UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

DUCOTE JAX HOLDINGS, L.L.C.,	*	**CIVIL ACTION**
	*	**NO. 04-1943**
Plaintiff,	*	
	*	**SECTION "L"**
VERSUS	*	**Judge Eldon E. Fallon**
	*	
BANK ONE CORPORATION, *et al.*,	*	**MAGISTRATE DIVISION (2)**
	*	**Judge Joseph C. Wilkinson, Jr.**
Defendants.	*	
	*	

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SECOND AMENDED AND SUPPLEMENTAL COMPLAINT

NOW INTO COURT, through undersigned counsel, comes Plaintiff, Ducote Jax Holdings L.L.C., who respectfully files this Second Amended and Supplemental Complaint, which amends and supplements its entire original Complaint for Damages and Injunctive Relief filed on July 8, 2004 and its First Amended and Supplemental Complaint filed on October 19, 2004, as follows:

I.

PARTIES

1. Plaintiff DUCOTE JAX HOLDINGS, L.L.C. is a corporation organized under the laws of the State of Louisiana, with its principal place of business in Orleans Parish.

2. Defendant BANK ONE, NA, at all material times was, and continues to be, a national banking association organized and existing under the laws of the United States of America, with its principal place of business located in Chicago, Illinois.

3. Defendant BANK ONE, NA d/b/a BANK ONE INNOVATIVE STRATEGIES GROUP (together with Bank One, NA, "Bank One"), at all material times was, and continues to be, a national banking association organized and existing under the laws of the United States of America, with its principal place of business located in Chicago, Illinois.

4. Upon information and belief, Defendant JOHN B. OHLE, III is a natural person of the full age of majority, a citizen of the State of Illinois and a resident of the city of Wilmette, Cook County.

5. Upon information and belief, Defendant SCOTT D. DEICHMANN is a natural person of the full age of majority, a citizen of the State of Illinois and a resident of the city of Chicago, Cook County.

6. Upon information and belief, Defendant JEFFREY T. CONRAD is a natural person of the full age of majority, a citizen of the State of Illinois and a resident of the city of Naperville, Will County.

7. Upon information and belief, Defendant WILLIAM E. BRADLEY is a natural person of the full age of majority and a resident and domiciliary of the city of Hammond, Parish of Tangipahoa, State of Louisiana.

8. Defendant AMERICAN EXPRESS TAX AND BUSINESS SERVICES, INC. ("American Express") at all material times was, and continues to be, a corporation formed under the laws of the United States of America, with its principal place of business located in Deerfield,

Illinois.

9. Upon information and belief, Defendant PAUL M. DAUGERDAS (together with Paul M. Daugerdas Chartered, Donna M. Guerin, and Erwin Mayer, the "DMG Group") is an attorney and certified public accountant licensed to practice law and accountancy in Illinois and before the U.S. Tax Court and U.S. Court of Claims. Until some time in 2003, Paul M. Daugerdas was a shareholder of the Texas-based law firm, Jenkens & Gilchrist, a Professional Corporation ("Jenkens"), was also the Managing Shareholder of the Jenkens's Chicago, Illinois office; headed Jenkens's structured investment practice and tax and estate planning practice; and was (and remains) part of Jenkens. Currently, Paul M. Daugerdas is Of Counsel to Jenkens.

10. Upon information and belief, Defendant PAUL M. DAUGERDAS CHARTERED (together with Paul M. Daugerdas, Donna M. Guerin, and Erwin Mayer, the "DMG Group") , an Illinois corporation (collectively, with Paul M. Daugerdas, "Daugerdas") is a corporate entity formed by Paul M. Daugerdas to render legal services.

11. Upon information and belief, Defendant ELEANOR S. DAUGERDAS is a natural person of the full age of majority, a citizen of the State of Illinois, and, upon information and belief, a resident of the City of Wilmette, Cook County, Illinois.

12. Upon information and belief, Defendant DONNA M. GUERIN (together with Paul M. Daugerdas, Paul M. Daugerdas Chartered, and Erwin Mayer, the "DMG Group") is an attorney licensed to practice law in Illinois. At all relevant times, Guerin was and remains a shareholder of Jenkens, who assisted and participated in writing the opinion letters sent to Plaintiff's owners described herein. She also served on the committee or team of Jenkens lawyers that reviewed and approved the issuance of these opinion letters and thus provided legal services and advice to

Plaintiff.

13. Upon information and belief, Defendant THOMAS P. GUERIN is a natural person of the full age of majority, a citizen of the State of Illinois, and, upon information and belief, a resident of the City of Elmhurst, Cook County, Illinois.

14. Upon information and belief, Defendant ERWIN MAYER (together with Paul M. Daugerdas, Paul M. Daugerdas Chartered, and Donna M. Guerin, the "DMG Group") is an attorney licensed to practice law in Illinois, who was a shareholder of Jenkens until some time in 2003 and is currently Of Counsel to Jenkens.

15. Upon information and belief, Defendant JENNIFER P. MAYER is a natural person of the full age of majority, a citizen of the State of Illinois, and, upon information and belief, a resident of the City of Winnetka, Cook County, Illinois.

16. Upon information and belief, Defendant DEUTSCHE BANK AG (together with Deutsche Bank Securities, Inc., d/b/a Deutsche Bank Alex Brown, "Deutsche Bank") is a leading international financial services conglomerate, with thirteen million customers and 71,000 employees in seventy-six countries, including the United States and in Louisiana.

17. Upon information and belief, Defendant DEUTSCHE BANK SECURITIES, INC. D/B/A DEUTSCHE BANK ALEX BROWN (together with Deutsche Bank AG, "Deutsche Bank"), is a Delaware corporation with its principal place of business in New York, New York.

18. Upon information and belief, Defendant EXECUTIVE RISK INDEMNITY INC. ("Executive Risk") is a foreign corporation doing business in the State of Louisiana which has in force a policy of liability insurance providing coverage to Defendants Daugerdas, Guerin and Mayer for some or all of the damages claimed herein. Executive Risk is liable jointly and *in solido* for the

damages to Plaintiff caused by Defendants Daugerdas, Guerin and Mayer pursuant to Louisiana's direct action statute, LSA-R.S. 22:655.

19. Upon information and belief, Defendant ABC INSURANCE COMPANY, whose exact name is unknown at this time, had in force a policy of liability insurance providing excess coverage to Defendants Daugerdas, Guerin and Mayer for the damages claimed herein. ABC Insurance Company is liable jointly and *in solido* for the damages to Plaintiff caused by Defendants Daugerdas, Guerin and Mayer pursuant to Louisiana's direct action statute, LSA-R.S. 22:655.

20. Upon information and belief, Defendant DEF INSURANCE COMPANY, whose exact name is unknown at this time, had in force a policy of liability insurance providing coverage to the Deutsche Bank defendants for the damages claimed herein. DEF Insurance Company is liable jointly and *in solido* for the damages to Plaintiff caused by the Deutsche Bank defendants pursuant to Louisiana's direct action statute, LSA-R.S. 22:655.

21. Upon information and belief, Defendant GHI INSURANCE COMPANY, whose exact name is unknown at this time, had in force a policy of liability insurance providing excess coverage to the Deutsche Bank defendants for the damages claimed herein. GHI Insurance Company is liable jointly and *in solido* for the damages to Plaintiff caused by the Deutsche Bank defendants pursuant to Louisiana's direct action statute, LSA-R.S. 22:655.

II.

JURISDICTION AND VENUE

22. This Honorable Court has jurisdiction over this civil action pursuant to 18 U.S.C. §§1964(a) and 1964(c), and 28 U.S.C. §§1331 and 1337. This is a civil action arising under 18 U.S.C. §§1961-1968, §901(a) of Title IX of the Organized Crime Control Act of 1970, as amended,

otherwise known as the Racketeer Influenced and Corrupt Organizations Act ("RICO"), and in particular, under 18 U.S.C. §1964 and other causes of action as set forth hereafter. This Court has supplemental jurisdiction over Plaintiff's state-law claims pursuant to 28 U.S.C. § 1367.

23. Venue lies in this district pursuant to 18 U.S.C. §1965 and 28 U.S.C. §1391. Defendants at relevant times conducted substantial business in this district. The violations occurred in this district. Defendants transact or have transacted their affairs in this district, and their concerted conduct, upon which this action is founded, was directed at and intended to injure Plaintiff in this district.

24. Defendants, either on their own or through their agents, at the time of the commission of the acts alleged hereunder, were found in, and/or transacted business in the State of Louisiana, and the cause of action which is the object of this Complaint arises out of business transactions in the State of Louisiana, including specific acts within this district.

25. Defendants, either on their own or through their agents, conspired to commit within the State of Louisiana the wrongful acts alleged in this Complaint and/or committed or participated in the commission of those acts within or without the State of Louisiana, purposefully directing their wrongful acts toward the forum of Louisiana, causing in Louisiana, directly or indirectly, the violations of RICO and the other causes of action set forth herein and Plaintiff's resultant injuries.

26. Defendants' racketeering activities were conducted through a pattern of acts and transactions which occurred and/or had their effect within the State of Louisiana, in this district.

27. In connection with the acts and conduct described herein, the Defendants directly or indirectly used the means of interstate commerce, including the mails and telephones.

III.

BACKGROUND FACTS

A. INTRODUCTION

28. Plaintiff brings this action against a major national bank, Bank One; three of its executives; an international financial institution, Deutsche Bank; a division of American Express; three Illinois tax attorneys, and a Louisiana attorney for their roles in soliciting and inducing Plaintiff to participate in a tax strategy that the federal government has found to be an unregistered tax shelter and to file tax returns premised on the assumption that the strategy was lawful even though the Defendants knew or should have known it would not be.

29. Plaintiff alleges claims under RICO, as well as under state-law for unjust enrichment, breach of fiduciary duty, fraud, negligent misrepresentation, breach of contract, and civil conspiracy. Plaintiff seeks disgorgement of the unethical, excessive, and illegal fees paid to the Defendants, plus compensation for all other damages sustained, including without limitation all fees and costs it has or will incur responding to the federal and state tax agencies as a result of the Defendants' actions, and any additional amounts, such as taxes, interest, and penalties, that may be assessed against it by the federal and state tax agencies, all of which damages must be trebled under RICO. Plaintiff also seeks all attorneys' fees and costs incurred in this matter under RICO.

30. The Defendants entered into various arrangements amongst themselves to market and promote certain tax strategies to high net-worth individuals and business entities in order to generate fees that have been reported to exceed $250 million. The Defendants arranged to solicit high net-worth participants, like Plaintiff, who were induced to engage in this tax strategy and other transactions and pay the Defendants and their co-conspirators exorbitant fees by misrepresentations

and advice that the Defendants knew or should have known were improper and illegal.

31. Among other things, the Defendants colluded in order to induce Plaintiff and others to engage in these tax strategies by unequivocally representing that the tax strategies had been vetted by major law firms and was lawful, by representing that these same law firms would provide legal opinions that attested to that characterization, and by assuring Plaintiff that the tax strategies provided protection against penalties that the tax authorities could assess in the unlikely event that they challenged the tax strategies' legitimacy. This advice has proven disastrous for Plaintiff, in that it has paid a significant amount of fees to the Defendants only to receive erroneous and incompetent advice that (a) has caused Plaintiff, and its owners, to be threatened with the assessment of substantial additional taxes, plus interest and penalties, (b) has prevented Plaintiff from availing itself of legitimate tax opportunities and deductions, and (c) has caused or will cause Plaintiff to pay substantial amounts to rectify the misconduct of the Defendants.

32. As described in more detail below, the Defendants abused their position of trust in order to generate exorbitant fees for themselves and their associates by marketing a scheme to reduce their clients' income taxes that Defendants' represented as being new and unique and, as such, not substantially similar to transactions that had been deemed abusive by the Internal Revenue Service ("IRS"). To the contrary, all of the Defendants knew that the tax strategy they were marketing and promoting was similar to prior strategies found abusive by the IRS and that, as a result, it would be intensely scrutinized and likely regarded as a sham by the tax authorities.

33. Further, the Defendants failed to disclose to their clients that they had successfully solicited hundreds, perhaps over a thousand, other individuals and business entities to participate in this tax scheme; instead, the Defendants deliberately misled each of their clients into believing that

the number of other participants was extremely limited. Although the Defendants knew or should have known that the tax scheme they promoted would likely be deemed illegal and/or abusive, the sheer volume of transactions for which no economic loss was sustained that were sold by the Defendants foreclosed any possibility that the tax authorities would find in favor of their clients.

34. Finally, in contrast to the Defendants' arguments in their Motions to Dismiss, no securities were purchased or sold in connection with these transactions; rather, the Defendants caused Plaintiff to purchase so-called Digital Options, which are nothing more than wagers that a certain commodity or equity will be at or beyond (or beneath) a given price on a certain date and time. Moreover, the fraud described in this Complaint is strictly based on the unlawful misrepresentations utilized by Defendants to solicit Plaintiff into paying outrageous fees in exchange for arranging an unlawful and/or abusive tax strategy created, marketed and promoted by Defendants and their associates, not the purchase or sale of securities.

B. THE DEVELOPMENT OF THE SCHEME TO SELL DIGITAL OPTIONS

1. About Bank One, Deutsche Bank, and Jenkens & Gilchrist

35. Bank One, which was originally incorporated in Ohio, is a national bank holding company which claims to provide a full range of consumer and commercial banking and related financial services. As of December 31, 2003, Bank One reported that its net income for 2003 was $3.5 billion and that its total assets exceeded $325 million.

36. On July 1, 2004, Bank One merged with JPMorgan Chase & Co. JPMorgan Chase, which is headquartered in New York, has assets in excess of $1.1 trillion and operations in more than 50 countries. Although Bank One continues to maintain its separate identity and operations, the conglomerated firm claims itself to be an international leader in investment banking, financial

services for consumers and businesses, financial transaction processing, asset and wealth management and private equity.

37. Deutsche Bank, founded in 1870, is a joint stock company principally dedicated to financing foreign trade. Deutsche Bank does business in major financial and banking markets in Germany, Europe and the rest of the world; and, as of December 31, 2002, had total assets of approximately $1.25 trillion. Deutsche Bank offers various investment, financial and related products and services to consumer and corporate clients worldwide. Deutsche Bank has roughly 67,700 employees and more than 1.3 million customers in 76 countries worldwide; more than half of Deutsche Bank's staff works outside of Germany.

38. Deutsche Bank claims to provide its private clients with all-round service extending from account-keeping and cash and securities investment advice to asset management. In addition, Deutsche Bank claims to have a leading position in international foreign exchange, fixed-income and equities trading.

39. Deutsche Bank holds itself out to be a pre-eminent provider of liquidity in the world's foreign exchange markets and a recognized leader in all aspects of foreign exchange. According to its website, it is consistently ranked as one of the top three global foreign exchange providers by *Euromoney* Magazine's industry standard annual Foreign Exchange Poll, both in terms of client perception and market share.

40. Deutsche Bank's Foreign Exchange claims to be committed to the core values of client focus and innovation that allegedly characterize all its wholesale client businesses. It emphasizes its ability to find the most creative solution available to individual client problems.

41. Deutsche Bank claims that its foreign exchange options franchise is unsurpassed

among major players. It further states that its options desk is fully integrated with all parts of its global foreign exchange operations, giving clients 24-hour access to a world of speculative and hedging opportunities.

42. At the time of the events in question, Jenkens was one of the nation's largest law firms with over 600 attorneys and offices in nine major cities throughout the United States. It claims expertise in a variety of industries and market segments, including Anti-Trust, Bankruptcy, Construction, Securities, Financial Institutions, Financial Services, Environmental, Franchise and Distribution, Health, Immigration, Intellectual Property, International Tax, Litigation, Technology, and Real Estate Law.

2. <u>About Digital Options</u>

43. An option gives a buyer the right to buy or sell something at a definite price for a definite period of time, regardless of that something's then market price on the open market. That "something" may be stock, bonds, commodities (such as coffee or pork bellies), or intangible market valuations such as the Standard & Poors (the "S&P") composite value. Options are said to be "in the money" if the price of the underlying "something" makes exercising the option profitable. Similarly, options are said to be "out of the money" when exercising the option would result in no gain or a loss. Although options were originally primarily developed as a "hedge" against declines in other investments, "plain vanilla" options have spawned a host of derivatives which sometimes hang by only a slender thread from any underlying investment or in some cases – like here – not at all.

44. Options may be either "American-style" or "European-style," depending upon whether the option purchaser has the right to exercise the option at any time before expiration or only

upon the designated expiration date. For example, assume an investor buys a "call" option on 1000 shares of ABC stock with a "strike price" of $100 and an expiration date of July 16, 2003. This option gives the investor the right to purchase 1000 shares of ABC for $100. Under an American-style option, the option holder can exercise the option by purchasing the shares at any time he chooses prior to July 16, 2003. Under a European-style option, the option holder can only elect to exercise the option on July 16, 2003, and perhaps, as was true in this case, only at a certain time on that date.

45. Digital Options are "digital" in the sense that the investor wins or loses a pre-determined amount in full, but only if the strike price is met – thus, the option is either on or off, like a digital (binary) 1 or 0. As a result, Digital Options provide an investor with the same payout no matter how far above the strike price the underlying price goes. For example, a Digital Option may look as follows: an investor will receive $1,000 if ABC Corp. closes at or above $12 per share on June 24, 2003. If the price of ABC Corp. is at or above $12 per share on the closing date, the investor is paid $1,000. If ABC does not close at or above $12 per share, the investor gets nothing and loses what he originally paid for the option. No matter the outcome, however, **stock in ABC Corp. never changes hands**. Digital Options are, in reality, nothing more than wagers that a certain commodity or equity price will be at or beyond (or beneath) a given price on a certain date.

46. Digital Options are ordinarily less expensive to purchase than standard options. A Digital Option price is influenced by many of the same factors as any other option, such as the price of the underlying commodity, the exercise price, the time to maturity, the volatility of the underlying commodity, and short-term interest rates. A key disadvantage of Digital Options is a limited profit potential.

3. Defendants Develop the Plan to Market the FX Contracts

47. The plan to market the foreign exchange digital options contracts (the "FX Contracts") was developed in the mid- to late-1990's by individuals at Deutsche Bank and Defendant Paul Daugerdas, who had a professional and social relationship with several Deutsche Bank executives for many years prior thereto. Prior to 1994, Defendant Daugerdas was employed by Arthur Anderson as, *inter alia,* the Partner in charge of the Futures and Options Tax Practice. From 1994 to December 28, 1998, he was a partner at the law firm of Altheimer & Gray in Chicago, Illinois, where he was Chairman of its Tax Department. Since December 29, 1998, Daugerdas has been a partner in Jenkens' Chicago office. At all material times, the remaining members of the DMG Group, Defendants Donna Guerin and Erwin Mayer, worked for Daugerdas at Altheimer & Gray and then became partners at Jenkens' Chicago office.

48. From 1991 until October 1999, Daugerdas apparently marketed a tax strategy in which a prospective client borrows a treasury security, sells the security short, and then contributes the proceeds to a partnership in exchange for a partnership interest. Although the issue is hotly contested, Daugerdas boasts that he independently developed the idea of substituting options in place of treasuries sometime in 1995 or 1996. He contends that after the House Ways and Means Committee of the United States Congress proposed legislation in October of 1999 that would, if passed, adversely impact the use of treasuries in the short-sale strategy, he began to employ the option strategy for his clients.

49. The result was a tax strategy where a taxpayer purchases and writes options and transfers these option positions to a partnership. As a result, the taxpayer claims that the basis of the taxpayer's partnership interest is increased by the cost of the purchased options, but is not reduced

by the taxpayer's obligation with regard to the options written. The use of European-style digital options in this transaction is essential because it permits significant leverage to be obtained at relatively modest cost and minimum risk.

50. Indeed, to hold the risk and the resulting profit potential to a minimum, the Defendants structured the FX Contracts as follows: Each client entered into two opposing transactions[1] – one where the client would be **PAID** if the spot rate on a particular foreign currency[2] was at or above a certain rate, and one where the client would have to **PAY OUT** if the spot rate was at or above a certain rate. The two rates that were set (one where the client would be PAID and one where the client would PAY OUT) were different by only *fractions of a penny*. On all of the FX Contracts, the trigger (*i.e.,* the event which causes a payoff) occurred when the spot rate on the underlying currency pair (*e.g.*, Japanese Yen vs. U.S. Dollar, Euro vs. U.S. Dollar, or Canadian Dollar vs. U.S. Dollar) was at or above a specific spot rate *on a certain date at a certain time*. Thus, there was almost no chance of only one position being acted upon. Either the spot rate would be above both, so both were acted upon, or the spot rate would be below both, so neither was acted upon.

51. To further ensure control of the transaction (that either both or neither one were acted upon), the ability to determine when and if the event was triggered was retained by Deutsche Bank,

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[1] The two transactions, although purportedly independent, were actually neither independent nor even transactions. Each client and Deutsche Bank entered into one form contract memorializing both what was bought and what was sold, and without providing further collateral the client could not transfer the positions separately. Further, the FX Contracts were not something traded on any recognized exchange but were simply a matter of private contract between the participants. Finally, neither party had any rights to take possession of the "underlying currency." As a result, the FX Contracts amounted, in actuality, to a contractual wager (i.e., a "bet") based on movements in foreign currency prices, without any real possibility of foreign currency ever changing hands between the parties. Of course, the Plaintiff was unaware of these aspects of the FX Contracts.

[2] Foreign currency was used so that the loss claimed could be either capital or ordinary, depending on the need, under § 988 of the Internal Revenue Code.

with the stipulation that Deutsche Bank, as the "calculation agent," could choose to accept or disregard any spot rate. When these two elements are combined – *i.e.*, the incredibly close proximity of the trigger spot rates (hundredths of a penny apart) and the ability to choose the spot rate that determines if the trigger occurred – the transactions had virtually no risk of just one of the paired transactions being exercised. Buried in a footnote in some, but not all, of Jenkens' opinion letters issued after the transaction was completed, Jenkens referred to the small chance of this occurring as "lottery-type" winnings. Of course, the Defendants never informed the Plaintiff that it had as good of a chance of winning the lottery as it had of earning a profit on the FX Contracts.

52. Upon information and belief, the Defendants structured the FX Contracts so that the total of fees to them and others was between five and one-half percent (5.5%) and nine and one-half percent (9.5%) of the tax savings the client desired to achieve. Of this amount, between one percent (1%) and five percent (5%) went to Deutsche Bank as the "spread" between the two positions in the FX Contract (*i.e.*, the difference between what was paid for buying one position and what was received for selling the other), three percent (3%) went to Jenkens for having "developed" the FX Contract as a tax strategy and writing an opinion letter on the transaction, and one and one-half percent (1.5%) went to Bank One and others (the "Marketing Participants"), who participated in the transaction by introducing and recommending the FX Contracts, as part of various tax strategies, to long-time clients who trusted them. The Marketing Participants included, *inter alia,* all of the Defendants, among others known and unknown.

53. In this case, Deutsche Bank designed and sold the FX Contracts, but Bank One, who helped develop later versions of the tax strategies, marketed and promoted the tax strategy to the Plaintiff, including giving advice on the tax aspects of the strategy.

54. The Plaintiff entered into the FX Contracts. In this case, the options expired "out of the money," thus allowing Deutsche Bank to retain the premiums it had received on the FX Contracts. Plaintiff also paid fees, sometimes unknowingly, to Jenkens, Bank One, and others.

55. Defendants, singly and in concert, directly or indirectly, engaged in a common plan, transaction and course of conduct described herein in connection with the purchase and sale of the FX Contracts, pursuant to which they knowingly or recklessly engaged in acts, transactions, practices and a course of business which operated as a fraud upon Plaintiff. Further, Defendants made various false statements of material fact, and omitted to state material facts which made statements misleading, to Plaintiff.

56. The purpose and effect of Defendants' plan, transaction, and course of conduct was to generate huge fees by co-promoting and serving as a counter-party for the FX Contracts as part of an alleged tax-savings strategy.

57. Defendants either had actual knowledge of the misrepresentations and omissions of material fact set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and disclose the true facts, even though such facts were available to them. In this regard, Defendants' acts and omissions included, *inter alia*:

- Failing to disclose to Plaintiff the true likelihood that the FX Contracts would pay out;
- Failing to disclose to Plaintiff that the Defendants retained virtually unlimited discretion to determine whether the FX Contracts would pay out and therefore, could ensure, if they so chose, that the FX Contracts would *not* pay out;
- Failing to apprise Plaintiff that the FX Contracts had no reasonable possibility of a

profit (certainly not in excess of the fees paid), and that, in reality, the net effect of the options they were purchasing and selling was nothing more than a wager, like buying a lottery ticket, on where the price of the underlying currency would be at exactly 10 a.m. on a given date thirty days hence;[3] and

- Failing to disclose to Plaintiff that this strategy was designed and created by Daugerdas, Bank One and others.

58. As a result of and in reliance on these misrepresentations, omissions, and promises, Plaintiff purchased the FX Contracts and engaged in the strategies at issue.

59. Had Plaintiff known of the material adverse information which Defendants did not disclose, it would not have purchased the FX Contracts or engaged in the Strategies at issue.

60. The Defendants owed duties to the Plaintiff. These duties included the duty to:

- Exercise prudence, caution and care in recommending and entering into the FX Contracts for and with Plaintiff; and
- Exercise their responsibility to deal fairly and in good faith and their fiduciary responsibilities of care and loyalty to Plaintiff.

61. Defendants intended to deceive Plaintiff, as evidenced by the aggressive push Defendants took, directly and through the Marketing Participants, to convince Plaintiff to enter into the FX Contracts and engage in the Strategies at issue. In combination with the relatively short time Plaintiff was given to consider the transactions and the transactions' complete failure to achieve their intended purpose, intentional deceit is the most plausible explanation for Defendants' behavior.

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[3] Unbeknownst to the Plaintiff, it was more like placing a wager where the "House" completely controls the outcome, as further described herein.

62. It is evident that Defendants chose to defraud the Plaintiff for personal gain in the farm of outrageous fees from unsuspecting "clients." These transactions to defraud were perpetrated through Defendants' discrete acts of misrepresentation.

C. THE ENTERPRISE IS FORMED AND THE SCHEME IS PUT IN ACTION

63. Based on information and belief, the DMG Group and, in many instances, Deutsche Bank, recruited Bank One and others as Marketing Participants to assist them in marketing the tax strategies at issue.

64. Why did the DMG Group and Deutsche Bank recruit the other Defendants to sell the Strategies? Simply stated, people trust their attorneys, accountants, and advisors. Wealthy clients place a tremendous amount of trust and faith in the advice and recommendations of their attorneys, accountants, and advisors. Attorneys, accountants, and advisors know their clients' finances better than just about anyone else. As a result, the DMG Group and Deutsche Bank knew that law, accounting, and investment firms had an established market for these tax strategies. The DMG Group and Deutsche Bank knew that if these firms recommended the tax strategies to their wealthy clients, the clients would more than likely do the deal without questioning the details of the particular strategy.

65. Why were firms like Bank One, American Express, and the other Defendants eager to participate in selling these strategies? And why did Bank One and the other Defendants in turn recruit others into their scheme to sell these tax shelters? MONEY! The fee to each of the participants in these tax strategies was not based on an hourly rate or time spent working on the deal; rather, the fee was based solely on "the size" of the transaction. In other words, the bigger the deal, the larger the fee shared by the Defendants. Thus, these Defendants had a motive to sell as many tax

strategies as possible, as large as possible. To all of the Defendants, "money" was clearly the name of the game.

66. The Defendants identified potential wealthy clients and set up meetings to discuss the transaction. The Defendants, capitalizing on the close relationship they had with their respective clients, gave the sales presentation. The crux of the sales pitch was always that a major law firm (*i.e.*, Jenkens) would prepare an "independent" opinion letter confirming the propriety of the tax strategies, which would supposedly provide insurance in the event of an audit. The meetings were scheduled either with existing clients of the Defendants or, taking the plan a step further, with clients of other accounting firms or investment advisors. In either case, the meetings were in large part facilitated by promising individual rewards to those who arranged them, whether they were inside or outside of that particular Defendant's company.

67. How did the Defendants intend to get to these unsuspecting "targets"? Upon information and belief, the Defendants developed, among other things, a concept to use "intermediaries" such as Bank One to get to the "targets." This marketing approach not only capitalized on the relationships third parties had with their clients, but actually envisioned that each Defendant would also allow others, such as Bank One, to "front" for them to increase their marketing success.

68. The chief, if not only, goal of the Defendants was to make money and the best interests of their clients (a/k/a the "targets") were secondary at best. Accordingly, the DMG Group and the other Defendants (or Marketing Participants) entered into an arrangement where each would receive a certain portion of the fee for each transaction sold, and Deutsche Bank would receive at least the premium under the FX Contracts.

69. Based on information and belief, the DMG Group prepared an opinion letter opining as to the propriety of its strategies long before the Defendants began to solicit clients. The opinion letter was a "canned," "prefabricated" form that was utilized, with minor changes based on the particular client, for each and every strategy sold across the country. Indeed, "macros" or "templates" of such opinion letters were actually used, requiring only that entries to certain "fields" be made to generate a "customized" opinion letter for each particular client.

70. Based on information and belief, this team of lawyers, banks, and others devised and implemented a well-planned sales strategy that focused on leveraging trust and confidence, coupled with pressure as needed, to sell the strategies to trusting clients. The Defendants identified the potential wealthy clients and set up meetings to discuss the strategies. Bank One, capitalizing on the close relationships it had with the individual owners of Plaintiff, gave the sales presentation. The crux of the sales pitch was that a major law firm, Jenkens, would prepare an "independent" opinion letter confirming the propriety of the strategies, which would supposedly provide "insurance" in the event of an audit.

D. THE ENTERPRISE SOLICITS THE PLAINTIFF

71. Based on the professional "weight" and public reputations of Jenkens and the Bank One and Deutsche Bank Defendants, the Ducotes agreed to engage in the tax strategies.

72. Although the Plaintiff's owners are successful business people, they do not have knowledge about complex tax and legal matters. Thus, the Plaintiff relied on the Defendants for their "expertise."

73. None of the Defendants ever told the Plaintiff that the strategies were actually created and designed, and would be implemented, by Bank One, the DMG Group and Deutsche Bank.

Rather, the Defendants told the Plaintiff or left Plaintiff with the impression in some instances that the strategies were Deutsche Bank strategies, despite the fact that they were actually created, designed and, for the most part, implemented by Bank One and the DMG Group. Indeed, the Plaintiff was never made aware that the DMG Group was providing a legal opinion as to the validity of its own tax shelter: which as a result was not in fact an "independent" opinion letter.

74. The Defendants' role in the scheme (including without limitation Deutsche Bank) was not limited to investment advice. To the contrary, the Defendants discussed all aspects of the strategies with the Plaintiff, including the alleged tax benefits of the strategy. For instance, the Defendants informed the Plaintiff that by forming a partnership to engage in the strategies at issue, it was possible to create large capital losses for tax purposes that would largely eliminate or offset their expected substantial capital gain and income. The Defendants informed the Plaintiff that the strategies at issue would result in either a large profit or a small loss in real dollars but that any small "real" loss would be more than offset by the tax savings from the large capital loss generated by the strategies at issue.

E. THE FEATURES OF THE STRATEGIES

75. Upon information and belief, the steps of one of the strategies employed on the Plaintiff's behalf was as follows:

a. First, the individual owners of the Plaintiff would sell a short option and purchase a long option in almost identical amounts on a foreign currency with different (but narrow) strike prices, each to expire in 30 days. The cost of the long option, though large, would be largely (although not entirely) offset by the premium earned on the sale of the short option. The individual owners of

the Plaintiff would form a single-member limited liability company ("LLC") for the purpose of purchasing the options;

b. Second, the individual owners of the Plaintiff (through the LLC) would contribute their options to a general partnership formed solely for the purpose of conducting the tax transactions. After 30 days, the long and short options would expire either "in or out of the money," resulting in a gain or loss, depending upon the exchange rate between the U.S. dollar and the relevant foreign currency at that time;

c. Third, the individual owners of the Plaintiff would make a capital contribution consisting of cash or other capital assets to the partnership; if cash was contributed, it was sometimes used to purchase capital or ordinary assets (depending on whether a capital or ordinary loss was being "created");

d. Fourth, the individual owners of the Plaintiff would contribute their interests in the partnership to an S Corporation, causing the termination of the partnership as a matter of law; and

e. Fifth, the S Corporation would sell the capital or ordinary assets contributed by the individual owners of the Plaintiff. These assets would have an artificially inflated basis and their sale would lead to a substantial unrealized short-tern capital loss and/or ordinary loss.

76. Each of the steps proposed by the Defendants, acting pursuant to an undisclosed arrangement, were to be fully planned in advance to reduce or eliminate tax liability for the Plaintiff's substantial capital gains.

77. The Defendants advised the individual owners of the Plaintiff that the basis of their interest in the partnership would be increased for tax purposes by the purchase cost of the Long Option, but not decreased by the premium earned by the Plaintiff on the Short Option. They further advised that, as a result, upon the contribution of the partnership interest to the S Corporation and the sale by the S Corporation of its assets, the S Corporation would realize a large capital or ordinary loss that could be applied to substantially reduce or eliminate the large capital gains or ordinary income realized by the Plaintiff, thus substantially reducing or even eliminating the Plaintiff's tax liability.

78. The Defendants, acting pursuant to an undisclosed arrangement with Jenkens, further advised the Plaintiff that the precise amount of loss to be generated by the strategies would be chosen beforehand, but should not be a loss so large that it would offset the capital gain or ordinary income entirely.

79. The Defendants informed the Plaintiff that depending on the exchange rate between the U.S. dollar and the foreign currencies involved in the options transactions, there was a reasonable chance of realizing a pre-tax gain on the FX Contracts, although a pre-tax loss might also occur. However, the Defendants assured the Plaintiff that the tax benefits of the Strategies as a whole, resulting from the creation of losses to offset gains and/or income, far outweighed any losses that might be incurred as a result of the FX Contracts.

80. The Defendants further advised the Plaintiff that if the IRS audited their tax returns as a result of the strategies, the DMG Group's "independent" opinion letter would confirm the propriety of the strategies and of claiming the resulting losses on their tax returns. This "independent" opinion letter would enable the Plaintiff to satisfy the IRS auditors as to the propriety

of the tax returns. As noted, the DMG Group had already prepared the "canned" and "prefabricated" opinion letters approving the strategies, and needed only to fill in several blanks for each of the many clients to which they rendered such opinion letters.

81. The Defendants advised the Plaintiff that the capital and ordinary losses created by the strategies were legitimate and in accordance with all applicable tax laws, rules, and regulations. In particular, the Defendants advised the Plaintiff that the strategies were not a "sham transaction" that would be ignored or disallowed for tax purposes and that the "independent" opinion letter from the DMG Group would confirm this.

F. IRS NOTICE 1999-59: TRANSACTIONS LACKING IN "ECONOMIC SUBSTANCE" ARE ILLEGAL

82. On December 27, 1999, the IRS issued IRS Notice 1999-59, entitled "Tax Avoidance Using Distribution of Encumbered Property." In this Notice, the IRS stated:

> The Internal Revenue Service and Treasury Department have become aware of certain types of transactions as described below, that are being marketed to taxpayers for the purpose of generating tax losses. This notice is being issued to alert taxpayers and their representatives that the purported losses arising from such transactions are not properly allowable for Federal income tax purposes. . . . Through a contrived series of steps, taxpayers claimed tax losses for capital outlays that they have in fact recovered. Such artificial losses are not allowable for Federal income tax purposes.

The clear message from the IRS to Defendants was that purported losses arising from transactions wholly lacking in "economic substance" are not properly allowable for Federal income tax purposes. The Defendants completely failed to discuss and analyze the effect and significance of this IRS Notice on the strategies with the Plaintiff.

83. As a result of Notice 1999-59, the Defendants knew or certainly should have known that the IRS would assert that the purported losses arising from the strategies were improper and not

allowable for tax purposes; however, based an the information and belief, the Defendants intentionally did not disclose this information to Plaintiff and, indeed, told it the exact opposite.

G. IRS NOTICE 2000-44: THE IRS CONTENDS THAT THE STRATEGIES ARE ILLEGAL

84. In August 2000, the IRS once again clearly and unequivocally informed accountants and tax attorneys across the country that they believed the strategies such as t hose described herein were illegal. Specifically, on August 11, 2000, the IRS published Notice 2000-44, entitled "Tax Avoidance Using Artificially High Basis." This Notice concerned "similar transactions [to those described in Notice 1999-59 that purport to generate tax losses for taxpayers," thus indicating the IRS believed it had also addressed transactions like the strategies described herein in Notice 1999-59 (2000-44 was issued before the DMG Group issued their opinion letters and before Plaintiff had, in reliance on those letters and the other advice received from the Defendants, filed its tax returns).

85. Most importantly, Notice 2000-44 specified the precise transactions marketed by the Defendants to Plaintiff, under which the taxpayer purchases call options and simultaneously writes offsetting call options, transfers the option positions to a partnership, and ultimately claims that the basis in his partnership interest "is increased by the cost of the purchased call options but is not reduced under [Internal Revenue Code] § 752 as a result of the partnership's assumption of the taxpayer's obligation." The IRS stated, "The purported losses from these transactions (and from any similar arrangements designed to produce non-economic tax losses by artificially overstating basis in partnership interest) are not allowable as deductions for Federal income tax purposes." The clear message from the IRS to Defendants was that the purported losses arising from these strategies are not properly allowable for Federal income tax purposes. These Defendants, however, simply ignored the IRS and this Notice to the detriment of Plaintiff.

86. Upon information and belief, the Defendants were specifically informed by a national accounting firm, BDO Seidman, L.L.P., that, in accordance with Notice 2000-44, (i) the COBRA transaction failed to meet the IRS' definition of "economic substance;" and (ii) that certain of Notice 2000-44's requirements (*e.g.*, "list-keeping") might apply to these transactions. This information, however, was never communicated to Plaintiff.

87. Thus, there is no doubt that Defendants knew or should have known that, as a result of IRS Notices 1999-59 and 2000-44, the purported losses arising from the Plaintiff's participation in the strategies at issue were not properly allowable for Federal or State income tax purposes; however, the Defendants intentionally failed to inform the Plaintiff of this fact to its detriment. More importantly, Defendants failed to retract, modify, or qualify in any way their advice to Plaintiff, the opinions expressed in the DMG Group's opinion letters, or their advice in connection with the preparation of the Plaintiff's tax returns confirming the propriety of claiming as an increase in basis the cost of the Long Option on Plaintiff's tax returns.

88. The Defendants represented that the strategies at issue herein were legal tax shelters despite the fact that IRS Notices 1999-59 and 2000-44 expressly and unequivocally stated that the type of transaction the Plaintiff undertook, based on the advice and recommendation of Defendants, was illegal. The Defendants simply ignored the clearly stated implications of IRS Notices 1999-59 and 2000-44 and, therefore, knowingly deceived and misled the Plaintiff to its detriment.

89. The Defendants represented that these strategies were not required to be disclosed on the Plaintiff's respective federal tax returns pursuant to Treas. Reg. 5 1.601 1-4(a). Further, Defendants failed to register these strategies as a tax shelter with the Internal Revenue Service pursuant to Treas. Reg. 5 301.611 1-2 and did not advise the Plaintiff that registration of such

strategies was required.

90. Unbelievably, the Defendants actually promoted and implemented the strategies after Notice 2000-44 was issued expressly stating that these transactions were illegal and invalid, and after at least the BDO Seidman firm had internally concluded that the Notice raised serious concerns. Unfortunately, the Defendants did not disclose this important development to the Plaintiff because the Defendants knew the Plaintiff would refuse to participate in the strategies and ask for a return of its fees. Clearly, the Defendants placed their greed over the Plaintiff's best interest.

H. DEFENDANTS' REPEATED FAILURE TO GIVE FULL DISCLOSURE TO PLAINTIFF

91. As a result of IRS Notices 1999-59 and 2000-44, the Defendants knew or should have known, that they were illegally promoting an unregistered tax shelter by marketing the strategies at issue to the Plaintiff, and that the purported losses arising from the strategies were not properly allowable for Federal and State income tax purposes; however, the Defendants intentionally failed to inform the Plaintiff of this and, in fact, advised it to the contrary. Simply stated, the Defendants repeatedly deceived and knowingly misled the Plaintiff and placed their greed over the best interest of their clients.

I. THE OPINION LETTERS FOR THE PLAINTIFF'S 2002 TAXES

92. In April 2002, the DMG Group sent the individual owners of the Plaintiff virtually identical opinion letters, regarding the propriety of the strategies at issue (the "Opinion Letters"). The Plaintiff was still under the mistaken belief that the Opinion Letters set forth "independent" opinions of a law firm on the propriety of the strategies at issue.

93. The Opinion Letters were authored and prepared based, in part, on representations made by Defendants. The Opinion Letters advised the Plaintiff that, among other things:

(1) Entering into the Options will not be taxable and the Options will be treated as separate instruments for Federal income tax purposes;

(2) The various partnerships will be classified as partnerships for Federal income tax purposes;

(3) The Plaintiff's contributions of its interests in its respective Options to its respective partnerships will not result in a taxable gain or loss;

(4) The Short Options will not be a liability within the meaning of § 752 of the Internal Revenue Code of 1986, as amended (the "Code");

(5) The Plaintiff's base in its interests in its respective partnerships, after the contribution of Plaintiff's interests in its respective Options, will include the cost of the Long Option contributed, without adjustment for the Short Option;

(6) The Plaintiff's contributions of its interests in its respective partnerships to its respective corporations will not be a taxable transaction, and the corporations' bases in the respective partnership's interests contributed by the Plaintiff will be equal to its basis in such interest as of the date of such contribution;

(7) The Plaintiff's bases in its interest in its respective corporations will be increased by an amount equal to the adjusted basis of its interest in its respective partnership as of the date of contribution;

(8) The liquidation of the partnerships will not result in gain or loss recognition;

(9) The liquidation of the partnerships will result in an allocation of the partnerships' "outside" bases to the properties distributed by each respective

partnership in liquidation;

(10) The disposition by the corporations of any capital assets received in liquidation of the partnerships will result in a capital loss, while the disposition of any foreign currency will result in ordinary loss;

(11) The step transaction, sham transaction, and economic substance doctrines will not apply to disallow the results of the transactions described herein;

(12) Code Sections 707(a)(2)(B), 165(c), 465, 469 and 1092 will not apply to the transactions described herein; and

(13) Treasury Regulation section 1.701-2 will not apply to the transactions described herein.

94. Tellingly, the DMG Group's opinion letters stated that Notice 2000-44 "does not change the existing law which we rely upon herein." Based on information and belief, the Defendants were aware of the existence and effect of Notices 1999-59 and 2000-44 but intentionally failed to fully discuss or analyze the effect of the Notices on the strategies.

J. AMERICAN EXPRESS GIVES TAX ADVICE AND PREPARES SOME OF THE PLAINTIFF'S TAX RETURNS

95. American Express prepared the 2001 corporate and personal tax returns for the Plaintiff. The Accountant Defendants advised this Plaintiff that these returns were properly prepared in accordance with professional standards. American Express utilized the losses generated by the strategies in these tax returns.

96. American Express reiterated to the Plaintiff that the strategies were a legal tax shelter (despite the import of IRS Notices 1999-59 and 2000-44). These Defendants advised the Plaintiff

that as a result of the above-described series of steps taken by them in the strategies, the individual owners of the Plaintiff could properly claim losses on their individual tax returns for 2000.

97. Relying on the representations made to the Plaintiff by the Defendants, including American Express, both orally and in the prepared tax returns, the Plaintiff included the premiums *it paid* for the Long Option, but not the premiums *they received* for the Short Options, in their tax bases for computing their respective capital losses and ordinary income in their 2000 tax returns.

98. In reasonable reliance on the tax advice and professional services rendered by American Express, the Plaintiff signed and filed its 2002 income tax returns.

K. THE DEFENDANTS FAIL TO GIVE PLAINTIFF FULL DISCLOSURE

99. At no time prior to or subsequent to their implementation of the strategies at issue was the Plaintiff informed that the IRS contended that such transactions constituted tax shelters within the meaning of Code § 6111 or otherwise, and that the Defendants were therefore illegally promoting an unregistered tax shelter by marketing the strategies to the Plaintiff. The Defendants failed to inform the Plaintiff of these facts and, in fact, advised it to the contrary.

100. Between the time the Defendants advised, recommended, and pressured the Plaintiff to enter into the strategies at issue and the time the Plaintiff's respective tax returns were prepared, signed and filed, the Defendants never disclosed to Plaintiff the significance of IRS Notices 1999-59 and 2000-44. The Defendants failed to advise Plaintiff that the strategies lacked a business purpose and economic substance and, in fact, advised Plaintiff to the contrary. Based on information and belief, Defendants intentionally failed to disclose this material information to the Plaintiff.

101. As a result of IRS Notice 1999-59 issued on December 27, 1999, and IRS Notice 2000-44 issued on August 11, 2000, and otherwise, the Defendants knew or should have known,

before issuing the Opinion Letters, and before American Express prepared the Plaintiff's tax returns, that the IRS would contend that the purported losses arising from the strategies were not properly allowable for Federal or State income tax purposes. However, the Defendants intentionally failed to inform Plaintiff of this and, indeed, informed it to the contrary.

102. The Defendants failed to retract, modify, or qualify in any way their advice and opinions expressed to the Plaintiff confirming the propriety of the strategies at issue.

L. THE CONSPIRACY AMONG THE DEFENDANTS

103. On information and belief, the Defendants conspired to devise and promote the strategies at issue for the purpose of receiving and splitting millions of dollars in fees (the "Defendants' Arrangement"). The receipt of those fees was the primary, if not sole, motive in the development and execution of the transaction. Further, the amount of fees earned by the Defendants was not tied to or reflective of the amount of time and effort they expended in providing tax or accounting services, but rather was tied to the amount of capital and/or ordinary losses each client would claim on its tax returns. Indeed, Defendants devised the transaction and agreed to provide a veneer of legitimacy to each other's opinion as to the lawfulness and tax consequences of the strategies at issue by agreeing to the representations that would be made and issuing the allegedly "independent" opinions before potential clients were solicited. These "independent" opinions were prefabricated and canned opinions used for each and every client across the United States with basic factual information inserted depending upon the client.

104. The Defendants aggressively put their scheme into action. All Defendants solicited their own clients to enter into the strategies at issue. Bank One, directly or through their Marketing Participants, identified the Plaintiff as potential clients based on their knowledge of the Plaintiff's

finances. The clients became "targets."

105. Based on information and belief, before meeting with the Plaintiff, Bank One devised a game plan that included soliciting their own clients for the strategies at issue. The game plan also included a scheme wherein Bank One identified potential clients and made the aggressive presentation. Bank One contacted their clients and made one or more presentations to them. Bank One would then set up additional meetings to allow Deutsche Bank, the DMG Group and others to meet with the potential "targets." During these meetings, Deutsche Bank, along with the DMG Group and the other Defendants, would each promote and market the strategies at issue as a completely legitimate tax-savings strategy that also allowed the client the opportunity to make a significant profit on the "investment." The Defendants would each assure the "target" that a major law firm would prepare an "independent" opinion letter confirming the propriety and legality of the strategies. The Defendants touted the reputations of Jenkens, Deutsche Bank, Bank One, and others as a means to assure the "target" that the strategies were completely legal. The Defendants would not disclose the fact that they would be providing a legal opinion as to the propriety and legality of a tax transaction created, designed, and implemented by the DMG Group itself. This scheme was carried out with the Plaintiff.

106. The receipt of fees and pecuniary gain from those fees was the primary motive for the Defendants' conduct; the provision of professional services to clients was merely an incidental byproduct of, not a motivating factor for, Defendants' conduct alleged herein. Further, the Defendants' Arrangement gave each of the participating Defendants a significant pecuniary interest in the advice and professional services they would render.

107. The Defendants had a financial, business and property interest in inducing Plaintiff,

as well as other clients, to enter into the strategies at issue, and to do so, promised, opined and assured that the transactions would enable the Plaintiff to have a reasonable opportunity to make a profit and at the same time legally reduce its taxes. American Express never disclosed to Plaintiff that its representation of them and their objectivity, integrity and professional care would be materially impaired by their own interest in the transactions in violation of the American Institute of Certified Public Accountants (AICPA) Code of Professional Conduct, including Sections 53, 54 and 55.

108. Based on information and belief, each Defendant entered into the Defendants' Arrangement, whereby they agreed they would solicit each other's clients.

109. Such solicitations violated the applicable rules of conduct for accountants in that American Express conspired with and assisted the other Defendants in their violation of codes of professional conduct. In so acting, American Express violated Section 53 of the AICPA Code of Professional Conduct. 138. Based on information and belief, pursuant to the Defendants' Arrangement, the Defendants split the fee to be charged clients that participated in the strategies at issue, including the Plaintiff. Such conduct on the part of American Express violated the applicable rules of conduct for accountants, including Section 53 of the AICPA Code of Professional Conduct.

110. Based on information and belief, a portion of the fee the Accountant Defendants actually received for the strategies at issue was dependent on the results of its service and was a contingent fee within the meaning of Section 302 of the AICPA Code of Professional Conduct.

M. RECENT PRONOUNCEMENTS OF THE IRS REGARDING THE TAX STRATEGIES

111. In June of 2003, the IRS formalized its position regarding the strategies at issue and other 2000-44 transactions by issuing new regulations (the "Regulations") retroactive to October 18,

1999, and through Office of Chief Counsel Notice CC-2003-020 (the "OCC Notice"). The Regulations invalidate the strategies and the OCC Notice explains the IRS's position why. For example, in the OCC Notice, the IRS stated that it is their position that:

> (1) For written options assumed by partnerships after October 18, 1999, but before June 24,2003, the Service will apply § 1.752-6T of the Income Tax Regulations to reduce the outside basis in the partnership of the taxpayer from whom the written call option was assumed.
>
> . . .
>
> (3) For an individual partner, the loss that a partner claims resulting from the artificial inflation of the partner's outside basis in a partnership used in a Son of Boss transaction may be disallowed under § 165(c)(2) because the partner lacked the requisite economic profit objective.
>
> (4) Under § 465(c)(4), taxpayers are not considered at risk for amounts invested in the economically offsetting option positions contributed to and assumed by a partnerships [sic] formed or availed of in connection with a Son of Boss transaction as such mounts are protected against loss.

As was true with Notice 2000-44, although the IRS names these transactions as "Son of Boss" in reference to a name given by another promoter, the description of the transaction makes it clear that the strategies at issue implemented by the Defendants in this matter are included.

112. The Regulations, retroactive to before the date of the Plaintiff's transactions, thus totally invalidate the strategies implemented by Plaintiff.

113. In the OCC Notice, the IRS has also indicated it will not be relying only upon the Regulations to invalidate the Plaintiff's transactions, but will also be taking the position that the losses generated by such transactions may be disallowed under §§ 165(c)(2) and 465(c)(4) of the Code. The Opinion Letters opined that § 165(c)(2) was inapplicable to the strategies at issue. Such argument presumes the possibility of hitting the "sweet spot." In the OCC Notice, the IRS cautioned that:

> Losses claimed by individuals, other than casualty losses, are limited by § 165(c) to (1) losses incurred in a trade or business and (2) losses incurred in any transaction entered into for profit, though not connected with a trade or business. The application of § 165(c) does not require a finding that the transaction lacks economic substance.
>
> If an individual invests in a Son of Boss transaction, any loss generated either through the disposition of the partnership interest or through the disposition of assets distributed to the individual in complete liquidation of the individual's partnership interest may be limited or denied under **5** 165(c)(2) because of the lack of an economic profit objective.

114. The Opinion Letters construed § 465(c)(4) in a manner totally at odds with the IRS in the OCC Notice.

115. Finally, the IRS also takes the position in the OCC Notice, again contrary to what the Plaintiff was told in the opinion letters provided by Defendants, that the transaction may be set aside as violative of the partnership "anti-abuse" rules:

> Section 1.701 -2(a), the partnership anti-abuse rule, provides in pertinent part that subchapter K is intended to permit taxpayers to conduct joint business (including investment) activities through a flexible economic arrangement without incurring an entity-level tax.
>
> . . .
>
> ... Accordingly, if a partnership is formed or availed of in connection with a transaction a principal purpose of which is to reduce substantially the present value of the partners7 aggregate federal tax liability in a manner that is inconsistent with the intent of subchapter K, the Service can recast the transaction for federal tax purposes, as appropriate to achieve tax results that are consistent with the intent of subchapter K in light of the applicable statutory and regulatory provisions and the pertinent facts and circumstances. Thus, even though the transaction may fall within the literal words of a particular statutory or regulatory provision, the Service can determine, based on the particular facts and circumstances, that to achieve tax results that are consistent with the intent of subchapter K:
>
>> (1) the purported partnership should be disregarded in whole or in part, and the partnership's assets and activities should be considered, in whole or in part, to be owned and conducted, respectively, by one or more of its purported partners; (2) one or more of the purported partners of the partnership should not be treated as a partner; (3) the methods of accounting

> used by the partnership or a partner should be adjusted to reflect clearly the partnership's or the partner's income; (4) the partnership's items of income, gain, loss, deduction or credit should be reallocated; or (5) the claimed tax treatment should otherwise be adjusted or modified.
>
> . . .
>
> . . . the requirement that each partnership transaction or series of related transactions be entered into with a substantial business purposes is not met . . . . Although establishment of substantial business purpose is a fact specific inquiry, the reasonably expected pre-tax profit from both the economically offsetting option positions and the investment transactions is minimal when compared to the purported reduction in tax liability achieved through the Son of Boss transaction.

116. In sum, the IRS has taken multiple positions in the OCC Notice, any one of which would thoroughly invalidate the strategies at issue and cause disallowance of all losses created thereby.

117. On or about May 5, 2004, in Notice 2004-46, the IRS, in furtherance of its previous pronouncements, offered to "settle" with the Plaintiff and other like-situated taxpayers by those parties paying to the IRS (a) all of the taxes avoided by use of these transactions, (b) all interest due, (c) a 10% penalty, and (d) a loss of 50% of the fees and other "out of pocket" costs deducted. If taxpayers did not accept this offer, then the IRS indicated they would be assessed all tax and interest, lose all deductions, and be assessed a 40% penalty.

N. THE COST OF THE STRATEGIES

118. The Plaintiff lost a significant amount of money in carrying out the strategies at issue. For the strategies and tax returns in connection therewith, the Plaintiff paid fees to the Defendants and others of at least $995,000.

119. The Plaintiff also incurred and is continuing to incur significant legal, accounting, and other advisory fees in connection with rectifying the wrongs that have been perpetrated against it.

IV.

FIRST CAUSE OF ACTION

CIVIL VIOLATIONS OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT

120. Plaintiff repeats and realleges each and every prior allegation as if full set forth herein.

121. Plaintiff is a "person" within the meaning of 18 U.S.C. §1964(c).

122. At all times relevant hereto, each of the Plaintiff and Defendants were "persons" within the meaning of 18 U.S.C. §1961(3).

The RICO Enterprise

123. An enterprise need not be a specific legal entity but rather may be "any union or group of individuals associated in fact although not a legal entity."

124. The enterprise at issue in this case, for purposes of 18 U.S.C. §§1961(3) and 1962(a), 1962(b), 1962(c) and 1962(d), is an association-in-fact of all Defendants and non-defendant co-conspirators referred to herein as "the Enterprise." Additional wrongdoers that may be part of the association-in-fact enterprise (sometimes referred to herein as "Member" or "Members") include the individual Defendants themselves, those employees and agents of the Defendants and other non-defendant entities or co-conspirators that participated in the fraudulent representations to the Plaintiff, the public, the courts, and various regulatory and enforcement agencies, including several other law firms and accounting firms. In fact, at times throughout the years the Defendants conducted these schemes, the number of Members conspiring and colluding in the Enterprise fluctuated because the Defendants would solicit additional co-conspirators, such as accounting firms, but then discharge others in order to increase profitability.

125. While the Defendants participated in the Enterprise and were a part of it, the

Defendants also have an existence separate and distinct from the Enterprise.

126. Defendants maintained an interest in and control of the Enterprise and also conducted or participated in the conduct of the Enterprise's affairs through a pattern of racketeering activity.

127. Defendants' control and participation in the Enterprise were necessary for the successful operation of Defendants' scheme.

128. The Enterprise had an ascertainable structure separate and apart from the pattern of racketeering activity in which the Defendants engaged.

129. Defendants and all other Members of the Enterprise worked together to orchestrate the pursuit of customer prospects; the promotion and the sale of tax strategies; and shared fees, costs, information, resources, and the fruits of its predicate acts. The association-in-fact enterprise, Defendants and other Members of the Enterprise, was a formal, ongoing relationship which functioned as a continuing unit, pursuing a course of conduct as set forth above (*i.e.,* the pursuit of customer prospects, the promotion and the sale of the series of tax strategies, regardless of what those strategies entailed), with a common or shared purpose (*i.e.,* to convince potential clients to allow it to attempt to eliminate those clients' tax liabilities, all the while charging exorbitant fees) and continuity of structure and personnel (including partners, associates and support staff).

130. Defendants and those employed by and/or associated with the Enterprise, which engaged in interstate commerce, have conducted the affairs of the Enterprise through a pattern of racketeering activity in violation of 18 U.S.C. §§1962(a) and (b), and have conspired to violate §1962(c) in violation of §1962(d) by pursuing and soliciting clients, designing, creating, engineering, implementing, marketing, promoting and/or selling and inducing the purchase of transactions which were designed to reduce or eliminate tax liability and which have been, or will be, determined by the

IRS to be illegal and/or abusive tax shelters under IRS Notice 2000-44, IRS Announcement 2004-46, and/or other IRS Notices or Announcements.

131. All Defendants have violated 18 U.S.C. §1962(d), inasmuch as they knowingly, intentionally, and unlawfully, aiding and abetting each other, conspired to conduct and participate, directly or indirectly, in the conduct of the affairs of the Enterprise, through the pattern of racketeering activity described herein.

Defendants' Scheme

132. For a substantial period of time, the Defendants knowingly, intentionally and directly participated in, or aided and abetted, counseled, commanded, induced, procured or caused and conspired in the pursuit of and solicitation of and eventual inducement of clients to participate in tax strategies which were designed to reduce or eliminate tax liability for their clients by means of false or fraudulent representations or promises by the use of the mails and/or wires for purposes of the execution of their scheme. In furtherance of their scheme, Defendants failed to reveal to the Plaintiff the number of other participants that were pursued and solicited by the Enterprise for placement into, and that actually were induced to participate in, these same or similar tax strategies which the Enterprise knew, should have known, and was in the best position to know likely would not withstand the challenge and/or scrutiny of the IRS. This was not a single scheme intended to induce one sole victim to do anything; the Members of the Enterprise schemed to pursue and solicit several hundred, if not more than a thousand, victims, as evidenced by 1) the multiple reported cases with the same operative facts that Bank One attached to its Motion to Dismiss, 2) the July 1, 2004 IRS announcement of a turnout of more that 1,500 taxpayers electing to settle with the IRS for participating in potentially illegal or abusive tax shelters, many of whom were participants in the

scheme described herein, and 3) recent reports that Jenkens generated over $250 million in fees for its role in transactions similar to the one at issue herein, over $50 million of which went to banking institutions like Bank One.

133. The particulars of the scheme concocted by the Defendants to reduce or eliminate tax liability by means of false or fraudulent representations or promises in the instant case consist of the following:

a. In or around October of 2001, Plaintiff was approached in New Orleans by Defendant John B. Ohle, III, who proposed that the Enterprise offered new and unique products or strategies which could reduce or eliminate certain of the Plaintiff's 2001 tax liabilities.

b. Plaintiff's decision to engage the Enterprise was based on the advice, representations and recommendations of Defendant Ohle and other members of the Enterprise during the initial presentation and thereafter.

c. As a result of the interaction with Ohle and the Enterprise, Plaintiff entered into a series of transactions which were orchestrated by the Enterprise with limited foreknowledge or input from Plaintiff other than signatures giving authority to the Enterprise to act in furtherance of its promises.

d. Other members of the Enterprise were directed by John B. Ohle, III, Scott D. Deichmann and Jeffrey T. Conrad and the Enterprise to perform acts in furtherance of the scheme. Some examples include: 1) an October 29, 2001 fax from defendant Deichmann, copied to defendant Ohle, asking Jenkens to send confidentiality agreements to their client David Ducote; 2) October 30, 2001 fax from Jenkens to

David Ducote stating "at the request of John Ohle of Bank One, attached is a nondisclosure agreement for your execution;" 3) November 9, 2001 fax from defendant Bank One Innovative Strategies Group to Susan Burnside of Jenkens, asking that defendant Jeffrey Conrad be notified when the [Ducotes'] documents are ready to be picked up so that he can deliver them [to the Ducotes]; 4) November 15, 2001 fax from Jenkens to David Ducote stating "at the request of John Ohle of Bank One, attached is a nondisclosure agreement for your execution;" and 5) November 21, 2001 letter from Jenkens to David Lukinovich stating "[p]ursuant to the request of Bank One" and requesting that the Ducotes execute various documents;

e. The more clients that Ohle, Deichmann and Conrad pursued, solicited and eventually induced to participate in the scheme, the more money they themselves would earn. Moreover, other Members and co-conspirators of the Enterprise were paid out of the fees paid by Plaintiff to the Enterprise, in many cases without the knowledge of Plaintiff, in furtherance of the Enterprise. For example, Plaintiff received from the IRS documents held by Jenkens which included 1) invoices from Defendant William E. Bradley requesting payment for services rendered in the Ducote matter; 2) an invoice from David Lukinovich requesting payment for services rendered in the Ducote matter; and 3) a worksheet indicating that Jenkens owed fees to Bank One, Brady [sic] and Lukinovich in the Ducote matter, all of which invoices were never disclosed to Plaintiff.

f. Prior to and during all transactions relative hereto, the Enterprise represented to Plaintiff that these tax strategies were new and unique and as such, not substantially

similar to transactions that had been deemed abusive by the IRS in official notices and announcements. In fact, the Enterprise knew or should have known that the tax strategies they were marketing and promoting were substantially similar to prior strategies found abusive by the IRS, and, as such, would be intensely scrutinized by the federal and state tax authorities.

g. The fees paid by the Plaintiff enabled the Enterprise to pursue, solicit and induce other individuals and entities to participate in the tax strategies at issue. The fees were reinvested into the Enterprise in order to fund the Enterprise, using or investing, directly or indirectly, part of the income, or the proceeds of such income, gained from the pattern of racketeering activity alleged herein back into the Enterprise in order to be able to pursue and sold additional clients and induce them to participate in the scheme set forth herein. As set forth in Plaintiff's Rico Statement, Defendants and their co-conspirators invested the money back into the Enterprise in order to provide the funding to market their tax strategies to other high net-worth individuals and/or business entities, which also caused the injury to Plaintiff since the collective number of the strategies and/or transactions that the Enterprise designed, created, engineered, implemented, marketed, promoted and/or sold compromised the viability of all of the transactions globally. Thus, although the Defendants knew or should have known that the tax scheme they promoted would likely be deemed illegal and/or abusive, the sheer volume of transactions solicited by the Defendants foreclosed any possibility that the tax authorities would find in favor of the Plaintiff.

h. The Defendants and other Members of the Enterprise failed to disclose that there

were hundreds of other participants to whom they had sold similar or identical tax strategy products to those sold to the Plaintiff; that were involved in the same or substantially similar tax strategies designed, created, engineered, implemented, marketed, promoted and/or sold by the Enterprise.

i. The Enterprise deliberately misled Plaintiff into believing that the number of other participants was extremely limited, and as such, that the proprietary nature of the transactions would not be compromised.

j. While soliciting Plaintiff, but before the Defendants delivered an actual tax opinion, the Enterprise, through defendant Ohle, expressly and repeatedly represented to Plaintiff on the telephone that:

   i. the tax strategy was highly defensible;

   ii. if the tax strategy ever came to the attention of the IRS, at worst, the IRS would settle at a substantial discount of the tax liability otherwise due; and

   iii. due to the underlying defensibility of the strategy and the litigation risk to the IRS, the Plaintiff would not have to pay interest or penalties.

k. On April 8, 2002, months after the Enterprise had pursued and solicited Plaintiff, and months after the Plaintiff had paid the exorbitant fees to the Defendants and other Members of the Enterprise, Plaintiff received a legal opinion, backdated to January 9, 2002, and other information necessary to complete tax returns with respect to the transactions at issue. The opinions Plaintiff received stated in pertinent part: "we are of the opinion that the described tax consequences have substantial authority and that it is more likely than not that you should prevail if challenged by the IRS."

l. On May 20, 2004, the Plaintiff was notified that the transactions it had entered into *were* or would be determined to be potentially abusive pursuant to IRS Notice 2000-44, and was further notified that the deadline for disclosure and for entering into preliminary settlement discussions with the IRS, pursuant to IRS Announcement 2004-46, was June 21, 2004.

m. Plaintiff was denied the opportunity to make a well-reasoned business decision regarding the risks involved in engaging in the schemes concocted by the Enterprise, due to various misrepresentations and failures to disclose made by the Enterprise. In particular, Bank One, through the individual Defendants Ohle, Deichmann and Conrad, among others, made oral representations, both telephonically and in person, to representatives of the Plaintiff about the defensibility and validity of the underlying tax strategies as set forth above. Moreover, the Enterprise failed to notify the Plaintiff that there were many, perhaps several hundred or even more than a thousand, other individuals and/or business entities that were pursued, solicited, and induced to participate in the underlying tax strategies. Plaintiff was not even provided with the tax legal opinions until long after payment for those opinions were made.

n. The importance of the failure to tell Plaintiff about the others involved in the scheme is that the collective number of the strategies and/or transactions that the Enterprise designed, created, engineered, implemented, marketed, promoted and/or sold compromised the viability of all of the transactions globally. Thus, although the Defendants knew or should have known that the tax scheme they promoted would

likely be deemed illegal and/or abusive, the sheer volume of transactions sold by the Defendants foreclosed any possibility that the tax authorities would find in favor of the Plaintiff.

134. The Enterprise never fully disclosed the risks or clearly articulated the nature of the transactions to Plaintiff and, in fact, completely misrepresented the worst case scenario to the Plaintiff. Moreover, the Enterprise failed to even provide the tax legal opinions until *after* Plaintiff paid over a million dollars in fees for those opinions.

Predicate Acts

135. With respect to the activities alleged herein, the Enterprise acted at all times with malice toward the Plaintiff, with the intent to engage in the conduct complained of for the monetary benefit of Defendants and the Enterprise. Such conduct was done with actionable wantonness and reckless disregard for the rights of Plaintiff. These predicate acts were acts of deception which furthered the goal of soliciting clients to participate in what the Enterprise knew or should have known was fraudulent and would be deemed abusive by the IRS. Specifically, the Enterprise knew that certain of its strategies had *been* deemed abusive by the IRS and that "new" strategies that they were promoting were not different enough to survive inspection or investigation by the IRS. Moreover, the Enterprise knew that it was placing several hundred, perhaps over a thousand, individuals and/or business enterprises in these strategies, likely foreclosing any possibility that the tax authorities would find in favor of their clients.

136. With respect to the activities alleged herein, the Enterprise was seeking to aid and abet and was aiding and abetting a transaction to violate 18 U.S.C. §§1962(a), (b) and (c). Each Member of the Enterprise agreed to interfere with, obstruct, delay or affect interstate commerce by

attempting to obtain and/or actually obtaining fees to which the Enterprise was not entitled.

137. With respect to the overt acts and activities alleged herein, each Member of the Enterprise conspired with each other non-defendant entity or co-conspirator to violate 18 U.S.C. §§1962(a), (b) and (c), all in violation of 18 U.S.C. §1962(d). In violation of §1962(c), each Member of the Enterprise agreed and conspired with each other Member, including others not named as Defendants in this matter, to: 1) pursuant to §1962(a), invest fees paid by Plaintiff into pursuing and soliciting other clients, inducing and causing other individuals and business entities to participate in the tax strategies at issue; and 2) pursuant to §1962(b), acquire or maintain property interests to which the Enterprise was not entitled through its racketeering activity by charging exorbitant fees for tax strategies it knew or should have known would likely be deemed unacceptable by the IRS.

138. The Enterprise and its individual Members exceeded any legitimate role of diligent tax advisers by designing, creating, engineering, implementing, marketing, promoting and/or selling a series of these tax strategies in an attempt to conspire to obtain money in the form of fees and commissions, knowing that the underlying strategies were likely not defensible to the IRS. Upon information and belief, the Enterprise participated in some of these transactions via partnerships that it formed to make the strategies perform. Many of these tax strategies have been and/or likely will be deemed illegal and/or abusive pursuant to IRS Regulations, Notices and Announcements.

139. The Enterprise was in the best position to know that these strategies were potentially illegal and/or abusive. The Enterprise and its co-conspirators placed several hundred, perhaps over a thousand, individuals and business entities into these strategies and yet failed to reveal to the Plaintiff the number of other participants that were pursued and solicited by the Enterprise for placement into and that were actually induced to participate in the same or similar tax strategies. The

Enterprise knew, should have known, and was in the best position to know that these strategies would not withstand the challenge and/or scrutiny of the Internal Revenue Service.

140. The Enterprise and its co-conspirators failed to reveal to the Plaintiff the number of other participants that were pursued and solicited by the Enterprise for placement into and that were actually induced to participate in the same or similar tax strategies which the Enterprise knew, should have known, and was in the best position to know would not withstand the challenge and/or scrutiny of the Internal Revenue Service. The collective number of the strategies and/or transactions that the Enterprise designed, created, engineered, implemented, marketed, promoted and/or sold compromised the viability of all of the transactions globally. Thus, although the Defendants knew or should have known that the tax scheme they promoted would likely be deemed illegal and/or abusive, the sheer volume of transactions solicited by the Defendants foreclosed any possibility that the tax authorities would find in favor of the Plaintiff.

141. The Enterprise's schemes have resulted in severe financial and business losses to the Plaintiff. Moreover, as a result of the Enterprise's wire fraud and mail fraud violations, Plaintiff has suffered extensive monetary damages consisting of unexpected tax liability, fees and commissions paid to the Enterprise, as well as interest and penalties which the Internal Revenue Service will likely seek. Plaintiff has also suffered additional damages, including but not limited to opportunity costs, additional legal, tax advisor and accountant fees and reputation damage.

142. The Enterprise's documents and communications associated with the schemes at issue contained false and/or misleading representations, including but not limited to assertions that:

a. No penalties would or could be assessed by the IRS or state taxing authorities because the transaction's unique characteristics and the opinion itself provided

complete "penalty protection.."

b. A bona fide attorney-client privilege would apply to the transactions, such that the name of the Plaintiff would not and could not be revealed to any third party whatsoever, including the IRS, without the client's consent.

c. An independent third party would review and advise the Plaintiff as to the tax strategy's legitimacy.

d. These strategies were new and unique and would not be subject to the same scrutiny as other potentially illegal and abusive strategies that had been identified by the IRS in its earlier Notices and/or Announcements.

e. The tax legal opinion it provided was highly defensible.

f. If the strategies ever came to the attention of the IRS, at worst, the IRS would settle at a substantial discount of the tax liability otherwise due.

g. Due to the underlying defensibility of the opinion to the Plaintiff and the litigation risk to the IRS, Ducote Jax Holdings, L.L.C. would not have to pay interest or penalties.

143. These misrepresentations constitute "false or fraudulent pretenses, representations or promises" within the meaning of the mail fraud (18 U.S.C. §1341) and wire fraud (18 U.S.C. §1343) provisions.

144. All of the Members of the Enterprise actively participated in this elaborate and abusive scheme to obtain money from Plaintiff, even those not named as defendants in this matter.

145. Unbeknownst to the Plaintiff, the allegedly independent third parties that were assembled to review and advise as to the legitimacy of the tax strategies at issue were actually

solicited and paid by the Enterprise, and as a result, such third parties were substantially compromised and could not and did not fulfill their fiduciary and other good faith obligations to the Plaintiff. Specifically, Bradley submitted invoices in this matter presumably as a result of his having been involved in the review or mechanics of the underlying strategies. However, neither the Plaintiff nor any of its owners and affiliates have ever heard of or spoken to this attorney.

146. The numerous predicate acts of mail and wire fraud described herein are part of separate fraudulent transactions by the Enterprise designed to defraud the Plaintiff of money and property interests under false pretenses. As the victim of these unlawful patterns of illegal behavior, Plaintiff has continued to suffer losses.

147. In carrying out the overt acts and fraudulent transactions described herein, the Defendants engaged in conduct in violation of various state and federal laws and regulations, including but not limited to 18 U.S.C. §§1341, 1343, 1346 and 1961 *et seq*, and both state and federal banking laws.

148. 18 U.S.C. 1961(1) provides that "racketeering activity means any act indictable under any of the following provisions of Title 18, United States Code: §1341 (relating to mail fraud), §1343 (relating to wire fraud), and §1346 (relating to scheme or artifice to defraud).

Violations of 18 U.S.C. Sections 1341 and 1343

149. For the purpose of executing and/or attempting to execute its transaction to defraud and to obtain money by means of false pretenses, representations or promises, the Enterprise, in violation of 18 U.S.C. §1341, placed in post offices and/or in authorized repositories for mail, matter and things to be sent or delivered by the Postal Service and received matter and things therefrom including but not limited to contracts, instructions, correspondence, opinion letters, and other items.

Specifically, for example, (1) on December 10, 2001, Jenkens sent Assignment Agreements to the Plaintiff and its owners and affiliates via facsimile on December 10, 2001; (2) on December 18, 2001, Jenkens wrote a letter to the Plaintiff asking that "documents necessary to complete the investment transactions" be signed *but not dated,* presumably so that the signed documents could be backdated by the Enterprise at their convenience, as the "Termination Date" of a transaction that Jenkens entered into with Plaintiff was five days earlier, on December 14, 2003; and (3) on April 8, 2002, Jenkens sent the Plaintiff a letter enclosing the tax legal opinion, *which the Enterprise backdated to January 9, 2002.*

150. For the purpose of executing and/or attempting to execute its transaction to defraud and obtain money by means of false pretenses, representations or promises, the Enterprise, in violation of 18 U.S.C. §1343, transmitted and received by wire, matter and things therefrom, including but not limited to contracts, instructions, correspondence, opinion letters, funds and other things.

151. The Enterprise's use of the mails and wires includes private and public components.

152. The Enterprise utilized the U.S. Mail and wire to communicate among themselves, as well as with its co-conspirators and its clients. While Bank One and Plaintiff were located in New Orleans, Louisiana during the implementation of the scheme at issue, the other individual defendants lived and worked in Chicago, Illinois, and participated in this scheme from there. Other Members of the Enterprise were located elsewhere. In order to carry out and implement its scheme, the Enterprise necessarily had to communicate by the mails and wires.

153. In those matters and things sent or delivered by the Postal Service, by wire and through other interstate electronic media, the Enterprise falsely and fraudulently misrepresented and

fraudulently suppressed material facts from Plaintiff, in violation of 18 U.S.C. §§1341 and 1343, including but not limited to the following:

a. Misrepresenting the proposed transactions as unique and/or distinct from those previously designed by Members of the Enterprise itself and by other promoters;

b. Falsely claiming that the transactions and the to-be-received tax opinions would protect the taxpayers from any tax penalties;

c. Misrepresenting the likelihood that the taxpayers would prevail should a dispute arise with taxing authorities;

d. Falsely stating that the Enterprise and/or its Members would prepare and provide an initial defense should an IRS inquiry ensue;

e. Falsely claiming that the transactions and/or all of the transactions' related information and data was privileged and would be protected from an IRS summons or request to the Enterprise and/or its Members;

f. Failing to disclose that similar and potentially compromising files would be held in the custody of the Enterprise, would thus not be protected by the attorney-client privilege, and would actually be provided to the IRS;

g. Misrepresenting the volume of transactions pursued, solicited and originated by The Enterprise, specifically leading Plaintiff to believe it was one of the select clients with whom the Defendants were working to attempt to reduce or eliminate tax liability in this manner;

h. Misrepresenting the volume of transactions in which Jenkens, a Member of the Enterprise that actually provided the tax legal opinion, produced opinions;

i. Failing to disclose the true likelihood that the IRS would not accept the tax treatment of these transactions as indicated in the opinion letters, based on the transactions' similarity to other transactions that had been deemed abusive and which had also been designed, created, engineered, implemented, marketed, promoted and/or sold by the Enterprise;

j. Failing to disclose that the IRS had previously issued official notices and announcements deeming substantially similar tax strategies to be abusive and/or illegal;

k. Failing to disclose the collective number of the strategies and/or transactions that the Enterprise designed, created, engineered, implemented, marketed, promoted and/or sold, which foreclosed any possibility that the tax authorities would find in favor of the Plaintiff.

154. The Enterprise intentionally and knowingly made these misrepresentations and intentionally and knowingly suppressed material facts from the Plaintiff for the purpose of deceiving it and thereby obtaining financial gain. The Enterprise either knew, should have known, or recklessly disregarded that the misrepresentations and omissions described herein were material. Plaintiff justifiably relied on the misrepresentations and omissions in carrying out the transactions and in subsequently filing its tax returns.

155. There are numerous specific examples of the predicate acts of mail and wire fraud committed by the Enterprise pursuant to its transaction to defraud Plaintiff, including without limitation:

a. On October 29, 2001, Defendant Deichmann, copied to defendant Ohle, sent a letter

to Jenkens, via facsimile, asking them to send confidentiality agreements to the Plaintiff;

b. On October 30, 2001, Defendant Deichmann sent Plaintiff, via facsimile, an "Executive Summary" for a "Hedge Option Monetization of Economic Remainder," which outlined the tax strategy transaction at issue herein;

c. On that same date, October 30, 2001, Jenkens faxed Plaintiff, "at the request of John Ohle of Bank One," a non-disclosure agreement for services involving "certain financing structures ... developed by [Jenkens] and/or its clients, consultants or co-counsel, that provide economic, financial, business and tax advantages for individuals and companies ...";

d. On November 9, 2001, the Defendant sent a fax to Jenkens, asking that Defendant Conrad be notified when the Plaintiff's documents are ready to be picked up;

e. On November 15, 2001, Jenkens sent another fax to the Plaintiff "at the request of John Ohle of Bank One....;

f. On November 21, 2001, Jenkens sent a letter to David Lukinovich stating "[p]ursuant to the request of Bank One" and requesting that the Plaintiff's representatives execute various documents;

g. On December 10, 2001, Jenkens sent Plaintiff, via facsimile, Assignment Agreements to be executed;

h. During a telephone conference with the Plaintiff on December 11, 2001, Defendants Ohle and Deichmann re-confirmed this tax strategy and represented that there was no risk to the Plaintiff;

i. On December 18, 2001, Jenkens wrote a letter to the Plaintiff asking that "documents necessary to complete the investment transactions" be signed *but not dated,* presumably so that the signed documents could be backdated by the Enterprise at their convenience, as the "Termination Date" of a transaction that Jenkens entered into with Plaintiff was on December 14, 2003;

j. On December 21, 2001, Jenkens sent unsigned letters of authorization to the Plaintiff, via facsimile, which Plaintiff's representatives could sign in order to authorize the payment of Jenkens' fees by wire transfer; and

k. On April 8, 2002, Jenkens sent the Plaintiff a letter enclosing the tax legal opinion, *which the Enterprise backdated to January 9, 2002.*

156. Plaintiff has therefore been injured in its business or property by the Enterprise's overt acts and racketeering activities.

Pattern of Racketeering Activity

157. The violations set forth herein constitute "racketeering activities" or "predicate acts" within the meaning of 18 U.S.C. §1961(l), and include but are not limited to:

a. Misrepresenting the proposed transactions as unique and/or distinct from those previously designed by Members of the Enterprise itself and by other promoters;

b. Falsely claiming that the transactions and the to-be-received tax opinions would protect the taxpayers from any tax penalties;

c. Misrepresenting the likelihood that the taxpayers would prevail should a dispute arise with taxing authorities;

d. Falsely stating that the Enterprise and/or its Members would prepare and provide an

initial defense should an IRS inquiry ensue;

e. Falsely claiming that the transactions and/or all of the transactions' related information and data would be protected from an IRS summons or request to the Enterprise and/or its Members;

f. Failing to disclose that similar and potentially compromising files would be held in the custody of the Enterprise, would thus not be protected by the attorney-client privilege, and would actually be provided to the IRS;

g. Misrepresenting the volume of transactions pursued, solicited and originated by The Enterprise, specifically leading Plaintiff to believe it was the one of a select few clients with whom the defendants were working to attempt to eliminate tax liability in this manner;

h. Misrepresenting the volume of transactions in which Jenkens, the Member of the Enterprise that actually provided the tax legal opinion, produced opinions;

i. Failing to disclose the true likelihood that the IRS would not accept the tax treatment of these transactions as indicated in the opinion letters, based on the transactions' similarity to other transactions that had been deemed abusive and which had also been designed, created, engineered, implemented, marketed, promoted and/or sold by the Enterprise;

j. Failing to disclose the collective number of the strategies and/or transactions that the Enterprise designed, created, engineered, implemented, marketed, promoted and/or sold, which foreclosed any possibility that the tax authorities would find in favor of the Plaintiff;

k. Improperly using the position of Defendant Bank One, NA as a multibillion dollar, federally regulated financial institution in order to create a relationship of trust and confidence;

l. Taking advantage of a relationship of trust and confidence and using its knowledge of Plaintiff's finances to pursue and solicit and eventually induce Plaintiff to participate in tax strategies concocted by the Enterprise;

m. Taking advantage of a relationship of trust and confidence in recommending tax strategies concocted by the Enterprise;

n. Advising and recommending that Plaintiff engage in tax strategies concocted by the Enterprise;

o. Charging and collecting unreasonable, excessive, and unethical fees;

p. Failing to fully explain the details of the tax strategies concocted by the Enterprise before inducing Plaintiff to enter into such scheme, including: 1) failing to identify the various parties, or the roles of the parties, involved in the scheme, including but not limited to Jenkens, Daugerdas, Mayer, Guerin, Deutsche Bank, and Parse; 2) failing to reveal to the Plaintiff the number of other participants in the scheme, which Plaintiff has since discovered numbered in the hundreds and in fact probably exceeded a thousand; and 3) failing to reveal the collective number (also in the hundreds or perhaps thousands) of the strategies and/or transactions that the Enterprise designed, created, engineered, implemented, marketed, promoted and/or sold, which foreclosed any possibility that the tax authorities would find in favor of the Plaintiff;

q. Designing, creating, engineering, implementing, marketing, promoting and/or selling an abusive, improper, and invalid tax shelter that is likely to be disallowed and/or prohibited by the IRS;

r. Illegally promoting an unregistered tax shelter by marketing it to Plaintiff;

s. Failing to disclose to Plaintiff that if it filed tax returns claiming capital and/or ordinary losses based on the tax strategies concocted by the Enterprise, it would be liable to taxing authorities including the IRS for penalties and interest;

t. Advising Plaintiff that the capital and/or ordinary losses created by the tax strategies concocted by the Enterprise were legitimate, proper, and in accordance with all applicable tax laws, rules and regulations;

u. Representing and advising Plaintiff that the various entities formed to carry out the tax strategies concocted by the Enterprise had a business purpose as well as economic substance;

v. Directing and assisting Plaintiff in making cash contributions to various entities formed for the purpose of carrying out the tax strategies concocted by the Enterprise;

w. Soliciting, assembling and paying allegedly independent third parties, including but not limited to Bradley, to, upon information and belief, review and advise as to the legitimacy of the tax strategies at issue and, as a result, substantially compromising such third parties so that they could not and did not fulfill their fiduciary and other good faith obligations to the Plaintiff.

x. Making and endorsing statements and representations contained in the Enterprises' oral advice, instructions, and recommendations;

y. Defendants' directing, instructing, and assisting Plaintiff in carrying out each of the steps of the scheme concocted by defendants and other Members of the Enterprise, including directing Plaintiff to sign authorizations and agreements with third parties other than defendants, such as the following: 1) October 29, 2001 fax from defendant Deichmann, copied to defendant Ohle, asking Jenkens to send confidentiality agreements to their client David Ducote; 2) October 30, 2001 fax from Jenkens to David Ducote stating "at the request of John Ohle of Bank One, attached is a nondisclosure agreement for your execution;" 3) November 9, 2001 fax from defendant Bank One Innovative Strategies Group to Susan Burnside of Jenkens, asking that defendant Jeffrey Conrad be notified when the [Ducotes'] documents are ready to be picked up so that he can deliver them [to the Ducotes]; 4) November 15, 2001 fax from Jenkens to David Ducote stating "at the request of John Ohle of Bank One....; and 5) November 21, 2001 letter from Jenkens to David Lukinovich stating "[p]ursuant to the request of Bank One" and requesting that the Ducotes execute various documents;

z. Failing to advise, recommend, and instruct Plaintiff to amend its tax returns, timely or otherwise;

aa. Advising Plaintiff that IRS Notice 2000-44 did not apply to the tax strategies concocted by the Enterprise and/or that it did not impact such strategies, knowing all the while that other similar strategies that they had also promoted had already been deemed abusive;

bb. Failing to advise, recommend and/or instruct Plaintiff to amend its tax returns in light

of IRS Notices or Announcements or otherwise;

cc. Advising Plaintiff that the tax strategies concocted by the Enterprise were valid and proper in spite of IRS Notice 2000-44;

dd. Failing to ensure that the transactions into which the Enterprise advised each Plaintiff to enter complied with applicable State and Federal Rules and Regulations;

ee. Failing to comply with its ethical obligation to Plaintiff;

ff. Providing erroneous legal, banking and tax opinions and advice; and

gg. Enticing, recommending, advising, assisting and directing Plaintiff to enter into a transaction that, unbeknownst to the Plaintiff, likely would be deemed abusive and improper and likely would be disallowed and held invalid by the IRS on the grounds that the transaction lacked economic substance, had no business purpose, was a "sham transaction," and violated the step transaction, sham transaction, and economic substance doctrines, despite the representations to the contrary in the tax legal opinions provided by the Enterprise.

hh. Failing to notify Plaintiff that the Enterprise and its co-conspirator Members schemed to pursue, solicit, induce, and then place several hundred, perhaps over a thousand, customers into these tax strategies with full knowledge that they would not pass IRS muster.

158. The Enterprise has engaged in a "pattern of racketeering activity," as defined in §1961 of RICO, by committing and/or conspiring to commit or aiding and abetting a transaction with at least two such acts of racketeering activity, as described specifically herein, within the past ten years. In fact, upon information and belief, each of the Members of the Enterprise and its co-conspirators

have committed at minimum several hundred of acts of racketeering activity. Each act of racketeering activity was related, had similar purposes, involved the same or similar participants and methods of commission, and had similar results impacting similar victims, including Plaintiff herein.

159. The Enterprise's innumerable racketeering activities or predicate acts are related and also amount to a continuous criminal activity.

160. These predicate acts are related in the sense that they have the same purpose (to carry out the scheme described herein); result (to obtain money); victims (such as Plaintiff herein and several hundred, if not thousands, of others); method of commission (the scheme described herein); and are otherwise interrelated by distinguishing characteristics and are not isolated events, because they were carried out for the same purpose.

161. The predicate acts were committed in the same manner, and they constituted the Enterprise's "normal" way of doing business with regard to pursuing and soliciting clients, inducing them to participate and then giving tax strategy advice. Defendants are also engaged in banking activities separate and apart from the scheme described herein, and their unlawful actions which constitute the predicate acts giving rise to this RICO claim (set forth herein) are within their "normal" and "regular" way of doing business.

162. The related predicates amount to a continued criminal activity because they extended over a substantial period of time, specifically from at least 1996, when the promotion of one of the abusive transactions mentioned in the attachments to Bank One, NA's Motion to Dismiss was initiated, to at least July of 2002, when Plaintiff in the instant matter wrote a letter expressing dissatisfaction in the manner in which the "follow up, support and related reporting...have been handled."

163. The Enterprise's course of action entails a span of years, during which Defendants committed numerous, related predicate acts, as set forth specifically herein, as part of its continuing scheme. Also, the predicate acts are closely intertwined as far as actors, goals, nature, functioning and structure of the operations described herein in the persecution of Plaintiff and the Enterprise's several hundred, perhaps over a thousand, other victims.

164. The multiple acts and the continuity and relatedness of racketeering activity committed and/or conspired to or aided and abetted by Defendants, as described herein, were related to each other, amount to and pose a threat of continued racketeering activity, and, therefore, constitute a "pattern of racketeering activity" within the meaning of 18 U.S.C. §1961(5).

IV.

SECOND CAUSE OF ACTION

DECLARATORY JUDGMENT AND UNJUST ENRICHMENT

165. An actual, justiciable controversy exists between Plaintiff on the one hand and the defendants and other Members of the Enterprise on the other.

166. Had the Plaintiff not been pursued, solicited and enticed to enter into the tax strategies designed, created, engineered, implemented, marketed, promoted and/or sold by the Enterprise, it would not have paid fees to the defendants and other Members of the Enterprise. Plaintiff seeks a declaration that, due to the foregoing lack of consideration, the Enterprise has been unjustly enriched and all fees paid to the Enterprise, including but not limited to fees paid to non-defendant co-conspirator Members, should be returned to Plaintiff.

167. Finally, Plaintiff seeks an award of costs and reasonable and necessary attorneys' fees as are equitable and just.

V.

THIRD CAUSE OF ACTION

BREACH OF FIDUCIARY DUTY

168. The Enterprise was Plaintiff's fiduciary, and thus owed to Plaintiff the duties of honesty, loyalty, care and compliance.

169. The Enterprise breached its fiduciary duties to Plaintiff by advising Plaintiff to engage in the tax strategies designed, created, engineered, implemented, marketed, promoted and/or sold by the Enterprise in reliance on its advice, representations, recommendations, instructions, and opinions, which the Enterprise knew or should have known to be improper and illegal, based on Members of the Enterprise's prior experience with similar strategies which they had also promoted and which had been deemed abusive by the IRS, for the purpose of generating huge fees for the Enterprise.

170. The Enterprise breached its fiduciary duties to Plaintiff by, among others, the following acts and/or omissions:

a. Misrepresenting the proposed transactions as unique and/or distinct from those previously designed by Members of the Enterprise itself and by other promoters;

b. Falsely claiming that the transactions and the to-be-received tax opinions would protect the taxpayers from any tax penalties;

c. Misrepresenting the likelihood that the taxpayers would prevail should a dispute arise with taxing authorities;

d. Falsely stating that the Enterprise and/or its Members would prepare and provide an initial defense should an IRS inquiry ensue;

e. Falsely claiming that the transactions and/or all of the transactions' related

information and data would be protected from an IRS summons or request to the Enterprise and/or its Members;

f. Failing to disclose that similar and potentially compromising files would be held in the custody of the Enterprise, would thus not be protected by the attorney-client privilege, and would actually be provided to the IRS;

g. Misrepresenting the volume of transactions pursued, solicited and originated by The Enterprise, specifically leading Plaintiff to believe it was the only client with whom the defendants were working to attempt to eliminate tax liability in this manner;

h. Misrepresenting the volume of transactions in which Jenkens, the Member of the Enterprise that actually provided the tax legal opinion, produced opinions;

i. Failing to disclose the true likelihood that the IRS would not accept the tax treatment of these transactions as indicated in the opinion letters, based on the transactions' similarity to other transactions that had been deemed abusive and which had also been designed, created, engineered, implemented, marketed, promoted and/or sold by the Enterprise;

j. Failing to disclose the collective number of the strategies and/or transactions that the Enterprise designed, created, engineered, implemented, marketed, promoted and/or sold, which foreclosed any possibility that the tax authorities would find in favor of the Plaintiff;

k. Improperly using the position of Defendant Bank One, NA as a multibillion dollar, federally regulated financial institution in order to create a relationship of trust and confidence;

l. Taking advantage of a relationship of trust and confidence and using its knowledge of Plaintiff's finances to pursue and solicit and eventually induce Plaintiff to participate in tax strategies concocted by the Enterprise;

m. Taking advantage of a relationship of trust and confidence in recommending tax strategies concocted by the Enterprise;

n. Advising and recommending that Plaintiff engage in tax strategies concocted by the Enterprise;

o. Charging and collecting unreasonable, excessive, and unethical fees;

p. Failing to fully explain the details of the tax strategies concocted by the Enterprise before inducing Plaintiff to enter into such scheme, including: 1) failing to identify the various parties involved in the scheme, including but not limited to Jenkens, Daugerdas, Mayer, Guerin, Deutsche Bank, and Parse; 2) failing to reveal to the Plaintiff the number of other participants in the scheme, which Plaintiff has since discovered numbered in the hundreds and in fact probably exceeded a thousand; and 3) failing to reveal the collective number (also in the hundreds or perhaps thousands) of the strategies and/or transactions that the Enterprise designed, created, engineered, implemented, marketed, promoted and/or sold, which foreclosed any possibility that the tax authorities would find in favor of the Plaintiff;

q. Designing, creating, engineering, implementing, marketing, promoting and/or selling an abusive, improper, and invalid tax shelter that is likely to be disallowed and/or prohibited by the IRS;

r. Illegally promoting an unregistered tax shelter by marketing it to Plaintiff;

s. Failing to disclose to Plaintiff that if it filed tax returns claiming capital and/or ordinary losses based on the tax strategies concocted by the Enterprise, it would be liable to taxing authorities including the IRS for penalties and interest;

t. Advising Plaintiff that the capital and/or ordinary losses created by the tax strategies concocted by the Enterprise were legitimate, proper, and in accordance with all applicable tax laws, rules and regulations;

u. Representing and advising Plaintiff that the various entities formed to carry out the tax strategies concocted by the Enterprise had a business purpose as well as economic substance;

v. Directing and assisting Plaintiff in making cash contributions to various entities formed for the purpose of carrying out the tax strategies concocted by the Enterprise;

w. Soliciting, assembling and paying allegedly independent third parties, including but not limited to Bradley, to review and advise as to the legitimacy of the tax strategies at issue and, as a result, substantially compromising such third parties so that they could not and did not fulfill their fiduciary and other good faith obligations to the Plaintiff.

x. Making and endorsing statements and representations contained in the Enterprises' oral advice, instructions, and recommendations;

y. Directing, instructing, and assisting Plaintiff in carrying out each of the steps of tax strategies concocted by the Enterprise, including asking Plaintiff to sign authorizations and agreements, such as the following: 1) October 29, 2001 fax from defendant Deichmann, copied to defendant Ohle, asking Jenkens to send

confidentiality agreements to their client David Ducote; 2) October 30, 2001 fax from Jenkens to David Ducote stating "at the request of John Ohle of Bank One, attached is a nondisclosure agreement for your execution;" 3) November 9, 2001 fax from defendant Bank One Innovative Strategies Group to Susan Burnside of Jenkens, asking that defendant Jeffrey Conrad be notified when the [Ducotes'] documents are ready to be picked up so that he can deliver them [to the Ducotes]; 4) November 15, 2001 fax from Jenkens to David Ducote stating "at the request of John Ohle of Bank One....; and 5) November 21, 2001 letter from Jenkens to David Lukinovich stating "[p]ursuant to the request of Bank One" and requesting that the Ducotes execute various documents;

z. Failing to advise, recommend, and instruct Plaintiff to amend its tax returns, timely or otherwise;

aa. Advising Plaintiff that IRS Notice 2000-44 did not apply to the tax strategies concocted by the Enterprise and/or that it did not impact such strategies, knowing all the while that other similar strategies that they had also promoted had already been deemed abusive;

bb. Failing to advise, recommend and/or instruct Plaintiff to amend its tax returns in light of IRS Notices or Announcements or otherwise;

cc. Advising Plaintiff that the tax strategies concocted by the Enterprise were valid and proper in spite of IRS Notice 2000-44;

dd. Failing to ensure that the transactions into which the Enterprise advised each Plaintiff to enter complied with applicable State and Federal Rules and Regulations;

ee. Failing to comply with its ethical obligation to Plaintiff;

ff. Providing erroneous legal, banking and tax opinions and advice; and

gg. Enticing, recommending, advising, assisting and directing Plaintiff to enter into a transaction that, unbeknownst to the Plaintiff, likely would be deemed abusive and improper and likely would be disallowed and held invalid by the IRS on the grounds that the transaction lacked economic substance, had no business purpose, was a "sham transaction," and violated the step transaction, sham transaction, and economic substance doctrines, despite the representations to the contrary in the tax legal opinions provided by the Enterprise.

hh. Failing to notify Plaintiff that the Enterprise and its co-conspirator Members schemed to pursue, solicit, induce, and then place several hundred, if not more than a thousand, customers into these tax strategies with full knowledge that they would not pass IRS muster.

171. As a result of the Enterprise's conduct set forth herein, Plaintiff has suffered injury in that it, among other things: 1) paid to the defendants and other Members of the Enterprise exorbitant fees, 2) took undue financial risk, 3) likely will incur tax penalties and interest, 4) has incurred opportunity costs; 5) has and will continue to incur substantial additional costs in hiring new tax and legal advisors to rectify the situation, 6) has incurred reputation damage, and 7) has foregone alternative tax opportunities.

172. As a proximate cause of the foregoing, Plaintiff has been injured in an actual amount to be proven at trial, and should be awarded damages in accordance with the evidence, plus attorneys' fees and costs.

VI.

FOURTH CAUSE OF ACTION

FRAUD

173. The Enterprise made false and misleading statements in violation of the laws of the United States and the State of Louisiana as set forth herein.

174. Additionally, the Enterprise made misrepresentations to the Plaintiff herein for the purpose of inducing Plaintiff to participate in its schemes and to pay the Enterprise enormous sums of money.

175. In order to induce the Plaintiff to pay it exorbitant fees, the defendants and other Members of the Enterprise made numerous knowingly false affirmative representations and intentional omissions of material facts to Plaintiff, including but not limited to:

a. Misrepresenting the proposed transactions as unique and/or distinct from those previously designed by Members of the Enterprise itself and by other promoters;

b. Falsely claiming that the transactions and the to-be-received tax opinions would protect the taxpayers from any tax penalties;

c. Misrepresenting the likelihood that the taxpayers would prevail should a dispute arise with taxing authorities;

d. Falsely stating that the Enterprise and/or its Members would prepare and provide an initial defense should an IRS inquiry ensue;

e. Falsely claiming that the transactions and/or all of the transactions' related information and data would be protected from an IRS summons or request to the Enterprise and/or its Members;

f. Failing to disclose that similar and potentially compromising files would be held in the custody of the Enterprise, would thus not be protected by the attorney-client privilege, and would actually be provided to the IRS;

g. Misrepresenting the volume of transactions pursued, solicited and originated by The Enterprise, specifically leading Plaintiff to believe it was the only client with whom the defendants were working to attempt to eliminate tax liability in this manner;

h. Misrepresenting the volume of transactions in which Jenkens, the Member of the Enterprise that actually provided the tax legal opinion, produced opinions;

i. Failing to disclose the true likelihood that the IRS would not accept the tax treatment of these transactions as indicated in the opinion letters, based on the transactions' similarity to other transactions that had been deemed abusive and which had also been designed, created, engineered, implemented, marketed, promoted and/or sold by the Enterprise;

j. Failing to disclose the collective number of the strategies and/or transactions that the Enterprise designed, created, engineered, implemented, marketed, promoted and/or sold, which foreclosed any possibility that the tax authorities would find in favor of the Plaintiff;

k. Improperly using the position of Defendant Bank One, NA as a multibillion dollar, federally regulated financial institution in order to create a relationship of trust and confidence;

l. Taking advantage of a relationship of trust and confidence and using its knowledge of Plaintiff's finances to pursue and solicit and eventually induce Plaintiff to

participate in tax strategies concocted by the Enterprise;

m. Taking advantage of a relationship of trust and confidence in recommending tax strategies concocted by the Enterprise;

n. Advising and recommending that Plaintiff engage in tax strategies concocted by the Enterprise;

o. Charging and collecting unreasonable, excessive, and unethical fees;

p. Failing to fully explain the details of the tax strategies concocted by the Enterprise before inducing Plaintiff to enter into such scheme, including: 1) failing to identify the various parties involved in the scheme, including but not limited to Jenkens, Daugerdas, Mayer, Guerin, Deutsche Bank, and Parse; 2) failing to reveal to the Plaintiff the number of other participants in the scheme, which Plaintiff has since discovered numbered in the hundreds, and in fact probably exceeded a thousand; and 3) failing to reveal the collective number (also in the hundreds or perhaps thousands) of the strategies and/or transactions that the Enterprise designed, created, engineered, implemented, marketed, promoted and/or sold, which foreclosed any possibility that the tax authorities would find in favor of the Plaintiff;

q. Designing, creating, engineering, implementing, marketing, promoting and/or selling an abusive, improper, and invalid tax shelter that is likely to be disallowed and/or prohibited by the IRS;

r. Illegally promoting an unregistered tax shelter by marketing it to Plaintiff;

s. Failing to disclose to Plaintiff that if it filed tax returns claiming capital and/or ordinary losses based on the tax strategies concocted by the Enterprise, it would be

liable to taxing authorities including the IRS for penalties and interest;

t. Advising Plaintiff that the capital and/or ordinary losses created by the tax strategies concocted by the Enterprise were legitimate, proper, and in accordance with all applicable tax laws, rules and regulations;

u. Representing and advising Plaintiff that the various entities formed to carry out the tax strategies concocted by the Enterprise had a business purpose as well as economic substance;

v. Directing and assisting Plaintiff in making cash contributions to various entities formed for the purpose of carrying out the tax strategies concocted by the Enterprise;

w. Soliciting, assembling and paying allegedly independent third parties, including but not limited to Bradley, to review and advise as to the legitimacy of the tax strategies at issue and, as a result, substantially compromising such third parties so that they could not and did not fulfill their fiduciary and other good faith obligations to the Plaintiff.

x. Making and endorsing statements and representations contained in the Enterprises' oral advice, instructions, and recommendations;

y. Directing, instructing, and assisting Plaintiff in carrying out each of the steps of tax strategies concocted by the Enterprise, including asking Plaintiff to sign authorizations and agreements, such as the following: 1) October 29, 2001 fax from defendant Deichmann, copied to defendant Ohle, asking Jenkens to send confidentiality agreements to their client David Ducote; 2) October 30, 2001 fax from Jenkens to David Ducote stating "at the request of John Ohle of Bank One, attached

is a nondisclosure agreement for your execution;" 3) November 9, 2001 fax from defendant Bank One Innovative Strategies Group to Susan Burnside of Jenkens, asking that defendant Jeffrey Conrad be notified when the [Ducotes'] documents are ready to be picked up so that he can deliver them [to the Ducotes]; 4) November 15, 2001 fax from Jenkens to David Ducote stating "at the request of John Ohle of Bank One....; and 5) November 21, 2001 letter from Jenkens to David Lukinovich stating "[p]ursuant to the request of Bank One" and requesting that the Ducotes execute various documents;

z. Failing to advise, recommend, and instruct Plaintiff to amend its tax returns, timely or otherwise;

aa. Advising Plaintiff that IRS Notice 2000-44 did not apply to the tax strategies concocted by the Enterprise and/or that it did not impact such strategies, knowing all the while that other similar strategies that they had also promoted had already been deemed abusive;

bb. Failing to advise, recommend and/or instruct Plaintiff to amend its tax returns in light of IRS Notices or Announcements or otherwise;

cc. Advising Plaintiff that the tax strategies concocted by the Enterprise were valid and proper in spite of IRS Notice 2000-44;

dd. Failing to ensure that the transactions into which the Enterprise advised each Plaintiff to enter complied with applicable State and Federal Rules and Regulations;

ee. Failing to comply with its ethical obligation to Plaintiff;

ff. Providing erroneous legal, banking and tax opinions and advice; and

gg. Enticing, recommending, advising, assisting and directing Plaintiff to enter into a transaction that, unbeknownst to the Plaintiff, likely would be deemed abusive and improper and likely would be disallowed and held invalid by the IRS on the grounds that the transaction lacked economic substance, had no business purpose, was a "sham transaction," and violated the step transaction, sham transaction, and economic substance doctrines, despite the representations to the contrary in the tax legal opinions provided by the Enterprise.

hh. Failing to notify Plaintiff that the Enterprise and its co-conspirator Members schemed to pursue, solicit, induce, and then place several hundred, if not more than a thousand, customers into these tax strategies with full knowledge that they would not pass IRS muster.

176. The above intentional omissions of material fact and/or affirmative representations made by each defendant and other Members of the Enterprise and its co-conspirators were false or were likely to be false when made and the Enterprise knew or should have known these representations to be false when made with the intention that Plaintiff rely on them in deciding whether or not to take the advice of the defendants and other Members of the Enterprise and thereby pay it exorbitant fees and commissions. In addition, the above affirmative misrepresentations and/or intentional omissions of material fact were made knowingly by defendants and other Members of the Enterprise with the intent to induce Plaintiff to enter into the abusive tax strategies and pay it exorbitant fees.

177. In reasonable reliance on the Enterprise's false affirmative representations and intentional omissions of material facts regard the transactions at issue, Plaintiff paid to the

defendants and other Members of the Enterprise exorbitant fees to execute the transactions, did not avail itself of alternative tax opportunities, filed federal and state tax returns that have been and/or likely will be deemed to reflect improper deductions for capital and ordinary losses resulting from the transactions, and did not amend its tax returns.

178. But for the Enterprise's intentional misrepresentations and material omissions described herein, Plaintiff would never have engaged the Enterprise for advice on its tax strategies, engaged in the transactions at issue, claimed the purportedly resulting capital and/or ordinary losses on its income tax returns, filed and signed its tax returns in reliance on the advice of the Enterprise, failed to amend its tax returns, and/or failed to avail itself of other alternative tax opportunities.

179. After discovering the Enterprise's fraud, Plaintiff incurred and will continue to incur substantial additional costs in hiring new tax and legal advisors to rectify the situation. As a result of the Enterprise's conduct set forth herein, Plaintiff has suffered injury in that it, among other things: 1) paid to the defendants and other Members of the Enterprise exorbitant fees, 2) took undue financial risk, 3) likely will incur tax penalties and interest, 4) has incurred opportunity costs; 5) has and will continue to incur substantial additional costs in hiring new tax and legal advisors to rectify the situation, 6) has incurred reputation damage, and 7) has foregone alternative tax opportunities.

180. As a proximate cause of the foregoing, Plaintiff has been injured in an actual amount to be proven at trial, and should be awarded damages in accordance with the evidence, plus attorneys' fees and costs.

181. In addition, Daugerdas, Guerin and Mayer each gifted to his or her respective spouse a substantial amount of the fees he or she received from the Plaintiff in order to conceal that money from his or her creditors, including Plaintiff herein.

VII.

FIFTH CAUSE OF ACTION

NEGLIGENT MISREPRESENTATION

182. The Enterprise owed Plaintiff duties of care, loyalty and honesty, and a duty to comply with the applicable standards of care.

183. During the course of its dealings with Plaintiff, the Enterprise made numerous knowingly or negligently false affirmative representations, and intentional or negligently misleading omissions of fact, and gave numerous recommendations, advice, instructions, and opinions to Plaintiff, including but not limited to:

a. Misrepresenting the proposed transactions as unique and/or distinct from those previously designed by Members of the Enterprise itself and by other promoters;

b. Falsely claiming that the transactions and the to-be-received tax opinions would protect the taxpayers from any tax penalties;

c. Misrepresenting the likelihood that the taxpayers would prevail should a dispute arise with taxing authorities;

d. Falsely stating that the Enterprise and/or its Members would prepare and provide an initial defense should an IRS inquiry ensue;

e. Falsely claiming that the transactions and/or all of the transactions' related information and data would be protected from an IRS summons or request to the Enterprise and/or its Members;

f. Failing to disclose that similar and potentially compromising files would be held in the custody of the Enterprise, would thus not be protected by the attorney-client

privilege, and would actually be provided to the IRS;

g. Misrepresenting the volume of transactions pursued, solicited and originated by The Enterprise, specifically leading Plaintiff to believe it was the only client with whom the defendants were working to attempt to eliminate tax liability in this manner;

h. Misrepresenting the volume of transactions in which Jenkens, the Member of the Enterprise that actually provided the tax legal opinion, produced opinions;

i. Failing to disclose the true likelihood that the IRS would not accept the tax treatment of these transactions as indicated in the opinion letters, based on the transactions' similarity to other transactions that had been deemed abusive and which had also been designed, created, engineered, implemented, marketed, promoted and/or sold by the Enterprise;

j. Failing to disclose the collective number of the strategies and/or transactions that the Enterprise designed, created, engineered, implemented, marketed, promoted and/or sold, which foreclosed any possibility that the tax authorities would find in favor of the Plaintiff;

k. Improperly using the position of Defendant Bank One, NA as a multibillion dollar, federally regulated financial institution in order to create a relationship of trust and confidence;

l. Taking advantage of a relationship of trust and confidence and using its knowledge of Plaintiff's finances to pursue and solicit and eventually induce Plaintiff to participate in tax strategies concocted by the Enterprise;

m. Taking advantage of a relationship of trust and confidence in recommending tax

strategies concocted by the Enterprise;

n. Advising and recommending that Plaintiff engage in tax strategies concocted by the Enterprise;

o. Charging and collecting unreasonable, excessive, and unethical fees;

p. Failing to fully explain the details of the tax strategies concocted by the Enterprise before inducing Plaintiff to enter into such scheme, including: 1) failing to identify the various parties involved in the scheme, including but not limited to Jenkens, Daugerdas, Mayer, Guerin, Deutsche Bank, and Parse; 2) failing to reveal to the Plaintiff the number of other participants in the scheme, which Plaintiff has since discovered numbered in the hundreds and in fact probably exceeded a thousand; and 3) failing to reveal the collective number (also in the hundreds or perhaps thousands) of the strategies and/or transactions that the Enterprise designed, created, engineered, implemented, marketed, promoted and/or sold, which foreclosed any possibility that the tax authorities would find in favor of the Plaintiff;

q. Designing, creating, engineering, implementing, marketing, promoting and/or selling an abusive, improper, and invalid tax shelter that is likely to be disallowed and/or prohibited by the IRS;

r. Illegally promoting an unregistered tax shelter by marketing it to Plaintiff;

s. Failing to disclose to Plaintiff that if it filed tax returns claiming capital and/or ordinary losses based on the tax strategies concocted by the Enterprise, it would be liable to taxing authorities including the IRS for penalties and interest;

t. Advising Plaintiff that the capital and/or ordinary losses created by the tax strategies

concocted by the Enterprise were legitimate, proper, and in accordance with all applicable tax laws, rules and regulations;

u. Representing and advising Plaintiff that the various entities formed to carry out the tax strategies concocted by the Enterprise had a business purpose as well as economic substance;

v. Directing and assisting Plaintiff in making cash contributions to various entities formed for the purpose of carrying out the tax strategies concocted by the Enterprise;

w. Soliciting, assembling and paying allegedly independent third parties, including but not limited to Bradley, to review and advise as to the legitimacy of the tax strategies at issue and, as a result, substantially compromising such third parties so that they could not and did not fulfill their fiduciary and other good faith obligations to the Plaintiff.

x. Making and endorsing statements and representations contained in the Enterprises' oral advice, instructions, and recommendations;

y. Directing, instructing, and assisting Plaintiff in carrying out each of the steps of tax strategies concocted by the Enterprise, including asking Plaintiff to sign authorizations and agreements, such as the following: 1) October 29, 2001 fax from defendant Deichmann, copied to defendant Ohle, asking Jenkens to send confidentiality agreements to their client David Ducote; 2) October 30, 2001 fax from Jenkens to David Ducote stating "at the request of John Ohle of Bank One, attached is a nondisclosure agreement for your execution;" 3) November 9, 2001 fax from defendant Bank One Innovative Strategies Group to Susan Burnside of Jenkens,

asking that defendant Jeffrey Conrad be notified when the [Ducotes'] documents are ready to be picked up so that he can deliver them [to the Ducotes]; 4) November 15, 2001 fax from Jenkens to David Ducote stating "at the request of John Ohle of Bank One, attached is a nondisclosure agreement for your execution;" and 5) November 21, 2001 letter from Jenkens to David Lukinovich stating "[p]ursuant to the request of Bank One" and requesting that the Ducotes execute various documents;

z. Failing to advise, recommend, and instruct Plaintiff to amend its tax returns, timely or otherwise;

aa. Advising Plaintiff that IRS Notice 2000-44 did not apply to the tax strategies concocted by the Enterprise and/or that it did not impact such strategies, knowing all the while that other similar strategies that they had also promoted had already been deemed abusive;

bb. Failing to advise, recommend and/or instruct Plaintiff to amend its tax returns in light of IRS Notices or Announcements or otherwise;

cc. Advising Plaintiff that the tax strategies concocted by the Enterprise were valid and proper in spite of IRS Notice 2000-44;

dd. Failing to ensure that the transactions into which the Enterprise advised each Plaintiff to enter complied with applicable State and Federal Rules and Regulations;

ee. Failing to comply with its ethical obligation to Plaintiff;

ff. Providing erroneous legal, banking and tax opinions and advice; and

gg. Enticing, recommending, advising, assisting and directing Plaintiff to enter into a transaction that, unbeknownst to the Plaintiff, likely would be deemed abusive and

improper and likely would be disallowed and held invalid by the IRS on the grounds that the transaction lacked economic substance, had no business purpose, was a "sham transaction," and violated the step transaction, sham transaction, and economic substance doctrines, despite the representations to the contrary in the tax legal opinions provided by the Enterprise.

hh. Failing to notify Plaintiff that the Enterprise and its co-conspirator Members schemed to pursue, solicit, induce, and then place several hundred, if not more than a thousand, customers into these tax strategies with full knowledge that they would not pass IRS muster.

184. The Enterprise either knew or reasonably should have known its representations, recommendations, advice, instructions, and opinions to be false, based on its Members' prior experience with similar strategies which they had also promoted and which had been deemed abusive by the IRS. In addition, the rendering of such representations, recommendations, advice, instructions and opinions, as well as the failure to advise Plaintiff of the omissions as set forth herein, was negligent, grossly negligent, and reckless.

185. Plaintiff fully performed its obligations as directed by the Enterprise and thus did not contribute to the intentional, negligent, grossly negligent, and/or reckless acts in any way.

186. In reasonable reliance on the Enterprise's false affirmative representations and intentional omissions of material facts regarding the transactions at issue, Plaintiff paid exorbitant fees to execute the transaction, did not avail itself of alternative tax opportunities, filed federal and state tax returns that have been and/or likely will be deemed to reflect improper deductions for capital and ordinary losses resulting from the transactions, and did not amend its tax returns.

187. But for the Enterprise's failure to meet the applicable standard of care and the intentional and/or negligent misrepresentations and material omissions described herein, Plaintiff would never have engaged the Enterprise for advice on the tax strategies concocted by the Enterprise, never would have engaged in those tax strategies, filed Federal and State tax returns that reflected deductions for capital and/or ordinary losses resulting from the tax strategies, failed to file amended returns for 2001 and/or failed to avail itself of other alternative tax opportunities.

188. After discovering the Enterprise's professional malpractice and misrepresentations, Plaintiff incurred and will continue to incur substantial additional costs in hiring new tax and legal advisors to rectify the situation.

189. As a result of the Enterprise's conduct set forth herein, Plaintiff has suffered injury in that it, among other things: 1) paid to the defendants and other Members of the Enterprise exorbitant fees, 2) took undue financial risk, 3) likely will incur tax penalties and interest, 4) has incurred opportunity costs; 5) has and will continue to incur substantial additional costs in hiring new tax and legal advisors to rectify the situation, 6) has incurred reputation damage, and 7) has foregone alternative tax opportunities.

190. As a proximate cause of the foregoing, Plaintiff has been injured in an actual amount to be proven at trial, and should be awarded damages in accordance with the evidence, plus attorneys' fees and costs.

VIII.

SIXTH CAUSE OF ACTION

BREACH OF CONTRACT

191. Plaintiff entered into oral contracts with the Enterprise to provide Plaintiff with

professional competent tax advice and services and obtain legal advice and services. In connection therewith, the Enterprise was required and expected to meet all applicable standards of care, to meet the fiduciary duties of loyalty and honesty, and to comply with all applicable rules of professional conduct and to make all of the appropriate disclosures, including but not limited to: 1) identifying the various parties involved in the scheme, 2) revealing to the Plaintiff the number of other participants in the scheme, and 3) failing to reveal the collective number of the strategies and/or transactions that the Enterprise designed, created, engineered, implemented, marketed, promoted and/or sold, which foreclosed any possibility that the tax authorities would find in favor of the Plaintiff.

192. The Enterprise ignored its obligations and instead provided Plaintiff with advice, opinions, recommendations, representations and instructions that the Enterprise either knew or reasonably should have known to be wrong. In addition, the rendering of such representations, recommendations, advice, instructions and opinions, as well as the failure to advise Plaintiff of the omissions set forth herein, was negligent, grossly negligent, and reckless. Accordingly, the Enterprise failed to exercise the standard of care required of it and breached its contracts with Plaintiff.

193. As a result of the Enterprise's conduct set forth herein, Plaintiff has suffered injury in that it, among other things: 1) paid to the defendants and other Members of the Enterprise exorbitant fees, 2) took undue financial risk, 3) likely will incur tax penalties and interest, 4) has incurred opportunity costs; 5) has and will continue to incur substantial additional costs in hiring new tax and legal advisors to rectify the situation, 6) has incurred reputation damage, and 7) has foregone alternative tax opportunities.

194. As a proximate cause of the foregoing, Plaintiff has been injured in an actual amount to be proven at trial, and should be awarded damages in accordance with the evidence, plus attorneys' fees and costs.

IX.

SEVENTH CAUSE OF ACTION

CIVIL CONSPIRACY

195. As described more fully herein, the Enterprise knowingly acted in concert to market and implement the fraudulent and abusive tax shelter transactions. In doing so, it acted with full knowledge and awareness that the transaction was designed to give the false impression that a complex series of financial transactions were legitimate business transactions which had economic substance from an investment standpoint, when they in fact lacked those features (which were necessary for successful tax strategies).

196. The Enterprise and its co-conspirators acted as described herein according to a predetermined and commonly understood and accepted plan of action, all for the purposes of obtaining professional fees from consumers, including the Plaintiff.

197. The acts of the Enterprise and its co-conspirators were contrary to numerous provisions of law, as stated herein.

198. There was a meeting of the minds between and among the Enterprise and its co-conspirators and other individuals and entities, both known and unknown, to commit the unlawful acts alleged herein. This conspiracy to commit these unlawful, overt acts, proximately caused and continues to cause Plaintiff damages as set forth herein.

199. As a result of the conduct of the Enterprise and its co-conspirators, the Plaintiff has

suffered injury to its business and property in that Plaintiff has paid to the defendants and other Members of the Enterprise exorbitant fees and has incurred actual damages and losses in an amount to be proven at trial; likely will incur tax penalties and interest and disallowance of other certain deductions; has incurred and will continue to incur substantial additional fees and costs in hiring new tax and legal advisors to rectify the situation; and has foregone alternative tax and investment opportunities.

200. As proximate cause of the foregoing, Plaintiff has been injured in an actual amount to be proven at trial and should be awarded damages in accordance with the evidence, plus attorneys' fees and costs.

X.

DAMAGES

201. As a proximate cause of the Enterprise's violation of 18 U.S.C. §§1962(a) - (d), the Plaintiff has been injured in its business or property for the reasons described herein and because it was forced to expend a substantial amount of money in fees to the Enterprise for the false and fraudulent advice, and has paid and continues to incur substantial additional costs and expenses for engaging attorneys, tax attorneys, accountants and experts in an attempt to rectify the wrongs perpetrated against it.

202. The Enterprise has exposed Plaintiff to substantial additional tax liability, including interest and penalties, due to Plaintiff's filing of tax returns based on the Enterprise's illegal and/or abusive tax advice and its failure to advise Plaintiff to amend those returns.

203. The Enterprise and its co-conspirators have caused Plaintiff to incur severe financial and business losses.

204. As set forth herein, as a result of the conduct of the Enterprise and its co-conspirators, the Plaintiff has suffered injury to its business and property in that Plaintiff has paid to the defendants and other Members of the Enterprise exorbitant fees and has incurred actual damages and losses in an amount to be proven at trial; likely will incur tax penalties and interest and disallowance of other certain deductions; has incurred and will continue to incur substantial additional fees and costs in hiring new tax and legal advisors to rectify the situation; and has foregone alternative tax and investment opportunities.

205. Pursuant to 18 U.S.C. §1964(c), Plaintiff is entitled to threefold the amount of actual damages suffered by it due to the actions of the Enterprise.

206. Plaintiff is also entitled to be awarded the costs incurred in this suit, pre-judgment interest, reasonable attorneys' fees and all other damages authorized by law.

WHEREFORE, Plaintiff Ducote Jax Holdings, L.L.C. prays that this First Amended and Supplemental Complaint be filed and served on all parties and that there be judgment as follows:

1. As to the RICO claim, a judgment in favor of Plaintiff and against each Defendant jointly and severally and in solido, for actual damages in an amount to be proven at trial, plus treble damages, attorneys' fees, interest and costs;

2. As to the Declaratory Judgment and Unjust Enrichment claim, an order on behalf of Plaintiff entering the declaratory relief prayed for herein, together with the return to the Plaintiff all amounts by which Defendants have been unjustly enriched;

3. As to the Breach of Fiduciary Duty claim, a judgment in favor of the Plaintiff against each Defendant jointly and severally and in solido, for actual damages in an amount to be proven at trial, plus attorneys' fees, interest and costs;

4. As to the Fraud claim, a judgment in favor of the Plaintiff against each Defendant jointly and severally and in solido, for actual damages in an amount to be proven at trial, plus attorneys' fees and costs, and return of all monies paid by Plaintiff herein;

5. As to the Negligent Misrepresentation claim, a judgment in favor of the Plaintiff against each Defendant jointly and severally and in solido, for actual damages in an amount to be proven at trial, plus attorneys' fees and costs;

6. As to the Breach of Contract claim, a judgment in favor of the Plaintiff against each Defendant jointly and severally and in solido, for actual damages in an amount to be proven at trial, plus attorneys' fees and costs;

7. As to the Civil Conspiracy claim, a judgment in favor of the Plaintiff against each Defendant jointly and severally and in solido, for actual damages in an amount to be proven at trial, plus attorneys' fees and costs;

8. Ordering the Defendant Spouses to forfeit and disgorge the money that was fraudulently conveyed to them by Defendants Daugerdas, Guerin and Mayer;

9. Against each Defendant, actual damages, including Plaintiff's tax liability, interest and penalties; attorneys' fees; costs; interest; and such other and further relief as the Court may deem just and proper; and

10. That the Court grant such other, further, and different relief as the Court deems just and proper under the circumstances.

Respectfully submitted,

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