

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

----- X  
ACE DECADE HOLDINGS LIMITED, : Index No. 653316/2015 (Bransten, J.)  
: :  
Plaintiff, : Motion Sequence No. 001  
: :  
-v- : **ORAL ARGUMENT REQUESTED**  
: :  
UBS AG, : :  
: :  
Defendant. : :  
----- X

**UBS AG'S MEMORANDUM OF LAW IN SUPPORT  
OF ITS MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

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## PRELIMINARY STATEMENT

Under settled law, this case does not belong in this New York court. Plaintiff Ace Decade Holdings Limited (“Ace Decade”), a British Virgin Islands company, claims that an employee in UBS AG’s (“UBS”) Hong Kong office misled Ace Decade’s “agent,” Kwok Ho Wan (“Kwok”), a Chinese citizen and, at the time, a Hong Kong resident, about a transaction in Hong Kong and China. In this transaction, Ace Decade allegedly invested \$500 million in a special purpose vehicle known as Dawn State Limited (“Dawn State”), a wholly owned subsidiary of a Chinese government-controlled investment fund, Haixia Capital Investment Fund (Fujian) Limited Partnership (“Haixia”). In turn, Dawn State invested more than \$1 billion in a private placement of shares of Haitong Securities Co., Ltd. (“Haitong”)—a Chinese company listed on the Hong Kong Stock Exchange (“HKSE”). To finance part of its investment, Dawn State (not Ace Decade) arranged to borrow up to \$775 million from UBS’s London Branch through UBS employees in UBS’s Hong Kong office.<sup>1</sup>

In late June and early July of 2015, after a “sharp downturn” in the Chinese markets (Complaint, filed October 5, 2015 (“Compl.”) ¶ 14), the price of Haitong’s Hong Kong-listed shares (which served as collateral for the UBS London Branch loan to Dawn State) dropped more than 25%. This steep price decline gave UBS the right under its financing agreement with Dawn State to call the loan, which UBS did. After Dawn State did not meet its prepayment obligations, UBS liquidated Dawn State’s position in Haitong shares, allegedly causing Ace Decade to lose the \$500 million that it invested with Dawn State.

In this lawsuit, Ace Decade seeks to blame UBS for its alleged losses from investing in Haitong shares through Dawn State. Ace Decade does not allege that it entered into

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<sup>1</sup> Attached to this brief as Appendix A is a diagram of the alleged transactions.



*any* transaction or agreement with UBS. Instead, Ace Decade implausibly alleges that it invested *half a billion dollars* with Dawn State based on a single UBS Hong Kong employee's *oral* misrepresentations to Kwok, including that UBS's London Branch did not intend to require Dawn State to repay UBS's loan if the underlying price of Haitong shares suffered a "short term price fluctuation." (Compl. ¶ 32.) Tellingly, Ace Decade acknowledges that it was represented by experienced Hong Kong counsel, but never alleges that it or its counsel reviewed the terms of the written financing agreement between UBS and Dawn State granting UBS the right to sell the Haitong shares if Dawn State did not repay UBS's loan.

This Court should dismiss Ace Decade's claims for each of the following separate and independent reasons.

*First*, Ace Decade fails to meet its burden of establishing personal jurisdiction over UBS to resolve this dispute over transactions having no relationship—none—to New York. Because UBS is incorporated and has its principal place of business in Switzerland, UBS is subject to personal jurisdiction in New York only for claims arising out of its activities in or directed to New York. Here, Ace Decade studiously avoids identifying (i) any contractual or other relationship between UBS and Ace Decade; (ii) what, if anything, UBS did in New York in connection with the relevant transactions; (iii) the location of the UBS employee who allegedly misrepresented the future terms of the financing agreement between Dawn State and UBS; and (iv) where Kwok resided when the UBS employee supposedly made this misstatement.

To try to manufacture the "substantial connection" between UBS's activities and New York required for subjecting UBS to suit in this State, Ace Decade claims that Kwok (1) moved to New York *after* Ace Decade invested with Dawn State, and then (2) set up a company in New York to manage Ace Decade's assets. But the law is settled that a party cannot

create jurisdiction in New York by moving to this State *after* a transaction. *See* cases cited *infra* at 14 to 18. In any event, the Complaint provides no New York address for Ace Decade, nor pleads that Ace Decade is registered to do business here (which it is not). Indeed, the Complaint *concedes* that the UBS employee made the claimed misrepresentations *before* Kwok supposedly moved to New York in January 2015. (Compl. ¶¶ 32-33, 36.)

*Second*, New York is a wholly inconvenient forum for resolving this dispute. The mere allegation that Kwok now resides in New York cannot overcome that every transaction here occurred in Hong Kong and/or China. New York law is clear: this Court should not hear a case involving entirely foreign transactions, particularly when all key witnesses (except supposedly Kwok) and documents are located far from New York, and the underlying claims are governed by Hong Kong (or other foreign) law. Moreover, unlike New York, Hong Kong has a substantial interest in regulating alleged misconduct in connection with securities offerings in Hong Kong. *See* cases cited *infra* at 20-21. And Ace Decade has provided no evidence that it would be prejudiced by litigating in Hong Kong when it was represented by Hong Kong counsel in connection with its investment in Dawn State, and Kwok is a Chinese citizen.

*Third*, Ace Decade's claims cannot survive a motion to dismiss on the merits. Ace Decade pleads no facts supporting its assertion that it had a fiduciary or special relationship with UBS, particularly where Ace Decade did *not* hold an account at UBS or enter into any agreement with UBS. An obviously sophisticated entity, Ace Decade cannot plausibly plead that it justifiably relied on the alleged *oral* misstatements of a single UBS employee concerning what terms UBS's London Branch intended to include in its financing agreement with Dawn State. (Compl. ¶¶ 33, 35, 39.) In such circumstances, no sophisticated party would invest \$500 million without obtaining written contractual protection for itself.

## BACKGROUND<sup>2</sup>

### A. The Parties

UBS AG is a “Swiss banking and financial services company” (Compl. ¶ 11) that is incorporated and has its principal place of business in Switzerland (Decl. ¶ 3).<sup>3</sup>

Ace Decade is a special purpose vehicle incorporated in the British Virgin Islands (“BVI”). (Compl. ¶¶ 10, 20.) The Complaint asserts that “Ace Decade’s principal place of business is in New York City” (Compl. ¶ 10), but does not allege that Ace Decade had *any* connection whatsoever with New York prior to January 2015 (Compl. ¶¶ 36-38), which was *after* Ace Decade allegedly invested \$500 million in Dawn State, a wholly owned subsidiary of a Chinese government-controlled investment fund (Compl. ¶¶ 27-31).

In fact, Ace Decade’s connection to New York is virtually non-existent: it is not registered to do business in New York (Decl. ¶ 4), and the Complaint provides no address for Ace Decade in New York. At most, the Complaint alleges that Kwok, a Chinese citizen and Hong Kong resident at least through the end of 2014 (*See* Affirmation of Stephen Wong, dated December 7, 2015 (“Wong Aff.”) ¶ 6) moved to New York in January 2015 and, in February

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<sup>2</sup> New York law permits parties to submit documentary evidence on motions to dismiss, and, when such evidence is presented, the court is “required to determine whether the opposing party actually has a cause of action or defense, not whether [it] has properly stated one.” JFK Holding Co. v. City of N.Y., 68 A.D.3d 477, 477 (1st Dep’t 2009) (quoting O’Donnell, Fox & Gartner, P.C. v. R-2000 Corp., 198 A.D.2d 154, 154 (1st Dep’t 1993)). In particular, courts may consider evidence outside the pleadings when ruling on a motion to dismiss, as here, based on the lack of personal jurisdiction and *forum non conveniens*. CPLR 3211(c); *see also* Cappellini v. United Tech. of N.Y., 79 A.D.2d 593, 593 (1st Dep’t 1980) (*forum non conveniens*); Limmer v. Medallion Grp., Inc., 75 A.D.2d 299, 304 (1st Dep’t 1980) (personal jurisdiction); Wyser-Pratte Mgmt. Co. v. Babcock Borsig AG, 2004 WL 3312835, \*6 (Sup. Ct. N.Y. Co. July 8, 2004) (Ramos, J.) (considering “expert evidence” submitted by defendants in connection with *forum non conveniens* motion).

<sup>3</sup> Unless otherwise specified, all references to “Decl.” or “Ex.” are to the Declaration of Justin J. DeCamp, dated December 7, 2015 (“DeCamp Decl.”) or the exhibits thereto.

2015, established Golden Spring (New York) Ltd. (“Golden Spring (New York)”) to “manag[e] Ace Decade’s investments and seek[] U.S. investors interested in investing in Haitong indirectly through Ace Decade.” (Compl. ¶¶ 36-38.)

Despite the Complaint’s conclusory allegation that Ace Decade “agreed to have UBS act as its advisor in connection with” Ace Decade’s “investment opportunity [] in an upcoming placement [] of” Haitong’s Hong Kong shares (Compl. ¶¶ 14, 19), Ace Decade never alleges that it has an account with UBS Hong Kong, or that it entered into any written contract with UBS for any supposed advisory services, much less in connection with a \$500 million investment in a Hong Kong private placement.

**B. Kwok’s Alleged Discussions With UBS in Hong Kong Over a Potential Transaction in Haitong Shares**

Around May of 2014, over seven months *before* Kwok allegedly moved to New York (Compl. ¶¶ 14, 36), Kwok purportedly discussed with UBS in Hong Kong investing in a potential private placement of H-shares of Haitong, “a joint stock limited company incorporated in [China].” (Compl. ¶¶ 14, 16.) “Haitong is one of the largest securities firms in [China] in terms of total assets, net assets, and total revenue.” (Compl. ¶ 16.) H-shares are “shares of a company incorporated in [China] that are listed on the [HKSE].” (Compl. ¶ 15.) Kwok allegedly told Stephen Wong (“Wong”) of UBS’s Hong Kong office that “(1) he planned to invest approximately US \$1,000,000,000; (2) he planned to make the [i]nvestment through Ace Decade . . . ; and (3) the ultimate purpose of the investment was to allow Mr. Kwok to enter into a subsequent transaction with other investors in mainland China.” (Compl. ¶ 20.)

According to the Complaint, an unnamed UBS employee recommended that Kwok invest in Haitong shares through an intermediary, and ultimately “UBS recommended” Haixia (Compl. ¶¶ 21-22), a Chinese investment fund controlled by China’s State Development

& Investment Corp. (“SDIC”).<sup>4</sup> The Complaint alleges that UBS did not disclose that almost a decade before—in June 2005—UBS and SDIC “formed China’s first joint venture fund management company called UBS SDIC.” (Compl. ¶ 22.) But this joint venture was completely unrelated to Dawn State’s investment (Compl. ¶ 22), and SDIC’s ownership interest in Haixia was widely reported in China and elsewhere (*see, e.g.*, Exs. 3-11).

After further discussions between Kwok and unnamed UBS and Haixia employees, Ace Decade supposedly decided to invest \$500 million in Haitong shares through Dawn State. (Compl. ¶¶ 24, 28.) The Complaint alleges that although “Kwok initially wanted to invest \$1 billion . . . without any financing,” an unnamed UBS employee “advised him that it would benefit [him] and Ace Decade to invest only \$500 million and to obtain a substantial loan to be invested in the purchase of additional shares.” (Compl. ¶ 25.) Moreover, on an unspecified date, Kwok supposedly told Wong that “Ace Decade would not enter into the [i]nvestment unless the margin call provisions did not include any triggers based on the short term price fluctuation of the [s]hares and provided Ace Decade with adequate time to meet any margin calls.” (Compl. ¶ 32.) Wong allegedly replied that the terms “would be consistent with Mr. Kwok’s requirements and further that UBS would work cooperatively with Ace Decade to allow it to meet any margin calls.” (Compl. ¶ 32.) There is no allegation that Kwok asked to review the written terms of UBS’s financing agreements with Dawn State, or whether he, or anyone on his behalf, ever did so.

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<sup>4</sup> SDIC is a “state-owned investment holding company” with 461.7 billion yuan in assets (Ex. 15 at 3 (SDIC Corp. Resp. Report)), or \$72.26 billion based on conversion rates as of November 24, 2015, Wall Street Journal, Exchange Rates, *available at* [http://online.wsj.com/mdc/public/page/2\\_3021-forex.html](http://online.wsj.com/mdc/public/page/2_3021-forex.html). SDIC has 23 direct subsidiaries and indirectly owns or controls another 184 additional companies. (Ex. 15 at 3.)

The Complaint does not allege that UBS made any of these purported statements in New York; indeed, the Complaint concedes that all of these statements were made *before* Kwok allegedly moved to New York in January 2015. (*See* Compl. ¶ 39 (“Because UBS had previously represented to Mr. Kwok [prior to the execution of the Financing Letter in December 2014] that the margin call provisions in the Financing Letter had been revised to reflect his comments, Mr. Kwok did not again directly discuss with UBS the margin call provisions in the final Facility Agreement and other associated collateral documents, which Dawn State and UBS entered into on April 1, 2015.”); *see also* Compl. ¶¶ 32-33 (alleged UBS misrepresentations occurred during “discussions about the loan financing” prior to the execution of the Financing Letter on “December 19, 2014”); ¶ 36 (“In early January 2015, Mr. Kwok and Ms. Yu moved to New York...”)). Moreover, at all relevant times Wong—the only UBS employee identified in the Complaint—worked in UBS’s Hong Kong office. (Wong Aff. ¶¶ 1, 7.)

### **C. The Transaction Documents**

On December 18, 2014, before Kwok supposedly moved to New York, Ace Decade allegedly entered into a “Co-Investment Agreement” with Haixia and Dawn State and a letter agreement with Haixia under which “Ace Decade would provide Dawn State with US \$500 million, which together with US \$775 million in loan financing that Dawn State was to obtain from UBS, would be used to purchase the [s]hares” of Haitong. (Compl. ¶¶ 27-28.) Ace Decade was represented by the experienced Hong Kong law firm, Stevenson, Wong & Co. (“Stevenson Wong”) in these transactions, none of which involved UBS. (*See* Compl. ¶ 47 (noting that “Haixia sent an email to Ace Decade’s counsel Stevenson, Wong & Co. [], notifying them that the closing price of the [Haitong] Shares had triggered short term fluctuation limits and that UBS would be calling the loan”); Ex. 17.)

As reflected in the Complaint's allegations, Ace Decade (but not UBS) has copies of its Co-Investment Agreement with Haixia and Dawn State. (Compl. ¶¶ 27-30.)<sup>5</sup> Tellingly, Ace Decade does not attach that agreement to its Complaint, much less provide the key terms such as the place of execution, governing law, or whether it contains a forum selection clause, presumably because those details would confirm that this case does not belong in New York.

On December 19, 2014, Dawn State and UBS executed a financing letter ("Financing Letter") memorializing the terms of the financing that UBS's London Branch, acting through an employee in UBS's Hong Kong office (Affirmation of Michel Lee, dated December 7, 2015 ("Lee Aff.") ¶¶ 3-4), would provide for Dawn State to purchase Haitong shares in the private placement. (Compl. ¶¶ 26, 33.) The Financing Letter provides that (1) the financing would be in Hong Kong dollars, (2) the agreement would "be governed by and construed in accordance with the laws of England," and (3) the parties would "irrevocably submit to the exclusive jurisdiction of the courts in England for the purpose of hearing and determining any dispute arising out of the Financing Commitment Documents." (Lee Aff. Ex. 1 at 7.)<sup>6</sup>

Despite supposedly making a \$500 million investment in Haitong shares through Dawn State, Ace Decade never alleges whether it (or its counsel) asked for or received a copy of the Financing Letter, or whether anyone verified that the terms were consistent with Ace

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<sup>5</sup> For example, Ace Decade alleges that, under its Co-Investment Agreement, "[i]n return for allowing Ace Decade to use its name for the [i]nvestment, Haixia would receive a fee equal to the higher of (a) 0.65% of the total amount invested by Dawn State and (b) US \$5 million, as well as a 0.1% annual management fee on the total amount of Dawn State investments." (Compl. ¶ 29.)

<sup>6</sup> The final Facility Agreement ultimately was executed on April 1, 2015 and provided financing of up to HK \$5,336,675,654.64 (Compl. ¶¶ 39-40) or \$688.3 million, which was later increased because of an increase in Haitong's share price while regulatory approval was pending. (See Compl. ¶¶ 39-43.)

Decade's alleged desires or with what Wong allegedly told Kwok those terms would be. (*See* Compl. ¶¶ 33-35.) Instead, the Complaint implausibly references only Wong's supposed oral representations to Kwok that UBS would provide financing, but not include a firm margin call/prepayment provision in the Financing Letter. (*See* Compl. ¶¶ 32-34.)

**D. Kwok Allegedly Moves to New York in January 2015**

In early January 2015, *after* all of the agreements relevant to Ace Decade's investment in Dawn State were executed, and after UBS agreed to loan money to Dawn State for investment in Haitong shares, Kwok and Yu Yong, allegedly a director of Ace Decade, supposedly moved to New York. (Compl. ¶¶ 20, 36.) Although the Complaint alleges that Kwok and Yu have conducted business for Ace Decade from New York (Compl. ¶ 38), Ace Decade is not registered to do business in New York (Decl. ¶ 4; Ex. 2), and the Complaint lacks any factual allegations, like an address, indicating that Ace Decade has a New York office.

In fact, what the Complaint actually alleges is that, while in New York, Kwok and Yu formed Golden Spring (New York) "to seek U.S. investors interested in investing in Chinese companies," and that, in February 2015, Golden Spring (New York) entered into an agreement with Ace Decade "pursuant to which Golden Spring New York would be responsible for managing Ace Decade's investments and seeking U.S. investors interested in investing in Haitong indirectly through Ace Decade." (Compl. ¶ 37.)<sup>7</sup> But Golden Spring (New York) has not registered as a broker-dealer or investment advisor with the Securities and Exchange

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<sup>7</sup> The Complaint alleges that Golden Spring (New York) is incorporated in New York (Compl. ¶ 36), but in fact Golden Spring (New York) is a Delaware Corporation registered to do business in New York. (Ex. 12.)



Commission or the Financial Industry Regulatory Authority (Decl. ¶¶ 15-16), as would be required to offer investments to U.S. persons lawfully.<sup>8</sup>

Critically, the Complaint concedes that *after moving to New York*, “Kwok did not again directly discuss with UBS the margin call provisions in the final Facility Agreement and other associated collateral documents.” (Compl. ¶ 39; *see also* Compl. ¶¶ 31-32 (noting that alleged misrepresentations were made in December 2014).) Thus, according to the Complaint itself, UBS made no misrepresentations to Kwok *after* he arrived in New York.

**E. The Chinese Stock Market Crash Triggers the Financing Agreement’s Prepayment Rights.**

“In mid-June 2015, China’s equities market experienced a sharp downturn and Haitong share prices began to fall along with other stocks in the H-share market.” (Compl. ¶ 46.) On July 6, Haitong stock dropped by more than 15%, for a total decline of more than 25% over five days (Ex. 16 (Google Finance Prices for Haitong shares)), triggering UBS’s prepayment rights under the financing agreement (Lee Aff. Ex. 2 (Notice of Prepayment)). At 5:22 pm Hong Kong time on July 6, 2015, “Haixia sent an email to Ace Decade’s [Hong Kong/Chinese] counsel Stevenson, Wong & Co. [], notifying them that the closing price of the [s]hares had triggered short term fluctuation limits and that UBS would be calling the loan.” (Compl. ¶ 47.) Later that evening, “UBS sent Haixia the mandatory prepayment notice, which Haixia forwarded to *Stevenson Wong*,” Ace Decade’s Hong Kong/Chinese counsel. (Compl. ¶ 48 (emphasis

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<sup>8</sup> See [15 U.S.C. § 80b-3\(a\)](#) (“[I]t shall be unlawful for any investment adviser, unless registered under this section, to make use of the mails or any means or instrumentality of interstate commerce in connection with his or its business as an investment adviser.”); [15 U.S.C. § 78o\(a\)\(1\)](#) (“It shall be unlawful for any broker or dealer . . . to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security . . . unless such broker or dealer is registered.”).

added).) “The notice stated that approximately US \$200 million needed to be paid by 5 pm the next day,” July 7, 2014. (Compl. ¶ 48.)

On July 7, 2015, “UBS asked Haixia to confirm by 2 pm Hong Kong time whether the required prepayment could be made that day so that UBS ‘c[ould] assess the situation and work together on next steps.’” (Compl. ¶ 50.) On July 7, 2015, Haitong stock dropped another 13% (bringing the decline to over 35% in seven days) (Ex. 16 (Google Finance Prices)), but no payment was made to UBS (Compl. ¶ 51). On July 8, 2015, as authorized by the financing agreement, “UBS sold all 569,427,620 shares.” (Compl. ¶ 58.)

#### **F. Ace Decade’s Claims in This Action**

In its Complaint, Ace Decade asserts the following five causes of action against UBS: (Count 1) common law fraud; (Count 2) constructive fraud; (Count 3) breach of fiduciary duty; (Count 4) negligent misrepresentation; and (Count 5) unjust enrichment. These claims are all based on allegations that UBS misrepresented that the “Financing Letter would not include margin call triggers based on short term price fluctuations and would give Ace Decade adequate time to meet any margin calls, and that UBS would make every effort to work with Ace Decade to allow it to meet margin calls.” (Compl. ¶¶ 69, 76, 86, 91.) The Complaint further alleges that UBS “concealed from Ace Decade that Haixia was controlled by UBS’s joint venture partner,” which caused Plaintiff to “enter[] into its agreement with Haixia” when it otherwise would not have done so. (Compl. ¶¶ 69-70, 73, 76-77, 80, 86-87, 91-92, 95, 98.)

### **ARGUMENT**

#### **I. THIS COURT SHOULD DISMISS THE COMPLAINT FOR LACK OF PERSONAL JURISDICTION OVER UBS.**

“The burden of proving jurisdiction is upon the party asserting it and when challenged on jurisdiction, such party must sustain that burden by preponderating proof.” [\*Jacobs\*](#)

[v. Zurich Ins. Co.](#), 53 A.D.2d 524, 525 (1st Dep’t 1976). Ace Decade asserts that this Court has general jurisdiction over UBS under [CPLR 301](#) (New York’s general jurisdiction statute) and specific jurisdiction under [CPLR 302](#) (New York’s long-arm jurisdiction statute). (Compl. ¶ 12.) Because Ace Decade is wrong on both counts, the Court should dismiss the Complaint.

**A. UBS Is Not Subject to General Jurisdiction in New York.**

In January 2014, the U.S. Supreme Court held that, under the protections of the Due Process Clause of the U.S. Constitution, a court (federal or state) can exercise general jurisdiction over a corporation only if the corporation’s “affiliations with the State [are] so continuous and systematic as to render [it] essentially at home in the forum State.” [Daimler AG v. Bauman](#), 134 S. Ct. 746, 754 (2014) (quotation omitted). As this Court has recognized, *Daimler* “brought an end to ‘doing business’ jurisdiction [under [CPLR 301](#)].” [Norex Petroleum Ltd. v. Blavatnik](#), 2015 WL 5057693, \*20 (Sup. Ct. N.Y. Co. Aug. 25, 2015) (Bransten, J.) (citing [Daimler](#), 134 S. Ct. at 751). Today, “[t]he only kind of corporate activity that ordinarily will satisfy the general jurisdiction test is incorporation in the state or maintenance of a corporation’s principal place of business in the state.” [Id.](#) at \*20.

Although the Complaint alleges that “one of UBS’s ‘main offices worldwide’ is located [in] . . . New York, NY 10019” (Compl. ¶ 11), it cannot be disputed that UBS is incorporated in and maintains its principal place of business in Switzerland. *See supra* at 4. Accordingly, since *Daimler*, courts have uniformly held that UBS is not subject to general jurisdiction in New York. *See* [Giordano v. UBS, AG](#), 2015 WL 5671970, \*1 (S.D.N.Y. Sept. 25, 2015) (court lacked general jurisdiction over UBS, because “UBS is incorporated in and has its principal place of business in Switzerland”); [SPV OSUS Ltd. v. UBS AG](#), 2015 WL 4394955, \*4 (S.D.N.Y. July 20, 2015) (“[T]his Court lacks general jurisdiction over UBS AG.”).

**B. UBS Is Not Subject to Specific Jurisdiction in New York for Claims Arising From Transactions Taking Place Entirely Outside of the United States.**

In assessing whether a non-domiciliary like UBS is subject to specific jurisdiction in New York, a court must “first determine whether [the] long-arm statute ([CPLR 302](#)) confers jurisdiction,” and second, “whether the exercise of jurisdiction comports with due process.” [LaMarca v. Pak-Mor Mfg. Co.](#), 95 N.Y.2d 210, 214 (2000). This action fails both tests.

**1. New York’s Long-Arm Statute Does Not Apply Here, Where the Transactions Occurred Entirely Outside of New York.**

New York’s long-arm statute, [CPLR 302](#), provides specific jurisdiction for claims arising out of: (1) business that a defendant “transacts . . . within the state”; (2) “a tortious act” committed “within the state”; or (3) “a tortious act” committed “without the state causing injury to person or property within the state.” [CPLR 302\(a\)\(1\)-\(3\)](#). Ace Decade generically claims this Court has specific jurisdiction, because “UBS transacted business in New York that gives rise to the claims herein and UBS committed tortious acts within and without the State that caused injury to Ace Decade in New York. Specifically, this action arises in substantial part from representations by UBS to Ace Decade in New York, and from agreements made by Ace Decade in New York.” (Compl. ¶ 12.) But Ace Decade pleads no facts to support its conclusory assertions of UBS representations and agreements “in New York,” which are contradicted by the Complaint’s own allegations.

**a. CPLR 302(a)(1)**

This Court may exercise jurisdiction pursuant to [CPLR 302\(a\)\(1\)](#) only “where (i) a defendant transacted business within the state and (ii) the cause of action arose from that transaction of business.” [Johnson v. Ward](#), 4 N.Y.3d 516, 519 (2005). The second prong of this inquiry requires that “there . . . be an ‘articulable nexus’ or ‘substantial relationship’ between the business transaction” occurring in New York and the legal claim asserted. [Licci v. Lebanese](#)

[Canadian Bank](#), 20 N.Y.3d 327, 339 (2012) (internal citations omitted). In other words, for [CPLR 302\(a\)\(1\)](#) to apply, “the cause of action [must] arise from the *non-domiciliary’s actions* that constitute transaction of business” in New York. [Paterno v. Laser Spine Inst.](#), 24 N.Y.3d 370, 379 (2014) (emphasis added). Ace Decade cannot satisfy this requirement because it fails to identify any transaction by UBS in New York giving rise to its claims.

As the Complaint makes clear, Ace Decade’s claims all rest on allegations that one or more UBS employees in Hong Kong induced Ace Decade, a BVI company represented by Kwok, then a Hong Kong resident, to invest in shares of Haitong shares through Dawn State, a subsidiary of a Chinese government-controlled entity, by either misrepresenting or omitting facts in statements made in Hong Kong. (*See, e.g.*, Compl. ¶¶ 69-70, 73.) Nothing about that transaction bears any relationship to New York: (i) the UBS team that executed the transaction was located in Hong Kong (Lee Aff. ¶¶ 3-4); (ii) UBS executed all of the relevant transaction documents in Hong Kong (Lee Aff. ¶ 7); (iii) Wong, the only UBS employee specifically alleged to have communicated with Kwok, was located in Hong Kong (Wong Aff. ¶¶ 1, 7); (iv) the only Ace Decade representative who allegedly communicated with UBS is Kwok, whom Plaintiff concedes was not in New York when the relevant communications occurred (*see supra* at 7); and (v) Ace Decade’s counsel for this transaction is in Hong Kong (*see supra* at 7). Nor does the Complaint allege that any communications between or among UBS, Haitong, Haixia, and/or Dawn State took place in New York. The obvious reason why is because all of those communications occurred in Hong Kong or China. *See supra* at 5-9.

The only allegations contained in the Complaint that involve New York are that Kwok and Yu moved to New York *in January 2015, after Ace Decade made its \$500 million investment*, and then began running an entity that managed Ace Decade’s assets. (Compl. ¶¶ 36,

38.) But those allegations are irrelevant, because the Complaint admits that Kwok did *not* discuss the terms of the financing with UBS *after* moving to New York in January 2015. (*See supra* at 7.) Moreover, when UBS called for prepayment of the loan on July 6, 2015, it allegedly did so by communicating with Haixia and Dawn State in China, which in turn provided notice to Ace Decade’s Hong Kong counsel, Stevenson Wong. (Compl. ¶¶ 47-48, 50.) The Complaint simply does not allege any connection between the Hong Kong and China transactions underlying Ace Decade’s claims and New York, much less the type of “substantial connection” needed to support this Court’s exercise of jurisdiction under [CPLR 302\(a\)\(1\)](#). [OneBeacon Am. Ins. Co. v. Newmont Mining Corp.](#), 82 A.D.3d 554, 555 (1st Dep’t 2011).<sup>9</sup>

**b. CPLR 302(a)(2)**

Ace Decade’s attempt to claim that UBS is subject to specific jurisdiction based on a tortious act committed within New York, pursuant to [CPLR 302\(a\)\(2\)](#), suffers from the same defects. The Court of Appeals has long given “restrictive meaning to the requirement that there be a showing of a tortious act committed in th[e] State.” [Kramer v. Vogl](#), 17 N.Y.2d 27, 31 (1966). Where, as here, the alleged wrongdoing involves misrepresentations and omissions, this provision applies only if the actual misrepresentation *took place in New York*; it is not enough for a misrepresentation to have been communicated to a party in New York if the speaker was

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<sup>9</sup> Even if Ace Decade could allege that the relevant contact between Kwok and UBS occurred after Kwok allegedly relocated to New York, that would not support this Court’s exercising jurisdiction here, because the transaction at the heart of Ace Decade’s claims (its decision to invest in Haitong shares through Dawn State) was consummated in December 2014, when Ace Decade entered into the Co-Investment Agreement. “Contacts after this date cannot be the basis to establish defendant’s relationship with New York because they do not serve as the basis for the underlying . . . claim[s].” [Paterno](#), 24 N.Y.3d at 379. Otherwise, [CPLR 302\(a\)\(1\)](#) would be “boundless in application,” as any individual engaged in a transaction overseas could move to New York, as Kwok supposedly has done, and claim that New York Courts have jurisdiction over disputes arising out of entirely foreign transactions. [Id.](#)

located elsewhere. See [Bauer Indus., Inc. v. Shannon Luminous Materials Co., 52 A.D.2d 897, 897-98 \(2d Dep't 1976\)](#) (court lacked jurisdiction where plaintiff alleged that alleged misrepresentation was “mailed to it in New York”). As shown *supra* at 7, none of the alleged UBS misrepresentations giving rise to Ace Decade’s claims was made in New York. Indeed, the only UBS employee identified in the Complaint, Wong, was located in Hong Kong at all relevant times. And, in any event, the Complaint itself admits that Kwok himself had not yet moved to New York when those alleged misrepresentations were made. See *supra* at 7, 9-10.

**c. CPLR 302(a)(3)**

Finally, Ace Decade appears to invoke [CPLR 302\(a\)\(3\)](#) by asserting that UBS committed a tortious act outside of New York that “caused injury to Ace Decade in New York.” (Compl. ¶ 12.) But Ace Decade does not adequately allege that it suffered harm in New York. Notably, the Complaint fails to provide so much as an address for Ace Decade in New York, and Ace Decade is not registered to do business in New York, as required under New York law. See [N.Y. BUS. CORP. LAW § 1301](#) (“A foreign corporation shall not do business in this state until it has been authorized to do so.”); [N.Y. LTD. LIAB. CO. LAW § 802](#) (same).

In any event, even if Ace Decade moved its principal place of business to New York in January 2015, that is not enough to establish jurisdiction under [CPLR 302\(a\)\(3\)](#). See [Fantis Foods, Inc. v. Standard Importing Co., 49 N.Y.2d 317, 326 \(1980\)](#) (“[T]he residence or domicile of the injured party within a State is not a sufficient predicate for jurisdiction, which must be based upon a more direct injury within the State.”). “[T]he situs of the injury for long-arm [jurisdiction] purposes is where the event giving rise to the injury occurred, not where the resultant damages occurred.” [Marie v. Altshuler, 30 A.D.3d 271, 272 \(1st Dep't 2006\)](#).

Ace Decade alleges only that in December 2014, it entered into agreements to invest in Dawn State, a BVI company and wholly owned subsidiary of a Chinese investment firm

(Haixia), that in turn would invest in Hong Kong-listed shares of Haitong (a Chinese company), in order to enter into subsequent transactions with investors in China. Ace Decade further alleges that it invested through Dawn State based on alleged misrepresentations and omissions by UBS personnel *in Hong Kong*. *Supra* at 5-9. Moreover, UBS allegedly called the loan by notifying Haixia in China and selling, in Hong Kong, the Haitong shares pledged as collateral for the financing, as permitted by the financing agreement. *Supra* at 10-11. Thus, accepting the allegations of the Complaint, the “situs” of Ace Decade’s alleged injury is in Hong Kong, where the alleged actions giving rise to Ace Decade’s claims occurred and Dawn State’s Haitong shares were sold. The fact that Ace Decade’s agent allegedly was in New York when these shares were sold does not establish jurisdiction in this State. *See [Fantis Foods, 49 N.Y.2d at 326](#)*.

**2. This Court’s Exercise of Specific Jurisdiction Here Would Violate Due Process.**

Beyond not meeting the requirements of New York’s long-arm statute, this Court’s exercise of personal jurisdiction here would violate Due Process. The U.S. Supreme Court recently held that, for purposes of specific jurisdiction, Due Process requires that “the defendant’s *suit-related conduct*” must “create a *substantial connection* with the forum State.” *Walden v. Fiore, 134 S. Ct. 1115, 1121 (2014)* (emphasis added). In conducting this analysis, the court must look “to the defendant’s contacts with the forum State itself, not the defendant’s contacts with persons who reside there.” *Id. at 1122*. Put simply, “the plaintiff cannot be the only link between the defendant and the forum.” *Id.*

As more fully shown above, Ace Decade has not alleged that UBS engaged in any activities in New York, or that UBS directed its activities in connection with this transaction into New York. The only alleged connection to New York is that this State “is where [Ace Decade’s agent] chose to be” when the prepayment provisions were triggered; that is insufficient to meet



the requirements of Due Process. [\*Id.\* at 1125-26](#); see [\*7 W. 57th Street Realty Co. v. Citigroup, Inc.\*, 2015 WL 1514539, \\*10 \(S.D.N.Y. Mar. 31, 2015\)](#) (for a court to exercise specific jurisdiction over a foreign bank under New York’s long-arm statute, the bank’s “suit-related conduct must tie [the bank] to New York *itself*,” or be “expressly aimed at New York, in addition to having an effect there”).

## **II. THE COURT ALSO SHOULD DISMISS THIS ACTION BECAUSE NEW YORK IS NOT A CONVENIENT FORUM FOR THESE CLAIMS.**

Even if jurisdiction over UBS were proper (and it is not), [CPLR 327](#) provides an independent ground for dismissal where “the action, although jurisdictionally sound, would be better adjudicated elsewhere.” [\*Islamic Rep. of Iran v. Pahlavi\*, 62 N.Y.2d 474, 479 \(1984\)](#). In weighing dismissal based on *forum non conveniens*, New York courts consider: (i) “the burden on the New York courts,” [\*id.\* at 479](#); (ii) whether the “the transaction out of which the cause of action arose occurred primarily in a foreign jurisdiction,” [\*id.\*](#); (iii) “the applicability of foreign law,” [\*Shin-Etsu Chem. Co. v. ICICI Bank Ltd.\*, 9 A.D.3d 171, 178 \(1st Dep’t 2004\)](#); (iv) “the potential hardship to the defendant,” [\*Pahlavi\*, 62 N.Y.2d at 479](#); and (v) whether “a foreign forum has a substantial interest in adjudicating an action,” [\*Shin-Etsu\*, 9 A.D.3d at 178](#). Each of these considerations plainly supports dismissal here.

### **A. The Burden on This Court Is Not Justified, Because This Dispute Relates to Transactions Executed Entirely in Hong Kong and China.**

New York courts, among the busiest in the country, “should not be under any compulsion to add to their heavy burdens by accepting jurisdiction of a cause of action having no substantial nexus with New York.” [\*Silver v. Great Am. Ins. Co.\*, 29 N.Y.2d 356, 361 \(1972\)](#). Indeed, New York courts routinely dismiss actions where “the transaction out of which the cause of action arose occurred primarily in a foreign jurisdiction.” [\*Kinder Morgan Energy Partners, L.P. v. Ace Am. Ins. Co.\*, 55 A.D.3d 482, 482 \(1st Dep’t 2008\)](#) (citing [\*Pahlavi\*, 62 N.Y.2d at](#)

[479](#)); [Hanwha Life Ins. v. UBS AG](#), 127 A.D.3d 618, 619 (1st Dep’t 2015) (affirming dismissal where “the transaction was effected by plaintiff in Korea and defendant’s employees in Hong Kong”).

Here, the Complaint takes great pains to avoid stating the obvious: all interactions between UBS and Ace Decade’s agent, Kwok, leading up to Ace Decade’s December 2014 decision to invest \$500 million in Dawn State, took place in Hong Kong and/or China. And all aspects of the underlying transaction, including (i) Haitong’s private placement of its shares, (ii) UBS London Branch’s agreement (through UBS employees in Hong Kong) to provide financing to Dawn State, (iii) the execution of and choice of law in the relevant contracts, (iv) UBS’s call for prepayment of the loan, and (v) the eventual sale of the shares, occurred in Hong Kong or China. (Compl. ¶¶ 14-15, 48, 50; Lee Aff. ¶¶ 1-4, 7.)

The Complaint’s only allegations tying this dispute to New York are that Kwok and Yu moved to New York in January 2015 and, in February 2015, established Golden Spring (New York) (a Delaware corporation that supposedly operates in New York), and in February 2015 Ace Decade agreed that Golden Spring New York would manage Ace Decade’s investments. (Compl. ¶¶ 36-38.) But those events took place *after* Ace Decade had already agreed to invest in Dawn State and Dawn State agreed to the terms of the financing set out in the Financing Letter. Such an attenuated, *ex post* connection to New York is insufficient to create the required “substantial nexus” with this State, particularly given the overwhelmingly foreign nature of the transactions underlying Ace Decade’s claims.

In such circumstances, New York courts have repeatedly dismissed suits on *forum non conveniens*. See, e.g., [Hanwha](#), 127 A.D.3d at 619 (dismissing claims because “[t]he prospectus for the investment at issue was sent to plaintiff in Korea, the transaction was effected

by plaintiff in Korea and defendant's employees in Hong Kong, the alleged injury to plaintiff was suffered in Korea, and that jurisdiction has an interest in adjudicating a matter involving harm to a Korean corporation; New York has no such interest" (internal citation omitted)); [\*Viking Global Equities, LP v. Porsche Automobil Holding SE\*, 101 A.D.3d 640, 641 \(1st Dep't 2012\)](#) (dismissing claim where "the events of the underlying transaction . . . occurred entirely in a foreign jurisdiction," even though some plaintiffs were New York residents and injured there); [\*Fin. & Trading Ltd. v. Rhodia S.A.\*, 28 A.D.3d 346, 346 \(1st Dep't 2006\)](#) ("[P]urported meetings [in New York] do not suffice to create a substantial nexus with New York in that the underlying transaction occurred primarily in a foreign jurisdiction.").

**B. New York Has No Sovereign Interest in This Action.**

"New York courts have recognized that where a foreign forum has a substantial interest in adjudicating an action, such interest is a factor weighing in favor of dismissal." [\*Shin-Etsu\*, 9 A.D.3d at 178](#) (in reversing trial court's failure to dismiss on *forum non conveniens* grounds, recognizing that "Indian courts are keenly interested in governing the affairs of [India's] financial institutions to insure uniformity and consistency in the processing of financial transactions and in the interpretation of Indian banking statutes and laws.").

The interests of Hong Kong and/or China in this lawsuit are far greater than those of New York. Hong Kong has an interest in regulating the activities of investment advisors, such as UBS, operating within its borders, and China has an interest in resolving disputes alleging wrongdoing by a state-controlled firm (Haixia) and stock offerings by a regulated Chinese securities firm. *See, e.g.*, [\*Garmendia v. O'Neill\*, 46 A.D.3d 361, 362 \(1st Dep't 2007\)](#) ("Uruguay has an interest in adjudicating claims involving its own banking institutions."). Because New York has no sovereign interest in regulating transactions in Hong Kong and China, *see* [\*Hanwha\*](#),

[127 A.D.3d at 619](#), this Court should defer to Hong Kong’s and China’s interest in “resolving [their] own affairs.” [Shin-Etsu, 9 A.D.3d at 178](#).

**C. The Need To Apply Foreign Law Supports Dismissal of This Action on *Forum Non Conveniens* Grounds.**

New York courts “commonly dismiss actions that may require interpretation of foreign law.” [Citigroup Global Mkts., Inc. v. Metals Holding Corp., 2006 WL 1594442, \\*10 \(Sup. Ct. N.Y. Co. June 8, 2006\) \(Fried, J.\)](#); [Hanwha, 127 A.D.3d at 619](#) (affirming dismissal where “Korean law applies”). Courts need not determine conclusively which sovereign’s law applies to consider this factor in dismissing on *forum non conveniens* grounds. *See, e.g., Pahlavi, 62 N.Y.2d at 480 (finding “the likely applicability of Iranian law” a relevant factor); [Phat Tan Nguyen v. Banque Indosuez, 19 A.D.3d 292, 295 \(1st Dep’t 2005\)](#) (finding “either French or Vietnamese” law applicable).*

Under New York’s “interest” analysis, which selects the “law of the jurisdiction which . . . has the greatest concern with the specific issue raised in the litigation,” [Babcock v. Jackson, 12 N.Y.2d 473, 481 \(1963\)](#), New York law would not govern in this case. In cases involving “conduct-regulating” rules, such as those prohibiting fraud, the law of the jurisdiction where the alleged fraud occurred applies, because “[t]he interest in regulating *behavior* taking place within a state’s borders is not vindicated by applying the law of a jurisdiction in which the *behavior* being regulated *did not occur*.” [Chase Manhattan Bank v. N.H. Ins. Co., 193 Misc.2d 580, 583 \(Sup. Ct. N.Y. Co. May 23, 2002\)](#) (emphasis in original). Here, Hong Kong law should govern, because any alleged misrepresentations that UBS made to Kwok occurred in Hong Kong and the underlying transaction was an offering of stock in a Chinese company traded on the Hong Kong Stock Exchange. Moreover, to the extent it is relevant, the Financing Letter between UBS and Dawn State is governed by English law. (Lee Aff. Ex. 1 at 7.)

**D. Trying This Case in New York Would Impose Undue Hardship on UBS, Because Almost All Relevant Witnesses and Documents Are Abroad.**

Dismissal is also appropriate where (i) a New York court does not have jurisdiction over key witnesses, [\*Nicholson v. Pfizer, Inc.\*, 278 A.D.2d 143, 143 \(1st Dep’t 2000\)](#); or (ii) relevant documents are located abroad, [\*Braspetro Oil Serv. Co. v. UK Guaranty & Bonding Corp.\*, 18 A.D.3d 291, 291 \(1st Dep’t 2005\)](#). Here, virtually every witness is located in Hong Kong or China. Indeed, the UBS employees who worked on the private placement of Haitong shares and the loan from UBS’s London Branch to Dawn State are in Hong Kong. (See Lee Aff. ¶¶ 3-4.) Moreover, UBS maintains all of its relevant deal documents for the transaction in Asia or in London (Lee Aff. ¶ 5), and it is likely that any documents maintained by Haixia, Haitong, or Dawn State are located in China.

Thus, this Court should dismiss on *forum non conveniens* grounds, because the key witnesses and documents bearing on the relevant transactions here are beyond the reach of this Court’s subpoena power. The “likely inability of [UBS] to compel these critical witnesses to testify in New York . . . will unfairly prejudice [UBS’s] ability to defend against [Ace Decade’s] charges, strongly militating in favor of having this case heard [abroad].” [\*Globalvest Mgmt. Co. v. Citibank, N.A.\*, 2005 WL 1148687, \\*7 \(Sup. Ct. N.Y. Co. May 12, 2005\) \(Fried, J.\)](#). Indeed, the cost of bringing even those witnesses willing to testify to New York “weighs heavily in favor of dismissal.” [\*Norex\*, 2015 WL 5057693, at \\*22](#) (citing [\*Globalvest\*, 2005 WL 1148687, at \\*6](#)).

Because Haixia, Dawn State, Haitong, and Stevenson Wong are all beyond this Court’s reach, were this case to proceed in New York, UBS would be forced “to engage in the time-consuming and expensive process of obtaining essential documentary evidence and witness testimony under the Hague Convention,” to which Hong Kong and China are signatories. [\*Crosstown Songs U.K. Ltd. v. Spirit Music Grp., Inc.\*, 513 F. Supp. 2d 13, 17 \(S.D.N.Y. 2007\)](#).

Moreover, documents located in Hong Kong or China may be subject to privacy protection or other laws restricting the transfer of those documents to New York. Courts routinely dismiss cases due to the “additional costs of conducting discovery in New York, including . . . the intensity and expense of U.S. discovery, and compliance with foreign (*i.e.*, non-U.S.) privacy laws.” [\*In re Herald, Primeo, & Therma Secs. Litig.\*, 2011 WL 5928952, \\*15 \(S.D.N.Y. Nov. 29, 2011\)](#).

### **III. THE COMPLAINT FAILS TO STATE A CLAIM AGAINST UBS.<sup>10</sup>**

Because Ace Decade’s claims rest on allegations that UBS made misrepresentations in connection with Ace Decade’s purchase of Haitong shares through Dawn State, those allegations must be pled in detail. [CPLR 3016\(b\)](#) (“Where a cause of action . . . is based upon misrepresentation, fraud, mistake, willful default, breach of trust or undue influence, the circumstances constituting the wrong shall be stated in detail.”). Ace Decade does not come close to meeting this standard or otherwise stating a claim.

#### **A. Plaintiff’s Claims Must Be Dismissed, Because Plaintiff Has Not Adequately Pled a Special Relationship with UBS.**

To plead a cause of action for breach of fiduciary duty, negligent misrepresentation, fraud based on an alleged omission, or unjust enrichment, Ace Decade must establish that UBS “had a duty to disclose material information and that it failed to do so.” [P.T. Bank Cent. Asia v. ABN AMRO Bank N.V.](#), 301 A.D.2d 373, 376 (1st Dept. 2003); *see* [Mandarin Trading Ltd. v. Wildenstein](#), 16 N.Y.3d 173, 182-83 (2011) (unjust enrichment claim).

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<sup>10</sup> For purposes of moving to dismiss for failure to state a claim, UBS argues based on New York law, under which Ace Decade purports to bring its claims. In doing so, UBS does not waive, and expressly reserves, its right to argue at a later stage in this litigation that the law of another sovereign applies to Ace Decade’s claims.

The Complaint does not allege any facts showing a special relationship between Ace Decade and UBS beyond the assertion that Ace Decade, at some unspecified date and in some unspecified way, orally “agreed to have UBS act as its advisor in connection with” its \$500 million investment in Haitong shares. (Compl. ¶ 19.) Ace Decade does not allege that it ever had an account with UBS Hong Kong or any advisory agreement that would give rise to the sort of special relationship that would support these claims, such as an agreement providing for Ace Decade to compensate UBS for providing advisory services. Nor does the Complaint identify any ongoing course of dealing between Ace Decade and UBS that could give rise to such a relationship. Without more, Ace Decade’s “conclusory allegations that [its] relationship with [UBS] was more than that of lender and borrower and that [it] relied on [UBS]’s advice are insufficient to raise the inference that this bank-borrower relationship was special.” [\*Citibank, N.A. v. Silverman\*, 85 A.D.3d 463, 466 \(1st Dep’t 2011\)](#) (dismissing counterclaims for negligent misrepresentation and breach of fiduciary duty); see [\*EBC I, Inc. v. Goldman Sachs & Co.\*, 91 A.D.3d 211, 216 \(1st Dep’t 2011\)](#) (granting summary judgment dismissing fiduciary duty claim because “[a]dvice alone . . . is not enough to impose a fiduciary duty.”).

**B. The Complaint Fails To Allege Justifiable Reliance as a Matter of Law.**

To plead its fraud and negligent misrepresentation claims, Ace Decade must establish “justifiable reliance upon the statement[s]” it attributes to UBS. [\*Abrahami v. UPC Constr. Co.\*, 224 A.D.2d 231, 233 \(1st Dep’t 1996\)](#). A sophisticated plaintiff like Ace Decade “ha[s] a duty to exercise ordinary diligence and conduct an independent appraisal of the risk [it is] assuming.” [\*Id.\* at 234](#).

As an initial matter, it is clear that Ace Decade is sophisticated. Ace Decade claims to have invested the equivalent of \$500 million and exposed itself to a loan of up to \$775 million in a private placement of stock in order “to enter into a subsequent transaction with other

investors in mainland China in which [Ace Decade] would exchange the acquired Shares for a controlling interest in shares of another company.” (Compl. ¶¶ 20, 28.) Both the massive size of this investment and its planned course of conduct plainly establish Ace Decade’s sophistication. See [\*Dragon Inv. Co. v. Shanahan\*, 49 A.D.3d 403, 404 \(1st Dep’t 2008\)](#) (affirming dismissal of claims for fraud and unjust enrichment where plaintiffs were “offshore companies who invested \$3.4 million” in relevant investment).

Here, the Complaint does not even allege that Kwok or his counsel attempted any basic due diligence, such as seeking to verify the terms of the financing between UBS’s London Branch and Dawn State, but simply relied on the alleged forward-looking oral representations from a single UBS employee about what the terms *would be* when the agreement was executed. (Compl. ¶¶ 33-35, 39.) This claim not only defies belief; it makes Ace Decade’s alleged reliance patently unjustified. As the First Department made clear in [\*Daily News, L.P. v. Rockwell Int’l Corp.\*, 256 A.D.2d 13, 14 \(1st Dep’t 1998\)](#): “Plaintiff’s fraud and misrepresentation claims were also properly dismissed since they are premised upon no more than an alleged conflict between oral representations and the subsequent written terms of the parties’ agreement. Such a conflict ‘negates a claim of a reasonable reliance upon the oral representation.’” (quotation omitted). See also [\*Perrotti v. Glynn, Melmed, and Muffly LLP\*, 2009 WL 7782105, \\*5 \(Sup. Ct. N.Y. Co. Dec. 14, 2009\) \(Bransten, J.\)](#) (“If the oral misrepresentations made to a party to a contract are ‘meaningfully contradicted’ by the subsequent writing, reliance on the oral representations is unreasonable.” (citation omitted)).<sup>11</sup>

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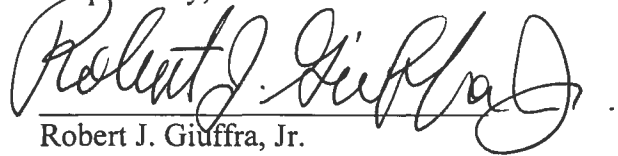
<sup>11</sup> It is equally apparent that Ace Decade or its counsel, Stevenson Wong, by exercising even minimum diligence, could have easily discovered from public reports that SDIC controlled Haixia, and that SDIC had entered into an unrelated joint venture with UBS. (See Exs. 3-11.)



## CONCLUSION

For the foregoing reasons, UBS respectfully requests that the Court dismiss the Complaint in its entirety.

Respectfully,

A handwritten signature in black ink, reading "Robert J. Giuffra, Jr.", written over a horizontal line.

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# APPENDIX A

## ***ACE DECADE V. UBS: RELEVANT PARTIES AT THE TIME OF THE TRANSACTIONS***

