBER: [REDACTED] AND
REFERENCE TRANSACTION CODE NO.M09/1209409VM5000
SUBJECT TO OUR SATISFACTORY RECEIPT OF YOUR
AFFIRMATIVE RESPONSE AND YOUR BANK CONFIRMATION
TO THE FOLLOWING QUERIES FOR OUR DUE DILIGENCE
PURPOSES THE SAID INSTRUMENT WILL BE RELEASED AND
DELIVERED AS ABOVE STATED:
1. THAT [REDACTED] ACTING ON BEHALF OF
BMW MAJE, TRASK AND AFFILIATES LTD. IS YOUR
CLIENT ON BASIS OF A RELATIONSHIP WITH YOUR
BANK UNDER ACCOUNT NUMBER [REDACTED]
2. THAT YOU ARE AWARE OF THE TRANSACTION CODE
[REDACTED] - 24/Dec/2009 10:08:30 AM - Page 1 of 2

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NUMBER M09/1209409VM5000 AND THAT YOU HAVE
RECEIVED A COPY OF THE AGREEMENT SIGNED BY
AND BETWEEN [REDACTED] AND
BMW MAJE, TRASK AND AFFILIATES LTD.

- 2 -

----- Message Trailer -----

----- Interventions -----

13. Deutsche Bank Financial Instruments Related to RICO Claims:

Der Wortlaut der nachfolgend aufgeführten Veröffentlichungen ist im Unternehmensregister unter der Firma

Deutsche Bank AG, HRB 30000, einsehbar.

Gesamtemittent	Datum	ISIN	WKN	Kurzname	Vorgang
Deutsche Bank AG, London Br.	09	5037		EO-ZO Med.-T. Nts	Kündigung
Deutsche Bank AG, London Br.	2009	1724		FLR-Nts. v.04(09) Share-Basket	Fixing
Deutsche Bank AG, London Br.	2009	1957		DL-FLR Med.-T. Nts 2004(05/14)	Fixing
Deutsche Bank AG, London Br.	2009	1957		DL-FLR Med.-T. Nts 2004(05/14)	Fixing
Deutsche Bank AG, London Br.	2009	1957		DL-FLR Med.-T. Nts 2004(05/14)	Fixing
Deutsche Bank AG, London Br.	2009	2481		Pendulum Nts.link v.04(09)	Fixing
Deutsche Bank AG, London Br.	2009	4179		EO-FLR Med.-T. Nts 2004(16)	Fixing
Deutsche Bank AG, London Br.	2009	3294		FLR-Share Bas.Link. Nts.04(10)	Fixing
Deutsche Bank AG, London Br.	2009	3377		FLR-Share Bas.Link. Nts.04(10)	Fixing
Deutsche Bank AG, London Br.	2009	4771		FLR-Share Bas.Link. Nts.04(10)	Fixing
Deutsche Bank AG, London Br.	2009	2003		DL-FLR Med.-T. Nts 2005(05/15)	Fixing
					Fixing

14. Table of Financial Accounts Related to RICO Claims:

Acc. Holder, Signatory or Beneficiary	Bank	SWIFT or Routing	Account Number	Transaction Code	SIN/CUSIP
Bruce Haglund	Wells Fargo Bank	121000248	2301		
Bruce Haglund	Wells Fargo Bank	121000248	ZW1		
Dale Briggs & Associates IOLTA	Wells Fargo Bank	WFBIUS6S	8259		
Steven Woods	Wachovia Bank (LA, California)				
Steven Woods	Ozark Mountain Bank	81518375	5676		
Hing Teik Choon / New Eurasia Impex Limited	Bank of America Corp.			3000	ISIN: AG97
Jon Divens	Bank of America N.A.				
James Linder	Bank of America	26009593	0191		
Maureen Wilde	Bank of America	26009593	8395		
Falcon International Holdings	Citizen's Bank	21313103	3194		
MM5 LLC	M&T Bank	52000113	6352		
O'Melveny & Myers	Citibank	21000089	0224		
James Wan & Company	OCBC Bank	OCBCSGSG	1301		
Hing Teik Choon / BMW / Falcon International	HSBC	HSBCHKHHKH	-888		
Baker McKenzie LLP	Barclays Bank	26002574			
Hing Teik Choon	Unicredit Bank	DEKRU22		009	
Lufti Abdulhaq Wakid	Citibank International Banking PLC	CITI059AUS			
Hing Teik Choon	JP Morgan Chase Bank	CHASUS33			CUSIP: AA5
	JP Morgan Chase Bank				CUSIP: 4 AG7
Matrix/BMW/Hing Teik Choon/New Eurasia Impex Limited	KFW Bank			000	ISIN: CN27

Altofin Bancorp Ltd	Volksbank Hungary Private Ltd	MAVOHUHB	[REDACTED]	[REDACTED]	3000
Trask Corporation Limited or Assigns	Deutsche Bank	DEUTCNSHPBC	[REDACTED]	0711	
	Deutsche Bank				ISIN: [REDACTED] 5037
	Deutsche Bank				ISIN: [REDACTED] 1724
	Deutsche Bank				ISIN: [REDACTED] 1957
	Deutsche Bank				ISIN: [REDACTED] 2481
	Deutsche Bank				ISIN: [REDACTED] 4179
	Deutsche Bank				ISIN: [REDACTED] 3294
	Deutsche Bank				ISIN: [REDACTED] 3377
	Deutsche Bank				ISIN: [REDACTED] 4771
	Deutsche Bank				ISIN: [REDACTED] 2003
	CW Capital				CUSIP: [REDACTED] DAG6
	FannieMae				CUSIP: [REDACTED] UA86
Francis Wilde or Assigns	Falcon Bank (Switzerland)	114915803			
Francis Wilde or Assigns	Wegelin Bank (Switzerland)	WEGECH2GXXX			Swiss
Francis Wilde or Assigns	Rosbank (Moscow, Russia)	UNEICHGGXXX			Swiss
Scott Anthony Koster	TCF Bank		[REDACTED]	7813	
Kerim S. Emre	US Bank		[REDACTED]	7523	
John Childs	Citibank		[REDACTED]	1911	
Winston J Cook	Sun Trust		[REDACTED]	2100	

15. HSBC directed their activity in a substantial way to the several states of the USA, including the forum state soliciting business, *i.e.*, commerce, and advancing:

“To open an account in the U.S., call our dedicated Business Customer Service Center³ at 877.472.2249 (TTY/TTD:800.898.5999), or for more information.

United States persons (including entities) may be subject to U.S. taxation on their worldwide income and may be subject to tax and other filing obligations with respect to their U.S. and non-U.S. accounts. U.S. persons and entities should consult a tax advisor for more information.

¹ The HSBC Group operates through a network of affiliates and subsidiaries around the world.”

See, immediately below, also

<http://www.us.hsbc.com/1/2/home/business/international-banking/intl-accounts/setup-us>

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Business
International
United States
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Internet Banking: Log on

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International accounts
Foreign exchange and risk
Cash management
Trade and supply chain

Expand your business in the U.S.

Let us help you make the move

HSBC is one of the largest banking and financial services organizations in the world, with a network that extends across the globe¹. While we continue to lead the way in emerging markets around the world, HSBC has the United States covered, as well.

We are committed to supporting the needs of our global clients looking to expand their businesses to the U.S. Our full-suite of products and services includes:

- Commercial Banking
- Global Banking and Markets
- Global Asset Management
- Global Private Banking
- Retail Banking and Wealth Management
- Insurance

Why HSBC?

More businesses today operate in a global marketplace, it is essential that companies of all sizes have access to expert business advice. With more than 140 years in business, HSBC provides a powerful mix of global reach and local knowledge. We bring together the expertise, security and fiscal strength of one of the world's leading financial institutions with the personalized service of your local bank¹.

Anytime, anywhere account access

The pace of business in the U.S. - and around the world - demands robust 24/7 cash management tools. [HSBCnet²](#), our powerful information and transaction portal, provides you the insight you need to manage your business from anywhere in the world. With real-time global account access and customizable setup and access features, you gain control over your critical financial functions at every level of your organization. Keep track of your payments, receivables, liquidity and the changing value of your assets - all with one secure, global solution.

To open an account in the U.S., call our dedicated Business Customer Service Center³ at 877.472.2249 (TTY/TTD: 800.898.5999), or for more information.

United States persons (including entities) may be subject to U.S. taxation on their worldwide income and may be subject to tax and other filing obligations with respect to their U.S. and non-U.S. accounts. U.S. persons and entities should consult a tax advisor for more information.

¹ The HSBC Group operates through a network of affiliates and subsidiaries around the world.

² HSBCnet features and functionality may vary by country.

³ Customer service hours of operation are 6:00AM ET to 12:00AM ET.

⁴ Account opening is not available in all countries.

Related products

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16. Message from HSBC Group Chief Executive Stuart Gulliver directed HSBC activity in a substantial way to the several states of the USA, including the forum state soliciting business, *i.e.*, commerce, and advancing:

“Under our new strategy, HSBC is now run and managed as a genuinely global firm, making it easier to set, monitor and enforce standards. We are implementing high global standards across the Group: we want to make sure that the highest standards required in any part of the business will apply to every part of the business.”

See, immediately below, also

<http://www.hsbc.com/1/2//newsroom/news/2012/Interim-results-sg>

Message from HSBC Group Chief Executive Stuart Gulliver — www.hs...

<http://www.readability.com/articles/87avj5lf>

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ORIGINAL PAGE

Message from HSBC Group Chief Executive Stuart Gulliver

30 Jul 2012



There are a number of reasons to be encouraged by the half year results that we have announced today. We have recorded underlying revenue growth and continued to make substantial progress in key areas.

We have seen strong revenue growth in the faster-growing regions of Hong Kong, Rest of Asia-Pacific and Latin America, in line with our strategy. These regions are driving global economic growth today and will continue to do so for the foreseeable future.

Our Global Banking and Markets business had a strong first half during a period of uncertainty in financial markets and the wider economic environment, with profits up on the same period last year led by our performance in faster-growing regions.

We have continued to make progress in delivering our strategy, as we strive to get the Group into the right shape for the future and position HSBC for growth. We have announced 36 disposals since 2011, exiting non-strategic markets, and selling non-core businesses and investments. We are also simplifying HSBC, removing layers of management, and clarifying reporting lines - all of which makes the company easier to manage and control.

However, our performance has been affected by the mistakes of the past. Our underlying profit has been affected by higher operating expenses which include provisions for UK customer redress programmes and

17. “HSBC shares are listed on the New York Stock Exchange in the form of American Depositary Receipts, and thus HSBC is subject to the insider lending prohibition of Section 13(k) of the Exchange Act. In addition, HSBC's lead bank subsidiary, HSBC Bank plc, a U.K. bank headquartered in London, maintains a shelf registration and is required to file reports under the Exchange Act (and thus is similarly subject to the insider lending prohibition of Section 13(k)).” Letter to the U.S. Securities and Exchange Commission, fr HSBC Richard E T Bennett Group General Manager, Legal and Compliance 17 October 2003.

18. Until recently, **HSBC Group policy instructed its affiliates to assume that all HSBC affiliates met the Group’s AML standards and to open correspondent accounts for those affiliates without additional due diligence. For years, HBUS followed that policy, opening U.S. correspondent accounts for HSBC affiliates without conducting any AML due diligence. Those affiliates have since become major clients of the bank. In 2009, for example, HBUS determined that “HSBC Group affiliates clear[ed] virtually all USD [U.S. dollar] payments through accounts held at HBUS, representing 63% of all USD payments processed by HBUS.”**⁸ HBUS failed to conduct due diligence on HSBC affiliates despite a U.S. law that has required all U.S. banks, since 2002, to conduct these due diligence reviews before opening a U.S. correspondent account for any foreign financial institution, with no exception made for foreign affiliates.

19. HSBC is the quintessential global bank, operating hundreds of affiliates in 80 countries, with its U.S. affiliate acting as the gateway into the U.S. financial system for

the entire network. See, U.S. Vulnerabilities to Money Laundering, Drugs, and Terrorist Financing: HSBC Case History; Majority and Minority Staff Report Permanent Subcommittee on Investigations United States Senate, July 17, 2012 Hearing at 9 [emphasis added] (Government Printing Office has yet to assign a government publication number; official Senate Web Address:

<http://www.hsgac.senate.gov/subcommittees/investigations> Document available at:

<http://www.hsgac.senate.gov/download/?id=8c7a921f-d45a-4430-b857-66559153191c> (2.36 MB))

HSBC Case Study. To examine the current money laundering and terrorist financing threats associated with correspondent banking, the Subcommittee selected HSBC as a case study. HSBC is one of the largest financial institutions in the world, with over \$2.5 trillion in assets, 89 million customers, 300,000 employees, and 2011 profits of nearly \$22 billion. HSBC, whose initials originally stood for Hong Kong Shanghai Banking Corporation, now has operations in over 80 countries, with hundreds of affiliates spanning the globe. Its parent corporation, HSBC Holdings plc, called "HSBC Group," is headquartered in London, and its Chief Executive Officer is located in Hong Kong.

Its key U.S. affiliate is HSBC Bank USA N.A. (HBUS). HBUS operates more than 470 bank branches throughout the United States, manages assets totaling about \$200 billion, and serves around 3.8 million customers. It holds a national bank charter, and its primary regulator is the U.S. Office of the Comptroller of the Currency (OCC), which

is part of the U.S. Treasury Department. HBUS is headquartered in McLean, Virginia, but has its principal office in New York City. HSBC acquired its U.S. presence by purchasing several U.S. financial institutions, including Marine Midland Bank and Republic National Bank of New York.

A senior HSBC executive told the Subcommittee that HSBC acquired its U.S. affiliate, not just to compete with other U.S. banks for U.S. clients, but primarily to provide a U.S. platform to its non-U.S. clients and to use its U.S. platform as a selling point to attract still more non-U.S. clients. HSBC operates in many jurisdictions with weak AML [Anti-Money Laundering] controls, high risk clients, and high risk financial activities including Asia, Middle East, and Africa. Over the past ten years, HSBC has also acquired affiliates throughout Latin America. In many of these countries, the HSBC affiliate provides correspondent accounts to foreign financial institutions that, among other services, are interested in acquiring access to U.S. dollar wire transfers, foreign exchange, and other services. As a consequence, HSBC's U.S. affiliate, HBUS, is required to interact with other HSBC affiliates and foreign financial institutions that face substantial AML challenges, often operate under weaker AML requirements, and **may not be as familiar with, or respectful of, the tighter AML controls in the United States. HBUS' correspondent services, thus, provide policymakers with a window into the vast array of money laundering and terrorist financing risks confronting the U.S. affiliates of global banks.** *id.* at 2

§ III. Legal Standard (Memorandum of Law)

1. Plaintiffs have pled no cause of action against the Nominal Defendant, but have joined the Nominal Defendant in this lawsuit to aid the recovery of relief by means of disclosure and to invoke the Court's powers to enforce recovery including, *inter alia*, turn-over, disgorgement, divestiture, clawback, and other necessary injunctive relief.

Role of a Nominal/Relief Defendant in a RICO Action

2. Fifth Circuit – *Janvey v. Adams*, Nos. 09-10761/10765 (C.A. 5, Nov. 13, 2009):

The resolution of the issues on appeal depends on the nature of a “relief defendant.”¹ A relief defendant, sometimes referred to as a “nominal defendant,” has no ownership interest in the property that is the subject of litigation but may be joined in the lawsuit to aid the recovery of relief. *SEC v. Cavanagh*, 445 F.3d 105, 109 n.7 (2d Cir. 2006). A relief defendant is not accused of wrongdoing, but a federal court may order equitable relief against such a person where that person (1) has received ill-gotten funds, and (2) does not have a legitimate claim to those funds. *SEC v. Colello*, 139 F.3d 674, 677 (9th Cir. 1998). The court in *CFTC v. Kimberlynn Creek Ranch, Inc.*, 276 F.3d 187 (4th Cir. 2002), discussed the theory behind this “obscure common law concept”:

A ‘nominal defendant’ is a person who can be joined to aid the recovery of relief without an additional assertion of subject matter jurisdiction only because he has no ownership interest in the property which is the subject of litigation. Because a nominal defendant has no ownership interest in the funds at issue, once the district court has acquired subject matter jurisdiction over the litigation regarding the conduct that produced the funds, it is not necessary for the court to separately obtain subject matter jurisdiction over the claim to the funds held by the nominal defendant; rather, the nominal defendant is joined purely as a means of facilitating collection. In short, a nominal defendant is part of a suit only as the holder of assets that

must be recovered in order to afford complete relief; no cause of action is asserted against a nominal defendant. *Kimberlynn Creek Ranch*, 276 F.3d at 191-92 (citations and quotation marks omitted).

[1] We have borrowed from the succinct explanation of this issue given by the court in *SEC v. Founding Partners Capital Management*, 639 F. Supp. 2d 1291 (2009) and *SEC v. Sun Capital, Inc.*, 2009 WL 1362634 (M.D. Fla. May 13, 2009).

"The 'citizens' upon whose diversity a plaintiff grounds jurisdiction must be real and substantial parties to the controversy." *Corfield v. Dallas Glen Hills LP*, 355 F.3d 853, 857 (5th Cir. 2003) (citing *Navarro Sav. Ass'n v. Lee*, 446 U.S. 458, 460 (1980) (citations omitted)). "[A] federal court must disregard nominal or formal parties and rest jurisdiction only upon the citizenship of real parties to the controversy." *Navarro*, 446 U.S. at 461 (citations omitted).

The Fifth Circuit Court of Appeals explains, "a party is nominal if its role is restricted to that of a 'depository or stakeholder,' e.g., one 'who has possession of the funds which are the subject of litigation.'" *In re Beazley Ins. Co.*, No. 09-20005, 2009 WL 205859, at *4 (5th Cir. Jan. 29, 2009) (citation omitted). "The test is not dependant on how the plaintiff labels its complaint, but rather on the practical effect of a judgment on a given defendant." *Id.* (citation omitted).

*Evidence of Wrongdoing is Not Required to Obtain Relief
Against a Nominal Defendant*

3. Pursuant to Rule 19(a)(1), FED. R. CIV. P., a person may be joined as a "nominal defendant" when joinder is necessary to afford "complete relief . . . among those already parties," even though: (1) no cause of action is asserted against the

nominal defendant; (2) the nominal defendant is not liable for any wrongdoing; and (3) there is no evidence of wrongdoing by the nominal defendant.¹⁴

Jurisdiction – Subject Matter Jurisdiction Over a Nominal Defendant

“Because a nominal defendant has no ownership interest in the funds at issue, once the district court has acquired subject matter jurisdiction over the litigation regarding the conduct that produced the funds, it is not necessary for the court to separately obtain subject matter jurisdiction over the claim to the funds held by the nominal defendant; rather, the nominal defendant is joined purely as a means of facilitating collection. In short, a nominal defendant is part of a suit only as the holder of assets that must be recovered in order to afford complete relief; no cause of action is asserted against a nominal defendant.” *CFTC v. Kimberlynn Creek Ranch, Inc.*, 276 F.3d 191-92 (4th Cir. 2002).

¹⁴ See, e.g., *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 400 (1982); *Int’l Bhd. of 280 Teamsters v. United States* 431 U.S. 324, 355-56 n.43 (1977); *Providence Bank v. Patterson*, 390 U.S. 102, 107-08 (1968); *City of Syracuse v. Onondaga County*, 464 F.3d 297, 307-11 (2d Cir. 2006); *Commodity Future Trading Comm’n v. Kimberlynn Creek Ranch, Inc.*, 276 F.3d 187, 191-93 (4th Cir. 2002); *Local 1351 Int’l Longshoreman’s Ass’n v. Sea-Land Servs. Inc.* 214 F.3d 566, 569-70 (5th Cir. 2002); *SEC v. Cavanagh*, 155 F.3d 129, 136 (2d Cir. 1998); *SEC v. Colello*, 139 F.3d 674, 675-77 (9th Cir. 1998); *Shaw v. Dow Brands, Inc.*, 994 F.2d 364, 369 (7th Cir. 1993); *SEC v. Cherif*, 933 F.2d 403, 414 (7th Cir. 1991), *EEOC v. MacMillian Blodedel Containers, Inc.*, 503 F.2d 1086, 1095-96 (6th Cir. 1974); *Selfix, Inc. v. Bisk*, 867 F. Supp. 1333, 1335-36 (N.D. Ill. 1994); *SEC v. Egan*, 856 F. Supp. 401, 402 (N.D. Ill. 1993); *SEC v. Antar*, 831 F. Supp. 380, 399 (D.N.J. 1993); *Eldredge v. Carpenters 46 N. Cal. Joint Apprenticeship and Training Comm.*, 440 F. Supp. 506, 518 -524 (N.D. Cal. 1977).

Jurisdiction – RICO Extraterritorial Conduct

4. Though there is a presumption against extraterritorial application of United States law, a number of courts have inferred that in enacting RICO, Congress intended to eliminate wrongful conduct wherever it occurs.¹⁵ Drawing from the securities and antitrust laws, courts have applied the **“conduct” and “effects” test to find that RICO applies to extraterritorial conduct where the defendant’s conduct within the United States affects U.S. citizens and commerce within the United States.**¹⁶ In *Alfadda v. Fenn*,¹⁷ the plaintiffs, foreign nationals, sued a foreign defendant under RICO. The alleged predicate acts included violations of the Securities Exchange Act of 1934,²⁵ based upon a sale of securities that took place in part in the United States. The plaintiffs alleged that the defendants had diluted plaintiffs’ stake in a Saudi Arabian venture in contravention of an offering prospectus, and that defendants had diverted the proceeds from the sale of additional shares for their personal benefit. The court reasoned that extraterritorial application of RICO turned on Congress’ intent. The court noted that there is **“no indication that Congress intended to limit [RICO] to infiltration of**

¹⁵ See *United States v. Noriega*, 746 F. Supp. 1506, 1517 (S.D. Fla. 1990), *aff’d*, 117 F.3d 1206 (11th Cir. 1997) (“Given the Act’s broad construction and equally broad goal of eliminating the harmful consequences of organized crime, it is apparent that Congress was concerned with the effects and not the locus of racketeering activities.”).

¹⁶ *Poulos v. Caesars World, Inc.*, 379 F.3d 654, 663–64 (9th Cir. 2004); see also *Liquidation Comm’n of Banco Intercontinental, S.A. v. Renta*, 530 F.3d 1339, 1351–1352 (11th Cir. 2008) (holding that RICO applied extraterritorially where conduct in furtherance of the RICO conspiracy occurred in the United States but the effects of the conspiracy were felt elsewhere); *OSRecovery, Inc. v. One Groupe Int’l, Inc.*, 354 F. Supp. 2d 357, 365–68 (S.D.N.Y. 2005) (applying “conduct” and “effects” test).

¹⁷ *Alfadda v. Fenn*, 935 F.2d 475 (2d Cir. 1991).

domestic enterprises. The mere fact that the corporate defendants are foreign entities does not immunize them from the reach of RICO. [emphasis added]"¹⁸ The defendants' commission of predicate acts within the United States provided a basis for subject matter jurisdiction for the RICO claims.¹⁹

5. **Jurisdiction of RICO actions have been extended to predicate crimes occurring wholly outside the United States where the acts had a substantial effect on United States commerce.** In *United States v. Noriega*,²⁰ the United States government brought RICO claims against former Panamanian dictator Manuel Noriega. Noriega, charged with various drug smuggling activities, moved to dismiss the claims for lack of subject matter jurisdiction because the alleged predicate acts did not take place in the United States. The court held that **RICO conferred jurisdiction on such conduct**, noting that the statute's prohibitions "**are on their face all-inclusive and do not suggest parochial application.**"²¹ The court reasoned that failure to extend RICO to reach extraterritorial conduct would "**frustrate RICO's purpose by allowing**

¹⁸ *Alfadda, supra*, 935 F.2d at 479 (citation omitted).

¹⁹ *Id.* at 480; see also *Sumitomo Corp. v. Chase Manhattan Bank*, No. 99 Civ. 4004(JSM), 2000 WL 1616960, at *2 (S.D.N.Y. Oct. 30, 2000) (holding that subject matter jurisdiction was proper even though most of the relevant acts occurred outside the United States when the plaintiff had alleged predicate acts, including fund transfers and wire communications, that were committed within the United States for the benefit of a major United States corporation); *Starlight Int'l, Inc. v. Herlihy*, 13 F. Supp. 2d 1178, 1185 (D. Kan. 1998) (denying foreign defendant's motion to dismiss for lack of subject matter jurisdiction where plaintiff had alleged both the use of the United States mail and wires to defraud and that the transfer of funds affected interstate commerce); *C.A. Westel De Venezuela v. Am. Tel. & Tel. Co.*, No. 90 Civ. 6665, 1992 WL 209641, at *15-17 (S.D.N.Y. Aug. 17, 1992) (holding that subject matter jurisdiction was proper when the plaintiff had alleged predicate acts of mail and wire fraud committed within the United States, even though the majority of the alleged racketeering conduct occurred in Venezuela).

²⁰ *United States v. Noriega, supra*.

²¹ *Id.* at 1516.

persons engaged in racketeering activities directed at the United States to escape RICO's bite simply by moving their actions abroad." [*emphasis added*]

§ IV. Argument

Internet Context of RICO Defendants' & Nominal Defendant's Intentional Direct Interstate & International Contacts and Operations

1. While in the Internet context there must be "something more" than an Internet advertisement alone to indicate that the RICO Defendants directly and through various enterprises for illicit purposes, and HSBC for legitimate purposes, purposefully (albeit electronically) directed their activity in a substantial way to the forum state.²² Given the such that they should have reasonably anticipated being haled into court here.²³ That test has surly been met in the instant case.²⁴

2. In analogous situations, the courts have held the use of a computer or network service located in a particular state created sufficient contacts to establish personal jurisdiction.²⁵ Plaintiffs argue that because RICO Defendants intended to

²² *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d at 414.

²³ *Burger King Corp. v. Rudzewic*, 471 U.S. 462, 474-75 (1985).

²⁴ See, e.g., *Digital Equipment Corp. v. Altavista Technology, Inc.*, 960 F. Supp. at 469-70.

²⁵ See, e.g., *CompuServe, Inc. v. Patterson*, 89 F.3d 1257, 1263-65 (6th Cir. 1996) (finding personal jurisdiction existed over defendant in Ohio where defendant entered into contract to distribute software through plaintiff's Ohio Internet server and defendant repeatedly sent his software files to the Ohio server via e-mail); *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119, 1124-27 (W.D. Penn. 1997) (distinguishing advertising cases from those in which defendant enters into contracts with forum state residents "involv[ing] the knowing and repeated transmission of computer files over the Internet," and finding jurisdiction in infringement suit against news service that consciously transmitted electronic messages into the state); *Plus System, Inc. v. New England Network, Inc.*, 804 F. Supp. 111, 118-19 (D. Colo. 1992) (finding jurisdiction based in significant part on use of forum state's computers to perform ATM processing services which benefitted

(continued...)

transmit traffic into Texas, their contacts were not inadvertent communication made across the border of Texas. Nor were their contacts made to the Plaintiff Flores in Texas merely "fortuitous;" they were in fact, sufficient to establish personal jurisdiction.²⁶

3. An accurate description of RICO Defendant's contacts with Texas and Alberta from on or just before December 2, 2009 until the filing of this suit, would be RICO Defendants' willful, intentionally fraudulent continued transmission of e-mail message communications to the Texas Plaintiff's and Canadian Plaintiff's mail servers and mail clients executed with scienter.²⁷

4. Plaintiffs also hold that all RICO Defendants' activities and the consequences of their calculated fraud, and RICO predicate and non-predicate overt criminal acts have a substantial enough connection with Texas to make the exercise of jurisdiction reasonable.²⁸

²⁵ (...continued)

defendant by providing its customers with nationwide ATM service); see also *Panavision Int'l, L.P. v. Toeppen*, 141 F.3d 1316, 1322 (9th Cir. 1998) (finding purposeful availment when Illinois defendant established a website using California plaintiff's trademark as his domain name and then sought compensation to give up the name; defendant's conduct was expressly aimed at the forum state and caused its effects there).

²⁶ *World-Wide Volkswagen*, 444 U.S. at 295 (characterizing car manufacturer's ties with Oklahoma as "fortuitous" because they resulted entirely out the fact that the plaintiffs had driven their car into that state).

²⁷ See, e.g., *Zippo Mfg.*, 952 F. Supp. at 1126 (holding service provider's contacts were not "fortuitous," because it "repeatedly and consciously chose to process [customers'] applications and to assign them passwords," it "knew that the result of these contracts would be the transmission of electronic messages into Pennsylvania," and "[t]he transmission of these files was entirely within its control").

²⁸ See *World-Wide Volkswagen*, at 292.

Invoking Jurisdiction Over HSBC and Attaching Nominal (Relief) Defendant Status

HSBC was a depository/recipient of an SBLC or other bank guarantee purchased from the Plaintiffs' and other investors' stolen funds acquired by various fraud schemes, then transmitted from the United States to the issuing bank and followed by the transmittal of alleged financial instruments to HSBC. Thusly, the Court RICO extraterritorial jurisdiction was invoked,²⁹ and invoking the likely status of nominal defendant to HSBC. See *In re Beazley Ins. Co.*, 2009 WL 205859, at *4; see also *Jeanes-Kemp, LLC v. Johnson Controls, Inc.*, No. 1:09cv723 LG-RHW, 2010 WL 502698, at *2 (S.D. Miss. Feb. 5, 2010) (denying remand and finding that a trustee was a nominal party because he merely held title to property subject to a deed of trust for the benefit of the real parties in interest); *Shoreview Assocs., LLC v. Wells Operating P'ship, L.P.*, No. Civ. 02-4764 JRTFLN, 2003 WL 22076610, at *2 (D. Minn. Aug. 24, 2003) (denying remand and noting "[i]t is well established that an escrow agent or depository that has been joined merely to perform a ministerial duty is no more than a nominal party, and is therefore disregarded for diversity purposes"); *Hidey v. Waste Sys. Int'l, Inc.*, 59 F.Supp.2d 543, 546 (D. Md. 1999) (denying remand and noting that escrow agent "served as a mere depository for the funds and, therefore, is a nominal party who has no interest in the outcome of the litigation").

²⁹ See, *Jurisdiction – RICO Extraterritorial Conduct*, ¶ [III.4](#), at [19](#).

Invoking Jurisdiction Over HSBC and Attaching Nominal (Relief) Defendant Status

5. The foregoing facts show that Nominal Defendant is subject to RICO jurisdiction of this Court and has, by its own words and actions availed itself to the laws and benefits of the United States and the several States. Nominal Defendant by its own policy directives, words and actions is inextricably intertwined with the subsidiaries of HSBC, thus has fulfilled “the core function of service [of a summons which] is to supply notice of the pendency of a legal action, in a manner and at a time that affords the defendant a fair opportunity to answer the complaint and present defenses and objections.” *Henderson v. United States*, 517 U.S. 654, 673(1996).

6. The Defendant is properly placed in this case and there is no cause to release the Defendant from this case as their status is nominal. There is no requirement for the Defendant to attend to the litigation of this case until such time as it becomes subject to the orders of this Court.

§ V. Prayer

Wherefore, Plaintiffs pray the Court DENY Nominal Defendant’s Motion to Dismiss.


Respectfully Submitted on Wednesday, Thursday, August 23, 2012.

s/ 

R. LANCE FLORES
Lead Attorney

3314 Pleasant Drive
Dallas, Texas 75227 USA
Tel. (Dallas): +1 (214) 272-0349
Tel. (Fax): +1 (210) 519-6528
ECF & Case Management E-mail:
LF_legaldept@MockingbirdFilms.com

Attorney for the Plaintiff

s/ 

VICKI CLARKSON

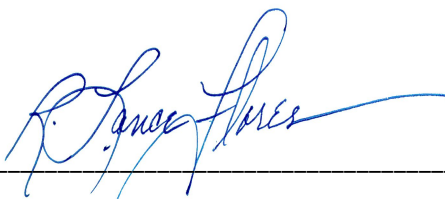
2416 - 36 Street SW
Calgary, AB T3E 2Z5
Tel. (Calgary): +1 403-244-9980
Tel. (Fax:) +1 (403) 246-3331
ECF & Case Management E-mail:
VC_LegalDept@MockingbirdFilms.com

Attorney for the Plaintiff

CERTIFICATE OF SERVICE

On Thursday, Friday, August 24, 2012, I electronically submitted the foregoing document with the Clerk of Court for the U.S. District Court, Northern District of Texas, using the electronic case filing system (CM/ECF) of the Court. I hereby certify that I have served all counsel and/or *pro se* parties of record electronically or by another manner authorized by Federal rule of Civil Procedure 5 (b)(2).

For the Plaintiffs:

s/ 

R. LANCE FLORES