UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN THE MATTER OF THE TAX LIABILITIES OF: JOHN DOES, United States taxpayers, who at any time during the years ended December 31, 2002 through December 31, 2011, directly or indirectly had interests in or signature or other authority (including authority to withdraw funds; trade or give instructions or receive account statements, confirmations, or other information, advice or solicitations) with respect to any financial accounts maintained at, monitored by, or managed through Wegelin & Co. and financial accounts maintained at, monitored by, or managed through other Swiss financial institutions that Wegelin & Co. permitted to transact client business through its United States correspondent account at UBS AG.	Case No._____ ECF Case **DECLARATION OF CHERYL R. KIGER**

Cheryl R. Kiger, pursuant to 28 U.S.C. § 1746, declares:

1. I am a duly commissioned Internal Revenue Agent assigned as Technical Specialist in the Internal Revenue Service's (the "IRS") Offshore Compliance Initiatives Program. The Offshore Compliance Initiatives Program develops projects, methodologies, and techniques for identifying United States taxpayers who are involved in abusive offshore transactions and financial arrangements for tax avoidance purposes. I have been an Internal Revenue Agent ("Revenue Agent") since 1991, and have specialized in offshore investigations since 2010. As a Revenue Agent, I have received training in tax law and audit techniques, and have received specialized training in abusive offshore tax issues. I also have experience in investigating offshore tax matters.

2. Since February 2011, I have been assigned to work on the Service's Offshore Private Banking Initiative. Prior to that, for approximately one year, I was assigned as a

Technical Advisor to agents reviewing Offshore Voluntary Disclosure submissions. Prior to that, and from approximately 2003, I worked on the Service's efforts to address various other abusive tax arrangements.

3. The IRS has long been concerned with the problem of United States taxpayers – whether involved in lawful or unlawful activities – evading their United States tax obligations by concealing unreported taxable income in accounts in offshore tax haven or financial secrecy jurisdictions. That problem has been described in detail in a number of reports, including "Crime and Secrecy: The Use of Offshore Banks and Companies," S. Rep. No. 99-130. (1985); United Nations' Office for Drug Control and Crime Prevention, Global Programme Against Money Laundering, "Financial Havens, Banking Secrecy and Money Laundering" (May 29, 1998) (www.imolin.org/imolin/finhaeng.html); and "Tax Haven Banks and U.S. Tax Compliance," S. Rep. No. 110-614 (2008).

4. The Offshore Private Banking Initiative addresses the use of private banking services by U.S. taxpayers to evade the payment of U.S. income tax.

Private Offshore Banking and Correspondent Accounts

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

6. To open an account in a private bank, prospective clients usually must deposit a substantial sum, often $1 million or more. In return for this deposit, the private bank assigns a "private banker" or "client advisor" to act as a liaison between the client and the bank and to facilitate the client's use of a wide range of the bank's financial

services and products. Those products and services often span the globe, enabling the client to benefit from services in carefully selected offshore jurisdictions that tout their strong financial privacy laws.

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

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

Private Banking and Money Laundering: A Case Study of Opportunities and Vulnerabilities: Hearings before the Senate Permanent Subcommittee on Investigations, S. Hng. 106-428 at 881-82 (1999) (Minority Staff Report).

8. The practice of offshore private banks to use correspondent accounts for purposes of accessing the United States financial market and its banking customers has similarly received considerable attention.

9. As reported in a 2001 investigative report published by the Minority Staff of the Senate Permanent Subcommittee on Investigations entitled Correspondent Banking: A Gateway For Money Laundering:

> Correspondent banking is the provision of banking services by one bank to another bank. It is a lucrative and important segment of the banking industry. It enables banks to conduct business and provide services for their customers in jurisdictions where the banks have no physical presence. For example, a bank that is licensed in a foreign country and has no office in the United States may want to provide certain services in the United States for its customers in order [to] attract or retain the business of important clients with U.S. business activities. Instead of bearing the costs of licensing, staffing and operating its own offices in the United States, the bank might open a correspondent account with an existing U.S. bank. By establishing such a relationship, the foreign bank, called a respondent, and through it, its customers, can receive many or all of the services offered by the U.S. bank, called the correspondent.
>
> Today, banks establish multiple correspondent relationships throughout the world so they may engage in international financial transactions for themselves and their clients in places where they do not have a physical presence. Many of the largest international banks located in the major financial centers of the world serve as correspondents for thousands of other banks. Due to U.S. prominence in international trade and the high demand for U.S. dollars due to their overall stability, most foreign banks that wish to provide international services to their customers have accounts in the United States capable of transacting business in U.S. dollars. Those that lack a physical presence in the U.S. will do so through correspondent accounts, creating a large market for those services.

U.S. Correspondent Banking in International Money Laundering: Hearings Before the Senate Permanent Subcommittee on Investigations, S. Hrg. 107-84 at 287 (Feb. 2001) (Report by the Minority Staff on Correspondent Banking: A Gateway For Money Laundering).

10. The Correspondent Banking Report went on to describe the special dangers of "nested" foreign correspondent accounts:

> Another practice in U.S. correspondent banking which increases money laundering risks in the field is the practice of foreign banks operating through the U.S. correspondent accounts of other foreign banks. The investigation uncovered numerous instances of foreign banks gaining access to U.S. banks – not by opening a U.S. correspondent account – but by opening an account at another foreign bank which, in turn, has an account at a U.S. bank. In some cases, the U.S. bank was unaware that a foreign bank was "nested" in the correspondent account the U.S. bank had

> opened for another foreign bank; in other cases, the U.S. bank not only knew but approved of the practice. In a few instances, the U.S. banks were surprised to learn that a single correspondent account was serving as a gateway for multiple foreign banks to gain access to U.S. dollar accounts, U.S. wire transfer systems and other services available in the United States.

Id, at 310.

Wegelin & Co.

11. According to numerous media reports, Wegelin & Co., Private Bankers, ("Wegelin") was the oldest bank in Switzerland. It was headquartered in the city of St. Gallen, and it had offices only in Switzerland. From its offices in Switzerland, Wegelin through the end of 2011 offered private banking, asset management, and other services to individuals and entities around the world including in the United States.

12. On February 2, 2012, a Federal Grand Jury sitting in the Southern District of New York issued a superseding indictment ("the Indictment") charging Wegelin and three of its Client Advisors with conspiracy to defraud the United States by concealing from the IRS undeclared accounts owned by U.S. taxpayers at Wegelin. A copy of the Indictment is attached hereto as Exhibit A.

13. Also on February 2, 2012, the United States Attorney for the Southern District of New York filed a verified complaint ("the Verified Complaint" or "Compl.") seeking forfeiture of all funds in Wegelin's correspondent account at UBS AG ("UBS"). On April 24, 2012, the United States District Court for the Southern District of New York entered default judgment and ordered forfeiture of the funds, totaling approximately $16 million. A copy of the Verified Complaint is attached hereto as Exhibit B.

14. The Indictment and the Verified Complaint are based on Wegelin's conspiracy, from 2002 through 2011, with various U.S. taxpayers and others to hide the

existence of bank accounts held at Wegelin and the income generated in those secret accounts from the IRS. Indictment ¶¶ 12-14; Compl. ¶¶ 13, 89 Among other things, in 2008 and 2009, Wegelin, through its employees, opened and serviced dozens of undeclared accounts for U.S. taxpayers in an effort to capture clients lost by UBS in the wake of widespread news reports that the IRS was investigating UBS for helping U.S. taxpayers evade taxes and hide assets in Swiss bank accounts. Indictment ¶ 16; Compl. ¶¶ 30. By mid-2008, UBS had stopped servicing undeclared accounts for U.S. taxpayers.

15. In the wake of the IRS investigation, members of Wegelin's senior management affirmatively decided to capture the illegal business that UBS exited. Indictment ¶ 12; Compl. ¶ 29. To capitalize on the business opportunity this presented and to increase the assets under management, along with the fees earned from managing those assets, individuals acting on behalf of Wegelin told various U.S. taxpayer-clients that their undeclared accounts would not be disclosed to the United States authorities because the bank had a long tradition of secrecy. Indictment ¶¶ 13-14; Compl. ¶¶ 30-32. They also persuaded U.S. taxpayer-clients to transfer assets from UBS to Wegelin by emphasizing, among other things, that unlike UBS, Wegelin did not have offices outside of Switzerland and was therefore less vulnerable to United States law enforcement pressure. *Id*.

16. Members of Wegelin's senior management approved efforts to capture the clients who were leaving UBS and also participated in some meetings with U.S. taxpayer-clients who were fleeing UBS. *Id.* Wegelin's Zurich branch even developed a special code – BNQ – for new undeclared accounts, indicating internally within Wegelin, among other things, that the accounts were undeclared. Indictment ¶ 23; Compl. ¶ 34.

According to the Indictment and Verified Complaint, Wegelin increased its U.S. business from approximately $240 million in undeclared U.S. taxpayer assets in 2005 to at least $1.2 billion in such assets in 2010. Indictment ¶ 26; Compl. ¶ 14.

17. On January 3, 2013, Wegelin appeared before the Honorable Jed S. Rakoff and plead guilty to Count 1 of the Indictment, which charged Wegelin with conspiracy to defraud the IRS, the filing of false federal income tax returns, and the evasion of federal income taxes in violation of 18 U.S.C. Section 371. Copies of the plea agreement entered into between the Government and Wegelin, dated December 3, 2012, (the "Plea Agreement"), as well as the transcript of Wegelin's January 3, 2013, guilty plea hearing (the "Transcript") are attached as Exhibits C and D, respectively.

18. In its plea agreement and allocution before Judge Rakoff, Wegelin admitted that, "[f]rom about 2002 through about 2010, Wegelin agreed with certain U.S. taxpayers to evade the U.S tax obligations of these U.S. taxpayer clients, who filed false tax returns with the IRS." Plea Agreement Exhibit A at 1; Transcript at 15:11-14. Wegelin admitted that, in furtherance of this conspiracy, it "opened and maintained accounts at Wegelin in Switzerland for U.S. taxpayers who did not complete W-9 tax disclosure forms. Wegelin also allowed independent asset managers to open non-W9 accounts for U.S. taxpayers at Wegelin." Plea Agreement Exhibit A at 1; Transcript at 15:15-20.

19. Wegelin further admitted as follows:

> At all relevant times, Wegelin knew that certain U.S. taxpayers were maintaining non-W9 accounts at Wegelin in order to evade their U.S. tax obligations, in violation of U.S. law, and Wegelin knew of the high probability that other U.S. taxpayers who held non-W9 accounts at Wegelin also did so for the same unlawful purpose. Wegelin was aware that U.S. taxpayers had a legal duty to report to the IRS, and pay taxes on the basis of, all of their income,

> including income earned in accounts that these U.S. taxpayers maintained at Wegelin. Despite being aware of this legal duty, Wegelin intentionally opened and maintained non W-9 accounts for these taxpayers with the knowledge that, by doing so, Wegelin was assisting these taxpayers in violating their legal duties. …
>
> Wegelin's conduct allowed Wegelin to increase the number of undeclared U.S. taxpayer accounts and the amount of undeclared U.S. taxpayer assets held at Wegelin, thereby increasing Wegelin's fees and profits.
>
> Wegelin admits that its agreement to assist U.S. taxpayers in evading their U.S. tax obligations in this manner resulted in a loss to the Internal Revenue Service that was $20,000,001.

Plea Agreement Exhibit A at 2-3; Transcript at 15:21-17:7.

Wegelin's Correspondent Account at UBS

20. According to the Indictment and the Verified Complaint, since at least the late 1990s, Wegelin has had a Connecticut-based correspondent bank account bearing account number 101-WA0358967-000 with UBS (the "UBS Correspondent Account"), which maintains its corporate headquarters in the Southern District of New York. *See* Indictment ¶ 1; Compl. ¶ 5.

21. Through this correspondent relationship, Wegelin could wire funds from Switzerland to the UBS Correspondent Account in the United States and, in turn, wire funds from the UBS Correspondent Account to other accounts in the United States or to accounts overseas. Compl. ¶22. Wegelin also had the ability to issue checks drawn on the UBS Correspondent Account. *Id.* These checks functioned like any check drawn on an account at a U.S. financial institution and could be deposited, or cashed for U.S. dollars, at other financial institutions. *Id.* Based on my experience, I know that a

correspondent account can also serve as a means of moving funds into the foreign respondent bank.

22. Wegelin also offered nested correspondent services to other Swiss banks that also held undeclared accounts for U.S. taxpayers. *Id.* ¶ 23. These additional Swiss banks were able to have Wegelin issue checks drawn on the UBS Correspondent Account on their behalf. *Id.* One of these other Swiss banks used this nested relationship, despite the fact that it maintained its own correspondent account with UBS in the United States. *Id.*

The IRS Investigation and the John Doe Summons

23. The IRS is now investigating United States taxpayers who directly or indirectly hold or held interests in, or have signature or other authority over, financial accounts at Wegelin, as well as at other Swiss Banks that Wegelin permitted to use its U.S. correspondent account, and who have not been or may not be complying with U.S. internal revenue laws requiring the reporting of foreign financial accounts, and income earned on those accounts. To facilitate this investigation, the IRS is seeking the Court's permission to serve, pursuant to Section 7602 of the Internal Revenue Code (26 U.S.C. § 7602), a "John Doe" summons to UBS AG in New York City, Wegelin's correspondent bank in the United States. A copy of this summons is attached as Exhibit E.

24. Based on information received by the IRS, including Wegelin's guilty plea, the persons in the "John Doe" class failed or may have failed to report the existence of foreign financial accounts under their control, failed to report income, evaded income taxes, or otherwise violated the internal revenue laws of the United States. *See* Plea Agreement Exhibit A at 1-2; Transcript at 15:11-17:2.

25. The correspondent account records requested in the John Doe summons will contain information needed to identify U.S. taxpayers with undisclosed accounts at Wegelin and at the other Swiss banks Wegelin permitted to use its U.S. correspondent account. For example, client names and other identifying information may be contained in payee or note lines or in endorsements on checks; on payee or note lines, signatures, or endorsements on deposited items; or on originator, beneficiary, or instruction fields on wire transfer records.

26. Because of the heightened risk of money laundering through correspondent accounts, the U.S.A. Patriot Act and related regulations impose certain obligations on U.S. financial institutions such as UBS that house correspondent accounts for foreign financial institutions to guard against money laundering. As explained in the Bank Secrecy Act/Anti-Money Laundering Handbook (the "Handbook"), published by Federal Financial Institutions Examination Council:

> Due diligence policies, procedures, and controls must include each of the following:
>
> - Determining whether each such foreign correspondent account is subject to [Enhanced Due Diligence].
> - Assessing the money laundering risks presented by each such foreign correspondent account.
> - Applying risk-based procedures and controls to each such foreign correspondent account reasonably designed to detect and report known or suspected money laundering activity, including a periodic review of the correspondent account activity sufficient to determine consistency with information obtained about the type, purpose, and anticipated activity of the account.

Handbook, Foreign Correspondent Account Recordkeeping and Due Diligence – Overview. The summons also requests reports produced by UBS's anti-money laundering system in connection with these due diligence requirements, as well as documents reflecting the results of investigations of such exceptions, including

communications with Wegelin. Such exception reports and investigation results may contain information relevant to the identification of U.S. taxpayers with undeclared accounts at Wegelin and the other Swiss banks using its correspondent account.

27. As described in greater detail below: (1) the "John Doe" summons to UBS relates to the investigation of an ascertainable group or class of persons; (2) there is a reasonable basis for believing that this group or class of persons has failed or may have failed to comply with provisions of the internal revenue laws; and (3) the information and documents sought to be obtained from the examination of the records or testimony (and the identity of the persons with respect to whose tax liabilities the summonses have been issued) are not readily available from sources other than UBS.

I.

THE SUMMONS DESCRIBES AN ASCERTAINABLE CLASS OF PERSONS

28. The "John Doe" summons to UBS seeks information regarding United States taxpayers who, at any time during the years ended December 31, 2002, through December 31, 2011, directly or indirectly had interests in or signature or other authority (including authority to withdraw funds, trade or give instructions or receive account statements, confirmations, or other information, advice or solicitations) with respect to any financial accounts maintained at, monitored by, or managed through Wegelin & Co. and financial accounts maintained at, monitored by, or managed through other Swiss financial institutions that Wegelin permitted to transact client business through its United States correspondent account at UBS.

29. This class of persons is ascertainable in that the individuals in the class are particularized from the general public by their characteristics of holding undisclosed

accounts at Wegelin or at other Swiss banks to which Wegelin extends privileges of conducting transactions through its U.S. correspondent account.

II.

MEMBERS OF THE "JOHN DOE" CLASS FAILED OR MAY HAVE FAILED TO COMPLY WITH THE INTERNAL REVENUE LAWS.

A. Internal Revenue Laws Require United States Taxpayers to Report Income Earned Worldwide, to Disclose All Foreign Financial Accounts, and to File Reports of Certain Foreign Financial Accounts.

30. United States taxpayers with gross income exceeding the filing requirements must file annual income tax returns reporting to the IRS their income from all sources worldwide. Taxpayers who fail to report all income on their income tax returns – including income earned in accounts held overseas – have failed to comply with the internal revenue laws.

31. United States taxpayers who have a financial interest in, or signature authority over, any foreign financial account must disclose the existence of that account on their federal income tax returns. This is done by checking the "Yes" box in response to a question at the bottom of Schedule B to the U.S. Individual Income Tax Return Form 1040.

32. United States taxpayers who have a financial interest in, or signature authority over, one or more financial accounts in a foreign country with an aggregate value of more than $10,000 at any time during a calendar year are required to file with the Department of the Treasury, for that calendar year, a Report of Foreign Bank and Financial Accounts on Form TD F 90-22.1 ("FBAR"). The FBAR for that calendar year is due by June 30 following the end of that calendar year. It is the experience of the IRS that taxpayers who have failed to file FBARs with respect to foreign financial accounts

typically also have failed to check the box on schedule B of the U.S. Individual Income Tax Return, Form 1040, disclosing the existence of foreign financial accounts, and have failed to report interest or other income earned with respect to those foreign accounts.

B. The IRS Has Reason To Believe that Members of the "John Doe" Class Failed or May Have Failed to Comply with One or More Requirements of the Internal Revenue Laws.

33. As described in further detail below, the "John Doe" class encompasses United States taxpayers with Wegelin accounts, including those taxpayers who dealt with Wegelin in order to avoid having their Swiss account relationships disclosed to the United States. The class also includes taxpayers with undisclosed accounts at other Swiss banks that Wegelin permitted to use its UBS Correspondent Account to transact business in the United States. Based on my experience with offshore accounts, taxpayers who hold undisclosed foreign accounts do so in order to conceal their income from the IRS. Indeed, Wegelin itself admitted that certain of its U.S. taxpayer clients "were maintaining non-W9 accounts at Wegelin in order to evade their U.S. tax obligations, in violation of U.S. law, and Wegelin knew of the high probability that other U.S. taxpayers who held non-W9 accounts at Wegelin also did so for the same unlawful purpose." Plea Agreement Exhibit A at 1; Transcript at 15:21-16:1. This admission, along with the fact that many of these United States taxpayers chose to hold "undeclared" account relationships with Wegelin and other Swiss banks provides a reasonable basis to believe that the members of the "John Doe" class failed or may have failed to comply with the internal revenue laws. Because it does not know the identities of those in the "John Doe" class, the IRS cannot yet audit these United States taxpayers' income tax returns to determine whether they reported their income held in offshore accounts.

34. It is the experience of the IRS that there is a direct correlation between unreported income and the lack of visibility of that income to the IRS. That is, when the third-party payer of income to a taxpayer is not required to, or does not, report that income to the IRS, the taxpayer-recipient of that income is far less likely to report that income on his tax returns. This experience, along with Wegelin's own admissions, supports the IRS's belief that United States taxpayers with undisclosed offshore accounts with Wegelin and the other Swiss banks using Wegelin's UBS Correspondent Account may not be complying with the internal revenue laws requiring them to report income earned on those accounts. Because it does not know the identities of those in the "John Doe" class, the IRS cannot yet audit the income tax returns filed by those United States taxpayers, to determine whether they reported that income.

35. The information obtained by the IRS and discussed in this Declaration confirms that United States account holders at Wegelin have not disclosed the existence of their Wegelin accounts, nor have they reported income earned on those accounts. Instead, they have relied on the lack of third party reporting to support their decision not to report the existence of those accounts, with the expectation that the IRS would not discover the accounts or omitted income.

36. In or around January 2001, Wegelin entered into a Qualified Intermediary Agreement ("QI Agreement") with the IRS. The QI Agreement required the bank to verify the identity and citizenship/domicile of its customers through the execution of IRS Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding, and IRS Form W-9, Request for Taxpayer Identification Number and

Certification, and to withhold and pay over to the IRS taxes on certain transactions from accounts beneficially owned by U.S. taxpayers.

37. Of the 37 Wegelin clients with undeclared accounts described in the Indictment, only one recalled being asked by Wegelin if he wished to fill out a Form W-9 declaring the account and causing it to be reported to IRS under the QI Agreement. According to the Indictment, that client declined to sign the form and Wegelin assured the client his identity and account information would not be disclosed to the IRS. Indictment ¶ 73. Another client signed both a W-9 declaring the account and another form falsely stating that a sham corporation was the beneficial owner of the account as part of a package of account opening documents signed at the offices of a Los Angeles lawyer. *Id.* ¶ 54. The package was sent to Wegelin, which opened an undeclared account, apparently on the basis of the false form rather than the accurate W-9. *Id*.

38. According to the Indictment and Verified Complaint, Wegelin and its U.S. account holders agreed to take the following steps, among others, to keep the accounts secret from the IRS:

a. Wegelin and its employees opened and serviced undeclared accounts for U.S. taxpayers in the name of sham corporations and foundations established under the laws of Panama, Hong Kong, and Liechtenstein for the purpose of helping the U.S. taxpayers hide assets and income from the IRS. Indictment ¶ 16; Compl. ¶25. For example, in or around 2006, Client GG transferred undeclared funds that he had held at a Swiss bank since in or about the early 1990s to a new undeclared account at Wegelin. Indictment ¶¶ 117-121; Compl. ¶¶ 64-69. The new undeclared account was held in the name of

Birkdale Universal, S.A., a sham entity established under the laws of Panama (the "Birkdale Account"). *Id.* The Wegelin Client Advisor explained to Client GG that the purpose of placing the assets in the name of Birkdale was to further conceal Client GG's ownership of the funds. Later, when Client GG discussed the U.S. government's investigation of UBS with the Wegelin Client Advisor, the Client Advisor said that because Wegelin had no offices outside Switzerland, Wegelin was less vulnerable to U.S. law enforcement pressure than UBS. *Id*.

b. The U.S. taxpayers signed, and Wegelin knowingly accepted bank documents falsely declaring that such sham entities beneficially owned certain accounts, when Wegelin knew that U.S. taxpayers beneficially owned such accounts. Indictment ¶ 16; Compl. ¶25. For example, on or about April 8, 2002, an undeclared account was opened at Wegelin for Clients X and Y in the name of Berry Trust, a sham Liechtenstein foundation. Indictment ¶¶ 100-103. At or about that time, Wegelin accepted a Form A (a Swiss anti-money laundering form) stating that Clients X and Y beneficially owned the Berry Trust account. *Id.* ¶ 101. At or about that time, Wegelin accepted another bank form falsely declaring that Berry Trust beneficially owned the Berry Trust account. At the top of this false form, the letters "BNQ" were written to ensure that this account was correctly coded in Wegelin's computer system as an undeclared account. *Id.*

c. Wegelin opened undeclared accounts for U.S. taxpayers using code names and numbers in place of the account holders' names on some account

documentation so that the U.S. taxpayers' names would appear on as few documents as possible in the event that the documents fell into the hands of third parties. Indictment ¶ 16; Compl. ¶25. For example, in about October 2008, when Clients B and C moved $900,000 from UBS to Wegelin, Wegelin accepted a Form A from Clients B and C stating that they resided in Florida and beneficially owned the account. Indictment ¶¶ 36-37. The Client Advisor agreed on behalf of Wegelin that Wegelin would not send mail to Clients B and C in the United States and that Clients B and C could conduct business with Wegelin using a code name, "N1677." *Id.* Because Client B did not want to use his real name when calling Wegelin from the United States, the Client Advisor set up the account so that Client B could use another code name – "Elvis" – when he did so. *Id*.

d. Wegelin routinely entered into "hold mail" agreements with U.S. taxpayers holding undeclared accounts and assured them that it would not mail account documents to the United States. Indictment ¶ 16; Compl. ¶25.

e. At various times from in or about 2005 up through and including in or about 2007, Wegelin Client Advisors communicated by e-mail and/or telephone with U.S. taxpayer-clients who had undeclared accounts at Wegelin. Indictment ¶ 16; Compl. ¶25. Client Advisors sometimes used their personal e-mail accounts to communicate with U.S. taxpayers to reduce the risk of detection by United States law enforcement authorities. *Id.* One Wegelin Client Advisor instructed a U.S. Client V to use text messages to communicate with him, rather than telephone calls, because U.S. law

enforcement authorities did not yet have the ability to track the huge volume of text messages that were written around the world. Indictment ¶ 36.

39. As alleged in the Verified Complaint and Indictment, Wegelin used its U.S. correspondent account at UBS AG in Stamford Connecticut in the following manner to facilitate the concealment of undeclared Swiss accounts by its own clients and by those of other Swiss banks:

a. Upon request by U.S. taxpayer-clients with undeclared accounts at Wegelin, Client Advisors or independent Swiss asset managers would send via private interstate commercial carrier, such as DHL or Federal Express, checks from Switzerland drawn on the UBS Correspondent Account to U.S. taxpayer-clients in the United States. Compl. ¶39. For example, on multiple occasions in or about 2008 and 2009, Client A or her husband called their Client Advisor from the United States to notify him that they would be traveling to Aruba. Indictment ¶ 28-34; Compl. ¶¶ 40-46. Once in Aruba, Client A or her husband called and/or faxed the Client Advisor to request that he send checks to them in the United States. *Id*. In response, the client Advisor sent at least 14 checks drawn on the UBS Correspondent Account from Switzerland to Client A in Boca Raton, Florida by private letter carrier. *Id.* All the checks, which were payable to Client A, later cleared through the UBS Correspondent Account with equivalent funds being debited from Client A's account at Wegelin. *Id.* In addition, the checks were all issued in the amount of $8,500 to help avoid detection of the account by the IRS. *Id*.

b. Checks were sometimes made payable to corporate entities affiliated with the U.S. taxpayer-client or family members of the U.S. taxpayer, rather than the U.S. taxpayer himself or herself, helping to obscure the relationship between the U.S. taxpayer-client and the undeclared funds. Compl. ¶39. For example, on various occasions in or about 2008 and 2009, in response to telephone and fax requests that Wegelin client Kenneth Heller made from locations in Manhattan and New Jersey to the Liechtenstein Asset Manager who managed Heller's account at Wegelin, the Liechtenstein Asset Manager mailed or sent by courier service from Liechtenstein to the United States checks drawn on Wegelin's Correspondent Account for the benefit of Heller, his wife, and his associates. *Id.* ¶¶ 47-53; Indictment ¶¶93-99. For example, on or about July 8, 2009, Heller caused Wegelin to issue from the UBS Correspondent Account approximately 12 checks in the amount of $2,500 made to Heller's wife. *Id*.

c. At the request of U.S. taxpayer-clients to their Client Advisors or Swiss asset managers, funds were sent from the UBS Correspondent Account to third parties who provided goods or services to U.S. taxpayers, thus allowing the U.S. taxpayers the benefit of these undeclared funds in a manner designed to make the source of the funds – that is, a U.S. taxpayer-client's undeclared Swiss account – difficult to detect. Complaint ¶ 35. For example, in or around 2010, Client EE went on safari in Africa. To pay for the safari, by a prearranged system with his independent asset manager, Client EE sent a letter with no return address from New Jersey to the asset manager in

Switzerland. *Id.* ¶¶ 54-60; Indictment ¶¶ 109-112. The envelope contained a single piece of paper on which was written the amount of money Client EE needed to wire to the safari company – and nothing else. *Id.* At or about that same time, Client EE sent a second letter to his independent asset manager containing only the wire transfer details for the safari company's bank account in Botswana. *Id*. Thereafter, pursuant to these instructions, on or about June 22, 2010, Wegelin wired approximately $37,000 through the UBS Correspondent Account to the safari company's bank account in Botswana. *Id*. Later, in August 2010, Client EE, who was in Africa on his safari, contacted the asset manager via satellite phone to request additional transfers of funds from his undeclared account for safari-related expenses. *Id*. Wegelin wired the safari company, through the UBS Correspondent Account, an additional $26,268 in two transactions. *Id*.

d. As an alternative to checks, funds from the U.S. taxpayer-clients were debited from their undeclared accounts in Switzerland and wired to them in the United States through the UBS Correspondent Account. Complaint ¶ 39. For example, between in or about 2007 and in or about 2010, Client FF frequently requested that funds in her undeclared account be sent to her in the United States. Complaint ¶¶ 61-63; Indictment ¶¶ 113-116. Wegelin sent her the funds in at least 85 separate wire transfers totaling $324,955. *Id.* The first two transfers in 2007 were each in the amount of $8,000. The remaining wire transfers were all in amounts less than $5,000. *Id*.

e. Rather than one large check or wire for the amount requested, batches of multiple checks or wires in smaller amounts were often sent in order to minimize the risk of scrutiny or detection of the transaction by U.S. financial institutions or government authorities and the discovery of the U.S. taxpayer clients' undeclared accounts. Complaint ¶ 39; Indictment ¶ 16.

f. In addition to providing U.S. taxpayer-clients with undeclared accounts at Wegelin access to their undeclared funds through its UBS Correspondent Account, Wegelin also allowed other Swiss banks where U.S. taxpayer-clients had undeclared accounts to provide these U.S. taxpayer-clients access to their undeclared funds through Wegelin's UBS Correspondent Account. Complaint ¶¶ 15, 23-24; Indictment ¶¶13, 15-16. For example, Wegelin allowed Swiss Bank C and Swiss Bank D to have checks written to be drawn on the UBS Correspondent Account. Complaint ¶ 23. In turn, Swiss Bank C and Swiss Bank D used Wegelin's UBS Correspondent Account to send undeclared funds to U.S. taxpayer-clients in the United States. *Id.* Swiss Bank C did so despite the fact that it maintained its own correspondent account at the same bank where Wegelin maintained the UBS Correspondent Account, UBS. *Id.* By sending the funds through Wegelin's UBS Correspondent Account, it became more difficult for the IRS to link U.S. taxpayer-clients to their undeclared accounts in Switzerland at the actual banks that managed their undeclared assets, promoting the scheme to defraud. *Id*.

g. Wegelin Client Advisor Urs Frei, a defendant in the Indictment, used one of Client GG's declared accounts at Wegelin and the UBS Correspondent

Account to conceal Frei's hand delivery of approximately $16,000 in U.S. currency to another U.S. taxpayer-client of Frei ("Frei's Other Client"). Complaint ¶¶ 39, 64-69; Indictment ¶¶ 117-121. Specifically, prior to a trip to the United States in or about August 2007, Frei asked Client GG, who had both declared and undeclared accounts at Wegelin, to permit Frei to wire approximately $16,000 from one of Client GG's declared Wegelin accounts to Client GG in New York and then have Client GG withdraw these funds from his U.S. bank as cash for Frei to give to Frei's other Client. *Id.* Client GG consented. Frei then wired these funds through the UBS Correspondent Account in two transactions, each under $10,000, reducing the chances that the transfer would be scrutinized. *Id.* Client GG, who was aware of certain currency transaction reporting requirements of U.S. financial institutions, withdrew these funds from his bank in Westchester County, New York, in three different withdrawals on three different dates, each in an amount less than $10,000. *Id*. Frei then traveled to the United States where, on or about August 21, 2007, he met Client GG for lunch in Manhattan. *Id*. At the lunch, Client GG provided Frei an unmarked envelope containing the approximately $16,000 in cash. *Id*. During the lunch, the head waiter informed Frei that someone else at the restaurant wished to speak with him. *Id*. Frei then excused himself from Client GG for approximately ten minutes. *Id.* Frei sat at a table across the restaurant with Frei's other Client and provided her with the cash-filled envelope that Client GG provided to Frei. *Id.* Frei commented to Client GG that it was becoming increasingly difficult to move funds out of

Switzerland and this was a technique he employed to conduct such international transactions. *Id.* Frei then credited Client GG's undeclared account at Wegelin, the Birkdale Account, with approximately $16,000. *Id.* The net effect of these transactions was to permit the other client to withdraw $16,000 from her undeclared Wegelin account with no record in the United States, while moving $16,000 from Client GG's declared account to his undeclared account at Wegelin. *Id.*

40. In March of 2009 and February of 2011, the Commissioner of Internal Revenue offered opportunities for United States taxpayers with undisclosed offshore accounts and assets to voluntarily disclose their tax non-compliance. Of the approximately 33,000 taxpayers who took advantage of these opportunities, approximately 246 had undisclosed accounts at Wegelin.

41. Various U.S. taxpayer-clients of Wegelin identified in the Indictment and Verified Complaint admitted filing Forms 1040 that falsely and fraudulently failed to report the existence of, and the income generated from, their undeclared Wegelin accounts; evaded substantial income taxes due and owing to the IRS; and failed to file timely FBARs identifying their undeclared accounts.

42. Wegelin, moreover, admitted that it knew that certain of its U.S. taxpayer clients were maintaining non-W9 accounts at Wegelin to evade their U.S. tax obligations, and that it was highly probable that other U.S. taxpayers who held non-W9 accounts at Wegelin also did so for the same unlawful purpose. Plea Agreement Exhibit A at 1; Transcript at 15:21-16:1. Wegelin further admitted that its conduct resulted in a loss to the IRS in the amount of $20,000,001, agreed to pay restitution in that amount to the IRS

and to not appeal the imposition of a fine of up to $40,000,002, and consented to the civil forfeiture of an additional $32 million. Plea Agreement at 1-2 and 5-6.

43. Based on the above information, the "John Doe" class includes United States taxpayers who are failing to comply with the Internal Revenue Code provisions governing United States taxpayers' obligations to report and pay tax on world-wide income, to disclose all interests in foreign financial accounts, and to file annual reports of foreign financial accounts with assets exceeding $10,000.

III.

THE REQUESTED MATERIALS ARE NOT READILY AVAILABLE FROM OTHER SOURCES

44. To my knowledge, and based on my experience, the only repository of the information sought by the proposed summons that is readily available to the IRS is UBS, which is the custodian of the records of Wegelin's UBS Correspondent Account. Although the Criminal Division of the U.S. Attorney's Office for the Southern District of New York may have received some of the requested information in the context of its grand jury investigation of Wegelin, I understand that those documents may be protected from disclosure to anybody under Federal Rule of Criminal Procedure 6(e) and, therefore, cannot be readily obtained by the IRS.

IV.

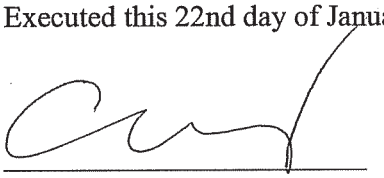
CONCLUSION

45. Based upon the foregoing, I believe that the information sought in the "John Doe" summons issued to UBS will allow the IRS to identify United States taxpayers who failed to comply with their obligation to report and pay U.S. tax on income earned with respect to financial accounts at Wegelin and at other Swiss banks using Wegelin's UBS

Correspondent Account during the years ended December 31, 2002, through December 31, 2011.

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

Executed this 22nd day of January, 2013.



CHERYL KIGER
Internal Revenue Agent
IRS