

IN THE CIRCUIT COURT OF THE 17th
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO.: 09-062943 (19)
Complex Litigation Unit

RAZORBACK FUNDING, LLC, D3 CAPITAL CLUB, LLC, BFMC INVESTMENT, LLC, LINDA VON ALLMEN, as Trustee of the VON ALLMEN DYNASTY TRUST, D&L PARTNERS, LP, DAVID VON ALLMEN, as Trustee of the DAVID VON ALLMEN LIVING TRUST, ANN VON ALLMEN, as Trustee of the ANN VON ALLMEN LIVING TRUST, DEAN KRETSCHMAR, COOPER MANAGEMENT, ANTHONY DEGENNARO, as Trustee of the EXTRA INNING DYNASTY TRUST, ADELE MUSSRY, JACK MUSSRY, NASSIM MUSSRY, MELINA EL-ANI, DANIELLE EL-ANI, H&N ASSOCIATES, ARETZ & ASSOCIATES, PARK NATIONAL CAPITAL FUNDING, LLC, PARK NATIONAL MORTGAGE SERVICING, SCOTT MORGAN, VICEROY GLOBAL INVESTMENTS, INC., CONCORDE CAPITAL, INC., IRA SOCHET as Trustee of the IRA SOCHET REVOCABLE INTER VIVOS TRUST, INVESTORS RISK ADVANTAGE, LP, SUSSCO, INC., EDWARD PALEY, FLORENCE PALEY, THE EDWARD AND FLORENCE PALEY FOUNDATION, STEVEN PALEY, LAURA PALEY, JANE ZARETSKY, STEVEN ZARETSKY as Trustee of the JANE ZARETSKY DYNASTY TRUST, LAWRENCE E. DEKELBAUM, AND SHALOM STRICTLY KOSHER MEATS, INC.,

Plaintiffs,

v.

SCOTT W. ROTHSTEIN, DAVID BODEN, DEBRA VILLEGAS, ANDREW BARNETT, IRENE STAY, TD BANK, N.A., FRANK A. SPINOSA, JENNIFER KERSTETTER, ROSANNE CARETSKY, BANYON INCOME FUND, L.P., BANYON USVI, LLC, BANYON 1030-32, LLC, GEORGE G. LEVIN, FRANK PREVE, MICHAEL SZAFRANSKI, ONYX OPTIONS CONSULTANTS CORPORATION,



ABS CAPITAL FUNDING, LLC, ALEXA FUNDING, LLC, BERENFELD SPRITZER SHECHTER SHEER, LLP, TRACY WEINTRAUB, GARY BERKOWITZ, BRIAN LEITSTEIN, BALLAMOR CAPITAL MANAGEMENT, LLC, BARRY R. BEKKEDAM, R.L. PEARSON & ASSOCIATES, INC., RICHARD PEARSON, GIBRALTAR PRIVATE BANK & TRUST, CO., PLATINUM PARTNERS VALUE ARBITRAGE FUND (USA), L.P., and CENTURION STRUCTURED GROWTH, LLC,

Defendants.



THIRD AMENDED COMPLAINT

Plaintiffs, RAZORBACK FUNDING, LLC, D3 CAPITAL CLUB, LLC, BFMC INVESTMENT, LLC, LINDA VON ALLMEN as Trustee of the VON ALLMEN DYNASTY TRUST, D&L PARTNERS, LP, DAVID VON ALLMEN, as Trustee of the DAVID VON ALLMEN LIVING TRUST, ANN VON ALLMEN, as Trustee of the ANN VON ALLMEN LIVING TRUST, DEAN KRETSCHMAR, COOPER MANAGEMENT, ANTHONY DEGENNARO as Trustee of the EXTRA INNING DYNASTY TRUST, ADELE MUSSRY, JACK MUSSRY, NASSIM MUSSRY, MELINA EL-ANI, DANIELLE EL-ANI, H&N ASSOCIATES, ARETZ ASSOCIATES, PARK NATIONAL CAPITAL FUNDING, LLC, PARK NATIONAL MORTGAGE SERVICING, SCOTT MORGAN, VICEROY GLOBAL INVESTMENTS, INC., CONCORDE CAPITAL, INC., IRA SOCHET REVOCABLE INTER VIVOS TRUST, INVESTORS RISK ADVANTAGE, LP, SUSSCO, INC., EDWARD PALEY, FLORENCE PALEY, THE EDWARD AND FLORENCE PALEY FOUNDATION, STEVEN PALEY, LAURA PALEY, JANE ZARETSKY, STEVEN ZARETSKY, as Trustee of the JANE ZARETSKY DYNASTY TRUST, LAWRENCE E. DEKELBAUM, AND SHALOM

STRICTLY KOSHER MEATS, INC., (collectively referred to herein as “Plaintiffs”) hereby sue **Defendants**, SCOTT W. ROTHSTEIN, DAVID BODEN, DEBRA VILLEGAS, ANDREW BARNETT, IRENE STAY, TD BANK, N.A., FRANK A. SPINOSA, JENNIFER KERSTETTER, ROSANNE CARETSKY, BANYON INCOME FUND, L.P., BANYON USVI, LLC, BANYON 1030-32, LLC, GEORGE G. LEVIN, FRANK PREVE, MICHAEL SZAFRANSKI, ONYX OPTIONS CONSULTANTS CORPORATION, ABS CAPITAL FUNDING, LLC, ALEXA FUNDING, LLC, BERENFELD SPRITZER SHECHTER SHEER, LLP, TRACY WEINTRAUB, GARY BERKOWITZ, BRIAN LEITSTEIN, BALLAMOR CAPITAL MANAGEMENT, LLC, BARRY R. BEKKEDAM, R.L. PEARSON & ASSOCIATES, INC., RICHARD PEARSON, GIBRALTAR PRIVATE BANK & TRUST, CO., PLATINUM PARTNERS VALUE ARBITRAGE FUND, L.P., and CENTURION STRUCTURED GROWTH, LLC (collectively referred to as “Defendants”), and allege as follows:

I. Plaintiffs’ Claims

1. The Plaintiffs sue the Defendants and seek the following:
 - a. Compensatory damages in excess of \$281,525,358.34, pre-judgment interest, and other amounts to be particularized at trial as a direct and proximate result of Defendants’ commission of the following:
 - i. fraudulent misrepresentation;
 - ii. negligent misrepresentation;
 - iii. violation of the Florida Securities and Investor Protection Act;
 - iv. breach of fiduciary duty;
 - v. aiding and abetting fraud;

- vi. aiding and abetting breach of fiduciary duty;
 - vii. aiding and abetting conversion;
 - viii. conversion;
 - ix. negligence;
 - x. negligent supervision; and
 - xi. civil conspiracy to defraud;
- b. punitive damages upon obtaining leave of court;
 - c. taxable costs and attorney's fees; and
 - d. any such further relief this court deems just under the circumstances.

II. Overview

2. This action arises out of a fraudulent scheme orchestrated by Scott W. Rothstein (hereinafter, “Rothstein”), who admittedly¹ bilked investors out of hundreds of millions of dollars in what has come to be known as the largest financial fraud in Florida history. Rothstein, through his law firm Rothstein Rosenfeldt Adler, P.A. (hereinafter, “RRA” and collectively referred to as the “Principal Conspirators”), devised an elaborate plot to lure investors into purchasing putative clients’ structured settlement proceeds rights at lump sum discounted rates. Rothstein’s role as the reputed escrow agent placed him at the center of the plot, providing him, in collaboration with his hand-picked bank insiders, unfettered access to manipulate and transfer the fraudulently obtained funds. In reality, while certain details used to induce investor funding were real, all of the confidential settlements were pure fabrication. Indeed, returns to earlier investors were not made *via* structured payments, but instead were made with the principal obtained from later investors--a classic Ponzi scheme.²

3. The Principal Conspirators, however, did not act alone. Defendant TD Bank, N.A. (hereinafter, “TD Bank”), a subsidiary of Toronto Dominion Bank, was complicit in this scheme, serving as a critical lynchpin “legitimizing” the Principal Conspirators’ plot and providing crucial inducements to investor action. Specifically, investors were duped by TD Bank employees who conspired with the Principal Conspirators to manipulate TD Bank’s trust account statements and

1 On January 27, 2010, Rothstein pled guilty to five counts of criminal offenses. On June 9, 2010, Rothstein was sentenced to fifty (50) years in federal prison.

2 A Ponzi scheme is generally recognized as a fraudulent investment operation that pays returns to earlier investors from their own money or from monies paid by subsequent investors, rather than from any actual profit earned. The scheme is named after Charles Ponzi who became notorious for using the technique in the early 1920’s.

lulled investors into a false senses of security by providing written assurances that settlement funds existed and could only be disbursed directly to the investor. These affirmative deceitful declarations, which in the investors' eyes was tantamount to a guaranty, gravely impacted the investor risk-evaluation analysis and influenced investors into making their investments.

4. Moreover, demonstrative of TD Bank's participation, or alternatively evidence of their gross negligence and wanton misconduct, is the bank's reckless disregard of numerous "red flags." TD Bank ignored their own policies and procedures and acted in derivation of national bank secrecy / anti-money laundering protections as applied to wire, interbank, and interstate transfers. Undeniably, TD Bank had actual knowledge of RRA's pervasive practice of rapidly moving hundreds of millions of dollars through its TD Bank trust accounts over short periods of time. In fact, in October 2009 alone, almost half of a billion dollars was moved in and out of RRA's trust accounts at one TD Bank location--more money than most bank branches would likely see in a decade. Yet, despite the massive amount of funds being moved by one client, TD Bank failed to enforce even basic safeguards, enabling the Principal Conspirators to conceal the fraud, to launder proceeds, and to enrich Rothstein and his band of co-conspirators at the expense of innocent investors. The Ponzi scheme simply could not have gained traction without TD Bank's involvement in sanctioning or willfully failing to exercise reasonable care as an ordinary and prudent bank questioning, *inter alia*, the vast amounts of money being circulated through its doors.

5. Based on the allegations set forth herein, Plaintiffs aver that, at all materials times, TD Bank was complicit in the Principal Conspirators' Ponzi scheme, had actual knowledge of Rothstein's wrongful conduct, and/or was recklessly or willfully blind to its role in materially supporting the scheme.

6. Additionally, Gibraltar Private Bank & Trust (hereinafter, "Gibraltar Bank") and Berenfeld Spritzer Shechter Sheer, LLP (hereinafter, "Berenfeld"), both played instrumental roles in perpetuating the conspiracy to defraud and their conduct and omissions materially contributed to Plaintiffs' losses. Had either Gibraltar Bank or Berenfeld acted in accordance with industry standards and/or their own internal governance policies and procedures, Rothstein's scheme would have been revealed and Plaintiffs' devastating losses averted.

7. Based on the allegations below, Plaintiffs aver that at all materials times Gibraltar Bank was complicit in the Principal Conspirators' Ponzi scheme, had actual knowledge of Rothstein's wrongful conduct, and substantially assisted in furthering the fraudulent scheme by, *inter alia*: (1) actively monitoring Principal Conspirators' trust and operating accounts to avoid compliance issues; (2) affirmatively assisting and advising Rothstein when to transfer funds from RRA trust accounts to cover the tens of millions of dollars in RRA operating account overdrafts; (3) blindly authorizing same-day transfers from client trust accounts to RRA operating accounts and then out to Rothstein's own personal accounts; (4) utilizing key Gibraltar Bank insiders to aggressively quash internal compliance officers concerns over Rothstein's blatantly suspicious activities; and (5) willfully providing Rothstein with "special accommodations"³ as a client with significant stature, and later as an investor with a 5% ownership interest in Gibraltar Bank. Gibraltar Bank's active support played a vital role in facilitating and/or otherwise substantially assisting the Ponzi and, as a direct consequence, renders Gibraltar Bank liable to Plaintiffs for the damages they suffered.

³ These "special accommodations" are detailed in Section X.A. below, and include abnormal banking procedures and major departures from Gibraltar Bank's own internal policies.

8. Based on the allegations below, Plaintiffs aver, *inter alia*, that at all materials times, Berenfeld was: (1) the personal tax accountants for Rothstein and Stuart Rosenfeldt; (2) the tax accountants for RRA; and (3) the independent auditors for the Banyon Income Fund, L.P. and, as such, uniquely positioned to discover the pervasive fraud. Notwithstanding, Berenfeld either intentionally, recklessly, or with gross disregard failed to act choosing instead to affirmatively assist the Ponzi scheme for their own benefit. Berenfeld has already admitted numerous major mistakes in preparing the Principal Conspirators' tax returns and confessed to ignoring a series of red flags discovered during the Banyon audit process. Similarly, Berenfeld cannot avoid the patent conflict in auditing the RRA financial statements it prepared. Berenfeld knew when issuing Banyon its clear audit opinion letter that it was to be incorporated and disseminated in a confidential offering memorandum intended to secure investors. For these reasons and more, Berenfeld's knowing, deliberate, and/or reckless indifference makes it liable to Plaintiffs for their damages.

9. Furthermore, as alleged in detail *infra*, the Principal Conspirators' inner-circle of facilitators (TD Bank, Spinosa, Kerstetter, Caretsky, Gibraltar Bank, Berenfeld, Weintraub, Berkowitz, Leitstein, Levin, Preve, Banyon entities, Szafranski, Onyx, Villegas, Boden, Barnett, Stay, Platinum, and Centurion) and promoters (TD Bank, Spinosa, Kerstetter, Caretsky, Gibraltar Bank, Levin, Preve, Banyon entities, Szafranski, Onyx, ABS, Bekkedam, Ballamor, Pearson, R.L. Pearson & Associates, Platinum, and Centurion) each played a vital role in the successful perpetration of this systemic fraud. Each of these Defendants either knowingly made material omissions, made false material statements intending to induce Plaintiffs, or knowingly aided and abetted or conspired in the scheme to defraud described herein. Indeed Rothstein, in a

November 23, 2009, interview with the Sun-Sentinel, stated that “karma has caught up with him, but it will catch up with others too . . . You’re in a town full of thieves, and at the end of the day, everyone will see. I’ll leave it at that.”

III. The Plaintiffs

10. The allegations made herein are made upon personal knowledge as to the Plaintiffs’ own acts, and upon information and belief as to all other matters. Plaintiffs information and belief is based upon the following including, but not limited to: a review and analysis of public documents; a review and analysis of specific transaction/deal documents; a review and analysis of discovery obtain to date; a review and analysis of pleadings and papers filed in other actions where a Defendant is a named party or witness; a review and analysis of the related RRA bankruptcy chapter 11 pleadings, documents, and 2004 examination testimony; and interviews with Defendants’ former employees, associates, and/or acquaintances.

11. Plaintiff, RAZORBACK FUNDING, LLC, (hereinafter, “Razorback”), is a Delaware limited liability company with its principal place of business in Broward County, Florida. From October 1, 2009 through October 26, 2009, Razorback invested \$32,000,000.00 into the Ponzi scheme through Banyon USVI, LLC. Von Allmen Dynasty Trust, D&L Partners, David Von Allmen Living Trust, Ann Von Allmen Living Trust, and Kretschmar were also major investors in Razorback.

12. Plaintiff, D3 CAPITAL CLUB, LLC (hereinafter, “D3”), is a Delaware limited liability company with its principal place of business in Broward County, Florida. From September 16, 2009 through October 23, 2009, D3 invested \$13,500,000.00 into the Ponzi scheme. Von Allmen Dynasty Trust, D&L Partners, and David Von Allmen Living Trust were investors in D3.

13. Plaintiff, BFMC INVESTMENT, LLC (hereinafter, "BFMC"), is a Florida limited liability company with its principal place of business in Broward County, Florida. On October 15, 2009, BFMC invested \$2,400,000.00 into the Ponzi scheme.

14. Plaintiff, LINDA VON ALLMEN, is trustee of the VON ALLMEN DYNASTY TRUST (hereinafter, "Dynasty Trust"), an irrevocable trust with its principal place of administration in Broward County, Florida. On May 5, 2009, the Dynasty Trust invested \$2,000,000.00 into the Ponzi scheme through Banyon Income Fund.

15. Plaintiff, D&L PARTNERS, LP (hereinafter, "D&L Partners"), is a Missouri limited partnership with its principal place of business in Broward County, Florida. From May 5, 2009 through June 8, 2009, D&L Partners invested approximately \$45,000,000.00 into the Ponzi scheme through Banyon Income Fund. Doug Von Allmen is the general partner of D&L Partners.

16. Plaintiff, DAVID VON ALLMEN, is trustee of the DAVID VON ALLMEN LIVING TRUST (hereinafter, "DVA Trust"), a revocable trust with its principal place of administration in Saint Louis County, Missouri. On August 26, 2009, the DVA Trust invested \$275,000.00 into the Ponzi scheme through Banyon Income Fund.

17. Plaintiff, ANN VON ALLMEN, is trustee of the ANN VON ALLMEN LIVING TRUST (hereinafter, "AVA Trust"), a revocable trust with its principal place of administration in Saint Louis County, Missouri. On August 28, 2009, the AVA Trust invested \$275,000.00 into the Ponzi scheme through Banyon Income Fund.

18. Plaintiff, DEAN KRETSCHMAR (hereinafter, "Kretschmar"), is an individual residing in Broward County, Florida. On June 3, 2009, Kretschmar invested \$8,000,000.00 into the Ponzi scheme through Banyon Income Fund.

19. Plaintiff, COOPER MANAGEMENT (hereinafter, "Cooper"), is a Delaware corporation with its principal place of business in Palm Beach County, Florida. On August 4, 2009, Cooper invested \$900,000.00 into the Ponzi scheme through Banyon Income Fund.

20. Plaintiff, ANTHONY DEGENNARO, is trustee of EXTRA INNING DYNASTY TRUST (hereinafter "Extra Inning Trust"), an irrevocable trust with its principal place of administration in Southington, Connecticut and the successor in interest to the Pavano Dynasty Trust. From August 18, 2008 through April 2, 2009, the Extra Inning Trust invested \$7,000,000.00 into the Ponzi scheme through Banyon 1030-32.

21. Plaintiffs, ADELE MUSSRY and JACK MUSSRY, are a married couple residing in California. From February 23, 2009 through October 15, 2009, Adele Mussry and Jack Mussry invested \$1,150,000.00 into the Ponzi scheme through Michael Szafranski and ABS Capital Funding, LLC.

22. Plaintiff, NASSIM MUSSRY, is an individual residing in California. On September 8, 2009, Nassim Mussry invested \$100,000.00 into the Ponzi scheme through Michael Szafranski and ABS Capital Funding, LLC.

23. Plaintiff, MELINA EL-ANI, is an individual residing in California. Between August 10, 2009 and October 13, 2009, Melina El-Ani invested \$145,900.00 into the Ponzi scheme through Michael Szafranski and ABS Capital Funding, LLC.

24. Plaintiff, DANIELLE EL-ANI, is an individual residing in California. On October 6, 2009, Danielle El-Ani invested \$35,000.00 into the Ponzi scheme through Michael Szafranski and ABS Capital Funding, LLC.

25. Plaintiff, H&N ASSOCIATES (hereinafter, "H&N"), is a New York partnership. On September 4, 2009, H&N invested \$100,000.00 into the Ponzi scheme through Michael Szafranski and ABS Capital Funding, LLC.

26. Plaintiff, ARETZ ASSOCIATES (hereinafter "ARETZ"), is a New York partnership. On October 20, 2009, ARETZ invested \$200,000.00 into the Ponzi scheme through Michael Szafranski and ABS Capital Funding, LLC.

27. Plaintiff, PARK NATIONAL CAPITAL FUNDING (hereinafter "PARK CAPITAL") is a New York limited liability company. Between June 30, 2009 and July 30, 2009, PARK CAPITAL invested \$200,000.00 into the Ponzi scheme through Michael Szafranski and ABS Capital Funding, LLC.

28. Plaintiff, PARK NATIONAL MORTGAGE SERVICING hereinafter "PARK MORTGAGE") is a New York partnership. On October 1, 2009, PARK MORTGAGE invested \$250,000.00 into the Ponzi scheme through Michael Szafranski and ABS Capital Funding, LLC.

29. Plaintiff, SCOTT MORGAN (hereinafter, "Morgan"), is an individual residing in Illinois. Between July 24, 2009 and September 21, 2009, Morgan invested \$358,791.67. into the Ponzi scheme into the Ponzi scheme through Michael Szafranski and ABS Capital Funding, LLC.

30. Plaintiff, VICEROY GLOBAL INVESTMENTS, INC. (hereinafter, "Viceroy"), is a Georgia corporation with its principal place of business in Atlanta, Georgia. Between August 31, 2009 and October 7, 2009, Viceroy invested \$3,300,000.00 into the Ponzi scheme through Richard Pearson and R.L. Pearson & Associates.

31. Plaintiff, CONCORDE CAPITAL, INC. (hereinafter, "Concorde"), is a Florida corporation with its principal place of business in Broward County, Florida. Between August and

September 2009, Concorde invested \$2,013,000.00 into the Ponzi scheme through Richard Pearson and R.L. Pearson & Associates.

32. Plaintiff, IRA SOCHET, is the trustee of the IRA SOCHET REVOCABLE INTER VIVOS TRUST (hereinafter, "Sochet Trust"), an irrevocable trust that between February and October 2009, invested \$147,300,000 into the Ponzi scheme through Szafranski, Onyx Options Consultants Corporation, and Alexa Funding, LLC.

33. Plaintiff, INVESTORS RISK ADVANTAGE, LP (hereinafter, "Investors Risk"), is a Delaware corporation with its principal place of business in Miami-Dade County, Florida. Between February and October 2009, Investors Risk invested \$8,450,000.00 into the Ponzi scheme through Szafranski and Alexa Funding, LLC.

34. Plaintiff, SUSSCO, INC. (hereinafter, "Sussco"), is a Florida corporation with its principal place of business in Miami-Dade County, Florida. Between March and October 2009, Sussco invested \$2,799,166.66 into the Ponzi scheme through Szafranski and ABS Capital Funding, LLC.

35. Plaintiff, EDWARD PALEY, is an individual residing in Palm Beach County, Florida. On September 1, 2009, Edward Paley invested \$500,000.00 into the Ponzi scheme through Banyon Income Fund.

36. Plaintiff, FLORENCE PALEY, is an individual residing in Palm Beach County, Florida. On September 1, 2009, Florence Paley invested \$500,000.00 into the Ponzi scheme through Banyon Income Fund.

37. Plaintiffs, STEVEN PALEY and LAURA PALEY, are a married couple residing in Bergen County, New Jersey. On August 27, 2009 and October 29, 2009 Steven and Laura Paley made investments totaling \$2,000,000.00 into the Ponzi scheme through Banyon Income Fund.

38. Plaintiff, STEVEN ZARETSKY, as trustee of the JANE ZARETSKY DYNASTY TRUST (hereinafter, "Zaretsky Dynasty Trust"), an irrevocable trust that on June 8, 2009, invested \$100,000.00 into the Ponzi scheme through Banyon Income Fund.

39. Plaintiff, JANE ZARETSKY, is an individual residing in Bergen County, New Jersey. On September 10, 2009, Jane Zaretsky invested \$50,000.00 into the Ponzi scheme through Banyon Income Fund.

40. Plaintiff, THE EDWARD AND FLORENCE PALEY FOUNDATION (hereinafter, "The Paley Foundation"), is a New Jersey not-for-profit corporation with its principal place of business in Bergen County, New Jersey. On August 26, 2009, The Paley Foundation invested \$100,000.00 into the Ponzi scheme through Banyon Income Fund.

41. Plaintiff, LAWRENCE E. DEKELBAUM (hereinafter, "Dekelbaum"), is an individual residing in Maryland. Between June 30, 2009 and October 8, 2009, Dekelbaum invested \$381,500.01 into the Ponzi scheme through Michael Szafranski and ABS Capital Funding, LLC.

42. Plaintiff, SHALOM STRICTLY KOSHER MEATS, INC. (hereinafter "Shalom Kosher") is incorporated under the laws of the State of Maryland. On October 6-8, 2009, Shalom Kosher invested \$142,000.00 into the Ponzi scheme through Michael Szafranski and ABS Capital Funding, LLC.

IV. The Defendants

A. Principal Conspirators

43. Defendant, ROTHSTEIN, is an individual residing in Broward County, Florida and, at all times relevant hereto, was one of Rothstein, Rosenfeldt Adler, P.A.'s founders, its managing partner and CEO. Rothstein is the admitted architect of the Ponzi scheme. On January 27, 2010, Rothstein pled guilty to one count of conspiracy to violate the racketeering influenced corrupt organization (RICO) statute (Count 1); one count of conspiracy to commit money laundering (Count 2); one count of conspiracy to commit mail fraud and wire fraud (Count 3); and two counts of wire fraud (Counts 4 and 5). On June 9, 2010, Rothstein was sentenced to fifty (50) years in federal prison. Rothstein also agreed to forfeit all known assets, including twenty-four pieces of real property, numerous luxury cars, boats, and other vessels, jewelry, sports memorabilia, business interests, and bank accounts. Rothstein materially participated, conspired, substantially assisted, encouraged, and otherwise knowingly aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein.

44. RRA, a non-party, is a Florida professional association with its principal place of business in Broward County, Florida. At all times pertinent to this complaint, RRA, through its agents, employees, alter egos, subsidiaries, or divisions, served as the legitimate front for this elaborate Ponzi scheme, acting as both the law firm representing the putative plaintiffs in connection with their pre-suit, confidential settlements and as the escrow agents for each of the Plaintiffs' Ponzi scheme investments. RRA's trust, escrow, and operating accounts at TD Bank and Gibraltar Bank were used to divert and misappropriate investor funds at the heart of this scheme. RRA materially participated, conspired, substantially assisted, encouraged, and otherwise

knowingly aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein.

B. TD Bank Defendants

45. Defendant, TD BANK, is a foreign national banking association registered to do business in Florida. TD Bank maintains substantial contact with the state of Florida through its multiple branches located throughout the state. TD Bank was the financial epicenter of the Ponzi scheme as hundreds of millions, if not billions, of Ponzi dollars flowed through RRA's TD Bank escrow, trust, and operating accounts. Despite the grossly inordinate amount of funds being rapidly wired in and out of RRA's accounts held at two local South Florida branches, these suspicious account activities inexplicably circumvented several fraud-risk tripwires and avoided detection by TD Bank's internal bank compliance officers and systems. As asserted herein, TD Bank's active involvement in the Ponzi lent substantial credibility to the scheme which Plaintiffs relied upon in making their investments. Accordingly, TD Bank is liable for Plaintiffs' losses as they materially participated, conspired, substantially assisted, encouraged, and otherwise knowingly aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein while willfully ignoring and/or failing to exercise reasonable care.

46. Defendant, FRANK A. SPINOSA (hereinafter, "Spinosa"), is an individual residing in Broward County, Florida and, at all times relevant hereto, was acting within the scope of his employment as a senior regional vice-president of operations for TD Bank. Spinosa contributed to the scheme by, among other things, making material misrepresentations in meeting with investors, providing falsified account statements, preparing fraudulent irrevocable "lock letters",

and using his position at the bank and the bank itself to induce investor funding for the Ponzi. Additionally, Spinosa materially participated, conspired, substantially assisted, encouraged, and otherwise knowingly aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein while willfully ignoring and/or failing to exercise reasonable care. On or about November 2009, TD Bank terminated Spinosa's employment.⁴

47. Defendant, JENNIFER KERSTETTER (hereinafter, "Kerstetter"), is an individual residing in Broward County, Florida and, at all times relevant hereto, was acting within the scope of her employment as an assistant manager for TD Bank. Kerstetter contributed to the scheme by, among other things, making material misrepresentations in meeting with investors, providing falsified account statements, preparing fraudulent irrevocable "lock letters", and using her position at the bank and the bank itself to induce investor funding. Additionally, Kerstetter materially participated, conspired, substantially assisted, encouraged, and otherwise knowingly aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein while willfully ignoring and/or failing to exercise reasonable care.⁵

48. Defendant, ROSANNE CARETSKY (hereinafter, "Caretsky"), is an individual residing in Broward County, Florida, and, at all times relevant hereto, was acting within the scope of her employment as an assistant vice president and branch manager for TD Bank. Caretsky

⁴ On June 10, 2010, Spinosa was deposed as part of the 2004 Examination in the case styled as *In Re: Rothstein Rosenfeldt Adler, P.A.*, Debtor, Case No.: 09-34791-BKC-RBR currently pending before the United States Bankruptcy Court Southern District of Florida. Mr. Spinosa's sworn 2004 Examination deposition testimony was relied upon by the Plaintiffs in making the allegations contained herein.

⁵ On May 18, 2010, Kerstetter was deposed as part of the 2004 Examination in the case styled as *In Re: Rothstein Rosenfeldt Adler, P.A.*, Debtor, Case No.: 09-34791-BKC-RBR currently pending before the United States Bankruptcy Court Southern District of Florida. Ms. Kerstetter's sworn 2004 Examination deposition testimony was relied upon by the Plaintiffs in making the allegations contained herein.

materially participated, conspired, substantially assisted, encouraged, and otherwise knowingly aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein while willfully ignoring and/or failing to exercise reasonable care.⁶

C. RRA Defendants

49. Defendant, DAVID BODEN (hereinafter, “Boden”), is an individual residing in Fort Lauderdale, Florida and, at all times relevant hereto, was a shareholder and general counsel for RRA. Boden also worked as an agent for defendant-broker Richard Pearson and was compensated for performing services as an “insider” to the fraudulent transactions alleged herein. Boden was Rothstein’s “right-hand man” and an essential participant in the scheme by, among other things, participating in investor inducement meetings, negotiating and drafting the putative settlement and assignment documents, acting as the “closing agent” to secure investor funding, and advising and soliciting investors into funding settlements despite actual and/or constructive knowledge that the investments were part of a Ponzi scheme. Boden materially participated, conspired, substantially assisted, encouraged, and otherwise knowingly aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein while willfully ignoring and/or failing to exercise reasonable care.⁷

⁶ On May 19, 2010, Caretsky was deposed as part of the 2004 Examination in the case styled as *In Re: Rothstein Rosenfeldt Adler, P.A.*, Debtor, Case No.: 09-34791-BKC-RBR currently pending before the United States Bankruptcy Court Southern District of Florida. Ms. Caretsky’s sworn 2004 Examination deposition testimony was relied upon by the Plaintiffs in making the allegations contained herein.

⁷ On April 29, 2010, Boden was deposed as part of the 2004 Examination in the case styled as *In Re: Rothstein Rosenfeldt Adler, P.A.*, Debtor, Case No.: 09-34791-BKC-RBR currently pending before the United States Bankruptcy Court Southern District of Florida. Mr. Boden’s sworn 2004 Examination deposition testimony was relied upon by the Plaintiffs in making the allegations contained herein.

50. Defendant, ANDREW BARNETT (hereinafter, "Barnett"), is an individual residing in Broward County, Florida and, at all times relevant hereto, was the Director of Corporate Development for RRA. Barnett participated in the scheme by, among other things, recruiting and soliciting investors into the Ponzi scheme, participating in investor inducement meetings, providing material misrepresentations which induced investor funding, and reaping financial benefits from the investor fraud despite having actual or constructive knowledge that the investments were being made into a Ponzi scheme. Barnett materially participated, conspired, substantially assisted, encouraged, and otherwise knowingly aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein while willfully ignoring and/or failing to exercise reasonable care.

51. Defendant, IRENE STAY (hereinafter, "Stay"), is an individual residing in Broward County, Florida and, at all times relevant hereto, was the chief financial officer of RRA. Stay participated in the scheme by furnishing investors with falsified bank account statements and wire transfer confirmations used to induce investor funding despite having actual or constructive knowledge that the investments were a Ponzi scheme. Stay materially participated, conspired, substantially assisted, encouraged, and otherwise knowingly aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein while willfully ignoring and/or failing to exercise reasonable care.

52. Defendant, DEBRA E. VILLEGAS (hereinafter, "Villegas"), is an individual residing in Broward County, Florida and, at all times relevant hereto, was the chief operating officer at RRA. Villegas, Rothstein's proclaimed number two at RRA, participated in the scheme by, among other things, drafting and notarizing fallacious putative settlement and assignment

agreements, furnishing investors with false bank account statements and fictitious wire transfer notifications for the purpose of inducing investments into the Ponzi scheme despite having actual or constructive knowledge of same. Villegas materially participated, conspired, substantially assisted, encouraged, and knowingly otherwise aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein while willfully ignoring and/or failing to exercise reasonable care. On June 11, 2010, Villegas pled guilty to federal charge of conspiracy to commit money laundering.

D. Banyon Defendants

53. Defendant, BANYON 1030-32, LLC (hereinafter, “Banyon 1030-32”), is the General Partner and investment manager of Banyon Income Fund and Banyon USVI. Banyon 1030-32, by and through its agent Frank Preve and Managing Member George Levin, directed several of the Banyon investment entities including, BIF, Banyon USVI, Banyon Funding, LLC, and Banyon Investments, LLC. In its role as the General Partner and investment manager of BIF, Banyon 1030-32 owed a fiduciary duty to the partnership and to the Limited Partners. Banyon 1030-32 made material misrepresentations to its Limited Partners and breached its fiduciary duties when it haphazardly invested all of the investors into the Ponzi scheme despite awareness of numerous indisputable “red flags.” Banyon 1030-32 benefited financially from their illegal, wrongful, and conspiratorial acts against the Limited Partners of BIF and Razorback. Banyon 1030-32 materially participated, conspired, substantially assisted, encouraged, and otherwise knowingly aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein while willfully ignoring and/or failing to exercise reasonable care.

54. Defendant, BANYON INCOME FUND, L.P. (hereinafter, "BIF"), is a Delaware limited partnership with its principal place of business in Fort Lauderdale, Florida. BIF, at all times relevant hereto, was operated by its Managing Members Levin and Preve as a putative investment entity formed exclusively to purchase interests in Ponzi scheme settlements.

55. Defendant, BANYON USVI, LLC (hereinafter, "Banyon USVI"), is a Delaware limited liability company with its principal place of business in Fort Lauderdale, Florida. Banyon USVI, at all times relevant hereto, was operated by its Managing Members Levin and Preve as a putative investment entity formed exclusively to purchase, along with Razorback, an interest in a certain Ponzi scheme settlement.

56. Defendant, GEORGE G. LEVIN (hereinafter, "Levin"), is an individual residing in Broward County, Florida and, at all times relevant hereto, was acting within the scope of his employment as the Chief Executive Officer and Managing Member of Banyon USVI, BIF, and Banyon 1030-32. Levin, who previously owned and operated GGL Industries, Inc. d/b/a Classic Motor Carriages, a company convicted of federal fraud charges, actively participated in the scheme by, among other things, recruiting, inducing, conspiring, assisting, encouraging, and otherwise aiding and abetting one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein while willfully ignoring and/or failing to exercise reasonable care. Similar to his operation of Classic Motor Carriages, Levin relied on others in Banyon to do his "dirty work" in an attempt to insulate him from both criminal and civil liability. Levin's participation in the Ponzi scheme should be considered "Classic Motors 2.0."

57. Defendant, FRANK J. PREVE (hereinafter, "Preve"), is an individual residing in Broward County, Florida and, at all times relevant hereto, was acting within the scope of his

employment as the chief operating officer or agent of Banyon USVI, BIF and Banyon 1030-32. Preve maintained an office at RRA and was the key Banyon insider who devoted significant time and effort collaborating with Rothstein to operate the Ponzi. Preve, a convicted bank fraud and embezzlement felon,⁸ participated in the scheme by, among other things, recruiting, inducing, conspiring, assisting, encouraging, and otherwise aiding and abetting one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein while willfully ignoring and/or failing to exercise reasonable care. Preve also acted as the first level of insulation between his boss, Levin, and the fraud being committed by Rothstein.

58. There is a sufficient unity of interest and ownership between Banyon 1030-32, BIF, and Banyon USVI such that the acts of one are for the benefit and can be imputed as the acts of the other. Banyon 1030-32, BIF, Banyon USVI, Levin, and Preve will hereinafter be collectively referred to as “Banyon.” The Banyon Defendants acted as the agents, servants, employees and/or representatives of each other within the course and scope of their agency and employment, and with the knowledge and permission of the other Banyon Defendants.

E. Onyx/ABS/Alexa Defendants

59. Defendant, MICHAEL SZAFRANSKI (hereinafter, “Szafranski”), is an individual residing in Miami-Dade County, Florida and, at all times relevant hereto, was acting within the scope of his employment as the president of Onyx Options Consultants Corporation and ABS Capital Funding, LLC. Szafranski was hired as an “independent” third-party on behalf of BIF, Banyon USVI, Razorback, and D3 and was tasked with verifying the legitimacy of the purported

⁸ Frank Preve pled guilty to bank embezzlement charges in 1985 and received ten (10) years probation and a \$10,000.00 fine for falsifying loan documents in connection with a scheme resulting in losses exceeding \$2,300,000.00.

confidential settlements. Specifically, Szafranski was the only person vested with authority to analyze the unredacted settlement documents, to substantiate the putative plaintiffs' and putative defendants' existence, to confirm the putative defendants' pre-funded wire transfer into the Principal Conspirators' TD Bank escrow account, to verify the Principal Conspirators' TD Bank trust and escrow account balances, and to provide an opinion as to the authenticity of the settlement deals. Szafranski participated in the scheme by, among other things, making material misrepresentations, false verifications, and conspiring to induce investor funding while accepting over \$32 million in payment from the Principal Conspirators despite having actual or constructive knowledge that the investments were a Ponzi scheme. Szafranski materially participated, conspired, substantially assisted, encouraged, and otherwise knowingly aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein while willfully ignoring and/or failing to exercise reasonable care.⁹

60. Defendant, ONYX OPTIONS CONSULTANTS CORPORATION d/b/a/ ONYX CAPITAL MANAGEMENT (hereinafter, "Onyx"), is a Florida limited liability company which, at all times relevant hereto, was owned and operated by Szafranski. Onyx materially participated, conspired, substantially assisted, encouraged, and otherwise knowingly aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein while willfully ignoring and/or failing to exercise reasonable care.

61. Defendant, ABS CAPITAL FUNDING, LLC, (hereinafter, "ABS"), is a Florida limited liability company which, at all times relevant hereto, was owned and operated by Szafranski

⁹ On March 8-9, 2010, Szafranski was deposed as part of the 2004 Examination in the case styled as *In Re: Rothstein Rosenfeldt Adler, P.A.*, Debtor, Case No.: 09-34791-BKC-RBR currently pending before the United States Bankruptcy Court Southern District of Florida. Mr. Szafranski's sworn 2004 Examination deposition testimony was relied upon by the Plaintiffs in making the allegations contained herein.

as a putative investment entity formed exclusively to purchase interests in Ponzi scheme settlements. ABS materially participated, conspired, substantially assisted, encouraged, and otherwise knowingly aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein while willfully ignoring and/or failing to exercise reasonable care.

62. Defendant, ALEXA FUNDING, LLC, (hereinafter, “Alexa Funding”), is a Florida limited liability company which, at all times relevant hereto, was owned and operated by Szafranski as a putative investment entity formed exclusively to purchase interests in Ponzi scheme settlements. Alexa Funding materially participated, conspired, substantially assisted, encouraged, and otherwise knowingly aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein while willfully ignoring and/or failing to exercise reasonable care.

F. CPA Defendants

63. Defendant, BERENFELD SPRITZER SHECHTER SHEER, CPA LLP (hereinafter, “Berenfeld”), is a Florida limited liability partnership which, at all times relevant hereto, served as the auditing firm for BIF and Banyon 1030-32 and as the accounting firm for RRA, Rothstein, and Rosenfeldt individually. As described, Berenfeld was uniquely positioned as Banyon auditor and RRA accountant to discover the fraudulent scheme and, despite countless “red flags” failed to do so. Berenfeld’s unqualified audit opinion of BIF and Banyon 1030-32, which it knew was being incorporated into a Confidential Offering Memorandum, authenticating hundreds of millions of dollars of non-existent receivables, was so patently deficient that the audit amounted to no audit at all. Berenfeld materially participated, conspired, substantially assisted, encouraged, and

otherwise knowingly aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein while willfully ignoring and/or failing to exercise reasonable care.

64. Defendant, TRACY WEINTRAUB, (hereinafter “Weintraub”), is an individual residing in Broward County, Florida, and, at all times material hereto, was acting within the scope of his employment as the Senior Audit and Managing Partner of Berenfeld’s Fort Lauderdale office located in the same building as RRA. Weintraub materially participated, conspired, substantially assisted, encouraged, and otherwise knowingly aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein while willfully ignoring and/or failing to exercise reasonable care.¹⁰

65. Defendant, GARY BERKOWITZ, (hereinafter “Berkowitz”), is an individual residing in Broward County, Florida and, at all times material hereto, was acting within the scope of his employment as a Certified Public Accountant of Berenfeld. Berkowitz materially participated, conspired, substantially assisted, encouraged, and otherwise knowingly aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein while willfully ignoring and/or failing to exercise reasonable care.¹¹

66. Defendant, BRIAN LEITSTEIN, (hereinafter “Leitstein”) is an individual residing in Broward County, Florida and, at all times material hereto, was acting within the scope

¹⁰ On May 12, 2010, Weintraub was deposed as part of the 2004 Examination in the case styled as *In Re: Rothstein Rosenfeldt Adler, P.A.*, Debtor, Case No.: 09-34791-BKC-RBR currently pending before the United States Bankruptcy Court Southern District of Florida. Mr. Weintraub’s sworn 2004 Examination deposition testimony was relied upon by the Plaintiffs in making the allegations contained herein.

¹¹ On March 17-18, 2010, Berkowitz was deposed as part of the 2004 Examination in the case styled as *In Re: Rothstein Rosenfeldt Adler, P.A.*, Debtor, Case No.: 09-34791-BKC-RBR currently pending before the United States Bankruptcy Court Southern District of Florida. Mr. Berkowitz’s sworn 2004 Examination deposition testimony was relied upon by the Plaintiffs in making the allegations contained herein.

of his employment as Audit Manager of Berenfeld. Leitstein materially participated, conspired, substantially assisted, encouraged, and otherwise knowingly aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein while willfully ignoring and/or failing to exercise reasonable care.

G. Ballamor Defendants

67. Defendant, BALLAMOR CAPITAL MANAGEMENT, LLC (hereinafter, “Ballamor”), is a Pennsylvania limited liability corporation which, at all times relevant hereto, was owned and operated by its president and sole officer, Barry Bekkedam. Ballamor is an investment, advisement, and strategies firm for ultra-high net worth individuals. Ballamor participated in the scheme by actively serving as a “feeder” entity used to promote, facilitate, and induce investments into the Ponzi scheme. Ballamor materially participated, conspired, substantially assisted, encouraged, and otherwise knowingly aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein while willfully ignoring and/or failing to exercise reasonable care. Ballamor conducted business and had regular, not isolated, contact with Florida for which it could reasonably anticipate being haled into this Court’s jurisdiction.

68. Defendant, BARRY R. BEKKEDAM (hereinafter, “Bekkedam”), is an individual residing in Delaware County, Pennsylvania and, at all times relevant hereto, was acting within the scope of his employment as the chief executive officer and president of Ballamor. Bekkedam materially participated, conspired, substantially assisted, encouraged, and otherwise knowingly aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein while willfully ignoring and/or failing to exercise reasonable

care. Bekkedam conducted business and had regular, not isolated, contact with Florida for which he could reasonably anticipate being haled into this Court's jurisdiction.

H. Pearson Defendants

69. Defendant, R.L. PEARSON & ASSOCIATES, INC. (hereinafter, "R.L. Pearson"), is a Florida corporation which, at all times material hereto, was owned and operated by its president and sole officer, Richard Pearson. R.L. Pearson participated in the scheme by actively serving as a "feeder" entity which materially participated, conspired, substantially assisted, encouraged, and otherwise knowingly aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein while willfully ignoring and/or failing to exercise reasonable care.

70. Defendant, RICHARD PEARSON (hereinafter "Pearson"), is an individual residing in Broward County, Florida and, at all times relevant hereto, was acting within the scope of his employment as the sole owner and president of R.L. Pearson. Pearson participated in the scheme by actively serving as a "feeder" that materially participated, conspired, substantially assisted, encouraged, and otherwise knowingly aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein while willfully ignoring and/or failing to exercise reasonable care.

I. Gibraltar Bank Defendant

71. Defendant, GIBRALTAR PRIVATE BANK & TRUST, CO. (hereinafter, "Gibraltar Bank") is a private bank and wealth management firm organized under the rules promulgated by the Office of Thrift Supervision as a Federal Stock Association Charter with its principal place of business in Miami-Dade County, Florida. As alleged herein, Gibraltar Bank

materially participated, conspired, substantially assisted, encouraged, and otherwise knowingly aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein while willfully ignoring and/or failing to exercise reasonable care.

J. Platinum and Centurion Defendants

72. Defendant, PLATINUM PARTNERS VALUE ARBITRAGE FUND (USA), L.P. (hereinafter “Platinum”), is a Delaware limited partnership which, at all times material hereto, by and through its agents, managers, and officers, materially participated, conspired, substantially assisted, encouraged, and otherwise knowingly aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein while willfully ignoring and/or failing to exercise reasonable care. Platinum’s general partner is Platinum Management (NY) LLC headquartered in New York, New York and the designated Managing Member is Mark “Meir” Nordlicht.

73. Defendant, CENTURION STRUCTURED GROWTH, LLC (hereinafter “Centurion”), is a Delaware limited liability company which, at all times material hereto, by and through their agents, managers, and officers, materially participated, conspired, substantially assisted, encouraged, and otherwise knowingly aided and abetted one or more of the other defendants in the unlawful, misleading, and fraudulent conduct alleged herein while willfully ignoring and/or failing to exercise reasonable care. Centurion’s managing member is Platinum Management (NY) LLC headquartered in New York, New York.

74. At the insistence of Platinum and Centurion, Michael Szafranski was appointed as an independent third party verifier of putative settlements and, at all times material hereto, acted as an agent for Platinum and Centurion.

V. The Ponzi Scheme

A. The Rothstein Facade

75. From humble beginnings in 2003, Rothstein transformed RRA into one of the fastest growing law firms in Florida. Under Rothstein's six-year stewardship, RRA grew from seven attorneys to over seventy and amassed almost one hundred and fifty in staff. Along with its dramatic growth in size, RRA rapidly emerged as a legal, political, and philanthropic powerhouse.

76. Not surprisingly, as the firm expanded so did Rothstein's enormous portfolio of personal assets including more than twenty-four real estate properties, twenty-five cars, an eighty-seven foot yacht, and various interests in a myriad of businesses ranging from watches to restaurants to vodka.

77. Rothstein lived lavishly and spent prolifically--critical components necessary to set his scheme in motion. Rothstein leveraged these assets as tools to induce investment into the Ponzi scheme, appeasing unwary investors with personal guaranties secured by these very same assets.

78. With RRA's tireless marketing efforts and meteoric rise into prominence, Rothstein quickly made forays into preeminent social circles, rubbing elbows with high net-worth individuals and political luminaries, the perfect breeding grounds to attract wealthy investors. His plot was up and running.

B. The Plan

79. Rothstein seized upon his new found stature to entice investors into his scheme using his purported budding employment and labor practice at RRA as the conduit.

80. The scheme was predicated on the Principal Conspirators' pipeline of pre-suit, confidential settlement agreements as the self-professed "preeminent sexual harassment and labor employment law firm in the country." RRA purported to attract a high volume of quality cases based upon RRA's own reputation, as well as from internet referrals and well placed "800" numbers. Investors were told that RRA had an extensive in-house private investigative team, including former F.B.I. and C.I.A. agents, led by a former Broward County sheriff, whose singular task was to obtain compromising evidence against high-profile, wealthy putative defendants. The story Rothstein spun was that once his team of investigators finished their surveillance and dug up enough evidence to support a civil cause of action (typically a sexual harassment, mass tort cover-up, or whistle-blower claim), he would contact the putative defendant and arrange a meeting at his office. Once in his office, Rothstein would layout all the evidence against the putative defendant painting a detailed picture of how the negative exposure would indubitably affect the putative defendant's personal and professional life. Rothstein would then extend an offer to amiably resolve the matter quickly and quietly through a confidential, pre-suit settlement with the putative plaintiff, thereby avoiding protracted litigation or negative publicity.

81. Once the putative defendant agreed, a confidential settlement would be negotiated, which invariably included two key provisions: (1) that the putative plaintiff would be paid the settlement over time, usually within a range of three to nine months; and (2) that the putative defendant would pre-fund the entire settlement amount, held in escrow by RRA, which could only be disbursed in accordance with the pre-determined schedule integrated into the confidential settlement.

C. The Pitch

82. With the stage set and his plan in place, Rothstein began to make his pitch. The key backdrop element incorporated into each investor meeting was that the putative plaintiffs did not and/or could not wait for the structured monthly payouts and would willingly agree to assign their rights to same for a discounted lump-sum payout. Typically, this lump-sum payment was at a discount rate in the range of 20-40% off the settlements' face-value. Rothstein scripted a plethora of plausible explanations as to why a putative plaintiff wanted his or her money now in lieu of waiting for the structured monthly payments.

83. Rothstein claimed to want nothing from the deal and was only presenting the "opportunity" for a putative plaintiff's benefit. Notwithstanding, Rothstein would often boast that if not for his professional and legal conflicts he would be the one purchasing these assignments. To bolster this claim, Rothstein agreed to stay on and act as the escrow agent to facilitate the transaction.

84. As a means to induce investor action, to corroborate the settlement being purchased and to mitigate any lingering risk-related concerns, Rothstein would show investors the purported executed agreement between the putative plaintiff and putative defendant; however, because the settlements were pre-suit and confidential in nature, all of the names were redacted.

85. Furthermore, Rothstein would agree to provide: (1) confirmation of RRA's IOTA trust account balance at TD Bank evidencing the putative defendant's fully funded settlement proceeds being held in escrow; (2) a "lock letter", drafted and executed by a TD Bank executive, irrevocably assuring that the putative defendant's pre-funded settlement proceeds in RRA's IOTA trust account could only be paid directly to the investor's designated account which, in

most cases, was an account at TD Bank; and (3) the opportunity for an independent third-party to authenticate the underlying settlement and assignment, and to verify that the putative defendant's funds were being held in RRA's IOTA trust account,

86. As the final piece to persuade an investment, the Principal Conspirators offered to absolutely and unconditionally guaranty the entire settlement transaction. This "gratuitous" guaranty, secured by the Principal Conspirators' significant assets (as discussed in part, *supra*), was a vital inducement further securitizing the transaction and lending critical credibility to the purchase of these settlements.

87. Notwithstanding these broad ranges of false assurances and material representations, Rothstein remained hyper-vigilant over access to RRA's IOTA trust and escrow accounts under the guise of confidentiality. In fact, potential investors could only access RRA's TD Bank account information from Rothstein or Stay, from the independent verifier, Szafranski, or through Rothstein's express authorization directing TD Bank executives like Spinosa, Kerstetter, and Caretsky to provide the requested statements. On numerous occasions, TD Bank vice-president Spinosa, assistant manager Kerstetter, and assistant vice president Caretsky physically handed trust/escrow account statements to Rothstein, who then handed the statement over to the investor in their presence, or provided Szafranski, Plaintiffs' third-party independent verifier, with same.

88. Once an investor expressed interest and was provided the above-referenced assurances, the Principal Conspirators, in conjunction with Boden and Villegas, prepared an agreement for the putative plaintiff's assignment of the settlement and related proceeds.

89. Once the terms of the deal were negotiated and finalized, the investor would receive a bank statement confirming that the funds were held in escrow in a designated RRA trust account. Thereafter, the investor would wire funds either directly into RRA's escrow account or to their investment advisor, who would in turn wire the investor's money into an RRA escrow account. The investor's wired money, equivalent to the agreed upon purchase price, was used to pay the putative plaintiff his or her lump sum settlement payout. Thereafter, RRA as the putative escrow agent was obligated to make the scheduled distributions from the locked account at TD Bank to the investor's account in accordance with the pre-determined schedule integrated into the confidential settlement.

VI. Ponzi Scheme In Action

A. Fabricated Settlements Premised on Real Cases

90. In certain instances, the purported settlements, *albeit* fraudulent, were based on actual cases being handled by RRA. For example, one of the settlements involved herein was based upon facts surrounding Jeffrey Epstein, the infamous billionaire financier. In fact, RRA did have inside information due to its representation of one of Epstein's alleged victims in a civil case styled *Jane Doe v. Jeffrey Epstein*, currently pending in the Southern District of Florida. Representatives of D3 were offered "the opportunity" to invest in a pre-suit, \$30,000,000.00, court settlement against Epstein arising from the same set of operative facts as the *Jane Doe* case, but involving a different underage female plaintiff. To bolster his concocted story, Rothstein invited D3 representatives to his office to view the thirteen banker's boxes of actual case files in *Jane Doe* in order to demonstrate that the claims against Epstein were legitimate and that the evidence against Epstein was real. In particular, Rothstein claimed that his investigative team discovered that there were high-profile witnesses onboard Epstein's private jet where some of the alleged sexual assaults took place and showed D3 copies of a flight log purportedly containing names of celebrities, dignitaries and international figures. Because of these potentially explosive facts, putative defendant Epstein had allegedly offered \$200,000,000.00 for settlement of the claims held by various young women who were his victims. Adding fuel to the fire, an investigative team representative privately told a D3 representative that they found three additional claimants about whom Rothstein did not yet know. Preve was present for this meeting, despite the fact that he was not involved as an investor or representative in the D3 deal.

91. Additionally, Rothstein leveraged RRA's representation in the Epstein case to pursue issues and evidence wholly unrelated to the underlying litigation but which could potentially be beneficial to lure investors into the Ponzi scheme. For instance, RRA relentlessly chased flight data and passenger manifests regarding flights Epstein took with other famous individuals knowing full well that no underage women were on board and no illicit activities took place. RRA also inappropriately attempted to take the depositions of these celebrities in a deliberate effort to bolster Rothstein's fictitious story.

92. Conspicuously, Preve and Szafranski shared an office inside RRA one floor down from Rothstein's office, which provided them direct access to assist Rothstein in the furtherance of the Ponzi scheme. This fact helps explain why Preve attended the aforementioned D3 meeting despite his lack of involvement as an investor or representative.

93. Another actual case which Rothstein attempted to use as a false predicate for his scheme was a mass tort case against Chiquita Brands International. In this instance, Rothstein claimed to be representing plaintiffs in 450 wrongful death cases on the verge of settling for \$2,000,000.00 each. Rothstein told investors to begin raising funds in order to purchase this settlement. While the cases against Chiquita are real, Rothstein did not represent any of the plaintiffs and the cases remain pending.

VII. Plaintiffs' Investments

A. Plaintiffs Induced by the Banyon Confidential Offering Memorandum

94. As the title suggests, this section concerns those Plaintiffs who were induced, at least in part, by Banyon's Confidential Offering Memorandum. As explained more fully below, the co-conspirators who either made or adopted the representations contained in that document include Levin, Preve, BIF, Banyon 1030-32, Banyon USVI, Berenfeld, Bekkedam, Ballamor, Onyx, and Szafranski (in his capacity as an independent verifier). As set forth *infra*, the Ponzi scheme could not have gained enough momentum and would never have defrauded as many investors as it did without the substantial assistance of Banyon as the primary "feeder fund."

95. Banyon Income Fund ("BIF") was launched in April 2009 and quickly ascended to become the primary "feeder fund" funneling money to purchase the Principal Conspirators' settlement deals.

96. According to the offering prospectus prepared by Levin and Preve, BIF was looking to raise one hundred million dollars (\$100,000,000.00) in minimum capital commitments of one million dollars (\$1,000,000.00) to continue "a business strategy that [Levin and Banyon] and its affiliates have been engaged in for approximately 2.5 years." *See* Confidential Offering Memorandum dated April 30, 2009, a copy of which is attached hereto and incorporated herein as **Composite Exhibit "A."**

97. BIF's strategy offered investors a slice of a "largely untapped market" aimed at purchasing:

discount settlements and related periodic revenue stream from individual plaintiffs who have settled their labor and employment related lawsuits or claims, and who would otherwise receive their settlement amounts over a period of

time.¹² The purchased settlements are secured by the full settlement amounts which will have been deposited in a trust account established by the plaintiff's attorney for the benefit of the plaintiff prior to purchase by Banyon Income Fund, LP. These settlements are released to Banyon Income Fund, LP over time to liquidate the purchased settlement.

Id.

98. For each investment up to one hundred million dollars (\$100,000,000.00), BIF promised investors "preferred returns of fifteen percent (15%) on their Capital Contributions . . . [along with] a claw back obligation to the extent the [investors] have not received 100% of the Capital Account balances (together with accrued but unpaid Preferred Return)"; however, all investments would be subject to a twelve month "lock-up period" precluding any early withdrawal of capital contributions.

99. Not coincidentally, BIF's investment strategy mirrors the purported investment vehicle offered by the Principal Conspirators at the center of the Ponzi scheme.

100. In fact, the Confidential Offering Memorandum specifically references the Principal Conspirators averring that "[o]nce a structure of formal documentation was put in place and an exclusive relationship established with Rothstein¹³, the General Partner was able to achieve a large ramp up in business volume"

¹² "The purchase price for the purchased settlement will represent a discount from the aggregate amount of payments to be received, typically 15% to 30% and the amount of the discount will represent the [] gross income on the transaction."

¹³ The Confidential Offering Memorandum acknowledges that Banyon and Levin purchase "non-tort labor and employment settlements from plaintiffs which are not identified but who are represented by Rothstein Rosenfeldt Adler".

101. As proof of BIF's "large ramp up in business volume" and astounding financial returns, the Confidential Offering Memorandum incorporates an unqualified audited opinion and financial statement prepared by Berenfeld, purportedly verifying, *inter alia*, that:

- a. Levin, by and through Banyon affiliated companies, was doing as much as \$75,000,000.00 in business a month with Rothstein;
- b. Through March 2009, Banyon affiliated companies purchased over \$1.1 billion dollars worth of legal settlements from Rothstein for a cost of \$657,000,000.00;
- c. By the end of March 2009, the Banyon affiliated companies had realized over \$531,000,000.00 in returns; and
- d. Banyon affiliated companies listed receivables in excess of \$559,000,000.00 from pending settlements investments.

102. Significantly, the Confidential Offering Memorandum affirmed that BIF would receive confirmation, prior to closing, verifying that the putative defendant had wire transferred the entire settlement proceeds into RRA's escrow account through an independent third party.

103. BIF's Confidential Offering Memorandum offers a glimpse into window of the Principal Conspirators' operations, as all or substantially all of BIF's assets were funneled directly into the Principal Conspirators' scheme helping feed the Ponzi's voracious appetite for capital which powered the perpetuation of this fraud.

1. The Banyon Investors

104. In the spring of 2009, Barry Bekkedam, an unabashed promoter of BIF,¹⁴ came to South Florida from Pennsylvania to first meet with Doug Von Allmen and discuss D&L Partners and Dynasty Trust's participation in BIF.

105. During that discussion, Mr. Von Allmen learned from Bekkedam that BIF was started by Levin, a professed mentor and confidant of Rothstein, and that the legal settlements being purchased were the product of an exclusive arrangement negotiated between Rothstein and Levin on behalf of BIF.

106. Mr. Von Allmen was told by Bekkedam that Levin was personally worth in excess of \$400,000,000.00 and would personally guarantee each of the settlements being purchased.

107. Additionally, Bekkedam told Mr. Von Allmen that the settlements being purchased were already fully pre-funded and held in escrow in RRA's trust accounts, that a "Big Four"¹⁵ auditing firm would verify financials quarterly, that Ballamor had continuous access to the trust account balances, and that Ballamor would oversee Banyon's hiring of an independent

¹⁴ On May 15, 2009, while serving as a panelist at a financial conference in Las Vegas Nevada, Bekkedam professed to have identified a niche financing opportunity purchasing legal settlements. Bekkedam stated that he negotiated a 15% current cash return on the \$100,000,000.00 of outside money raised which was further secured by a personal guaranty from the entrepreneur who already had \$500,000,000.00 of his own money invested. Strikingly, Bekkedam claimed to be the driving force behind the fund's [BIF] origination declaring that "literally he [the entrepreneur] didn't even understand that the fund structure was out there. We put him in the fund business basically."

¹⁵ Bekkedam misrepresented this fact as it turns out that the auditing firm was Berenfeld which is decidedly not one of the referenced "Big Four" firms and belied by the audit opinion contained within the Confidential Offering Memorandum.

verifier to monitor and confirm the entire settlement transaction and funding. Each of these representations made, and ultimately relied upon herein, was intended to induce an investment.

108. Finally, Mr. Von Allmen was told by Bekkedam that it would take two signatures to move the money, one of which would be someone from BIF.

109. Shortly thereafter, Bekkedam, provided Mr. Von Allmen with a Confidential Settlement Funding memorandum dated April 21, 2009, which corroborated Bekkedam's pitch and spelled out in greater detail the "Due Diligence Undertaken" by Ballamor and Bekkedam. *See* Confidential Settlement Funding memorandum dated April 21, 2009, a copy of which is attached hereto and incorporated herein as **Composite Exhibit "B."** Significantly, the Confidential Settlement Funding memorandum emphasized that a Ballamor / Banyon

representative has had the opportunity to visit and speak with a senior banking officer at a local branch of the financial institution [TD Bank] to ask questions and confirm current trust account balances, including confirming written bank statements provided from the bank with balances shown through on-line access. The representative has had the opportunity to speak with another independent representative [Szafranski] performing services for another purchaser.

110. Bekkedam acted as a sub-feeder on behalf of Banyon, using the Confidential Offering Memorandum to either make or bolster his representations about the veracity and low risk nature of the investment.

111. Bekkedam persisted in his pursuit of inducing Mr. Von Allmen's investment, going as far as purchasing a dinner aboard Mr. Von Allmen's boat at a charity auction and inviting Rothstein and Levin, along with their wives, to attend as his guests. The dinner was held on April 4, 2009, which was the first time Mr. Von Allmen met Levin.

112. By late April 2009, Bekkedam's perseverance paid off as his successful pitch to Mr. Von Allmen's personal banker at Bank of America was the final hurdle in securing Mr. Von Allmen's financial commitment.

113. In reliance on these aforementioned representations by Bekkedam, on or about May 4, 2009, Mr. Von Allmen (through D&L Partners) and his wife Linda Von Allmen (through Dynasty Trust) first wired funds to BIF. Approximately one month later, Mr. Von Allmen's son and daughter-in-law, David and Ann Von Allmen (through the DVA Trust and AVA Trust), and his step-son, Dean Kretschmar, predicated on these same representations as to the security and verification processes, funded investments into BIF as directed by Ballamor and Bekkedam. For ease of reference, these parties are hereinafter collectively referred to as "the Banyon Investors."

114. Logistically, the Banyon Investors were Limited Partners in BIF while Banyon 1030-32, served as the General Partner and Levin as the Managing Partner.

115. Notably, at no time during his courtship of Mr. Von Allmen, did Bekkedam disclose his indebtedness to Levin for the more than one million dollars provided to underwrite Ballamor's \$1.8 billion dollar expansion earlier in 2009, nor did Bekkedam reveal his *quid pro quo* procurement of Levin's \$5,000,000.00 investment of a planned \$18,000,000.00 in Nova Bank (aka Nova Financial Holdings, Inc.) where Bekkedam served as Chairman.

116. Prior to investing, each Banyon Investor received the aforementioned Confidential Offering Memorandum describing the terms and conditions of the investment structure in greater detail.

117. As previously stated, the Confidential Offering Memorandum provided that a receipt of the putative defendant's wire transfer of the full settlement proceeds into RRA's trust account

would be verified by an independent third party. That purportedly independent verifier turned out to be Michael Szafranski.

118. Additionally, the Banyon Investors were assured that in cooperation with TD Bank executives (which turned out to be Spinosa, Kerstetter, and Caretsky), that BIF's third-party verifier would have online access to banking records for each deposit account and admission into all records related to the purchased settlements and settlement trust accounts.

119. Furthermore, the Memorandum states that while "Ballamor will receive no compensation for its participation or investment recommendation . . . George Levin has an agreement in principle with Ballamor and its principal, Barry R. Bekkedam, with respect to an equity investment in Ballamor by Mr. Levin and a loan to Mr. Bekkedam, the final terms of which have not been determined."¹⁶

120. Michael Szafranski, president of Onyx Capital Management, and as agent for the Banyon Investors was designated the independent third-party verifier of deals procured by Banyon 1030-32 and BIF. Prior to and during the course of his investigation, Szafranski obtained numerous documents demonstrative TD Bank's involvement as the RRA escrow agent bank.

121. Rosanne Caretsky, an assistant branch manager with Commerce Bank,¹⁷ was the source for the following documents obtained by Szafranski:

- a. October 29, 2008, letter signed by Caretsky enclosing three trust/escrow account statements for RRA:

¹⁶ In fact, this was a decidedly false assurance, as we now know that, at the time the Memorandum was issued, Ballamor and Mr. Bekkedam had already received \$1,000,000.00 "loan" from Levin for their involvement in this Ponzi scheme, along with \$5,000,000.00 of a promised \$18,000,000.00 of investment through Ballamor into Nova Bank, a Pennsylvania financial institution where Bekkedam served as the Chairman.

¹⁷ Commerce Bank was a predecessor in interest to TD Bank as a result of March 2008 purchase.

- i. account number 6860291258 containing \$166,922,339.00;
 - ii. account number 6860423489 containing \$40,125,685.44; and
 - iii. account number 6860420923 containing \$348,229,463.21.
- b. These three statements purportedly show a total of \$555,277,487.65 in available funds in the corresponding accounts.
- c. April 17, 2009, letter signed by Caretsky as a TD Bank Assistant Vice President, enclosing RRA trust/escrow account statements for:
 - i. account number 6860423489 showing a balance of \$61,117,111;
 - ii. account statement for account number 6860755104 showing a balance of \$80,978,935.31;
 - iii. account statement for account number 6860699146 showing a balance of \$136,122,322.87;
 - iv. account statement for account number 6860291258 showing a balance of \$198,644,311.13; and
 - v. account statement for account number 6860420923 showing a balance of \$483,668,999.39.
- d. These five statements purportedly show a total of \$960,531,679.70 in available funds in the corresponding accounts.

122. All totaled, the eight account statements provided by Caretsky purported to represent \$1,515,809,167.35 in available funds in the RRA trust/escrow accounts.

123. Jennifer Kerstetter, an assistant manager for TD Bank, was the source for the following documents obtained by Szafranski:

- a. March 20, 2009, letter signed by Kerstetter enclosing RRA trust/escrow account statements for:
 - i. account number 6860699146 showing a balance of \$104,211,711.22;
 - ii. account number 6860420923 showing a balance of \$368,333,133.20;and
 - iii. account number 6860291258 showing a balance of \$110,331,563.13.
- b. These three statements purportedly show \$582,876,407.55 in available funds in the corresponding accounts
- c. July 13, 2009, letter signed by Kerstetter from TD Bank enclosing RRA trust/escrow account statement for account number 6861077193 showing a balance of \$14,286,000.00.

124. All totaled, the four account statements provided by Kerstetter purported to represent \$597,162,407.55 in available funds in the RRA trust/escrow accounts.

125. Additionally, Szafranski obtained the following documents originated from TD Bank:

- a. June 22, 2009, Commerce Bank wire transfer to RRA trust/escrow account ending x-0923 in the amount of \$1,957,500.00 and purporting to be a funded settlement;
- b. June 22, 2009, Commerce Bank wire transfer to RRA trust/escrow account ending x-0923 in the amount of \$2,680,000.00 and purporting to be a funded settlement;
- c. June 22, 2009, Commerce Bank wire transfer to RRA trust/escrow account

ending x-0923 in the amount of \$695,000.00 and purporting to be a funded settlement;

- d. June 30, 2009, Commerce Bank wire transfer to RRA trust/escrow account ending x-0923 in the amount of \$2,208,000.00 and purporting to be a funded settlement;
- e. July 1, 2009, Commerce Bank wire transfer to RRA trust/escrow account ending x-0923 in the amount of \$6,072,000.00 and purporting to be a funded settlement; and
- f. July 17, 2009, TD Bank wire transfer to RRA trust/escrow account ending x-0923 in the amount of \$22,348,221.00 and purporting to be a funded settlement.

126. All totaled, the aforementioned Commerce and TD Bank wire transfer statements represented \$35,960,721.00 worth of deposits into the RRA trust/escrow account ending in number x-0923 between June 22, 2009, and July 17, 2009.

127. In reliance on the foregoing, as allegedly confirmed by Szafranski, the Banyon Investors collectively invested \$60,550,000.00 into BIF and into the Ponzi scheme.

2. Clockwork Capital Advisors, LLC

128. The Von Allmen family investments breathed new life into BIF and, on the heels of his success in securing these funds, Bekkedam continued pursuit of additional investment funds.

129. In early summer of 2009, Ballamor's Managing Director Al Rapetti put Bekkedam in touch with Abraxas Discala (hereinafter, "Discala"), who was portrayed as a potential investor source with access to high-net worth individuals and Hollywood celebrities.

130. After a few initial conversations and an informal meeting in Florida, Bekkedam invited Discala to Ballamor's headquarters in Pennsylvania.

131. Over the course of many discussions, Discala learned from Bekkedam about the inner workings of BIF and about the confidential settlements being purchased.

132. As a backdrop, Bekkedam described the close personal relationship shared between Rothstein and Levin which explained how BIF was able to secure the purported exclusive right to purchase RRA's entire pipeline of confidential settlements.

133. Additionally, Bekkedam detailed how RRA's successful marketing efforts, via strategically placed "800" numbers and network of nationwide referrals, swelled the firm's pipeline of settlements to a critical mass. Bekkedam even pointed to Berenfeld's audited accounting financial statements as proof substantiating BIF's monthly purchases of between \$50,000,000.00 - \$75,000,000.00 of settlements a month.

134. BIF's problem was that the current pace of funding was unsustainable as RRA's seemingly insatiable capital demands exhausted Banyon's financial wherewithal. As a result, BIF was in danger of creating rolling monthly shortfalls which would inevitably crater BIF's exclusivity deal.

135. Bekkedam believed that with Discala's help in promoting BIF the monthly deficit could be bridged and, to bolster his confidence, brought Levin and Preve into the discussion to augment this point.

136. In essence, Discala was being positioned as a "white knight" capable of riding in to save BIF and make a lot of money for himself and his investors along the way.

137. When, in approximately August or September, 2009, the conversations turned to solidifying his involvement, Discala balked at the opportunity to work directly for Ballamor, deeming the proposed remuneration inadequate.

138. The conversation quickly transitioned to the idea of Discala taking over fund raising responsibilities from BIF by creating his own investment fund which would absorb BIF and provide Discala the opportunity to raise capital under more financially lucrative terms. In principal, this idea would not only benefit Discala, but would also permit Levin to significantly reduce (if not eliminate) his personal investment, allow him to eliminate his personal guaranty, and ensure that he could step away from the day-to-day stresses and responsibilities of raising capital.

139. These discussions led Discala to incorporate Clockwork Capital Advisors, LLC (“hereinafter, Clockwork”), with an eye towards planning for the creation of a Clockwork fund.

140. On September 8, 2009, Discala and Levin memorialized their understandings by executing a Letter of Intent (hereinafter, “LOI”) prepared by Ballamor’s General Counsel Lawrence Rovin, Esq., outlining “the proposed terms and conditions for a new facility to provide funding for the business currently being conducted” by BIF and its affiliates.

141. Specifically, the LOI details the mechanics for rolling BIF into the to-be-formed Clockwork fund,¹⁸ describes the transition of primary money raising responsibility to Clockwork, and offers insight into Levin’s expedited financial exit.¹⁹

¹⁸ At closing, Clockwork will “take responsibility of the administration of the purchase, funding and collection of Settlements on behalf of Newco . . . [and] will also assume administration of the collection of pre-existing BIF Settlements.”

¹⁹ Following the closing, Clockwork agrees to “fund by way of loans . . . at least 50%, but at Levin’s option up to 90% of the Settlement Price of Approved Settlements, with Newco funding the balance” on the first \$500,000,000.00 raised by Clockwork and, thereafter, to “fund 90% of the Settlement Price for Approved Settlements by way of loans . . . subject to the right of Newco to fund more than 10% of the Settlement Price using funds provided solely by Levin.”

142. The LOI also sets forth two noteworthy provisions, namely: (1) the creation of a new Levin-owned entity to serve as the “gatekeeper” for all settlements, allowing Levin to maintain control of all of the Principal Conspirators’ deals²⁰; and (2) a requirement that Levin provide the start-up funding and requisite legal fees necessary to launch the Clockwork fund.²¹ These two provisions were put in place to ensure that Levin and Preve continue to “control” the settlement distribution process and effectively insulate the Principal Conspirators from direct investor involvement.

143. On September 16, 2009, pursuant to the terms of the LOI, Levin wired Discala \$125,000.00 to help get Clockwork off its feet and to hire the Clifford Chance, LLP law firm needed to prepare Clockwork’s private placement memorandum.

144. Notwithstanding, settlement purchase opportunities came along during the time that Clockwork was still in formation and not yet fully operational. The Principal Conspirator’s insatiable demand for fresh Ponzi capital lured Discala to begin raising capital for both the Razorback and D3 deals, discussed in detail in Section VII, A.3-4 below. In so doing, Discala shared the information he obtained in being recruited to help form Clockwork with the investors who eventually funded both Razorback and D3 deals. For Douglas Von Allmen, a major investor in both Razorback and D3, this information further buttressed the representations previously made to

²⁰ That any purchase of the Principal Conspirators’ confidential settlements “will be conducted exclusively” through “[a] new special purpose entity domiciled in the U.S. Virgin Islands [which] will be created, owned and controlled by Levin”.

²¹ Finally, “[t]o cover the costs and expenses of creating and documenting Clockwork fund and other costs incidental to concluding the transactions contemplated herein, Clockwork shall receive a \$750,000 commitment fee payable as follows: (1) \$125,000 upon execution of this letter of intent; (2) \$250,000 upon funding the first \$100 million in Loans; (3) \$250,000 upon funding the next \$100 million in Loans; and (4) \$125,000 upon funding the next \$100 million in Loans.”

him by Bekkedam and by and though Banyon's confidential offering memorandum and incorporated audited financials.

3. *Razorback Funding, LLC*

145. Razorback was formed September 24, 2009, for purposes of investing in two RRA settlements: (1) a \$40,600,000.00 structured settlement, payable in four equal monthly installments, offered in exchange for a lump sum payment of \$23,200,000.00; and (2) a \$26,100,000.00 structured settlement, payable in three equal monthly installments, offered in exchange for a lump sum payment of \$17,400,000.00.

146. In particular, the deal was structured so Razorback would fund \$32,000,000.00 towards the purchase of these settlements by means of a loan to Banyon USVI, LLC. Banyon USVI in turn would contribute \$8,600,000.00 to purchase the settlement proceeds from the Principal Conspirators.

147. On October 1, 2009, Szafranski, who, in addition to acting as the independent verifier for Banyon, was utilized as the independent reviewer for Razorback, met with Rothstein to review and verify all of the documents supporting the Razorback deal. In that meeting, Szafranski purportedly witnessed Rothstein sign on to the TD Bank on-line banking website and verified that all of the wire transfers for the underlying Razorback settlement deals had been received by RRA and were held in RRA's escrow account ending in x-1356.

148. Szafranski also verified that a “lock letter” signed by Spinosa,²² in his capacity as Regional Vice President of TD Bank and dated October 1, 2009, had been received. That letter stated:

Pursuant to your written instructions to us of September 30, 2009, please be advised that all funds contained in the above referenced account shall only be distributed upon your or Stuart Rosenfeldt’s instruction and shall only be distributed to Banyon USVI (Del), LLV, c/o Razorback Funding, LLC, Debt & Equity Re-Payment Account: TD Bank, NA, 319 Glen Head Road, Old Brookville, NY, ABA: 026013673, Account # 4244986191. Your letter is understood not to convey ownership of the account or access to the account to any other party, but rather is meant to irrevocably restrict conveyances as follows: conveyances shall only be made from the account referenced above to the Banyon USVI account.

See October 1, 2009 letter which is attached hereto and incorporated herein as **Exhibit “C.”**

149. The “above referenced account” mentioned in Razorback’s lock letter had the account number: 4245221356.

150. Spinosa e-mailed the “lock letter” to Rothstein earlier that day with a message stating that at Rothstein’s “request and instructions, this account [RRA’s trust account] has been irrevocably locked as to destination of all disbursements [which was Razorback’s account, also at TD Bank]. The letter confirming same is attached. Please do not deposit any funds into this account that are not soley (sic) to be directed to the entity set forth in the irrevocable instruction.”

151. On October 1, 2009, Razorback received copies of two TD Bank wire transfer statements from Preve, a Banyon USVI representative, demonstrating that a total of \$66,700,000.00

²² Additionally, as part of its due diligence, Razorback, on or about September 18, 2009, obtained a copy of another TD Bank “lock letter” that was signed by Spinosa in a prior deal. The lock letter indicates that TD Bank had been irrevocably instructed to pay the fund identified in a particular RRA trust account only to the investor’s bank account.

(the full settlement funding being purchased) had been received by RRA in its escrow account at TD Bank, account number 4245221356 which is the same account reference in the aforementioned TD Bank irrevocable lock letter. A copy of the October 1, 2009, TD Bank wire transfer statement is attached hereto and incorporated herein as **Composite Exhibit "D."**

152. On the same day, Preve forwarded Razorback an email from Rothstein providing: (1) confirmation of Preve's purported \$8,000,000.00 wire into RRA's trust account; and (2) that no disbursement on the deal would be made until he received the \$32,000,000.00 from Razorback.

153. On October 3, 2009, Razorback received confirmation from Spinosa's assistant that she prepared the lock letter and witnessed Spinosa signing it.

154. On October 7, 2009, Razorback received an e-mail from Preve which contained an on-line screen shot of an RRA trust account at TD Bank indicating a balance of \$66,700,000.00 in the account ending in number x-1356. A copy of the TD Bank account screen shot is attached hereto as **Exhibit "E."**

155. On October 22, 2009, Szafranski met again with Rothstein and verified that all of the putative plaintiffs in the Razorback deals received their disbursements by reviewing TD Bank's on-line banking website.

156. In late September 2009, Clifford Chance LLP a large national law firm retained by Clockwork, meet with Rothstein for two days to perform due diligence on the Razorback deal. During the course of the in-depth interview and discussion, lawyers for Clifford Chance achieved a greater understanding of settlement deal flow and verification process and eventually recommended and endorsed investor funding into Razorback.

157. In reliance on the foregoing, Razorback transferred the sum of \$32,000,000.00 to RRA's trust account.

158. As it turns out, account number 4245221356 never contained the funds represented in the wire transfer statements or on the online screenshot of that account at TD Bank.

4. D3 Capital Club, LLC

159. The Principal Conspirator's frenzied demand for the required capital necessary to keep the Ponzi going coupled with the identification of an exuberant new funding source provided the conspirators a perfect opportunity to secure funding. Accordingly, the Principal Conspirator's concocted a new settlement "opportunity" premised upon the Jeffrey Epstein case referenced *supra*.

160. D3 was formed October 4, 2009, for purposes of investing in a \$30,000,000.00 RRA structured settlement, payable in six equal monthly installments of \$5,000,000.00, offered in exchange for \$18,000,000.00.

161. A D3 representative, who was also a representative of Razorback's management team, along with Douglas and David Von Allmen as investors, had knowledge of and relied upon the contacts and representations made by TD Bank in connection with the Razorback transaction.

162. On or about October 15, 2009, as part of its due diligence, D3 obtained a copy of a TD Bank "lock letter" signed by Spinosa stating the following:

Pursuant to your written instructions to us of October 14, 2009, please be advised that all funds contained in the above referenced account shall only be distributed upon your or Stuart Rosenfeldt's instruction and shall only be distributed to D3 Capital Club, LLC, 2833 NE 35th Court, Fort Lauderdale, FL, 33308, TD Bank NA, Account # 4245728568.

Your letter is understood not to convey ownership of the account or access to the account to any other party, but rather is meant to irrevocably restrict conveyances as follows: conveyances shall only

be made from the account referenced above to the TD bank account # 4245728568 belonging to D3 Capital Club, LLC.

See October 15, 2009, lock letter attached hereto and incorporated herein as **Exhibit “F.”**

163. The “above referenced account” mentioned in the lock letter had the account number: 4246051629.

164. On October 15, 2009, Spinosa signed another letter enclosing a copy of RRA’s trust account bank statement for account number 4246051629. The account statement that Spinosa enclosed showed a balance in excess of \$30,000,000.00 as of October 14, 2009.

165. Furthermore, on October 15, 2009, Kerstetter drafted a letter to RRA enclosing a copy of RRA’s trust account bank statement for the D3 settlement showing a balance in excess of \$30,000,000.00 in account number 4246051629 as of October 14, 2009.²³ This letter was personally delivered by Kerstetter to Rothstein and immediately handed to the D3 representative in everyone’s presence while inside the TD Bank Fort Lauderdale branch. Later that day, Kerstetter met again with that same D3 representative in order to sign the paperwork to open a D3 account at TD Bank.

166. On October 16, 2009, and again on October 19, 2009, a D3 representative sent e-mails to Spinosa and Kerstetter advising that D3 had opened its account for purposes of doing business with RRA and asked about the mechanics of the irrevocable lock letter that D3 had obtained regarding account number 4246051629.

²³ The TD Bank statement balance was for \$64,000,000.00 which purportedly represented the putative defendant’s settlement funding for two putative plaintiff both of which were to be purchased by D3 in two transactions: D3 (\$30,000,000.00) and D3-1 (\$34,000,000.00).

167. Spinosa responded to the October 19, 2009 e-mail with a phone call to the D3 representative and while Spinosa acknowledged signing the lock letter he refused to provide any other details about the general procedures for how the irrevocable lock letter works.

168. On October 19, 2009, Szafranski, as the hired agent independent verifier for D3, met with Rothstein and confirmed that the sum of \$30,000,000.00 was wired from the putative defendant into the locked RRA escrow account ending 4246051629. A copy of the October 19, 2009 email is attached hereto and incorporated herein as **Exhibit "G."**

169. Additionally, in early October 2009, Morgan, Lewis & Bockius LLP a large national law firm retained by Clockwork, met with Rothstein at RRA to perform due diligence on the D3 deal. During the course of the in-depth interview and discussion, Morgan, Lewis & Bockius LLP achieved a greater understanding of settlement deal flow and verification process which allowed them to approve investor funding for the D3 deal.

170. In reliance on the foregoing, D3 transferred the sum of \$13,500,000.00 to RRA's trust account.

171. As it turns out, RRA's escrow account number 4246051629 never contained the funds represented in the account statements provided by Spinosa and Kerstetter.

5. Cooper Management

172. Cooper Management, by and through its owner and operator Hilary Musser (hereinafter, "Musser"), was introduced to BIF by Musser's financial advisor, Bekkedam.

173. Bekkedam, in an effort to persuade Cooper Management's investment, repeatedly assured Musser that the BIF opportunity represented the highest return with lowest possible risk of any venture that he had ever handled. As Bekkedam explained, the money being purchased at

a lump sum discount was already pre-funded by the putative defendant prior to investing and held in a protected escrow account by the putative plaintiff's attorney and, thus, was almost essentially free of risk. Further, Musser was told that the escrow account had a dual signature requirement for any withdrawals, one of which was always a Banyon representative.

174. Bekkedam further represented to Musser that all pre-funded monies were held in trust/escrow accounts at TD Bank. Bekkedam assured Musser that he had access to these trust/escrow accounts allowing him to monitor transactions on a daily basis and verify that the amounts claimed were actually held in trust in those accounts. In making such representations, and to further induce Musser, Bekkedam promised that he would pay Musser back if the investment with Banyon failed.

175. On or about July 29, 2009, in an effort to bolster his oral representations, Bekkedam provided Musser with BIF's Confidential Offering Memorandum and incorporated Berenfeld audited financials.

176. The representations in the Confidential Offering Memorandum, consistent with the representations made to the other BIF investors referenced *supra*, offered her a limited partnership opportunity with a guaranteed rate of return of 15%.

177. As a final inducement into the Ponzi, Bekkedam promised Musser that her entire investment would be personally guaranteed by Levin whom Bekkedam represented as an extremely wealthy individual worth more than four hundred million dollars (\$400,000,000.00) and who had invested substantial amounts of his own money into the purchase of these confidential settlements. Bekkedam assured Musser that Levin was "guaranteeing the investment dollar for dollar—cash in the bank."

178. Based on the representations of Bekkedam, the Confidential Offering Memorandum, and Levin's executed personal guaranty, Cooper Management wired \$900,000.00 into BIF on August 4, 2009. After Cooper Management's initial wire transfer, Bekkedam attempted to convince Musser to invest additional funds into BIF and persuaded her to convince her wealthy friends to do the same.

6. *Paley Family Investors*

179. Edward Paley, Florence Paley, the Edward and Florence Paley Foundation, Steven Paley, Laura Paley, Jane Zaretsky, and the Jane Zaretsky Dynasty Trust (collectively referred to herein as the "Paley Family Investors"), first learned of BIF by and through their financial advisor Bekkedam.

180. For more than eight years, Bekkedam served as the Paley Family Investors financial advisor. Over the course of that representation, the family routinely emphasized their investment goals of capital preservation and modest growth. The Paley Family Investors' approach to investing never wavered over that period as the family implicitly trusted Bekkedam to only recommend opportunities consistent with this strategy. Bekkedam reiterated that he understood the Paley Family Investors' needs and that they "should be flying at 35,000 feet" as he "was the guy that should be worrying in the trenches."

181. On or about May of 2009, Bekkedam approached the Paley Family to discuss investment into BIF. Bekkedam began by telling the story of how this billionaire investor (Levin) founded BIF after securing the exclusive opportunity with a law firm (RRA) to purchase the rights to structured settlement proceeds at lump sum discounted rates.

182. Bekkedam continued by emphasizing the safety of the BIF investment explaining that all settlements were pre-funded prior to investment and held in the law firm's trust/escrow account. With these protections in place, Bekkedam proclaimed that almost all risk of investment loss was eliminated. Bekkedam went as far as to tout BIF as "absolutely safe and a no-brainer" assuring the family that this once-in-a-lifetime opportunity represents "the highest return with lowest risk" of any investment he had ever seen.

183. Furthermore, Bekkedam represented to the Paley Family Investors: (1) that BIF was paying 15% interest through 2010 and 12% interest thereafter; (2) that the trust/escrow account holding the pre-funded settlement proceeds had a dual signature requirement for any withdrawals, one of which was always a BIF representative; (3) that Bekkedam and Ballamor thoroughly vetted the entire investment process; (4) that BIF's profitable financial track record was supported by audited financials and that a "Big Four" auditing firm would verify financials quarterly; (5) that Ballamor had continuous access to the trust account balances, and would oversee the third-party verifier to authenticate that the settlement proceeds were completely funded and locked in a designated trust/escrow account; and (6) that Levin would personally guaranty each limited partner's entire investment.²⁴

184. Bekkedam repeatedly assured the Paley Family Investors that he always had their best interest at heart and guaranteed that he would never put them in jeopardy because he considered them family. Moreover, Bekkedam in a final effort to induce the Paley Family Investors investment proclaimed that all Banyon investors were insured by a crime-fraud policy

²⁴ Bekkedam represented that Levin was an extremely wealthy individual and had invested one hundred and twenty five million dollars (\$125,000,000.00) of his own money into the purchase of these settlements.

for which he unequivocally stated that the family would be “crazy” not to invest because their money would be “one-hundred percent secure.”

185. Shortly thereafter, to corroborate Bekkedam’s oral representations about the veracity and low risk nature of the investment, Bekkedam provided the Paley Family Investors with BIF’s Confidential Offering Memorandum and incorporated Banyon financials audited by Berenfeld discussed *infra*. Each Paley Family Investor received the aforementioned Confidential Offering Memorandum and related subscription documentation prior to funding.

186. The next time Bekkedam met with the Paley Family Investors in July of 2009, he again focused his pitch on BIF. Bekkedam advised that he had personally completed the substantial due diligence highlighted in the Confidential Offering Memorandum and unequivocally stressed that the BIF opportunity perfectly matched the Paley Family Investors investment strategy. During the ensuing discussion, Bekkedam pointed out that all settlement funds were held in a TD Bank trust/escrow account and that he had seen first-hand the firm’s large trust fund balances. Bekkedam stated that, “there’s a TD Bank on every corner, if it’s not safe at TD Bank where would it be safe, they have billions of dollars in assets.” Finally, Bekkedam closed with an emphatic plea that this was a “can’t miss” investment and that the Paley Family Investors simply could not afford to sit on the sidelines and pass up the opportunity to significantly enhance their investment portfolio.

187. In reliance in part on Bekkedam’s representations, the Confidential Offering Memorandum, and the purported due diligence and verification procedures in place, the Paley Family Investors invested the following funds into BIF:

- a. June 8, 2009 - \$100,000.00 from The Jane Zaretsky Dynasty Trust;

- b. August 26, 2009 - \$100,000.00 from The Edward & Florence Paley Foundation;
- c. August 27, 2009 - \$1,500,000.00 from Steven & Laura Paley;
- d. September 1, 2009 - \$500,000.00 from Edward Paley;
- e. September 1, 2009 - \$500,000.00 from Florence Paley;
- f. September 10, 2009 - \$50,000.00 from Jane Zaretsky; and
- g. October 29, 2009 - \$500,000.00 from Steven & Laura Paley

188. All told, the Paley Family Investor invested \$3,250,000.00 into Rothstein's Ponzi scheme.

B. Plaintiffs Induced by Other "Feeders"

189. The Ponzi scheme did not survive on only one "feeder fund." Similar to Banyon and Bekkedam, co-conspirators Michael Szafranski and Richard Pearson, by and through their respective feeder entities, brought new money and new victims to Rothstein's doorstep. The following Plaintiffs became ensnared in Rothstein's Ponzi scheme by the misrepresentations of such feeder funds.

1. The Mussry Plaintiffs (Induced by Szafranski)

190. Adele Mussry and Szafranski became close friends while working together in New York several years ago.

191. On or about February 2009, Adele Mussry learned of the confidential settlement deals from Szafranski. Szafranski explained that the settlements being purchased involved pre-suit, sexual harassment claims brought by female employees who wanted to quickly leave town and could not wait for months of scheduled payments. Szafranski assured Adele Mussry that

many of the cases he verified first-hand and that the opportunity was too good to pass up. This, according to Szafranski, was where the investors came in. Investors would front the money and, in return, receive their principal and interest in monthly installments.

192. Szafranski told Adele and Jack Mussry that all the cases were legitimate and that he had been involved with Rothstein for a long time. He represented that he personally accompanied Rothstein to TD Bank to verify that the putative defendants' money was in RRA's escrow account and that he was able to confirm same either through logging on to TD Bank's website or through TD Bank tellers. Szafranski explained that they would not be asked to wire any money unless and until the putative defendants' money from the settlements was wired into the RRA escrow account.

193. In response to Adele Mussry's concerns over certain risks, Szafranski repeatedly told her that the investments were 100% safe and that if something was not right he would know about it. The primary reason the Mussrys decided to invest the majority of their life savings was because of Adele Mussry's trust in Szafranski.

194. Based upon Szafranski's representations, Jack and Adele Mussry invested in several settlements through ABS on the following dates:

- a. February 23, 2009: \$100,000.00
- b. April 6, 2009: \$50,000.00
- c. May 7, 2009: \$75,000.00
- d. June 12, 2009: \$150,000.00
- e. July 9, 2009: \$125,000.00
- f. August 11, 2009: \$165,000.00

- g. September 8, 2009: \$200,000.00
- h. September 10, 2009: \$50,000.00
- i. October 7, 2009: \$110,000.00
- j. October 14, 2009: \$125,000.00

195. Jack and Adele Mussry invested a total of \$1,150,000.00 into the Ponzi through Szafranski and ABS.

196. Predictably, after the misguided appearance of early returns on investment, the Mussrys told close family members about their success with Szafranski. These individuals include Nassim Mussry (Jack's father), Melina El-Ani (Adele's mother), and Danielle El-Ani (Adele's sister).

197. After learning all of the details from Jack and Adele Mussry, Nassim Mussry invested \$100,000.00 with Szafranski and ABS on September 8, 2009.

198. After learning all of the details from Jack and Adele Mussry, Melina El-Ani invested \$60,000.00 with Szafranski and ABS on August 10, 2009, \$40,000.00 on September 9, 2009, and \$45,900.00 on October 13, 2009.

199. After learning all of the details from Jack and Adele Mussry, Danielle El-Ani invested \$35,000.00 with Szafranski and ABS on October 6, 2010.

200. For ease of reference, Jack Mussry, Adele Mussry, Nasim Mussry, Melina El-Ani, and Danielle El-Ani are hereinafter collectively referred to as the Mussry Family Investors.

201. All told, the Mussry Family Investors invested \$1,430,900.00 as a result of Adele Mussry's "close friend", Michael Szafranski's material misrepresentations and omissions.

**2. *H&N Associates, Artez Associates, Park Capital, Park Mortgage
(Induced by Szafranski)***

202. Harvey Wolinetz (hereinafter, “Wolinetz”), owner and officer of H&N Associates, Artez Associates, Park Capital, and Park Mortgage (collectively “the Wolinetz entities”) first learned of the opportunity to purchase confidential settlements through Szafranski and ABS. Wolinetz was acquainted with Szafranski by virtue of being neighbors as well as members of the same religious congregation and, on or about early 2009 informally discussed what Szafranski was doing with Rothstein at RRA.

203. On or about April or May 2009, Wolinetz was contacted by Natalie Turetsky, an agent of ABS, who informed Wolinetz about the specific investment opportunity regarding the purchase and assignment of confidential settlement proceeds. Turetsky explained in great detail how Szafranski was working closely with Rothstein and, as the verifier, was the only other person with direct access to look behind the confidentiality veil to verify that: (1) each of the putative plaintiffs and defendants were real; (2) TD Bank held the putative defendants’ pre-funded settlement money in an RRA escrow account; and (3) to confirm the veracity of all settlement and assignment documentation.

204. On or about May of 2009, Wolinetz spoke with Szafranski who described the investment opportunity in similar detail. Ultimately, Szafranski gave Wolinetz multiple assurances that the confidential settlements being purchased were all real, that the investments had negligible risk, and that the opportunity was just too good to pass up.

205. Both Szafranski and Turetsky provided the Wolinetz entities with various documents and spreadsheets to entice Wolinetz’s investment into the Ponzi scheme. Szafranski agreed to prepare a Preferred Equity Agreement for each deal Wolinetz decided to invest in,

spelling out the specific terms and providing explicit assurances that Szafranski would act as the verifier for each of the confidential settlements being purchased, as had been represented.

206. Based upon Szafranski, Turetsky, and ABS's representations, Wolinetz made the following wire transfers to ABS through the Wolinetz entities:

- a. June 30, 2009 \$50,000.00 through Park Capital
- b. July 30, 2009 \$150,000.00 through Park Capital
- c. September 4, 2009 \$100,000.00 through H&N
- d. October 1, 2009 \$250,000.00 through Park Mortgage
- e. October 20, 2009 \$200,000.00 through Aretz

207. Wolinetz invested, through the various Wolinetz entities, a total of \$750,000.00 into Rothstein's Ponzi scheme based upon the misrepresentations of Szafranski, Turetsky, and ABS.

3. Scott Morgan (Induced by Szafranski)

208. On or about June 2009, Morgan first learned of the RRA settlements from an investor and mutual acquaintance of Szafranski.

209. Shortly thereafter, Szafranski's business partner and ABS agent, Matthew Turetsky, contacted Morgan. Matthew Turetsky informed Morgan that Szafranski was involved with the purchase and assignment of settlement proceeds acting as an independent verifier. In that role, Morgan was told that Szafranski went to the RRA offices to ensure that the putative plaintiff and putative defendant signed the settlement agreement, that the putative defendant's money was transferred to a trust/escrow account at TD Bank, and that once an assignment of settlement proceeds was executed, the money in RRA's trust/escrow account representing the

full settlement proceed could only be distributed to the purchaser pursuant to the terms of the confidential settlement agreement schedule. Finally, over the course of a few discussions, Matthew Turetsky gave Morgan multiple assurances that the investment was extremely safe, had low risk and high reward, and that Szafranski verified that the parties, the settlements, and the pre-funded monies were all real.

210. Based upon these ABS representations, in June 2009, Morgan invested \$100,000.00 in to the Ponzi scheme.

211. On or about August 2009, Morgan began speaking directly with Szafranski by telephone. Morgan requested that Szafranski show him prior deals that Szafranski had done. Citing confidentiality, Szafranski told Morgan that he could only show him the documents if Morgan came to see them in Florida. Szafranski did, however, tell Morgan that the settlements were related to government whistleblower cases, and that the returns were only so good because of the strict confidentiality requirement.

212. In these telephone conversations, Szafranski continuously repeated that he was an independent verifier of these deals, which involved going to the law offices of RRA to make certain that the appropriate documents were properly signed, and confirming that the funds were transferred to RRA's TD Bank escrow account which could only be distributed to the purchasing investor(s).

213. Based upon Szafranski's representations, Morgan invested, through ABS, in several settlements:

- a. July 24, 2009 \$100,000.00
- b. August 21, 2009 \$250,000.00

c. September 21, 2009 \$8,791.67

214. Morgan invested a total of \$358,791.67 into Rothstein's Ponzi scheme based upon the misrepresentations of Szafranski, Turetsky, and ABS.

4. Viceroy Global Investments, Inc. (Induced by Pearson)

215. Viceroy, by and through its principal Howard Solomon (hereinafter, "Solomon"), was introduced to the concept of purchasing confidential settlements *via* a conference call during the first week of August 2009. Solomon participated in the teleconference along with Rothstein, Boden, Pearson, Ali Raza, Nabil Rhazi (an employee of Pearson's), and others to preview the deal structure and discuss investment opportunities in purchasing these settlements.

216. At some point during the conference call, Ali Raza confirmed to Solomon that she had worked with some of the purported defendants and plaintiffs. Based on certain affirmations and material representations made by Rothstein, Boden, and Pearson, Solomon decided to fly to Ft. Lauderdale to personally meet with Rothstein at the end of August 2009.

217. However, prior to that meeting, Solomon first got together with Pearson who carefully went over the entire deal flow and document exchange. Pearson repeatedly mentioned that he had invested approximately \$11,000,000.00 of his own money with Rothstein and that he had the right of first refusal to purchase any of the cases within the RRA settlement pipeline. Pearson provided specific assurances about the veracity of prior investment returns and legitimacy of the opportunity, even claiming that Big Four accounting firm PricewaterhouseCoopers spent up to three months auditing the entire settlement structure.

218. As the discussion was concluding and prior to meeting with Rothstein, Pearson informed Solomon that because previous potential investors turned out to be just window

shopping and wasted valuable resources, the Principal Conspirators now required any potential investor to wire earnest money into escrow before Rothstein would agree to meet in person. Solomon questioned this unusual requirement and asked for a written guaranty stating that he could get all of his money back if he decided against investing. Pearson responded that he would check with someone at RRA to address those concerns. A short time later, Pearson returned with Boden who handed Solomon a letter from RRA spelling out the relevant terms of the guaranty. Boden reiterated that if Solomon chose not to proceed with the transaction he would get 100% of his money back. Furthermore, Boden told Solomon that his money would be held in an RRA escrow account which, even if he decided to invest, could not be disturbed unless and until the full settlement proceeds were first received from the putative defendant. Solomon requested a few changes which Boden immediately incorporated and, based upon same Viceroy wired a total of \$1,980,000.00 to Pearson.

219. Solomon, accompanied by Ali Raza, Pearson, Boden, and others, then proceeded to Rothstein's office. Rothstein, Boden, and Pearson discussed deal specifics and outlined the settlement purchase and assignment process, tracking almost verbatim the representations made in the Confidential Offering Memorandum previously provided to Solomon by Pearson and Boden.

220. On September 2, 2009, Boden sent an e-mail to Pearson, which was subsequently passed on to Solomon by either Pearson or one of his employees. Attached to the e-mail were multiple documents related to a purported settlement to which RRA assigned the internal confidential case number RRA-P20. The attachments included:

- a. A letter dated September 2, 2009, from Rothstein certifying that RRA was in receipt of, and was holding in trust, \$900,000.00, representing the full liquidated settlement proceeds in case number P20;
- b. A letter dated September 2, 2009, from Rothstein guaranteeing to Viceroy three monthly payments of \$300,000.00 in connection with Viceroy's purchase of rights under the P20 Settlement Agreement;
- c. A redacted document that was purportedly a contract of employment between RRA and the plaintiff in the P20 case;
- d. A redacted document that was purportedly the Confidential Settlement Agreement between the plaintiff and defendant in the P20 case;
- e. An Acknowledgement of Assignment/Purchase of Settlement Proceeds in case number RRA-P20 naming Viceroy as the exclusive Transferee of the proceeds of the purported settlement and directing TD Bank that said proceeds are only to be released to Viceroy; and
- f. A Sale and Transfer Agreement for case number RRA-P20 dated September 2, 2009.

221. On September 2, 2009, Boden sent another e-mail to Pearson, which was subsequently passed on to Solomon by either Pearson or one of his employees. Attached to the e-mail were multiple documents related to a purported settlement to which RRA assigned the internal confidential case number RRA-P21. The attachments included:

- a. A letter dated September 2, 2009, from Rothstein certifying that RRA was in receipt of, and was holding in trust, \$900,000.00, representing the full liquidated settlement proceeds in case number P21;
- b. A letter dated September 2, 2009, from Rothstein guaranteeing to Viceroy three monthly payments of \$300,000.00 in connection with Viceroy's purchase of rights under the P21 Settlement Agreement;
- c. A redacted document that was purportedly a contract of employment between RRA and the plaintiff in the P21 case;
- d. A redacted document that was purportedly the Confidential Settlement Agreement between the plaintiff and defendant in the P21 case;
- e. An Acknowledgement of Assignment/Purchase of Settlement Proceeds in case number RRA-P21 naming Viceroy as the exclusive Transferee of the proceeds of the purported settlement and directing TD Bank that said proceeds are only to be released to Viceroy; and
- f. A Sale and Transfer Agreement for case number RRA-P21 dated September 2, 2009.

222. On September 2, 2009, Boden sent yet another e-mail to Pearson, which was subsequently passed on to Solomon by either Pearson or one of his employees. Attached to the e-mail were multiple documents related to a purported settlement to which RRA assigned the internal confidential case number RRA-P22. The attachments included:

- a. A letter dated September 2, 2009, from Rothstein certifying that RRA was in receipt of, and was holding in trust, \$900,000.00, representing the full liquidated settlement proceeds in case number P22;
- b. A letter dated September 2, 2009, from Rothstein guaranteeing to Viceroy three monthly payments of \$300,000.00 in connection with Viceroy's purchase of rights under the P22 Settlement Agreement;
- c. A redacted document that was purportedly the Confidential Settlement Agreement between the plaintiff and defendant in the P22 case;
- d. An Acknowledgement of Assignment/Purchase of Settlement Proceeds in case number RRA-P22 naming Viceroy as the exclusive Transferee of the proceeds of the purported settlement and directing TD Bank that said proceeds are only to be released to Viceroy; and
- e. A Sale and Transfer Agreement for case number RRA-P22 dated September 2, 2009.

223. Based upon the foregoing, Viceroy decided to invest in the investments identified as P20, P21, and P22, rather than seeking the return of the \$1,980,000.00 previously wired.

224. On October 6 and 7, 2009, Viceroy wired an additional \$1,320,000.00 into RRA trust accounts in order to invest in deals P30 and P31.

225. On October 14, 2009, Boden sent an e-mail to Solomon attaching multiple documents related to a purported settlement to which RRA assigned the internal confidential case number RRA-P30. The attachments included:

- a. A letter dated October 6, 2009, from Rothstein certifying that RRA was in receipt of, and was holding in trust, \$900,000.00, representing the full liquidated settlement proceeds in case number P30;
- b. A letter dated October 6, 2009, from Rothstein guaranteeing to Viceroy three monthly payments of \$300,000.00 in connection with Viceroy's purchase of rights under the P30 Settlement Agreement;
- c. A redacted document that was purportedly a contract of employment between RRA and the plaintiff in the P30 case;
- d. A redacted document that was purportedly the Confidential Settlement Agreement between the plaintiff and defendant in the P30 case;
- e. An Acknowledgement of Assignment/Purchase of Settlement Proceeds in case number RRA-P30 naming Viceroy as the exclusive Transferee of the proceeds of the purported settlement and directing TD Bank that said proceeds are only to be released to Viceroy; and
- f. A Sale and Transfer Agreement for case number RRA-P30 dated October 6, 2009.

226. The Ponzi scheme cratered before Viceroy received any documents relating to deal P31.

227. Viceroy invested a total of \$3,300,000 into the Ponzi scheme based upon the misrepresentations stated above.

5. *Concorde Capital, Inc. (Induced by Pearson)*

228. On or about August 22, 2009, Thomas D’Azevedo (hereinafter, “D’Azevedo”), on behalf and as the principal of Concorde, briefly discussed the confidential settlement investment opportunity with Bradley Singer while the two attended a Bar Mitzvah. Singer suggested that D’Azevedo contact him the next day to continue their discussion of the particulars of the deal structure.

229. On August 23, 2009, D’Azevedo telephoned Singer, who talked in great detail how he was first approached by Pearson about the purchase and assignment of RRA settlements. Singer stated that Pearson wanted him to be a commissioned representative and to solicit potential investors to purchase settlement deals. Pearson spent a lot of time explaining the nature and operation of the purchase and assignment of legal settlements knowing that Singer would rely on the very same information when pitching investors, like Concorde. Pearson stressed to Singer, who in turn passed this information on to D’Azevedo, the low risk high return potential of these investments.

230. Singer went on to explain that RRA was handling a large amount of settlements from around the country in which confidentiality was of utmost importance to the putative defendants. Singer elaborated that as a result the defendants’ payments were not immediately released in their entirety to the putative plaintiffs, but were instead held in RRA escrow accounts to be paid over time, and were subject to clawback if any of the putative plaintiffs breached the confidentiality of the agreements. Singer further described that many of the putative plaintiffs, for fear of never receiving the money at all, were willing to take less in exchange for receiving a lump sum payment upfront.

231. On August 24, 2009, Singer sent D'Azevedo an e-mail further clarifying the structure of the investment. The e-mail included a copy of a flowchart prepared by Pearson illustrating the mechanics of the settlements and payment to RRA and the investor. Also included was an explanation that the deal was being brokered by Pearson, as well as a detailed description of Pearson and Singer equally sharing a 5% commission from any investment made by Concorde.

232. On or about August 28, 2009, D'Azevedo attended a meeting at the RRA offices in order to close on a deal and purchase an interest in purported settlement case number RRA-P17. Nabil Rhazi, an employee of Pearson, met D'Azevedo outside of the RRA offices and accompanied him during the entire closing. Prior to walking into the RRA conference room, Rhazi confirmed Pearson's multimillion dollar personal investment into these deals, and that RL Pearson & Associates had an ownership stake and was helping to build a local Ritz Carlton. Once in the conference, both Rhazi and Boden again extolled the virtues of the deal. Rhazi assured D'Azevedo of the veracity of the underlying cases and asserted that Pearson had been having success with these investments for years. After Boden and Rhazi's final pitch, but prior to funding the purported settlement, Boden provided D'Azevedo with the following documents:

- a. A letter dated August 26, 2009, from Rothstein certifying that RRA was in receipt of, and was holding in trust, \$900,000.00, representing the full liquidated settlement proceeds in case number P17;
- b. A letter dated August 26, 2009, from Rothstein guaranteeing to Concorde three monthly payments of \$300,000.00 in connection with Concorde's purchase of rights under the P17 Settlement Agreement;

- c. A redacted document that was purportedly a contract of employment between RRA and the plaintiff in the P17 case;
- d. A redacted document that was purportedly the Confidential Settlement Agreement between the plaintiff and defendant in the P17 case;
- e. An Acknowledgement of Assignment/Purchase of Settlement Proceeds in case number RRA-P17 naming Concorde as the exclusive Transferee of the proceeds of the purported settlement and directing Commerce Bank that said proceeds are only to be released to Concorde; and
- f. A Sale and Transfer Agreement for case number RRA-P17 dated August 26, 2009.

233. Boden handled the entire closing transaction. Prior to execution of the assignment and completion of the wire transfer, Boden said he witnessed, and his assistant said she notarized, the putative plaintiff's and Rothstein's signatures on the Sale and Transfer Agreement that morning. This same assistant acted as the notary public for Concorde's signature on the same Sale and Transfer Agreement.

234. In reliance upon the foregoing, Concorde, acting through D'Azevedo, invested \$660,000.00 into the P17 deal.

235. On or about August 29, 2009, D'Azevedo attended a meeting at the offices of RRA in order to close on a deal to fund the purported settlement to which RRA assigned the internal confidential case number RRA-P19. At that meeting and prior to funding the purported settlement, Boden provided D'Azevedo with the following documents:

- a. A letter dated August 28, 2009, from Rothstein certifying that RRA was in receipt of, and was holding in trust, \$900,000.00, representing the full liquidated settlement proceeds in case number P19;
- b. A letter dated August 28, 2009, from Rothstein guaranteeing to Concorde three monthly payments of \$300,000.00 in connection with Concorde's purchase of rights under the P19 Settlement Agreement;
- c. A redacted document that was purportedly a contract of employment between RRA and the plaintiff in the P19 case;
- d. A redacted document that was purportedly the Confidential Settlement Agreement between the plaintiff and defendant in the P19 case;
- e. An Acknowledgement of Assignment/Purchase of Settlement Proceeds in case number RRA-P19 naming Concorde as the exclusive Transferee of the proceeds of the purported settlement and directing Commerce Bank that said proceeds are only to be released to Concorde; and
- f. A Sale and Transfer Agreement for case number RRA-P19 dated August 26, 2009.

236. In reliance upon the foregoing, Concorde, acting through D'Azevedo, invested \$660,000.00 into the P19 deal.

237. On or about September 30, 2009, D'Azevedo attended a meeting at the offices of RRA in order to close on a deal to fund the purported settlement to which RRA assigned the internal confidential case number RRA-P27. At that meeting and prior to funding the purported settlement, Boden provided D'Azevedo with the following documents:

- a. A letter dated September 29, 2009, from Rothstein certifying that RRA was in receipt of, and was holding in trust, \$900,000.00, representing the full liquidated settlement proceeds in case number P27;
- b. A letter dated September 29, 2009, from Rothstein guaranteeing to Concorde three monthly payments of \$300,000.00 in connection with Concorde's purchase of rights under the P27 Settlement Agreement;
- c. A redacted document that was purportedly a contract of employment between RRA and the plaintiff in the P27 case;
- d. A redacted document that was purportedly the Confidential Settlement Agreement between the plaintiff and defendant in the P27 case;
- e. An Acknowledgement of Assignment/Purchase of Settlement Proceeds in case number RRA-P27 naming Concorde as the exclusive Transferee of the proceeds of the purported settlement and directing Commerce Bank that said proceeds are only to be released to Concorde; and
- f. Sale and Transfer Agreement for case number RRA-P27 dated September 29, 2009.

238. In reliance upon the foregoing, Concorde, acting through D'Azevedo, invested \$660,000.00 into the P27 deal.

239. Additionally, Concorde, acting through D'Azevedo, paid a total of \$33,000.00 in commissions to Pearson.

240. All told, Concorde's investments in the Ponzi and commission payments to Pearson totaled \$2,013,000.00.

6. *Ira Sochet Inter Vivos Revocable Trust and Investors Risk Advantage (Induced by Szafranski)*

241. Ira Sochet first became acquainted with Michael Szafranski in the latter half of 2001. Over the following eight years, Sochet developed a close bond with Szafranski and his family. Sochet attended the bris of two of Szafranski's children and attended a dinner in Szafranski's honor. In 2008, Sochet and his wife travelled to Israel with Szafranski and his wife. Ira Sochet reposed trust and confidence in Szafranski and a fiduciary relationship arose.

242. Over the years, Sochet began seeing "Mikey" as his protégé, mentoring Szafranski based on his many years of experience in the financial sector.

243. Sochet had total and absolute trust in Szafranski, giving Szafranski access to all of his client's accounts. Szafranski served as a financial advisor to Sochet's wife, children, and grandchildren. In fact, Sochet had so much faith in his relationship with Szafranski that he appointed Szafranski as Trustee of his Estate.

244. In June, 2008, Szafranski informed Sochet that he was working for a then unnamed hedge fund in New York (Platinum and Centurion) verifying transactions at an undisclosed attorney's office (RRA). Even after the stock market suffered a sharp drop later that year, Szafranski continuously bragged about how well the hedge funds were performing.

245. In February, 2009, Szafranski told Sochet that the hedge fund was cutting back, which presented a fantastic opportunity for both Sochet and his company, Investors Risk Advantage, LLC, to invest in a very safe investment in which the benefits were much better returns than the stock market, and that Szafranski was personally doing all of the necessary independent verification.

246. Despite his close relationship with Sochet, Szafranski relied on his usual pitch, explaining that the investments were based on funding pre-suit settlement agreements. As Szafranski explained, investors would front the money and, in return, investors would receive their principal and interest in regular monthly installments. Szafranski assured Sochet that he verified the settlements first hand.

247. Szafranski told Sochet that all the cases were legitimate and that he had been involved with Rothstein for a long time. He represented that he personally accompanied Rothstein to TD Bank to verify that the putative defendants' money was in RRA's escrow account and that he was able to confirm same either through logging on to TD Bank's website or through TD Bank tellers. Szafranski explained that Sochet would only be required to make his investment after the putative defendants' money from the settlements was wired into the RRA escrow account.

248. On February 24, 2009, Szafranski submitted to Sochet five of Rothstein's investments. Based upon Szafranski's and Rothstein's representations, Sochet began wiring funds from the Sochet Trust and from Investors Risk directly into an RRA Trust Account at TD Bank. Additionally, Sochet signed an agreement both for the Sochet Trust and on behalf of Investors Risk with Szafranski and Alexa Funding whereby Szafranski, through Alexa, would be paid a 5% finders fee and a 5% verification fee of all profits.

249. On March 27, 2009, Sochet received account balance statements for several RRA Trust Accounts at TD Bank. These statements showed a balance of over \$500,000,000.00 between five different RRA Trust Accounts as of March 20, 2009.

250. Ira Sochet for the Sochet Trust and on behalf of Investors Risk relied upon the representations of Szafranski, Alexa Funding, LLC, and Onyx Options Consultants Corporation. Ira Sochet for the Sochet Trust and on behalf of Investors Risk also relied upon the documents received from RRA, TD Bank, and others which were both material and integral to the furtherance of the Ponzi

251. Over the next several months, Szafranski continued presenting deals to Sochet. Based upon Szafranski's representations, Sochet made the following wire transfers through the Sochet Trust to RRA's TD Bank trust account:

a.	February 25, 2009	\$5,000,000.00
b.	March 17, 2009	\$2,000,000.00
c.	March 24, 2009	\$1,500,000.00
d.	April 27, 2009	\$2,750,000.00
e.	April 29, 2009	\$200,000.00
f.	May 8, 2009	\$300,000.00
g.	May 27, 2009	\$4,950,000.00
h.	June 9, 2009	\$900,000.00
i.	June 24, 2009	\$950,000.00
j.	June 29, 2009	\$4,700,000.00
k.	July 8, 2009	\$1,250,000.00
l.	July 16, 2009	\$1,800,000.00
m.	July 20, 2009	\$3,600,000.00
n.	July 24, 2009	\$3,600,000.00

o.	July 28, 2009	\$6,000,000.00
p.	July 29, 2009	\$9,000,000.00
q.	August 7, 2009	\$2,400,000.00
r.	August 10, 2009	\$8,800,000.00
s.	September 3, 2009	\$7,000,000.00
t.	September 5, 2009	\$19,000,000.00
u.	September 16, 2009	\$10,000,000.00
v.	September 18, 2009	\$2,500,000.00
w.	September 24, 2009	\$5,000,000.00
x.	September 25, 2009	\$4,000,000.00
y.	October 8, 2009	\$8,100,000.00
z.	October 16, 2009	\$16,000,000.00
aa.	October 23, 2009	\$16,000,000.00

252. Sochet also made the following additional investments through Investors Risk

Advantage to RRA's TD Bank trust account:

a.	February 25, 2009	\$1,000,000.00
b.	March 27, 2009	\$500,000.00
c.	April 27, 2009	\$600,000.00
d.	July 8, 2009	\$750,000.00
e.	July 16, 2009	\$300,000.00
f.	July 29, 2009	\$600,000.00
g.	August 10, 2009	\$800,000.00

h.	August 26, 2009	\$1,000,000.00
i.	September 3, 2009	\$1,000,000.00
j.	September 25, 2009	\$1,000,000.00
k.	October 8, 2009	\$900,000.00

253. On August 25, 2009, Rothstein sent a letter to Frank Spinosa at TD Bank instructing him that the funds in a specified trust account should only be distributed to Sochet Trust.

254. On September 17, 2009, Sochet met Scott Rothstein at TD Bank where the two were joined by Frank Spinosa, TD Bank's senior regional vice-president. That same day, Rothstein sent another letter to Spinosa instructing him that the funds in a specified trust account should only be distributed to Sochet Trust.

255. On September 18, 2009, Spinosa authorized and then e-mailed a "lock letter" to Rothstein specifically acknowledging the August 25, 2009, instructions alleged above and confirming that the funds referenced were being held in a specified trust account and could only be distributed to the Sochet Trust. *See* September 18, 2009 lock letter attached hereto and incorporated herein as **Exhibit "H"**.

256. In the beginning of October, 2009, Szafranski and Rothstein began missing the scheduled payments on the deals. Szafranski provided numerous excuses, including that TD's computer systems had crashed and that there had been a confidentiality breach that needed to be addressed before the funds could be released.

257. By the time the Ponzi imploded, Ira Sochet, for the Sochet Trust, had invested \$147,300,000.00 in the Ponzi scheme and Investors Risk had invested \$8,450,000.00 in the Ponzi scheme.

258. Additionally, Szafranski received \$713,000.00 from Sochet Trust and \$95,000.00 from Investors Risk in finders and verification fees.

7. Sussco, Inc. (Induced by Szafranski)

259. Sussco first learned of the opportunity to purchase confidential settlements through Szafranski and ABS in early 2009. The principals of Sussco were acquainted with Szafranski by virtue of being neighbors and through their membership in the same religious congregation. Additionally, the Sussco principal's were aware of Szafranski's reputation in the community, as well as the successes of others who had done business with him.

260. On or about February of 2009, Szafranski first approached Sussco with an opportunity to invest in the purchase and assignment of the proceeds from confidential settlement agreements, providing multiple assurances that the confidential settlements being purchased were all real. Szafranski told Sussco that he first became aware of and involved in this opportunity when he served as the verifier for a hedge fund that was investing in such settlements. He further informed Sussco that the settlements he previously verified had proven successful and were continuing to perform.

261. More specifically, Szafranski assured Sussco that the settlements were legitimate by telling them that he personally met with Rothstein and had verified and confirmed that the funds from the purported defendants had already been wired into Rothstein's escrow account at TD Bank. Szafranski further assured Sussco that he had and would continue to personally verify

that the “plaintiff” and “defendant” both signed the purchase and sales agreement and that the “plaintiff” had received the money that was funded by the investor.

262. Based upon Szafranski, ’s representations, Sussco made the following payments to ABS:²⁵

- | | |
|-----------------------|-----------------------------------|
| a. March 30, 2009 | \$300,000.00 (wire transfer) |
| b. May 11, 2009 | \$150,000.00 (wire transfer) |
| c. June 29, 2009 | \$223,333.33 (wire transfer) |
| d. July 29, 2009 | \$328,125.00 (wire transfer) |
| e. July 30, 2009 | \$122,708.33 (wire transfer) |
| f. September 8, 2009 | \$100,000.00 (payment by check) |
| g. September 21, 2009 | \$300,000.00 (payment by check) |
| h. October 20, 2009 | \$1,275,000.00 (payment by check) |

263. As a result of Szafranski’s representations, Sussco invested a total of \$2,799,166.66 into Rothstein’s Ponzi scheme.

8. Dekelbaum and Shalom Kosher (Induced by Szafranski)

264. Dekelbaum and his family’s corporation, Shalom Kosher, first learned of the opportunity to purchase confidential settlements through Szafranski and ABS in the Spring of 2009. Dekelbaum and the principals of Shalom Kosher were acquainted with Szafranski through their affiliation in the same religious congregation. Dekelbaum had known of Szafranski for six years and knew that Szafranski presented himself as a successful investment broker. More

²⁵ The payments made on March 27, 2009 (\$300,000.00), and on July 31, 2009 (\$122,708.33), were funded directly by the Sussco principals, who were reimbursed shortly thereafter by Sussco.

significantly, Dekelbaum knew of other individuals whose investments in the settlements with Szafranski and ABS had yielded the promised returns. After learning of Szafranski's apparent success, Dekelbaum followed up with him and inquired about the investments.

265. Szafranski had seen Dekelbaum in synagogue a number of times when Dekelbaum was visiting family in Florida who were also members of the congregation. As with his other victims, Szafranski relied on his usual pitch, explaining that the investments were based on funding pre-suit settlement agreements. More specifically, Szafranski explained that investors would front the money and, in return, would receive their principal and interest in regular monthly installments. Szafranski assured Dekelbaum that he verified the settlements first hand. Szafranski also told Dekelbaum that all the cases were legitimate and that he had been involved with Rothstein for a long time. He represented that he personally accompanied Rothstein to TD Bank to verify that the putative defendants' money was in RRA's escrow account and that he was able to confirm same. Szafranski explained that Dekelbaum would only be required to make his investment after the putative defendants' money from the settlements was wired into the RRA escrow account.

266. Dekelbaum trusted Szafranaski based upon Szafranski's reputation in the community as well as his own dealings. Dekelbaum thought that Szafranski was simply a nice young man who was trying to support his young family by working hard and providing other members of the community with this opportunity.

267. Based upon Szafranski's representations, Dekelbaum made the following payments to ABS:

- a. June 30, 2009 \$50,000.00 (wire transfer)

- b. July 31, 2009 \$88,333.34 (wire transfer)
- c. September 4, 2009 \$109,353.34 (wire transfer)
- d. September 4, 2009 \$105,000.00 (wire transfer)
- e. September 4, 2009 \$20,000.00 (wire transfer)
- f. September 4, 2009 \$8,980.00.00 (wire transfer)
- g. October 8, 2009 \$7,400.00 (wire transfer)
- h. October 8, 2009 \$1,433.33 (payment by check)

268. Based upon Szafranski's representations, Dekelbaum, through Shalom Kosher, made the following payments to ABS:

- a. October 8, 2009 \$120,000.00 (wire transfer)²⁶
- b. October 8, 2009 \$22,000.00 (payment by check)

269. All told, as a result of Szafranski's representations, Dekelbaum and Shalom Kosher invested \$532,500.01 into Rothstein's Ponzi scheme.

C. Plaintiffs Induced Directly by RRA

270. In addition to relying upon the investments generated by feeders, Rothstein also used conspirators affiliated with RRA, such as Barnett and Boden, to attract new investors to the Ponzi scheme.

1. *BFMC Investment, LLC*

271. BFMC was formed in November 1998 to fund investment opportunities.

²⁶ The October 8, 2009, investment by Shalom Kosher was actually a policy loan which was borrowed against a Mass Mutual Policy. Mass Mutual wired the funds to ABS on behalf of Shalom Kosher.

272. On September 28, 2009, BFMC principal, Barry Florescue (“Florescue”) met socially with Andrew Barnett (“Barnett”), Director of Corporate Development for RRA.

273. During this meeting, Barnett described his role at RRA and invited Florescue to meet Rothstein later that week to discuss a lucrative investment opportunity. Florescue, who was aware of Rothstein’s prominence in the Fort Lauderdale business and social community, agreed to a meeting at RRA on September 30, 2009.

274. On September 30, 2009, Florescue and his employee, Mark Seigel (“Seigel”), arrived in RRA’s offices and were initially greeted by Barnett. Barnett then took Florescue and Seigel into Boden’s office to meet Boden.

275. Boden was introduced as RRA’s business manager and general counsel. Coincidentally, Boden had, many years earlier, worked as a junior staff member with Florescue’s corporate counsel and had actively worked on one of Florescue’s previous financing transactions.

276. After several minutes, Boden and Barnett led Florescue and Seigel into Rothstein’s private office where the five of them participated in the meeting.

277. After brief introductions, Rothstein, Boden, and Barnett described to Florescue and Seigel an opportunity involving the lump-sum purchase of various pre-funded confidential settlements with structured payments explaining the investment as follows:

a. RRA is a nationally recognized firm representing plaintiffs in whistleblower lawsuits against employers. RRA also has expertise in qui tam litigation, whistleblower lawsuits brought by a private person against a company or person who is believed to have violated the law in the performance of a contract with the government or is acting in

violation of a government regulation.²⁷ In a qui tam action the plaintiff (the person bringing the suit) will be entitled to a percentage of the recovery of the penalty (which may include large amounts for breach of contract) as a reward for exposing the wrong-doing and assisting recovering funds for the government. RRA purportedly became a magnet for qui tam actions following its success as co-counsel in a 2008 Eli Lilly Qui Tam case, which resulted in a \$1 billion plus settlement.

b. RRA was currently representing whistleblower plaintiffs employed by a Fortune 500 company which allegedly defrauded the United States government. Citing confidentiality, Rothstein could not share the name of the company, but he described it as a large food conglomerate that had substituted cheaper ingredients into food supplies which were sold to the government under national contracts. Rothstein claimed to be rounding up dozens of whistleblowers inside the company who had been threatened by senior management to remain silent regarding the company's fraud.

c. RRA had negotiated numerous settlement "tranches" for \$1,400,000.00 for various whistleblower clients, but the defendant insisted on paying the settlements out over four months. Rothstein, Boden, and Barnett then stated that the putative plaintiffs wanted their cash up front.

d. Rothstein explained that the putative plaintiffs were willing to take a large discount up front because: (i) they had a high degree of concern over whether the defendant would attempt to prevent them from receiving payments after settling and, (ii) plaintiff was "in privity" with the defendant, which subjected their settlement to reversal by the federal

²⁷ Qui tam suits are brought for "the government as well as the plaintiff."

government. Rothstein represented that a third party buyer of the settlement rights would not be subject to such reversal as the third party was not “in privity” with the defendant.

e. The settlement documents were drafted and ready to be settled but Rothstein needed to find an investor to fund these settlements. Rothstein explained that such a transaction was legal because the settlement agreement had no “anti-assignment rights”; however, any third party investor could not be given any details about the parties involved in the settlement because it was highly confidential and contained strict confidentiality provisions.

f. Due to the fact that a “funder” could not be given any information about the case, the defendant, or the plaintiff, and given the fact that Rothstein needed a high degree of confidentiality about even the existence of the funding arrangement (in order to prevent defendants from explicitly prohibiting this type of arrangement going forward), Rothstein could only engage in such transaction with local friends with whom he trusted.

g. RRA’s clients were willing to accept \$800,000.00 up front in exchange for their rights to the \$1,400,000.00 settlement, payable over 4 months.

h. Rothstein could not personally fund the structured settlements because it was illegal for him or his firm to profit from a settlement in which he represented the plaintiff. However, it was in RRA’s interest to find a funder so that the firm could settle the case and get paid its contingency fee. Accordingly, to help facilitate the transaction, Rothstein agreed to stay on as the acting escrow agent.

i. Rothstein remarked that the entire transaction would be independently verified, that he would provide evidence of the settlement in his office, and that he would get on the phone with Spinoso of TD Bank to confirm that the putative defendant’s funds had been

wired into a Florida Bar trust account with strict instructions to only release the funds in that account to the specified investment funder.

278. At some point during the meeting between Rothstein, Boden, Barnett, and Florescue, Rothstein went online to show Florescue the balances in the TD Bank accounts.

279. Upon concluding the meeting, Barnett walked Florescue and Seigel out to the elevator. During that time, Barnett revealed that the “confidential” defendant they had been discussing was Dole Foods, which had allegedly supplied the U.S. Government with impure orange juice in breach of their contract which required 100% pure orange juice. Barnett informed Florescue and Seigel that Rothstein offered to sign a corporate and personal guaranty as a further inducement to make the investment.

280. Between October 1, 2009, and October 15, 2009, BFMC worked with Boden to revise and finalize the transaction and security documents necessary to close the deal.

281. The first version of the settlement assignment documents was prepared by Boden. Once BFMC made its redline changes, Boden remarked that he needed to sit down with the client to review the revisions. Boden explained to Florescue and Siegel that he was negotiating seventy (70) different settlements and meeting with each client was often difficult and time consuming.

282. On or about the middle of October, 2009, Boden finalized the deal documents for BFMC’s investment in three identical RRA settlements each involving a \$1,400,000.00 structured settlement, payable in four equal monthly installments, offered in exchange for a lump sum payment of \$800,000.00.

283. BFMC's explicit understanding from Barnett, Boden and Rothstein was that the putative defendant's settlement proceeds were pre-funded and being held in RRA's escrow trust account and could only be released directly to BFMC's account pursuant to the terms of the irrevocable "lock letter."

284. During the first week of October, 2009, Florescue telephoned Spinosa to discuss the investment specifics and to inquire about Rothstein. Florescue had an existing professional relationship with Spinosa and had previously employed Spinosa and TD Bank for various banking activities. Notwithstanding, Spinosa stonewalled Florescue, declining to discuss anything related to Rothstein without his consent, and flatly refusing to answer even the most basic questions.

285. The closing was scheduled for October 15, 2009. That same day, as part of its due diligence, BFMC obtained a copy of a TD Bank "lock letter" signed by Spinosa stating that:

Re: Account 4245220324 RRA-BFMC

. . . Pursuant to your written instructions to us of October 14, 2009, please be advised that all funds contained in the above referenced account shall only be distributed upon your or Stuart Rosenfeldt's instruction and shall only be distributed to BB&T (FKA: Colonial Bank), Pompano Beach Branch # 32083, (954) 943-6550, ABA# 062001319, for further credit to: BFMC Investment, LLC Account # 8050674491.

Your letter is understood not to convey ownership of the account or access to the account to any other party, but rather is meant to irrevocably restrict conveyances as follows: conveyances shall only be made from the account referenced above to the BB&T (FKA: Colonial Bank) account # 8050674491 belonging to BFMC Investment, LLC.

See October 15, 2009 lock letter attached hereto and incorporated herein as **Exhibit "I."**

286. Additionally, on that same day and prior to closing, Boden provided Florescue and Siegel with the TD Bank wire transfer verification confirming that the putative defendant funded \$4,200,000.00 into RRA escrow/trust account number 4245220324 (irrevocably locked account).

287. Although the closing was supposed to take place in the late morning, Boden informed Florescue and Siegel that the process was being held up as they were working with the putative plaintiffs to hammer out the deal. By mid-afternoon, Rothstein and Boden walked into the room where Florescue and Siegel were waiting with original signed documents. Rothstein and Boden allowed Florescue and Siegel see the original documents and then proceeded to execute their closing documents.

288. Later that day, and in reliance on the foregoing, BFMC wired \$2,400,000.00 to RRA's TD Bank trust account number 6860420923.

D. Plaintiffs Induced Directly by Banyon

1. Extra Inning Dynasty Trust

289. Joseph W. Sparveri, Jr. (hereinafter, "Sparveri"), was a co-trustee of the predecessor in interest of the Extra Inning Trust and, at all material times relevant hereto, was acting as one of the trusts' investment advisors.

290. Sparveri first heard about the Principal Conspirators settlement investment opportunity through Banyon in mid-2008 from another client, Roland Labonte. Sparveri served as Mr. Labonte's investment advisor and is a co-trustee on at least one of Mr. Labonte's family of trusts. Labonte informed Sparveri that Joseph DiSilva, a commissioned Banyon agent, explained the entire deal structure for the purchase and assignment of confidential settlements.

After what appeared to be some initial success with Labonte's investment, Sparveri began looking into the possibility of getting the Extra Inning Trust to invest as well.

291. On or about May 23, 2008, Sparveri received Levin's initialed copy of Banyon 1030-32's balance sheet and profit and loss statement showing total assets in excess of \$135,000,000.00.

292. On or about July 18, 2008, Sparveri received Banyon 1030-32's seventeen page Confidential Settlement Funding power point presentation entitled "A High Yield Low Risk Activist Investment Strategy." Within the presentation, Banyon 1030-32 made material representations including: (1) all investments are guaranteed personally by Levin; (2) Banyon 1030-32 securitizes each investment with a Promissory Note valued at not less than 130% of the settlement face value; (3) that the putative defendant fully fund the settlement amount in advance of investor funding which is then held in a special purpose escrow/trust account by the putative plaintiff's attorney as the trustee of funds; (4) the special purpose trust account has a dual signature requirement for any and all withdrawals, one of which is always a Banyon representative; and (5) as of June 1, 2008, Banyon has funded settlements with a face value in excess of \$200,000,000.00.

293. Additionally, Banyon, through Preve and DiSilva, provided Sparveri with the following:

- a. Banyon 1030-32's private funding background summary asserting significant representations regarding the settlement purchase structure and growth forecast;

- b. Banyon 1030-32's audited financial statement and opinion letter prepared by Berenfeld as of June 30, 2008;
- c. Banyon 1030-32's preliminary financials as of December 31, 2008;
- d. Banyon 1030-32 incorporation documents and corporate resolutions;
- e. Authorization to contact Berenfeld's Managing Partner, Tracy Weintraub to discuss Banyon 1030-32's audited financials, tax returns, and other related financial transaction information;
- f. The promise that the Extra Inning Trust would receive a Promissory Note, Security Agreement, and Levin's personal guaranty as security/collateral for each investment made into Banyon 1030-32; and
- g. Information regarding the overall deal structure including specifics into the mechanics of RRA's escrow account used to secure an investor's Promissory Note.

294. Based upon the foregoing, between August 18 and August 20, 2008, Extra Inning Trust wired to Banyon 1030-32's Gibraltar Bank trust account ending x-6377, two investments of \$1,000,000.00 each (\$2,000,000.00 total). In exchange, the Extra Inning Trust received a Promissory Note, a Security Agreement, and a Levin personal guaranty for each of the respective investments into Banyon 1030-32.

295. Thereafter, in October, 2008, December, 2008, January, 2009, and April, 2009, Extra Inning Trust made four additional investments through Banyon 1030-32 by wiring \$1,000,000.00 (10/31/08), \$1,000,000.00 (12/02/08), \$1,000,000.00 (1/09/09), and \$2,000,000.00 (4/02/09), respectively, into Banyon 1030-32's Gibraltar Bank trust account

ending x-6377. Each investment was accompanied by a Promissory Note, a Security Agreement, and a Levin personal guaranty. Because of the relatively consistent payments of the promised interest, the principal of all of the notes were either rolled over or re-invested.

296. In total, Extra Inning Trust invested \$7,000,000.00 through Banyon 1030-32 into the Ponzi scheme.

VIII. Implosion of Rothstein's Ponzi Scheme

297. In October, 2009, the Ponzi scheme reached critical mass. October was a huge month for investor settlement redemptions and Rothstein knew that the influx of new investor capital could not satisfy all previous investor obligations. Sensing that the end was near, Rothstein began planning his escape.

298. On October 17, 2009, Rothstein sent an RRA firm-wide e-mail asking for help to determine whether a "client" who is facing a multitude of criminal charges in the United States--including fraud, money laundering, and embezzlement--could be extradited to the United States or Israel from abroad if he renounced his United States citizenship. Rothstein's e-mail requested a list of countries which did not have extradition treaties with the United States or Israel²⁸ and concluded by stating that "[t]his client is related to a very powerful client of ours and so time is of the essence. Lets rock and roll... there is a very large fee attached to this case. Thanks Love ya Scott." Suffice it to say, Rothstein was the purported "client" and this e-mail provides the first written indication that he was preparing to flee.

²⁸ Not coincidentally Morocco, Rothstein's destination on October 27, 2009, was one of the countries that does not have an extradition treaty with either the United States or Israel.

299. By the end of October 2009, the Principal Conspirators began defaulting on certain investors' structured payments as they came due and the scheme began to unravel.

300. On October 27, 2009, Richard Pearson, whose investors put more than \$18,000,000.00 in the Ponzi scheme, confronted Rothstein while he was sitting with Spinosa inside of the Bova Prime restaurant. Pearson proceeded, in Spinosa's presence, to demand to know why Rothstein was days late in releasing two scheduled payments due his investors. Rothstein quickly attempted to diffuse the situation and skirt assertion that he was in breach of his fiduciary duties as the acting escrow agent holding these funds all of which left Spinosa visibly shaken.

301. Shortly thereafter, Rothstein methodically drained the TD Bank RRA accounts dry, depleting virtually all of the remaining investors' money as well as the money of many of the firms' clients.

302. On the evening of October 27, 2009, Rothstein secretly boarded a private G-5 jet destined for Morocco accompanied by, *inter alia*, Ahnick Khalid his purported Moroccan guide, but not before completing a \$16,000,000.00 wire transfer from RRA's TD Bank trust account to Khalid's Moroccan account at Banque Centrale Populaire.

303. By October 30, 2009, as the number of defaults escalated, investors desperately tried to contact Rothstein for answers. Unbeknownst to them Rothstein was already gone, along with their investments, as the Ponzi scheme finally buckled under the pressure of its overwhelming financial obligations.

304. Over the next few days, alarmed investors frantically reached out to other RRA executives and attorneys, begging for information as to the whereabouts of Rothstein and their

more than \$30,000,000.00 in overdue payments. Stuart Rosenfeldt (hereinafter, "Rosenfeldt") assembled a team at RRA, including Boden, Stay and Grant Smith, to begin answering the deluge of investor calls after attempting to confirm with Stay (RRA's C.F.O.) that RRA's operating and trust accounts contained more than \$1 billion dollars. Shamefully, Stay refused to provide Rosenfeldt the confirmation requested. Growing ever agitated, Rosenfeldt and the others continued to press Stay, demanding to know what was going on and insisting that she produce current account statements. Eventually, Stay relented and began inconsolably crying, repeating the phrase, "I don't want to go to jail." Rosenfeldt proceeded to telephone Spinosa, who initially declined to provide account balance verification. After much cajoling, Spinosa finally informed Rosenfeldt that the RRA accounts had been almost completely depleted.

IX. Devastating Fallout

305. As is well chronicled, Scott Rothstein's Ponzi scheme crumbled under its own weight on or about October 30, 2009. The velocity at which the Ponzi scheme cratered sent a sonic boom felt throughout the financial and legal world.

306. Reeling from its shameful missteps in connection with the Rothstein scandal, an emergency receiver was appointed for RRA on November 4, 2009 for the purpose of winding down its operations.

307. As the dust begins to settle, critical details have emerged revealing the scope and magnitude of the nefarious scheme.

A. TD Bank

308. By way of example, Plaintiffs have discovered relative to TD Bank that:

- a. the entirety of Plaintiffs' more than \$281,525,358.34 investment is gone;
- b. Plaintiffs' TD Bank irrevocable "lock letter" accounts were never funded with the purported settlement money and contained only a nominal deposit of \$100.00. Spinosa's irrevocable "lock letters" were critical inducements into the Ponzi scheme, materially misleading Plaintiffs' into a false sense of security that TD Bank was safeguarding their investment and securitizing their risk exposure. This overt inducement was done in close collaboration with Rothstein in furtherance of the conspiracy to defraud and proximately caused injury to the Plaintiffs;
- c. additionally, Rothstein utilized Spinosa and his position at TD Bank to further the conspiracy by having Spinosa personally meet with investors at

RRA, at TD Bank branches, and elsewhere as a means to assuage investor concerns and create an illusion of legitimacy that TD Bank stood behind the investments being made. In fact, at one particular investor meeting in late July 2009, attended by Rothstein, Spinosa, Preve, and Szafranski, Spinosa represented to the potential investor that Rothstein had been doing these deals “for quite some time without a hitch” and that the trust fund monies were all well protected;

- d. On or about the summer of 2009, Rothstein delivered to Spinosa fifty thousand dollars (\$50,000.00) in cash for his continued cooperation and participation in the Ponzi;
- e. On or about the summer of 2009, Rothstein delivered to Caretsky twenty five thousand dollars (\$25,000.00) in cash for her continued cooperation and participation in the Ponzi;
- f. TD Bank active participation in authorizing atypical banking procedures enabled Rothstein’s systemic fraud and allowed the Ponzi scheme to flourish. Some of the atypical banking procedures include: (1) abdication of internal wire transfer protocols; (2) unfettered movement of inordinate sums of money in and out of RRA’s TD Bank trust, escrow, and operating accounts; (3) using key inside employees to approve deviations from internal policies and procedures meant to circumvent discovery of the fraud; and (4) using bank employees and bank facilities to participate in investor meetings to help induce funding and lend credibility to the Ponzi.

Each of these “special accommodations” were essential factors that provided substantial assistance in furthering the scheme and allowed Rothstein to misappropriate over a two hundred and eighty million dollars of Plaintiffs’ money from TD Bank escrow and trust accounts;

- g. even after Rothstein’s October 27, 2009, departure to Morocco, millions of dollars were raided from RRA’s TD Bank trust, escrow, and operating accounts, indicative of a(n) insider(s) continuing to use TD Bank to operate the Ponzi scheme. Some of the individuals and entities who received money on and after October 27, 2009, include, but are not limited to:

i.	Shimon Levy	\$ 366,000.00
ii.	Shimon Levy	\$ 287,500.00
iii.	Onyx Capital	\$ 263,000.00
iv.	Barbe Frank	\$ 240,000.00
v.	Shimon Levy	\$ 225,000.00
vi.	Ovadia Levy	\$ 250,000.00
vii.	Rachel Levy	\$ 50,000.00
viii.	Daniel Minkowitz	\$ 225,000.00
ix.	Ben Zion Varon	\$ 33,333.00
x.	Domenick Tonacchio	\$ 280,000.00
xi.	Daniel Minkowitz	\$ 200,000.00
xii.	Daniel Minkowitz	\$ 100,000.00
xiii.	Shimon Levy	\$ 366,666.00
xiv.	Shimon Levy	\$ 337,500.00
xv.	Onyx Capital	\$ 275,000.00
xvi.	Ovadia Levy	\$ 268,000.00
xvii.	Ovadia Levy	\$ 175,000.00
xviii.	Moty Bar-Adon	\$ 132,000.00
xix.	Ben Zion Varon	\$ 33,333.00
xx.	Ahnick Khalid	\$ 16,000,000.00
xxi.	BWS Investments	\$ 300,000.00
xxii.	Pirulin Group	\$ 300,000.00
xxiii.	National Financial	\$ 150,000.00
xxiv.	Bonnie Barnett	\$ 500,000.00;

- h. in April, 2009, \$53,060,000.00 in credits and \$51,560,000.00 in debits were transacted through four RRA trust accounts at TD Bank;
- i. in October, 2009, \$235,000,000.00 in credits and \$232,000,000.00 in debits were transacted through RRA accounts at TD Bank;
- j. on November 1, 2009, a group of investors²⁹ purportedly victimized by the Ponzi scheme met to share information regarding their investments in the fraudulent scheme and to discuss ways to collectively pursue recovery of their interests. At that meeting, Mel Lifshitz of DE Securities, whose group invested nearly \$100,000,000.00 into the Ponzi scheme, advised the group that he personally sat with Spinosa at TD Bank and verified investment account balances;
- k. sometime in late spring or early summer of 2009, Ted Morse, another Ponzi scheme investor, was personally provided with a fraudulent written RRA trust account balance statement by Caretsky at TD Bank;
- l. as shown herein, TD Bank encountered numerous “red flags” suggestive of money laundering and other misappropriation. Notwithstanding, TD Bank willfully ignored its duty to make reasonable inquiry to prevent a diversion; instead, TD Bank chose to provide the Principal Conspirators with substantial assistance in perpetuating this fraud for their own benefit.

²⁹ The group of investors attending the November 1, 2009 meeting include: Dean Kretschmar, Ted Morse, Ed Morse, Richard Pearson, Ira Sochet, Mel Lifshitz, AJ Discala, Mac Melvin, Mark Nordlicht, Jack Simony, Steve Jackel, Laurence King, Steve Levin, George Levin, Frank Preve, Barry Bekkedam, and Michael Szafranski.

By ignoring evidence of the Principal Conspirators' misconduct and permitting the continued use of TD Bank accounts to accomplish this fraud, TD Bank knowingly or recklessly allowed itself to become a conduit for these activities and, accordingly, is liable for its participation;

m. in late November, TD Bank fired Spinosa;

B. Levin, Preve and Banyon

309. Plaintiffs have discovered, relative to Levin, Preve, and Banyon, that:

- a. an \$8,000,000.00 wire transfer confirmation used by Levin, Preve, and Rothstein to induce Razorback's \$32,000,000.00 payment was never received by RRA or TD Bank. In fact, the fictitious \$8,000,000.00 wire is powerful evidence of the frenzied push by the Principal Conspirators, along with Levin and Preve, to do and say whatever was needed to secure investor funding as the Ponzi scheme began to unravel. Indeed, in their feverish zeal to induce Razorback's funding the purported wire was inaccurate, leaving Banyon USVI with a \$600,000.00 funding shortfall which, when Levin and Preve were pressed for an explanation, was quickly diffused by assurances that Banyon USVI would immediately make-up the difference;
- b. during the November 1, 2009 investor meeting, Levin informed the group that he reached out to Rothstein in Morocco letting him know that Banyon stood ready to provide shortfall financing if he was having trouble making payments. Astoundingly, Levin's revealing admission took the group by

surprise because one of the core “deal” tenets insured against any possible deficit by requiring a putative defendant’s settlement to be funded *prior to* an investor’s lump sum purchase. Thus, any shortfall, even the smallest one, was patently contrary to the investment structure and obvious evidence that the monies were either being misused or were a part of a Ponzi scheme;

- c. Plaintiffs now believe that Levin’s statement was a thinly-veiled attempt to cover his tracks after Rothstein rejected his last-ditch efforts to persuade Rothstein to keep the Ponzi scheme going. In support, Plaintiffs rely on an October 31, 2009, email from Preve to Rothstein stating that “We [Levin and Preve] understand that the shortage is *now 300m which is still manageable if we have your cooperation*. Let me know,” to which Rothstein responds, “[t]hat is not the shortage that is the amount of money needed to give the investors back their money. I really just need to end it frank. It will make it easier for everyone.” (Emphasis added). The attempt to try and “manage” the hole created now demonstrates that Levin and Preve had knowledge of a prior deficit and serves as an unwitting admission of their involvement in the perpetuation of the Ponzi scheme;
- d. Levin and Preve often claimed to be continuously “reinvesting” all principal and profits back into the Principal Conspirators’ settlement scheme. Plaintiffs aver that Levin and Preve knew full well that if they removed capital after each deal this would cripple the Principal Conspirators’ plan and

cause the Ponzi scheme to come crumbling down even sooner than it did. Accordingly, Levin and Preve devised Clockwork as the former classic car fraudster's getaway vehicle from the Ponzi scheme. Instructively, Levin and Preve masterminded an alluring financial trap, ensnaring Discala and his investors, all-the-while making Discala believe it was his "idea." Levin lured Discala's compliance by assuring considerable financial gains as a calculated means to divert attention away from questioning why Levin and Preve, without any meaningful compensation, would be stepping away from this exceptional opportunity. Levin's and Preve's manipulation of Discala continued by dictating the terms and conditions of the BIF/Clockwork transition, by controlling Clockwork's start-up financing, and by creating a deal structure providing Levin an opportunity to minimize his monetary exposure. Although the Clockwork fund never got off the ground, Levin's and Preve's plan was revealed and provides further evidence of their deep-seeded involvement in the Ponzi scheme;

- e. Other additional evidence and indicia of Levin, Preve, and Banyons' complicity in Rothstein's conspiracy to defraud included:
 - i. a April 17, 2008, e-mail from Preve to Rothstein subject "G-82" writes "This is one we already funded completely (according to our books)...is it worth getting Centurion to fund it again or will it be a hassle 'proving' she got the money when Milk Toast comes in???"

- ii. a July 7, 2008, e-mail from Preve to Rothstein writing “Hoodsie, You send me the deposit and I will send the \$687,500 back to you as a ‘mistake’ so your books are balanced.”;
- iii. a February 8, 2009, e-mail from Preve to Rothstein stating, “What are we doing about the \$10.9m? Why are your people giving out money without papering the deals? This will (already has) get us in hot water because we will not be able to plan our cash flows.....”;
- iv. an April 13, 2009 distressing e-mail from Preve to Rothstein in response to an inquiry from Platinum concerning receipt of an inadequate partial payment, Preve writes, “This is exactly what we needed to avoid. Between the phone call to Mayer [Nordlicht] and this wire, we have opened the floodgates of doubt. Why send them anything if we are going to only send them \$256k?? What is the plan for the next 20 minutes? Give me a shout when you finish with BSO so I can respond to the NY calls.”;
- v. an April 27, 2009, e-mail from Preve to Rothstein entitled “DECISIONS” writing, that “your lenders will never agree to any program which allows you or anyone else to interrupt their flow of their own funds based on a totally undocumented funding requirement. Even today everyone is being asked to acknowledge a funding goal for which there is absolutely no documentation --

this will never stand up under scrutiny. However, we do know that on Monday we had 30 million dollars to be funded and these were held up based on the above dispute. We have already sacrificed the interest of at least a third of your clients based on her misperception of the funding cycle. Lets get this back tomorrow. If you do not fund and then do not receive funds in return you are guaranteed to lose your suspension/license appeal. If you do fund and receive the funds under a 'settlement' agreement with Banyon, you can at least show your critics that you defended your clients and finally have received partial performance and have an expectation of receiving the remaining funding.”;

- vi. a April 27, 2009, e-mail from Preve to Rothstein writing, “Problem #1: RRA needs cover for its non-funding of clients--Banyon provides the cover as follows: Banyon signs a Default Agreement with RRA acknowledging that it has defaulted on its commitment to RRA’s clients to fund their settlements. Banyon consents to fund \$150 million in the next 20 days. George Levin gives his personal written guaranty to make available funds. Problem #2: Where is the 150m coming from??”;
- vii. a May 1, 2009, e-mail from Rothstein to Levin and Preve informing them that Rothstein, “Just wired plat[inum] a million that I borrowed.”;

- viii. a May 18, 2009, e-mail from Preve to Rothstein expressing, “....concerned? I am petrified....if word gets out that we are \$125m past due we will never see another cent in 3rd party fundings including the PPM. We will have the auditors looking at the books in another 12 days and that also gives me great concern....it is so easy to see the sudden lack of releases and you know auditors...everything has to be explained in footnotes....and by the way, no one if throwing you under the bus....all we have done is support you at every single turn and we will continue to do so. The fact that I am concerned that 25% of our portfolio is past due should not come as a surprise to you, to the Bar, to God, or to anyone else that notices that I am walking around smelling like I just peed by pants.....”(emphasis added);
- ix. a September 15, 2009, e-mail from Preve to Rothstein stating that, “This ‘system’ is not working . . . Yesterday I failed to make \$500,000 in payments to our largest investor and it will not be pretty today. In addition, on the 28th we have two loans maturing that cannot be extended -- \$1.5m and \$5.5m -- if we don’t plan for these in advance, George is going to make the newspapers big time. Because of your youth, inexperience, and drugs none of this bothers you. Because of my age, failures, and drugs -- all of this is

sending me off the deep end,.....expect expletives shortly!!!!!!!!!!!!!! Have a jolly good day.”;

- x. a September 22, 2009, e-mail from Preve to Rothstein entitled “DOCS” asks “Can we at least get the documents for the monies that have been sent so if we do have public scrutiny over the BIF books we have things balanced rather than the cavernous hole that I have allowed to be created????”;
- xi. an October 3, 2009, e-mail from Preve to Rothstein entitled “Mike Szafranski” states that “This is bullshit about Doug but we have to get Mike in there on Monday or the crapola is going to hit the fan - - we do not need this sort of distraction which is being caused solely by inattention. Please get this monkey off. Also, before you talk any business with AJ need to discuss a couple of approaches.”;
- xii. an October 21, 2009, e-mail from Preve to Rothstein establishes that Banyon is “teetering on bankruptcy. If I don’t get \$8m today and tomorrow I will be officially gone -- you know where \$5m it is going...the rest are for my bank payments. By this time I would have thought that we could come to some sort of daily payment schedule that would relieve me as my role as official groveler for the Levin’s. I just don't do a good job at this. As you know, we have invested, reinvested and raised about \$170,000,000 since the meltdown last April. In return you have released about \$13million

in Ban1030 money. I don't know what we need to do to resolve this as it seems we are dealing with a moving target but my ability to stay afloat with smoke and mirrors is gone....really gone. So am I.”;

- xiii. a revealing October 30, 2009, e-mail from Levin to Rothstein copying Preve after Levin got word that “other investors” were not getting paid he wrote, “If we don’t make Doug’s [Von Allmen] payment tomorrow, I am afraid the game will be over! Just when we were going to put the ball over the goal next week. Aj goes out for \$ wed of next week! We won't be able to recover. This being their first payment! I will calm Barry down, however Doug will be impossible to calm down! The entire town will know this by tomorrow night! Why wouldn't this payment be made? No matter what it takes tomorrow the payment will be made! That means if Scott has to release some of the \$400,000,000 + that he is holding, enough to cover the payments then, that's what we are going to have to do. We can't let the entire business go down over this, if we keep cool heads and take the course of least resistance we will get over this tomorrow. If we stick our heads in the sand, or think this is going to be like the NY boys, this strategy will never recover. Not this time and not with Doug! He is nuts and very suspicious of us! We will have more lawyers and publicity than

the NY times by Saturday! I am available for the next 24 hours day or night to help get over this problem. We have the way to do it if we act as businessmen! So lets get it done! One way or the other.”;

xiv. Preve received over \$440,000.00 in payments from the Principal Conspirators;

C. Villegas

310. Plaintiffs have discovered relative to Villegas that:

- a. on July 27, 2009, Rothstein transferred a property with an assessed value of \$407,750.00 to Villegas for “love and affection” and \$100.00. Notwithstanding, Villegas, who earned \$250,000.00 a year and owned the property free and clear decided to pull \$100,000.00 out of the property via a mortgage days prior to the IRS filing of a forfeiture *in rem* complaint against the property;
- b. additionally, Rothstein also gave Villegas other extravagant gifts including a \$130,000.00 Maserati;
- c. there is little doubt that Rothstein relied heavily on Villegas as she was one of the few employees allowed into the inner sanctum of his private office and responsible for “papering” Rothstein’s settlements;
- d. Rothstein wrote in a firm wide e-mail outlining Villegas’ power and influence in stating that, “when she speaks she is speaking for me . . . [and] [t]hus, absent extraordinary circumstances, no one is to challenge

her authority or come to me to attempt to override any decision she makes.” Rothstein added, “WE WOULD NOT EXIST WITHOUT HER — SHE HAS HELPED ME AND CONTINUES TO HELP ME MORE THAN I COULD EVER EXPLAIN...OUR OFFICES THAT WE CURRENTLY OCCUPY WOULD NOT HAVE BEEN COMPLETED WITHOUT HER... OUR GROWTH WOULD BE IN REVERSE.”;

D. Berenfeld

311. Plaintiffs have discovered relative to Berenfeld that:

- a. Berenfeld’s audited financial statements for the affiliated Banyon entities confirmed finance receivables of \$517,404,505.00 due from RRA settlements worth more than \$1,100,000,000.00. As now known, these “verified finance receivables” were pure fiction. Incontrovertibly, Berenfeld either knew and willfully participated in this fraud or should have known as part of the audit process that the finance receivables were fabricated and were incapable of being independently verified;
- b. Berenfeld’s complicity in the Ponzi scheme is further compounded by its role as accountants for RRA and Rothstein and Rosenfeldt individually, providing it with first-hand knowledge of the patent inconsistencies between Banyon’s purported verified audited receivables and RRA’s actual numbers;
- c. due to the vast complexity in maintaining the fraudulent accounting, it is only the stamp of approval of sophisticated accountants that could have

lent these “phantom” investments an air of legitimacy necessary to sustain the Ponzi scheme over a period of four years;

E. Ballamor and Bekkedam

312. Plaintiffs have discovered relative to Ballamor and Bekkedam that:

- a. Bekkedam and Ballamor, in their role as investment advisors, induced client investments into the Rothstein Ponzi despite particular facts giving rise to a strong inference that they either had fraudulent intent, or acted with conscious recklessness as to truth or falsity of their representations made to investors. In addition to the aforementioned facts stated *supra*, other supporting inference of actual knowledge of the fraud include that:
 - i. The relationship between Bekkedam and Banyon was a *de facto* partnership. Bekkedam and Ballamor worked hand-in-hand to drafting the BIF Confidential Offering Memorandum. Thereafter, Bekkedam promoted the BIF investment to the tune of tens of millions of dollars in funds vital to fuel the Ponzi as the alleged returns generated by BIF and other Banyon-related entities was the engine that drove Rothstein’s scheme. Simply put, Banyon and Rothstein needed Bekkedam and his cadre of wealthy investors to perpetuate the Ponzi and Bekkedam needed the capital infusion Levin provided;
 - ii. Bekkedam betrayed numerous investors who entrusted him with their savings by recklessly feeding their funds into the largest Ponzi scheme in Florida history, while falsely claiming and or materially

- misrepresenting that he: (1) performed extensive due diligence; (2) verified the existence of each pre-funded settlement being purchase in the designated TD Bank escrow account; and (3) monitored the account balance and transactions made on a daily basis.
- iii. Bekkedam held himself out as an investment guru who often proclaimed in public that he came up with the idea for BIF and personally benefitted to the tune of several million dollars. In reality, Bekkedam was nothing more than a master marketer whose efforts were substantially directed at convincing investors--including the BIF Investor's, Cooper Management, and the Paley Family Investors--to invest without actually evaluating or identifying the true risks involved;
- iv. The record evidence supports that Bekkedam and Ballamor knew of Banyon's and the Principal Conspirators' dire financial straits as early as March 2009, and yet failed to disclose this material information to the investor-Plaintiffs he induced into funding the Ponzi;
- v. Bekkedam knew that Rothstein charged no fees of any kind for his role in the transaction and that Rothstein even personally guaranteed a handful of transactions. Bekkedam himself, whose stock and trade was in charging significant management and incentive fees for the money he purported to manage, recognized that a willingness to

do something for nothing was facially suspicious and yet never disclosed this concern;

- vi. Bekkedam's clear pattern of conduct reveals that he intentionally and/or recklessly ignored numerous warning signs that the BIF investment presented a high risk of fraud. Bekkedam's admitted failure to do adequate due diligence on Rothstein, Banyon, and the settlement operations caused him to breach his fiduciary duties and caused representations he made to investors concerning his ongoing due diligence and oversight of outside money managers to be false and misleading.
 - vii. After the collapse of Rothstein's Ponzi scheme, the Paley Family Investors confronted Bekkedam, asking him about his supposed "due diligence" of the investments. Bekkedam responded with the jaw dropping statement that he had faith in the delas because Rothstein's picture was on a billboard in Florida with Dan Marino and, since Dan Marino is a smart guy, he would never have his picture with anyone that was not upstanding.
- b. Notably, at no time during his courtship of BIF Investor's, Cooper Management, and the Paley Family Investors, did Bekkedam disclose that as a direct benefit for their agreement to cooperate in perpetuating Rothstein's scheme, Ballamor and Bekkedam received a \$1,000,000.00 "loan" from Levin to underwrite Ballamor's \$1.8 billion dollar expansion;

- c. additionally, Levin made a \$5,000,000.00 investment through Ballamor into Nova Bank, a Pennsylvania bank of which Bekkedam sat on the board as Chairman. Levin had recently received regulatory approval to fund an additional \$18,000,000.00 into Nova Bank;
- d. Through his misrepresentations, concealment, self-dealing, reckless conduct, and gross negligence, Bekkedam abused the trust of his client-investors in BIF, and breached the fiduciary duties owed to them. Bekkedam personally benefitted at these client-investor's expense while failing to adequately oversee, audit, or investigate as represented. Bekkedam's deceit, recklessness, and breaches of fiduciary duty have resulted in these Plaintiffs significant losses.

F. Szafranski, ABS and Onyx

313. Plaintiffs have discovered relative to Szafranski, ABS and Onyx that:

- a. the TD Bank account statements provided and verified by Szafranski were completely fabricated and incapable of being confirmed. In most instances, there was either no money in the settlement accounts or the amounts contained were hundreds of millions less than what was represented in the statements;
- b. based upon the forensic evidence accumulated to date, Szafranski and his related entities received in excess of \$32,000,000.00 in Ponzi investor monies;

- c. additionally, Szafranski's supposed independent auditing firm, Onyx, received over six million four hundred and eighty thousand dollars (\$6,480,000.00) in Ponzi money from the Principal Conspirators between July 9, 2009, and October 23, 2009, although there should not have been any payments between the Principal Conspirators and Onyx for the verification work allegedly being performed on behalf of investors;
- d. evidence of Szafranski's central role in the Ponzi scheme is detailed in a series of e-mails exchanged with Rothstein from Tuesday, October 27, 2009 through Friday, October 30, 2009. As the Ponzi scheme was rapidly unraveling and Rothstein was fleeing to Morocco, Szafranski wrote to Rothstein on the 27th, "**Barrie is close to calling Spinosa . . . can you plz call me so I know bob norman didn't steal ur bbery and start answering ur emails.**" (emphasis added);
- e. on October 29, 2009, Szafranski prepared a detailed list of amounts of exposure per account for the following investors: ABS, Ira Sochet and Investors Risk, Mel Lifshitz and EMESS; and Coquina, for which Rothstein responds that "[s]ince coquina exposure is so small . . . I am going to pay them personally so they have no loss . . . so barrie shuts up." Szafranski retorts: "Hmmm hold. Off. He will t[e]ll ira [Sochet]. **I'd rather you pay me off part of it to get me through any rough patch.** Love u Mikeyyy" (emphasis added);

- f. on October 30, 2009, after Szafranski learns that ABS investors will not get paid the \$866,666.66 due, he writes Rothstein asking him if he can “borrow funds to pay the abs cases, **I don’t want to have to give them the explanation and will freak if payments are not sent. i wil repay you or the oper acct when we resume but I need this . . .** i don’t want my clients to go crazy over such a small dollar abt love you Call me I miss you and I am worried mikeyyy.” (emphasis added);
- g. later that same morning, Szafranski writes: “**it would keep everyone at bay if we can get a spinoza letter saying there is x in the acct but due to circumstances the money is frozen. Also the letter from opposing counsel would be helpful.** Love you Mikeyyy” (emphasis added);
- h. finally, on October 30, 2009, Szafranski’s role in the scheme becomes clear as he suggests to Rothstein that he may be able to hold an aggrieved investor “off a few weeks if frank [Preve] gives him \$37 million plus their abs payment. I need to have someone get balances for me to see. Or we can have spinosa write a letter detailing each accounts balance since banyon is open to taking everyone out. . . **Please make this happen or we are all done.**” (emphasis added).
- i. these written admissions concealing investor losses by paying borrowed money to fill the gap later with future investor monies is Ponzi 101; and

- j. accordingly, Plaintiffs aver that there can be no question that “Mikeyyyy” Szafranski is a co-conspirator who made material misrepresentations which allowed Rothstein to keep the scheme rolling along.

G. Pearson

314. Plaintiffs have discovered relative to Pearson that:

- a. Pearson betrayed investors who entrusted him with their savings by conspiring to and/or recklessly feeding his investors’ funds into one of the largest Ponzi schemes in history. Pearson held himself out as an investment advisor with an inside-track to an exclusive low-risk, high-reward investment opportunity all the while knowing the facial deficiencies of same;
- b. unbeknownst to the investors who Pearson lured into the scheme with false assurances, in addition to earning a commission from them, Pearson also received a finder’s fee payment from Rothstein for each investment made. Plaintiffs are currently aware of no less than twenty-one deals where Pearson “double dipped”, including receiving at least \$1,200,000.00 in so-called finder’s fees in September and October 2009 alone;
- c. additionally, Pearson as a principal, is imputed with the knowledge of his agent, Boden, for whom he hired on or about July 2009, to gain access to the Ponzi scheme riches;
- d. although Pearson has publically held himself out as a victim, in reality, he was a key co-conspirator and indisputable net-winner in this scam.

Pearson's considerable time and efforts in marketing this fraud and funneling investor funds into the scheme helped perpetuate the Ponzi and provided for his own financial enrichment at the expense of Plaintiffs' substantial losses. Pearson's numerous acts of deceit and breaches of fiduciary duties in furtherance of the conspiracy have invariably contributed to Plaintiffs' losses and he should be held responsible for same.

X. Essential Co-Conspirators

315. On January 27, 2010, Rothstein pled guilty to orchestrating one of the largest financial frauds in Florida history. As part of his plea agreement with the government, Rothstein admitted that for the last four years he was the architect behind the billion plus dollar Ponzi scheme aimed at defrauding investors through the sale of fabricated confidential settlements.

316. Rothstein, however, did not act alone in pulling off this financial fraud. The sheer scope, size, and sophistication of the fraud necessitated the cooperation and assistance of many individuals and institutions who knowingly, recklessly, or with conscious disregard of the consequences, participated in the scheme. As alleged herein, Rothstein, along with a number of senior RRA employees, feeder funds, financial institutions, financial lenders, accountants, and other professionals, willfully collaborated in the Ponzi while recklessly ignoring blatant “red flags” evidencing the deceptive conduct. Ultimately, each co-conspirator chose their own financial gain over doing what they knew was right.

317. Unquestionably, conspiring with Rothstein was a highly profitable venture. Rothstein “feeders,” Levin, Preve, Bekkedam, and Pearson capitalized on the “Rothstein myth,”³⁰ hoarding tens of millions of dollars in fees for doing little more than funneling investor money in to the Ponzi. Professional organizations like TD Bank and Berenfeld also benefitted financially by substantially assisting Rothstein in inducing investor funding, by ignoring

³⁰ Rothstein, like convicted fraudster Madoff, successfully created an “air of exclusivity” around these settlements, purposefully creating the illusion that an investor was lucky to be chosen to invest. Rothstein’s myth was bolstered by his self-created celebrity status which allowed him to hobnob with wealthy locals, athletes, and politicians and which tacitly provided him credibility in support of his promise of high investment returns.

regulatory and internal safeguards, and by turning a blind eye to the indiscriminate transfer of trust fund monies.

318. While the Ponzi scheme could not have succeeded without these co-conspirators' contribution, the active participation of other essential co-conspirators *to wit*: Gibraltar Bank, Tracy Weintraub ("Weintraub"), Gary Berkowitz ("Berkowitz") and Brian Leitstein ("Leitstein") of Berenfeld, Platinum Partners Value Arbitrage Fund, LP ("Platinum"), and Centurion Structured Growth, LLC ("Centurion"), were equally important in pulling off the scam.

319. As described *infra*, each of the aforementioned individuals and entities either chose to become collaborators and co-conspirators in Rothstein's financial fraud or acted in gross dereliction of their professional duties. Specifically, each of them, with actual knowledge or with reckless disregard, aided and abetted Rothstein by encouraging or rendering substantial assistance in breaching their legal, and often times fiduciary, obligations to Plaintiffs and in facilitating the underlying fraud. Additionally, each of them was a direct, necessary, and substantial participant in the conspiracy who agreed to perform the overt acts for the unlawful purpose complained of herein.

A. Gibraltar Bank

320. To execute this financial scam, the Principal Conspirators relied upon the cooperation of two very different types of banks. TD Bank, because of its large presence and national recognition, served as the banking face of the Ponzi and was critical for attracting a certain level of investor. Gibraltar Bank, on the other hand, was the smaller, "home town" bank, where the Rothstein name and the weight of his looted millions provided significant clout in influencing Gibraltar Bank to knowingly stifle compliance investigations or willfully ignore

innumerable improper and atypical transactions. These overt acts provided substantial assistance in making the Ponzi possible.

321. Rothstein, through key Gibraltar Bank employees including Senior Vice President John Harris (“Harris”) and Vice President Lisa Ellis (“Ellis”), leveraged his clout to cover persistent, sizeable account overdrafts and gained unfettered access to the transfer of money from RRA trust accounts into RRA operating and then out to Rothstein’s personal accounts. These “special accommodations” provided Rothstein the necessary opportunity to circulate money out of the Ponzi using Harris, Ellis, and other Gibraltar employees as willing team players.

322. Gibraltar Bank maintained several RRA trust and operating accounts along with many of Rothstein’s personal, family, and business accounts and, as such, was privy to a considerable amount of financial information clearly evidencing the fraud. At all times relevant hereto, Gibraltar Bank was aware of its duties and responsibilities related to the maintenance of these accounts as required by law and by their own internal policies and procedures.

323. Notably, one of the trust accounts maintained at Gibraltar was the RRA Banyon Trust Account, which was created in September 2007, to hold funds in trust for the benefit of various Banyon entities, including Banyon Income Fund. Gibraltar was aware of the special nature of the trust account, had often inquired about its activities, and became concerned over the chaotic movement of money in and out of the account supposedly being held for the benefit of Banyon. Gibraltar knew that Rothstein was not the true owner of the deposited funds and yet participated in the appropriation of these funds from trust accounts to offset overdraft debts in RRA’s operating and payroll accounts.

324. Gibraltar Bank's actions and omissions in conspiring with and/or substantially assisting the Principal Conspirators' misconduct, and in relying on key bank insiders to help avoid fraud-risk reports and short-circuit suspicious activity inquiries³¹, enabled the Ponzi scheme's success. Without Gibraltar Bank's willing complicity, this Ponzi scheme simply could not have been sustained as banks have a duty to safeguard trust funds when confronted with clear evidence indicating that those funds are being mishandled.

325. Reasonable inference of Gibraltar Bank's knowledge and implicating participation in Rothstein's fraudulent scheme include:

- a. Routinely providing the Principal Conspirator's liquidity in the form of significant (often daily) overdraft loans used by Rothstein to satisfy funding shortfalls--a necessary component for perpetuating a Ponzi scheme in leaner financial times;
- b. Institution of unusual systems for advising and encouraging the raiding of client trust fund accounts to cover significant overdraft deficits in RRA's operating, payroll, and Rothstein's own personal accounts for Gibraltar's benefit and at the expense of the trust account beneficiaries;
- c. Lending legitimacy to the Ponzi by establishing trust accounts where Plaintiffs settlement proceeds were allegedly being held so as to give investors the appearance that their funds were being carefully monitored and safe-guarded;

³¹ The record is replete with Gibraltar Bank imploring Rothstein to reduce the significant overdraft deficits for fear, as Harris put it in a 2007 e-mail to Rothstein, that RRA accounts "were starting to show up on the wrong reports!!!!!!!!!" (emphasis in original).

- d. Serving as a clearinghouse used to launder Ponzi money from TD Bank trust accounts and elsewhere including diversion of funds not listed in initial deposit instructions;
- e. Creating the appearance of a profitable law firm and a profitable Ponzi business by concealing illegal transfers from trust accounts to cover RRA operating account overdraft defaults and failing to disclose these facts from other Gibraltar clients supposedly “in business” with Rothstein;
- f. Record evidence supporting Rothstein’s reliance on senior bank officials to quash compliance / fraud-risk investigations into Rothstein’s illegal activities in violation of internal and federally mandated banking policies;
- g. Recommending that clients of Gibraltar’s Private Wealth Management division invest in Rothstein’s Ponzi scheme knowing that the firm was teetering on the verge of insolvency while failing to disclose the benefit to Gibraltar in helping cure continuing overdraft shortfalls and helping appease one of their biggest customer and biggest source of deposits; and
- h. Approving the pinball-type transfer of client trust funds in clear violation of internal protocols because of Gibraltar Bank’s financial incentive to do so, namely, to cover overdraft loans to RRA, and provide the needed assistance demanded by one of the bank owners (Rothstein owned five percent of Gibraltar).

326. As a result of Gibraltar Bank’s participation, Rothstein’s scheme flourished. The Principal Conspirators took in nearly \$1.4 billion dollars from investors, nearly two hundred and

eight million of which belonged to the Plaintiffs and has not been returned. Specific examples of Gibraltar Bank's overt acts, assistance and/or omissions in furtherance of the conspiracy include:

- a. Rothstein learned early in his scheme that he could not convince wealthy investors to give him money unless he established relationships with financial institutions who would provide a perceived layer of legitimacy
- b. The mechanics of Rothstein's operation relied upon maximizing his sphere of influence over Gibraltar Bank. Rothstein knew that his Gibraltar "insiders" would not question the immediate disbursement of wires from Banyon or RRA's TD Bank trust/escrow accounts out to RRA operating accounts and then to Rothstein's personal accounts. Rothstein also knew that his "insiders" would insulate him to minimize risk and compliance concerns. These acts by Harris, Ellis, and others were vital to the scheme's success.
- c. When Gibraltar became aware of improper conduct by Rothstein and undertook an internal risk/compliance investigation, Rothstein and his Gibraltar insiders would spring into action and quickly diffuse the situation. In one such instance in May, 2009, Gibraltar Bank's BSA (Bank Secrecy Act) Officer Julia Ansari ("Ansari") requested "additional supporting information/documentation" regarding the occurrence of certain suspicious transactions between May and September 2008,³²

³² Gibraltar Bank waited ten (10) months to inquire into the source of a suspicious fifteen million dollars (\$15,000,000.00) in wire transfers. Curiously, this coincides with the time period in mid 2009 when Gibraltar Bank was in the process of being privately acquired and, accordingly, may have been forced to reconcile and "clean up" their books in order to facilitate a sale.

including the lack of verification as to the source of the money in question. Rothstein attempted to placate Ansari by directing a letter from his certified public accountants at Berenfeld which stated that the transactions in question were treated as income and would be reflected as revenue on RRA's 2008 tax return. Ansari, not fooled by these blanket, unverified assertions, continued with the investigation by bringing her concern to the attention of Chuck Sanders, Senior Vice President, Chief Risk & Chief Compliance Office ("Sanders"). After reviewing the file, Sanders agreed with Ansari and the two jointly escalated the matter to Gibraltar Bank's CFO, COO and CEO. In the face of Ansari's and Sanders's evidence of Rothstein's misconduct, Gibraltar Bank's founder and CEO, Steven D. Hayworth, backed by Harris, unceremoniously shut his compliance officers down, openly stating that he did not want his compliance officers "bothering" one of the bank's best clients. Gibraltar Bank's executive team's decision was to accept Berenfeld's unverified letter and to smooth things over with Rothstein as he remained a priority client who was responsible for bringing in a lot of new business and wealthy clients in to the bank.

- d. This type of protective coverage was typical from Gibraltar Bank's senior management. In fact, in late 2008, then COO Jonathan Hullick "resigned" a day after openly confronting Harris in front of several senior management officials (including CEO Hayworth) and demanding an

explanation of why the bank's internal compliance and fraud-risk policies and regulations were not being applied to clients like RRA and Rothstein. CEO Hayworth, supported by other senior management officials, abruptly cut Hullick off and demanded that he leave Harris alone as he was doing all that was necessary to keep this important client happy.

- e. Rothstein was a substantial source of deposits at Gibraltar Bank and, as a result, Gibraltar Bank was more than willing to bend (and break) the rules to accommodate his needs. The large sums of money deposited into his and RRA's accounts provided Gibraltar Bank with an enormous financial cushion and allowed the bank the opportunity to enlarge its lending practice and aggressively pursue increases to its bottom line.
- f. Any time a policy or procedure was put into place that Rothstein did not like, he simply threatened to take his business elsewhere and Gibraltar Bank, concerned about losing this capital, would promptly buckle. For example, Gibraltar bankers Harris and Ellis frequently approved and helped cover sizeable overdrafts in the RRA trust and operating accounts. Harris and Ellis did this in direct contravention of Gibraltar Bank's own internal policies and procedures. In an October 17, 2006, e-mail, Rothstein was notified that the bank would no longer approve overdrafts in excess of \$50,000.00. However, after voicing his displeasure, in no uncertain terms, with Gibraltar Bank's position, Rothstein was quickly

reassured by Harris and Ellis not to worry. Thereafter, Rothstein enjoyed *carte blanche* overdraft protection, *to wit*:

- i. on February 17, 2007, Harris approved overdrafts in excess of \$250,000.00 in the RRA and Rothstein accounts;
- ii. on May 11, 2007, a \$500,000.00 overdraft in the RRA and Rothstein account was permitted;
- iii. six days later on May 17, 2007, Gibraltar approved a \$100,000.00 overdraft in the RRA accounts;
- iv. the next day on May 18, 2007, Gibraltar Bank authorized another \$180,000 in overdrafts bringing the total to \$280,000.00 “combined overdrafts” in these accounts;
- v. on September 28, 2007, two separate RRA accounts were overdrawn in the amounts of \$585,830.81 and \$1,579,865.69, respectively;
- vi. on June 30, 2008, RRA/Rothstein accounts were overdrawn in the amount of \$355,000.00.
- vii. This pattern of “special treatment” continued throughout 2007, 2008 and 2009, including:
 1. an October 31, 2008 e-mail from Ellis to Rothstein beginning “good morning mi amore, you had a couple of big checks come in on your personal account and we need 488k to cover. Let

me know if you want to pull from banyon. Other than that rra looks good.”; and

2. a December 5, 2008 e-mail from Harris to Rothstein copying Ellis with the subject line “coverage in accounts needed” stating: “To cover o/d [overdrafts] today. RRA operating is (42M), Rothstein personal (168M); rra payroll (67M); waww9 (128M) Riley Renov (157M) total is -\$570,000. please effect transfers at your very earliest opportunity. Thanking you in advance!!!! Let us know soooooon! Best-John”
- g. Gibraltar knew that at the same time Rothstein’s payroll and operating accounts were overdrawn, Gibraltar’s management and compliance departments were simultaneously investigating his blatantly irregular banking activities. Further, Gibraltar was expressly informed by Rothstein himself that the funds in RRA’s trust accounts were being held in escrow accounts for settlement deals. Notwithstanding, Gibraltar still agreed to offset the debts owed by Rothstein in order to recover moneys owed for its own benefit.
- h. By virtue of these continuous overdrafts, especially those in RRA’s trust accounts, Gibraltar knew that Rothstein was using his Gibraltar accounts to engage in improper conduct. As a result, Gibraltar benefitted from or participated in a diversion of the RRA trust funds for non-fiduciary purposes. Namely, Gibraltar had actual knowledge that Rothstein, as a

fiduciary, was using funds for his own benefit and in violation of his fiduciary duty.

- i. By assisting Rothstein to accomplish misappropriation of trust funds, Gibraltar, having actual knowledge that fraud was being perpetrated, knowingly made itself a party to the fraud.
- j. Gibraltar Bank's preferential treatment meant frequently approving and/or facilitating atypical banking transactions. For example, in a March 24, 2008, e-mail to Rothstein, Ellis wrote, "I need to show your payroll account as being positive for at least one entire day out of the quarter so it does not go on the 90 O/D list which goes in front of the powers that be." Essentially, Ellis was affirmatively and gratuitously helping Rothstein avoid being flagged for suspicious activity, thereby shielding him from a potential bank secrecy act / anti-money laundering (BSA/AML) compliance inquiry.
- k. For years, Harris, Ellis, and Frank Fernandez ("Fernandez") (collectively referred to as the "Gibraltar Bankers"), provided substantial assistance to Rothstein by feverishly transferring funds, "no questions asked," in and out of RRA's trust accounts. Gibraltar had actual knowledge that Rothstein was improperly using trust funds for his personal use and acted in bad faith when transferring said trust funds to Rothstein's personal accounts. Often, as soon as the money was wired to a Gibraltar Bank trust

account, it was immediately disbursed into RRA's operating account and then out to Rothstein's personal accounts, *to wit*:

- i. on December 14, 2007, Rothstein ordered the Gibraltar Bankers to transfer \$750,000.00 from RRA trust account x-5214 to RRA operating and then to transfer \$723,987.23 from operating to RRA Real Estate Trust x-5443;
- ii. on June 24, 2008, Rothstein directed a transfer of \$402,339.00 from RRA Banyon trust account to RRA operating and then a transfer of \$244,500.00 from RRA operating to Rothstein's personal account;
- iii. on June 26, 2008, Rothstein e-mailed Ellis and Fernandez directing the transfer of \$293,000.00 from RRA Banyon to RRA operating and then directing the transfer of \$275,000.00 from RRA operating to RRA payroll. Minutes later, Rothstein sent a subsequent e-mail directing the transfer of \$32,333.00 from RRA Banyon to RRA operating and \$31,000.00 RRA operating to Rothstein's personal account;
- iv. on September 22, 2008, Rothstein e-mailed Harris and Ellis to transfer \$2,000,000.00 from RRA Banyon to RRA operating; transfer \$500,000.00 from RRA operating to Rothstein's personal account; and transfer \$125,000.00 from Rothstein's personal account to AAMM;

- v. on October 16, 2008, Rothstein e-mailed Harris and Ellis to transfer \$100,000.00 from RRA operating to AAMM; transfer \$358,000.00 from RRA operating to RRA payroll; and transfer \$1,560,000.00 from RRA operating to Rothstein's personal account;
- vi. on October 20, 2008, Rothstein e-mailed Harris and Ellis to transfer \$3,000,000.00 from RRA trust account x-5214 to RRA operating; transfer \$50,000.00 from RRA operating to RRA payroll; and transfer \$300,000.00 from RRA operating to Rothstein's personal account;
- vii. on October 23, 2008, Rothstein e-mailed Ellis to transfer \$1,300,000.00 from RRA Banyon to RRA operating; and then transfer \$600,000.00 from RRA operating to Rothstein's personal account;
- viii. on May 12, 2009, Rothstein e-mailed Stay to transfer \$750,000.00 from an RRA trust account at TD Bank to Gibraltar Bank's Banyon trust account; transfer \$700,000.00 from RRA Banyon to RRA operating; and then transfer \$20,000.00 from RRA operating to Rothstein's personal account. Stay then instructed Harris and Ellis to effectuate same.
- ix. These types unquestioned transfers continued throughout 2007, 2008, and 2009.

- l. Gibraltar's knew from its internal reports and inquiries that it was serving as a clearing house for Rothstein's misconduct. As an intermediary bank receiving trust funds into a trust account for the benefit of third parties, Gibraltar would continuously allow transfers to cover overdrafts in all of Rothstein's accounts. Specifically with regard to the special nature of the overdrafts in RRA trust accounts, Gibraltar acted in bad faith when it transferred funds and appropriated them to set them off against the debt of Rothstein. Gibraltar, as a banking institution, was aware that Rothstein's banking activities were the quintessence of money laundering but allowed and endorsed such illegal behavior.
- m. Gibraltar Bank's abdication of its regulatory oversight responsibilities regarding the personal and RRA accounts shielded the Ponzi from discovery and allowed Rothstein and others to maximize their financial gains. To illustrate how money quickly flowed out once a wire hit an RRA trust account, below is a list of five e-mail transfer requests from Rothstein over a one day period (July 2, 2008):
 - i. Rothstein's first e-mail to Ellis and Fernandez titled "Here we go" sought the transfer of \$997,133.00 from RRA Banyon to RRA operating; the transfer of \$128,005.00 from RRA operating to RRA payroll; the transfer of \$20.00 dollars from RRA operating to WAWW2; and the transfer \$101,003.00 from RRA operating to Rothstein's personal account;

- ii. Rothstein's second e-mail to Ellis and Fernandez directed the transfer of \$98,123.00 from RRA operating to RRA Banyon; the transfer of \$33,000.00 from RRA operating to RRA payroll; and then the transfer of \$33,000.00 from RRA operating to Rothstein's personal account;
- iii. Rothstein's third e-mail to Ellis and Fernandez asks for the transfer of another \$35,000.00 from RRA operating to Rothstein's personal account;
- iv. Rothstein's fourth e-mail to Ellis and Fernandez instructs the transfer of \$160,000.00 from RRA Banyon to RRA operating; and then the transfer of \$35,000.00 from RRA operating to Rothstein's personal account; and
- v. Rothstein's fifth and final e-mail of the day to Ellis and Fernandez directs the transfer of \$41,229.63 from RRA trust account x-5214 to RRA operating; and the transfer of \$34,111.00 from RRA operating to Rothstein's personal account.

- n. Rothstein would also use Gibraltar Bank to funnel money to his family, as exemplified in this September 17, 2008 e-mail to Stay directing her to have \$1,000,000.00 transferred into RRA operating, and then transfer \$350,000.00 of the \$1,000,000.00 into Rothstein's personal account; transfer \$200,000.00 from his personal account into his parents Bank Atlantic account; and finally transfer \$75,000.00 from his personal

account into Kim Rothstein's account. Rothstein closes by stating that "Billy [Boockver] has all the wire data. This needs to be done immediately." Stay then e-mailed instructions to Ellis to complete same.

327. Interestingly, although willing to approve and help cover-up indiscriminate "overdrafts" and "transfers," Gibraltar Bank apparently was not willing to risk its own money when it came to extending Rothstein's line of credit. When Rothstein sought a five million dollar line of credit, Gibraltar Bank required that he post a five million dollar CD as security, offering further proof that Gibraltar Bank knew that Rothstein was using his Gibraltar accounts to engage in misconduct.

328. To put Gibraltar Bank's financial motivation for helping Rothstein into context, between July 2008 and September 2008 alone, hundreds of millions of dollars were wired into RRA trust and operating accounts at Gibraltar Bank. Moreover, Gibraltar reaped in excess of \$200,000.00 in NSF (not sufficient funds) overdrafts fees as a result of repeatedly approving and helping to cover sizeable overdrafts totaling in excess of \$64,000,000.00.

329. These high overdraft fees coupled with Rothstein's ability to get Gibraltar Bank's president Hayworth an audience with the biggest names in South Florida provides valuable insight as to why Gibraltar was so willing to provide such substantial assistance.

330. Further, Gibraltar's willingness to provide substantial assistance to Rothstein is no doubt related to its fear of losing such a great financial resource as a customer. The basis for this fear is demonstrated by Rothstein's multiple threats over the years to take his business elsewhere whenever he became annoyed by verification or compliance requests. By way of example:

- a. on September 8, 2006, an email from Rothstein to Harris in response to inquiries regarding overdrafts: "If they are going to start putting pressure

on us again every time the account is od from the previous nights pod they can kiss my firm, my consulting group, albert, ovi, ovi's dad, roger, the Bahamas deal and all the rest that goes with me goodbye...I will not be pushed or pressured by the idiot's in credit ever again. Not for one second. And you can tell them if they screw around with me I will be sure to tell every other one of their clients that I represent and that I am close to exactly what they are doing...that includes the levinsons and some other tasty accounts ... I am running a law firm and I have way too much on my plate each day to worry about morons in credit who think I am evil incarnate and who have no clue how business is actually done. . . . You and lisa are great and I do not want anything to effect [sic] our relationship but after all I have done and what I have clearly proved I can do I will not put up with even the slightest level of bullshit from them. You can tell them that they should be very wary of testing me at this stage of our relationship.”

- b. on November 13, 2006, another email from Rothstein to Harris in which he exclaims “Gotta love itand tell them to fuck off... ..not interested in their heat... ..if they want my friends as clients they just need to deal with it when things get a bit dicey... ..”
- c. on November 17, 2006 an email from Rothstein to Harris and copied to Ellis: “Johnny boy.....we need to establish a protocol with the folks in the gables regarding my accounts. Neither you nor I nor Lisa nor Irene needs the pressure they apply. ... It sends a message that, in all candor, I find repulsive. They cannot be my “best buds” when we are cranking, and then forget my name when we have a blip on the screen.....even if it is a major blip. They need to chill. They can not be my “best buds” when I am doing all I can to refer the bank business and then forget my name when they fell like forgetting what I am trying to do for my business and their

business. I bank with you because we treat each other with respect and because we understand the true meaning of what it is to be partners in something amazing.” (Emphasis supplied). Rothstein continues “My firm was instrumental in getting the governor elected. My firm was instrumental in getting 38 other elected officials in Washington and other states elected this cycle. Our client list grows every day. And candidly, I am just getting warmed up.....and they can either hang on and enjoy the ride or I will find someone who will. I can not operate thinking that when the shit hits the fan, they will cut and run. Charlie crist shows up here.....I call you. I have a client that I think I can sway to change banks, I call you. I have a deal that I think I can steer your way.....ie. the Blandin deal that we tried to put together, I insist on you. The Bahamas deal....you. I think you can benefit from being in with my boys, you are in. We hit a bump, I always do what I say I am going to do. You do the same. But your superiors or the decision makers do not see it the same way. And candidly, their nonsense and total lack of respect is growing tiresome. Tell them to back off. They are either on the team and want my firm or they do not. There is no in between in this type of business relationship.”

- d. on February 14, 2007, an email from Rothstein to Harris: “I can not be bothered by them on a daily basis. I do not care if they are watching. They can watch all they want.....that is their prerogative. If they want our business, they have to deal with it right now. If they do not want our business, commerce bank has just flown its senior guy down from new jersey and they just sent us 30 litigation files and wants our accounts.overdrafts and all ... The bottom line is that business that is as politically connected as we are is a hot commodity right now....new governor and all....new appointments and all.....and the presidential election just around the corner with roger running mccain.”

e. on March 11, 2009, an email from Rothstein to Harris once again threatening to take his business elsewhere: “I do not believe that I am being treated as valued customer by gibraltar and candidly, it has grown tiresome. . . . i also intend to meet with stu and david boden in the morning to discuss ending my banking relationship with gibraltar.”

331. For its part, Gibraltar eventually presented Rothstein with a way to avoid those pesky compliance requests. At or around the same time the Principal Conspirators’ compliance issues were reaching a head in mid-2009, Gibraltar Bank’s CEO Hayworth was rounding up a group of private investors to buy Gibraltar Bank. Rothstein, as it turns out, was one of the 50 “private” investors courted by Hayworth to assist in the bank’s repurchase. Hayworth’s strategy included ensuring that no individual investor would own more than 9.9 percent of the bank, thereby avoiding particular regulatory and statutory compliance requirements necessitated when a bank changes control.

332. Around this same time, Harris told Rothstein that because the bank does not investigate its owners, he should make sure to participate in this repurchase if he wanted any additional compliance issues to go away. On or about September 17, 2009, Gibraltar Bank was purchased back from Boston Private Financial Holdings for \$93 million, of which Rothstein invested five million dollars (\$5,000,000.00) for a 5-6% stake. As Harris had promised, Gibraltar’s concerns about the Principal Conspirators’ lingering compliance issues were completely quelled simultaneously with Rothstein’s investment. Accordingly, Rothstein not only purchased an ownership stake in one of his Ponzi banks, but also bought himself a “free pass” on the compliance issue, allowing his scam to continue ahead.

333. For his part, Rothstein lavished Harris with gifts, including invitations to exclusive concerts and sporting events, dinners, gift baskets, and even a vintage \$20,000.00 Rolex watch. It is noteworthy to mention that Gibraltar Bank fired Harris just a few weeks after the Ponzi scheme imploded.

334. Gibraltar Bank placed itself at the heart of the Rothstein Ponzi scheme. Despite significant suspicious activity and fraud-risk concerns and direct knowledge of RRA's raiding of client trust accounts to cover insufficient operating account balances, Gibraltar Bank failed to protect its customers, including specific investor Plaintiffs named herein. Gibraltar had actual knowledge that Rothstein was not the true owner of the trust funds. Furthermore, Gibraltar's actions in offsetting debts owed by Rothstein were in total disregard of banking practices, including its own internal policies. It knew that the accounts being raided by Rothstein were owned by legal entities separate and apart from Rothstein, individually, and any setoffs authorized or ordered by Gibraltar were precluded by law. Gibraltar Bank's failures inexorably highlight its role in the conspiracy and directly evidence its financial motive and the substantial assistance it provided to the Principal Conspirators' criminal operations.

335. Accordingly, with the help of Gibraltar Bank, Plaintiffs were victimized to the tune of hundreds of millions of dollars and, as such, seek recovery from Gibraltar Bank for their losses suffered.

B. Berenfeld Employees

336. Rothstein orchestrated the entire scheme around a veil of confidentiality--a deliberately opaque strategy meant to be intentionally vague. Although this tact was employed

as a means to deflect direct questioning, the one place this tactical strategy should not have succeeded was with his accountants, Berenfeld.

337. Berenfeld, by and through its employees, Weintraub, Berkowitz and Leitstein (collectively referred to herein as “Berenfeld Employees”), was uniquely positioned to discover the substantial evidence of fraud. Serving as the tax accountants and the preparer of financial statements for RRA and Rothstein individually, and as the auditor of Banyon 1030-32, an entity with known significant relationships to Rothstein as his principal feeder fund, the Berenfeld Employees either intentionally failed to disclose or inexcusably failed to detect obvious warning signs that something was amiss.

338. Berenfeld’s professional duties mandate that an accounting firm exercise the appropriate level of due diligence for the services being performed, to make inquiries when the accountant is aware that information supplied by the client is incorrect, incomplete or otherwise unsatisfactory, and to withdraw from the representation if additional information is not provided to the satisfaction of the accountant.

339. Regrettably, Berenfeld shirked these obligations choosing instead to look the other way when presented with direct evidence reflecting Rothstein’s breach of fiduciary duty and commissions of fraud.

340. Berenfeld relied upon Rothstein as a major referral source directly responsible for bringing in several of the firm’s major clients including Edify, LLC and its related entities, Jewel River Cruise Line US, LLC, RRA Sports & Entertainment, LLC, RRA Goal Line Management, LLC, the Bova restaurant chain, and the Rothstein Family Foundation, collectively representing – together with RRA – significant revenue for Berenfeld

341. The financial benefits of this relationship helped induce Berenfeld to act inconsistently with its professional and contractual obligations, asking questions (and getting answers) that would have protected Plaintiffs from the abuses of Rothstein.

342. Between July of 2007 until early November of 2009, Berenfeld was engaged by RRA and Rothstein individually to perform, *inter alia*, professional services, including but not limited to tax return preparation, tax consulting services, and accounting services such as compilation of financial statements, year-end closure of the books, bank account reconciliations, staffing for RRA's internal bookkeeping operations, and credit card reconciliations.

343. Furthermore, between September, 2008 and February, 2009, Berenfeld conducted an audit of Banyon 1030-32 and related entities. The Berenfeld Employees had actual knowledge of Rothstein's improper manipulations of RRA for his individual benefit, his use of Banyon to secure investors' monies, and his diversion of monies from RRA accounts and transfer of same into RRA's operating account, and vice versa, for his personal misuse. That misuse included Rothstein's bolstering of RRA's payroll, sponsorships and advertising to support his posturing as a major player in Florida legal, political, and philanthropic circles.

344. Rothstein demanded that Berenfeld not disclose RRA accounting information to anyone at RRA, including any of its attorneys including the other shareholder and the other so-called partners and Berenfeld surprisingly agreed to comply with this directive of secrecy.

345. Berenfeld learned of the details of both the dire financial straits of RRA and the real source of profligate spending by Rothstein which was supported by the record evidence. Significantly, Berenfeld after extensively reviewing and reconciling RRA's operating and trust bank accounts, RRA's substantial overdraft positions, and actual knowledge of the NSF (not

sufficient funds) bank charges, knew that the firm was hemorrhaging cash caused by Rothstein's profligate spending.³³

346. As described in the preceding *Gibraltar* section, on May 27, 2009, Rothstein received a letter from Gibraltar Bank BSA Officer Ansari raising concerns over multiple suspicious transactions at Commerce Bank (now TD Bank) from July through September, 2008. Ansari wrote "[a]s discussed, we need to know and document the purpose of the payments" and requested "additional supporting information/documentation." Ansari closed by stating that "[a] letter from your CPA supporting the information will be greatly appreciated."

347. Thereafter, Rothstein sent an e-mail to Weintraub entitled "bank crap" writing: "Hey bro.....need to see you this afternoon if possible so I can get that nebulous letter over to Gibraltar about the fact that I am declaring certain funds as income to my firm" Weintraub then forwards the e-mail on to Berkowitz and the two, without verifying the source of the funds in question,³⁴ craft a letter to Gibraltar baldly assuring Ansari that the large deposits "are recorded as revenue on the books of the law firm and will be reflected as income on their tax return for 2008", adding only that "[t]his information was not audited by our firm . . ."

³³ Between 2005 and October 2009, Rothstein incurred approximately \$22 million of credit card charges (increasing steadily from \$1.2 million in 2005 to almost \$7 million in the first ten-months of 2009); Berenfeld obtained this knowledge through its reconciliation of RRA's American Express charges for each of the compilations and/or annual tax returns that they prepared and because it posted or requested that RRA post those summaries of charges to RRA's records.

³⁴ Berkowitz testified under oath at a March 17, 2010, bankruptcy examination that he clearly understood that Gibraltar Bank was seeking to determine whether or not RRA earned the monies in question during the course of delivering legal services to clients. Although he admits he "could see that RRA was transferring moneys from trust accounts at Commerce Bank/TD Bank, in sufficiently large numbers, to cause Gibraltar Bank, the depository institution, to raise its hand and ask, hey, what is this money for", he never made any inquiry of Commerce Bank about the source of these funds.

348. During a March 17, 2010, deposition in the related RRA bankruptcy case, Berkowitz revealed, under oath, that he and Weintraub altered the original draft of the letter to Ansari pursuant to Rothstein's instruction. The original letter stated that "we provide no proof of accuracy" and "[t]his information was not audited *or verified* by our firm". At Rothstein's direction the phrase "we provide no proof of accuracy" and the words "or verified" were deleted from the final letter.

349. Furthermore, Berkowitz admitted under oath that he knowingly failed to comply with accounting standards by, for "no real reason," failing to attach a required compilation report responsive to financial inquiries being made from an insurance company. Berkowitz also, without justification, erroneously omitted the required compilation report when providing Gibraltar Bank with a requested RRA statement of assets, liabilities, and stockholders' equity.

350. Additionally, Berkowitz admitted in the same deposition that he made repeated mistakes including major failures in verifying the source of funds rapidly being transferred in and out of the law firm's trust, escrow, and operating accounts and in not properly accounting for the more than twenty million dollar (\$20,000,000.00) jump in RRA revenues from 2007 to 2008.³⁵

351. In fact, Berkowitz testified that RRA's CFO Stay "messed up" the balance sheet leaving him unsure of the source of the revenue, candidly admitting "[w]e didn't know what the deposits were for and how to report them." Incredibly, and in spite of rampant discrepancies and deficiencies, Berkowitz and Weintraub finalized the prepared tax return for filing anyway.

³⁵ Berkowitz commented that he "noticed payroll numbers were going up, and it didn't look like there was enough law business to justify all these salaries." In fact, in 2009, firm income stood at \$9,979,625.00 while yearly anticipated payroll numbers came out to \$29,350,957.22, leaving an astounding \$19,371,332.22 shortfall.

352. Finally, Berkowitz incredulously admits that he believes that the million plus dollars (\$1,000,000.00) in legal fees supposedly paid to RRA by Gruverman Enterprises (Edify) in 2008 was bogus. This too was swept under the rug by the accounting firm.

353. Berenfeld also knew that RRA was not generating nearly enough income from the practice of law to justify the rapid increase in the number of attorneys in its Fort Lauderdale and other offices, and in the extraordinary expenditures of the law firm.

354. With knowledge of Rothstein's actions and observing his financially damaging effects upon RRA, Berenfeld was also retained by Banyon 1030-32 for the purpose of providing an independent audited financial statement report to investors and potential investors. At the same time Berenfeld was auditing Banyon, it was concurrently preparing tax returns for RRA, delivering accounting services to RRA and providing tax advice to Rothstein.

355. As stated in the Banyon 1030-32, LLC engagement letter, Berenfeld agreed to:

plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatements, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of law or governmental regulations attributable to the entity or to acts by management or employees acting on behalf of the entity,

356. As part of the preliminary assessment of Banyon's consolidated finances, Berenfeld set forth an audit plan to "adequately test" the accounts receivable balance as of December 31, 2008. Berenfeld's "primary objective" was to "perform audit procedures to test the [e]xistence of the legal settlements" including, *inter alia*, verified confirmation: (1) that the legal settlements exist; (2) that the defendant transferred plaintiff's settlement funds to the escrow trustee (RRA) as agreed to in the settlement; (3) that funds were available in the escrow

account for disbursement to Banyon 1030-32 once an assignment is executed; (4) that the assignment agreement included the name of the plaintiff, date of settlement, the amount to be paid by Banyon 1030-32 to plaintiff, and the schedule of payments to be disbursed by the escrow trustee to Banyon 1030-32; and (5) that Banyon 1030-32's list of receivables was accurately reflected.

357. Indeed, Berenfeld's duty in independently verifying these audit procedures was heightened by the fact that RRA was the sole source of the to-be-audited assets and was responsible for the entire deal flow process as the putative escrow agent.³⁶

358. As we now know, each of the settlement deals, including the putative plaintiffs and defendants, were all phony. Had the Berenfeld Employees engaged in any meaningful attempt to independently verify the legitimacy of these settlements, requested confirmation from the debtor/defendant that an agreement was reached, or endeavored to verify that funds were wired from the putative defendants, the entire fraud would have been exposed and hundreds of innocent investors, including the Plaintiffs, would have been spared financial ruin. Instead, the Berenfeld Employees chose to validate the business model, falsely representing to Plaintiffs that BIF/Banyon 1030-32 investments were secure and gaining value.

359. Accordingly, the Berenfeld Employees either willfully conspired to wholly abandon these duties or acted with gross negligence in forsaking their responsibilities.

360. Additionally, the Berenfeld Employees committed the following overt acts and/or omissions in furtherance of the conspiracy.

³⁶ Although Berenfeld CPA Partner Robert Bedwell acknowledges in a February 2, 2009 e-mail to Leitstein that "fraud risk assessment procedures will need to be performed given the higher fraud risk assessment" there is no evidence supporting any implementation of such procedures.

- a. In a February 19, 2009, e-mail from Preve to Rothstein regarding Berenfeld's audit confirmation request received by RRA entitled "Banyon Resources Confirmation", Preve encloses "the schedule Berenfeld is looking for . . . [which] should be ATTACHED to the confirmation letter they are asking you to sign." Preve adds that he thinks "it is important that [Rothstein] get this [attachment] down to Tracy [Weintraub] ASAP so we can get any feedback to changes . . . you might want to make some appropriate scribbles on the schedule so that it looks like someone actually worked with it.....you know the drill....." This e-mail proves that Weintraub was working hand in hand with Preve and Rothstein to help "doctor up" an audit confirmation that will satisfy Berenfeld's audit team. Remember, the entire purpose of the audit confirmation is for RRA to independently authenticate for Berenfeld that the settlements were in fact actually purchased by Banyon 1030-32 and, therefore, neither Preve, or Weintraub should have had any involvement *whatsoever* in preparing, reviewing, revising, and/or authenticating same.
- b. Many of the patent irregularities and inconsistencies described herein should have raised a myriad of red flags. Several other significant warning signs ignored include:
 - i. as both sophisticated auditors and tax preparers, the Berenfeld Employees either did or should have spotted the distorted correlation between RRA's firm revenues (approximately

\$34,000,000.00 in 2007) with the attorneys' fees expected to be generated from more than a billion dollars worth of legal settlements.³⁷ This discrepancy alone simply cannot be reconciled and should have sounded major alarm bells;

- ii. Banyon's unexplained exponential jump in revenue from \$7,956,654.00 in 2007 to \$146,005,125.00 in 2008, an increase of over 1725%;
- iii. the idea that Banyon 1030-32 was operating a billion dollar operation with one employee out of shared office space failed to raise eyebrows;
- iv. the lack of transparency into RRA, including Rothstein's refusal to comply with even the most routine of disclosures;
- v. in response to Leitstein's inquiry whether a Promissory Note with Platinum Partners at a rate of 50% was reasonable and legal, Preve responded that "[o]f course it is not reasonable but then neither are our discounts."³⁸; and
- vi. the fact that Rothstein was not a registered advisor, that he supposedly did not charge any fees for this spectacular lucrative opportunity, and that he gratuitously agreed to guaranty the entire

³⁷ Even at a conservative 20% contingency fee, gross attorney fee revenue generated from the putative settlements would exceed two hundred million dollars (\$200,000,000.00).

³⁸ Leitstein even joked with other Berenfeld employees who toyed with the idea of telling "the Banyon investors we can do better than the 20% return they are getting, lol."

transaction were but a few more of the many glaring, tell-tale signs that something was amiss.

- vii. Berenfeld knew that excluding a shareholder of a Subchapter S company from access to accounting information in its possession was not correct or consistent with standard operating procedures or professional standards;
- viii. Berenfeld prepared tax returns that reported client trust funds in a way that did not distinguish between RRA operating cash and client trust funds, giving the misimpression that RRA had more available cash than it actually owned. Client trust funds are commonly listed on a balance sheet as an “Other Current Asset” along with an offsetting “Other Current Liability” and not as “Cash” as shown by Berenfeld;
- ix. Berenfeld saw that RRA’s trust accounts did not contain investor funds in amounts commensurate with the vast sums that RRA’s books and records reflected as held in trust;
- x. Berenfeld knew that RRA’s payroll accounts were running large negative daily balances and that NSF charges were extensively incurred;
- xi. Berenfeld knew that RRA was paying for credit card charges that Rothstein, his wife, as well as other employees incurred and that

the credit card was used to pay for substantially all costs and expenses of the law firm;

- xii. Berenfeld sent confirmations, during its 2007 audit of Banyon, to Rothstein in order to verify \$42 million of investments held in attorney trust accounts however no corresponding liabilities were reflected on RRA's income tax return or trial balance. Likewise, for the 2008 Banyon audit, Berenfeld sent confirmations to substantiate \$545,000,000 of investments purportedly held in attorney trust accounts, yet the RRA trial balance reflected no such cash balance or corresponding trust liability;
- xiii. Berenfeld failed to comply with its own quality control standards by not completing necessary checklists. The RRA work-papers produced by Berenfeld do not include copies of their "Tax Return Preparation Checklist" which indicates it is a "guideline" and "to be used as a working tool in preparation and self-review of tax returns";
- xiv. Berenfeld suspected that the revenue reflected in RRA's books was not "fee income," as Rothstein and Stay insisted it was, but took no steps to track down and document the true source of this revenue;
- xv. Berenfeld knew of the wildly inaccurate RRA bookkeeping and inadequate accounting personnel evidenced by the way in which the books and records were created and maintained, leading to

- extraordinary adjustments, tantamount to re-writing the books and records of RRA;
- xvi. Berenfeld provided a “nebulous” letter to Rothstein to help cover up \$15,000,000 in suspicious transactions in response to an anti-money laundering compliance inquiry from Gibraltar Bank (and even surprisingly, at the direction of Rothstein to cover up the obviously illegal scheme, removed disclaimer language that certain information was not “verified”);
- xvii. Berenfeld considered it strange that Stay refused to provide copies of bank statements, did not insist upon seeing them, despite the incredible numbers being provided to Berenfeld;
- xviii. Berenfeld recognized that information concerning transfers from trust accounts made “no sense” but did not pursue the true source of these transfers, which information was readily available in the documentation concerning the Banyon audit;
- xix. Berenfeld prepared 2006 compiled financial statements for RRA which reflected current liabilities in excess of current assets; which reflected positive available cash of only approximately \$4,000; and which reflected distributions made of 99% of the alleged current year’s net income;
- xx. Berenfeld knew that operating cash balances were significantly overdrawn at the end of each year from 2005 to 2008;

- xxi. Berenfeld observed that tens of millions of dollars of “loans/fee income” were being deposited into RRA’s various trust and operating accounts without any supporting documentation to support shifting revenues from trust accounts to operating and payroll accounts;
- xxii. Berenfeld’s requests to see detailed information concerning trust accounts and fee income were rebuffed by Villegas, and neither followed up, protested, nor refused to sign the tax return for that year;
- xxiii. Berenfeld adjusted RRA’s 2007 and 2008 income by almost \$95,000,000 under suspicious circumstances. Berenfeld reclassified this liability as income in order to keep the books in balance – a liability that remains and that the RRA estate has to deal with;
- xxiv. Berenfeld prepared the 2006 compiled financial statement without an accountants’ report which should have indicated the level of services being performed; and
- xxv. Berenfeld sent RRA’s 2006 financial statements to third parties (including an insurance company and a bank), without indicating whether the financial statement was the product of a “compilation,” or “review” in violation of AICPA’s reporting requirements.

- c. For his part, Rothstein lavished Weintraub with gifts, including invitations to exclusive concerts and sporting events, dinners, gift baskets, and even an expensive watch.
- d. Weintraub, a partner on the Executive Committee at Berenfeld and head of its office in Fort Lauderdale, had access to and personal knowledge of RRA's, Rothstein's and Banyon's financial information.
- e. Serving in multiple capacities as auditor of Banyon, accountant and tax preparer for RRA, and tax preparer for Rothstein individually, and accountant for various Rothstein businesses, Berenfeld failed to comply with basic provisions of the AICPA Code of Professional Conduct and applicable provisions of the Statement on Standards of Accounting and Review Services ("SSARS"). And of course its audit of Banyon was woefully inept; it was not conducted in accordance with Generally Accepted Auditing Standards ("GAAS").
- f. As both tax accountants for RRA and Rothstein and as auditor for Banyon, Berenfeld routinely observed multi-million dollar transfers made from Banyon's trust accounts into RRA's trust accounts, payroll account, and operating account. In fact, Weintraub – the preparer signatory on the RRA tax returns – had knowledge of and full access to Banyon's financial information. He was the originator and concurring audit partner on the Banyon audits and he participated in service delivery to Banyon.

361. Berenfeld neglected its responsibilities under applicable professional standards to provide accounting services consistent with the standards required of a public accounting firm.

362. The Berenfeld Employees' colossal failure in not identifying and/or paying attention to the glaring red flags is at best gross professional error. However, compounding these patent failures the Berenfeld Employees intentionally, or with reckless disregard, issued an unqualified audit opinion letter which they knew would be attached as a critical representation in BIF / Banyon 1030-32's Confidential Offering Memorandum (described in detail in Section VII, A, *supra*).³⁹

363. The Berenfeld Employees were aware that prospective and existing investors in BIF/Banyon 1030-32, like Plaintiffs, were the intended beneficiaries of their audit work and foreseeably would rely on the Confidential Offering Memorandum as a means to investigate and confirm BIF/Banyon 1030-32's financial health. As a result, the Berenfeld Employees owed the limited partners of BIF, including the Banyon Investors, Cooper Management, Razorback, D3 and others a duty to act as an attentive and skeptical auditor as required under the Generally Accepted Auditing Standards ("GAAS").

364. The audit procedures performed by Berenfeld were entirely mechanical exercises with minimal to no audit value. The integrity of the underlying data used to derive their opinion was neither independently verified nor evaluated for reasonableness.⁴⁰ Berenfeld failed to

³⁹ "In our opinion, the consolidated financials statements referred to above present fairly, in all material respects, the consolidated financial position of Banyon 1030-32, LLC and Affiliates as of December 31, 2008 and 2007"

⁴⁰ The audit files do not reflect that any verification was made by any independent third-party as to the reasonableness of these settlements and/or business models. In fact, had Berenfeld even minimally endeavored to test the reasonableness of these settlements they would have quickly discovered that the volume of putative assets being purchased was completely unattainable and the model wholly unsustainable.

implement procedures to adequately test Banyon controls as they relate to money laundering despite increased professional obligations imposed upon auditors to make such fraud assessments. Berenfeld even performed certain accounting procedures which should have been done by Banyon and, as a result, meant that Berenfeld was actually auditing its own work. This utter lack of independence highlights Berenfeld's audit deficiencies, a list which also includes:

- a. ignoring substantial evidence of RRA and Banyon commingling funds;
- b. disregarding the inadequacy of BIF/Banyon 1030-32's reserves;
- c. failing to determine how the BIF/Banyon 1030-32 accounts were maintained and reconciled to conclusively establish that new monies were not being used to pay old obligations;
- d. never asking for and, therefore, never receiving any of RRA's bank statements showing the massive account balances needed as support to corroborate the receivable being audited;
- e. not obtaining a better understanding of the confidential settlement purchase business model in order to better formulate proper verification procedures;
- f. wholesale acceptance of unsupported management representations embodied in key components of the independent auditor's report; and
- g. providing BIF/Banyon 1030-32 an editable Word format of their audited financials, rather than a "locked" PDF version, for inclusion in Banyon's Confidential Offering Memorandum.

365. Berenfeld's compilation of work papers, background information, and documentation should have raised serious questions about the integrity of RRA's operations. Rather than diligently perform their sacrosanct duty, the Berenfeld Employees cavalierly gave their seal of approval to a Ponzi scheme premised upon phantom investments, paying phantom plaintiffs, and authenticating phantom receivables. Berenfeld's decision to rely on purely arbitrary assumptions and self-serving management representations in formulating its unqualified⁴¹ audit opinion are unforgivable errors providing either direct evidence of the Berenfeld Employee's overt actions in furtherance of the scam or conclusively demonstrating the reckless disregard of their professional duties.⁴² Either way, the Berenfeld Employees are culpable for keeping this Ponzi scheme alive.

366. The Berenfeld Employees were the last line of defense that had the means and opportunity to expose the largest Ponzi scheme in Florida history. With multiple inroads to discover the Rothstein fraud, principally in its position as the Principal Conspirators' tax accountants and as the only auditor with access to verify and confirm the Principal Conspirators' settlement deal flow, the Berenfeld Employees were in the best position of any other co-collaborator to detect the Ponzi scheme. Instead, the Berenfeld Employees elected to do nothing

⁴¹ Berenfeld's Independent Auditor Report contained neither a scope of limitation nor a qualification confining their opinion.

⁴² It is noteworthy to mention that Berenfeld was recently reprimanded on February 28, 2008, by the Public Company Accounting Oversight Board (the "PCAOB") for what the PCAOB inspection team identified as considerable audit deficiencies. The PCAOB report revealed that "[t]he deficiencies identified in one of the [Berenfeld] audits reviewed included a deficiency of such significance that it appeared to the inspection team that the Firm did not obtain sufficient competent evidential matter to support its opinion on the issuer's financial statements." That deficiency was the failure to perform audit procedures related to revenue recognition. The auditing deficiency described above related to auditing an aspect of an issuer's financial statements that the issuer revised in a restatement of its financial statements, subsequent to inspection fieldwork." (emphasis added).

but intentionally or recklessly ignored a list of red flags as long as the list of victims. Undeniably, in failing to properly conduct its audit and failing to properly prepare the Principal Conspirators' tax returns, Berenfeld substantially assisted the perpetration of the fraud.

367. Without the Berenfeld Employees' cooperation in the conspiracy and/or gross incompetence, Rothstein's billion dollar Ponzi scheme would not have survived for as long as it did. These errors and omissions are at best examples of gross negligence and at worst evidence of Berenfeld's complicity in the Ponzi. Accordingly, Plaintiffs seek recovery from the Berenfeld Employees for their losses suffered.

C. Platinum and Centurion

368. This Ponzi scheme, like so many before it, was all about the money. Money motivated the Ponzi's inception, fueled its growth, and ultimately caused its crater.

369. Over the last four years, the Principal Conspirators amassed more than a billion dollars worth of private investments, the bulk of which originated from feeder hedge funds. These hedge funds provided access to large sums of investor money and lent critical financial credibility to the legitimacy of the Principal Conspirators operations.

370. Two of the hedge funds at the center of the Rothstein scheme were Platinum and Centurion. Platinum and Centurion, by and through inter-related acting agents, managers, and officers Jack Simony ("Simony"), Ari Glass ("Glass"), Brian Jedwab ("Jedwab"), Gilad Kalter, and Mark "Meir" Nordlicht ("Nordlicht"), obtained actual knowledge of the Ponzi in early 2009. However, rather than pursue their contractual rights which would have ended the fraudulent scheme, Platinum and Centurion elected to conceal the damning information, to affirmatively

misrepresent and/or induce other investors into the scheme, and to willfully accept payment of dirty Ponzi money.

371. As described herein, Platinum and Centurion's actions in furtherance of the conspiracy and/or substantial assistance in aiding and abetting the fraud were selfishly motivated and deliberately intended to protect their own investments to the detriment of others, including the Plaintiffs, for which they should be held liable.

372. Platinum and Centurion were both introduced to the Ponzi scheme by Levin, Preve, and Banyon in early 2008.

373. On June 26, 2008, Platinum entered into a Credit Agreement with Banyon Investments, LLC, whereby Platinum agreed to make available one hundred and fifty million dollars (\$150,000,000.00) in a revolving credit line for purchase of settlement interests secured by a Second Amended & Restated Promissory Note dated September 24, 2008, in the principal amount of one hundred and fifty million dollars (\$150,000,000.00).

374. On April 3, 2008, Centurion entered into a Credit Agreement with Banyon Funding, LLC, whereby Centurion agreed to make available fifty million dollar (\$50,000,000.00) in a revolving credit facility for purchase of settlement interests secured⁴³ by a Amended & Restated Promissory Note dated September 25, 2008, in the principal amount of fifty million dollars (\$50,000,000.00).

375. Significantly, the Credit Agreement called for Platinum and Centurion to *pre-approve* any settlement interest being purchased before drawing down on the revolving credit line. As agreed, Banyon would submit a detailed Request for Advance spelling out all relevant

⁴³ Banyon provided additional collateral for both the Platinum and the Centurion Credit Arrangements in the form of a first priority perfected lien on the interests being acquired, along with a personal guaranty from Levin.

terms and conditions including: (1) copies of the redacted settlement documents⁴⁴; (2) the total settlement purchase price and amount of the requested advance; (3) an acknowledgement of assignment of settlement proceeds executed by Escrow Agent (RRA) and Banyon; (4) RRA's acknowledgment of defendant's payment in full on the entire settlement proceeds; and (5) a date specific schedule of loan repayment consistent with terms of the settlement agreement being purchased.

376. Platinum and Centurion knew, prior to accepting the purchase of any settlement interest, that the entire settlement proceeds were prefunded in an RRA escrow account and that each enjoyed a preferred security interest.

377. Beginning in late 2008, Centurion's Managing Director Jedwab began expressing concerns to Kalter, Glass, Simony, and Nordlicht over the dramatic increase in the settlement amounts being made available and the ever increasing rates of return. That suspicion spread, and soon Platinum and Centurion both began raising concerns over RRA's entire operations. Platinum and Centurion agreed that additional substantive due diligence was needed.

378. Because Jedwab has extensive knowledge of the settlement industry, he was designated as the lead in Platinum and Centurion's due diligence investigation. In early 2009, after several Platinum and Centurion loans became delinquent, Jedwab issued an unfavorable report highlighting significant due diligence concerns which, ultimately, caused a dramatic slow down in the amount of settlements being purchased.

⁴⁴ Redacted settlement documents include: (a) a retainer agreement between escrow agent (RRA) and the putative plaintiff showing the fees paid to the escrow agent (RRA) by the putative plaintiff for the services rendered (whether contingent or otherwise); (2) a settlement agreement showing the amount of the proposed liquidated settlement payment, and the frequency and amounts of the disbursement of same by escrow agent (RRA); (3) a sale and transfer agreement executed by putative plaintiff; and (4) a sale and transfer agreement executed by Banyon.

379. This slowdown in funding caught Rothstein off-guard and created an unanticipated cash crunch as there was no longer a steady flow of dollars coming through the Ponzi doors. Banyon and RRA worked with Platinum and Centurion to try and assuage them to continue funding by attempting to address their most pressing concerns.

380. However, Rothstein's Ponzi deficit continued to mount and by late March, early April 2009, the burden became unmanageable. Knowing he could no longer sustain the Ponzi, Rothstein concocted a story about how Platinum's and Centurion's halt in funding caused a client settlement backlog and, as a result, he was facing imminent Florida Bar suspension and a total freeze on RRA's accounts. This was Rothstein cover story for why mounting scheduled settlement payments were not being made to Platinum and Centurion.

381. Platinum and Centurion knew that there was no such impending Bar suspension and that there was no way--absent criminal charges and issuances of an injunction--for a law firm's entire assets, including client trust accounts, to be frozen.

382. Instructively, despite Platinum's and Centurion's knowledge of a problem and rather than pursue the contractual security rights so carefully put in place to protect their interest in the event something like this happened, Platinum and Centurion proceeded in an entirely different manner.

383. As their due diligence revealed, Rothstein was engaged in a Ponzi fraud and they knew there was no money to be paid. Accordingly, Platinum and Centurion were faced with a dilemma--either (1) write down the entire investment loss and walk away, or (2) reveal to the world that they were duped into a Ponzi scheme which is tantamount to financial suicide for an investment hedge fund.

384. However, Platinum and Centurion did not choose either of these options and, instead, decided to pursue a third option which was to work with Rothstein and Banyon to get their money back. Platinum and Centurion understood that the more money the Ponzi scheme brought in, the more money there was to pay Platinum and Centurion back. Consequently, Platinum and Centurion first agreed to forego a default of Banyon which would cast a large shadow over the entire strategy and reveal the underlying fraud. Second, Platinum and Centurion agreed to extol the virtues of the investment strategy when identified as a reference for other potential investors by Banyon and RRA. Finally, Platinum and Centurion actively assisted in helping solicit new investors by, *inter alia*, knowingly misrepresenting the security of their investment position and return history.

385. Platinum and Centurion followed this “game plan” by initially not defaulting Banyon despite tens of millions of dollars in delinquent scheduled payment due, electing instead to actively conceal the same from their own investors. Platinum and Centurion also extolled the virtues of the investment strategy as a reference for Banyon and RRA including, *inter alia*, to Gibralt US, Inc. Gibralt was an early investor through Banyon who, similar to Platinum and Centurion, grew wary of the growing case settlement pipeline. After conducting significant due diligence, on April 1, 2009, Gibralt US, Inc. decided “to pass” on continuing to purchase settlement deals. However, Banyon persuaded Gibralt to reach out to Platinum and Centurion and, on April 5, 2009, Rothstein, in an e-mail to Preve and Levin, revealed that “For what it is worth they [Gibralt] are still doing due diligence on us. They contacted ari [Glass] the day after they told u they were out to see if he thought it was a solid investment and he advised *absolutely yes*. Soooo We shall see. Love ya Rh hood of the bronx” (emphasis added).

386. Finally, Platinum and Centurion substantially assisted in inducing new investments into the scheme by knowingly misrepresenting and/or omitting material information in conversations with potential investors. By way of example, as Clockwork began undertaking its due diligence investigation, Preve suggested that Clockwork speak with some of their other big New York hedge fund investors, Platinum and Centurion. In August 2009, a Clockwork representative spoke with Simony who represented: (1) that Platinum and Centurion had conducted extensive due diligence on every aspect of the Rothstein investment and that it was a solid investment; (2) that the investments were performing and, as a result, they were continuing to invest; and (3) that they “love the opportunity” and would recommend investing with Rothstein. Simony also pointed out their initial concern over the lack of transparency regarding the identities of the parties to the settlements and were successful in negotiating with Rothstein and Banyon for the appointment of an independent third-party verifier. Michael Szafranski was chosen by Platinum and Centurion to be the independent third-party verifier because he lived in Miami and was well-known as a childhood friend to a high level executive at Platinum and Centurion (later revealed to be Kalter). Furthermore, Simony represented that Platinum and Centurion took the following actions to mitigate any risk associated with the investment:

- a. they required RRA to move their trust accounts from Gibraltar to TD Bank as the latter was a more established international bank with presumably greater internal controls and less susceptible to possible influence by Rothstein;

- b. they negotiated with Rothstein to consent to the appointment of Michael Szafranski as a third party verifier to review unredacted settlement documentation; and
- c. they personally met with Spinosa and other TD representatives to confirm trust account balances on location at TD Bank branch offices.

387. Based on these affirmative misrepresentations, Razorback and D3 invested in the Ponzi scheme and lost more than fifty million dollars (\$50,000,000.00).

388. Additionally, other reasonable inferences of Platinum's and Centurion's actual knowledge of the fraud and evidence of their substantial assistance in furtherance of the scheme is evidenced by:

- a. As alleged herein, Platinum and Centurion did not just sit idly by while Rothstein endeavored to re-direct Ponzi money back to them but, instead, actively concealed discovery of the fraud and affirmatively assisted in the inducement of other investments into the Ponzi which ultimately accelerated repayment to them.
- b. Following the terms of the Credit Agreement and related documentation, each Platinum and Centurion repayment was to be made pursuant to a pre-determined fixed schedule. Additionally, because the putative defendants funded the entire settlement into an RRA escrow account prior to purchase, there would never be an occasion for the funds to be missing or a plausible explanation for why funds needed to be borrowed. Moreover, it is inconceivable that Platinum and Centurion would receive any loan

repayment from RRA instead of Banyon, as the loan obligation was exclusively Banyon's. Yet, as revealed in an April 29, 2010 e-mail correspondence from Rothstein to Simony, Platinum and Centurion knowingly accepted "borrowed" funds not from RRA's escrowed trust accounts. "I have borrowed the 15m [\$15,000,000.00] to pay platinum this week." (emphasis added). The e-mail alone is direct evidence of the fraud because, as stated *supra*, Platinum and Centurion knew that Rothstein should not need to borrow any money to secure repayment and likewise knew that their repayment should be from Banyon Funding, LLC and not from RRA.

- c. On April 8, 2009, Levin sent a letter to Centurion expressing "deep[] concern[s] about [Centurion's] unilateral decision to cease funding and the position this has placed Banyon relative to other third parties." In the same letter, Levin articulates that he is troubled by Centurion's refusal "to share the results of your due diligence investigations" despite several days of meetings with Rothstein which apparently raised considerable red flags;
- d. On April 13, 2009, Will Slota of Platinum Partners the general partner of Platinum wrote to Preve copying Nordlicht, Ari Glass, and J. San Filippo of Platinum expressing concern over receipt of an unexplained partial payment stating that, "Moments ago, Banyon Investments Collection received a wire in the amount of \$256,250. . . . The payment amount due to Banyon Investments Collection today is \$7,765,300.94 [not 256,250]."

Please advise.” Based upon the deal structure and the unambiguous representation that the settlement money was pre-funded and being held in a designated escrow account, a partial payment cannot be explained and further confirmed what they already knew, namely that this was fraud;

- e. Later that day after completing a \$3,666,666.67 wire transfer, Rothstein writes to Simony stating “jack, I will be awaiting receipt of one half [of the wire amount] back today as per your direct assurances.” This type of circular funding is a core component for perpetrating a Ponzi scheme and serves as prima facia evidence on the parties agreement to defraud;
- f. On May 1, 2009 Nordlicht sent Rothstein an e-mail concerning a suspicious investor “who is going to blow up my fund on mon and create major headaches for all involved. [The investor] wants to do it now already but I held him off by saying I gave george [Levin] my word. Please any wire at all is mustered today will help stabilize the situation even if full amount doesn’t come until Monday. PLEASE HELP-I’m dying here”;
- g. On May 6, 2009, Rothstein e-mails Nordlicht that “Obviously, given these and all the other pendent circumstances, Banyon and my firm expect that you will not issue a default against Banyon. I am certain that given all of our conversations and all that has transpired, you understand that such an act would serve no one’s purpose, with a result none of us want.”;

- h. Later that day, Preve sent Rothstein an e-mail relaying a message that “Jack [Simony] asked if you could look at sending something to the other two funds to keep them quiet as well.....”;
- i. On May 7, 2009, Nordlicht e-mailed Preve stressing that he needs \$6,500,000.00 “for [P]latinum today whether it be from yesterdays funds or if the bar releases everything. I cannot nail down nav without it and investors are starting to ask q’s. MUST HAVE TODAY.” This e-mail was followed by an e-mail from Preve to Rothstein writing that “Jack [Simony] seems to think Mark [Nordlicht] is going off the deep end.....says they need something to keep them alive.....”;
- j. On May 11, 2009, Rothstein sent Preve an e-mail entitled “WIRE” stating that “According to Jack [Simony] everybody is on board with our game plan this week.”;
- k. On May 18, 2009 there is a series a significant e-mails which starts with one from Nordlicht to Preve and Simony beginning “Frank – just a friendly reminder we are behind 1.5 million from the end of last month and have an additional 15 [million] due today. I am told centurion and level 3 are owed 1.5 each today as well. Hopefully the logjam is breaking. Don’t mean to be a nag (we leave that to Jack) but feeling a lot of pressure on my end.” Preve then forwards the e-mail onto Rothstein who answers, “What the hell is that bullshit about u being concerned about the lack of direct releases...u make me sound like the problem. And I didn’t start this

shit. Don't hang me out to dry with these motherfuckers." Finally, Preve replies, "...concerned? I am petrified...if word gets out that we are \$125m past due we will never see another cent in 3rd party fundings including the PPM. We will have the auditors looking at the books in another 12 days and that also gives me great concern...it is so easy to see the sudden lack of releases and you know auditors...everything has to be explained in footnotes...and by the way, no one is throwing you under the bus...all we have done is support you at every single turn and we will continue to do so. The fact that I am concerned that 25% of our portfolio is past due should not come as a surprise to you, to the Bar, to God, or to anyone else that notices that I am walking around smelling like I just peed my pants....."(emphasis added);

- l. On June 9, 2009, Simony received an e-mail from Preve entitled "UPDATE" – "Sent 500k to Cent and 500k to Level 3 because Mark [Nordlicht] said to do it per Scott. Tomorrow is 1m [\$1,000,000.00] for Plat and 500k for each of the little guys." On June 10, 2009, Simony responds writing, "Hey frank - Hope all is well. Can it be changed to both million go platinum today? Let me know.";
- m. Again on June 23, 2009 after Preve e-mailed Simony to expect tomorrow "1.5m Plat, 250k Cent, 250k L3" Simony responds requesting "to have 500 go to Cent this time and next time send 500 to L3? Simply internal pressures, please let me know."; and

- n. On October 15, 2009, Preve writes Rothstein that he “Need[s] to send something so I can send something to Jack -- he is key figure now in acting as go between forf [sp] the new hedge fund investors and Centurion/Platinum....they are deeply suspicious that no one from Plat is calling them back. If Jack is going to risk his credibility, he needs to be compensated.....”
- o. According to Scott Rothstein, Preve and Simony worked on numerous “side deals” whereby the two men individually profited through lucrative commissions and finders fees by inducing other investors into the Ponzi

389. Through their actions and omissions, Platinum and Centurion fraudulently inflated their investment returns using Ponzi money to repay what would otherwise be significant realized losses.

390. Platinum and Centurion had first-hand information of damaging facts, evincing their knowledge and ultimately, rendering them liable to Plaintiffs for their damages suffered.

XI. Jurisdiction and Venue

391. This court has jurisdiction over this matter as an action for damages in excess of \$100,000,000.00 exclusive of attorneys’ fees, costs and interest.

392. Venue is appropriate Broward County, Florida, pursuant to § 47.011, Fla. Stat., because the cause of action accrued in Broward County, Florida.

393. All conditions precedent, if any, have been met, waived or excused.

394. Plaintiffs have retained the undersigned firm and have agreed to pay it a reasonable fee.

