

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

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 ELIAS SACAL CABABIE; BVG WORLD, S.A. DE C.V.; :
 CORPORATION BAY VIEW GRAND, S.A. DE C.V.; :
 ADMINISTRACIONES BVG, S.A. DE C.V.; CABO :
 VALLARTA, S.A. DE C.V.; INMOBILIARIA BVG :
 BAJAMAR, S.A. DE C.V.; PORTOCHERVIO :
 ACAPULCO, S.A. DE C.V.; and INMOBILIARIA :
 INSURGENTES 421, S.A. DE C.V. :

 Plaintiff, :

 - against - :

 J.P. MORGAN CHASE BANK, N.A. :

 Defendant. :
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Index No: **10600652**
Date Purchased: Mar. 12 2010

SUMMONS

Plaintiff designates New York
County as the place of trial.

The basis of venue is
Defendant's principal place of
business.

Defendant's address is:
270 Park Avenue
New York, NY 10154.

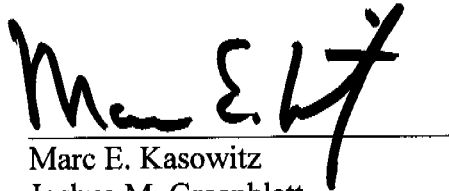
TO THE ABOVE-NAMED DEFENDANT:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the Plaintiffs' attorney within twenty (20) days after the service of this summons, exclusive of the day of service (or within thirty (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 answer, judgment will be taken against you by default for the relief demanded in the complaint.

FILED
MAR 12 2010
COUNTY CLERK'S OFFICE
NEW YORK

Dated: March 12, 2010
New York, New York

KASOWITZ, BENSON, TORRES &
FRIEDMAN LLP



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Vallarta, S.A. de C.V., Inmobiliaria BVG
Bajamar, Cabo Vallarta, S.A. de C.V.,
Portochervio Acapulco, Cabo Vallarta,
S.A. de C.V., and Inmobiliaria
Insurgentes 421, Cabo Vallarta, S.A. de
C.V.*

TO: JP MORGAN CHASE BANK, N.A.
270 Park Avenue
New York, NY 10154

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INSURGENTES 421, S.A. DE C.V. :

No: _____

COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs,

- against -

JPMORGAN CHASE BANK, N.A.

Defendant.

FILED
MAR 12 2010
COUNTY CLERK'S OFFICE
NEW YORK
0600652

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Plaintiffs Elias Sacal Cababie ("Sacal") and BVG World, S.A. de C.V., Corporation
Bay View Ground, S.A. de C.V., Cabo Vallarta, S.A. de C.V., Cabo Vallarta, S.A. de C.V.,
Inmobiliaria BVG Bajamar, Cabo Vallarta, S.A. de C.V., Portochervio Acapulco, Cabo
Vallarta, S.A. de C.V., and Inmobiliaria Insurgentes 421, Cabo Vallarta, S.A. de C.V.
(collectively, "BVG" and, together with Sacal, "plaintiffs"), for their complaint against
defendant JPMorgan Chase Bank, N.A. ("JP Morgan"), allege as follows:

Preliminary Statement

1. This action arises from egregious breaches of fiduciary duty, breach of contract and other wrongful conduct by defendant JP Morgan which – while holding itself out as a trusted investment banker and financial advisor to Sacal, a Mexican condominium developer, and BVG, his operating company – willfully exploited its position to enrich itself at their expense.

2. Beginning in 2005, JP Morgan developed a relationship of trust and confidence with Sacal based on representations that it had superior and unique experience and expertise in relevant financial matters and would put Sacal's and BVG's interests first. Because of this relationship, Sacal and BVG turned to JP Morgan for advice and representation on a variety of financial, tax and investment banking matters, including the proposed sale of BVG.

3. Over the next several years, JP Morgan, among other things: convinced Sacal and BVG to borrow hundreds of millions of dollars in unnecessary debt from JP Morgan, purportedly to prepare BVG for a sale and to fund apparently questionable tax shelters; scuttled the proposed BVG sale by rejecting a favorable \$500 million offer to purchase BVG, and its accompanying \$50 million non-refundable deposit, despite Sacal's instruction to accept the offer; and steered Sacal to invest in exotic, highly risky JP Morgan-sponsored investments it knew were contrary to his investment goals, resulting in losses to Sacal of at least \$30 million.

4. Despite its representations to Sacal and BVG concerning its purported expertise and its commitment to their welfare, JP Morgan in fact was motivated only by its own self-interest and desire to maximize its fees. As a result, JP Morgan not only has deprived Sacal and BVG of the proceeds of the BVG sale, but has left them saddled with an enormous and unnecessary debt load and severe investment losses.

5. To make matters even worse, now JP Morgan – in bad faith and on purely pretextual grounds – seeks to accelerate the very loan JP Morgan saddled Sacal and BVG with, notwithstanding that there has not been even a single missed interest payment or any other *bona fide* default and notwithstanding the massive harm acceleration would cause Sacal, and BVG and its employees.

6. Accordingly, Sacal and BVG bring this action to recover the damages they have suffered as a result of JP Morgan's wrongful conduct, including its gross breaches of its fiduciary duties to Sacal and BVG.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action pursuant to CPLR §§ 301.

8. Venue is proper in this Court pursuant to CPLR § 503.

9. Jurisdiction and venue are also proper in this Court pursuant to written agreement of the parties. Several of the agreements between the parties provide that they irrevocably submit to the jurisdiction of any local, state or federal court located within New York City and that they irrevocably waive any objection to the laying of venue in any such court.

PARTIES

10. Plaintiff Sacal is the owner of BVG and a citizen of Mexico.

11. Plaintiff BVG World, S.A. de C.V. ("BVG World") is a Mexican corporation with its principal place of business in Mexico City.

12. Plaintiff Corporation Bay View Grand, S.A. de C.V. ("CBVG") is a Mexican corporation with its principal place of business in Mexico City.

13. Plaintiff Administraciones BVG, S.A. de C.V. ("ABVG") is a Mexican corporation with its principal place of business in Mexico City.

14. Plaintiff Cabo Vallarta, S.A. de C.V. ("Cabo") is a Mexican corporation with its principal place of business in Mexico City.

15. Plaintiff Inmobiliaria BVG Bajamar, S.A. de C.V. ("Bajamar") is a Mexican corporation with its principal place of business in Mexico City.

16. Plaintiff Portochervio Acapulco, S.A. de C.V. ("Portochervo") is a Mexican corporation with its principal place of business in Mexico City.

17. Plaintiff Inmobiliaria Insurgentes 421, S.A. de C.V. ("Inmobiliaria") is a Mexican corporation with its principal place of business in Mexico City.

18. CBVG, ABVG, Cabo, Bajamar, Portochervo and Inmobiliaria are subsidiaries of BVG World and, together with Sacal, are guarantors under a term loan agreement entered between JP Morgan and BVG World, S.A. de C.V. dated as of May 31, 2007 (the "Term Loan Agreement").

19. Defendant JP Morgan is a Delaware corporation with its principal place of business in New York, New York.

STATEMENT OF FACTS

20. Through BVG and related companies, which he owns, Sacal is a successful developer of luxury condominiums throughout Mexico, including in the cities of Cancun, Puerto Vallarta, Ixtapa, Acapulco and Baja California. BVG currently has approximately 200 employees.

21. Prior to 2005, neither BVG nor Sacal had a relationship with JP Morgan. Instead, BVG's condominium development activities were financed through private investment, pre-payments by condominium purchasers, and lending arrangements with non-U.S. lending institutions.

22. In 2005, however, Sacal's success attracted the notice of JP Morgan, which began to aggressively pursue a relationship with both Sacal and BVG. In furtherance of this effort, Jenny Penhos ("Penhos"), a Vice President in JP Morgan's Private Bank, based in Mexico City, visited Sacal in BVG's offices in Mexico City on or about March 2005. During this meeting, and in subsequent meetings between March and June 2005, Penhos, together with her supervisor, Eduardo Cepeda ("Cepeda"), the General Director of JP Morgan Grupo Financiero, S.A. de C.V. and Claudia Caffuzzi ("Caffuzzi"), a JP Morgan Managing Director focused on tax-related services, aggressively marketed financial and transactional services to Sacal and BVG on behalf of JP Morgan, representing that JP Morgan would place Sacal's interests first in every respect.

23. Penhos represented that JP Morgan could and would provide Sacal with a full panoply of financial advice, tax consulting, estate planning, investment advice, insurance protection and other services. Penhos represented that JP Morgan was uniquely capable of providing these services. As a result of JP Morgan's representations concerning its purported expertise and its commitment to advancing and protecting his interests, Sacal engaged JP Morgan to provide financial services in 2005, including checking accounts and credit cards, and life and property insurance policies for Sacal and his family.

24. In late 2005 and early 2006, JP Morgan, through Penhos, Cepeda and Caffuzzi and others, advised Sacal to establish six separate offshore companies and related accounts of which he and his family would be the beneficiaries, with the sole purpose of such transactions being tax savings that Sacal would purportedly gain. JP Morgan designed and implemented all aspects of this financial structure, preparing and filing the documents required for the specific entities being created and appointing JP Morgan directors to control these entities.

As JP Morgan had intended, Sacal – who lacked sophistication with respect to estate planning and taxation issues – deferred to JP Morgan’s judgment in all respects and followed its advice and directives with respect to his finances.

25. In addition to tax and financial advisory services, JP Morgan also embarked on an effort to convince Sacal to invest personal funds through JP Morgan in 2005. To that end, beginning in April 2005, Miguel Barbosa (“Barbosa”), JP Morgan’s Managing Director of Private Banking in New York, traveled to BVG’s office in Mexico City several times to pitch JP Morgan’s private banking services to Sacal.

26. At this initial meeting in April 2005 and in all subsequent meetings, Sacal told Barbosa and, after 2007, Rodrigo Blanco (“Blanco”), another executive in JP Morgan’s Private Bank, that he wanted only conservative investments with a low risk of loss. Sacal told Barbosa and Blanco that he was more concerned with security than yield with respect to any investments made through JP Morgan or otherwise. Likewise, Sacal told Barbosa and Blanco that he was not interested in “gambling” with his savings or his earnings from BVG.

27. At their initial meeting in April 2005 and during subsequent meetings, Barbosa and Blanco acknowledged Sacal’s explicitly conservative investment aims and objectives and represented that JP Morgan could and would provide Sacal with conservative investment opportunities and instruments which complied with these aims in all respects. In reliance on these representations and on JP Morgan’s representations that it had unique and specialized expertise, Sacal agreed to invest his personal funds with JP Morgan’s Private Bank.

JP Morgan Further Cultivates its Intimate Financial Advisory Relationship With Sacal and BVG By Preparing Tax Shelter Structures and Other Transactions

28. In late 2005 and early 2006, JP Morgan also advised Sacal to enter into sophisticated tax shelters – referred to as “back-to-back transactions” – which JP Morgan was actively marketing to its wealthy Mexican clientele. The typical back-to-back transaction is accomplished: (i) by a loan from JP Morgan to a Mexican company, evidenced by promissory notes executed by the company in favor of JP Morgan; (ii) the proceeds of which are then transferred to an individual or entity related to the Mexican company and deposited in an account with JP Morgan; and (iii) a guaranty of the loan by the related individual or entity, secured by the loan proceeds that were transferred to the individual or entity. The transactions are structured so that the Mexican company pays interest to JP Morgan at a slightly higher rate than that paid by JP Morgan on the deposited loan proceeds. JP Morgan benefits by retaining the spread between these interest payments in addition to its transaction fees. Under Mexican law, the Mexican company can deduct the interest paid to JP Morgan for the loan and the individual guarantor receives tax-exempt interest payments from JP Morgan on the deposit. The Mexican government is deprived of tax revenue to which it is otherwise entitled to under Mexican law.

29. JP Morgan induced Sacal to agree to participate in a number of back-to-back transactions, with the first such transaction consummated in early 2006. Now, as described further below, JP Morgan has sued BVG World and Sacal to seek to accelerate repayment of \$92.5 million on three promissory notes executed by BVG World in March and April 2009 in connection with the last such “back-to-back” transaction (the “Promissory Notes”).

**Highlighting Its Purportedly Superior and Unique
Expertise and Position, JP Morgan Represents
That It Can and Will Sell BVG For Sacal**

30. In July 2006, with BVG's business at its peak, Sacal decided to seek to sell BVG and reached an agreement in principle with Grupo GICSA ("GICSA"), a Mexican real estate development company for approximately \$400 million. While JP Morgan was not initially involved in this transaction, Jorge Sosa ("Sosa"), a Managing Director in JP Morgan's Credit Department in New York, Barbosa and others from JP Morgan closely monitored the negotiations between Sacal and GICSA, through updates from Sacal and others at BVG and, on information and belief, through contacts at GICSA.

31. In or about September 2006, with negotiations concerning GICSA's acquisition of BVG at a critical stage, JP Morgan injected itself into the process, motivated by the potentially large payday for arranging a deal. Playing on the deep trust and confidence Sacal reposed in JP Morgan, Barbosa advised Sacal to forego further negotiations concerning GICSA's \$400 million offer and represented that, if retained by Sacal, JP Morgan's real estate group could and would obtain a higher price for BVG. Barbosa represented that, among other things, JP Morgan's expertise in arranging real estate transactions and its knowledge of all relevant details of BVG's business would ensure a successful and lucrative sale.

32. In early October 2006, in reliance on JP Morgan's advice and representations, Sacal abandoned negotiations with GICSA and met with Barbosa and Gilberto Sotelo ("Sotelo"), a Vice President in JP Morgan's real estate group at BVG's offices in Mexico City concerning JP Morgan's real estate marketing services. At this meeting and in subsequent meetings and communications through the remainder of 2006, Barbosa, Sotelo and others

from JP Morgan assured Sacal that JP Morgan could and would achieve a sale of BVG at a price above the \$400 million GICSA offer.

33. In December 2006, Barbosa, Sotelo and other JP Morgan employees made a presentation to Sacal touting JP Morgan's purportedly unique expertise and ability to effectuate a sale of BVG. Among other things, JP Morgan claimed to have "participated in the most relevant real estate transactions [relative to BVG] in Latin America" and claimed to be a "specialist in transactions involving family groups" such as BVG. As part of this presentation, JP Morgan also provided Sacal with a detailed list of thirty-four "potential buyers" of BVG, tailoring the list to highlight each buyer's focus on Mexican real estate assets.

34. In January 2007, JP Morgan presented Sacal with a "Financial Advisory Proposal" (the "Proposal") which again described JP Morgan's purported qualifications to effect a successful sale of BVG and also set forth the scope of and strategy behind JP Morgan's proposed engagement; the members of the JP Morgan team who were to execute this strategy; and JP Morgan's proposed compensation in connection with the engagement. JP Morgan explicitly based the Proposal on its purported "understanding of the Company's objectives and [its] experience in similar assignments" and stated that it was "the right advisor for [the BVG sale] because it will commit a highly qualified team of professionals with the best industry, local, product and transaction specific expertise. Our advice will be objective and responsive to changing circumstances, guided by our long-standing principal of maximizing value for our clients."

35. JP Morgan's Proposal presented the sale of BVG as a two-stage process. JP Morgan represented that, in "Phase I," it would undertake an analysis of BVG's business and

“competitive and financial position” and explore Sacal’s objectives so that JP Morgan would be uniquely positioned to “maximize shareholder value through a strategic sale.” JP Morgan took pains to describe a potential sale of BVG as a “complex process” with “numerous technical issues related to . . . valuation” and other “intricacies” which required “flawless execution.” JP Morgan represented that it alone was “best suited” to effectuate the sale of BVG based on its specified knowledge and market presence, its purportedly skilled personnel, and its specific knowledge of BVG’s business.

36. JP Morgan promised that, in “Phase II,” it would assist in “execution” of a sale of BVG by “throughout each step of the sale process, including valuation, due diligence, negotiations, documentation and closing” JP Morgan highlighted its purportedly unique expertise, abilities, central position in the Mexican real estate market and access to an “international network of real estate and private equity contacts.”

37. JP Morgan explicitly promised to follow BVG’s direction in all respects with respect to “final negotiations” and decisions with respect to any offers received. JP Morgan stated that it would “provide tactical advice on the negotiations and . . . [would] be involved in the negotiations, either assisting the Company or, if requested by you, negotiating directly with the potential buyers on your behalf.” JP Morgan promised that its “solid negotiating abilities and experience” would ensure that BVG’s terms were met.

38. Based on JP Morgan’s representations as to its unique abilities, expertise, position and understanding of both the Mexican real estate market and BVG’s business, as well as the trust and confidence Sacal had in JP Morgan based on the relationship JP Morgan had carefully cultivated with him, Sacal and BVG engaged JP Morgan to sell BVG on or about January 19, 2007.

JP Morgan Induces BVG to Borrow \$100 Million in Reliance on its Promise to Sell BVG

39. After convincing Sacal to agree to its engagement, JP Morgan quickly began to willfully exploit its role with respect to the BVG sale process. After purportedly undertaking the analysis of BVG's "competitive and financial position" in connection with "Phase I" of the BVG sale process, JP Morgan advised Sacal that BVG could not be sold unless approximately \$40 million in inter-company liabilities were paid off and BVG had at least \$20 million in cash in its corporate treasury, for which JP Morgan would loan BVG the funds.

40. JP Morgan had made no mention of these purported requirements during its pursuit of the right to represent Sacal in connection with the proposed sale of BVG and Sacal initially balked at JP Morgan's efforts to saddle BVG with millions of dollars of debt. To convince Sacal to agree to do so, therefore, Sosa, Barbosa and Sotelo represented that JP Morgan would be willing to provide an additional \$40 million to BVG so that Sacal could "cash out" his equity interest in BVG in anticipation of the sale that JP Morgan promised to effectuate (the "Cash Out Payment").

41. Based on this offer and the confidence he had in JP Morgan, Sacal authorized BVG to borrow approximately \$100 million from JP Morgan in May 2007, pursuant to the Term Loan Agreement. The funds provided under the Term Loan Agreement (the "Term Loan") included \$40 million for expunging BVG's inter-company liabilities, \$20 million for BVG's corporate treasury and \$40 million for the Cash Out Payment to Sacal. This Term Loan Agreement has been amended and restated by the parties three times, most recently on March 31, 2009 in order to reflect a principal balance of \$99 million ("Third Amended Agreement").

42. In securing Sacal's agreement to the Term Loan Agreement by promising the Cash Out Payment and representing that the Term Loan Agreement was necessary to sell BVG, JP Morgan aggressively imposed a variety of conditions on Sacal and BVG which benefited JP Morgan far beyond that of an arms-length lender. Among other things, in addition to the conditions described above, JP Morgan required that:

- Sacal take out a \$50 million life insurance policy arranged by Fernando Restegui, Vice President and Insurance Advisor at JP Morgan, for which JP Morgan is the primary beneficiary;
- BVG establish a trust in Mexico to hold assets as collateral for the Term Loan;
- BVG execute numerous promissory notes and purported guarantees for the Term Loan; and
- the Cash Out Payment be invested exclusively with JP Morgan's Private Bank.

43. The Term Loan Agreement itself and the conditions imposed by JP Morgan in connection with the Cash Out Payment served to cement JP Morgan's control over Sacal's personal and professional financial dealings and BVG's business.

JP Morgan Ignores Sacal's Express Wishes and Refuses a \$500 Million Offer for BVG

44. Contrary to its purported "commitment to providing objective advice" and desire to "avoid financial incentives that conflict with [Sacal's] anticipated financial and strategic objectives" with respect to BVG – which JP Morgan touted to Sacal in its Proposal and in representations by Barbosa and Sotelo – JP Morgan's primary motivation was, at all times, to maximize its own profits from any deal, without regard to the harm that its actions would cause Sacal and BVG.

45. Accordingly, whereas before Sacal had agreed to allow JP Morgan to handle the BVG sale, JP Morgan suggested a "success fee" equal to "1% of the total value of the

Transaction, subject to a minimum of \$4,000,000” if it was successful in selling the Company, JP Morgan changed its tune after Sacal had signed on. Indeed, on or about February 26, 2007, after Sacal had already committed to JP Morgan’s engagement, JP Morgan pressured him to accept an “alternative” compensation structure for the deal which revised its “success fee” to be equal to “0.75% for the first US \$450 Million of the Transaction, plus 3.25% of the next US \$50 Million (\$450-\$500), plus 3.75% of the of the next US \$50 Million (\$500-\$550), plus 5.0% of any value above US \$550 Million; subject to a minimum of US \$3,000,000; payable upon closing”

46. On its face, this “alternative” success fee structure incentivized JP Morgan – which had already benefited by saddling BVG with JP Morgan debt – to abandon its “commitment to . . . objective advice” and to focus on meeting fee benchmarks in order to maximize its own gain, irrespective of the best course for BVG or the best interests of Sacal. In fact, this is precisely what occurred: JP Morgan willfully and/or recklessly ignored Sacal’s express directives and refused to accept an offer of \$500 million for BVG (and a non-refundable deposit associated with this offer) in an effort to maximize its own fees under the “alternative” success fee structure it had convinced Sacal to accept.

47. Throughout the first half of 2007, JP Morgan marketed BVG to prospective purchasers and received no offers. Finally, in September 2007, BVG received two offers to purchase the company. The first, from Consorcio Inmobiliario Promotor, S.A. de C.V. (“COPRI”), was for only \$204 million and was immediately rejected by Sacal.

48. Then, on September 14, 2007, Prudential Real Estate Investors, S. de R.L. de C.V. (“PREI”) offered to purchase BVG and all rights associated therewith for \$500,005,000. PREI offered, upon the signing of binding agreements but before final negotiations or closing,

to “deposit 10% of the value of the transaction in escrow” – a non-refundable advance of over \$50 million – as “a breakage fee” for Sacal and BVG in the event that PREI withdrew from the transaction.

49. Pleased with PREI’s offer, Sacal directed Sotelo and JP Morgan to work with PREI to prepare binding documentation and to accept, at once, PREI’s offer to deposit over \$50 million into escrow. Despite its claims of “objectivity,” “independent perspective,” and “execution experience” and its promise to follow Sacal’s directions and effect a sale of BVG in the best interests of Sacal and BVG, however, JP Morgan abandoned Sacal and BVG’s interests with respect to PREI’s binding offer in an attempt to maximize JP Morgan’s own success fees. Thus, to Sacal’s surprise, rather than follow his direction, Sotelo advised Sacal to immediately reject PREI’s offer and refuse its non-refundable deposit.

50. When Sacal reiterated his direction to JP Morgan to accept the deposit from PREI and work to finalize the acquisition, Sotelo refused to do so and stated that JP Morgan would not agree to a sale price below \$600 million. Sotelo stated that a rejection was sure to be countered by PREI and represented that JP Morgan could “easily” obtain a sale price of approximately \$100 million more than the \$500 million offered by PREI based on, among other things, JP Morgan’s relationship with PREI executives.

51. Relying on Sotelo’s recommendation and representations and based on the confidence he had in JP Morgan, Sacal rejected PREI’s September 14 offer. JP Morgan’s recommendation and representations proved catastrophic to Sacal and BVG. By the end of September 2007, PREI had abandoned its offer for BVG.

52. By egregiously forsaking Sacal’s and BVG’s interests in favor of its own interests and by refusing to follow Sacal’s directions despite its promise to do so, JP Morgan

caused Sacal and BVG to lose the non-refundable \$50 million breakage fee offered by PREI and prevented the sale of BVG to PREI for over \$500 million.

JP Morgan Forces Sacal to Invest the “Cash Out Payment” in Unsuitably Risky JP Morgan-Sponsored Investments

53. JP Morgan’s offer to cash out Sacal in connection with the proposed sale of BVG proved as damaging to Sacal as JP Morgan’s failure to effect the sale itself.

54. After inducing Sacal to agree to its role in the BVG sale by offering the “Cash Out Payment,” JP Morgan required that it be invested exclusively with JP Morgan’s Private Bank. Accordingly, during the week of January 29, 2007, and in anticipation of the Cash Out Payment, JP Morgan flew Sacal to Miami for meetings sponsored for its favored Private Banking clients. JP Morgan provided lavish accommodations, meals and entertainment to Sacal, all in an effort to pitch him various investment vehicles sponsored by JP Morgan’s Private Bank.

55. Sacal – fully aware that the Cash Out Payment was merely part of the Term Loan, would have to be repaid by BVG, and was guaranteed by Sacal and other BVG entities – reiterated his conservative investment guidelines to Barbosa and Blanco before, during and after the January 2007 Miami meetings. Sacal repeatedly advised Barbosa and Blanco to avoid risk with respect to investment of the Cash Out Payment. At all relevant times, Barbosa and Blanco represented to Sacal that the Cash Out Payment would be invested in line with Sacal’s directives and conservative investment aims.

56. Despite these promises, its clear understanding of Sacal’s conservative investment aims, and its representations to Sacal that his interests would come first, JP Morgan used its control over investment of the Cash Out Payment to foist some of JP

Morgan's riskiest investment vehicles on Sacal, including exotic private equity and hedge fund investments and highly speculative currency swap transactions.

57. Sacal was unfamiliar with either the particularities or the level of risk associated with such investments and relied on JP Morgan's judgment and assurances in all respects concerning these investments. Indeed, prior to the Cash Out Payment, Sacal had never invested in private equity or hedge fund vehicles whatsoever and had engaged only in very limited dollar-to-peso currency swaps with JP Morgan on behalf of BVG as a hedge against currency fluctuations that might affect BVG's purchase of construction materials, payment of contractors or receipt of payments from customers.

58. At no point did Barbosa, Blanco or anyone else at JP Morgan acknowledge the extent to which the investments recommended by JP Morgan for the Cash Out Payment were, in fact, extraordinarily aggressive and risky. Instead, Barbosa and Blanco represented that Sacal could expect extremely positive yields on each of these investments, suggesting to Sacal that those who had the funds to meet investment minimums (as Sacal would after receiving the Cash Out Payment) were certain to make profits on their investments. By these representations and with no means of declining these "recommendations" (because of the requirement that he invest the Cash Out Payment exclusively with JP Morgan's Private Bank), Sacal was convinced by JP Morgan to make investments that far outstripped his appetite or capacity for risk. Having thus enticed Sacal into borrowing extraordinary sums based on promises that it would sell BVG and representations concerning its unique abilities and commitment to Sacal's interests, JP Morgan then willfully steered him towards completely unsuitable investments.

59. A vast majority of those investments chosen for Sacal by JP Morgan's Private Bank have now lost all or substantially all of their value. Indeed, Sacal has already realized a loss of over \$27 million, a sum which will continue to grow as Sacal's remaining holdings are liquidated at a total or near-total loss.

60. Sacal's realized losses through JP Morgan's Private Bank are as follows.

Transaction	Purchase Date/Price	Sale Date/Price	Loss
GoldenTree Offshore Ltd. 05-07 Subscription.	Purchased on 4/26/07 for \$2,327,029	Sold on 11/4/08, 5/12/09, 6/11/09 and 8/19/09 for total of \$1,914,032	(\$412,997)
Atticus Emerging Markets Ltd. Subscription.	Purchased on 4/26/07 for \$2,500,000	Sold on 8/4/08 for \$1,980,534	(\$519,466)
Highbridge Capital Corp. Subscription.	Purchased on 5/27/07 for \$3,000,000	Sold on 11/14/08 for \$2,517,932	(\$482,068)
Atticus Emerging Markets Ltd. Subscription	Purchased on 5/27/07 for \$500,000	Sold on 8/4/08 for \$388,823	(\$111,177)
Ishares MSCI Japan Index Fund	Purchased on 5/27/07 for \$303,870	Sold on 1/11/08 for \$269,846	(\$34,024)
Ishares Russell 1000 Value Index Fund	Purchased on 5/27/07 for \$594,088	Sold on 1/11/08 for \$522,518	(\$71,570)
SPDR Trust Series 1	Purchased on 5/27/07 for \$586,170	Sold on 1/28/08 for \$508,357	(\$77,813)
Atticus Global Fund Ltd	Purchased on 5/27/07 for \$3,000,000	Sold on 10/2/09 for \$2,244,365	(\$755,635)
REN Private Investors Offshore, L.P. Subscription.	Purchased on 5/27/07 for \$500,000	Sold on 5/29/08 and 5/25/09 for \$440,217	(\$59,783)
JPM US Strategic Growth - USD	Purchased on 5/28/07 for \$600,000	Sold on 1/29/08 for \$532,904	(\$67,096)
JPM Europe Select Equity Fund - EUR	Purchased on 7/3/07 for \$807,870	Sold on 1/29/08 for \$695,422	(\$112,448)
JPM Europe Strategic Growth - EUR	Purchased on 7/3/07 for \$807,870	Sold on 1/14/08 for \$769,539	(\$38,331)
JPM Europe Strategic Value - EUR	Purchased on 7/3/07 for \$807,870	Sold on 1/29/08 for \$671,313	(\$136,557)

Transaction	Purchase Date/Price	Sale Date/Price	Loss
Three-month cross-currency interest rate swap USD/CHF	Purchased on 7/16/07; 2/1/08; 3/7/08; and 3/11/08 for \$9,220,198	Paid or unwound on 8/21/07; 12/7/07; and 3/3/08 for \$1,327,587	(\$7,892,611)
Three-month cross currency interest rate swap USD/JPY	Purchased on 7/16/07; 2/1/08; 3/7/08; 3/11/08 for \$10,069,858	Paid or unwound on 9/7/07; 12/7/07; and 3/7/08 for \$1,915,399	(\$8,154,459)
European-style foreign exchange option – JPY call/USD put	Purchased on 7/18/07 for \$325,000	Option expired on 1/16/08 Total received: \$0	(\$325,000)
GoldenTree Offshore Ltd. 07-07 Subscription.	Purchased on 7/27/07 for \$466,375	Redeemed on 11/4/08, 5/12/09, 6/11/09, and 8/19/09 for \$372,079	(\$94,296)
Foreign exchange contracts EUR/USD.	Purchased: 12/19/07 for \$51,580,079	Settled on 12/21/07 for \$50,000,000	(\$1,580,079)
Settled forward currency contract – Buy USD Sale EUR	Purchased on 6/23/08 for \$53,207,888	Settled on 6/23/08 for \$50,000,000	(\$3,207,888)
Totals	Total Purchase Price: \$144,204,165	Total Value Received: \$117,070,867	Total Losses: (\$27,133,298)

61. In addition to the foregoing, Sacal continues to hold certain investments sold to him through JP Morgan's Private Bank using proceeds of the Cash Out Payment. The losses from these investments are set forth in the chart below.

Transaction	Purchase Date/Price	Price as of 12/31/09	Loss
JC Flowers II Private Investors	Purchased on 12/27/06 for \$2,881,241	Estimated value as of 12/31/09: \$1,007,235	(\$1,874,006)
Goldentree Offshore Ltd. 05-07	Purchased on 4/26/07 for \$172,971	Estimated value as of 12/31/09: \$79,944	(\$93,027)
CCMP Capital Investors (Cayman) II, L.P.	Purchased on 5/22/07 for \$306,062	Estimated value as of 12/31/09: \$220,635	(\$85,427)
AP Europe VII (APAX)	Purchased on 6/25/07 for: \$2,043,181	Estimated value as of 12/31/09: \$1,468,263	(\$574,918)
Goldentree Offshore Ltd. 07-07	Purchased on 6/27/07 for \$33,625	Estimated value as of 12/31/09: \$15,541	(\$18,084)

KKR 2006 Private Investors Offshore	Purchased on 7/3/07 for \$2,349,678	Estimated value as of 12/31/09: \$2,117,530	(\$232,148)
Purchase 30,000 Lehman Bros. Semi-Annual Review Certificates	Purchased: 8/15/07 for \$3,000,000	Estimated value as of 12/31/09: \$0	(\$3,000,000)
Silver Lake Partners II	Purchased on 10/22/07 for \$890,738	Estimated value as of 12/31/09: \$759,563	(\$131,175)
Totals	Total Purchase Price: \$11,677,496	Total Value Received: \$5,668,711	Total Losses: (\$6,008,785)

62. To date, JP Morgan refuses to acknowledge its responsibility for Sacal's unsuitably risky investments or the losses he has suffered and continues to suffer as a result.

JP Morgan Now Seeks to Harm Sacal and BVG

63. Apparently unhappy with new protections afforded to Sacal under the Third Amended Agreement, JP Morgan now seeks to harm Sacal and BVG and terminate its relationship with them.

64. In January 2010, JP Morgan sued Sacal and BVG in both New York and Mexico seeking immediate repayment of nearly \$200 million which it claims is due and owing, despite the fact that BVG had never missed a single interest payment on any of its loan obligations to JP Morgan. In New York, JP Morgan seeks immediate repayment of \$92.5 million from BVG World (or Sacal and Inmobiliaria as guarantors) on the Promissory Notes executed in March and April 2009 in connection with the last back-to-back tax-shelter structured for Sacal by JP Morgan. In Mexico, JP Morgan seeks repayment of the entire \$99 million borrowed by BVG World (and guaranteed, in part, by Sacal, CBVG, ABVG, Cabo, Bajamar, Portochervo, and Inmobiliaria) pursuant to the Third Amended Agreement.

65. JP Morgan seeks immediate payment of the nearly \$200 million it claims BVG owes, notwithstanding that, among other things:

- BVG never missed a single interest payment on any loan obligation to JP Morgan prior to JP Morgan's pretextual effort to terminate its relationship with Sacal and BVG;
- BVG has sufficient cash and collateral to meet all obligations to JP Morgan now and going forward;
- BVG has complied with governing loan documents in all material respects;
- JP Morgan has, throughout the course of its lending relationship to BVG, routinely extended and renewed its loans in the ordinary course;
- JP Morgan refused to disclose the details of the defaults it claims, let alone provide BVG with any opportunity to cure any claimed default; and
- as described above, the sums JP Morgan claims BVG owes pursuant to the Third Amended Agreement were provided to BVG only in connection with JP Morgan's promised – but failed – sale of BVG.

66. JP Morgan's actions are without justification and are designed purely to harm Sacal and BVG. Indeed, JP Morgan is well-aware that its demand for immediate repayment of the term loans pursuant to the Third Amended Agreement – which are not otherwise due until December 1, 2010, at the earliest – will cripple BVG's business and operations and drive the company towards ruin by, among other things, forcing Sacal and BVG to liquidate assets in the worst real estate market in memory. Indeed, not only does JP Morgan seek to unreasonably accelerate all BVG loan obligations, but it seeks to deprive Sacal and his family of access to even their personal holdings. Indeed, on or about December 1, 2009, JP Morgan unilaterally froze all accounts maintained by BVG and Sacal with JP Morgan, without regard to whether the accounts were personal to Sacal and his family. After JP Morgan unilaterally froze BVG's and Sacal's personal accounts on or about December 1, 2009, Sacal sought to contact Barbosa, Cafuzzi and others at JP Morgan to ascertain the reasons behind JP Morgan's radical actions. Barbosa, Cafuzzi and others at JP Morgan, however, refused to speak with Sacal, other than to inform him that they had been instructed not to speak with

him. Finally, on January 22, 2010, the same day it sued Sacal and BVG in New York, JP Morgan provided Sacal with a purported default notice concerning the Promissory Notes.

67. JP Morgan apparently is motivated by its displeasure with certain new terms in the Third Amended Agreement which provided new protections for Sacal. Those terms limit Sacal's personal guaranty on the term loan to a maximum of \$1 million (whereas it had been previously uncapped); limit BVG's liability for expenses in connection with the negotiation and enforcement of the Third Amended Agreement to \$20,000; change the governing law from New York law to "the laws of Mexico"; and change the required jurisdiction for disputes with respect to the Third Amended Agreement from New York to Mexico.

68. Moreover, JP Morgan apparently has gone so far as to disparage Sacal and BVG to third parties. On or about March 1, 2010, Cepeda personally told a leading Mexican businessman in the pharmaceutical and real estate business that Sacal had committed "criminal" actions against JP Morgan and was not to be trusted. Likewise, JP Morgan employees told a notary charged with documenting trust assets related to the collateral for the Third Amended Agreement that Sacal had "harmed" JP Morgan and that JP Morgan will "never negotiate with Sacal" and intends to break him. These gratuitous and baseless attacks on Sacal only further evidence JP Morgan's extraordinary bad faith and intention to cause Sacal and BVG harm.

JURY DEMAND

69. Plaintiffs hereby demand a trial by jury of all issues triable to a jury.

FIRST CAUSE OF ACTION

Breach of Fiduciary Duty

70. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 69 above as though fully set forth herein.

71. JP Morgan owed fiduciary duties of care, loyalty, good faith, honesty, and full disclosure to plaintiffs. JP Morgan assiduously cultivated a relationship with Sacal and BVG that went far beyond a typical financial advisory, brokerage or lending relationship, and this relationship created fiduciary obligations to Sacal and BVG on the part of JP Morgan. Sacal and BVG placed their trust in JP Morgan's experience and expertise and relied on its advice.

72. JP Morgan repeatedly and willfully violated its fiduciary obligations to Sacal and BVG by, among other things: (a) abandoning Sacal's and BVG's best interests with respect to the sale of BVG in favor of an effort to obtain higher fees for JP Morgan; (b) imposing unnecessary debt burdens on Sacal and BVG by representing that this debt was necessary to successfully sell BVG; (c) causing Sacal to invest a portion of this debt in risky JP Morgan-sponsored investments which were patently unsuitable to Sacal's conservative investment needs and express directives; (d) inducing BVG and Sacal to engage in improper back-to-back tax shelter transactions and to borrow substantial sums from JP Morgan in connection with such transactions, and (e) seeking to terminate its relationship with Sacal and BVG, without basis, in bad faith and on a pretext, regardless of the harm to Sacal and BVG that this course of conduct has caused and will continue to cause.

73. By the actions described herein, JP Morgan was grossly negligent in carrying out its obligations to Sacal and BVG.

74. Plaintiffs have incurred significant damage as a result of JP Morgan's above-described conduct. JP Morgan's conduct, as alleged herein, was outrageous, willful and wanton, perpetrated with a reckless indifference to the rights of Sacal and BVG, and was grossly and egregiously negligent.

75. By reason of the foregoing, plaintiffs are entitled to compensatory and punitive damages in amounts to be determined at trial, but not less than \$500 million.

SECOND CAUSE OF ACTION

Breach of Contract

76. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 75 above as though fully set forth herein.

77. The parties entered into a contract for financial, investment banking, tax and insurance services.

78. As set forth above, JP Morgan breached the contract and plaintiffs were injured as a result.

79. By reason of the foregoing, plaintiffs are entitled to compensatory damages in amounts to be determined at trial, but not less than \$500 million.

THIRD CAUSE OF ACTION

Breach of the Implied Covenant of Good Faith and Fair Dealing

80. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 79 above as though fully set forth herein.

81. New York law, which governs the Promissory Notes, implies into every contract a covenant of good faith and fair dealing.

82. Based on the conduct described above, JP Morgan has breached the implied covenant of good faith and fair dealing in the Promissory Notes with BVG.

83. JP Morgan's breach of the implied covenant of good faith and fair dealing in the Promissory Notes has caused and will continue to cause plaintiffs damage.

84. By reason of the foregoing, plaintiffs are entitled to compensatory damages in amounts to be determined at trial, but not less than \$500 million.

FOURTH CAUSE OF ACTION

Prima Facie Tort

85. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 84 above as though fully set forth herein.

86. By the acts described above, JP Morgan intended to inflict pecuniary harm on plaintiffs, without justification.

87. By reason of the foregoing, plaintiffs are entitled to compensatory and punitive damages in amounts to be determined at trial, but not less than \$500 million.

FIFTH CAUSE OF ACTION

Fraud In the Inducement With Respect to Investments

88. Sacal repeats and realleges the allegations set forth in paragraphs 1 through 87 above as though fully set forth herein.

89. With the intent of inducing Sacal to invest in JP Morgan-sponsored hedge fund and private equity investments and currency swap transactions unsuitable for Sacal based on his conservative investment aims, JP Morgan knowingly and/or recklessly made and

participated in the making of material misrepresentations of fact and the omission of material facts to Sacal.

90. In justifiable reliance upon JP Morgan's misrepresentations and omissions, and without knowledge of the truth, Sacal invested in the JP Morgan-sponsored hedge fund and private equity investments and currency swap transactions. Had Sacal known that the information he received from, and the representations made by, JP Morgan were false, or had Sacal known the material adverse information that was concealed by JP Morgan, Sacal would not have agreed to the investments.

91. By reason of the foregoing, plaintiffs are entitled to compensatory and punitive damages in amounts to be determined at trial, but not less than \$500 million.

PRAYER FOR RELIEF

WHEREFORE, Sacal and BVG respectfully request that judgment be entered against JP Morgan awarding:

1. Sacal, on the first, fourth and fifth causes of action, compensatory and punitive damages in amounts to be determined at trial, but not less than \$500 million;

2. BVG, on the first, fourth and fifth causes of action, compensatory and punitive damages in amounts to be determined at trial, but not less than \$500 million;

3. Sacal, on the second and third causes of action, compensatory damages in amounts to be determined at trial, but not less than \$500 million;

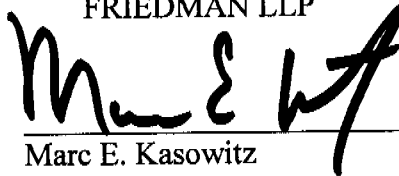
4. BVG, on the second and third causes of action, compensatory damages in amounts to be determined at trial, but not less than \$500 million;

5. An order awarding plaintiffs interest and reasonable attorneys' fees, together with the costs of this action; and,

6. Such other and further relief as the Court may deem just and proper.

Dated: March 12, 2010
New York, New York

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FRIEDMAN LLP



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Inmobiliaria BVG Bajamar, Cabo Vallarta,
S.A. de C.V., Portochervio Acapulco, Cabo
Vallarta, S.A. de C.V., and Inmobiliaria
Insurgentes 421, Cabo Vallarta, S.A. de C.V.*

ORIGINAL

Index No.

Year 20 10

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION

ELIAS SACAL CABABIE; BVG WORLD, S.A. DE C.V.; CORPORATION BAY VIEW
GRAND, S.A. DE C.V.; ADMINISTRACIONES BVG, S.A. DE C.V.; CABO VALLARTA,
S.A., DE C.V.; INMOBILIARIA BVG BAJAMAR, S.A. DE C.V.; PORTOCHERVIO
ACAPULCO, S.A. DE C.V.; and INMOBILIARIA INSURGENTES 421, S.A. DE C.V.
Plaintiff,

-against-

J.P. MORGAN CHASE BANK, N.A.

Defendant.

SUMMONS AND COMPLAINT

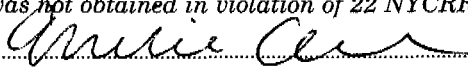
KASOWITZ, BENSON, TORRES & FRIEDMAN LLP

Attorney(s) for
Plaintiffs

1633 BROADWAY
NEW YORK, NEW YORK 10019
212-506-1700

Pursuant to 22 NYCRR 130-1.1-a, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, (1) the contentions contained in the annexed document are not frivolous and that (2) if the annexed document is an initiating pleading, (i) the matter was not obtained through illegal conduct, or that if it was, the attorney or other persons responsible for the illegal conduct are not participating in the matter or sharing in any fee earned therefrom and that (ii) if the matter involves potential claims for personal injury or wrongful death, the matter was not obtained in violation of 22 NYCRR 1200.41-a.

Dated: March 12, 2010

Signature 

Print Signer's Name Emilie Cooper

Service of a copy of the within

is hereby admitted.

Dated:

Attorney(s) for

PLEASE TAKE NOTICE

Check Applicable Box

that the within is a (certified) true copy of a
NOTICE OF ENTRY entered in the office of the clerk of the within-named Court on 20

that an Order of which the within is a true copy will be presented for settlement to the
NOTICE OF SETTLEMENT Hon. _____, one of the judges of the within-named Court,
at _____
on _____ 20 _____, at _____ M.

Dated: