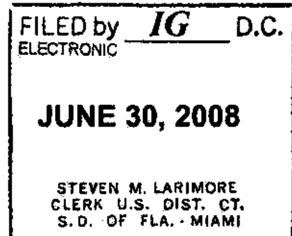
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ELECTRONIC

JUNE 30, 2008

STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
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IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA

CASE NO.
08-21864-MC-LENARD/GARBER

IN THE MATTER OF THE TAX
LIABILITIES OF:

JOHN DOES, United States taxpayers, who at any time during the years ended December 31, 2002 through December 31, 2007, had signature or other authority (including authority to withdraw funds; to make investment decisions; to receive account statements, trade confirmations, or other account information; or to receive advice or solicitations) with respect to any financial accounts maintained at, monitored by, or managed through any office in Switzerland of UBS AG or its subsidiaries or affiliates and for whom UBS AG or its subsidiaries or affiliates (1) did not have in its possession Forms W-9 executed by such United States taxpayers, and (2) had not filed timely and accurate Forms 1099 naming such United States taxpayers and reporting to United States taxing authorities all reportable payments made to such United States taxpayers.

DECLARATION OF DANIEL REEVES

I, Daniel Reeves, pursuant to 28 U.S.C. Section 1746, declare and state:

1. I am a duly commissioned Internal Revenue Agent and Offshore Compliance Technical Advisor employed in the Small Business/Self Employed Business Division of the Internal Revenue Service and am assigned to the Internal Revenue Service's Offshore Compliance Initiative. The Offshore Compliance Initiative develops projects, methodologies, and techniques for identifying United States taxpayers who are involved in abusive offshore transactions and financial arrangements for tax avoidance purposes. I have been an Internal Revenue Agent for more than thirty years and have specialized in offshore investigations for the

last eight years. As an Internal Revenue Agent, I have received training in tax law and audit techniques, including specialized training in abusive offshore tax issues, and have extensive experience in investigating offshore tax matters.

2. For the past six years I have been the lead investigator for the Internal Revenue Service's Offshore Credit Card Project and other offshore compliance initiatives. I developed many of the investigative techniques and procedures being used to identify United States taxpayers with offshore bank accounts. I am also one of the developers of the Internal Revenue Service's offshore training programs for investigators and have participated as an instructor and expert at numerous presentations and training sessions on identifying offshore accounts.

3. The Internal Revenue Service is now investigating United States taxpayers who maintain accounts with UBS AG in Switzerland but who have not provided to UBS (via Forms W-9) their taxpayer identification numbers and other information necessary for reporting to the Internal Revenue Service (via Forms 1099) taxable income earned from their Swiss accounts. To facilitate this investigation, the Internal Revenue Service, once authorized by the Court, will issue under the authority of Section 7602 of the Internal Revenue Code (26 U.S.C.), a "John Doe" summons to UBS. A copy of this summons is attached as Exhibit A.

4. UBS is a Swiss bank with branches around the world and with a major presence in the United States. UBS provides, among other services, private banking services to wealthy United States taxpayers. The records sought by the summons will reveal the identities of and disclose transactions by persons who may be liable for federal taxes and will enable the Internal Revenue Service to investigate whether those persons have complied with the internal revenue laws.

5. Based on information received by the Internal Revenue Service, it is likely that the persons in the "John Doe" class may have been under-reporting income, evading income taxes, or otherwise violating the internal revenue laws of the United States.

6. The "John Doe" summons to UBS relates to the investigations of an ascertainable group or class of persons. There is a reasonable basis for believing that this group or class of persons has failed or may have failed to comply with provisions of the internal revenue laws. The information and documents sought to be obtained from the examination of the records or testimony (and the identity of the persons with respect to whose tax liabilities the summonses have been issued) are not readily available from sources other than UBS.

I. THE SUMMONS DESCRIBES AN ASCERTAINABLE CLASS OF PERSONS

7. The proposed "John Doe" summons seeks information regarding United States taxpayers who, at any time between December 31, 2002 and December 31, 2007, had financial accounts with UBS in Switzerland, and for whom UBS (1) did not have in its possession IRS Forms W-9, and (2) had not submitted timely and accurate IRS Forms 1099 to United States taxing authorities reporting all reportable payments made to the United States taxpayers.

8. This class of persons is easily ascertainable by UBS. As explained below, UBS divides their United States taxpayer clients into those who provide an IRS Form W-9 and those who do not. The very nature of private banking suggests that UBS will be conversant with virtually all of a client's significant financial affairs, including the formation of controlled foreign entities and the opening of foreign accounts. Private banking requires that the primary client advisor be familiar with all of the financial affairs of the client in order to advise the client on a

comprehensive financial plan. For these reasons, UBS will be able to readily ascertain the identity of the proposed "John Doe" class.

II. REASONABLE BASIS FOR BELIEF THAT THE 'JOHN DOE' CLASS HAS FAILED TO COMPLY WITH INTERNAL REVENUE LAWS

A. A United States Taxpayer Who Fails to Disclose Taxable Payments Has Failed to Comply with the Internal Revenue Laws

9. United States taxpayers are required to file annual income tax returns reporting to the Internal Revenue Service their income from all sources worldwide. Taxpayers who fail to include taxable payments on their income tax returns have failed to comply with the internal revenue laws.

10. As will be described in further detail below, the "John Doe" class is limited to United States taxpayers with UBS accounts in Switzerland who affirmatively chose not to provide to UBS Forms W-9 disclosing their status as United States taxpayers, and for whom UBS did not submit Forms 1099 reporting to the Internal Revenue Service all of their reportable payments. Based on my experience with offshore accounts, taxpayers who choose not to provide the documents necessary for proper reporting do so in order to conceal their income from the Internal Revenue Service. The fact that these United States taxpayers chose not to submit Forms W-9 to UBS, thus choosing to remain "undeclared," provides a reasonable basis to believe that they have failed to comply with the internal revenue laws. Because it does not know the identities of those in the "John Doe" class, the Internal Revenue Service cannot yet audit these United States taxpayers' income tax returns to determine whether they reported such payments.

B. The Tradition of Offshore Tax Haven or Financial Privacy Jurisdictions

11. The Internal Revenue Service has been concerned with the growing problem of United States taxpayers, involved in both lawful and unlawful activities, evading the payment of United States taxes by concealing unreported taxable income in accounts in offshore tax haven or financial privacy jurisdictions. I summarize below several studies that describe the use of offshore tax haven or financial privacy jurisdictions and provide a background of the offshore private banking system.

a. The Gordon Report

12. On January 12, 1981, the Internal Revenue Service issued a report entitled "Tax Havens and Their Use by United States Taxpayers - An Overview," commonly known as the "Gordon Report" for its author, Richard A. Gordon, Special Counsel for International Taxation. The Gordon Report was based on a review of judicial decisions and published literature in the field of international tax planning, research into internal Internal Revenue Service documents concerning taxpayer activities, interviews with Internal Revenue Service personnel, personnel who dealt with tax haven issues for other federal government agencies, and lawyers and certified public accountants who specialized in international taxation. Additionally, the findings in the Gordon Report were based on a statistical analysis of available data concerning international banking, United States direct investment abroad and foreign investment in the United States.

13. The Gordon Report states that the available data support the view that taxpayers ranging from large multi-national companies to individuals and criminals are making extensive use of tax haven and financial privacy jurisdictions. The Gordon Report concluded that there are:

> enormous and growing levels of financial activity and accumulation of funds in tax havens [as well as a] large number of transactions involving illegally earned income and legally earned income which is diverted to or passed through havens for purposes of tax evasion.

b. The Crime and Secrecy Report

14. On August 28, 1985, the Permanent Subcommittee on Investigations of the United States Senate Governmental Affairs Committee issued a report entitled "Crime and Secrecy: The Use of Offshore Banks and Companies." The Crime and Secrecy Report summarized the offshore problem as follows:

> The subcommittee found that the criminal exploitation of offshore havens is flourishing because of haven secrecy and foreign government intransigence in the face of overwhelming evidence of dirty money in their banking systems. The effect has been to systematically obstruct U.S. law enforcement investigations, erode the public's confidence in our criminal justice system, and thwart the collection of massive amounts of tax revenues.

15. The report includes a quote from Senator William V. Roth, Chairman of the subcommittee regarding the committee's findings on the use of tax haven and financial privacy jurisdictions by American citizens:

> But equally shocking is the fact that we have also found that offshore havens are no longer used exclusively by criminals. Instead, they are increasingly being used by otherwise law abiding Americans to avoid paying taxes and to shield assets from creditors.

16. The Crime and Secrecy Report estimated that the "underground economy" at that time (1985) was hiding between $150 billion and $600 billion apparently unreported income from both legal and illegal business from the Internal Revenue Service. Furthermore, it stated that the underground economy was unquestionably linked to the use of offshore facilities.

c. The United Nations Report

17. On May 29, 1998, the United Nations' Office for Drug Control and Crime Prevention, Global Programme Against Money Laundering, released a report entitled "Financial Havens, Banking Secrecy and Money Laundering." The United Nations Report (at http://www.imolin.org/imolin/finhaeng.html) states that offshore financial centers, tax havens and bank secrecy jurisdictions --

> attract funds partly because they promise both anonymity and the possibility of tax avoidance or evasion. A high level of bank secrecy is almost invariably used as a selling point by offshore financial centers. Many Internet advertisements for banks emphasize the strictness of the jurisdiction's secrecy and assure the prospective customers that neither the bank nor the government will ever give bank data to another government. When the advertising is for private banks, it also stresses the protection from tax collectors.

United Nations Report, Part II, "The Global Financial System."

d. Offshore Private Banks

18. Private banks are operational units within banks that specialize in providing financial and related services to wealthy individuals, primarily by acting as a financial advisor, estate planner, credit source, and investment manager.

19. To open an account in a private bank, prospective clients usually must deposit a substantial sum, often $1 million or more. In return for this deposit, the private bank assigns a "private banker" or "client advisor" to act as a liaison between the client and the bank and to facilitate the client's use of a wide range of the bank's financial services and products. Those products and services often span the globe, enabling the client to benefit from services in carefully selected offshore jurisdictions that tout their strong financial privacy laws.

20. Offshore private banking practices have received considerable attention in recent years. The Senate Permanent Subcommittee on Investigations issued a report concluding that:

> Most private banks offer a number of products and services that shield a client's ownership of funds. They include offshore trusts and shell corporations, special name accounts, and codes used to refer to clients or fund transfers.
>
> All of the private banks interviewed by the Subcommittee staff made routine use of shell corporations for their clients. These shell corporations are often referred to as "private investment corporations" or PICs. They are usually incorporated in [tax haven or financial privacy] jurisdictions . . . which restrict disclosure of a PIC's beneficial owner. Private banks then open accounts in the name of the PIC, allowing the PIC's owner to avoid identification as the account holder.

Minority Staff Report for Permanent Subcommittee on Investigations Hearing on Private Banking and Money Laundering: A Case Study of Opportunities and Vulnerabilities, November 9, 1999, pp. 881-882.

21. Similarly, the Federal Reserve Bank of New York concluded, after a study of forty institutions engaged in private banking, that:

> Most banking institutions maintain and manage accounts for PICs in their U.S. offices; in fact, frequently PICs are established for the client – the beneficial owner of the PIC – by one of the institution's affiliated trust companies in an offshore secrecy jurisdiction. The majority of these institutions employ the sound practice of applying the same general KYC ["Know Your Customer"] standards to PICs as they do to personal private banking accounts – they identify and profile the beneficial owners. Most institutions had KYC documentation on the beneficial owners of the PICs in their U.S. files.

Federal Reserve Bank of New York, Guidance on Sound Risk Management Practices Governing Private Banking Activities, July 1997.

22. More recently, the Senate Permanent Subcommittee on Investigations issued a report describing this "sophisticated offshore industry," noting that:

> A sophisticated offshore industry, composed of a cadre of international professionals including tax attorneys, accountants, bankers, brokers, corporate service providers, and trust administrators, aggressively promotes offshore jurisdictions to U.S. citizens as a means to avoid taxes and creditors in their home jurisdictions. These professionals, many of whom are located or do business in the United States, advise and assist U.S. citizens on opening offshore accounts, establishing sham trusts and shell corporations, hiding assets offshore, and making secret use of their offshore assets here at home. Experts estimate that Americans now have more than $1 trillion in assets offshore and illegally evade between $40 and $70 billion in U.S. taxes each year through the use of offshore tax schemes . . . Utilizing tax haven secrecy laws and practices that limit corporate, bank, and financial disclosures, financial professionals often use offshore tax haven jurisdictions as a "black box" to hide assets and transactions from the Internal Revenue Service ("IRS"), other U.S. regulators, and law enforcement.

Minority & Majority Staff Report for Permanent Subcommittee on Investigations Hearing on Tax Haven Abuses: The Enablers, The Tools and Secrecy, August 1, 2006, p. 1.

23. Thus, although a United States taxpayer may open a private account in Switzerland, it is often the case that the bank will form a foreign shell entity in a third jurisdiction to act as the nominal owner of the assets. Keeping the account in the name of a foreign entity enables the bank to avoid reporting to the Internal Revenue Service payments that were essentially made to the United States taxpayer (the true owner of the account). The banks remove all visible connections between United States taxpayers and the offshore accounts by structuring the arrangement to appear as though foreign entities are the actual and sole beneficial owners.

C. **UBS & Bradley Birkenfeld**

24. UBS is a bank headquartered in Switzerland with branches throughout the United States, including two in Miami, Florida. According to its 2007 Annual Report, relevant portions of which are attached as Exhibit B, UBS provides "a comprehensive range of products and services, individually tailored for wealthy and affluent clients around the world . . ." According to the Annual Report, UBS Wealth Management International & Switzerland reported a record "net new money intake" of 125 billion Swiss Francs for 2007 alone, "leading to an all-time high in invested assets of [1,294 billion Swiss Francs] . . ."

25. On October 12, 2007, I interviewed Bradley Birkenfeld, a former employee of UBS, regarding his practices as a client advisor for United States taxpayers with UBS accounts in Switzerland. On June 19, 2008, Birkenfeld pleaded guilty to conspiring to assist Igor Olenicoff, a United States taxpayer, evade paying $7.2 million in taxes by assisting him to conceal $200 million of assets. Attached as Exhibit C is Birkenfeld's executed Statement of Facts offered at his allocution ("Statement"). Although the Statement does not specifically name UBS, I know from my prior conversation with Birkenfeld that UBS is indeed the "Swiss Bank" referenced in his Statement. Similarly, although Birkenfeld's indictment and Statement refers to an individual with the initials "I.O.," according to an article appearing in the Wall Street Journal and attached as Exhibit D, Olenicoff's attorney has confirmed this is indeed a reference to Olenicoff. The following description is based on information gathered during my interview with Birkenfeld and from his Statement.

26. Birkenfeld worked with UBS Global Wealth Management International & Switzerland. His primary duties being to acquire and develop new clients in the United States,

Birkenfeld was one of approximately 40 to 50 private banking employees of UBS who, with the encouragement of UBS management, traveled to the United States on a quarterly basis to service United States taxpayers. In order to avoid detection by U.S. authorities, according to Birkenfeld, UBS trained its bankers when entering the United States to state falsely on customs forms that they were traveling for pleasure rather than for business. UBS private bankers also traveled with encrypted laptop computers containing clients' portfolios.

27. According to Birkenfeld, UBS assisted wealthy United States taxpayers conceal their assets in offshore UBS accounts nominally held by sham entities formed in overseas jurisdictions, many of which were tax havens. UBS collaborated with United States taxpayers to prepare false and misleading IRS Forms W-8BEN ("Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding") claiming that the sham entities owned the accounts, and they failed to prepare and file IRS Forms W-9 ("Request for Taxpayer Identification Number and Certification") that should have identified the United States taxpayers as the owners of the accounts. Because it was made to appear as though non-United States taxpayers owned the accounts, UBS would not submit Forms 1099 reporting income earned on the offshore accounts. By concealing the United States taxpayers' ownership and control over the assets in the offshore accounts, UBS assisted these United States taxpayers evade the reporting and payment of their income taxes.

28. During our interview, Birkenfeld provided to me a letter from UBS addressed to all of its United States taxpayer clients with offshore accounts dated November 4, 2002. UBS sent the letter following its entry into a Qualified Intermediary Agreement ("Q.I. Agreement") with the Internal Revenue Service in order to assuage concerns of United States taxpayers that

the Q.I. Agreement would result in the disclosure of their identities to U.S. authorities. The Declaration of Barry Shott contains a full explanation of the Q.I. Agreement. In this letter UBS advised that United States taxpayers who did not want to provide Forms W-9 would continue to enjoy anonymity, and their identities would not be shared with U.S. authorities. This letter, which is attached as Exhibit E, states in part:

> The QI regime fully respects client confidentiality as customer information are only disclosed to U.S. tax authorities based on the provision of a W-9 form. Should a customer choose not to execute such a form, the client is barred from investments in U.S. securities but under no circumstances will his/her identity be revealed. Consequently, UBS's entire compliance with its QI obligation does not create the risk that his/her identity be shared with U.S. authorities.

29. Because it assisted certain United States taxpayers conceal their ownership of the accounts, UBS divided its United States taxpayer clients into two groups: (1) those who were willing to submit Forms W-9 and have the bank file Forms 1099 reporting their earned income, and (2) those who wished to remained "undeclared."

30. UBS, through Birkenfeld, assisted Igor Olenicoff, a high-profile United States taxpayer, to conceal his ownership of offshore UBS accounts. Igor Olenicoff's story is illustrative because he is similarly situated to the "John Doe" class described in the summons. Many of Birkenfeld's representations regarding his dealings with Olenicoff have been extensively covered by both the national and the international media. Some of these news articles are attached as composite Exhibit F. According to a Wall Street Journal article attached as Exhibit D, Olenicoff was "a major player in Southern California real estate after starting his company, Olen Properties, in 1973." According to the article, Forbes magazine listed Olenicoff as the 286th richest U.S. citizen with an estimated worth of approximately $1.7 billion.

31. According to Birkenfeld, Olenicoff, with UBS's assistance, formed a Bahamian corporation and fraudulently completed an IRS Form W-8BEN to make it appear as though the corporation was the beneficial owner of an offshore account that he had with UBS. To this and other bogus entities, Olenicoff transferred $60 million, as well as a 147-foot yacht. Because it was in the name of a foreign entity, UBS did not report to the Internal Revenue Service any payments made to the account, and Olenicoff was able to refrain from reporting the income secure in the knowledge that UBS would maintain the traditional secrecy of Swiss accounts. In December 2007, Olenicoff pleaded guilty to a criminal count of filing a false 2002 tax return for omitting income earned from the offshore assets.

32. In a document attached as Exhibit G, UBS describes similar tactics to assist United States taxpayers evade the reporting and payment of their income taxes in a document found on its own website (last visited June 18, 2008). The document is called "Qualified Intermediary System: US withholding tax on dividends and interest income from US securities," and in it UBS acknowledges that:

> While the main issue concerning [offshore entities] is whether they really are companies and also whether they really are the beneficial owner of the assets as defined by US tax law (facts which can be confirmed using the appropriate forms), the basic problem with trusts and foundations is that US tax law tends to regard them as transparent intermediaries with corresponding disclosure obligations.

For those clients who wish to use such trusts and foundations but who also wish to avoid the "corresponding disclosure obligations," the document continues, in relevant part, as follows (emphasis added):

> [I]f there is no desire to disclose the identities of either the bank's contracting partner or the beneficial owner to the US tax authorities, the possible alternatives

> are for US securities to be excluded from the portfolio, for the beneficial owner to hold them directly, *or for a structure to be put in place between the foundation/trust and the bank* which itself serves as an independent, non-transparent beneficial owner (e.g. a legal entity/corporation/company) and submits documentation to the QI to this effect.

33. Based on what I have learned from Birkenfeld and from UBS's website, it appears that UBS offered, throughout the years addressed by the "John Doe" summons, undeclared offshore accounts to United States taxpayers. In a document found on its own website, UBS suggests putting a "structure in place" between the beneficial owner and the bank in order to avoid disclosure of their beneficial ownership of the account to the Internal Revenue Service. In short, UBS, in plain language, suggests using a nominee entity as a means of avoiding the reporting requirements of the U.S. tax laws.

34. United States taxpayers in the "John Doe" class who choose to remain undisclosed to the Internal Revenue Service are likely failing to comply with the Internal Revenue Code provisions governing a United States taxpayer's obligations to report and pay tax on world-wide income. Given my general knowledge and experience concerning taxpayers who use banking and other services in offshore tax havens and financial privacy jurisdictions, as well as Birkenfeld's Statement, and the story of Olenicoff, I believe it is reasonable to believe that the unidentified United States taxpayers described as the John Doe class, above, may have failed to comply with provisions of the internal revenue law of the United States.

III. THE REQUESTED MATERIALS ARE NOT READILY AVAILABLE FROM OTHER SOURCES

35. As described in the Declaration of Barry Shott, the United States potentially has two means of obtaining Swiss banking records other than through UBS's compliance with the

37. Finally, the source of any information obtained in response to a request made under the Swiss treaty is the same source from which the Internal Revenue Service will seek information pursuant to the summons – UBS. A request pursuant to the Swiss treaty is a request that the Swiss government use its legal processes to obtain information from UBS. UBS is the only source for the information, whether obtained in response to the Swiss treaty or the John Doe summons. I am not aware of any other institution or person that could provide this information without getting it from UBS in the first instance.

38. In light of the above, the records sought by the John Doe summons are not otherwise reasonably and timely available to the Internal Revenue Service.

IV. CONCLUSION

39. As a general proposition, Internal Revenue Service's experience has shown a direct correlation between unreported income and the lack of visibility of that income to the Internal Revenue Service. That is, income not subject to third party reporting (such as on Forms 1099) is far more likely to go unreported than income that is subject to such reporting. This general proposition is buttressed by examples such as Igor Olenicoff. In short, the Internal Revenue Service's experience provides a reasonable basis to believe United States taxpayers with "undeclared" offshore accounts with UBS are not in compliance with internal revenue laws with respect to such accounts.

I declare under penalty of perjury, pursuant to 28 U.S.C. Section 1746, that the foregoing is true and correct.

Executed this 26th day of June 2008.

DANIEL REEVES
Revenue Agent
Internal Revenue Service