SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

BRADLEY BIRKENFELD
Vs.
SCHERTLER & ONORATO, LLP

C.A. No. 2012 CA 008397 M

INITIAL ORDER AND ADDENDUM

Pursuant to D.C. Code § 11-906 and District of Columbia Superior Court Rule of Civil Procedure ("SCR Civ") 40-I, it is hereby **ORDERED** as follows:

(1) Effective this date, this case has assigned to the individual calendar designated below. All future filings in this case shall bear the calendar number and the judge's name beneath the case number in the caption. On filing any motion or paper related thereto, one copy (for the judge) must be delivered to the Clerk along with the original.

(2) Within 60 days of the filing of the complaint, plaintiff must file proof of serving on each defendant: copies of the Summons, the Complaint, and this Initial Order. As to any defendant for whom such proof of service has not been filed, the Complaint will be dismissed without prejudice for want of prosecution unless the time for serving the defendant has been extended as provided in SCR Civ 4(m).

(3) Within 20 days of service as described above, except as otherwise noted in SCR Civ 12, each defendant must respond to the Complaint by filing an Answer or other responsive pleading. As to the defendant who has failed to respond, a default and judgment will be entered unless the time to respond has been extended as provided in SCR Civ 55(a).

(4) At the time and place noted below, all counsel and unrepresented parties shall appear before the assigned judge at an Initial Scheduling and Settlement Conference to discuss the possibilities of settlement and to establish a schedule for the completion of all proceedings, including, normally, either mediation, case evaluation, or arbitration. Counsel shall discuss with their clients **prior** to the conference whether the clients are agreeable to binding or non-binding arbitration. **This order is the only notice that parties and counsel will receive concerning this Conference.**

(5) Upon advice that the date noted below is inconvenient for any party or counsel, the Quality Review Branch (202) 879-1750 may continue the Conference **once**, with the consent of all parties, to either of the two succeeding Fridays. Request must be made not less than six business days before the scheduling conference date. No other continuance of the conference will be granted except upon motion for good cause shown.

(6) Parties are responsible for obtaining and complying with all requirements of the General Order for Civil cases, each Judge's Supplement to the General Order and the General Mediation Order. Copies of these orders are available in the Courtroom and on the Court's website http://www.dccourts.gov/.

Chief Judge Lee F. Satterfield

Case Assigned to: Judge JUDITH N MACALUSO
Date: October 31, 2012
Initial Conference: 9:30 am, Friday, February 08, 2013
Location: Courtroom 415
500 Indiana Avenue N.W.
WASHINGTON, DC 20001

ADDENDUM TO INITIAL ORDER AFFECTING ALL MEDICAL MALPRACTICE CASES

In accordance with the Medical Malpractice Proceedings Act of 2006, D.C. Code § 16-2801, et seq. (2007 Winter Supp.), "[a]fter an action is filed in the court against a healthcare provider alleging medical malpractice, the court shall require the parties to enter into mediation, without discovery or, if all parties agree[,] with only limited discovery that will not interfere with the completion of mediation within 30 days of the Initial Scheduling and Settlement Conference ("ISSC"), prior to any further litigation in an effort to reach a settlement agreement. The early mediation schedule shall be included in the Scheduling Order following the ISSC. Unless all parties agree, the stay of discovery shall not be more than 30 days after the ISSC." D.C. Code § 16-2821.

To ensure compliance with this legislation, on or before the date of the ISSC, the Court will notify all attorneys and *pro se* parties of the date and time of the early mediation session and the name of the assigned mediator. Information about the early mediation date also is available over the internet at https://www:dccourts.gov/pa/. To facilitate this process, all counsel and *pro se* parties in every medical malpractice case are required to confer, jointly complete and sign an EARLY MEDIATION FORM, which must be filed no later than ten (10) calendar days prior to the ISSC. Two separate Early Mediation Forms are available. Both forms may be obtained at www.dccourts.gov/medmalmediation. One form is to be used for early mediation with a mediator from the multi-door medical malpractice mediator roster; the second form is to be used for early mediation with a private mediator. Both forms also are available in the Multi-Door Dispute Resolution Office, Suite 105, 515 5th Street, N.W. (enter at Police Memorial Plaza entrance). Plaintiff's counsel is responsible for eFiling the form and is required to e-mail a courtesy copy to earlymedmal@dcsc.gov. *Pro se* Plaintiffs who elect not to eFile may file by hand in the Multi-Door Dispute Resolution Office.

A roster of medical malpractice mediators available through the Court's Multi-Door Dispute Resolution Division, with biographical information about each mediator, can be found at www.dccourts.gov/medmalmediation/mediatorprofiles. All individuals on the roster are judges or lawyers with at least 10 years of significant experience in medical malpractice litigation. D.C. Code § 16-2823(a). If the parties cannot agree on a mediator, the Court will appoint one. D.C. Code § 16-2823(b).

The following persons are required by statute to attend personally the Early Mediation Conference: (1) all parties; (2) for parties that are not individuals, a representative with settlement authority; (3) in cases involving an insurance company, a representative of the company with settlement authority; and (4) attorneys representing each party with primary responsibility for the case. D.C. Code § 16-2824.

No later than ten (10) days after the early mediation session has terminated, Plaintiff must eFile with the Court a report prepared by the mediator, including a private mediator, regarding: (1) attendance; (2) whether a settlement was reached; or, (3) if a settlement was not reached, any agreements to narrow the scope of the dispute, limit discovery, facilitate future settlement, hold another mediation session, or otherwise reduce the cost and time of trial preparation. D.C. Code § 16-2826. Any Plaintiff who is *pro se* may elect to file the report by hand with the Civil Clerk's Office. The forms to be used for early mediation reports are available at www.dccourts.gov/medmalmediation.

Chief Judge Lee F. Satterfield

Superior Court of the District of Columbia

CIVIL DIVISION- CIVIL ACTIONS BRANCH

INFORMATION SHEET

BRADLEY BIRKENFELD Case Number: 0008397-12

vs Date:

SCHERTLER & ONORATO, LLP et al ☒ One of the defendants is being sued in their official capacity.

Name: *(Please Print)* CHRISTOPHER G. HOGE	Relationship to Lawsuit
Firm Name: CROWLEY, HOGE & FEIN, P.C.	☒ Attorney for Plaintiff
Telephone No.: (202) 483-2900 Six digit Unified Bar No.: 203257	☐ Self (Pro Se)
	☐ Other:

TYPE OF CASE: ☐ Non-Jury ☐ 6 Person Jury ☒ 12 Person Jury

Demand: $ 20,000,000.00 Other:

PENDING CASE(S) RELATED TO THE ACTION BEING FILED

Case No.: Judge: Calendar #:

Case No.: Judge: Calendar#:

NATURE OF SUIT: *(Check One Box Only)*

A. CONTRACTS **COLLECTION CASES**

☐ 01 Breach of Contract
☐ 02 Breach of Warranty
☐ 06 Negotiable Instrument
☐ 15 Special Education Fees
☐ 07 Personal Property
☐ 09 Real Property-Real Estate
☐ 12 Specific Performance
☐ 13 Employment Discrimination
☐ 14 Under $25,000 Pltf. Grants Consent
☐ 16 Under $25,000 Consent Denied
☐ 17 OVER $25,000

B. PROPERTY TORTS

☐ 01 Automobile
☐ 02 Conversion
☐ 07 Shoplifting, D.C. Code § 27-102 (a)
☐ 03 Destruction of Private Property
☐ 04 Property Damage
☐ 05 Trespass
☐ 06 Traffic Adjudication

C. PERSONAL TORTS

☐ 01 Abuse of Process
☐ 02 Alienation of Affection
☐ 03 Assault and Battery
☐ 04 Automobile- Personal Injury
☐ 05 Deceit (Misrepresentation)
☐ 06 False Accusation
☐ 07 False Arrest
☐ 08 Fraud
☐ 09 Harassment
☐ 10 Invasion of Privacy
☐ 11 Libel and Slander
☐ 12 Malicious Interference
☐ 13 Malicious Prosecution
☒ 14 Malpractice Legal
☐ 15 Malpractice Medical (Including Wrongful Death)
☐ 16 Negligence- (Not Automobile, Not Malpractice)
☐ 17 Personal Injury- (Not Automobile, Not Malpractice)
☐ 18 Wrongful Death (Not Malpractice)
☐ 19 Wrongful Eviction
☐ 20 Friendly Suit
☐ 21 Asbestos
☐ 22 Toxic/Mass Torts
☐ 23 Tobacco
☐ 24 Lead Paint

SEE REVERSE SIDE AND CHECK HERE ☐ IF USED

Information Sheet, Continued

C. OTHERS

I.

- ☐ 01 Accounting
- ☐ 02 Att. Before Judgment
- ☐ 04 Condemnation (Emin. Domain)
- ☐ 05 Ejectment
- ☐ 07 Insurance/Subrogation Under $25,000 Pltf. Grants Consent
- ☐ 08 Quiet Title
- ☐ 09 Special Writ/Warrants (DC Code § 11-941)
- ☐ 10 T.R.O./ Injunction
- ☐ 11 Writ of Replevin
- ☐ 12 Enforce Mechanics Lien
- ☐ 16 Declaratory Judgment
- ☐ 17 Merit Personnel Act (OEA) (D.C. Code Title 1, Chapter 6)
- ☐ 18 Product Liability
- ☐ 24 Application to Confirm, Modify, Vacate Arbitration Award (DC Code § 16-4401)
- ☐ 25 Liens: Tax/Water Consent Granted
- ☐ 26 Insurance/ Subrogation Under $25,000 Consent Denied
- ☐ 27 Insurance/ Subrogation Over $25,000
- ☐ 28 Motion to Confirm Arbitration Award (Collection Cases Only)
- ☐ 26 Merit Personnel Act (OHR)
- ☐ 30 Liens: Tax/ Water Consent Denied
- ☐ 31 Housing Code Regulations

II.

- ☐ 03 Change of Name
- ☐ 06 Foreign Judgment
- ☐ 13 Correction of Birth Certificate
- ☐ 14 Correction of Marriage Certificate
- ☐ 15 Libel of Information
- ☐ 19 Enter Administrative Order as Judgment [D.C. Code § 2-1802.03 (h) or 32-1519 (a)]
- ☐ 20 Master Meter (D.C. Code § 42-3301, et seq.)
- ☐ 21 Petition for Subpoena [Rule 28-I (b)]
- ☐ 22 Release Mechanics Lien
- ☐ 23 Rule 27(a) (1) (Perpetuate Testimony)
- ☐ 24 Petition for Structured Settlement
- ☐ 25 Petition for Liquidation

Christopher G. Hoge

Attorney's Signature

10-30-12

Date

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

BRADLEY BIRKENFELD
c/o Christopher G. Hoge
Crowley, Hoge & Fein, P.C.
1730 Rhode Island Ave., NW #1015
Washington, D.C. 20036

v.

SCHERTLER & ONORATO, LLP
A Limited Liability Partnership
575 7th Street, N.W. #300 South
Washington, D.C. 20004

and

DAVID SCHERTLER
575 7th Street, N.W. #300 South
Washington, D.C. 20004

and

DANNY C. ONORATO
575 7th Street, N.W. #300 South
Washington, D.C. 20004

and

DAVID H. DICKIESON
575 7th Street, N.W. #300 South
Washington, D.C. 20004

and

PETER V. TAYLOR
555 Fourth Street, N.W.
Washington, D.C. 20001

Defendants

0008397-12

Civil Action No.

COMPLAINT
(Legal Malpractice; Breach of Fiduciary Duty; Unlawful Trade Practices)

Comes now the Plaintiff, Bradley C. Birkenfeld, by his undersigned counsel, and for his Complaint against the above-named Defendants states as follows:

JURISDICTION

1. Plaintiff is an adult resident of the State of New Hampshire.

2. Defendant Schertler & Onorato, LLP (hereinafter "S&O") is a limited liability partnership organized under the laws of the District of Columbia and doing business as a law firm in the District of Columbia.

3. Defendant David Schertler ("Schertler") is, and was at all times relevant hereto, an attorney licensed to practice law in the District of Columbia and actively practicing law as a partner with S&O.

4. Defendant Danny C. Onorato ("Onorato") is, and was at all times relevant hereto, an attorney licensed to practice law in the District of Columbia and actively practicing law as a partner with S&O.

5. Defendant David H. Dickieson ("Dickieson") is, and was at all times relevant hereto, an attorney licensed to practice law in the District of Columbia and actively practicing law as a partner with S&O.

6. Defendant Peter V. Taylor ("Taylor") was at all times relevant hereto, an attorney licensed to practice law in the District of Columbia and actively practicing law as an associate with S&O. Upon information and belief, Taylor is now an employee of the United States Attorney's Office in Washington, D.C.

7. Jurisdiction of this Court is premised upon D.C. Code §11-921, *et seq.*

STATEMENT OF FACTS COMMON TO ALL COUNTS

8. Plaintiff is a former Senior Client Advisor for a large Swiss bank, UBS AG ("UBS"). An American citizen born and raised in the Commonwealth of Massachusetts, from on or about October 2, 2001 until on or about October 5, 2005, Plaintiff was stationed in Geneva, Switzerland, where he worked on acquiring and providing services to United States citizens on behalf of UBS.

9. Commencing in or about June of 2005, Plaintiff began communicating his concerns about the legality of UBS' interactions with United States citizens to various officials of UBS. During a series of communications with UBS management, the UBS officials did not respond satisfactorily to Plaintiff's urgent concerns.

10. On or about October 5, 2005, on the advice of his Swiss counsel, Plaintiff formally resigned his position at UBS.

11. In or about March of 2006, Plaintiff filed a formal whistleblower complaint with UBS pursuant to UBS' written whistleblower policies. No satisfactory action was taken by UBS in response to Plaintiff's complaint.

12. On or about April 19, 2006, Plaintiff met with Schertler, Onorato and Taylor in S&O's Washington, D.C. office to discuss their representation of Plaintiff in connection with intended whistleblowing activities in the United States. On or about April 28, 2006, Schertler presented Plaintiff with a written retainer letter offering to represent Plaintiff "in connection with legal claims against your former employer, UBS and potential violations of the law by UBS." The retainer letter also stated that "[y]ou seek to recover potential monetary awards either through cooperation with law enforcement agencies or through direct action against UBS." The letter quoted a reduced

hourly fee for the S&O attorneys plus "15% of the gross amount you receive as a result of any agreement, statutory or legal provisions, or settlement or judgment by any governmental agency or by UBS in connection with any of you [sic] claims related to UBS's conduct."

13. The April 19, 2006 retainer letter was not executed by either Plaintiff or Defendants. Nevertheless, Defendants commenced working on Plaintiff's case on or about April 27, 2006.

14. Prior to being retained, Defendants falsely represented themselves to Plaintiff as experienced in and knowledgeable about federal whistleblowing laws and procedures. In fact, at the time Defendants' primary practice was in the area of criminal law, with very limited experience in the area of obtaining compensation and immunity for whistleblowers under federal law. Plaintiff relied, to his detriment, on Defendants' false representations. If he had known about Defendants' lack of experience with whistleblowing claims, he would have hired more experienced counsel in that area, as he later did.

15. On or about December 5, 2006, Defendants Schertler and Taylor held a meeting with Defendant Dickieson, who was then an attorney with the law firm of Buchanan, Ingersoll & Rooney ("BIR") in Washington, D.C. Throughout December of 2006, Schertler and Taylor recruited Dickieson to leave BIR and join S&O, because Dickieson had more familiarity with tax law than Schertler or Taylor. Dickieson did in fact leave BIR and took a position with S&O in or about early 2007, and he was assigned to Plaintiff's case.

16. At the time Schertler and Taylor began talking with Dickieson, BIR was representing UBS in several matters. Neither Schertler, Taylor nor Dickieson ever advised Plaintiff of the implications of this conflict of interest, or obtained a waiver thereof. On or about December 11, 2006, Dickieson sent an e-mail to Schertler and Taylor stating that "... it would be unlikely that we could get a waiver of a conflict of interest from UBS."

17. Between April 27, 2006 and June 18, 2007, Defendants engaged in various activities in connection with Plaintiff's legal matter, as evidenced by their monthly billing records. Among other things, Defendants conducted research into U.S. banking and securities regulations; they contacted potential experts; they reviewed new legislation "creating the IRS whistleblower remedy"; they made contact with the U.S. Department of Justice Tax Division ("DOJ") about the whistleblower program; they attempted "to coordinate [a] meeting with Tax Division attorneys and IRS"; they worked with Plaintiff on a proffer of facts he would be willing to share with DOJ; and Defendant Dickieson made "phone calls to the IRS Whistleblower office to discuss dual goals of participating in the program and gaining immunity."

18. In or about December of 2006, approximately eight months after Plaintiff retained Defendants to work on his whistleblowing case, Congress enacted amendments to the federal whistleblowing statute applicable to the Internal Revenue Service. 26 U.S.C. §7623 was amended such that monetary awards to whistleblowers in federal tax matters were no longer discretionary, but became mandatory. Under 26 U.S.C. §7623(b), whistleblowers whose information is used in "(1) detecting underpayments of tax, or (2) detecting and bringing to trial and punishment persons guilty of violating the internal

revenue laws or conniving at the same" are entitled to payment by the Secretary of the Treasury. The award shall be "at least 15 percent but not more than 30 percent of the collected proceeds....". §7623(b)(6)(c) provides that "no award may be made under this subsection based on information submitted to the Secretary unless such information is submitted under penalty of perjury."

19. On or about December 20, 2006, Congress signed into law P.L. 109-432, Div. A, Title IV, §406(b), 120 Stat. 2959, creating an IRS Whistleblower Office to analyze whistleblower information received pursuant to §7623(b) and investigate the matter. Subsequently, rules and procedures were promulgated by the IRS Whistleblower Office which governed the treatment of whistleblower claims. Among the requirements of these rules and procedures were the submission by mail of an IRS Form 211, signed by the whistleblower applicant under penalty of perjury; the filing of a Form 2848 Power of Attorney ("POA") by counsel for the whistleblower; and the assignment of a claim number by the IRS Whistleblower Office. Once all such procedures are followed, the applicant is eligible for consideration for an award for whistleblower information, and he or she can be granted confidential informant status ("CI Status"). CI Status prevents the IRS from disseminating information gleaned from a whistleblower with other institutions or individuals, unless the whistleblower specifically approves such dissemination.

20. In representing Plaintiff, Defendants failed to follow the rules and procedures promulgated by the IRS Whistleblower Office. Specifically, they never assisted Plaintiff with properly submitting by mail a Form 211 signed under penalty of perjury; they never filed a POA on behalf of Plaintiff with the IRS Whistleblower Office; and they never received a claim number from that office. Moreover, Defendants never took Plaintiff to

the IRS Whistleblower Office to personally meet the staffers who operate that program. Without those steps having been taken, Plaintiff was ineligible for any benefits under 26 U.S.C. §7623(b).

21. On or about May 9, 2007, Defendant Dickieson sent an e-mail to Defendants Schertler and Taylor stating that he was communicating with DOJ Tax Division about Plaintiff's availability for a "use immunity briefing."

22. In or about June of 2007, Defendants made arrangements for Plaintiff to meet with attorneys and staff from DOJ's Tax Division. Prior to such meeting, they did not properly file a claim on Plaintiff's behalf with the IRS Whistleblower Office, and they made no agreement for immunity or confidentiality with DOJ. Plaintiff received none of the customary protections or assurances prior to delivering his information to DOJ.

23. On or about June 6, 2007, Defendants received a FAX from Kevin M. Downing ("Downing") and Karen E. Kelly ("Kelly") of DOJ Tax Division acknowledging that Plaintiff wished to participate in the IRS Whistleblower Reward Program, but advising Defendants that "... [A]s previously stated, the Department of Justice does not, in any way, participate in the Program. The Program is exclusively within the jurisdiction and control of the Internal Revenue Service." Defendants failed to inform Plaintiff about this FAX.

24. On or about June 13, 2007, Defendant Schertler sent an e-mail to Defendants Dickieson and Taylor describing problems negotiating with DOJ and stating that Downing was trying to make Plaintiff into a criminal and may try to indict him. Schertler also falsely stated that Plaintiff did not have documents to back up his story. Defendants never advised Plaintiff that they feared a possible indictment by DOJ; had they done so,

Plaintiff would not have embarked on the disastrous course of action which was orchestrated by Defendants.

25. On or about June 19, 2007, Defendant Schertler drafted another retainer letter, which was not signed by Plaintiff. The June 19, 2007 retainer letter contained essentially the same terms as the April 19, 2006 retainer letter.

26. On or about June 19, 2007, Plaintiff, along with Defendants Schertler, Dickieson and Taylor, met at DOJ's offices with Downing, Kelly and Matthew Kutz ("Kutz"), a U.S. Treasury Agent. At the meeting Plaintiff was questioned for hours by Downing, Kelly and Kutz.

27. At the June 19, 2007 meeting, Plaintiff was questioned by Downing, Kelly and Kutz about specific American clients of UBS. Plaintiff was willing and able to discuss individual clients at the June 19, 2007 meeting at DOJ, but he requested a subpoena so that he would be protected from prosecution under Swiss bank secrecy laws which make it illegal to divulge such information. The DOJ representatives refused to issue a subpoena, and Plaintiff therefore did not divulge specific information about individual clients at UBS, except for one person, Abdulaziz Abbas, who was living in Manhattan, had ties to Iraq, and was believed to have used his UBS accounts, valued at hundreds of millions of dollars, to conceal enormous profits made through illegal oil sales involving Saddam Hussein's regime.

28. If Plaintiff had been duly registered with the IRS Whistleblower's Office by Defendants and granted CI Status, he could have safely divulged the information about the clients and nobody, including UBS, would have found out about it without Plaintiff's permission.

29. Prior to the June 19, 2007 meeting at DOJ, Plaintiff had turned over numerous important documents concerning illegal activities by UBS and UBS' American customers to Defendants. Shortly after the June 19, 2007 meeting, Defendants turned such documents over to representatives of DOJ.

30. Defendants spent time in July of 2007 preparing a draft immunity agreement for consideration by DOJ. However, Plaintiff had already divulged much incriminating information to DOJ at the June 19, 2007 meeting, and through the submission of numerous important documents and guidance as to UBS' banking strategies on or about June 21, 2007.

31. In August of 2007, Defendants tried repeatedly and unsuccessfully to get DOJ to sign an immunity agreement. By the end of August, Defendant Dickieson started looking into setting up a meeting with Sen. Carl Levin, Chair of the Senate Committee on Homeland Security and Government Affairs (the "Senate Committee").

32. In early October of 2007, pursuant to negotiations with Defendants, a "friendly" subpoena was issued to Plaintiff by the Senate Committee. On or about October 11, 2007, Plaintiff and Defendant Dickieson met with Senator Levin's staff, and Plaintiff gave testimony under oath divulging extensive information about illegal activities by UBS and its American clients.

33. During the Senate testimony, which has been transcribed, Plaintiff gave detailed information about UBS' practices in the United States and about a number of specific UBS clients, including but not limited to one Igor Olenicoff ("Olenicoff"), a billionaire residing in California who was one of Plaintiff's main clients. Upon information and belief, based on the information divulged by Plaintiff, Olenicoff pled

guilty to failure to report approximately $200 million in overseas assets. Included in Olenicoff's sentence was the requirement to pay approximately $52 million in fines, penalties and interest on unpaid taxes related to his undeclared overseas assets.

34. On or about October 23, 2007, Defendant Schertler submitted a third retainer letter to Plaintiff (the "10/23/07 retainer"). This letter was counter-signed by Plaintiff on or about November 22, 2007. The 10/23/07 retainer stated that Defendants would represent Plaintiff "in connection with whistleblower activity against your former employer, UBS and potential violations of the law by UBS" and that "[y]ou seek to recover potential monetary awards either through cooperation with law enforcement agencies of through direct action against UBS." The letter quoted a reduced hourly fee for the S&O attorneys plus "*12.5 % of the gross amount* you receive..." (emphasis in original).

35. On or about October 26, 2007, Defendant Dickieson established contact with the U.S. Securities Exchange Commission Enforcement Office ("SEC") to determine if that agency had interest in Plaintiff's information. The SEC was indeed interested, and on or about October 31, 2007, Plaintiff and Dickieson met with SEC officials, who extensively questioned Plaintiff. As with the Senate Committee, Plaintiff voluntarily divulged information and documents concerning UBS and its American clients, including but not limited to Olenicoff. Plaintiff and Dickieson had a number of subsequent meetings and communications with the Senate Subcommittee Counsel and SEC Counsel, in which Plaintiff revealed essential information regarding the tax fraud scheme perpetrated by UBS and its clients.

36. On or about January 31, 2008, Defendant Dickieson spoke to Plaintiff about Plaintiff's "Russian client" (Olenicoff), and then contacted Ms. Kelly of DOJ with "useful information" about Olenicoff.

37. On or about February 27, 2008, Defendant Dickieson had a "telephone discussion with DOJ-Tax to follow up on their prior threat; pursue strategy requested by client to insist on immunity."

38. On or about March 4, 2008, in an e-mail exchange with Bob Roach of the Senate Committee, Defendant Dickieson memorialized Plaintiff's full cooperation during his October 11, 2007 Senate Committee testimony, and the valuable information he shared about Olenicoff. Dickieson also deplored the unbending stance of DOJ in denying immunity to Plaintiff. However, neither he nor the other defendants were able to break the stalemate that had arisen with DOJ.

39. On or about March 17, 2008, unbeknownst to Plaintiff, Defendant Dickieson sent an e-mail to Downing indicating that Defendants had been forced to suspend all activities until Plaintiff had funds to pay for additional legal services. Even though this was an important development in Plaintiff's case, Defendants did not keep Plaintiff reasonably informed of their actions, some of which Plaintiff contends were unethical.

40. On or about April 28, 2008, Defendant Dickieson discussed with Plaintiff, who was at the time at his residence in Geneva, Switzerland "plans for trip to DC" to testify further before the Senate Committee and the SEC. Even though DOJ had threatened to criminally prosecute Plaintiff, on or about May 5, 2008, Dickieson sent an e-mail to Downing, Kelly and Kutz advising them that Plaintiff planned to fly into the

United States, thus effectively providing DOJ with logistical assistance in arresting Plaintiff.

41. On or about May 6, 2008, Plaintiff flew from his home in Geneva, Switzerland to Boston, Massachusetts. Upon his arrival Plaintiff was placed under arrest by United States authorities. The arrest was widely reported in the media.

42. After having been advised of Plaintiff's arrest, on or about May 6, 2008 Defendant Schertler sent an e-mail to Defendants Onorato, Dickieson and Taylor stating that "[W]e never should have taken him in. These are bad people." Upon information and belief, Schertler was referring to DOJ Tax Division personnel, and particularly Downing.

43. On or about May 7, 2008, Defendant Onorato traveled to Boston and arranged for Plaintiff's release on bail. It was decided that Plaintiff's case would be prosecuted in the United States District Court for the Southern District of Florida, and Plaintiff was permitted to travel on his own to Fort Lauderdale for an arraignment to be held on May 13, 2008.

44. On or about May 8, 2008, Plaintiff traveled to Washington, D.C. with Defendant Onorato. On that day, Plaintiff and Defendant Onorato met at the DOJ offices with Downing and other DOJ personnel, as well as Treasury Agent Kutz. At the meeting, Plaintiff, who had already been served with a subpoena by the Senate Subcommittee, advised Downing that Plaintiff had traveled from Geneva specifically to give further testimony to the Senate Committee and the SEC, and that, now that he was in Washington, he intended to keep these prearranged meetings. Downing responded by yelling at Plaintiff that he could not give testimony before the Senate Committee or the

SEC, stating emphatically that Plaintiff was not to contact or meet with them. Defendants did nothing to protest, challenge or report Downing's statements, which constituted a clear obstruction and impeding of a witness, in violation of 18 U.S.C. §§1505 and 1512.

45. On or about May 9, 2008, Defendant Schertler presented Plaintiff with a fourth retainer letter (the "5/9/08 retainer"). The letter stated, *inter alia*, that Defendants would represent Plaintiff "in connection with your pending criminal case out of the Southern District of Florida (Miami)." The 5/9/08 retainer further stated that "[t]his agreement supersedes our agreement related to other matters and applies to any and all work done in connection with the criminal matter ...". The legal fee was set at a "fixed rate per hours", with no contingency fee provision. The hourly rates were significantly increased from the previous retainer agreements.

46. In or about early May of 2008, Plaintiff had the first of several communications with Defendants about unfreezing an account he held with Fidelity Investments in Boston ("Fidelity") so that Plaintiff could pay Defendants' legal fees. At the time, Plaintiff was unemployed, and his Fidelity account, comprised exclusively of stock holdings, had been frozen by the Government. On or about May 13, 2008, a representative of Defendants telephoned Fidelity "regarding the procedure for freezing an account". However, Defendants never filed a motion to unfreeze the account, despite repeated requests by Plaintiff to do so, and between May and the end of August, 2008, the account lost more than $500,000 in value due to the precipitous decline in the United States stock market.

47. On or about May 22, 2008, Downing, who was prosecuting the criminal case for DOJ, presented Defendants with a proposed plea agreement, by which Plaintiff would have to plead guilty to one count of conspiracy to violate the tax laws of the United States.

48. Between May 22, 2008 and June 19, 2008, Defendants Schertler and Onorato negotiated with DOJ over the plea agreement. On or about June 19, 2008, Plaintiff, Schertler and Onorato appeared before Judge Zloch of the United States District Court for the Southern District of Florida and entered a plea of guilty to one count of conspiracy to violate the tax laws of the United States.

49. On or about June 20, 2008, Defendant Dickieson received a call from the Senate Subcommittee seeking a meeting with Plaintiff. Dickieson thereupon notified "co-counsel and client" and discussed "problems with meeting during ongoing prosecution."

50. On or about July 8, 2008, Defendant Dickieson reviewed and turned over to Defendant Onorato "notes of meetings with Senate investigators." However, such notes were not made available to Plaintiff or his subsequent counsel for use at sentencing. If the notes made reference to the information Plaintiff had given concerning Olenicoff and Plaintiff's own activities, it would have prevented Downing from falsely representing to the sentencing judge that Plaintiff had not revealed information concerning Olenicoff or his own involvement. Throughout July of 2008, Dickieson continued to engage in discussions with Senate Committee representatives, including but not limited to Bob Roach and Mike Flowers.

51. After his arrest, Plaintiff became increasingly disenchanted with Defendants' services, and in or about late July of 2008 he retained the Boston, Massachusetts firm of Todd & Weld to represent him as co-counsel in the criminal matter. Attorneys David Meier ("Meier") and Lisa Arrowwood ("Arrowwood") were assigned to the case.

52. On or about July 30, 2008, Defendant Dickieson met with Arrowwood "to discuss the pursuit of the IRS reward" and transmit files to "co-counsel".

53. On or about August 27, 2008, Defendant Onorato held a telephone conference with a lawyer for one Mario Staggl ("Staggl"). Staggl was a major co-conspirator with UBS, stationed in Liechtenstein, and Plaintiff was under Court Order not to have any communication with him. Plaintiff had specifically requested that Defendants have no communication with Staggl.

54. In early September of 2008, upon review of an invoice generated by Defendants, Plaintiff noticed that on August 27, 2008, Defendant Onorato had charged him .4 hours for a telephone conference with Staggl's lawyer. Plaintiff repeatedly asked Onorato to explain the reasons for this call and what was said. However, Onorato, after initially denying that he had been involved in the call, repeatedly evaded giving any information about it. Plaintiff shortly thereafter dismissed Defendants as his lawyers and directed that Meier and Arrowwood assume full responsibility for his criminal case.

55. Plaintiff requested, both orally and in writing, that Defendants immediately turn over his entire files to Meier and Arrowwood. Defendants initially refused to send copies of Plaintiff's files to Meier or Arrowwood. Eventually, however, Defendants turned over only two boxes of files, which turned out to be a small portion of Plaintiff's entire files. The files that were not turned over contained evidence, including but not

limited to Dickieson's notes taken at the Senate Committee hearing, which would have proven that allegations about non-cooperation made at the sentencing hearing were totally untrue. Furthermore, no notes, memoranda or documents of any kind pertaining to Onorato's unauthorized telephone conversation with Staggl's attorney were produced. In addition, Defendants failed to obtain or provide to Plaintiff the transcript of his sworn testimony before the Senate Subcommittee, which would have further discredited the Government's misrepresentations about Plaintiff's alleged non-cooperation.

56. On August 21, 2009, represented by Meier, Plaintiff was sentenced by Judge Zloch in Florida. At the sentencing hearing, Downing falsely represented to the Court that Plaintiff had failed to disclose information about Olenicoff to the Government and had "refused to disclose his own wrongdoing." Downing claimed that "but for Mr. Birkenfeld failing to disclose his involvement with the fraud and the U.S. clients that he aided and assisted in tax evasion, I believe we well would have nonprosecuted Mr. Birkenfeld." Downing further stated "[t]hat's why he was indicted", "that's why we are seeking jail time", and that "Mr. Olenicoff would be in jail had Mr. Birkenfeld come in, in 2007, and disclosed that information." Plaintiff was sentenced to 40 months incarceration, a $30,000 fine, and three years' probation.

57. If Defendants' files had been timely and completely transmitted to Meier and Arrowwood, they would have been able to produce evidence that Plaintiff had fully cooperated and given extensive information concerning Olenicoff and other UBS clients to the Senate Committee and the SEC in 2007.

58. In or about September of 2009, Plaintiff retained the Washington, D.C. law firm of Kohn, Kohn & Colapinto ("KK&C") to represent him in connection with his claim for a reward under the IRS Whistleblower laws.

59. On or about October 30, 2009, Attorney Stephen Kohn ("Kohn") of KK&C filed a POA as Plaintiff's counsel with the IRS Whistleblower Office. Shortly thereafter, in attempting to pursue the claim on Plaintiff's behalf, Kohn was advised by a representative of the IRS Whistleblower Office that no verified Form 211 had ever been filed on behalf of Plaintiff, that no attorney had previously filed a POA for Plaintiff, and that no claim number had been assigned. In the absence of such events, Plaintiff was ineligible for any award under 26 U.S.C. §7623(b).

60. KK&C then communicated with Defendants in an effort to obtain Plaintiff's remaining files, which had never been produced to Plaintiff, Meier or Arrowwood. Only after filing a complaint with District of Columbia Bar Counsel did KK&C succeed in obtaining Plaintiff's complete files. On or about June 10, 2010, KK&C received an additional four boxes of documents from Defendants, including approximately 975 pages, some of which Plaintiff and his new counsel had never seen before.

61. For almost three years, between September of 2009 and August of 2012, KK&C actively pursued Plaintiff's claim to a whistleblower's award. In or about August of 2012 a substantial award was granted to Plaintiff. However, the award specifically did not include an amount for information supplied about Olenicoff. Had the fines, penalties and taxes paid by Olenicoff been included in the award calculation, Plaintiff would have received at least $7,800,000, and up to $15,600,000, more than he actually received.

62. Upon information and belief, the information disclosed by Plaintiff to the Senate Committee and/or the SEC, with Defendants' assistance, substantially contributed to the conviction of Olenicoff, which was followed by the arrest of Plaintiff. If Plaintiff had been granted CI status by the IRS Whistleblower Office or immunity by the DOJ before divulging his information, he would not have been arrested, indicted or convicted.

63. If Defendants had obtained and provided to Plaintiff the transcript of Plaintiff's testimony before the Senate Committee, Downing could not have falsely argued at sentencing that Plaintiff had not cooperated in 2007 in connection with Olenicoff, or that he had "refused to disclose his own wrongdoing."

CAUSES OF ACTION

COUNT ONE
(Legal Malpractice)

64. Plaintiff incorporates by reference the facts and allegations set forth in paragraph 1 through 63 of the Complaint into this, the first count thereof.

65. Defendants, having agreed to act as attorneys for Plaintiff in connection with his whistleblower claim and his criminal prosecution, had a duty to use that degree of care reasonably expected of other legal professionals with similar skills acting under the same or similar circumstances.

66. Defendants breached their duty of care to Plaintiffs by:

a. Failing to properly register Plaintiff with the IRS Whistleblower Office by mailing a verified Form 211, failing to file a POA on Plaintiff's behalf, and failing to obtain a claim number from the Whistleblower Office.

b. Failing to adequately explain to Plaintiff the conflict of interest

presented by the involvement of Defendant Dickieson when he was still employed by the BIR law firm, which represented UBS, or to seek a waiver of any such conflict.

c. Failing to properly advise Plaintiff of the danger of meeting with DOJ or giving incriminating information without a prior agreement for immunity or confidentiality with the DOJ.

d. Failing to properly advise Plaintiff, in June of 2007 or at any time thereafter, that Defendants were concerned about a possible indictment by DOJ.

e. Failing to properly advise Plaintiff that if he had been duly registered with the IRS Whistleblower's Office by Defendants, he could have received CI Status and safely divulged the information about his clients, including but not limited to Olenicoff, without concern that the information would have been disseminated to anyone else, including UBS, without Plaintiff's permission.

f. Sending the March 17, 2008, e-mail from Defendant Dickieson to Downing indicating that Defendants had been forced to suspend all activities until Plaintiff had funds to pay for additional legal services, thereby prejudicing Plaintiff's case after he had paid tens of thousands of dollars to Defendants.

g. Failing to protest, challenge or report Downing's illegal misconduct at the May 8, 2008 meeting at DOJ, during which Downing improperly obstructed and impeded Plaintiff from giving testimony before the Senate Committee and the SEC.

h. Failing to file a motion to unfreeze Plaintiff's Fidelity account so that Plaintiff could use the funds to pay attorneys' fees, and could liquidate the fund to avoid precipitous devaluation in the United States stock market.

i. Failing to turn over Dickieson's "notes of meetings with Senate investigators" to Plaintiff or his subsequent counsel for use at sentencing.

j. Failing to turn over all of Plaintiff's files until June 10, 2010, after receiving correspondence from the D.C. Office of Bar Counsel.

k. Conducting a telephone conference with the lawyer for Staggl in violation of a Court Order that Plaintiff not have any communication with Staggl, and in violation of Plaintiff's express instructions, and then billing Plaintiff for this call while at the same time concealing from Plaintiff and his new legal counsel any and all details surrounding the nature, facts and circumstances of the call.

l. Failing to obtain or provide to Plaintiff a transcript of his sworn testimony before the Senate Committee, for use in his plea negotiations and at sentencing.

m. Failing to keep Plaintiff reasonably informed of all significant developments in his case.

67. As a direct and proximate result of Defendants' breaches of their duty of care, as aforesaid, Plaintiff has incurred substantial damages, including but not limited to:

a. His arrest, indictment, conviction and sentencing to 40 months in prison, a $30,000 fine and three years' probation, all of which could have been avoided if Defendants had properly represented him;

b. At least $7,800,000 to $15,600,000 more than he actually received as his whistleblower's award;

c. More than $500,000 in lost stock value in the Fidelity account, which would not have been lost if Defendants had not ignored Plaintiff's repeated demands,

over the course of several months, that they take action to unfreeze and liquidate the assets in that account so that he could pay his attorneys' fees;

d. Loss of approximately two years of interest on the award that Plaintiff received in August of 2012, due to Defendants' failure to properly file Plaintiff's claim with the IRS Whistleblower's Office;

e. Substantial attorneys' fees paid to Plaintiff's subsequent attorneys, including Todd & Weld and KK&C;

f. Severe emotional distress.

WHEREFORE, Plaintiff respectfully prays for a judgment against all Defendants, jointly and severally, for legal malpractice, in the amount of Twenty Million Dollars ($20,000,000.00), plus his costs and reasonable attorneys' fees.

COUNT TWO
(Breach of Fiduciary Duty)

68. Plaintiff incorporates by reference the facts and allegations set forth in paragraph 1 through 67 of the Complaint into this, the second count thereof.

69. Defendants had a fiduciary duty to Plaintiff, requiring them to act honestly and in good faith, and not to be negligent in their representation of Plaintiff.

70. Defendants breached their fiduciary duty to Plaintiff as a result of the acts and failures to act as specified in paragraph 66, *supra*.

71. As a direct and proximate result of Defendants' breaches of their fiduciary duty, as aforesaid, Plaintiff has incurred substantial damages as specified in paragraph 67 *supra*.

WHEREFORE, Plaintiff respectfully prays for a judgment against all Defendants,

jointly and severally, for breach of fiduciary duty, in the amount of Twenty Million Dollars ($20,000,000.00), plus his costs and reasonable attorneys' fees.

COUNT THREE
(Unlawful Trade Practices – Violation of D.C. Code §28-3904)

72. Plaintiff incorporates by reference the facts and allegations set forth in paragraph 1 through 71 of the Complaint into this, the third count thereof.

73. Defendants have engaged in unlawful trade practices that are prohibited by D.C. Code §28-3904. Specifically Defendants have violated the following subsections of that statute:

a. §28-3904(e), prohibiting misrepresentations as to a material fact which has a tendency to mislead. Defendants misrepresented to Plaintiff their experience regarding federal whistleblower claims.

b. §28-3904(f), penalizing failure to state a material fact if such failure tends to mislead. Defendants failed to advise Plaintiff of their inexperience with federal whistleblower claims and of their fear in June of 2007 that DOJ may seek an indictment of him. Had he known this, he would have embarked on a different course of action.

c. §28-3904(f), penalizing a person who harasses or threatens a consumer with any act other than legal process, by phone, cards or letters. Defendants violated this statute by threatening to withdraw from Plaintiff's case due to his lack of funds, after he had paid them tens of thousands of dollars and at a very delicate stage of the negotiations, and by sending the March 17, 2008, e-mail to Downing indicating that Defendants had been forced to suspend all activities until Plaintiff had funds to pay for additional legal services.

75. As a result of Defendants' commission of such unfair trade practices, Plaintiff is entitled to treble damages, punitive damages and attorneys' fees.

WHEREFORE, Plaintiff respectfully prays for a judgment against all Defendants, jointly and severally, for unfair trade practices in violation of D.C. Code §28-3904, in the amount of Twenty Million Dollars ($20,000,000.00), plus treble damages, punitive damages, costs and reasonable attorneys' fees.

Respectfully submitted,

BRADLEY C. BIRKENFELD
Plaintiff
By Counsel

CROWLEY, HOGE & FEIN, P.C.

By: _____
Christopher G. Hoge #203251

_____
Elena Iuga #485684

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JURY DEMAND

Plaintiff respectfully demand trial by jury as to all issues of fact raised in the Complaint .

_____
Christopher G. Hoge

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