

ANDERSON & KARRENBERG

Thomas R. Karrenberg (3726)

Stephen P. Horvat (6249)

Jennifer R. Eshelman (9155)

50 West Broadway #700

Salt Lake City, Utah 84101

Telephone: (801) 534-1700

Facsimile: (801) 364-7697

shorvat@aklawfirm.com

*Shorvat #574
1-13-09
3:06P*

RIKER, DANZIG, SCHERER, HYLAND & PERRETTI LLP

Julian W. Wells (JW-4893) (*pro hac vice application pending*)

Anthony J. Borrelli (AB-8089) (*pro hac vice application pending*)

Headquarters Plaza

One Speedwell Avenue

Morristown, NJ 07962-1981

Telephone: (973) 538-0800

Facsimile: (973) 538-1984

Attorneys for Plaintiff UBS Bank USA

IN THE THIRD DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

<p>UBS BANK USA,</p> <p>Plaintiff,</p> <p>vs.</p> <p>HERBERT K. MALLARD,</p> <p>Defendant.</p>	<p>SUMMONS</p> <p>(30 Day)</p> <p>Case No. 080926075</p> <p>Judge Sandra Peuler</p>
--	---

THE STATE OF UTAH TO THE ABOVE-NAMED DEFENDANT:

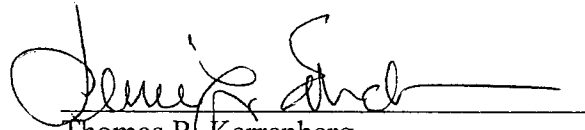
ORG RCVD 12-22-08-9AM
CERT. IN _____ JUD. CIRCUIT
C.P.S. NAME _____ # _____

**Herbert K. Mallard
160 Hammon
Palm Beach, Florida 33480-4710**

YOU ARE HEREBY SUMMONED and required to file a written Answer to the attached Complaint with the Clerk of the above-entitled Court at 450 South State Street, Salt Lake City, Utah 84111, and to serve upon or mail to the Plaintiff's attorney, at the address above, a copy of said Answer within thirty (30) days after service of this Summons. If you fail to do so, judgment by default may be taken against you for the relief demanded in the attached Complaint, which is on file with the Court.

DATED: December 19, 2008

ANDERSON & KARRENBERG



Thomas R. Karrenberg
Stephen P. Horvat
Jennifer R. Eshelman
Attorneys for Plaintiff

FILED
CLERK OF DISTRICT COURT
2008 DEC 18 PM 4:13
SALT LAKE COUNTY
BY _____

ANDERSON & KARRENBERG
Thomas R. Karrenberg (3726)
Stephen P. Horvat (6249)
Jennifer R. Eshelman (9155)
50 West Broadway #700
Salt Lake City, Utah 84101
Telephone: (801) 534-1700
Facsimile: (801) 364-7697
shorvat@aklawfirm.com

RIKER, DANZIG, SCHERER, HYLAND & PERRETTI LLP
Julian W. Wells (JW-4893) (*pro hac vice application pending*)
Anthony J. Borrelli (AB-8089) (*pro hac vice application pending*)
Headquarters Plaza
One Speedwell Avenue
Morristown, NJ 07962-1981
Telephone: (973) 538-0800
Facsimile: (973) 538-1984
Attorneys for Plaintiff UBS Bank USA

IN THE THIRD DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

<p>UBS BANK USA, Plaintiff, vs. HERBERT K. MALLARD, Defendant.</p>	<p>COMPLAINT Case No. <u>080926075</u> Judge <u>Reuler</u></p>
--	--

Plaintiff UBS Bank USA, by and through its undersigned counsel, hereby complains against Defendant Herbert K. Mallard and alleges and seeks relief as follows:

PARTIES

1. Plaintiff UBS Bank USA (the "Bank") is a federally regulated, Utah industrial bank with its principal place of business at 299 South Main Street, Suite #2275, Salt Lake City, Utah 84111. It is qualified to do business in the State of Utah.

2. Upon information and belief, defendant Herbert K. Mallard ("Mallard") is an individual having an address at 160 Hammon, Palm Beach, Florida 33480-4710. *no address*

3. Venue properly lies in this Court on the basis of certain agreements between the Bank and Mallard that provide, among other things, that actions arising out of or related to such agreements between the parties shall be brought and maintained in this Court. Additionally, a substantial part of the events and omissions giving rise to the Bank's claims occurred in the district in which this Court resides. ✓

FACTS

A. The Credit Line Agreement

4. The Bank and Mallard are parties to, among other things, a certain Credit Line Agreement, dated July 25, 2008, which was duly signed by Mallard.

5. A true and correct copy of the Credit Line Agreement, partially redacted to remove personal data identifiers, is attached hereto as Exhibit A.

6. Pursuant to the Credit Line Agreement, the Bank established an uncommitted, demand revolving line of credit by which the Bank, upon Mallard's request, could in its sole and absolute discretion make one or more advances to Mallard.

7. The Bank has made certain advances to Mallard under the Credit Line Agreement (the "Loans").

8. The Loans bear interest at such rate(s), and such interest shall be payable on such date(s), as are specified in the Credit Line Agreement.

9. Pursuant to the Credit Line Agreement, Mallard understood, acknowledged, and agreed that, among other things, the Bank may, at any time and in its sole and absolute discretion, demand that any and all Loans that the Bank made to Mallard, plus accrued interest, be immediately re-paid in full. More specifically, the Credit Line Agreement provides, in relevant part:

THE BORROWER UNDERSTANDS AND AGREES THAT UBS BANK USA MAY DEMAND FULL OR PARTIAL PAYMENT OF THE CREDIT LINE OBLIGATIONS, AT ITS SOLE OPTION AND WITHOUT CAUSE, AT ANY TIME, AND THAT NEITHER FIXED RATE ADVANCES NOR VARIABLE RATE ADVANCES ARE EXTENDED FOR ANY SPECIFIC TERM OR DURATION.

(See Exhibit A.) [Emphasis in original.]

B. The Collateral

10. Mallard has maintained, and continues to maintain, certain accounts (the "Accounts") at the Bank and at UBS Financial Services Inc., an affiliate of the Bank.

11. Pursuant to the Credit Line Agreement, the Loans are secured by, among other things, the assets contained in the Accounts (the "Collateral").

12. The Credit Line Agreement provides, in relevant part:

To secure payment or performance of the Credit Line Obligations, the Borrower assigns, transfers and pledges to the Bank, and grants to the Bank a first priority lien and security interest in the following assets and rights of the Borrower . . . : (i) each Collateral Account; (ii) any and all money, credit balances, certificated and uncertificated securities, security entitlements, commodity contracts, certificates of deposit, instruments, documents, partnership interests, general intangibles, financial assets

and other investment property now or in the future credited to or carried, held or maintained in any Collateral Account . . . (iv) any and all accounts of the Borrower at the Bank or any of its affiliates

...

(See Exhibit A.)

C. Mallard's Defaults

13. Pursuant to the Credit Line Agreement, Mallard understood, acknowledged, and agreed that, among other things, the Loans are "subject to collateral maintenance requirements" and that he was obligated to maintain at all times Collateral in which the Bank has a first-priority, perfected security interest that has an aggregate lending value of not less than that which the Bank, in its sole and absolute determination, requires. More specifically, the Credit Line Agreement provides, in relevant part:

THE BORROWER UNDERSTANDS THAT BORROWING USING SECURITIES AS COLLATERAL ENTAILS RISKS. SHOULD THE VALUE OF THE SECURITIES IN THE COLLATERAL ACCOUNT DECLINE BELOW THE REQUIRED COLLATERAL MAINTENANCE REQUIREMENTS, UBS BANK USA MAY REQUIRE THAT THE BORROWER POST ADDITIONAL COLLATERAL, REPAY PART OR ALL OF THE BORROWER'S LOAN AND/OR SELL THE BORROWER'S SECURITIES.

(See Exhibit A.) [Emphasis in original.].

14. Under the Credit Line Agreement, should Mallard fail to maintain at all times sufficient Collateral, the Loans are "immediately due and payable (without demand)" and "the Bank may, in its sole and absolute discretion, liquidate, withdraw or sell all or any part of the Collateral and apply the same, as well any proceeds of any liquidation or sale, to any amounts owed to the Bank . . ." (See Exhibit A.)

15. In or about October 2008, as well as at other times, Mallard failed to maintain sufficient Collateral in the Accounts.

16. In addition, pursuant to the Credit Line Agreement, the Bank had the right to demand, at any time, immediate repayment of any and all amounts due and owing under the Loans.

17. Accordingly, the Bank exercised its rights under the Credit Line Agreement by liquidating the Collateral and applying it to the amounts due and owing on the Loans.

18. Following the Bank's liquidation of the Collateral, there existed and still currently remains certain amounts due and owing on the Loans. ✓

19. By letter dated November 13, 2008, the Bank demanded immediate payment in full from Mallard of all amounts due and owing on the Loans, including accrued interest. The Bank further notified Mallard that, should he fail to make such payment to the Bank, the Bank would, among other things, undertake certain actions, including, but not limited to, pursuing its legal remedies. *paid*

20. Mallard has failed and refused to repay the outstanding principal and interest due and owing on the Loans.

21. As of December 18, 2008, the amounts due and owing on the Loans totaled \$55,703.31, upon which amount interest has accrued and is continuing to accrue. ✓

FIRST COUNT
(Breach of Contract)

22. The Bank repeats the allegations of the foregoing paragraphs of this Complaint as if set forth at length herein.

23. Pursuant to the Credit Line Agreement, Mallard promised, among other things, to repay all Loans to the Bank upon the Bank's demand. In addition, Mallard owed the Bank certain obligations under the Credit Line Agreement. ✓

24. Mallard has breached his obligations and has defaulted under the Credit Line Agreement by, among other things, failing to repay all amounts due and owing on the Loans and/or failing to, among other things, maintain at all times sufficient Collateral in which the Bank has a first-priority, perfected security interest, thereby causing damages to the Bank of at least \$55,703.31. ✓

SECOND COUNT
(Breach of Covenant of Good Faith and Fair Dealing)

25. The Bank repeats the allegations of the foregoing paragraphs of this Complaint as if set forth at length herein.

26. There exists in every commercial transaction the implied duty of good faith and fair dealing.

27. Mallard's refusal to fulfill his obligations is a breach of the Credit Line Agreement perpetrated in bad faith and constitutes unfair dealing.

28. Mallard's failure to engage in good faith and fair dealing has caused damages to the Bank of at least \$55,703.31.

THIRD COUNT
(Unjust Enrichment)

29. The Bank repeats the allegations of the foregoing paragraphs of this Complaint as if set forth at length herein.

30. The Bank fully completed all of its obligations in connection with the Credit Line Agreement.

31. Allowing Mallard to retain the benefits provided by the Bank without payment of the amounts currently due and owing under the Credit Line Agreement would be unjust.

32. As a direct and proximate result of Mallard's breaches of the Credit Line Agreement and Mallard's defaults, and unjust retention of the benefits of the Credit Line Agreement, the Bank has suffered damages of at least \$55,703.31.

FOURTH COUNT
(Account Stated)

33. The Bank repeats the allegations of the foregoing paragraphs of this Complaint as if set forth at length herein.

34. On or about November 13, 2008, the Bank stated an account to Mallard upon which certain amounts were due, owing and unpaid.

35. Despite demand, Mallard has not paid the amounts due and owing to the Bank, thereby causing the Bank damages of at least \$55,703.31.

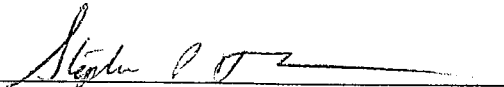
PRAYER FOR RELIEF

WHEREFORE, Plaintiff UBS Bank USA demands judgment against Defendant Herbert K. Mallard in the amount of at least \$55,703.31, plus accruing interest, collection costs, costs of suit, attorney fees, and such further relief as is deemed just and proper.

[COMPLAINT]

DATED: December 18, 2008

ANDERSON & KARRENBERG


Thomas R. Karrenberg
Stephen P. Horvat
Jennifer R. Eshelman
Attorneys for Plaintiff

Plaintiff's Address:

299 Main Street, #2275
Salt Lake City, Utah 84111



Credit Line Account Application and Agreement for Individuals

UBS Bank USA

Variable Credit Line Account Number (if applicable)
 Fixed Credit Line Account Number (if applicable)
 SSN / TIN
 Internal Use Only

HA

For Internal Use Only			
Variable Credit Line Account at UBS Bank USA			
MR Herbert K Mallard			
Fixed Credit Line Account at UBS Bank USA			
MR Herbert K Mallard			

Collateral Account(s) at UBS Financial Services Inc
 Insert the information below for each UBS Financial Services Inc account to be pledged to secure the Borrower's credit line

Full Collateral (Securities) Account Title	Branch	Account Number	FA#
1) Herbert K Mallard			
2)			
3)			
4)			
5)			
6)			

Credit Line Account

- Select the type of credit line account
- Variable Credit Line Account
 - Fixed Credit Line Account
 - Both

- Select the type of Credit Line Account
- Sole Borrower
 - Joint Borrowers

If you do not indicate your preference you will be deemed to have selected the Both option

Please read carefully the Joint Credit Line Account Agreement section of the attached Credit Line Agreement

* Any person whether married unmarried or separated may apply for separate credit

Borrower Information

Complete this section for a Sole Borrower Account or the Primary Borrower for Joint Borrowers

Basic Information

First Name: Herbert Middle Name: K

Last Name: Mallard

Country of Citizenship: USA Other (specify) SS#

Passport/CEDULA and Green Card# (If non U S and no SS# specified)

Passport/CEDULA Country of Issuance

Location of Address: Home Legal Residence Business Primary

Other (specify)

Street Address (If a PO Box complete the Additional Address Information on page 3)

City: State: Zip:

Residence Telephone Number:

Borrower Financial Information If you share assets with another person please provide financial information (e.g. annual income liquid assets net worth) per individual

Annual Income: Liquid Assets:

Net Worth (exclusive of residence):

Do you derive a substantial amount of your income/wealth (over 50%) from a country outside of the United States?
 No Yes If yes specify

Country(ies):

Is the Borrower a control person of UBS AG or its subsidiaries or affiliates?
 Yes No If yes please specify company and %