

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

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PEOPLE OF THE STATE OF NEW YORK
by ANDREW M. CUOMO, the Attorney General
of the State of New York,

Plaintiff,

Index No. 06/405236

-against-

UBS FINANCIAL SERVICES, INC.,

Defendant.
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SETTLEMENT AGREEMENT

Pursuant to the provisions of Article 23-A of the General Business Law and §63(12) of the Executive Law, the State of New York by the Attorney General of the State of New York (the "Attorney General"), asserted claims against UBS Financial Services, Inc. ("UBS") in a complaint (the "Complaint") filed in the Supreme Court of the State of New York, New York County, Index No. 06/405236 (the "Action").

WHEREAS, the Attorney General and UBS (collectively, the "Settling Parties") have agreed to enter into a settlement of the Action (the "Settlement"), the Settling Parties stipulate and agree as follows:

IT IS AGREED that UBS shall pay the total sum of twenty three million, three hundred thousand dollars (\$23,300,000) (the "Settlement Amount") in consideration for the settlement and discontinuance of this Action pursuant to the terms of this Settlement Agreement;
and

IT IS FURTHER AGREED that within 30 days following delivery to counsel for

UBS of a fully executed copy of this Settlement Agreement (the “Delivery Date”), UBS will pay, as part of the Settlement Amount, twenty one million, three hundred thousand dollars (\$21,300,000) (the “Remediation Fund”) into an agreed-upon, interest bearing account; and

IT IS FURTHER AGREED that UBS or its designee shall distribute the Remediation Fund to current and/or former UBS InsightOne customers in accordance with a Remediation Plan approved by the Attorney General that shall be substantially in accordance with the principles outlined below; and

IT IS FURTHER AGREED that, to be eligible for remediation, an InsightOne customer must have a lifetime ratio of InsightOne fees paid versus estimated commissions of 200% or more (the “Potentially Eligible Customers”); and

IT IS FURTHER AGREED that, for such Potentially Eligible Customers, UBS would remediate, on a pro rata basis and subject to the cap on remediation addressed below, the InsightOne fees in excess of 100% of the estimated commissions for the period in which the Potentially Eligible Customers had consecutive “200% Years”; as used herein, “200% Year” is defined as a year in which an InsightOne customer’s ratio of fees paid to estimated commissions was 200% or more, and

IT IS FURTHER AGREED that, the remediation for each Potentially Eligible Customer will be calculated, on a pro rata basis and subject to the cap on remediation addressed below, as follows: (1) 75% of the amount by which the Insight One fees exceed 100% of the estimated commissions in the first of any consecutive 200% Years; and (2) 100% of the amount by which the Insight One fees exceed 100% of estimated commissions in any subsequent 200% Years; and

IT IS FURTHER AGREED that, the total amount of remediation by UBS shall

not exceed \$21.3 million (the “Remediation Fund”) plus any investment income, revenue or proceeds that may accrue in connection with holding the Remediation Fund in an agreed-upon interest bearing account pending distribution; and

IT IS FURTHER AGREED that UBS will submit a formal Remediation Plan consistent with the four principles outlined above to the Attorney General for approval within 30 days of the Delivery Date and such approval shall not be unreasonably withheld; and

IT IS FURTHER AGREED that in no event shall any portion of the Remediation Fund or any investment income, revenue or proceeds earned thereon be used for any purpose other than providing payment to current and/or former InsightOne customers; and

IT IS FURTHER AGREED that UBS or its designee shall pay, as part of the Settlement Amount, two million dollars (\$2,000,000), as a penalty, by wire transfer to the State of New York within 30 days of the Delivery Date; and

IT IS FURTHER AGREED that, within one business day of the Delivery Date, UBS will withdraw its motion in New York v. UBS Financial Servs., No. 07-1851-cv (2d Cir.), for leave to appeal to the United States Court of Appeals for the Second Circuit, or if the appeal has already been calendared in that court, file a motion pursuant to and in compliance with Rule 42(b) of the Federal Rules of Appellate Procedure that voluntarily dismisses the appeal; and

IT IS FURTHER AGREED that the Attorney General releases and discharges UBS from any and all actions, claims, suits, prosecutions, damages, and demands relating to or concerning the allegations set forth in the Complaint; and

IT IS FURTHER AGREED that UBS shall neither seek nor accept from any person or entity indemnification or contribution, in whole or part, which pays for or otherwise relates to the Settlement Amount, except that nothing in this Paragraph shall prohibit UBS from

seeking indemnification or contribution from any insurer for any legal fees or costs related to the Action; and

IT IS FURTHER AGREED that UBS will not seek or assert a deduction, offset or loss of any kind in connection with the payment or assessment of any actual or potential tax obligations based upon the payment of the two million dollars (\$2,000,000) in penalty; and

IT IS FURTHER AGREED that this Settlement Agreement is intended to be and is a settlement and compromise of a dispute between the Settling Parties, and the Settling Parties do not intend, other than as expressly contemplated herein, that this Settlement Agreement: (i) shall constitute an admission or denial of liability of any kind (other than a liability created by this Settlement Agreement); (ii) be admissible, or have value as precedent, in any other proceeding; or (iii) be construed as containing or making any adjudicated findings of fact; and

IT IS FURTHER AGREED that the Settlement Amount and the other terms of the Settlement were negotiated in good faith by the Settling Parties, and reflect a settlement that was reached voluntarily after full investigation, consultation with experienced legal counsel and arms-length negotiation; and

IT IS FURTHER AGREED that nothing contained herein shall be construed so as to create any third party rights or private rights of action; and

IT IS FURTHER AGREED that nothing contained herein shall be construed so as to deprive any third party individual or entity of any private right under the law and nothing contained herein shall prevent UBS from taking the position that it is entitled to an offset reflecting an amount paid in remediation with respect to any claim by a third party individual or entity; and

IT IS FURTHER AGREED that this Settlement Agreement shall be construed

and interpreted in accordance with the laws of the State of New York; and

IT IS FURTHER AGREED that concurrent with delivery by the Attorney General to counsel for UBS of an executed copy of this Settlement Agreement, the Attorney General shall deliver to counsel for UBS an executed Stipulation of Discontinuance with Prejudice in the form annexed hereto as Exhibit A and that UBS shall file said Stipulation of Discontinuance with Prejudice with the Clerk of the Court and need not give any further notice thereof to the Attorney General; and

IT IS FURTHER AGREED that this Settlement Agreement constitutes the entire agreement between the Settling Parties concerning the subject matter of the Action and supersedes any prior communication, understanding, or agreement, whether written or oral, concerning said subject matter; and

IT IS FURTHER AGREED that this Settlement Agreement shall not be amended, changed, or modified except by a writing signed by the Settling Parties; and

IT IS FURTHER AGREED that this Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall be deemed to constitute one instrument.

AGREED TO BY AND BETWEEN,

Dated: New York, New York
July 16, 2007

ANDREW M. CUOMO,
Attorney General of the State of New York,

By: 
Zachary B. Sturges
Assistant Attorney General

Dated: New York, New York
July 16, 2007

UBS FINANCIAL SERVICES, INC.

By: 
Robert B. McCaw
Counsel for UBS Financial Services, Inc.