

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORKDEUTSCHE BANK TRUST
COMPANY AMERICAS,

Plaintiff(s),

*-against-*HPM PARTNERS LLC, BENJAMIN A.
PACE III, LAWRENCE B. WEISSMAN,
STEVEN A. KUROSKO, LINDSEY
JONATHAN NADEL, QUINN JO-ROSE
PORTFOLIO, and NEZA BEVC,
Defendant(s).

Index No.

Summons

Date Index No. Purchased:


To the above named Defendant(s)

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is CPLR sec. 503, which is proper because Plaintiff is duly authorized to conduct business in the State of New York and its principal place of business in New York is in New York County.

Dated: May 27, 2014

by


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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

DEUTSCHE BANK TRUST COMPANY AMERICAS,

Plaintiff,

-against-

HPM PARTNERS LLC, BENJAMIN A. PACE III,
LAWRENCE B. WEISSMAN, STEVEN A.
KUROSKO, LINDSEY JONATHAN NADEL, QUINN
JO-ROSE PORTFOLIO, and NEZA BEVC,

Defendants.

Index No. _____.

VERIFIED COMPLAINT

Plaintiff Deutsche Bank Trust Company Americas (“Plaintiff” or “DB”), by and through its attorneys, Baker & Hostetler LLP, as and for its Verified Complaint against defendants HPM Partners, LLC (“HPM”) and Benjamin A. Pace, III, Lawrence B. Weissman, Steven A. Kurosko, Lindsey Jonathan Nadel, Quinn Jo-Rose Portfolio, and Neza Bevc (the individual defendants collectively the “Employee Defendants,” together with HPM, the “Defendants”) alleges as follows:

PRELIMINARY STATEMENT

1. This action involves an attempt at a wholesale raid by HPM on DB’s Chief Investment Office (“CIO”) and domestic discretionary portfolio management (“DPM”) private banking business. HPM and the Employee Defendants colluded to unlawfully violate DB’s notice and non-solicitation policies to lure other employees away from DB, induce valuable DB clients to leave DB, and engage in activities that could, if not stopped, ultimately lead to devastating consequences to DB’s business, to DB’s detriment, and in favor of HPM.
2. Upon information and belief, HPM unlawfully induced the Employee Defendants to breach their notice and non-solicitation obligations by resigning and leaving DB *en masse* in order to join HPM’s operations, and to bring with them DB’s most valuable key clients.

3. HPM targeted nearly all of DB's domestic CIO/DPM private banking business, including nine Managing Directors, seven of whom initially resigned as part of HPM's orchestrated efforts.

4. HPM's unlawful raid of DB's Employee Defendants in order to misappropriate DB's business appears to be a relentless continuation of prior similar unlawful activity directed towards DB and its key assets.

5. In April, 2012 HPM hired four former DB managing directors in California to open its fourth U.S. office, in efforts to expand on the West Coast. The matter was settled following litigation, but HPM ended up with over \$550 million of assets under management previously managed at DB by the departing managing directors.

6. This time HPM's raid knows no limits, and seeks to choreograph a mass exodus of key talent that, if successful, would comprise the core of DB's human capital, such that key clients would have no choice but to follow—resulting in a vast windfall for HPM—while HPM easily avoids the many years of marketing and investment dollars that it takes to establish and maintain those client relationships and the cost of acquiring the business.

7. The unlawful actions by HPM and the Employee Defendants could best be described as an economic coup d'état, which seeks to obtain DB's critical client base as its spoils. HPM is exploiting the situation by unfairly competing with DB. For example, on May 19, 2014, HPM's top management contacted one of DB's key clients, falsely claiming that "the Deutsche Bank New York Investment Group has joined with HPM Partners . . . as of Friday, May 16." Similarly, the Employee Defendants have begun to contact DB's private banking clients in order to transfer their business to HPM.

8. Not only are Defendants' actions unlawful, but the Employee Defendants' actions specifically violate DB's Code of Professional Conduct, DB's Notice & Non Solicitation Obligations Policy, and the applicable provisions of the Employee Defendants' employment agreements; and HPM's actions are in clear violation of the non-disparagement provisions of the 2012 Settlement Agreement between HPM and DB and constitute unfair competition.

9. This action was filed in order to put a stop to these unlawful actions, and the significant impending harm to DB's business, pending mandatory FINRA arbitrations.

THE PARTIES

10. Plaintiff Deutsche Bank Trust Company Americas is incorporated under Delaware law and maintains its principal place of business in New York, New York. Deutsche Bank Trust Company Americas is a member of the Deutsche Bank Group, which is a group of firms affiliated with Deutsche Bank AG. At all relevant times, the Employee Defendants were employed by Deutsche Bank Trust Company Americas or a predecessor company, and provided services to Deutsche Bank Trust Company Americas, as well as certain other entities affiliated with Deutsche Bank AG. Where applicable, the definition of Plaintiff and/or DB shall include such affiliates for whom the Employee Defendants provided services.

11. Defendant HPM, with offices located on 6 East 43rd Street, New York, New York, is a corporation organized and existing under Delaware law. HPM is duly authorized to conduct business in New York.

12. Defendant Benjamin A. Pace, III, was hired by DB in 1994 as a Senior Portfolio Manager, and held the title of Managing Director as of May 16, 2014. Mr. Pace resides at 14 Pine Street, North Arlington, NJ 07031.

13. Defendant Lawrence B. Weissman has been a Managing Director with DB since January 2010. Mr. Weissman resides at 1 Renaissance Square, Apt. 23A, White Plains, NY 10601.

14. Defendant Steven A. Kurosko was hired by DB as an Analyst in February 2001 and held the title of Director at DB as of May 16, 2014. Mr. Kurosko is a resident of New York State, and currently resides at 312 Hicks Street, Apt. 4, Brooklyn, NY 11201.

15. Defendant Lindsey Jonathan Nadel has been a Director with DB since June 2010. Mr. Nadel resides at 117 Foxwood Drive, Jericho, NY 11753.

16. Defendant Quinn Jo-Rose Portfolio has been an Analyst with DB since November 2010. Ms. Portfolio resides at 330 East 39th Street, Apt. 14L, New York, NY 10016.

17. Defendant Neza Bevc has been an Analyst with DB since October 2010. Ms. Bevc resides at 446 West 49th Street, Apt. 4A, New York, NY 10019.

FACTUAL BACKGROUND

18. Defendants' unlawful actions are clearly a coordinated, deliberate, and premeditated interference with DB's ability to manage its business, which if left unabated, could have a debilitating impact on DB's ability to effectively service its clients' needs and carry out its fiduciary obligations to people who have entrusted DB with their assets.

19. The facts outlined below will demonstrate DB's entitlement to relief resulting from, among others: (i) the Employee Defendants' breach of DB's Code of Professional Conduct and the applicable employment agreements; (ii) certain of the Employee Defendants' violations of DB's Notice & Non Solicitation Obligations Policy and the applicable employment agreements; (iii) HPM's tortious interference with the Employee Defendants' notice and non-solicitation obligations; and (iv) HPM's violation of the 2012 Settlement Agreement between HPM and DB, and its unfair competition with DB.

I. DB's Domestic Private Banking Business

20. The Employee Defendants belong to DB's domestic CIO/DPM private banking business, which is part of DB's Asset & Wealth Management Division. The Employee Defendants are comprised of Managing Directors, Portfolio Consultants and Portfolio Analysts who work together to service high net worth clients with various financial products and multifaceted investment solutions. The Portfolio Consultants manage the money, and have exclusive fiduciary advisory relationships with the clients. They work directly with clients to explore various investment options across all asset classes, from conservative vehicles to more high risk initiatives.

21. Once the client chooses an investment objective, the Portfolio Consultant will work with the client from then on, interfacing directly with the client on investment and money management matters. The Portfolio Consultants have discretion with respect to how to ultimately invest the client's funds, meaning that they are not limited to DB proprietary products or any particular class of third-party products in order to make the best investment decisions for the clients.

22. If HPM's attempt at a full raid continues unabated, the employee departures and subsequent "client grab" will have devastating irreparable consequences to DB.

II. The Employee Defendants' Resignations

23. On Friday, May 16, 2014, Benjamin A. Pace, III, submitted a notice of resignation directed to Randy Brown, a DB Managing Director and his direct supervisor. In his letter, Pace conveniently cites to "pressure to sell proprietary products" as the reason for his departure. However, Pace and his team had discretion with respect to how to ultimately invest client funds, and DB's management, including Brown and DB's Global Head of Asset & Wealth Management, Michele Faissola, had reiterated this to Pace on multiple occasions.

24. While acknowledging in his resignation letter that he was subject to notice and non-solicitation covenants, Pace incorrectly cited the perceived “pressure to sell proprietary products” as the basis for his belief that he was free to disregard the covenants.

25. Unsurprisingly, Larry B. Weissman sent an almost identical letter to DB on the same date—May 16, 2014—quoting identical language, i.e., alleged “pressure to sell proprietary products,” as the reason for his departure.

26. Weissman also expressed the belief that DB’s post-employment restrictions and notice periods were inapplicable to him.

27. The letters from Pace and Weissman were conspicuously similar on their face, and clearly demonstrate a coordinated and planned departure.

28. On May 16, eight other DB employees who were subject to a notice provision, namely Steven A. Kurosko, Lindsey Jonathan Nadel, David D. Jumper, Foster J. McCoy, John Bosco Walsh, Ronald Ernest Colonna, Jr., Sean Gamble Magee and Gary Joel Pollack,¹ also resigned, though in their resignation letters, ostensibly purported to abide by their notice period requirements.

29. Upon information and belief, on May 16, HPM invited certain other DB employees, namely Quinn Jo-Rose Portfolio, Neza Bevc, Patrick Murray, Jessica Anne Farrell, Brittany Berry and Caitlin Brunton to a cocktail party that Friday afternoon. Upon further information and belief, HPM informed the aforementioned DB employees at the cocktail party that their superiors at DB had resigned to join HPM, and presented them with offer letters, encouraging them to make a decision and sign the offer letters by Sunday evening.

¹ Messrs. Jumper, McCoy, Walsh, Colonna, Magee and Pollack initially resigned on May 16, 2014, but are not named as defendants in this action.

30. Between Sunday, May 18 and Tuesday, May 20, 2014, six additional DB employees, namely Portfolio, Bevc, Murray, Farrell, Berry and Brunton² also resigned. Attached as Exhibit A, are true and correct copies of the DB employees' resignation letters.

III. Unlawful Targeting Of DB's Clients

31. The Employee Defendants have already placed calls to existing DB clients, and DB has already received several communications from clients who indicated that their business has been solicited on behalf of HPM. DB's clients have valid investment advisory agreements with DPM.

32. Upon information and belief, on May 19, 2014, Stephen Nielander from HPM's Orange County, California office, contacted one of DB's key clients, falsely claiming that "the Deutsche Bank New York Investment Group has joined with HPM Partners . . . as of Friday, May 16."

33. Similarly, upon information and belief, on May 19, 2014, several Employee Defendants, including Nadel, contacted one or more of DB's clients in order to transfer their business to HPM.

34. These pre-departure solicitations by the Employee Defendants, some of whom are still working at DB pursuant to their notice requirements, violate DB's Code of Professional Conduct and Notice & Non Solicitation Obligations Policy, and constitute breaches of fiduciary duties by any employees directly or indirectly involved.

IV. DB's Code Of Professional Conduct

35. In order to protect confidential and proprietary information, DB's Code of Professional Conduct, a true and correct copy of which is attached hereto as Exhibit B, expressly

² Mr. Murray, Ms. Farrell, Ms. Berry and Ms. Brunton initially resigned on May 19, 2014, but are not named as defendants in this action.

provides that “during the term of [his or her] employment and for a period of 120 days following termination of employment,” an employee may not:

(1) [D]irectly or indirectly, solicit, or facilitate obtaining business from any Deutsche Bank client which was a client of the employee’s division at any time during his or her employment, in any case other than for Deutsche Bank; (2) induce or attempt to induce any such client to reduce or terminate its business with Deutsche Bank; or (3) directly or indirectly, solicit, induce, cause, participate or assist any third party in soliciting any employees from the employee’s division to work for the employee or any entity.

See Exhibit B at 9, ¶ 2.

36. It was clear to all DB employees, particularly the Employee Defendants, that employment at DB and sharing its identity meant adhering to this Code. Indeed, compliance with the Code was “a term and condition of initial and continued employment.” *See* Exhibit B at 3, ¶ 2.

37. The Employee Defendants have breached DB’s Code of Professional Conduct, and in turn, their condition of employment, by soliciting other DB employees and soliciting business from existing DB clients during the term of their employment and/or within 120 days from their dates of termination.

V. DB’s Notice & Non Solicitation Obligations Policy

38. DB employs a notice policy entitled, “Notice & Non Solicitation Obligations Policy – US,” to which certain DB employees are required to adhere. This policy, a true and correct copy of which is attached hereto as Exhibit C, is typically outlined in DB’s employment agreements. According to the policy, in order to “protect valuable employee and client relationships, and assist in the smooth transition of business when an employee leaves,” DB requires certain employees to adhere to a “Notice Period,” which requires them “to provide

written notice before resigning from their employment.”³ *See* Exhibit C at 4, ¶ 1.

39. DB’s non-solicitation policy, also reflected in paragraph [42] above, provides that during employment and “for 120 days thereafter,” DB employees shall not: (i) “solicit or facilitate obtaining business from any DB client which was a client of [their] division at any time during [their] employment”; (ii) “induce or attempt to induce any such client to reduce or terminate its business with DB”; or (iii) “directly or indirectly, solicit, induce, cause, participate or assist any third party in soliciting any employees from [their] division to work for [them] or any entity.” *See* Exhibit C at 5, ¶ 1.

40. DB’s non-solicitation period applies to any employee’s employment term, plus 120 days “following the date on which [an employee’s] termination becomes effective.” For employees subject to the Notice Period, the employee’s termination becomes effective on the “last date of the Notice Period.” *See* Exhibit C at 5, ¶ 1.

41. All United States based DB employees who hold the title of Vice President or above “are required to provide Deutsche Bank with written notice . . . before resigning their employment.” *See* Exhibit C at 4, ¶ 1. The Notice Period ranges between 30 and 90 calendar days.

42. All DB Asset Wealth Management “Managing Directors,” “Directors,” and “Vice Presidents,” are required to provide DB with written notice 90, 60, and 30 calendar days, respectively, prior to separation of employment. *See* Exhibit C at 4, ¶ 3.

43. DB employees subject to the Notice Period are not permitted to “perform any services for any other employer during the Notice Period unless DB agrees in writing or terminates [the employee’s] employment.” *See* Exhibit C at 4, ¶ 5.

³ Attached as Exhibit D are true and correct copies of the Employee Defendants’ employment agreements, some of which also reflect DB’s Notice & Non Solicitation Obligations Policy, and some of which reflect DB’s Notice Period requirements.

VI. The 2012 Settlement Agreement

44. In April, 2012 HPM hired four former DB managing directors in California to open its fourth U.S. office, in efforts to expand on the West Coast.

45. HPM's April, 2012 "hiring" of DB's top talent eventually resulted in litigation and a subsequent September 2012 Settlement Agreement between HPM, DB, and the former DB employees who resigned in order to work for HPM.

46. Stephen B. Nielander was among the individual parties to the Settlement Agreement who had previously worked for DB in Orange County, California. The Settlement Agreement notes that the individuals had "resigned from their employment with DB and immediately became employed by HPM[.]" acknowledging that they had not served out their required notice periods.

47. The Settlement Agreement contained a non-disparagement provision, which required HPM, and Nielander specifically, among others, not to "disparage, defame and/or communicate any derogatory information to any other person or business entity which reflects negatively upon the professional, business, corporate or personal reputation or character of Deutsche Bank."

48. HPM, however, is clearly operating under the same playbook. Indeed, on May 19, 2014, Nielander, who was a party to the Settlement Agreement, contacted at least one of DB's key clients, falsely claiming that "the Deutsche Bank New York Investment Group has joined with HPM Partners . . . as of Friday, May 16."

49. As such, HPM's actions are not only a violation of law constituting unfair competition, but are also in violation of the September 2012 Settlement Agreement.

**FIRST CAUSE OF ACTION
FOR BREACH OF CONTRACT (CODE OF PROFESSIONAL CONDUCT,
NOTICE & NON-SOLICITATION POLICY AND EMPLOYMENT AGREEMENTS)
AGAINST THE EMPLOYEE DEFENDANTS**

50. DB repeats and re-alleges each of the allegations made in Paragraphs 1 through 49 of the Complaint as if fully stated herein.

51. By reason of the foregoing conduct as alleged herein, the Employee Defendants have breached DB's Code of Professional Conduct, DB's Notice & Non Solicitation Obligations Policy, as well as the corresponding terms of their individual employment agreements regarding non-solicitation.

52. The Employee Defendants breached DB's Code of Professional Conduct, DB's Notice & Non Solicitation Obligations Policy, their applicable employment agreements, and in turn, their condition of employment, by: (i) soliciting business from existing DB clients; (ii) inducing or attempting to induce such clients to terminate their business with DB, and to work with HPM; and (iii) directly or indirectly, soliciting or assisting HPM in soliciting DB employees to work for HPM, all during the term of their employment and/or within 120 days from their dates of termination.

53. As a result of the Employee Defendants' breaches, DB has suffered and will continue to suffer injury, including irreparable injury, and substantial damages, including direct, consequential, and incidental damages, in amounts to be determined at trial.

54. By reason of the Employee Defendants' substantial breaches of DB's Code of Professional Conduct, DB's Notice & Non Solicitation Obligations Policy and the applicable employment agreements, DB is entitled to compensatory damages, including direct, consequential, and incidental damages, in amounts to be determined at trial, as well as injunctive relief requiring the Employee Defendants to honor the terms of DB's Code of Professional

Conduct, Notice & Non Solicitation Obligations Policy, and their respective employment agreements by: (i) preliminarily and permanently enjoining the Employee Defendants from further contacting and soliciting DB's clients and other DB employees in violation of the non-solicitation provisions expressly stated in DB's Code of Professional Conduct, by which all Employee Defendants are bound; and (ii) preliminarily and permanently enjoining the Employee Defendants from improperly using and/or disseminating any confidential and/or proprietary information belonging to DB that they may have in their possession.

**SECOND CAUSE OF ACTION
FOR BREACH OF CONTRACT (NOTICE & NON SOLICITATION OBLIGATIONS
POLICY AND EMPLOYMENT AGREEMENTS) AGAINST PACE AND WEISSMAN**

55. DB repeats and re-alleges each of the allegations made in Paragraphs 1 through 54 of the Complaint as if fully stated herein.

56. By reason of the foregoing conduct as alleged herein, certain of the Employee Defendants, namely Pace and Weissman, have breached DB's Notice & Non Solicitation Obligations Policy and the applicable corresponding terms of their respective employment agreements.

57. DB employees subject to the Notice Period are not permitted to "perform any services for any other employer during the Notice Period unless DB agrees in writing or terminates [the employee's] employment."

58. Certain of the Employee Defendants, namely Pace and Weissman, have breached DB's Notice Period by indicating intention to start employment with HPM prior to the expiration of their respective Notice Periods.

59. These Employee Defendants also breached DB's non-solicitation policy by: (i) soliciting business from existing DB clients; (ii) inducing or attempting to induce such clients to terminate their business with DB; and (iii) directly or indirectly, soliciting or assisting HPM in

soliciting DB employees to work for HPM, during their Notice Period and/or within 120 days from their dates of termination.

60. By reason of the Employee Defendants' substantial breaches of DB's Notice & Non Solicitation Obligations Policy and the applicable corresponding terms of their respective employment agreements, DB is entitled to compensatory damages, including direct, consequential, and incidental damages, in amounts to be determined at trial, as well as injunctive relief requiring these Employee Defendants to honor the terms of DB's Notice & Non Solicitation Obligations Policy and the applicable corresponding terms of their respective employment agreements by: (i) preliminarily and permanently enjoining HPM from improperly hiring certain of the Employee Defendants, namely Pace and Weissman, in violation of such Notice Periods; (ii) preliminarily and permanently enjoining these Employee Defendants from further contacting and soliciting DB's clients and other DB employees in violation of the non-solicitation provisions expressly stated in DB's Code of Professional Conduct and DB's Notice & Non Solicitation Obligations Policy, by which all Employee Defendants are bound, as well as the applicable corresponding terms of their respective employment agreements; and (iii) preliminarily and permanently enjoining these Employee Defendants from improperly using and/or disseminating any confidential and/or proprietary information belonging to DB that they may have in their possession.

**THIRD CAUSE OF ACTION FOR BREACH OF CONTRACT
(2012 SETTLEMENT AGREEMENT) AGAINST HPM**

61. DB repeats and re-alleges each of the allegations made in Paragraphs 1 through 60 of the Complaint as if fully stated herein.

62. By reason of the foregoing conduct as alleged herein, HPM is in clear breach of the September 2012 Settlement Agreement between HPM and DB.

63. HPM violated the Settlement Agreement by communicating derogatory information to existing DB clients, which reflects negatively upon DB's domestic CIO/DPM private banking business, in violation of the non-disparagement provisions in the agreement.

64. By reason of HPM's substantial breaches to the Settlement Agreement, DB is entitled to compensatory damages, including direct, consequential, and incidental damages, in amounts to be determined at trial, as well as injunctive relief requiring HPM to honor the terms of the Settlement Agreement by: (i) preliminarily and permanently enjoining HPM from further contacting and soliciting DB's clients and other DB employees in violation of the non-disparagement provisions expressly stated in the Settlement Agreement.

**FOURTH CAUSE OF ACTION
FOR TORTIOUS INTERFERENCE AGAINST HPM**

65. DB repeats and re-alleges each of the allegations made in Paragraphs 1 through 64 of the Complaint as if fully stated herein.

66. The Employee Defendants agreed to DB's Code of Professional Conduct, Notice & Non Solicitation Obligations Policy, and valid employment agreements which exist between DB and the Employee Defendants. DB also has valid investment advisory agreements for each DPM account.

67. HPM has tortiously interfered with DB's contractual and employment relationships, and caused certain Employee Defendants to breach their agreement with DB, despite being fully aware of the employment agreements between DB and the Employee Defendants. HPM has also tortiously interfered with DB's contractual and business relationships with its clients, of which HPM is fully aware.

68. HPM maliciously induced or attempted to induce certain Employee Defendants to breach their employment agreements with DB, including DB's Code of Professional Conduct,

Notice & Non Solicitation Obligations Policy, and the applicable terms of their employment agreements. Upon information and belief, HPM's conduct and actions were a substantial factor in causing these breaches of contracts at issue.

69. DB suffered damages as a result of HPM's willful, wanton, and malicious conduct.

70. By reason of HPM's tortious conduct, DB is entitled to punitive and compensatory damages, including, direct, consequential, and incidental damages, in amounts to be determined at trial, as well as injunctive relief: (i) preliminarily and permanently enjoining HPM from further contacting and soliciting DB's employees and DB's clients; and (ii) preliminarily and permanently enjoining HPM from improperly hiring certain of the Employee Defendants in violation of their Notice Periods.

**FIFTH CAUSE OF ACTION FOR BREACH OF FIDUCIARY DUTY
AGAINST THE EMPLOYEE DEFENDANTS**

71. DB repeats and re-alleges each of the allegations made in Paragraphs 1 through 70 of the Complaint as if fully stated herein.

72. The Employee Defendants each owed fiduciary duties to DB, including duties of loyalty, candor, disclosure, and diligence.

73. The Employee Defendants breached their fiduciary duties to DB by assisting HPM to compete with DB; using DB's facilities, confidential information, resources, and time, to assist HPM to compete with DB; by using DB's business records and confidential information for their personal benefit and the benefit of HPM; and by usurping opportunities belonging to DB, by contacting existing DB clients in order to induce them to terminate their relationship with DB in favor of HPM; and by assisting HPM to solicit other DB employees, all the time while employed with DB.

74. DB suffered damages as a result of the Employee Defendants' willful, wanton, and malicious conduct.

75. By reason of the Employee Defendants' tortious conduct, DB is entitled to punitive and compensatory damages, including direct, consequential, and incidental damages, in amounts to be determined at trial, as well as injunctive relief, preliminarily and permanently enjoining the Employee Defendants from further contacting and soliciting DB's clients, and engaging in further breaches of fiduciary duty.

**SIXTH CAUSE OF ACTION FOR AIDING AND ABETTING
BREACH OF FIDUCIARY DUTY AGAINST HPM**

76. DB repeats and re-alleges each of the allegations made in Paragraphs 1 through 75 of the Complaint as if fully stated herein.

77. The Employee Defendants each owed fiduciary duties to DB, including duties of loyalty, candor, disclosure, and diligence.

78. Upon information and belief, HPM knowingly and actively aided and abetted the Employee Defendants' breaches of fiduciary duty.

79. DB suffered damages as a result of HPM's willful, wanton, and malicious conduct.

80. By reason of HPM's tortious conduct, DB is entitled to punitive and compensatory damages, including direct, consequential, and incidental damages, in amounts to be determined at trial, as well as injunctive relief, preliminarily and permanently enjoining HPM from further contacting and soliciting DB's clients and/or employees, and engaging in further acts of aiding and abetting breaches of fiduciary duty.

**SEVENTH CAUSE OF ACTION
FOR UNFAIR COMPETITION AGAINST HPM**

81. DB repeats and re-alleges each of the allegations made in Paragraphs 1 through 80 of the Complaint as if fully stated herein.

82. HPM took deliberate actions to destroy DB's business by intentionally interfering with its contractual obligations, with hopes of obtaining a windfall, and avoiding the many years of marketing and investment dollars that DB took to establish and maintain those client relationships.

83. HPM's deliberate solicitation of DB clients and employees, and intentional misrepresentations to DB clients, demonstrate that HPM seeks to profit from DB's expenditure of time, labor, and talent. HPM is also unfairly competing with DB by exploiting the instability caused at DB by the Employee Defendants' resignations and attempting to induce additional DB employees and DB clients to join HPM.

84. DB has suffered damages as a result of HPM's willful, wanton, and malicious conduct, and unfair competition.

85. By reason of HPM's tortious conduct, DB is entitled to punitive and compensatory damages, including direct, consequential, and incidental damages, in amounts to be determined at trial, as well as injunctive relief, preliminarily and permanently enjoining HPM from further contacting and soliciting DB's clients and/or employees, and engaging in further acts of unfair competition.

**EIGHTH CAUSE OF ACTION FOR
UNJUST ENRICHMENT AGAINST HPM**

86. DB repeats and re-alleges each of the allegations made in Paragraphs 1 through 85 of the Complaint as if fully stated herein.

87. Upon information and belief, HPM unlawfully induced the majority of the senior employees in DB's domestic CIO/DPM private banking business to terminate their employ with DB in favor of HPM.

88. Upon information and belief, HPM has contacted at least one of DB's key clients, falsely claiming that "the Deutsche Bank New York Investment Group has joined with HPM Partners . . . as of Friday, May 16."

89. Upon information and belief, HPM has tortiously interfered with DB's contractual and employment relationships, and caused certain Employee Defendants to breach their agreements with DB, in favor of employment at HPM.

90. HPM has also maliciously induced or attempted to induce certain DB clients to sever their business relationships with DB, in favor of HPM.

91. By reason of the foregoing conduct, HPM has benefitted from its malicious conduct, to DB's detriment and expense.

92. DB has suffered damages as a result of HPM's willful, wanton, and malicious conduct.

93. By reason of HPM's tortious conduct, equity and good conscience necessitates DB's entitlement to punitive and compensatory damages, including direct, consequential, and incidental damages, in amounts to be determined at trial, as well as injunctive relief: (i) preliminarily and permanently enjoining HPM from further contacting and soliciting DB's clients and/or employees; and (ii) preliminarily and permanently enjoining HPM from improperly hiring certain of the Employee Defendants in violation of their Notice Periods.

**NINTH CAUSE OF ACTION
FOR DECLARATORY JUDGMENT (CODE OF PROFESSIONAL CONDUCT,
NOTICE & NON SOLICITATION OBLIGATIONS POLICY, AND EMPLOYMENT
AGREEMENTS) AGAINST EMPLOYEE DEFENDANTS**

94. DB repeats and re-alleges each of the allegations made in Paragraphs 1 through 93 of the Complaint as if fully stated herein.

95. This cause of action seeks a judicial declaration that DB's Code of Professional Conduct, Notice & Non Solicitation Obligations Policy, and employment agreements, and in particular the non-solicitation and notice period provisions therein, are enforceable against the Employee Defendants.

96. There is a substantial, immediate, and actual controversy between DB and the Employee Defendants as to the enforceability of DB's policies and agreements, in particular the non-solicitation and notice period provisions.

97. By reason of the foregoing, DB is entitled to a declaratory judgment under CPLR 3001 declaring that: (i) DB's Code of Professional Conduct, Notice & Non Solicitation Obligations Policy, and employment agreements, and in particular the non-solicitation and notice period provisions, are enforceable as against the Employee Defendants; (ii) the Employee Defendants must abide by DB's Notice Period requirement, if applicable, and may not accept employment from HPM prior to the expiration of their respective Notice Periods; (iii) the Employee Defendants may not contact or solicit DB's clients or other DB employees during their Notice Period and within 120 days from their dates of termination, for personal gain or on behalf of HPM or any other third party, in violation of the non-solicitation provisions expressly stated in DB's Code of Professional Conduct, Notice & Non Solicitation Obligations Policy, and employment agreements, by which all Employee Defendants are bound; and (iv) the Employee

Defendants may not improperly use and/or disseminate any confidential and/or proprietary information belonging to DB that they may have in their possession.

PRAYER FOR RELIEF

WHEREFORE, DB respectfully requests that this Court enter in its favor and against Defendants as follows:

(a) Entering declaratory judgment under CPLR 3001 adjudging, declaring, and decreeing the enforceability of DB's Code of Professional Conduct, Notice & Non Solicitation Obligations Policy, and employment agreements, in particular the non-solicitation and notice period provisions, as against the Employee Defendants, and barring the Employee Defendants from: (i) accepting employment from HPM prior to the expiration of their respective Notice Periods; (ii) soliciting DB's clients and other DB employees during their Notice Period and within 120 days from their dates of termination, for personal gain and/or on behalf of HPM or any other third party, in violation of the non-solicitation provisions expressly stated in DB's Code of Professional Conduct, Notice & Non Solicitation Obligations Policy, and employment agreements, by which all Employee Defendants are bound; and (iii) improperly using and/or disseminating any confidential and/or proprietary information belonging to DB that they may have in their possession.

(b) Awarding injunctive relief by: (i) enjoining the Employee Defendants from further contacting and soliciting DB's clients and other DB employees in violation of the non-solicitation provisions expressly stated in DB's Code of Professional Conduct and Notice and Non Solicitation Obligations Policy, by which all Employee Defendants are bound, and the applicable terms of the employment agreements the Employee Defendants executed; (ii) enforcing the Notice Periods contained in certain of the employment agreements and preventing

HPM from improperly hiring certain of the Employee Defendants in violation of such Notice Periods; and (iii) enjoining the Employee Defendants and HPM from improperly using and/or disseminating any confidential and/or proprietary information belonging to DB that they may have in their possession, and from further contacting or soliciting current DB clients and/or DB employees for their benefit, and to DB's detriment.

(c) Awarding compensatory damages against the Employee Defendants in amounts to be determined at trial for breaching their non-solicitation obligations pursuant to DB's Code of Professional Conduct, DB's Notice and Non Solicitation Obligations Policy and their applicable employment agreements;

(d) Awarding compensatory damages against certain Employee Defendants in amounts to be determined at trial for breaching their notice period obligations pursuant to DB's Notice & Non Solicitation Obligations Policy and their applicable employment agreements;

(e) Awarding compensatory and punitive damages against certain Employee Defendants in amounts to be determined at trial for breaching their fiduciary duties owed to DB;

(f) Awarding compensatory and punitive damages against HPM in amounts to be determined at trial for aiding and abetting the Employee Defendants' breaches of fiduciary duty;

(g) Awarding compensatory and punitive damages against HPM in amounts to be determined at trial for its unfair competition;

(h) Awarding compensatory damages against HPM in amounts to be determined at trial for breaching the 2012 Settlement Agreement;

(i) Awarding compensatory and punitive damages against HPM in amounts to be determined at trial for its tortious interference with the Employee Defendants' employment agreements, and DB's investment advisory agreements with its clients;

- (j) Awarding DB the disgorgement and return of all salary, bonuses, and other compensation and benefits paid by DB to the Employee Defendants during the period of disloyalty;
- (k) Awarding DB pre- and post- judgment interest as allowed by law; and
- (l) Awarding DB such other and further relief as the Court deems just and proper.

Dated: May 27, 2014

Respectfully submitted,

BAKER & HOSTETLER LLP

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*Attorneys for Plaintiff Deutsche Bank Trust
Company Americas*

VERIFICATION

I, Cynthia P. Nestle, state that I am Chief Operating Officer of Deutsche Bank Trust Company Americas. I have read the foregoing Verified Complaint and, based on my personal knowledge, together with the information reasonably available to me as Managing Director of Deutsche Bank Trust Company Americas in the ordinary course of its business, hereby verify that the allegations set forth herein are true and accurate to the best of my knowledge, information, and belief.

Signed under the penalties of perjury on this 27th day of May, 2014.

CP Nestle

YOLANDA RICHARDSON
Notary Public, State of New York
No. 01R16053071
Qualified in Queens County
Commission Expires January 2, 2015