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CIRCUIT & COUNTY  
MIAMI-DADE COUNTY  
CIVIL DIVISION

IN THE CIRCUIT COURT FOR THE  
ELEVENTH JUDICIAL CIRCUIT IN AND  
FOR MIAMI-DADE COUNTY, FLORIDA

TOMAS BENITEZ RIONDA,

CASE NO. 10005598 CA 321

Plaintiff

v.

HSBC BANK U.S.A., N.A.,

Defendant.

COMPLAINT

Plaintiff, Tomas Benitez Rionda, sues HSBC Bank U.S.A., N.A., and alleges as follows:

**PARTIES**

1. Plaintiff Tomas Benitez Rionda ("Benitez") is an individual, and resident of Miami-Dade County in the State of Florida.
2. Defendant HSBC Bank U.S.A., N.A. ("HSBC," or "Bank") is a corporation that employs ten or more persons in Miami-Dade County, Florida.

**JURISDICTION AND VENUE**

3. Jurisdiction in this Court is proper under Fla. Stat. § 26.012 because this suit seeks damages in excess of \$15,000.00, and under Fla. Stat. § 48.193, among other reasons, because Defendant HSBC maintains an office and does business in Miami-Dade County, Florida.
4. Venue is proper in Miami-Dade County under Fla. Stat. § 47.011 because the causes of action accrued in Miami-Dade County, and the Defendant resides in this County.

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## FACTS IN SUPPORT OF ALL COUNTS

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5. HSBC offers a comprehensive menu of sophisticated products and services that cater to the particular financial needs of wealthy clients. As a result, HSBC provides individually tailored solutions, advisory and discretionary investment services and a wide range of investment vehicles from around the world, including bonds, equities, derivatives, structured products, mutual funds, and hedge funds.

6. In October, 2000, HSBC hired Mr. Benitez as a Senior Vice President. His job included bringing in clients from Latin America for HSBC's international private banking business, operating out of HSBC's Brickell Avenue office. Benitez's client base included individuals from Mexico, Guatemala, and El Salvador, among other countries. Among other capacities, during his time at HSBC, Benitez served as head of HSBC's Special Investments Group.

7. In addition to other relevant qualifications, Benitez is a FINRA Registered Representative, holding Series 7 and Series 63 designations.

8. From October, 2000 to January 29, 2009, Benitez worked under and reported to Antonio Suarez, head of private banking in HSBC's Brickell Avenue office.

9. Throughout his tenure at HSBC, Benitez consistently earned high marks in his reviews and received positive feedback on his performance, and as a result, received regular increases in his compensation. His regular performance reviews from his supervisors were consistently positive. In addition, Benitez received yearly bonuses, and HSBC told Benitez that his 2008 performance would entitle him to a bonus for that year.

10. In December 2007, HSBC awarded Benitez "Hero of the Year," a prestigious HSBC employee honor, and HSBC flew him to Paris to receive the award.

11. In almost nine years at HSBC, Benitez experienced no disputes with his colleagues that could not be resolved through conversation. As a result, even in the highly-charged environment of a financial firm dealing with complex monetary issues during extraordinary economic times, no dispute Benitez had ever escalated beyond a simple conversation to resolve misunderstandings.

12. All conditions precedent to bringing this cause of action have occurred or have been waived.

**COUNT I: VIOLATION OF THE FLORIDA WHISTLEBLOWER ACT**

13. Plaintiff re-alleges and incorporates the allegations in paragraphs 1-12 above.

14. Defendant HSBC employs ten or more persons, and, until January, 2009, Benitez was one of those employees.

15. Before January 2009, when HSBC summarily terminated Benitez at an early morning meeting, Benitez objected to, and refused to participate in HSBC's having customer account relationships that included the proceeds of trade with Cuba and Iran.

16. On multiple occasions during his employment at HSBC, Benitez objected to -- by informing his supervisor and HSBC's compliance department -- HSBC's maintenance of specific customers' accounts where the primary source of funds was a business involved in trade or commerce with Iran or Cuba.

**Benitez objected to accounts that violate the law.**

17. In 2008, at a "Know Your Customer" meeting, and at multiple meetings with his supervisor, Benitez expressed his understanding that certain of HSBC's Brickell Avenue office clients were trading with prohibited countries. In addition, he noted that certain clients were

funneling large amounts of money that originated or passed through such countries via their HSBC domestic accounts, in violation of federal law.

18. Suarez, who was Benitez's supervisor, and HSBC's compliance department were advised of these violations and of Benitez's objections to the maintenance of such accounts through HSBC's Brickell Avenue office.

19. Benitez stated that the accounts contained the proceeds of trade with Cuba and Iran. Trading with Iran, particularly through a U.S. financial institution, violates, among other regulations, the Office of Foreign Assets Control (OFAC) regulations regarding financing of transactions with Iranian entities. Trading with Cuba is similarly highly restricted and regulated pursuant to the OFAC regulations.

*The "CM" Account*

20. In February, 2008, Benitez attended an audit meeting regarding the CM account, along with the account's relationship officer. The meeting was part of a regularly-conducted audit program, in which HSBC account officers interacted with Federal regulators regarding the accounts held under their auspices. Although the account was not within Benitez's group, the account's relationship officer asked Benitez to attend because his group head was unavailable to attend the audit.

21. At the audit meeting with Federal regulators, the issue of the CM account's connection to entities that trade with both Cuba and Iran was raised. The Federal auditor reviewing the account specifically stated that the entity at issue had multiple affiliates whose ties to Iran and Cuba were part of their ordinary course of business. Mr. Benitez's colleague, in defense of the account, responded that the ties should be ignored because the entity holding the HSBC account was a non-U.S. entity.

22. After the meeting with the Federal auditor, Mr. Benitez mentioned to Suarez that the auditor had expressed reservations regarding the account due to its principals' ties to Cuba and Iran. Suarez advised Benitez to do nothing.

23. At a subsequent Know Your Customer (KYC) committee meeting in the summer of 2008, Benitez learned that no changes had been made as a result of the facts revealed at the February meeting. The CM account was still maintained by HSBC and was addressed at the KYC meeting. Among other issues, the account was funneling large amounts of funds in and out, with no apparent business purpose. When the account came up, Benitez spoke up and informed Clara Hurtado, of HSBC's compliance department, that the CM account had ties to Iran and Cuba and that, as a result, it should not be maintained.

24. Benitez's supervisor, Antonio Suarez, was present at that KYC meeting. The account was a lucrative account for the office – of which Suarez was head – and he made his objection to its closing clear to both Hurtado and Benitez. Indeed, Suarez denied any knowledge regarding the account's ties to Cuba and Iran, even though Benitez had previously informed him of the red flags connected to the account. After the meeting, Suarez confronted Benitez and stated that he would not allow Benitez's word and suspicions to defeat a million-dollar-plus account relationship.

25. Despite Suarez's view, at the time Benitez objected to the account, based upon the information available in the audit referenced in paragraph 18 and 19 above, the account was not in compliance with necessary legal steps for contacts with Cuba and Iran. As a result, at that time, HSBC's maintenance of the non-complying account was an activity, policy or practice that violated a law, rule or regulation.

26. HSBC did not terminate the account. In October, 2008, Hurtado inquired why the account was still being kept in Miami. Suarez and others noted that the clients were objecting to HSBC's charges for restructuring and shifting the account out of the U.S. and therefore the account had not yet been fully transitioned out of Miami.

*The "CC" Account*

27. In addition, in January, 2009, Benitez reported to Suarez that another account, which generated over \$1 million in revenue for the Bank, likely had illegal ties to Cuba. The account had been funded with the proceeds of trade with Cuba, which Benitez confirmed upon receiving documentation from the HSBC internal accounting department. Suarez had previously dismissed protests regarding the account, and further, specifically informed Benitez that the \$1 million plus in fees the account generated justified any alleged indirect ties to Cuba.

28. Benitez asked Suarez to terminate the CC Account relationship. Further, Benitez specifically cited three times, twice in 2008 and once in 2009, that the accounts' receipt of funds could be traced to trade with Cuba. In making his objection to the account, Benitez relied upon records provided by the HSBC accounting department. Despite this evidence, the CC account remained open as of the date of Benitez's termination from HSBC.

**HSBC retaliated against Benitez.**

29. In January, 2009, as a result of Benitez's objection to violations of law, HSBC took retaliatory personnel action against Benitez. HSBC terminated Benitez and refused to pay him the remainder of his earned compensation for 2008 even though Benitez's performance, summarized in paragraphs 6 through 11 above, provided no business reason for HSBC to do so.

30. Despite no indication it was coming – given his positive evaluations from HSBC’s personnel department during his career – HSBC summarily terminated Benitez on the morning of January 23, 2009, without any advance notice.

31. On January 23, 2009, based on purported workplace incidents of which he was provided no advance notice or meaningful opportunity to respond, Benitez was escorted out of HSBC’s office in Miami and told never to return.

32. HSBC did not pay Benitez any severance payment or provide job placement or references. Instead, HSBC gave Benitez a letter stating that January 23, 2009 was his “final day of employment with HSBC,” and that “all employment benefit programs will cease” as of his termination date.

33. After his termination, Benitez retained the undersigned law firm, and agreed to pay it reasonable fees and costs in furtherance of obtaining the relief requested in this Complaint.

WHEREFORE, Plaintiff Tomas Benitez, requests the Court award him: reinstatement to the same position Benitez held before HSBC retaliated against him; reinstatement of full fringe benefits and seniority rights; compensation for lost wages, benefits, and other remuneration; and any other damages allowable at law, including his costs and attorneys fees as provided in Chapter 448, Florida Statutes.

## **COUNT II: BREACH OF CONTRACT**

34. Plaintiff re-alleges and incorporates by reference the allegations in paragraphs 1-12 above.

35. Benitez worked at HSBC as a Senior Vice President, and his yearly compensation was split into two components: a base salary, awarded biweekly, and a bonus, awarded in the next year, based upon revenue and other performance criteria met during the preceding year.

36. Throughout the course of his employment relationship with HSBC, this two-part compensation agreement, including a portion of such compensation earned deferred until the next year based upon performance, was agreed to among Benitez and HSBC.

37. The two-part compensation arrangement is customary in the financial industry, and is used by financial firms to provide high-producing employees with incentives to maximize revenue and production from the accounts they manage and maintain. The financial firm receives the benefit of an employee magnifying a client's investment relationship with the firm, and, when the account flourishes, the employee receives increased compensation.

38. Each year, Benitez received additional compensation based on the previous year's performance, which, depending upon his production and market conditions, varied between \$25,000 and \$75,000.

39. In 2008, for example, based upon his 2007 performance, Benitez earned additional compensation of \$75,000.

40. In 2008, Benitez earned and received \$190,000 in base compensation. His performance and production for 2008 were consistent with his 2007 production.

41. Benitez worked for the entire 2008 compensation year. Based on the parties' course of dealings, if HSBC had not terminated Benitez, he would have received a bonus payment for 2008.

42. Benitez, however, was terminated in January, 2009, before the March, 2009 date when 2008 bonuses were to be paid. As a result, the balance of his 2008 compensation has not been paid to him.

43. In 2008 and 2009, HSBC had a compensation policy in effect that provided for bonuses based on performance in the preceding year. Consistent with that policy, Benitez's

supervisors informed him that he would receive 70% of the previous year's bonus in March, 2009. In addition, Employees who were not terminated received such compensation for their 2008 performance in 2009.

44. HSBC's failure to pay the compensation is a breach of its agreement with Benitez.

45. Benitez is damaged because he did not receive the compensation to which he was entitled for working at HSBC.

WHEREFORE, Plaintiff Tomas Benitez requests the Court award him damages for breach of contract, including any allowable statutory interest, and any further relief the Court deems just and equitable.

### **COUNT III: UNJUST ENRICHMENT**

46. Plaintiff re-alleges and incorporates by reference the allegations in paragraphs 1-12 above.

47. During 2008, Benitez worked at HSBC as Senior Vice President, and developed and maintained prosperous customer relationships on behalf of HSBC.

48. As a result of Benitez's work, HSBC received substantial economic benefit, through fees and enhanced account relationships in its Miami office.

49. HSBC willingly accepted those benefits, with an understanding that if Benitez's work met certain performance criteria he would be entitled to enhanced compensation. That compensation was to be awarded in the subsequent year, once numbers for the previous year were finalized.

50. As a result, HSBC accepted the benefits of Benitez's work, and Benitez did that work, based on a mutual understanding that performance that met bonus criteria would be compensated.

51. Further, there is a general understanding in the financial industry that performance above certain established thresholds is worth additional compensation. Previous years' performance and resulting compensation is generally the baseline for such payments. Rarely, if ever, does an employee in a job such as Benitez's receive only base compensation.

52. HSBC terminated Benitez with knowledge that he was entitled to a bonus, and retained the benefit of his efforts in 2008 without compensating him for that benefit.

WHEREFORE Plaintiff Tomas Benitez requests the Court enter judgment in his favor for the amount of compensation he would have been entitled to had he not been terminated before March, 2009, when bonus compensation for 2009 performance was to be paid.

**JURY DEMAND**

Plaintiff demands a jury trial.

Respectfully submitted,

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