

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

19

CASE NO.:

09062843

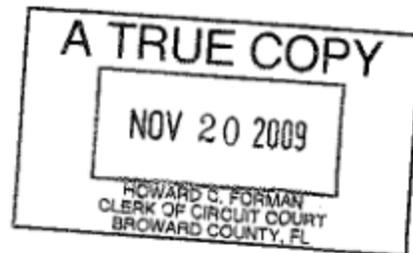
RAZORBACK FUNDING, LLC, D3
CAPITAL CLUB, LLC, BFMC
INVESTMENT, LLC, LINDA VON
ALLMEN, as Trustee of the VON
ALLMEN DYNASTY TRUST, D&L
PARTNERS, LP, and DEAN
KRETSCHMAR,

Plaintiffs,

v.

SCOTT W. ROTHSTEIN, DAVID
BODEN, DEBRA VILLEGAS, ANDREW
BARNETT, TD BANK, N.A., FRANK
SPINOSA, JENNIFER KERSTETTER,
ROSANNE CARETSKY, and FRANK
PREVE,

Defendants.



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; and DEAN KRETSCHMAR (collectively referred to herein as "Plaintiffs") hereby sue the Defendants, SCOTT W. ROTHSTEIN; DAVID BODEN; DEBRA VILLEGAS; ANDREW BARNETT; TD BANK, N.A.; FRANK SPINOSA; JENNIFER KERSTETTER; ROSANNE CARETSKY and FRANK PREVE (collectively referred to herein as "Defendants"), and allege as follows:

Plaintiffs' Claims

1. The Plaintiffs sue the Defendants and seek the following:
 - a. Compensatory damages in excess of \$100,000,000.00, pre-judgment interest, and other amounts to be particularized at trial as a direct and proximate result of Defendants' commission of the following:
 - i. conversion;
 - ii. fraudulent misrepresentation;
 - iii. negligent misrepresentation;
 - iv. negligent supervision;
 - v. breach of fiduciary duty;
 - vi. civil conspiracy; and
 - vii. aiding and abetting fraud, conversion and breach of fiduciary duty;
 - b. punitive damages upon obtaining leave of court;
 - c. taxable costs and attorney's fees; and
 - d. any such further relief this court deems equitable and just under the circumstances.

Overview

2. This action arises out of a fraudulent scheme orchestrated by Scott W. Rothstein, who bilked investors out of hundreds of millions of dollars. Mr. Rothstein, through the use of his law firm Rothstein Rosenfeldt Adler, P.A. (collectively referred to herein as the "Principal Conspirators" and more fully described, *infra*), devised an elaborate plan to assign putative

plaintiffs' confidential settlements with structured payments to investors at a lump sum discounted rate. In reality, while some of the cases relied upon to induce investor funding were real, all of the confidential settlements were purely fabricated. 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.¹

3. However, the Principal Conspirators 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 facilitating crucial inducements to investor action. Specifically, investors were duped by TD Bank employees conspiring with the Principal Conspirators to manipulate TD Bank's trust account statements and conniving investors with false senses of security predicated on written assurances that settlement funds existed and would only be released directly to them. It is these bank declarations, tantamount to a guaranty, which gravely impacted investor risk-evaluation analysis and unduly influenced investors to close their deals.

4. Moreover, demonstrative of TD Bank's participation or alternatively, evidence of their gross negligence and wanton disregard, is the bank's reckless disregard of numerous "red flags." Irrefutably, TD Bank knew that Rothstein Rosendfeldt Adler, P.A. (hereinafter, "RRA") was moving hundreds of millions of dollars through its TD Bank trust accounts. In fact, in October 2009 alone, almost a half of a billion dollars moved in and out of RRA's Fort Lauderdale based trust accounts--more money than most bank branches would likely see in a decade. Yet, despite the

¹ A Ponzi scheme is generally recognized as a fraudulent investment operation that pays returns to separate 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 early 1920.

massive amount of funds being moved by one client, TD Bank never sought independent verification of the source of monies, choosing instead to stand idly by. The Ponzi scheme simply could not have gained traction without TD Bank's involvement in sanctioning or, otherwise, willfully failing to authenticate the origin of the enormous amounts of money coming through its doors.

5. Unfortunately, this is not the only pending case which alleges a TD Bank affiliate as a complicit actor involved in a Ponzi scheme. On August 29, 2009, TD Bank's parent, Toronto Dominion Bank, was sued for "knowing assistance and/or dishonest assistance" in a Ponzi scheme based upon, *inter alia*, holding over \$20,000,000.00 in fraudulent proceeds and transferring hundreds of millions of dollars through the alleged perpetrator's accounts. See a copy of the Dynasty Furniture Manufacturing, Ltd., et al., v. Toronto Dominion Bank, Statement of Claim attached hereto for reference as **Exhibit "A."**

6. Based on the allegations set forth herein, Plaintiffs aver that, at all materials times, TD Bank had actual knowledge of its complicit involvement in a highly-organized Ponzi scheme and/or was recklessly or willfully blind to its role in materially supporting the scheme. TD Bank's acts and/or omissions in assisting, facilitating, and actively participating in the Ponzi scheme, renders TD Bank as a direct and proximate cause of Plaintiffs' losses and, therefore, is liable for the damages Plaintiffs incurred.

The Plaintiffs

7. 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 or about the summer of 2009, the Dynasty Trust invested \$7,000,000.00 into the Ponzi scheme through the Banyon Income Fund.

8. Plaintiff, D&L PARTNERS, LP (hereinafter, "D&L Partners"), is a Missouri limited partnership with its principal place of business in Broward County, Florida. On or about the summer of 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.

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

10. RAZORBACK FUNDING, LLC, (hereinafter, "Razorback"), is a Delaware limited liability company with its principal place of business in Broward County, Florida. Razorback invested \$32,000,000.00 into the Ponzi scheme through Banyon USVI, LLC. Dynasty Trust, D&L Partners and Kretschmar were also major investors in Razorback.

11. Plaintiff, D3 CAPITAL CLUB, LLC (hereinafter, "D3"), is a Delaware limited liability company with its principal place of business in Broward County, Florida. D3 invested \$13,500,000.00 into the Ponzi scheme. Dynasty Trust, D&L Partners and Kretschmar were major investors in D3 as well.

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

The Defendant - Principal Conspirators

13. Scott W. Rothstein, Esq. (hereinafter, "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 principal organizer of the Ponzi scheme.

14. Non-party RRA is a Florida professional association with its principal place of business in Broward County, Florida. RRA was used as the front to this elaborate Ponzi scheme, serving as the purported law firm representing putative plaintiffs in connection with their pre-suit, confidential settlements. RRA's trust accounts were allegedly used to receive the putative defendants' settlement funds and used to receive investor payments.

15. Rothstein and RRA are collectively referred to as the "Principal Conspirators".

The Defendants - Co-Conspirators

TD Bank Defendants

16. TD Bank is a foreign national banking association registered to do business in Florida. TD Bank maintains substantial contact with Florida through its multiple branches throughout the state. TD Bank was the financial epicenter of the Ponzi scheme. Among other things, TD Bank conspired, induced, and facilitated the Principal Conspirators' deceptive

practices, allowing Principal Conspirators to divert hundreds of millions of investor dollars through TD Bank accounts.

17. FRANK SPINOSA (hereinafter, "Spinosa"), is an individual residing in Broward County, Florida and, at all times relevant hereto, was a senior vice-president of operations for TD Bank. Spinosa participated in the scheme by, among other things, meeting with investors, verifying account statements and providing investors with purported irrevocable "lock letters" securing investor funds.

18. JENNIFER KERSTETTER (hereinafter, "Kerstetter"), is an individual residing in Broward County, Florida and, at all times relevant hereto, was an assistant manager for TD Bank. Kerstetter participated in the scheme by, among other things, meeting with investors, verifying account statements, and providing investors with purported irrevocable "lock letters" securing investor funds.

19. ROSEANNE CARETSKY (hereinafter, "Caretsky"), is an individual residing in Broward County, Florida, and, at all times relevant hereto, was an assistant vice president and branch manager for TD Bank. Caretsky participated in the scheme by, among other things, meeting with investors, verifying account statements, and providing investors with purported irrevocable "lock letters" securing investor funds.

RRA Defendants

20. DAVID BODEN (hereinafter, "Boden"), is an individual residing in Fort Lauderdale, Florida and, at all times relevant hereto, was a partner and general counsel for RRA. Boden was Rothstein's "right-hand man" and an essential participant in the scheme by, among other things, recruiting and soliciting investors and drafting documents to induce investors into funding

the settlement while having actual and/or constructive knowledge that the investments were part of a Ponzi scheme.

21. 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 number two at RRA, participated in the scheme by, among other things, furnishing false bank account statements and wire transfers to investors for the purpose of inducing investor funding despite having actual or constructive knowledge that the investments were a Ponzi scheme.

22. 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, soliciting and inducing investor funding despite having actual or constructive knowledge that the investments were a Ponzi scheme.

Banyon Defendant

23. FRANK J. PREVE (hereinafter, "Preve"), is an individual residing in Broward County, Florida and, at all times relevant hereto, was the chief operating officer or agent of Banyon USVI, LLC and Banyon Income Fund who maintained an office at RRA. Preve, a convicted bank fraud and embezzlement felon² participated in the scheme by, among other things, recruiting, soliciting, and inducing investor funding despite having actual or constructive knowledge that the investments were a Ponzi scheme.

² Frank Preve plead 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 that resulted in losses exceeding \$2,300,000.00.

The Ponzi Scheme

The Rothstein Facade

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

25. Not surprisingly, Rothstein amassed an enormous portfolio of assets including more than sixteen 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. Rothstein lived lavishly and spent prolifically--a critical initial component to set his scheme in motion.

26. 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 lure wealthy investors. His plot was up and running.

The Plan

27. Rothstein seized upon his new found stature to entice investors into what would eventually become a Ponzi scheme using his budding employment and labor practice at RRA as his conduit.

28. The scheme was predicated on the Principal Conspirators self-professed pipeline of pre-suit, confidential settlement agreements as the "preeminent sexual harassment and labor employment law firm in the country." Investors were told that the Principal Conspirators had an

extensive in-house private investigative team, including former F.B.I. and C.I.A. agents, whose singular task was to obtain compromising evidence against high-profile putative defendants. Rothstein's story was that the evidence and surveillance acquired, often supporting civil causes of action ranging from sexual harassment to mass tort cover-ups to whistle-blower claims, was presented to the putative defendant who was then offered an opportunity to avoid litigation and the negative publicity associated therewith by agreeing to resolve the matter voluntarily by and through a confidential settlement with the putative plaintiff.

29. Once the putative defendant agreed, the confidential settlement always included two main ingredients: (1) that structured payments to a putative plaintiff be made over time, generally a three to nine month time period; and (2) that the putative defendant would fund the entire settlement up front to be held in RRA's TD Bank trust account and disbursed to the putative plaintiff in accordance with the terms of the confidential settlement agreement.

The Pitch

30. Rothstein informed investors that the putative plaintiffs did not want to wait for the structured monthly payouts and would agree to assign their rights to the structured payout for a lump-sum payment typically in the range of 20-40% of the settlements' face-value.

31. Rothstein always had a plethora of plausible explanations as to why a putative plaintiff wanted their money now and simply could not wait for the structured monthly payments.

32. Rothstein claimed to want nothing from the deal and was only presenting the "opportunity" for the putative plaintiff's benefit and to facilitate recovery of RRA's contingent fee.

33. Notwithstanding, Rothstein would often boast that if not for his professional and legal conflicts he would be the one purchasing these assignments.

34. As a means to induce investor action, Rothstein would show investors the purported settlement agreement in an attempt to substantiate the deal; however, because the settlements were pre-suit and confidential, the names of the putative plaintiffs and putative defendants were redacted.

35. Additionally, the Principal Conspirators would provide: (1) confirmation of RRA's trust account balance at TD Bank evidencing the putative defendants fully funded settlement proceeds; (2) a "lock letter", drafted and executed by a TD Bank executive, irrevocably confirming that the respective settlement proceeds in RRA's 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) opportunities for an independent third-party verifier to authenticate the underlying settlement, assignment and funding of settlement proceeds.

36. Notably, Rothstein was hyper-vigilant regarding access to RRA accounts under the guise of confidentiality. In fact, potential investors could only access TD Bank account information in one of two ways. Either Rothstein would invite the investor to his office to view the online balance or, he would "authorize" TD Bank to provide copies of account statements and wire transfers prepared and delivered by TD Bank executives Spinosa, Kerstetter and Caretsky. On numerous occasions, TD Bank vice-president Spinosa, assistant manager Kerstetter, and assistant vice president Caretsky, physically handed the trust account statement to Rothstein in the immediate presence of an investor.

37. As the final piece to persuade an investment, Rothstein would offer to personally guaranty the transaction. This personal guaranty, secured by the significant assets (as discussed, *supra*), was an essential component which tacitly lent credibility and security to the underlying transaction.

38. Once an investor was interested, the Principal Conspirators, in conjunction with Boden, drafted an agreement for the assignment of the settlement agreement and proceeds.

39. Upon execution of the assignment, the investor would wire transfer to RRA's trust account the lump sum payment for immediate disbursement to the putative plaintiff. Thereafter, RRA was obligated to make payment from the funds previously verified and held in RRA's trust account at TD Bank directly to the investor's lock letter trust account at TD Bank in strict accordance with the terms of the purported settlement agreement.

Ponzi Scheme In Action

Fabricated Settlements Premised on Real Cases

40. 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*, 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. See e-mail dated October 6, 2009 referencing Epstein which is attached hereto and incorporate herein as **Exhibit "B."** To augment

his concocted story Rothstein invited D3 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, the investigative team representative privately told a D3 representative that they found three additional claimants which Rothstein did not yet know about. Further, Preve was present for this meeting, despite the fact that he was not involved as an investor or representative in the D3 deal.

41. Additionally, Rothstein used RRA's representation in the Epstein case to pursue issues and evidence unrelated to the underlying litigation, but potentially beneficial to lure investors into the Ponzi scheme. For instance, RRA relentlessly pursued flight data and passenger manifests regarding flights Epstein took with other famous individuals knowing full well that no under age 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 lies.

42. Conspicuously Preve, who maintained an office at RRA despite being a Banyon Income Fund, LP employee, attended the aforementioned meeting despite his lack of involvement as an investor or representative.

43. 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. See e-mail dated October 14, 2009 referencing Chiquita which is attached hereto and incorporated herein as **Exhibit "C."** While the cases against Chiquita are real, Rothstein did not represent any of the plaintiffs and the cases remain pending.

Plaintiffs' Investments:

1. Banyon Income Fund

44. Banyon Income Fund, LP (hereinafter, "BIF"), was formed in May 2009, and served as an original feeder fund for the Principal Conspirators structured settlement deals.

45. According to offering materials, BIF's stated investment goal was to purchase:

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. 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.

See Confidential Offering Memorandum dated April 30, 2009, a copy of which is attached hereto and incorporated herein as **Composite Exhibit "D."**

46. Not coincidentally, BIF's investment strategy is identical to the purported investment vehicle offered by the Principal Conspirators at the center of the Ponzi scheme.

47. All or substantially all of BIF's assets were funneled into the Principal Conspirators scheme.

48. In the spring of 2009, Barry Bekkedam from Ballamor Capital Management, LLC (hereinafter, "Ballamor")³ and promoter of BIF, met Doug Von Allmen (D&L Partners) to discuss D&L Partners participation in BIF.

49. During that discussion, Mr. Von Allmen learned that BIF was started by George Levin, a professed mentor and confidant of Rothstein, and that the settlements BIF was purchasing were through an exclusive arrangement negotiated between Rothstein and Levin on behalf of BIF.

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

51. Additionally, Mr. Bekkedam told Mr. Von Allmen that the settlements were already fully-funded in the attorneys' trust accounts, that a "Big Four" auditing firm would verify them quarterly, and that Ballamor had continuous unfettered access to the trust account balances and would be responsible for monitoring same.

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

53. Mr. Von Allmen (through D&L Partners) brought his wife Linda Von Allmen (through Dynasty Trust) into the investment while, approximately one month later, his step-son, Dean Kretschmar (collectively referred to herein as "Banyon Investors") was brought into the investment deal by Barry Bekkedam.

³ Ballamor Capital Management, LLC is an S.E.C. registered investment advisor specializing in managing investments on behalf of high and ultra-high net worth individuals

54. Prior to investing, each Banyon Investor received a "Confidential Offering Memorandum" dated April 30, 2009 which described the terms and conditions of the purported deals in greater detail. See **Composite Exhibit "D."**

55. Significantly, the Confidential Offering Memorandum provided that the receipt of the wire transfer from the putative defendant into RRA's trust account would be verified by an independent third party. *Id.*

56. Furthermore, the Banyon Investors were assured that a representative of the limited partners of BIF would have online access to banking records for each deposit account and all system records related to the purchased settlements and could verify purchase settlement trust accounts and deposits by putative defendants. *Id.*

57. Michael Szafranski, president of Onyx Capital Management, acted as an independent verifier for the Banyon Investors and BIF. Prior to and during the course of his investigation, Mr. Szafranski obtained the following information which demonstrated TD Bank's involvement:

a. October 29, 2008 letter signed by Caretsky, assistant branch manager with Commerce Bank⁴ enclosing three trust account statements for RRA: (1) account number 6860291258 containing \$166,922,339.00; (2) account number 6860423489 containing \$40,125,685.44; and (3) account number 6860420923 containing \$348,229,463.21. All three trust account statements for RRA are attached hereto and incorporated herein as **Composite Exhibit "E."**

b. March 20, 2009 letter signed by Kerstetter an assistant manager for TD Bank

⁴ Commerce Bank was a predecessor in interest to TD Bank as a result of TD Bank's \$7 billion purchase of Commerce Bank in March 2008.

enclosing three trust account statement for RRA: (1) account number 6860699146 showing a balance of \$104,211,711.22; (2) account number 6860420923 showing a balance of \$368,333,133.20; and (3) account number 6860291258 showing a balance of \$110,331,563.13. All three account statements referenced are attached hereto and incorporated herein as **Composite Exhibit "F."**

c. April 17, 2009 letter signed by Caretsky as a TD Bank Assistant Vice President, enclosing RRA trust account statement for: (1) account number 6860423489 showing a balance of \$61,117,111; (2) RRA trust account statement for account number 6860755104 showing a balance of \$80,978,935.31; (3) RRA trust account statement for account number 6860699146 showing a balance of \$136,122,322.87; (4) RRA trust account statement for account number 6860291258 showing a balance of \$198,644,311.13; and (5) RRA trust account statement for account number 6860420923 showing a balance of \$483,668,999.39. All five trust account statements referenced are attached hereto and incorporated herein as **Composite Exhibit "G."**

d. June 22, 2009 Commerce Bank wire transfer to RRA trust account ending x-0923 in the amount of \$1,957,500.00 and purporting to be a funded settlement, a copy of which is attached hereto and incorporated herein as **Exhibit "H"**;

e. June 22, 2009 Commerce Bank wire transfer to RRA trust account ending x-0923 in the amount of \$2,680,000.00 and purporting to be a funded settlement, a copy of which is attached hereto and incorporated herein as **Exhibit "I"**;

f. June 22, 2009 Commerce Bank wire transfer to RRA trust account ending x-0923 in the amount of \$695,000.00 and purporting to be a funded settlement, a copy of which is attached hereto and incorporated herein as **Exhibit "J"**;

g. June 30, 2009 Commerce Bank wire transfer to RRA trust account ending x-0923 in the amount of \$2,208,000.00 and purporting to be a funded settlement, a copy of which is attached hereto and incorporated herein as **Exhibit "K"**;

h. July 1, 2009 Commerce Bank wire transfer to RRA trust account ending x-0923 in the amount of \$6,072,000.00 and purporting to be a funded settlement, a copy of which is attached hereto and incorporated herein as **Exhibit "L"**;

i. July 13, 2009 letter signed by Kerstetter from TD Bank enclosing RRA trust account statement for account number 6861077193 showing a balance of \$14,286,000.00, a copy of which is attached hereto and incorporated herein as **Composite Exhibit "M"**; and

j. July 17, 2009 TD Bank wire transfer to RRA trust account ending x-0923 in the amount of \$22,348,221.00 and purporting to be a funded settlement, a copy of which is attached hereto and incorporated herein as **Exhibit "N"**;

58. In reliance on the foregoing, the Banyon Investors collectively invested \$60,000,000.00 into BIF and into the Ponzi scheme.

2. Razorback Funding, LLC

59. 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. *See Confidential Settlement Agreements and Releases* which are attached hereto and incorporated herein as **Composite Exhibit "O."**

60. 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. See Acknowledgement of Assignment/Purchase of Settlement Proceeds and Sale and Transfer Agreements which is attached hereto and incorporated herein as **Composite Exhibit "P."**

61. On or about September 18, 2009, as part of its due diligence, Razorback obtained a copy of a TD Bank "lock letter" signed by Spinoso used in a prior deal. See September 18, 2009 lock letter from TD Bank which is attached hereto and incorporated herein as **Exhibit "Q."** 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.

62. On October 1, 2009, Mike Szafranski, who 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, Mr. Szafranski 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 trust account ending in x-1356. A copy of the October 1, 2009 email from Mike Szafranski verifying the above-referenced account is attached hereto and incorporated herein as **Exhibit "R."**

63. Mr. Szafranski also verified that a "lock letter" had been received by Spinoso as Regional Vice President of TD Bank dated October 1, 2009 stating the following:

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 "S."**

64. 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 solely (sic) to be directed to the entity set forth in the irrevocable instruction." A copy of the October 1, 2009 email from Spinosa is attached hereto and incorporated herein as **Exhibit "T."**

65. Also on October 1, 2009, Razorback received copies of two wire transfers from Preve, a Banyon USVI representative, demonstrating that a total of \$66,700,000.00 (the full settlement funding being purchased) had been received by RRA in its trust account with TD Bank. A copy of the October 1, 2009 wire transfers is attached hereto and incorporated herein as **Composite Exhibit "U."**

66. 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. A copy of the October 1, 2009 email from Rothstein is attached hereto and incorporated herein as **Exhibit "V."**

67. On October 3, 2009, Razorback attempted to contact Spinosa to verify the details of the lock letter. The Razorback representative was unable to reach Spinosa but did receive confirmation from Spinosa's assistant that she prepared the lock letter and that Spinosa signed it.

68. On October 7, 2009, Razorback received an email 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. A copy of the on-line screen shot of the TD Bank account is attached hereto and incorporated herein as **Exhibit "W."**

69. Finally, on October 22, 2009, Mr. 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. A copy of Mr. Szafranski October 22, 2009 confirming email is attached hereto and incorporated herein as **Exhibit "X."**

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

3. D3 Capital Club, LLC

71. 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. *See Confidential Settlement Agreements and Releases* which is attached hereto and incorporated herein as **Composite Exhibit "Y."**

72. A D3 representative, who was also a representative of Razorback's management team, had knowledge of and relied upon the contacts and representations made by TD Bank in connection with the Razorback transaction.

73. On or about October 15, 2009, as part of its due diligence, D3 obtained a copy of a TD Bank "lock letter" signed by Spinoso 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 "Z."**

74. On October 15, 2009, Spinoso signed another letter enclosing a copy of RRA's trust account bank statement showing a balance in excess of \$30,000,000.00. See October 15, 2009 letter attached hereto and incorporated herein as **Composite Exhibit "AA."**

75. 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. This letter was personally delivered by Kerstetter to Rothstein in a D3 representative's presence while inside the TD Bank Fort Lauderdale branch. See October 15, 2009 letter attached hereto and incorporated herein as **Exhibit "AA-1."** Later that day, Kerstetter met again with that same D3 representative at a location outside of the bank in order to sign the paperwork to open a D3 account at TD Bank.

76. On October 16, 2009 and again on October 19, 2009, a D3 representative sent emails 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 with RRA account number 4246051629. A copy of the October 16, 2009 and October 19, 2009 emails are attached hereto and incorporated herein as **Composite Exhibit "BB."**

77. Spinosa responded to the October 19, 2009 email with a phone call to the D3 representative. During the conversation, the lock letter was acknowledged by Spinosa who declined to provide any further details about the Principal Conspirators' accounts.

78. Finally, on October 19, 2009, Mr. Szafranski met with Rothstein and verified that the sum of \$30,000,000.00 was wired from the putative defendant into the RRA trust account ending x-1629. A copy of the October 19, 2009 email is attached hereto and incorporated herein as **Exhibit "CC."**

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

4. BFMC Investment, LLC

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

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

82. 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 was aware of Rothstein given Rothstein's prominence in the Fort Lauderdale business and social community, and a meeting was scheduled at RRA on September 30, 2009.

83. Florescue and his employee, Mark Seigel ("Seigel"), arrived in RRA's offices and were initially introduced to Boden. Coincidentally, Boden had, many years earlier, worked as a junior staff member at Florescue's corporate counsel and had actively worked on one of Florescue's previous financing transactions.

84. After several minutes, Boden and Barnett led Florescue and Seigel into Rothstein's private office.

85. After introductions, Rothstein described an investment opportunity involving purchasing various structured settlements explaining as follows:

a. RRA is a nationally recognized firm representing whistleblowers in whistleblower lawsuits against employers. RRA has specific expertise in a specific type of litigation called Qui Tam litigation, in which the defendant is also accused of defrauding the United States government. RRA became a magnet for Qui Tam cases 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 inside a Fortune 500 company that had allegedly defrauded the United States government. Citing confidentiality, Rothstein could not share the name of the defendant, but he described it as a large food conglomerate that had substituted cheaper ingredients into food supplies sold to the government under national contracts. Rothstein was 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 settlements for \$1,400,000.00 for various whistleblower clients, but defendant insisted on paying the settlements out over four months. The 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 defendant would attempt to prevent them from receiving payments after settling and, (ii) Rothstein explained in detail a legal concept called “privity” – plaintiff was “in privity” with the defendant which subjected their settlement to reversal by the federal 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 the settlement. Rothstein explained that such a transaction was legal, because the settlement agreement had no “anti-assignment rights”, but that any third party investor couldn’t be given any details about the parties involved in the settlement, because it was by nature highly confidential and did contain strong 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 structured settlement in which he represented the plaintiff. However, it was in his firm's interest to find a funder so that the firm could settle the case and get paid its contingency fee.

i. Rothstein remarked that the transaction would be substantiated and verified, that he would provide evidence of the settlement in his office, and that he would get on the phone with Spinosa of TD Bank to confirm that the putative defendant's funds had been wired into a Florida Bar trust account with instructions to only release the funds in that account to the specified funder.

86. Upon concluding the meeting, Barnett walked Florescue and Seigel out to the elevator. During a debrief, Barnett revealed that the defendant was Dole Foods, which had knowingly supplied the U.S. Government with impure orange juice in a major juice contract that called for 100% pure orange juice. Barnett said that Rothstein had offered to sign a corporate and personal guaranty as a further inducement to make the investment.

87. Between September 30, 2009 and October 15, 2009, BFMC worked with their counsel and Boden on various transaction documents necessary to close the deal.

88. During the first week of October 2009, Florescue telephoned Spinosa, who Florescue knew professionally based on various banking activities previously engaged in, to inquire about Rothstein. Spinosa said that he could not talk about Rothstein without Rothstein's consent.

89. In early October, 2009, Boden finalized the deal documents for BFMC's investment in three identical RRA settlements: (1) 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; (2) a second \$1,400,000.00 structured settlement, payable in four equal monthly installments, offered in exchange for a lump sum payment of \$800,000.00; and (3) a third \$1,400,000.00 structured settlement, payable in four equal monthly installments, offered in exchange for a lump sum payment of \$800,000.00. See correspondence from David Boden which is attached hereto and incorporated herein as **Exhibit "DD."**

90. BFMC's explicit understanding from Boden and Rothstein was that the putative defendant's funds were to be held in RRA's trust account and could only be released directly to BFMC's account pursuant to an irrevocable "lock letter."

91. On or about October 15, 2009, as part of its due diligence, BFMC obtained a copy of a TD Bank "lock letter" signed by Spinosa stating that:

[p]ursuant 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, [REDACTED], 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 "EE."**

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

Implosion of Rothstein's Ponzi Scheme

93. 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.

94. On October 17, 2009, Rothstein sent a firm-wide e-mail at RRA 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 after renouncing his United States citizenship. Rothstein's email asked for countries which did not have extradition treaties with the United States or Israel⁵ 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." See Sun-Sentinel article dated November 16, 2009 referencing the October 17, 2009 email which is attached hereto and incorporated herein as **Exhibit "FF."** Suffice it to say, Rothstein was the purported "client" and this is the first clear written indication that he knew his fate.

95. By the end of October 2009, Rothstein and RRA began to default on the investor's structured payments and the Ponzi scheme began to unravel.

96. On October 26, 2009, Richard Pearson, who had invested \$18,000,000.00 in the Ponzi scheme, confronted Rothstein who was sitting with Spinosa inside of Bova restaurant. Pearson, in Spinosa's presence, demanded to know why he had not received two scheduled

⁵ 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

payments due to him the week prior. Rothstein attempted to diffuse the situation leaving Spinosa visibly shaken.

97. Shortly thereafter, Rothstein proceeded to methodically drain 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.

98. On October 27, 2009, Rothstein secretly boarded a private G-5 jet destined for Morocco, but not before completing a \$16,000,000.00 wire transfer to a Moroccan bank.

99. By October 30, 2009, investors began to scramble desperately attempting to reach Rothstein for answers. Unbeknownst to them Rothstein was already gone, along with their investments, as the Ponzi scheme finally buckled under the pressure of obligations due.

Devastating Fallout

100. The velocity at which the Ponzi scheme cratered sent a sonic boom felt throughout the financial and legal world.

101. 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.

102. As the dust begins to settle, critical details have emerged revealing the scope and magnitude of this the nefarious scheme. By way of example Plaintiffs have discovered that:

- a. the entirety of Plaintiffs' more than \$100,000,000.00 investment was gone;
- b. plaintiffs' "lock letter" accounts were never funded with the purported settlement money and contained only a nominal deposit of \$100.00;

- c. even after Rothstein's October 27, 2009 departure to Morocco, millions of dollars continued to flow out of RRA accounts from the Fort Lauderdale TD Bank accounts, indicative of an insider(s) maintaining operations of the Ponzi scheme;
- d. in October 2009 alone \$235,000,000.00 in credits and \$232,000,000.00 in debits was transacted through the RRA accounts at TD Bank;
- e. the \$8,000,000.00 wire transfer confirmation used by Preve and Rothstein to induce Razorback's \$32,000,000.00 payment was in fact never received by RRA or TD Bank;
- f. on July 27, 2009 Rothstein transferred a \$407,750.00 assessed value property to Villegas for "love and affection" and \$100.00. Notwithstanding owning the property free and clear, Villegas who earned \$250,000.00 a year decided to pull \$100,000.00 out of the property days prior to the IRS filing of a forfeiture *in rem* complaint against the property;
- g. on November 1, 2009, Mel Lipschitz of DE Securities whose group invested nearly \$100,000,000.00 into the Ponzi scheme, advised a group of investor victims that he personally sat with Spinosa at TD Bank and verified investment account balances;
- h. sometime in the Spring or Summer of 2009, Ted Morse was personally provided with a written account balance statement by Caretsky at TD Bank; and

- i. TD Bank either knew or certainly should have known of the criminality and/or gross irregularities of RRA's operations. Alternatively, TD Bank's actions and/or omissions in not conducting any due diligence inquiry into RRA's suspicious activities, unorthodox settlement structures, lack of supporting document and vigilant (if not obsessive) control over account access was either deliberate or reckless.

103. A Ponzi scheme cannot be operated without insider help. Plaintiffs believe that additional members of RRA, including its non-lawyer investigators, were used by Rothstein to perpetuate, promote and facilitate the Ponzi scheme. The details of these individuals or entities involvement and participation is presently unknown but further allegations and counts will be added as discovery is conducted and information concerning the complicity of these individuals or entities is confirmed.

Jurisdiction and Venue

104. 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.

105. Venue is appropriate Broward County, Florida, pursuant to § 47.011, Fla. Stat., because the Defendants' reside in Broward County, Florida and the cause of action accrued in Broward County, Florida.

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

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

**COUNT I - FRAUDULENT MISREPRESENTATION
(against Scott Rothstein)**

108. Plaintiffs incorporate the allegations contained in paragraphs 1 through 107 as if restated herein.

109. This is a claim for fraudulent misrepresentation.

110. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

111. In furtherance of the Ponzi scheme, Rothstein knowingly made material false statements and representations, including but not limited to representing that the settlement agreements purchased by investors were real, that they had been fully funded, and that they would be paid out to investors over a predetermined schedule.

112. Rothstein intended the Banyon Investors to act on his knowingly false representations.

113. The Banyon Investors justifiably relied upon Rothstein's representations to their detriment.

114. As a direct and proximate result of Rothstein's false statements, The Banyon Investors have sustained damages.

WHEREFORE, LINDA VON ALLMEN, as Trustee of the VON ALLMEN DYNASTY TRUST, D&L PARTNERS, LP, and DEAN KRETSCHMAR request judgment against SCOTT ROTHSTEIN for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT II - FRAUDULENT MISREPRESENTATION
(against Jennifer Kerstetter)**

115. Plaintiffs incorporate the allegations contained in paragraphs 1 through 107 as if restated herein.

116. This is a claim for fraudulent misrepresentation.

117. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

118. In furtherance of the Ponzi scheme, Kerstetter knowingly made material false statements and representations including, but not limited to, supplying investors with false bank account statements.

119. Kerstetter intended the Banyon Investors to act on her knowingly false representations.

120. The Banyon Investors justifiably relied upon Kerstetter's representations to their detriment.

121. As a direct and proximate result of Kerstetter's false statements, the Banyon Investors have sustained damages.

WHEREFORE, THE LINDA VON ALLMEN, as Trustee of the VON ALLMEN DYNASTY TRUST, D&L PARTNERS, LP, and DEAN KRETSCHMAR request judgment against JENNIFER KERSTETTER for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT III - FRAUDULENT MISREPRESENTATION
(against Roseanne Caretsky)**

122. Plaintiffs incorporate the allegations contained in paragraphs 1 through 107 as if restated herein.

123. This is a claim for fraudulent misrepresentation.

124. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

125. In furtherance of the Ponzi scheme, Caretsky knowingly made material false statements and representations including, but not limited to, supplying investors with false bank account statements.

126. Caretsky intended the Banyon Investors to act on her knowingly false representations.

127. The Banyon Investors justifiably relied upon Caretsky's representations to their detriment.

128. As a direct and proximate result of Caretsky's false statements, the Banyon Investors have sustained damages.

WHEREFORE, THE LINDA VON ALLMEN, as Trustee of the VON ALLMEN DYNASTY TRUST, D&L PARTNERS, LP, and DEAN KRETSCHMAR request judgment against ROSEANNE CARETSKY for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT IV - FRAUDULENT MISREPRESENTATION
(against TD Bank, N.A.)**

129. Plaintiffs incorporate the allegations contained in paragraphs 1 through 107 as if restated herein.

130. This is a claim for fraudulent misrepresentation.

131. At all times material hereto, Kerstetter was acting in the scope of her employment as an assistant manager of TD Bank.

132. At all times material hereto, Caretsky was acting in the scope of her employment as an assistant vice president and branch manager of TD Bank.

133. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

134. In furtherance of the Ponzi scheme, TD Bank, through Kerstetter and Caretsky, knowingly made material false statements and representations including, but not limited to, supplying investors with false bank account statements.

135. TD Bank, through Kerstetter and Caretsky, intended the Banyon Investors to act on their knowingly false representations.

136. The Banyon Investors justifiably relied upon TD Bank's through Kerstetter's and Caretsky's representations to their detriment.

137. As a direct and proximate result of TD Bank's, made through Kerstetter's and Caretsky's, false statements, the Banyon Investors have sustained damages.

WHEREFORE, LINDA VON ALLMEN, as Trustee of the VON ALLMEN DYNASTY TRUST, D&L PARTNERS, LP, and DEAN KRETSCHMAR request judgment against TD

BANK, N.A., for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT V - NEGLIGENT MISREPRESENTATION
(against Jennifer Kerstetter)**

138. Plaintiffs incorporate the allegations contained in paragraphs 1 through 107 as if restated herein.

139. This is a claim for negligent misrepresentation.

140. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

141. In furtherance of the Ponzi scheme, Kerstetter made material false statements and representations including, but not limited to, supplying investors with false bank account statements.

142. When making the false statements and representations, Kerstetter either knew or reasonably should have known that they were false.

143. Kerstetter owed the Banyon Investors a duty of care because she knew or had reason to know that the Banyon Investors were placing trust and confidence in her and relying on her to inform them.

144. Kerstetter breached her duty to the Banyon investors by making false representations with the intention that the Banyon Investors rely on them.

145. The Banyon Investors justifiably relied upon Kerstetter's representations to their detriment.

146. As a direct and proximate result of Kerstetter's false statements, the Banyon Investors have sustained damages.

WHEREFORE, LINDA VON ALLMEN, as Trustee of the VON ALLMEN DYNASTY TRUST, D&L PARTNERS, LP, and DEAN KRETSCHMAR request judgment against JENNIFER KERSTETTER for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT VI - NEGLIGENT MISREPRESENTATION
(against Roseanne Caretsky)**

147. Plaintiffs incorporate the allegations contained in paragraphs 1 through 107 as if restated herein.

148. This is a claim for negligent misrepresentation.

149. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

150. In furtherance of the Ponzi scheme, Caretsky made material false statements and representations, including, but not limited to, showing investors false statements of the amounts in RRA trust accounts.

151. When making the false statements and representations, Caretsky either knew or reasonably should have known that they were false.

152. Caretsky owed the Banyon Investors a duty of care because she knew or had reason to know that the Banyon Investors were placing trust and confidence in her and relying on her to inform them.

153. Caretsky breached her duty to the Banyon investors by making false representations with the intention that the Banyon Investors rely on them.

154. As a direct and proximate result of Caretsky's false statements, the Banyon Investors have sustained damages.

WHEREFORE, LINDA VON ALLMEN, as Trustee of the VON ALLMEN DYNASTY TRUST, D&L PARTNERS, LP, and DEAN KRETSCHMAR request judgment against ROSEANNE CARETSKY for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT VII - NEGLIGENT MISREPRESENTATION
(against TD Bank, N.A.)**

155. Plaintiffs incorporate the allegations contained in paragraphs 1 through 107 as if restated herein.

156. This is a claim for negligent misrepresentation.

157. At all times material hereto, Kerstetter was acting in the scope of her employment as an assistant manager of TD Bank.

158. At all times material hereto, Caretsky was acting in the scope of her employment as an assistant vice president and branch manager of TD Bank.

159. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

160. In furtherance of the Ponzi scheme, TD Bank, through Kerstetter and Caretsky, made material false statements and representations, including, but not limited to, showing investors false statements of the amounts in RRA trust accounts.

161. When making the false statements and representations, TD Bank, through Kerstetter and Caretsky, either knew or reasonably should have known that they were false.

162. TD Bank owed the Banyon Investors a duty of care because it knew or had reason to know that the Banyon Investors were placing trust and confidence in it and relying on it to inform them.

163. TD Bank breached its duty to the Banyon Investors by making false representations, through Kerstetter and Caretsky, with the intention that the Banyon Investors rely on them.

164. The Banyon Investors justifiably relied upon TD Bank's, through Kerstetter's and Caretsky's, representations to their detriment.

165. As a direct and proximate result of TD Bank's representations, made through Kerstetter and Caretsky, the Banyon Investors have sustained damages.

WHEREFORE, LINDA VON ALLMEN, as Trustee of the VON ALLMEN DYNASTY TRUST, D&L PARTNERS, LP, and DEAN KRETSCHMAR request judgment against TD BANK, N.A., for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT VIII - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
(against Jennifer Kerstetter)**

166. Plaintiffs incorporate the allegations contained in paragraphs 1 through 107 as if restated herein.

167. This is a claim for aiding and abetting breach of fiduciary duty.

168. Kerstetter was aware that as trustee of the attorney trust accounts where the Banyon Investors' purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to the Banyon Investors. Kerstetter was also aware that as trustee of the attorney trust accounts containing the funds to which the Banyon Investors had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to the Banyon Investors.

169. Kerstetter was aware that Rothstein was financially exploiting the investors to their detriment, and was aware that Rothstein was breaching his fiduciary obligations to the Banyon Investors.

170. Kerstetter actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of the Banyon Investors and his breaches of fiduciary duty.

171. Kerstetter's actions have directly caused injury and damage to the Banyon Investors.

WHEREFORE, LINDA VON ALLMEN, as Trustee of the VON ALLMEN DYNASTY TRUST, D&L PARTNERS, LP, and DEAN KRETSCHMAR request judgment against JENNIFER KERSTETTER for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT IX - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
(against Roseanne Caretsky)**

172. Plaintiffs incorporate the allegations contained in paragraphs 1 through 107 as if restated herein.

173. This is a claim for aiding and abetting breach of fiduciary duty.

174. Caretsky was aware that as trustee of the attorney trust accounts where the Banyon Investors' purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to the Banyon Investors. Caretsky was also aware that as trustee of the attorney trust accounts containing the funds to which the Banyon Investors had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to the Banyon Investors.

175. Caretsky was aware that Rothstein was financially exploiting the investors to their detriment, and was aware that Rothstein was breaching his fiduciary obligations to the Banyon Investors.

176. Caretsky actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of the Banyon Investors and his breaches of fiduciary duty.

177. Caretsky's actions have directly caused injury and damage to the Banyon Investors.

WHEREFORE, LINDA VON ALLMEN, as Trustee of the VON ALLMEN DYNASTY TRUST, D&L PARTNERS, LP, and DEAN KRETSCHMAR request judgment against ROSEANNE CARETSKY for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT X - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
(against TD Bank, N.A.)**

178. Plaintiffs incorporate the allegations contained in paragraphs 1 through 107 as if restated herein.

179. This is a claim for aiding and abetting breach of fiduciary duty.

180. At all times material hereto, Kerstetter was acting in the scope of her employment as an assistant manager of TD Bank.

181. At all times material hereto, Caretsky was acting in the scope of her employment as an assistant vice president and branch manager of TD Bank.

182. TD Bank was aware that as trustee of the attorney trust accounts where the Banyon Investors' purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to the Banyon Investors. TD Bank was also aware that as trustee of

the attorney trust accounts containing the funds to which the Banyon Investors had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to the Banyon Investors.

183. TD Bank was aware that Rothstein was financially exploiting the investors to their detriment, and was aware that Rothstein was breaching his fiduciary obligations to the Banyon Investors.

184. TD Bank, through its employees acting within the scope of their employment, actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of the Banyon Investors and his breaches of fiduciary duty.

185. TD Bank's actions have directly caused injury and damage to the Banyon Investors.

WHEREFORE, LINDA VON ALLMEN, as Trustee of the VON ALLMEN DYNASTY TRUST, D&L PARTNERS, LP, and DEAN KRETSCHMAR request judgment against TD BANK, N.A., for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XI - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
(against Debra Villegas)**

186. Plaintiffs incorporate the allegations contained in paragraphs 1 through 107 as if restated herein.

187. This is a claim for aiding and abetting breach of fiduciary duty.

188. Villegas was aware that as trustee of the attorney trust accounts where the Banyon Investors' purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to the Banyon Investors. Villegas was also aware that as trustee of the attorney

trust accounts containing the funds to which the Banyon Investors had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to the Banyon Investors.

189. Villegas was aware that Rothstein was financially exploiting the investors to their detriment, and was aware that Rothstein was breaching his fiduciary obligations to the Banyon Investors.

190. Villegas actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of the Banyon Investors and his breaches of fiduciary duty.

191. Villegas's actions have directly caused injury and damage to the Banyon Investors.

WHEREFORE, LINDA VON ALLMEN, as Trustee of the VON ALLMEN DYNASTY TRUST, D&L PARTNERS, LP, and DEAN KRETSCHMAR request judgment against DEBRA VILLEGAS for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XII – BREACH OF FIDUCIARY DUTY
(against Scott Rothstein)**

192. Plaintiffs incorporate the allegations contained in paragraphs 1 through 107 as if restated herein.

193. This is a claim for breach of fiduciary duty.

194. As trustee of the attorney trust accounts where the Banyon Investors' purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to the Banyon Investors. Additionally, as trustee of the attorney trust accounts containing the funds

to which the Banyon Investors had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to the Banyon Investors.

195. Rothstein breached his fiduciary duties by raiding the RRA trust accounts for his personal use.

196. Rothstein's actions have directly caused injury and damages to the Banyon Investors.

WHEREFORE, LINDA VON ALLMEN, as Trustee of the VON ALLMEN DYNASTY TRUST, D&L PARTNERS, LP, and DEAN KRETSCHMAR request judgment against SCOTT ROTHSTEIN for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XIII - BREACH OF FIDUCIARY DUTY
(against TD Bank, N.A.)**

197. Plaintiffs incorporate the allegations contained in paragraphs 1 through 107 as if restated herein.

198. This is a claim for breach of fiduciary duty.

199. At all times material hereto, Kerstetter was acting in the scope of her employment as an assistant manager of TD Bank.

200. At all times material hereto, Caretsky was acting in the scope of her employment as an assistant vice president and branch manager of TD Bank.

201. In Florida, a bank assumes a fiduciary duty with its customer under special circumstances where the bank knows or has reason to know that the customer is placing trust and confidence in the bank and is relying on the bank to so counsel and inform him. Under the circumstances outlined above, where TD Bank knew that the Banyon Investors were relying on

Kerstetter's and Caretsky's representations that the RRA trust accounts contained substantial funds, TD Bank was a fiduciary of the Banyon Investors and owed them the fiduciary duties of honesty, loyalty, and care.

202. TD Bank breached its fiduciary duties through the actions of its employees by either ignoring or actively assisting and providing substantial assistance to Rothstein in its financial exploitation of the Banyon Investors.

203. TD Bank's actions have directly caused injury and damage to the Banyon Investors.

WHEREFORE, LINDA VON ALLMEN, as Trustee of the VON ALLMEN DYNASTY TRUST, D&L PARTNERS, LP, and DEAN KRETSCHMAR request judgment against TD BANK, N.A., for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XIV - AIDING AND ABETTING FRAUD
(against Jennifer Kerstetter)**

204. Plaintiffs incorporate the allegations contained in paragraphs 1 through 107 as if restated herein.

205. This is a claim for aiding and abetting fraud.

206. As described more fully above, the deals in which the Banyon Investors invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

207. Kerstetter knew of Rothstein's fraudulent scheme.

208. Kerstetter actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of The Banyon Investors through fraud. Kerstetter's assistance

included, but was not limited to, providing false documentation to the Banyon Investors that the RRA trust accounts contained substantial funds when they did not.

209. Kerstetter's actions have directly caused injury and damage to the Banyon Investors.

WHEREFORE, LINDA VON ALLMEN, as Trustee of the VON ALLMEN DYNASTY TRUST, D&L PARTNERS, LP, and DEAN KRETSCHMAR request judgment against JENNIFER KERSTETTER for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XV - AIDING AND ABETTING FRAUD
(against Roseanne Caretsky)**

210. Plaintiffs incorporate the allegations contained in paragraphs 1 through 107 as if restated herein.

211. This is a claim for aiding and abetting fraud.

212. As described more fully above, the deals in which the Banyon Investors invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

213. Caretsky knew of Rothstein's fraudulent scheme.

214. Caretsky actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of The Banyon Investors through fraud. Caretsky's assistance included, but was not limited to, providing false documentation to the Banyon Investors that the RRA trust accounts contained substantial funds when they did not.

215. Caretsky's actions have directly caused injury and damage to the Banyon Investors.

WHEREFORE, LINDA VON ALLMEN, as Trustee of the VON ALLMEN DYNASTY TRUST, D&L PARTNERS, LP, and DEAN KRETSCHMAR request judgment against ROSEANNE CARETSKY for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XVI - AIDING AND ABETTING FRAUD
(against TD Bank, N.A.)**

216. Plaintiffs incorporate the allegations contained in paragraphs 1 through 107 as if restated herein.

217. This is a claim for aiding and abetting fraud.

218. As described more fully above, the deals in which the Banyon Investors invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

219. At all times material hereto, Kerstetter was acting in the scope of her employment as an assistant manager of TD Bank.

220. At all times material hereto, Caretsky was acting in the scope of her employment as an assistant vice president and branch manager of TD Bank.

221. TD Bank knew of Rothstein's fraudulent scheme.

222. TD Bank, through Kerstetter and Caretsky, actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of the Banyon Investors through fraud. TD Bank's assistance included, but was not limited to, providing false documentation to the Banyon Investors that the RRA trust accounts contained substantial funds when they did not.

223. TD Bank's actions have directly caused injury and damage to the Banyon Investors.

WHEREFORE, LINDA VON ALLMEN, as Trustee of the VON ALLMEN DYNASTY TRUST, D&L PARTNERS, LP, and DEAN KRETSCHMAR request judgment against TD BANK, N.A., for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XVII - AIDING AND ABETTING FRAUD
(against Debra Villegas)**

224. Plaintiffs incorporate the allegations contained in paragraphs 1 through 107 as if restated herein.

225. This is a claim for aiding and abetting fraud.

226. As described more fully above, the deals in which the Banyon Investors invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank

227. Villegas knew of Rothstein's fraudulent scheme.

228. Villegas actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of all of the investor victims of Rothstein's Ponzi scheme, including the Banyon Investors, through fraud. Villegas's assistance included, but was not limited to, furnishing false bank account statements and wire transfers to investors in order to induce them to invest despite having actual or constructive knowledge that the investments were a Ponzi scheme.

229. Villegas's actions have directly caused injury and damage to the Banyon Investors.

WHEREFORE, LINDA VON ALLMEN, as Trustee of the VON ALLMEN DYNASTY TRUST, D&L PARTNERS, LP, and DEAN KRETSCHMAR request judgment against DEBRA

VILLEGAS for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XVIII – CONVERSION
(against Scott Rothstein)**

230. Plaintiffs incorporate the allegations contained in paragraphs 1 through 107 as if restated herein.

231. This is a claim for conversion.

232. As described more fully above, the deals in which the Banyon Investors invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of the Banyon Investors when he absconded with the Banyon Investors \$60,000,000.00 in funds.

233. Rothstein's conversion of the Banyon Investors funds has permanently deprived the Banyon Investors of their property.

234. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by the Banyon Investors to make demand upon him for the return of their property would be futile.

235. Rothstein's actions have directly caused injury and damages to the Banyon Investors.

WHEREFORE, LINDA VON ALLMEN, as Trustee of the VON ALLMEN DYNASTY TRUST, D&L PARTNERS, LP, and DEAN KRETSCHMAR request judgment against SCOTT ROTHSTEIN for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XIX - AIDING AND ABETTING CONVERSION
(against Jennifer Kerstetter)**

236. Plaintiffs incorporate the allegations contained in paragraphs 1 through 107 as if restated herein.

237. This is a claim for aiding and abetting conversion.

238. As described more fully above, the deals in which the Banyon Investors invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of the Banyon Investors when he absconded with their \$60,000,000.00 in funds.

239. Rothstein's conversion of the Banyon Investors' funds has permanently deprived the Banyon Investors of their property.

240. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by the Banyon Investors to make demand upon him for the return of their property would be futile.

241. Kerstetter actively assisted, and provided substantial assistance, to Rothstein in either temporarily or permanently depriving the Banyon Investors of their property by deceiving the Banyon Investors into turning their property over to Rothstein under false pretenses.

242. Kerstetter's actions have directly caused injury and damages to the Banyon Investors.

WHEREFORE, LINDA VON ALLMEN, as Trustee of the VON ALLMEN DYNASTY TRUST, D&L PARTNERS, LP, and DEAN KRETSCHMAR request judgment against

JENNIFER KERSTETTER for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XX - AIDING AND ABETTING CONVERSION
(against Roseanne Caretsky)**

243. Plaintiffs incorporate the allegations contained in paragraphs 1 through 107 as if restated herein.

244. This is a claim for aiding and abetting conversion.

245. As described more fully above, the deals in which the Banyon Investors invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of the Banyon Investors when he absconded with their \$60,000,000.00 in funds.

246. Rothstein's conversion of the Banyon Investors' funds has permanently deprived the Banyon Investors of their property.

247. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by the Banyon Investors to make demand upon him for the return of their property would be futile.

248. Caretsky actively assisted, and provided substantial assistance, to Rothstein in either temporarily or permanently depriving the Banyon Investors of their property by deceiving the Banyon Investors into turning its property over to Rothstein under false pretenses.

249. Caretsky's actions have directly caused injury and damages to the Banyon Investors.

WHEREFORE, LINDA VON ALLMEN, as Trustee of the VON ALLMEN DYNASTY TRUST, D&L PARTNERS, LP, and DEAN KRETSCHMAR request judgment against ROSEANNE CARETSKY for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XXI - AIDING AND ABETTING CONVERSION
(against TD Bank, N.A.)**

250. Plaintiffs incorporate the allegations contained in paragraphs 1 through 107 as if restated herein.

251. This is a claim for aiding and abetting conversion.

252. As described more fully above, the deals in which the Banyon Investors invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of the Banyon Investors when he absconded with their \$60,000,000.00 in funds.

253. Rothstein's conversion of the Banyon Investors' funds has permanently deprived the Banyon Investors of their property.

254. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by the Banyon Investors to make demand upon him for the return of their property would be futile.

255. At all times material hereto, Kerstetter was acting in the scope of her employment as an assistant manager of TD Bank.

256. At all times material hereto, Caretsky was acting in the scope of her employment as an assistant vice president and branch manager of TD Bank.

257. TD Bank, through its employees while acting within the scope of their employment, actively assisted, and provided substantial assistance, to Rothstein in either temporarily or permanently depriving the Banyon Investors of their property by allowing Rothstein to make unauthorized withdrawals of its funds and by deceiving the Banyon Investors into turning its property over to Rothstein under false pretenses.

258. TD Bank's actions have directly caused injury and damages to the Banyon Investors.

WHEREFORE, LINDA VON ALLMEN, as Trustee of the VON ALLMEN DYNASTY TRUST, D&L PARTNERS, LP, and DEAN KRETSCHMAR request judgment against TD BANK N.A., for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XXII - AIDING AND ABETTING CONVERSION
(against Debra Villegas)**

259. Plaintiffs incorporate the allegations contained in paragraphs 1 through 107 as if restated herein.

260. This is a claim for aiding and abetting conversion.

261. As described more fully above, the deals in which the Banyon Investors invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of the Banyon Investors when he absconded with the Banyon Investors' \$60,000,000.00 in funds.

262. Rothstein's conversion of the Banyon Investors' funds has permanently deprived the Banyon Investors of their property.

263. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by the Banyon Investors to make demand upon him for the return of their property would be futile.

264. Villegas actively assisted, and provided substantial assistance, to Rothstein in either temporarily or permanently depriving the Banyon Investors of their property by deceiving the Banyon Investors into turning their property over to Rothstein under false pretenses.

265. Villegas's actions have directly caused injury and damages to the Banyon Investors.

WHEREFORE, LINDA VON ALLMEN, as Trustee of the VON ALLMEN DYNASTY TRUST, D&L PARTNERS, LP, and DEAN KRETSCHMAR request judgment against DEBRA VILLEGAS for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XXIII - NEGLIGENT SUPERVISION
(against TD Bank, N.A.)**

266. Plaintiffs incorporate the allegations contained in paragraphs 1 through 107 as if restated herein.

267. This is a claim for negligent supervision.

268. As described more fully above, Kerstetter and Caretsky participated, with actual or constructive knowledge, in Rothstein's Ponzi scheme. Kerstetter's and Caretsky's participation included, but was not limited to, providing the Banyon Investors with false information concerning the amounts deposited in RRA trust accounts.

269. In reliance on Kerstetter's and Caretsky's representations, on May 5, 2009, the Banyon Investors began sending payments to RRA's account at TD Bank, eventually funding a total of \$60,000,000.00.

270. The Banyon Investors' reliance on Kerstetter's and Caretsky's representations was reasonable and justified.

271. TD Bank owed a duty to the Banyon Investors to ensure that its employees were not actively defrauding depositors by making false representations in order to trick them into making unsafe deposits into trust accounts that they knew or reasonably should have known were being raided by Rothstein.

272. TD Bank breached its duties to the Banyon Investors because it had actual or constructive notice that its assistant manager and assistant vice president and branch manager were either fraudulently or negligently participating in a scheme which resulted in the unauthorized raiding of investors' deposits, and acted unreasonably by failing to investigate or take corrective action.

273. As a direct and proximate result of TD Bank's failure to investigate or take corrective action against Kerstetter or Caretsky, the Banyon Investors have sustained damages.

WHEREFORE, LINDA VON ALLMEN, as Trustee of the VON ALLMEN DYNASTY TRUST, D&L PARTNERS, LP, and DEAN KRETSCHMAR request judgment against TD BANK N.A., for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XXIV - FRAUDULENT MISREPRESENTATION
(against Scott Rothstein)**

274. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

275. This is a claim for fraudulent misrepresentation.

276. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

277. In furtherance of the Ponzi scheme, Rothstein knowingly made material false statements and representations, including but not limited to representing that the settlement agreements purchased by investors were real, that they had been fully funded, and that they would be paid out to investors over a predetermined schedule.

278. Rothstein intended Razorback to act on his knowingly false representations.

279. Razorback justifiably relied upon Rothstein's representations to its detriment.

280. As a direct and proximate result of Rothstein's false statements, Razorback has sustained damages.

WHEREFORE, RAZORBACK FUNDING, LLC, requests judgment against SCOTT ROTHSTEIN for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XXV - FRAUDULENT MISREPRESENTATION
(against Frank Spinosa)**

281. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

282. This is a claim for fraudulent misrepresentation.

283. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

284. In furtherance of the Ponzi scheme, Spinosa knowingly made material false statements and representations including, but not limited to, supplying investors with false bank account statements and misleading and untrue written assurances concerning the settlement accounts.

285. Spinosa intended Razorback to act on his knowingly false representations.

286. Razorback justifiably relied upon Spinosa's representations to its detriment.

287. As a direct and proximate result of Spinosa's false statements, Razorback has sustained damages.

WHEREFORE, RAZORBACK FUNDING, LLC, requests judgment against FRANK A. SPINOSA for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XXVI - FRAUDULENT MISREPRESENTATION
(against Jennifer Kerstetter)**

288. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

289. This is a claim for fraudulent misrepresentation.

290. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

291. In furtherance of the Ponzi scheme, Kerstetter knowingly made material false statements and representations including, but not limited to, supplying investors with false bank account statements.

292. Kerstetter intended Razorback to act on her knowingly false representations.

293. Razorback justifiably relied upon Kerstetter's representations to its detriment.

294. As a direct and proximate result of Kerstetter's false statements, Razorback has sustained damages.

WHEREFORE, RAZORBACK FUNDING, LLC, requests judgment against JENNIFER KERSTETTER for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XXVII - FRAUDULENT MISREPRESENTATION
(against Roseanne Caretsky)**

295. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

296. This is a claim for fraudulent misrepresentation.

297. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

298. In furtherance of the Ponzi scheme, Caretsky knowingly made material false statements and representations including, but not limited to, supplying investors with false bank account statements.

299. Caretsky intended Razorback to act on her knowingly false representations.

300. Razorback justifiably relied upon Caretsky's representations to its detriment.

301. As a direct and proximate result of Caretsky's false statements, Razorback has sustained damages.

WHEREFORE, RAZORBACK FUNDING, LLC, requests judgment against ROSEANNE CARETSKY for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XXVIII - FRAUDULENT MISREPRESENTATION
(against TD Bank, N.A.)**

302. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

303. This is a claim for fraudulent misrepresentation.

304. At all times material hereto, Spinosa was acting in the scope of his employment as Regional Vice President of T.D. Bank.

305. At all times material hereto, Kerstetter was acting in the scope of her employment as an assistant manager of TD Bank.

306. At all times material hereto, Caretsky was acting in the scope of her employment as an assistant vice president and branch manager of TD Bank.

307. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

308. In furtherance of the Ponzi scheme, TD Bank, through Spinosa, Kerstetter, and Caretsky, knowingly made material false statements and representations including, but not limited to, supplying investors with false bank account statements and supplying investors with misleading and untrue written assurances concerning the settlement accounts.

309. TD Bank, through Spinosa, Kerstetter, and Caretsky, intended Razorback to act on their knowingly false representations.

310. Razorback justifiably relied upon TD Bank's, through Spinosa's, Kerstetter's, and Caretsky's, representations to its detriment.

311. As a direct and proximate result of TD Bank's, made through Spinosa's Kerstetter's, and Caretsky's, false statements, Razorback has sustained damages.

WHEREFORE, RAZORBACK FUNDING, LLC, requests judgment against TD BANK, N.A., for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XXIX - FRAUDULENT MISREPRESENTATION
(against Frank Preve)**

312. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

313. This is a claim for fraudulent misrepresentation.

314. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

315. In furtherance of the Ponzi scheme, Preve knowingly made material false statements and representations including, but not limited to, supplying investors with false bank account statements and false confirmations that other monies had been wired to RRA trust accounts.

316. Preve intended Razorback to act on his knowingly false representations.

317. Razorback justifiably relied upon Preve's representations to its detriment.

318. As a direct and proximate result of Preve's false statements, Razorback has sustained damages.

WHEREFORE, RAZORBACK FUNDING, LLC, requests judgment against FRANK PREVE for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XXX - NEGLIGENT MISREPRESENTATION
(against Frank Spinosa)**

319. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

320. This is a claim for negligent misrepresentation.

321. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

322. In furtherance of the Ponzi scheme, Spinosa made material false statements and representations including, but not limited to, supplying investors with false bank account statements and misleading and untrue written assurances concerning the settlement accounts.

323. When making the false statements and representations, Spinosa either knew or reasonably should have known that they were false.

324. Spinosa owed Razorback a duty of care because he knew or had reason to know that Razorback was placing trust and confidence in him and relying on him to inform it.

325. Spinosa breached his duty to Razorback by making false representations with the intention that Razorback rely on them.

326. Razorback justifiably relied upon Spinosa's representations to its detriment.

327. As a direct and proximate result of Spinosa's false statements, Razorback has sustained damages.

WHEREFORE, RAZORBACK FUNDING, LLC, requests judgment against FRANK A. SPINOSA for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XXXI - NEGLIGENT MISREPRESENTATION
(against Jennifer Kerstetter)**

328. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

329. This is a claim for negligent misrepresentation.

330. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

331. In furtherance of the Ponzi scheme, Kerstetter made material false statements and representations including, but not limited to, supplying investors with false bank account statements.

332. When making the false statements and representations, Kerstetter either knew or reasonably should have known that they were false.

333. Kerstetter owed Razorback a duty of care because she knew or had reason to know that Razorback was placing trust and confidence in her and relying on her to inform it.

334. Kerstetter breached her duty to Razorback by making false representations with the intention that Razorback rely on them.

335. Razorback justifiably relied upon Kerstetter's representations to its detriment.

336. As a direct and proximate result of Kerstetter's false statements, Razorback has sustained damages.

WHEREFORE, RAZORBACK FUNDING, LLC, requests judgment against JENNIFER KERSTETTER for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XXXII - NEGLIGENT MISREPRESENTATION
(against Roseanne Caretsky)**

337. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

338. This is a claim for negligent misrepresentation.

339. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

340. In furtherance of the Ponzi scheme, Caretsky made material false statements and representations including, but not limited to, supplying investors with false bank account statements.

341. When making the false statements and representations, Kerstetter either knew or reasonably should have known that they were false.

342. Caretsky owed Razorback a duty of care because she knew or had reason to know that Razorback was placing trust and confidence in her and relying on her to inform it.

343. Caretsky breached her duty to Razorback by making false representations with the intention that Razorback rely on them.

344. Razorback justifiably relied upon Caretsky's representations to its detriment.

345. As a direct and proximate result of Caretsky's false statements, Razorback has sustained damages.

WHEREFORE, RAZORBACK FUNDING, LLC, requests judgment against ROSEANNE CARETSKY for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XXXIII - NEGLIGENT MISREPRESENTATION
(against TD Bank, N.A.)**

346. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

347. This is a claim for negligent misrepresentation.

348. At all times material hereto, Spinosa was acting in the scope of his employment as Regional Vice President of T.D. Bank.

349. At all times material hereto, Kerstetter was acting in the scope of her employment as an assistant manager of TD Bank.

350. At all times material hereto, Caretsky was acting in the scope of her employment as an assistant vice president and branch manager of TD Bank.

351. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

352. In furtherance of the Ponzi scheme, TD Bank, through Spinosa, Kerstetter, and Caretsky, made material false statements and representations, including, but not limited to, showing investors false statements of the amounts in RRA trust accounts and providing misleading and untrue written assurances concerning the settlement accounts.

353. When making the false statements and representations, TD Bank, through Spinosa, Kerstetter, and Caretsky, either knew or reasonably should have known that they were false.

354. TD Bank owed Razorback a duty of care because it knew or had reason to know that Razorback was placing trust and confidence in her and relying on it to inform them.

355. TD Bank breached its duty to Razorback by making false representations, through Spinosa, Kerstetter, and Caretsky, with the intention that Razorback rely on them.

356. Razorback justifiably relied upon TD Bank's, through Spinosa's, Kerstetter's, and Caretsky's, representations to their detriment.

357. As a direct and proximate result of TD Bank's representations, made through Spinosa, Kerstetter, and Caretsky, Razorback has sustained damages.

WHEREFORE, RAZORBACK FUNDING, LLC, requests judgment against TD BANK, N.A., for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XXXIV - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
(against Frank Spinosa)**

358. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

359. This is a claim for aiding and abetting breach of fiduciary duty.

360. Spinosa was aware that as trustee of the attorney trust account where Razorback's purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to Razorback. Spinosa was also aware that as trustee of the attorney trust account containing the funds to which Razorback had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to Razorback.

361. Spinosa was aware that Rothstein was financially exploiting the investors to their detriment, and was aware that Rothstein was breaching his fiduciary obligations to Razorback.

362. Spinosa actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of Razorback and his breaches of fiduciary duty.

363. Spinosa's actions have directly caused injury and damage to Razorback.

WHEREFORE, RAZORBACK FUNDING, LLC, requests judgment against FRANK A. SPINOSA for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XXXV - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
(against Jennifer Kerstetter)**

364. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

365. This is a claim for aiding and abetting breach of fiduciary duty.

366. Kerstetter was aware that as trustee of the attorney trust account where Razorback's purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to Razorback. Kerstetter was also aware that as trustee of the attorney trust account containing the funds to which Razorback had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to Razorback.

367. Kerstetter was aware that Rothstein was financially exploiting the investors to their detriment, and was aware that Rothstein was breaching his fiduciary obligations to Razorback.

368. Kerstetter actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of Razorback and his breaches of fiduciary duty.

369. Kerstetter's actions have directly caused injury and damage to Razorback.

WHEREFORE, RAZORBACK FUNDING, LLC, requests judgment against JENNIFER KERSTETTER for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XXXVI - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
(against Roseanne Caretsky)**

370. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

371. This is a claim for aiding and abetting breach of fiduciary duty.

372. Caretsky was aware that as trustee of the attorney trust account where Razorback's purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to Razorback. Caretsky was also aware that as trustee of the attorney trust account containing the funds to which Razorback had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to Razorback.

373. Caretsky was aware that Rothstein was financially exploiting the investors to their detriment, and was aware that Rothstein was breaching his fiduciary obligations to Razorback.

374. Caretsky actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of Razorback and his breaches of fiduciary duty.

375. Caretsky's actions have directly caused injury and damage to Razorback.

WHEREFORE, RAZORBACK FUNDING, LLC, requests judgment against ROSEANNE CARETSKY for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XXXVII - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
(against TD Bank, N.A.)**

376. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

377. This is a claim for aiding and abetting breach of fiduciary duty.

378. At all times material hereto, Spinosa was acting in the scope of his employment as Regional Vice President of T.D. Bank.

379. At all times material hereto, Kerstetter was acting in the scope of her employment as an assistant manager of TD Bank.

380. At all times material hereto, Caretsky was acting in the scope of her employment as an assistant vice president and branch manager of TD Bank.

381. TD Bank was aware that as trustee of the attorney trust account where Razorback's purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to Razorback. TD Bank was also aware that as trustee of the attorney trust account containing the funds to which Razorback had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to Razorback.

382. TD Bank was aware that Rothstein was financially exploiting the investors to their detriment, and was aware that Rothstein was breaching his fiduciary obligations to Razorback.

383. TD Bank, through its employees acting within the scope of their employment, actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of Razorback and his breaches of fiduciary duty.

384. TD Bank's actions have directly caused injury and damage to Razorback.

WHEREFORE, RAZORBACK FUNDING, LLC, requests judgment against TD BANK, N.A., for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XXXVIII - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
(against Debra Villegas)**

385. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

386. This is a claim for aiding and abetting breach of fiduciary duty.

387. Villegas was aware that as trustee of the attorney trust account where Razorback's purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to Razorback. Villegas was also aware that as trustee of the attorney trust account containing the funds to which Razorback had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to Razorback.

388. Villegas was aware that Rothstein was financially exploiting the investors to their detriment, and was aware that Rothstein was breaching his fiduciary obligations to Razorback.

389. Villegas actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of Razorback and his breaches of fiduciary duty.

390. Villegas's actions have directly caused injury and damage to Razorback.

WHEREFORE, RAZORBACK FUNDING, LLC, requests judgment against DEBRA VILLEGAS for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XXXIX - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
(against Frank Preve)**

391. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

392. This is a claim for aiding and abetting breach of fiduciary duty.

393. Preve was aware that as trustee of the attorney trust account where Razorback's purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to Razorback. Preve was also aware that as trustee of the attorney trust account containing the funds to which Razorback had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to Razorback.

394. Preve was aware that Rothstein was financially exploiting the investors to their detriment, and was aware that Rothstein was breaching his fiduciary obligations to Razorback.

395. Preve actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of Razorback and his breaches of fiduciary duty.

396. Preve's actions have directly caused injury and damage to Razorback.

WHEREFORE, RAZORBACK FUNDING, LLC, requests judgment against FRANK PREVE for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XL - BREACH OF FIDUCIARY DUTY
(against Scott Rothstein)**

397. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

398. This is a claim for breach of fiduciary duty.

399. As trustee of the attorney trust account where Razorback's purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to Razorback. Additionally, as trustee of the attorney trust account containing the funds to which Razorback had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to Razorback.

400. Rothstein breached his fiduciary duties by raiding the RRA trust accounts for his personal use.

401. Rothstein's actions have directly caused injury and damages to Razorback.

WHEREFORE, RAZORBACK FUNDING, LLC, requests judgment against SCOTT ROTHSTEIN for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XLI - BREACH OF FIDUCIARY DUTY
(against TD Bank, N.A.)**

402. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

403. This is a claim for breach of fiduciary duty.

404. At all times material hereto, Spinosa was acting in the scope of his employment as Regional Vice President of T.D. Bank.

405. At all times material hereto, Kerstetter was acting in the scope of her employment as an assistant manager of TD Bank.

406. At all times material hereto, Caretsky was acting in the scope of her employment as an assistant vice president and branch manager of TD Bank.

407. In Florida, a bank assumes a fiduciary duty with its customer under special circumstances where the bank knows or has reason to know that the customer is placing trust and confidence in the bank and is relying on the bank to so counsel and inform him. Under the circumstances outlined above, whereby TD Bank knew that Razorback was relying on Spinosa's assurances to Razorback of the precautions in place to prevent improper withdrawals from its account, TD Bank was a fiduciary of Razorback and owed Razorback the fiduciary duties of honesty, loyalty, and care. Additionally, where TD Bank knew that Razorback investors were relying on Spinosa's, Kerstetter's and Caretsky's representations that the RRA trust accounts contained substantial funds, TD Bank was a fiduciary of Razorback and owed Razorback the fiduciary duties of honesty, loyalty, and care.

408. TD Bank breached its fiduciary duties through the actions of its employees by either ignoring or actively assisting and providing substantial assistance to Rothstein in its financial exploitation of Razorback.

409. TD Bank's actions have directly caused injury and damage to Razorback.

WHEREFORE, RAZORBACK FUNDING, LLC, requests judgment against TD BANK, N.A., for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XLII - BREACH OF FIDUCIARY DUTY
(against Frank Preve)**

410. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

411. This is a claim for breach of fiduciary duty.

412. By holding himself out as a co-investor, Preve became a fiduciary of Razorback and owed Razorback the fiduciary duties of honesty, loyalty, and care.

413. Preve breached his fiduciary duties by either ignoring or actively assisting and providing substantial assistance to Rothstein in his financial exploitation of Razorback.

414. Preve's actions have directly caused injury and damage to Razorback.

WHEREFORE, RAZORBACK FUNDING, LLC, requests judgment against FRANK PREVE for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XLIII - AIDING AND ABETTING FRAUD
(against Frank Spinosa)**

415. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

416. This is a claim for aiding and abetting fraud.

417. As described more fully above, the deals in which Razorback invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank

418. Spinosa knew of Rothstein's fraudulent scheme.

419. Spinosa actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of Razorback through fraud. Spinosa's assistance included, but was not limited to, supplying Razorback with false bank account statements and misleading and untrue written assurances concerning the settlement accounts.

420. Spinosa's actions have directly caused injury and damage to Razorback.

WHEREFORE, RAZORBACK FUNDING, LLC, requests judgment against FRANK A. SPINOSA for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XLIV - AIDING AND ABETTING FRAUD
(against Jennifer Kerstetter)**

421. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

422. This is a claim for aiding and abetting fraud.

423. As described more fully above, the deals in which Razorback invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

424. Kerstetter knew of Rothstein's fraudulent scheme.

425. Kerstetter actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of Razorback through fraud. Kerstetter's assistance included, but was not limited to, providing false documentation to Razorback that the RRA trust accounts contained substantial funds when they did not.

426. Kerstetter's actions have directly caused injury and damage to Razorback.

WHEREFORE, RAZORBACK FUNDING, LLC, requests judgment against JENNIFER KERSTETTER for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XLV - AIDING AND ABETTING FRAUD
(against Roseanne Caretsky)**

427. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

428. This is a claim for aiding and abetting fraud.

429. As described more fully above, the deals in which Razorback invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

430. Caretsky knew of Rothstein's fraudulent scheme.

431. Caretsky actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of Razorback through fraud. Caretsky's assistance included, but was not limited to, providing false documentation to Razorback that the RRA trust accounts contained substantial funds when they did not.

432. Caretsky's actions have directly caused injury and damage to Razorback.

WHEREFORE, RAZORBACK FUNDING, LLC, requests judgment against ROSEANNE CARETSKY for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XLVI - AIDING AND ABETTING FRAUD
(against TD Bank, N.A.)**

433. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

434. This is a claim for aiding and abetting fraud.

435. As described more fully above, the deals in which Razorback invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank

436. At all times material hereto Spinosa was acting in the scope of his employment for TD Bank.

437. At all times material hereto, Kerstetter was acting in the scope of her employment as an assistant manager of TD Bank.

438. At all times material hereto, Caretsky was acting in the scope of her employment as an assistant vice president and branch manager of TD Bank.

439. TD Bank knew of Rothstein's fraudulent scheme.

440. TD Bank, through Spinosa, Kerstetter, and Caretsky, actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of Razorback through fraud. TD Bank's assistance included, but was not limited to, providing false documentation to Razorback that the RRA trust accounts contained substantial funds when they did not and supplying investors with misleading and untrue written assurances concerning the settlement accounts.

441. TD Bank's actions have directly caused injury and damage to Razorback.

WHEREFORE, RAZORBACK FUNDING, LLC, requests judgment against TD BANK, N.A., for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XLVII - AIDING AND ABETTING FRAUD
(against Debra Villegas)**

442. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

443. This is a claim for aiding and abetting fraud.

444. As described more fully above, the deals in which Razorback invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

445. Villegas knew of Rothstein's fraudulent scheme.

446. Villegas actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of all of the investor victims of Rothstein's Ponzi scheme, including

Razorback, through fraud by furnishing false bank account statements and wire transfers to investors in order to induce them to invest despite having actual or constructive knowledge that the investments were a Ponzi scheme.

447. Villegas's actions have directly caused injury and damage to Razorback.

WHEREFORE, RAZORBACK FUNDING, LLC, requests judgment against DEBRA VILLEGAS for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XLVIII - AIDING AND ABETTING FRAUD
(against Frank Preve)**

448. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

449. This is a claim for aiding and abetting fraud.

450. As described more fully above, the deals in which Razorback invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

451. Preve knew of Rothstein's fraudulent scheme.

452. Preve actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of Razorback through fraud. Preve's assistance included, but was not limited to, confirming wire transfers into Rothstein's trust accounts that he knew were fabricated.

453. Preve's actions have directly caused injury and damage to Razorback.

WHEREFORE, RAZORBACK FUNDING, LLC, requests judgment against FRANK PREVE for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XLIX - CONVERSION
(against Scott Rothstein)**

454. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

455. This is a claim for conversion.

456. As described more fully above, the deals in which Razorback invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of Razorback when he absconded with Razorback's \$32,000,000.00 in funds.

457. Rothstein's conversion of Razorback's funds has permanently deprived Razorback of its property.

458. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by Razorback to make demand upon him for the return of its property would be futile.

459. Rothstein's actions have directly caused injury and damages to Razorback.

WHEREFORE, RAZORBACK FUNDING, LLC, requests judgment against SCOTT ROTHSTEIN for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT L - AIDING AND ABETTING CONVERSION
(against Frank Spinosa)**

460. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

461. This is a claim for aiding and abetting conversion.

462. As described more fully above, the deals in which Razorback invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of Razorback when he absconded with Razorback's \$32,000,000.00 in funds.

463. Rothstein's conversion of Razorback's funds has permanently deprived Razorback of its property.

464. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by Razorback to make demand upon him for the return of its property would be futile.

465. Spinosa actively assisted, and provided substantial assistance, to Rothstein in either temporarily or permanently depriving Razorback of its property by deceiving Razorback into turning its property over to Rothstein under false pretenses.

466. Spinosa's actions have directly caused injury and damages to Razorback.

WHEREFORE, RAZORBACK FUNDING, LLC, requests judgment against FRANK A. SPINOSA for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT LI - AIDING AND ABETTING CONVERSION
(against Jennifer Kerstetter)**

467. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

468. This is a claim for aiding and abetting conversion.

469. As described more fully above, the deals in which Razorback invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In

furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of Razorback when he absconded with Razorback's \$32,000,000.00 in funds.

470. Rothstein's conversion of Razorback's funds has permanently deprived Razorback of its property.

471. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by Razorback to make demand upon him for the return of its property would be futile.

472. Kerstetter actively assisted, and provided substantial assistance, to Rothstein in either temporarily or permanently depriving Razorback of its property by deceiving Razorback into turning its property over to Rothstein under false pretenses.

473. Kerstetter's actions have directly caused injury and damages to Razorback.

WHEREFORE, RAZORBACK FUNDING, LLC, requests judgment against JENNIFER KERSTETTER for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT LII - AIDING AND ABETTING CONVERSION
(against Roseanne Caretsky)**

474. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

475. This is a claim for aiding and abetting conversion.

476. As described more fully above, the deals in which Razorback invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of Razorback when he absconded with Razorback's \$32,000,000.00 in funds.

477. Rothstein's conversion of Razorback's funds has permanently deprived Razorback of its property.

478. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by Razorback to make demand upon him for the return of its property would be futile.

479. Caretsky actively assisted, and provided substantial assistance, to Rothstein in either temporarily or permanently depriving Razorback of its property by deceiving Razorback into turning its property over to Rothstein under false pretenses.

480. Caretsky's actions have directly caused injury and damages to Razorback.

WHEREFORE, RAZORBACK FUNDING, LLC, requests judgment against ROSEANNE CARETSKY for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT LIII - AIDING AND ABETTING CONVERSION
(against TD Bank, N.A.)**

481. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

482. This is a claim for aiding and abetting conversion.

483. As described more fully above, the deals in which Razorback invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of Razorback when he absconded with Razorback's \$32,000,000.00 in funds.

484. Rothstein's conversion of Razorback's funds has permanently deprived Razorback of its property.

485. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by Razorback to make demand upon him for the return of its property would be futile.

486. At all times material hereto Spinosa was acting in the scope of his employment for TD Bank.

487. At all times material hereto, Kerstetter was acting in the scope of her employment as an assistant manager of TD Bank.

488. At all times material hereto, Caretsky was acting in the scope of her employment as an assistant vice president and branch manager of TD Bank.

489. TD Bank, through its employees while acting within the scope of their employment, actively assisted, and provided substantial assistance, to Rothstein in either temporarily or permanently depriving Razorback of its property by allowing Rothstein to make unauthorized withdrawals of its funds and by deceiving Razorback into turning its property over to Rothstein under false pretenses.

490. TD Bank's actions have directly caused injury and damages to Razorback.

WHEREFORE, RAZORBACK FUNDING, LLC, requests judgment against TD BANK N.A., for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT LIV - AIDING AND ABETTING CONVERSION
(against Debra Villegas)**

491. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

492. This is a claim for aiding and abetting conversion.

493. As described more fully above, the deals in which Razorback invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of Razorback when he absconded with Razorback's \$32,000,000.00 in funds.

494. Rothstein's conversion of Razorback's funds has permanently deprived Razorback of its property.

495. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by Razorback to make demand upon him for the return of its property would be futile.

496. Villegas actively assisted, and provided substantial assistance, to Rothstein in either temporarily or permanently depriving Razorback of its property by deceiving Razorback into turning its property over to Rothstein under false pretenses.

497. Villegas's actions have directly caused injury and damages to Razorback.

WHEREFORE, RAZORBACK FUNDING, LLC, requests judgment against DEBRA VILLEGAS for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT LV - AIDING AND ABETTING CONVERSION
(against Frank Preve)**

498. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

499. This is a claim for aiding and abetting conversion.

500. As described more fully above, the deals in which Razorback invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In

furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of Razorback when he absconded with Razorback's \$32,000,000.00 in funds.

501. Rothstein's conversion of Razorback's funds has permanently deprived Razorback of its property.

502. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by Razorback to make demand upon him for the return of its property would be futile.

503. Preve actively assisted, and provided substantial assistance, to Rothstein in either temporarily or permanently depriving Razorback of its property by deceiving Razorback into funding settlements that he knew did not exist.

504. Preve's actions have directly caused injury and damages to Razorback.

WHEREFORE, RAZORBACK FUNDING, LLC, requests judgment against FRANK A. SPINOSA for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT LVI - NEGLIGENT SUPERVISION
(against TD Bank, N.A.)**

505. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

506. This is a claim for negligent supervision.

507. As described more fully above, Spinosa, Kerstetter, and Caretsky participated, with actual or constructive knowledge, in Rothstein's Ponzi scheme. Spinosa's, Kerstetter's, and Caretsky's participation included, but was not limited to, providing the Razorback with false

information concerning the amounts deposited in RRA trust accounts and supplying investors with misleading and untrue written assurances concerning the settlement accounts.

508. In reliance on Spinosa's, Kerstetter's, and Caretsky's representations, on October 2, 2009, Razorback began sending payments to RRA's account at TD Bank, eventually funding a total of \$32,000,000.00.

509. Razorback's reliance on Spinosa's, Kerstetter's, and Caretsky's representations was reasonable and justified.

510. TD Bank owed a duty to Razorback to ensure that its employees were not actively defrauding depositors by making false representations in order to trick them into making unsafe deposits into trust accounts that they knew or reasonably should have known were being raided by Rothstein.

511. TD Bank breached its duties to Razorback because it had actual or constructive notice that its assistant manager and assistant vice president and branch manager were either fraudulently or negligently participating in a scheme which resulted in the unauthorized raiding of investors' deposits, and acted unreasonably by failing to investigate or take corrective action.

512. As a direct and proximate result of TD Bank's failure to investigate or take corrective action against Spinosa, Kerstetter, or Caretsky, Razorback has sustained damages.

WHEREFORE, RAZORBACK FUNDING, LLC, requests judgment against TD BANK N.A., for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT LVII - FRAUDULENT MISREPRESENTATION
(against Scott Rothstein)**

513. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

514. This is a claim for fraudulent misrepresentation.

515. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

516. In furtherance of the Ponzi scheme, Rothstein knowingly made material false statements and representations, including but not limited to representing that the settlement agreements purchased by investors were real, that they had been fully funded, and that they would be paid out to investors over a predetermined schedule.

517. Rothstein intended D3 to act on his knowingly false representations.

518. D3 justifiably relied upon Rothstein's representations to its detriment.

519. As a direct and proximate result of Rothstein's false statements, D3 has sustained damages.

WHEREFORE, D3 CAPITAL CLUB, LLC, requests judgment against SCOTT ROTHSTEIN for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT LVIII - FRAUDULENT MISREPRESENTATION
(against Frank Spinosa)**

520. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

521. This is a claim for fraudulent misrepresentation.

522. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

523. In furtherance of the Ponzi scheme, Spinosa knowingly made material false statements and representations including, but not limited to, supplying investors with false bank account statements and misleading and untrue written assurances concerning the settlement accounts.

524. Spinosa intended D3 to act on his knowingly false representations.

525. D3 justifiably relied upon Spinosa's representations to its detriment.

526. As a direct and proximate result of Spinosa's false statements, D3 has sustained damages.

WHEREFORE, D3 CAPITAL CLUB, LLC, requests judgment against FRANK A. SPINOSA for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT LIX - FRAUDULENT MISREPRESENTATION
(against Jennifer Kerstetter)**

527. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

528. This is a claim for fraudulent misrepresentation.

529. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

530. In furtherance of the Ponzi scheme, Kerstetter knowingly made material false statements and representations including, but not limited to, supplying investors with false bank account statements.

531. Kerstetter intended D3 to act on her knowingly false representations.

532. D3 justifiably relied upon Kerstetter's representations to its detriment.

533. As a direct and proximate result of Kerstetter's false statements, D3 has sustained damages.

WHEREFORE, D3 CAPITAL CLUB, LLC, requests judgment against JENNIFER KERSTETTER for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT LX - FRAUDULENT MISREPRESENTATION
(against Roseanne Caretsky)**

534. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

535. This is a claim for fraudulent misrepresentation.

536. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

537. In furtherance of the Ponzi scheme, Caretsky knowingly made material false statements and representations including, but not limited to, supplying investors with false bank account statements.

538. Caretsky intended D3 to act on her knowingly false representations.

539. D3 justifiably relied upon Caretsky's representations to its detriment.

540. As a direct and proximate result of Caretsky's false statements, D3 has sustained damages.

WHEREFORE, D3 CAPITAL CLUB, LLC, requests judgment against ROSEANNE CARETSKY for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT LXI - FRAUDULENT MISREPRESENTATION
(against TD Bank, N.A.)**

541. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

542. This is a claim for fraudulent misrepresentation.

543. At all times material hereto, Spinosa was acting in the scope of his employment as Regional Vice President of [REDACTED] Bank.

544. At all times material hereto, Kerstetter was acting in the scope of her employment as an assistant manager of TD Bank.

545. At all times material hereto, Caretsky was acting in the scope of her employment as an assistant vice president and branch manager of TD Bank.

546. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

547. In furtherance of the Ponzi scheme, TD Bank, through Spinosa, Kerstetter, and Caretsky knowingly made material false statements and representations including, but not limited to, supplying investors with false bank account statements and supplying investors with misleading and untrue written assurances concerning the settlement accounts.

548. TD Bank, through Spinosa, Kerstetter, and Caretsky intended D3 to act on their knowingly false representations.

549. D3 justifiably relied upon TD Bank's through Spinoso's, Kerstetter's, and Caretsky's representations to its detriment.

550. As a direct and proximate result of TD Bank's, made through Spinoso's Kerstetter's, and Caretsky's false statements, D3 has sustained damages.

WHEREFORE, D3 CAPITAL CLUB, LLC, requests judgment against TD BANK, N.A., for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT LXII - NEGLIGENT MISREPRESENTATION
(against Frank Spinoso)**

551. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

552. This is a claim for negligent misrepresentation.

553. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

554. In furtherance of the Ponzi scheme, Spinoso made material false statements and representations including, but not limited to, supplying investors with false bank account statements and misleading and untrue written assurances concerning the settlement accounts.

555. When making the false statements and representations, Spinoso either knew or reasonably should have known that they were false.

556. Spinoso owed D3 a duty of care because he knew or had reason to know that D3 was placing trust and confidence in him and relying on him to inform it.

557. Spinoso breached his duty to D3 by making false representations with the intention that D3 rely on them.

558. D3 justifiably relied upon Spinosa's representations to its detriment.

559. As a direct and proximate result of Spinosa's false statements, D3 has sustained damages.

WHEREFORE, D3 CAPITAL CLUB, LLC, requests judgment against FRANK A. SPINOSA for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT LXIII - NEGLIGENT MISREPRESENTATION
(against Jennifer Kerstetter)**

560. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

561. This is a claim for negligent misrepresentation.

562. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

563. In furtherance of the Ponzi scheme, Kerstetter made material false statements and representations including, but not limited to, supplying investors with false bank account statements.

564. When making the false statements and representations, Kerstetter either knew or reasonably should have known that they were false.

565. Kerstetter owed D3 a duty of care because she knew or had reason to know that D3 was placing trust and confidence in her and relying on her to inform it.

566. Kerstetter breached her duty to D3 by making false representations with the intention that Razorback rely on them.

567. D3 justifiably relied upon Kerstetter's representations to their detriment.

568. As a direct and proximate result of Kerstetter's false statements, D3 has sustained damages.

WHEREFORE, D3 CAPITAL CLUB, LLC, requests judgment against JENNIFER KERSTETTER for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT LXIV - NEGLIGENT MISREPRESENTATION
(against Roseanne Caretsky)**

569. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

570. This is a claim for negligent misrepresentation.

571. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

572. In furtherance of the Ponzi scheme, Caretsky made material false statements and representations including, but not limited to, supplying investors with false bank account statements.

573. When making the false statements and representations, Kerstetter either knew or reasonably should have known that they were false.

574. Caretsky owed D3 a duty of care because she knew or had reason to know that D3 was placing trust and confidence in her and relying on her to inform it.

575. Caretsky breached her duty to D3 by making false representations with the intention that D3 rely on them.

576. D3 justifiably relied upon Caretsky's representations to their detriment.

577. As a direct and proximate result of Caretsky's false statements, D3 has sustained damages.

WHEREFORE, D3 CAPITAL CLUB, LLC, requests judgment against ROSEANNE CARETSKY for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT LXV - NEGLIGENT MISREPRESENTATION
(against TD Bank, N.A.)**

578. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

579. This is a claim for negligent misrepresentation.

580. At all times material hereto, Spinosa was acting in the scope of his employment as Regional Vice President of T.D. Bank.

581. At all times material hereto, Kerstetter was acting in the scope of her employment as an assistant manager of TD Bank.

582. At all times material hereto, Caretsky was acting in the scope of her employment as an assistant vice president and branch manager of TD Bank.

583. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

584. In furtherance of the Ponzi scheme, TD Bank, through Spinosa, Kerstetter, and Caretsky made material false statements and representations, including, but not limited to, showing investors false statements of the amounts in RRA trust accounts and providing misleading and untrue written assurances concerning the settlement accounts..

585. When making the false statements and representations, TD Bank, through Spinosa, Kerstetter, and Caretsky either knew or reasonably should have known that they were false.

586. TD Bank owed D3 a duty of care because it knew or had reason to know that D3 was placing trust and confidence in her and relying on it to inform them.

587. TD Bank breached its duty to D3 by making false representations, through Spinosa, Kerstetter, and Caretsky, with the intention that D3 rely on them.

588. D3 justifiably relied upon TD Bank's, through Spinosa's, Kerstetter's, and Caretsky's, representations to its detriment.

589. As a direct and proximate result of TD Bank's representations, made through Spinosa, Kerstetter, and Caretsky D3 has sustained damages.

WHEREFORE, D3 CAPITAL CLUB, LLC, requests judgment against TD BANK, N.A., for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT LXVI - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
(against Frank Spinosa)**

590. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

591. This is a claim for aiding and abetting breach of fiduciary duty.

592. Spinosa was aware that as trustee of the attorney trust account where D3's purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to D3. Spinosa was also aware that as trustee of the attorney trust account containing

the funds to which D3 had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to D3.

593. Spinosa was aware that Rothstein was financially exploiting the investors to their detriment, and was aware that Rothstein was breaching his fiduciary obligations to D3.

594. Spinosa actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of D3 and his breaches of fiduciary duty.

595. Spinosa's actions have directly caused injury and damage to D3.

WHEREFORE, D3 CAPITAL CLUB, LLC, requests judgment against FRANK A. SPINOSA for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT LXVII - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
(against Jennifer Kerstetter)**

596. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

597. This is a claim for aiding and abetting breach of fiduciary duty.

598. Kerstetter was aware that as trustee of the attorney trust account where D3's purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to D3. Kerstetter was also aware that as trustee of the attorney trust account containing the funds to which D3 had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to D3.

599. Kerstetter was aware that Rothstein was financially exploiting the investors to their detriment, and was aware that Rothstein was breaching his fiduciary obligations to D3.

600. Kerstetter actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of D3 and his breaches of fiduciary duty.

601. Kerstetter's actions have directly caused injury and damage to D3.

WHEREFORE, D3 CAPITAL CLUB, LLC, requests judgment against JENNIFER KERSTETTER for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT LXVIII - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
(against Roseanne Caretsky)**

602. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

603. This is a claim for aiding and abetting breach of fiduciary duty.

604. Caretsky was aware that as trustee of the attorney trust account where D3's purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to D3. Caretsky was also aware that as trustee of the attorney trust account containing the funds to which D3 had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to D3.

605. Caretsky was aware that Rothstein was financially exploiting the investors to their detriment, and was aware that Rothstein was breaching his fiduciary obligations to D3.

606. Caretsky actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of D3 and his breaches of fiduciary duty.

607. Caretsky's actions have directly caused injury and damage to D3.

WHEREFORE, D3 CAPITAL CLUB, LLC, requests judgment against ROSEANNE CARETSKY for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT LXIX - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
(against TD Bank, N.A.)**

608. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

609. This is a claim for aiding and abetting breach of fiduciary duty.

610. At all times material hereto, Spinosa was acting in the scope of his employment as Regional Vice President of TD Bank.

611. At all times material hereto, Kerstetter was acting in the scope of her employment as an assistant manager of TD Bank.

612. At all times material hereto, Caretsky was acting in the scope of her employment as an assistant vice president and branch manager of TD Bank.

613. TD Bank was aware that as trustee of the attorney trust account where D3's purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to D3. TD Bank was also aware that as trustee of the attorney trust account containing the funds to which D3 had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to D3.

614. TD Bank was aware that Rothstein was financially exploiting the investors to their detriment, and was aware that Rothstein was breaching his fiduciary obligations to D3.

615. TD Bank, through its employees acting within the scope of their employment, actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of D3 and his breaches of fiduciary duty.

616. TD Bank's actions have directly caused injury and damage to D3.

WHEREFORE, D3 CAPITAL CLUB, LLC, requests judgment against TD BANK, N.A., for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT LXX - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
(against Debra Villegas)**

617. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

618. This is a claim for aiding and abetting breach of fiduciary duty.

619. Villegas was aware that as trustee of the attorney trust account where D3's purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to D3. Villegas was also aware that as trustee of the attorney trust account containing the funds to which D3 had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to D3.

620. Villegas was aware that Rothstein was financially exploiting the investors to their detriment, and was aware that Rothstein was breaching his fiduciary obligations to D3.

621. Villegas actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of D3 and his breaches of fiduciary duty.

622. Villegas's actions have directly caused injury and damage to D3.

WHEREFORE, D3 CAPITAL CLUB, LLC, requests judgment against DEBRA VILLEGAS for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT LXXI – BREACH OF FIDUCIARY DUTY
(against Scott Rothstein)**

623. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

624. This is a claim for breach of fiduciary duty.

625. As trustee of the attorney trust account where D3's purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to D3. Additionally, as trustee of the attorney trust account containing the funds to which D3 had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to D3.

626. Rothstein breached his fiduciary duties by raiding the RRA trust accounts for his personal use.

627. Rothstein's actions have directly caused injury and damages to D3.

WHEREFORE, D3 CAPITAL CLUB, LLC, requests judgment against SCOTT ROTHSTEIN for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT LXXII – BREACH OF FIDUCIARY DUTY
(against TD Bank, N.A.)**

628. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

629. This is a claim for breach of fiduciary duty.

630. At all times material hereto, Spinosa was acting in the scope of his employment as Regional Vice President of TD Bank.

631. At all times material hereto, Kerstetter was acting in the scope of her employment as an assistant manager of TD Bank.

632. At all times material hereto, Caretsky was acting in the scope of her employment as an assistant vice president and branch manager of TD Bank.

633. In Florida, a bank assumes a fiduciary duty with its customer under special circumstances where the bank knows or has reason to know that the customer is placing trust and confidence in the bank and is relying on the bank to so counsel and inform him. Under the circumstances outlined above, whereby TD Bank knew that D3 was relying on Spinosa's assurances to D3 of the precautions in place to prevent improper withdrawals from its account, TD Bank was a fiduciary of D3 and owed D3 the fiduciary duties of honesty, loyalty, and care. Additionally, where TD Bank knew that D3 was relying on Kerstetter's representations to D3 that the settlement trust accounts had been funded, TD Bank was a fiduciary of D3 and owed D3 the fiduciary duties of honesty, loyalty, and care. In addition, TD knew that D3 was relying on Caretsky's representations that the RRA trust accounts contained substantial funds, TD Bank was a fiduciary of D3 and owed D3 the fiduciary duties of honesty, loyalty, and care.

634. TD Bank breached its fiduciary duties through the actions of its employees by either ignoring or actively assisting and providing substantial assistance to Rothstein in its financial exploitation of D3.

635. TD Bank's actions have directly caused injury and damage to D3.

WHEREFORE, D3 CAPITAL CLUB, LLC, requests judgment against TD BANK, N.A., for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT LXXIII - AIDING AND ABETTING FRAUD
(against Frank Spinosa)**

636. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

637. This is a claim for aiding and abetting fraud.

638. As described more fully above, the deals in which D3 invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

639. Spinosa knew of Rothstein's fraudulent scheme.

640. Spinosa actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of D3 through fraud. Spinosa's assistance included, but was not limited to, supplying D3 with false bank account statements and misleading and untrue written assurances concerning the settlement accounts.

641. Spinosa's actions have directly caused injury and damage to D3.

WHEREFORE, D3 CAPITAL CLUB, LLC, requests judgment against FRANK A. SPINOSA for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT LXXIV - AIDING AND ABETTING FRAUD
(against Jennifer Kerstetter)**

642. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

643. This is a claim for aiding and abetting fraud.

644. As described more fully above, the deals in which D3 invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

645. Kerstetter knew of Rothstein's fraudulent scheme.

646. Kerstetter actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of D3 through fraud. Kerstetter's assistance included, but was not limited to, providing false documentation to D3 that the RRA trust accounts contained substantial funds when they did not.

647. Kerstetter's actions have directly caused injury and damage to D3.

WHEREFORE, RAZORBACK FUNDING, LLC, requests judgment against JENNIFER KERSTETTER for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT LXXV - AIDING AND ABETTING FRAUD
(against Roseanne Caretsky)**

648. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

649. This is a claim for aiding and abetting fraud.

650. As described more fully above, the deals in which D3 invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

651. Caretsky knew of Rothstein's fraudulent scheme.

652. Caretsky actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of D3 through fraud by representing to D3 that the RRA trust accounts contained substantial funds, all the time knowing that the accounts contained, at most, minimal

balances and that, to the extent the accounts were funded, that Rothstein routinely raided the accounts for his own use.

653. Caretsky's actions have directly caused injury and damage to D3.

WHEREFORE, D3 CAPITAL CLUB, LLC, requests judgment against ROSEANNE CARETSKY for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT LXXVI - AIDING AND ABETTING FRAUD
(against TD Bank, N.A.)**

654. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

655. This is a claim for aiding and abetting fraud.

656. As described more fully above, the deals in which Razorback invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

657. At all times material hereto Spinosa was acting in the scope of his employment for TD Bank.

658. At all times material hereto, Kerstetter was acting in the scope of her employment as an assistant manager of TD Bank.

659. At all times material hereto, Caretsky was acting in the scope of her employment as an assistant vice president and branch manager of TD Bank.

660. TD Bank knew of Rothstein's fraudulent scheme.

661. TD Bank, through Spinosa, Kerstetter, and Caretsky, actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of D3 through fraud. TD Bank's assistance included, but was not limited to, providing false documentation to the D3

that the RRA trust accounts contained substantial funds when they did not and supplying investors with misleading and untrue written assurances concerning the settlement accounts.

662. TD Bank's actions have directly caused injury and damage to D3.

WHEREFORE, D3 CAPITAL CLUB, LLC, requests judgment against TD BANK, N.A., for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT LXXVII - AIDING AND ABETTING FRAUD
(against Debra Villegas)**

663. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

664. This is a claim for aiding and abetting fraud.

665. As described more fully above, the deals in which D3 invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

666. Villegas knew of Rothstein's fraudulent scheme.

667. Villegas actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of all of the investor victims of Rothstein's Ponzi scheme, including D3, through fraud by furnishing false bank account statements and wire transfers to investors in order to induce them to invest despite having actual or constructive knowledge that the investments were a Ponzi scheme.

668. Villegas's actions have directly caused injury and damage to D3.

WHEREFORE, D3 CAPITAL CLUB, LLC, requests judgment against DEBRA VILLEGAS for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT LXXVIII - CONVERSION
(against Scott Rothstein)**

669. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

670. This is a claim for conversion.

671. As described more fully above, the deals in which D3 invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of D3 when he absconded with D3's \$13,500,000.00 in funds.

672. Rothstein's conversion of D3's funds has permanently deprived D3 of its property.

673. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by D3 to make demand upon him for the return of its property would be futile.

674. Rothstein's actions have directly caused injury and damages to D3.

WHEREFORE, D3 CAPITAL CLUB, LLC, requests judgment against SCOTT ROTHSTEIN for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT LXXIX - AIDING AND ABETTING CONVERSION
(against Frank Spinosa)**

675. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

676. This is a claim for aiding and abetting conversion.

677. As described more fully above, the deals in which D3 invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of D3 when he absconded with D3's \$13,500,000.00 in funds.

678. Rothstein's conversion of D3's funds has permanently deprived D3 of its property.

679. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by D3 to make demand upon him for the return of its property would be futile.

680. Spinosa actively assisted, and provided substantial assistance, to Rothstein in either temporarily or permanently depriving D3 of its property by deceiving D3 into turning its property over to Rothstein under false pretenses.

681. Spinosa's actions have directly caused injury and damages to D3.

WHEREFORE, D3 CAPITAL CLUB, LLC, requests judgment against FRANK A. SPINOSA for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT LXXX - AIDING AND ABETTING CONVERSION
(against Jennifer Kerstetter)**

682. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

683. This is a claim for aiding and abetting conversion.

684. As described more fully above, the deals in which D3 invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In

furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of D3 when he absconded with D3's \$13,500,000.00 in funds.

685. Rothstein's conversion of D3's funds has permanently deprived D3 of its property.

686. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by D3 to make demand upon him for the return of its property would be futile.

687. Kerstetter actively assisted, and provided substantial assistance, to Rothstein in either temporarily or permanently depriving D3 of its property by deceiving D3 into turning its property over to Rothstein under false pretenses.

688. Kerstetter's actions have directly caused injury and damages to D3.

WHEREFORE, D3 CAPITAL CLUB, LLC, requests judgment against JENNIFER KERSTETTER for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT LXXXI - AIDING AND ABETTING CONVERSION
(against Roseanne Caretsky)**

689. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

690. This is a claim for aiding and abetting fraud.

691. As described more fully above, the deals in which D3 invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

692. Caretsky knew of Rothstein's fraudulent scheme.

693. Caretsky actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of D3 through fraud. Caretsky's assistance included, but was not limited to, providing false documentation to D3 that the RRA trust accounts contained substantial funds when they did not.

694. Caretsky's actions have directly caused injury and damage to D3.

695. Caretsky's actions have directly caused injury and damages to D3.

WHEREFORE, D3 CAPITAL CLUB, LLC, requests judgment against ROSEANNE CARETSKY for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT LXXXII - AIDING AND ABETTING CONVERSION
(against TD Bank, N.A.)**

696. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

697. This is a claim for aiding and abetting conversion.

698. As described more fully above, the deals in which D3 invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of D3 when he absconded with D3's \$13,500,000.00 in funds.

699. Rothstein's conversion of D3's funds has permanently deprived D3 of its property.

700. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by D3 to make demand upon him for the return of its property would be futile.

701. At all times material hereto Spinosa was acting in the scope of his employment for TD Bank.

702. At all times material hereto, Kerstetter was acting in the scope of her employment as an assistant manager of TD Bank.

703. At all times material hereto, Caretsky was acting in the scope of her employment as an assistant vice president and branch manager of TD Bank.

704. TD Bank, through its employees while acting within the scope of their employment, actively assisted, and provided substantial assistance, to Rothstein in either temporarily or permanently depriving D3 of its property by allowing Rothstein to make unauthorized withdrawals of its funds and by deceiving D3 into turning its property over to Rothstein under false pretenses.

705. TD Bank's actions have directly caused injury and damages to D3.

WHEREFORE, D3 CAPITAL CLUB, LLC, requests judgment against TD BANK N.A., for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT LXXXIII - AIDING AND ABETTING CONVERSION
(against Debra Villegas)**

706. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

707. This is a claim for aiding and abetting conversion.

708. As described more fully above, the deals in which D3 invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In

furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of D3 when he absconded with D3's \$13,500,000.00 in funds.

709. Rothstein's conversion of D3's funds has permanently deprived D3 of its property.

710. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by D3 to make demand upon him for the return of its property would be futile.

711. Villegas actively assisted, and provided substantial assistance, to Rothstein in either temporarily or permanently depriving D3 of its property by deceiving D3 into turning its property over to Rothstein under false pretenses.

712. Villegas's actions have directly caused injury and damages to D3.

WHEREFORE, D3 CAPITAL CLUB, LLC, requests judgment against DEBRA VILLEGAS for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT LXXXIV - NEGLIGENT SUPERVISION
(against TD Bank N.A.)**

713. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

714. This is a claim for negligent supervision.

715. As described more fully above, Spinosa, Kerstetter, and Caretsky participated, with actual or constructive knowledge, in Rothstein's Ponzi scheme. Spinosa's, Kerstetter's, and Caretsky's participation included, but was not limited to, providing D3 with false information

concerning the amounts deposited in RRA trust accounts and supplying investors with misleading and untrue written assurances concerning the settlement accounts.

716. In reliance on Spinoso's, Kerstetter's, and Caretsky's representations, on October 21, 2009, D3 began sending payments to RRA's account at TD Bank, eventually funding a total of \$13,500,000.00.

717. D3's reliance on Spinoso's, Kerstetter's, and Caretsky's representations was reasonable and justified.

718. TD Bank owed a duty to D3 to ensure that its employees were not actively defrauding depositors by making false representations in order to trick them into making unsafe deposits into trust accounts that they knew or reasonably should have known were being raided by Rothstein.

719. TD Bank breached its duties to D3 because it had actual or constructive notice that its assistant manager and assistant vice president and branch manager were either fraudulently or negligently participating in a scheme which resulted in the unauthorized raiding of investors' deposits, and acted unreasonably by failing to investigate or take corrective action.

720. As a direct and proximate result of TD Bank's failure to investigate or take corrective action against Spinoso, Kerstetter, or Caretsky, D3 has sustained damages.

WHEREFORE, D3 CAPITAL CLUB, LLC, requests judgment against TD BANK N.A., for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT LXXXV - FRAUDULENT MISREPRESENTATION
(against Scott Rothstein)**

721. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

722. This is a claim for fraudulent misrepresentation.

723. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

724. In furtherance of the Ponzi scheme, Rothstein knowingly made material false statements and representations, including but not limited to representing that the settlement agreements purchased by investors were real, that they had been fully funded, and that they would be paid out to investors over a predetermined schedule.

725. Rothstein intended BFMC to act on his knowingly false representations.

726. BFMC justifiably relied upon Rothstein's representations to its detriment.

727. As a direct and proximate result of Rothstein's false statements, BFMC has sustained damages.

WHEREFORE, BFMC INVESTMENT, LLC, requests judgment against SCOTT ROTHSTEIN for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT LXXXVI - FRAUDULENT MISREPRESENTATION
(against Frank Spinoso)**

728. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

729. This is a claim for fraudulent misrepresentation.

730. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

731. In furtherance of the Ponzi scheme, Spinosa knowingly made material false statements and representations including, but not limited to, supplying investors with false bank account statements and misleading and untrue written assurances concerning the settlement accounts.

732. Spinosa intended BFMC to act on his knowingly false representations.

733. BFMC justifiably relied upon Spinosa's representations to its detriment.

734. As a direct and proximate result of Spinosa's false statements, BFMC has sustained damages.

WHEREFORE, BFMC INVESTMENT, LLC, requests judgment against FRANK A. SPINOSA for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT LXXXVII - FRAUDULENT MISREPRESENTATION
(against TD Bank, N.A.)**

735. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

736. This is a claim for fraudulent misrepresentation.

737. At all times material hereto, Spinosa was acting in the scope of his employment as Regional Vice President of TD Bank.

738. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

739. In furtherance of the Ponzi scheme, TD Bank, through Spinosa, knowingly made material false statements and representations including, but not limited to, supplying investors with false bank account statements and supplying investors with misleading and untrue written assurances concerning the settlement accounts.

740. TD Bank, through Spinosa, intended BFMC to act on their knowingly false representations.

741. BFMC justifiably relied upon TD Bank's, through Spinosa's representations, to their detriment.

742. As a direct and proximate result of TD Bank's, made through Spinosa's, false statements, BFMC has sustained damages.

WHEREFORE, BFMC INVESTMENT, LLC, requests judgment against TD BANK, N.A., for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT LXXXVIII - FRAUDULENT MISREPRESENTATION
(against David Boden)**

743. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

744. This is a claim for fraudulent misrepresentation.

745. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

746. In furtherance of the Ponzi scheme, Boden knowingly made material false statements and representations including, but not limited to, making misleading and untrue assurances concerning the settlement agreements and accounts.

747. Boden intended BFMC to act on his knowingly false representations.

748. BFMC justifiably relied upon Boden's representations to its detriment.

749. As a direct and proximate result of Boden's false statements, BFMC has sustained damages.

WHEREFORE, BFMC INVESTMENT, LLC, requests judgment against DAVID BODEN for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT LXXXVIX - FRAUDULENT MISREPRESENTATION
(against Andrew Barnett)**

750. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

751. This is a claim for fraudulent misrepresentation.

752. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

753. In furtherance of the Ponzi scheme, Barnett knowingly made material false statements and representations including, but not limited to, supplying BFMC with false information about the identity of the defendant who was purportedly funding the settlement.

754. Barnett intended BFMC to act on his knowingly false representations.

755. BFMC justifiably relied upon Barnett's representations to its detriment.

756. As a direct and proximate result of Barnett's false statements, BFMC has sustained damages.

WHEREFORE, BFMC INVESTMENT, LLC, requests judgment against ANDREW BARNETT for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XC - NEGLIGENT MISREPRESENTATION
(against Frank Spinosa)**

757. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

758. This is a claim for negligent misrepresentation.

759. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

760. In furtherance of the Ponzi scheme, Spinosa made material false statements and representations including, but not limited to, supplying investors with false bank account statements and misleading and untrue written assurances concerning the settlement accounts.

761. When making the false statements and representations, Spinosa either knew or reasonably should have known that they were false.

762. Spinosa owed BFMC a duty of care because he knew or had reason to know that BFMC was placing trust and confidence in him and relying on him to inform it.

763. Spinosa breached his duty to BFMC by making false representations with the intention that BFMC rely on them.

764. BFMC justifiably relied upon Spinosa's representations to its detriment.

765. As a direct and proximate result of Spinosa's false statements, BFMC has sustained damages.

WHEREFORE, BFMC INVESTMENT, LLC, requests judgment against FRANK A. SPINOSA for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XCI - NEGLIGENT MISREPRESENTATION
(against TD Bank, N.A.)**

766. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

767. This is a claim for negligent misrepresentation.

768. At all times material hereto, Spinosa was acting in the scope of his employment as Regional Vice President of T.D. Bank.

769. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

770. In furtherance of the Ponzi scheme, TD Bank, through Spinosa, made material false statements and representations, including, but not limited to, showing investors false statements of the amounts in RRA trust accounts and providing misleading and untrue written assurances concerning the settlement accounts..

771. When making the false statements and representations, TD Bank, through Spinosa, either knew or reasonably should have known that they were false.

772. TD Bank owed BFMC a duty of care because it knew or had reason to know that BFMC was placing trust and confidence in her and relying on it to inform them.

773. TD Bank breached its duty to BFMC by making false representations, through Spinosa, with the intention that BFMC rely on them.

774. BFMC justifiably relied upon TD Bank's, through Spinosa's, representations to its detriment.

775. As a direct and proximate result of TD Bank's representations, made through Spinosa, BFMC has sustained damages.

WHEREFORE, BFMC INVESTMENT, LLC, requests judgment against TD BANK, N.A., for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XCII - NEGLIGENT MISREPRESENTATION
(against Andrew Barnett)**

776. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

777. This is a claim for negligent misrepresentation.

778. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

779. In furtherance of the Ponzi scheme, Barnett made material false statements and representations including, but not limited to, supplying BFMC with false information about the identity of the defendant who was purportedly funding the settlement.

780. When making the false statements and representations, Barnett either knew or reasonably should have known that they were false.

781. Barnett owed BFMC a duty of care by affirmatively and voluntarily undertaking to offer BFMC information.

782. Barnett breached his duty to BFMC by making false representations with the intention that BFMC rely on them.

783. BFMC justifiably relied upon Barnett's representations to its detriment.

784. As a direct and proximate result of Barnett's false statements, BFMC has sustained damages.

WHEREFORE, BFMC INVESTMENT, LLC, requests judgment against ANDREW BARNETT for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XCIII - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
(against Frank Spinosa)**

785. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

786. This is a claim for aiding and abetting breach of fiduciary duty.

787. Spinosa was aware that as trustee of the attorney trust account where BFMC's purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to BFMC. Spinosa was also aware that as trustee of the attorney trust account containing the funds to which D3 had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to BFMC.

788. Spinosa was aware that Rothstein was financially exploiting the investors to their detriment, and was aware that Rothstein was breaching his fiduciary obligations to BFMC.

789. Spinosa actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of BFMC and his breaches of fiduciary duty.

790. Spinosa's actions have directly caused injury and damage to BFMC.

WHEREFORE, BFMC INVESTMENT, LLC, requests judgment against FRANK A. SPINOSA for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XCIV - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
(against TD Bank, N.A.)**

791. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

792. This is a claim for aiding and abetting breach of fiduciary duty.

793. At all times material hereto, Spinosa was acting in the scope of his employment as Regional Vice President of TD Bank.

794. TD Bank was aware that as trustee of the attorney trust account where BFMC's purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to BFMC. TD Bank was also aware that as trustee of the attorney trust account containing the funds to which BFMC had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to BFMC.

795. TD Bank was aware that Rothstein was financially exploiting the investors to their detriment, and was aware that Rothstein was breaching his fiduciary obligations to BFMC.

796. TD Bank, through its employees acting within the scope of their employment, actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of BFMC and his breaches of fiduciary duty.

797. TD Bank's actions have directly caused injury and damage to BFMC.

WHEREFORE, BFMC INVESTMENT, LLC, requests judgment against TD BANK, N.A., for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XCV - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
(against David Boden)**

798. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

799. This is a claim for aiding and abetting breach of fiduciary duty.

800. Boden was aware that as trustee of the attorney trust account where BFMC's purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to BFMC. Boden was also aware that as trustee of the attorney trust account containing the funds to which BFMC had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to BFMC.

801. Boden was aware that Rothstein was financially exploiting the investors to their detriment, and was aware that Rothstein was breaching his fiduciary obligations to BFMC.

802. Boden actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of BFMC and his breaches of fiduciary duty.

803. Boden's actions have directly caused injury and damage to BFMC.

WHEREFORE, BFMC INVESTMENT, LLC, requests judgment against DAVID BODEN for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XCVI - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
(against Debra Villegas)**

804. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

805. This is a claim for aiding and abetting breach of fiduciary duty.

806. Villegas was aware that as trustee of the attorney trust account where BFMC's purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to BFMC. Villegas was also aware that as trustee of the attorney trust account containing the funds to which BFMC had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to BFMC.

807. Villegas was aware that Rothstein was financially exploiting the investors to their detriment, and was aware that Rothstein was breaching his fiduciary obligations to BFMC.

808. Villegas actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of BFMC and his breaches of fiduciary duty.

809. Villegas's actions have directly caused injury and damage to BFMC.

WHEREFORE, BFMC INVESTMENT, LLC, requests judgment against DEBRA VILLEGAS for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XCVII - BREACH OF FIDUCIARY DUTY
(against Scott Rothstein)**

810. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

811. This is a claim for breach of fiduciary duty.

812. As trustee of the attorney trust account where BFMC's purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to BFMC. Additionally, as trustee of the attorney trust account containing the funds to which BFMC had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to BFMC.

813. Rothstein breached his fiduciary duties by raiding the RRA trust accounts for his personal use.

814. Rothstein's actions have directly caused injury and damages to BFMC.

WHEREFORE, BFMC INVESTMENT, LLC, requests judgment against SCOTT ROTHSTEIN for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XCVIII - BREACH OF FIDUCIARY DUTY
(against TD Bank, N.A.)**

815. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

816. This is a claim for breach of fiduciary duty.

817. At all times material hereto, Spinosa was acting in the scope of his employment as Regional Vice President of TD Bank.

818. In Florida, a bank assumes a fiduciary duty with its customer under special circumstances where the bank knows or has reason to know that the customer is placing trust and confidence in the bank and is relying on the bank to so counsel and inform him. Under the circumstances outlined above, whereby TD Bank knew that BFMC was relying on Spinosa's assurances to BFMC of the precautions in place to prevent improper withdrawals from its

account, TD Bank was a fiduciary of BFMC and owed BFMC the fiduciary duties of honesty, loyalty, and care.

819. TD Bank breached its fiduciary duties through the actions of its employees by either ignoring or actively assisting and providing substantial assistance to Rothstein in its financial exploitation of BFMC.

820. TD Bank's actions have directly caused injury and damage to BFMC.

WHEREFORE, BFMC INVESTMENT, LLC, requests judgment against TD BANK, N.A., for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT XCIX - AIDING AND ABETTING FRAUD
(against Frank Spinosa)**

821. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

822. This is a claim for aiding and abetting fraud.

823. As described more fully above, the deals in which BFMC invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

824. Spinosa knew of Rothstein's fraudulent scheme.

825. Spinosa actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of BFMC through fraud. Spinosa's assistance included, but was not limited to, supplying BFMC with false bank account statements and misleading and untrue written assurances concerning the settlement accounts.

826. Spinosa's actions have directly caused injury and damage to BFMC.

WHEREFORE, BFMC INVESTMENT, LLC, requests judgment against FRANK A. SPINOSA for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT C - AIDING AND ABETTING FRAUD
(against TD Bank, N.A.)**

827. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

828. This is a claim for aiding and abetting fraud.

829. As described more fully above, the deals in which Razorback invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

830. At all times material hereto Spinosa was acting in the scope of his employment for TD Bank.

831. TD Bank knew of Rothstein's fraudulent scheme.

832. TD Bank, through Spinosa, actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of BFMC through fraud. TD Bank's assistance included, but was not limited to, providing false documentation to BFMC that the RRA trust accounts contained substantial funds when they did not and supplying investors with misleading and untrue written assurances concerning the settlement accounts.

833. TD Bank's actions have directly caused injury and damage to BFMC.

WHEREFORE, BFMC INVESTMENT, LLC, requests judgment against TD BANK, N.A., for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT CI - AIDING AND ABETTING FRAUD
(against David Boden)**

834. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

835. This is a claim for aiding and abetting fraud.

836. As described more fully above, the deals in which BFMC invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

837. Boden knew of Rothstein's fraudulent scheme.

838. Boden actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of BFMC through fraud. Boden's assistance included, but was not limited to, making assurances to BFMC that there were safeguards in place to protect its deposits, all the time knowing that no such safeguards existed.

839. Boden's actions have directly caused injury and damage to BFMC.

WHEREFORE, BFMC INVESTMENT, LLC, requests judgment against DAVID BODEN for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT CII - AIDING AND ABETTING FRAUD
(against Debra Villegas)**

840. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

841. This is a claim for aiding and abetting fraud.

842. As described more fully above, the deals in which BFMC invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

843. Villegas knew of Rothstein's fraudulent scheme.

844. Villegas actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of all of the investor victims of Rothstein's Ponzi scheme, including BFMC, through fraud by furnishing false bank account statements and wire transfers to investors in order to induce them to invest despite having actual or constructive knowledge that the investments were a Ponzi scheme.

845. Villegas's actions have directly caused injury and damage to BFMC.

WHEREFORE, BFMC INVESTMENT, LLC, requests judgment against DEBRA VILLEGAS for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT CIII - AIDING AND ABETTING FRAUD
(against Andrew Barnett)**

846. Plaintiff incorporates the allegations contained in paragraphs I through 107 as if restated herein.

847. This is a claim for aiding and abetting fraud.

848. As described more fully above, the deals in which BFMC invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

849. Barnett knew of Rothstein's fraudulent scheme.

850. Barnett actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of all of the investor victims of Rothstein's Ponzi scheme, including BFMC, through fraud. Barnett's assistance included, but was not limited to, supplying BFMC with false information about the identity of the defendant who was purportedly funding the

settlement despite having actual or constructive knowledge that the settlements were part of a Ponzi scheme.

851. Barnett's actions have directly caused injury and damage to BFMC.

WHEREFORE, BFMC INVESTMENT, LLC, requests judgment against ANDREW BARNETT for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT CIV - CONVERSION
(against Scott Rothstein)**

852. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

853. This is a claim for conversion.

854. As described more fully above, the deals in which BFMC invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of BFMC when he absconded with BFMC's \$2,400,000.00 in funds.

855. Rothstein's conversion of BFMC's funds has permanently deprived BFMC of its property.

856. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by BFMC to make demand upon him for the return of its property would be futile.

857. Rothstein's actions have directly caused injury and damages to BFMC.

WHEREFORE, BFMC INVESTMENT, LLC, requests judgment against SCOTT ROTHSTEIN for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT CV - AIDING AND ABETTING CONVERSION
(against Frank Spinosa)**

858. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

859. This is a claim for aiding and abetting conversion.

860. As described more fully above, the deals in which BFMC invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of BFMC when he absconded with D3's \$2,400,000.00 in funds.

861. Rothstein's conversion of BFMC's funds has permanently deprived BFMC of its property.

862. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by BFMC to make demand upon him for the return of its property would be futile.

863. Spinosa actively assisted, and provided substantial assistance, to Rothstein in either temporarily or permanently depriving BFMC of its property by deceiving BFMC into turning its property over to Rothstein under false pretenses.

864. Spinosa's actions have directly caused injury and damages to BFMC.

WHEREFORE, BFMC INVESTMENT, LLC, requests judgment against FRANK A. SPINOSA for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT CVI - AIDING AND ABETTING CONVERSION
(against TD Bank, N.A.)**

865. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

866. This is a claim for aiding and abetting conversion.

867. As described more fully above, the deals in which BFMC invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of BFMC when he absconded with BFMC \$2,400,000.00 in funds.

868. Rothstein's conversion of BFMC's funds has permanently deprived BFMC of its property.

869. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by BFMC to make demand upon him for the return of its property would be futile.

870. At all times material hereto Spinosa was acting in the scope of his employment for TD Bank.

871. TD Bank, through its employees while acting within the scope of their employment, actively assisted, and provided substantial assistance, to Rothstein in either temporarily or permanently depriving BFMC of its property by allowing Rothstein to make

unauthorized withdrawals of its funds and by deceiving BFMC into turning its property over to Rothstein under false pretenses.

872. TD Bank's actions have directly caused injury and damages to BFMC.

WHEREFORE, BFMC INVESTMENT, requests judgment against TD BANK N.A., for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT CVII - AIDING AND ABETTING CONVERSION
(against David Boden)**

873. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

874. This is a claim for aiding and abetting conversion.

875. As described more fully above, the deals in which BFMC invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of D3 when he absconded with BFMC's \$2,400,000.00 in funds.

876. Rothstein's conversion of BFMC's funds has permanently deprived BFMC of its property.

877. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by BFMC to make demand upon him for the return of its property would be futile.

878. Boden actively assisted, and provided substantial assistance, to Rothstein in either temporarily or permanently depriving BFMC of its property by deceiving BFMC into turning its property over to Rothstein under false pretenses.

879. Boden's actions have directly caused injury and damages to BFMC.

WHEREFORE, BFMC INVESTMENT, LLC, requests judgment against DAVID BODEN for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT CVIII - AIDING AND ABETTING CONVERSION
(against Debra Villegas)**

880. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

881. This is a claim for aiding and abetting conversion.

882. As described more fully above, the deals in which BFMC invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of D3 when he absconded with BFMC's \$2,400,000.00 in funds.

883. Rothstein's conversion of BFMC's funds has permanently deprived BFMC of its property.

884. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by BFMC to make demand upon him for the return of its property would be futile.

885. Villegas actively assisted, and provided substantial assistance, to Rothstein in either temporarily or permanently depriving BFMC of its property by deceiving BFMC into turning its property over to Rothstein under false pretenses.

886. Villegas's actions have directly caused injury and damages to BFMC.

887. WHEREFORE, BFMC INVESTMENT, LLC, requests judgment against DEBRA VILLEGAS for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT CIX - AIDING AND ABETTING CONVERSION
(against Andrew Barnett)**

888. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

889. This is a claim for aiding and abetting conversion.

890. As described more fully above, the deals in which BFMC invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of D3 when he absconded with BFMC's \$2,400,000.00 in funds.

891. Rothstein's conversion of BFMC's funds has permanently deprived BFMC of its property.

892. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by BFMC to make demand upon him for the return of its property would be futile.

893. Barnett actively assisted, and provided substantial assistance, to Rothstein in either temporarily or permanently depriving BFMC of its property by deceiving BFMC into turning its property over to Rothstein under false pretenses.

894. Barnett's actions have directly caused injury and damages to BFMC.

WHEREFORE, BFMC INVESTMENT, LLC, requests judgment against ANDREW BARNETT for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT CX - NEGLIGENT SUPERVISION
(against TD Bank, N.A.)**

895. Plaintiff incorporates the allegations contained in paragraphs 1 through 107 as if restated herein.

896. This is a claim for negligent supervision.

897. As described more fully above, Spinoso participated, with actual or constructive knowledge, in Rothstein's Ponzi scheme. Spinoso's participation included, but was not limited to, providing BFMC with false information concerning the amounts deposited in RRA trust accounts and supplying investors with misleading and untrue written assurances concerning the settlement accounts.

898. In reliance on Spinoso's representations, on October 15, 2009, BFMC wired \$2,400,000.00 to RRA's TD Bank account.

899. BFMC's reliance on Spinoso's representations was reasonable and justified.

900. TD Bank owed a duty to BFMC to ensure that its employees were not actively defrauding depositors by making false representations in order to trick them into making unsafe deposits into trust accounts that they knew or reasonably should have known were being raided by Rothstein.

901. TD Bank breached its duties to BFMC because it had actual or constructive notice that its assistant manager and assistant vice president and branch manager were either

fraudulently or negligently participating in a scheme which resulted in the unauthorized raiding of investors' deposits, and acted unreasonably by failing to investigate or take corrective action.

902. As a direct and proximate result of TD Bank's failure to investigate or take corrective action against Spinosa, BFMC has sustained damages.

WHEREFORE, BFMC INVESTMENT, LLC, requests judgment against TD BANK N.A., for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT CXI - CIVIL CONSPIRACY
(against Scott Rothstein)**

903. Plaintiffs incorporate the allegations contained in paragraphs 1 through 107 as if restated herein.

904. This is a claim for civil conspiracy.

905. As described more fully above, Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Preve, and TD Bank knowingly acted in concert to market and implement the illegal Ponzi scheme. In doing so, Rothstein acted with full knowledge and awareness that the activities of his and the other co-conspirators were designed to give the false impression of the existence of legitimate investment opportunities when in fact the investments were no more than his own blatant fabrications.

906. Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Preve, and TD Bank acted in their respective roles, as described *supra*, according to a predetermined and commonly understood and accepted plan of action all for the purpose of obtaining substantial funds from investors, including Plaintiffs.

907. The overt acts of Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Preve, and TD Bank were contrary to law, as stated above.

908. There was a meeting of the minds between and among Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Preve, TD Bank, and other individuals and entities, both known and unknown, to commit the unlawful acts alleged herein. This conspiracy to commit these unlawful overt acts proximately caused and continues to cause Plaintiffs damages.

909. Rothstein and his co-conspirators' conduct has directly caused injury and damage to Plaintiffs.

WHEREFORE, RAZORBACK FUNDING, LLC, D3 CAPITAL CLUB, LLC, BFMC INVESTEMENT, LLC, LINDA VON ALLMEN, as Trustee of the VON ALLMEN DYNASTY TRUST, D&L PARTNERS, LP, and DEAN KRETSCHMAR request judgment against SCOTT ROTHSTEIN for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT CXII - CIVIL CONSPIRACY
(against TD Bank, N.A.)**

910. Plaintiffs incorporate the allegations contained in paragraphs 1 through 107 as if restated herein.

911. This is a claim for civil conspiracy.

912. At all times material hereto, Spinosa was acting in the scope of his employment as Regional Vice President of [REDACTED] Bank.

913. At all times material hereto, Kerstetter was acting in the scope of her employment as an assistant manager of T.D. Bank.

914. At all times material hereto, Caretsky was acting in the scope of her employment as an assistant vice president and branch manager of TD Bank.

915. As described more fully above, TD Bank, acting through its employees, and Rothstein, Boden, Villegas, Barnett, and Preve knowingly acted in concert to market and implement the illegal Ponzi scheme. In doing so, TD Bank acted with full knowledge and awareness that the activities of Rothstein and the other co-conspirators were designed to give the false impression of the existence of legitimate investment opportunities when in fact the investments were no more than blatant fabrications by Rothstein.

916. TD, through its employees, and Rothstein, Boden, Villegas, Barnett, and Preve acted in their respective roles, as described *supra*, according to a predetermined and commonly understood and accepted plan of action all for the purpose of obtaining substantial funds from investors, including Plaintiffs.

917. The overt acts of TD Bank, Rothstein, Boden, Villegas, Barnett and Preve were contrary to law, as stated above.

918. There was a meeting of the minds between and among TD Bank, through its employees, and Rothstein, Boden, Villegas, Barnett, Preve, and other individuals and entities, both known and unknown, to commit the unlawful acts alleged herein. This conspiracy to commit these unlawful overt acts proximately caused and continues to cause Plaintiffs damages.

919. TD Bank's and its co-conspirators' conduct has directly caused injury and damage to Plaintiffs.

WHEREFORE, RAZORBACK FUNDING, LLC, D3 CAPITAL CLUB, LLC, BFMC INVESTEMENT, LLC, LINDA VON ALLMEN, as Trustee of the VON ALLMEN DYNASTY

TRUST, D&L PARTNERS, LP, and DEAN KRETSCHMAR request judgment against TD BANK, N.A., for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT CXIII - CIVIL CONSPIRACY
(against Frank Spinosa)**

920. Plaintiffs incorporate the allegations contained in paragraphs 1 through 107 as if restated herein.

921. This is a claim for civil conspiracy.

922. As described more fully above, Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Preve, and TD Bank knowingly acted in concert to market and implement the illegal Ponzi scheme. In doing so, Spinosa acted with full knowledge and awareness that the activities of Rothstein and the other co-conspirators were designed to give the false impression of the existence of legitimate investment opportunities when in fact the investments were no more than blatant fabrications by Rothstein.

923. Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Preve, and TD Bank acted in their respective roles, as described *supra*, according to a predetermined and commonly understood and accepted plan of action all for the purpose of obtaining substantial funds from investors, including Plaintiffs.

924. The overt acts of Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett Preve, and TD Bank were contrary to law, as stated above.

925. There was a meeting of the minds between and among Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Preve, TD Bank, and other individuals and entities, both known and unknown, to commit the unlawful acts alleged herein. This conspiracy

to commit these unlawful overt acts proximately caused and continues to cause Plaintiffs damages.

926. Spinosa's and his co-conspirators' conduct has directly caused injury and damage to Plaintiffs.

WHEREFORE, RAZORBACK FUNDING, LLC, D3 CAPITAL CLUB, LLC, BFMC INVESTEMENT, LLC, LINDA VON ALLMEN, as Trustee of the VON ALLMEN DYNASTY TRUST, D&L PARTNERS, LP, and DEAN KRETSCHMAR request judgment against FRANK SPINOSA for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT CXIV - CIVIL CONSPIRACY
(against Jennifer Kerstetter)**

927. Plaintiffs incorporate the allegations contained in paragraphs 1 through 107 as if restated herein.

928. This is a claim for civil conspiracy.

929. As described more fully above, Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Preve, and TD Bank knowingly acted in concert to market and implement the illegal Ponzi scheme. In doing so, Kerstetter acted with full knowledge and awareness that the activities of Rothstein and the other co-conspirators were designed to give the false impression of the existence of legitimate investment opportunities when in fact the investments were no more than blatant fabrications by Rothstein.

930. Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Preve, and TD Bank acted in their respective roles, as described above *supra*, according to a predetermined and

commonly understood and accepted plan of action all for the purpose of obtaining substantial funds from investors, including Plaintiffs.

931. The overt acts of Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Preve, and TD Bank were contrary to law, as stated above.

932. There was a meeting of the minds between and among Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Preve, TD Bank, and other individuals and entities, both known and unknown, to commit the unlawful acts alleged herein. This conspiracy to commit these unlawful overt acts proximately caused and continues to cause Plaintiffs damages.

933. Kerstetter's and her co-conspirators' conduct has directly caused injury and damage to Plaintiffs.

WHEREFORE, RAZORBACK FUNDING, LLC, D3 CAPITAL CLUB, LLC, BFMC INVESTEMENT, LLC, LINDA VON ALLMEN, as Trustee of the VON ALLMEN DYNASTY TRUST, D&L PARTNERS, LP, and DEAN KRETSCHMAR request judgment against JENNIFER KERSTETTER for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT CXV - CIVIL CONSPIRACY
(against Roseanne Caretsky)**

934. Plaintiffs incorporate the allegations contained in paragraphs 1 through 107 as if restated herein.

935. This is a claim for civil conspiracy.

936. As described more fully above, Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Preve, and TD Bank knowingly acted in concert to market and implement the

illegal Ponzi scheme. In doing so, Caretsky acted with full knowledge and awareness that the activities of Rothstein and the other co-conspirators were designed to give the false impression of the existence of legitimate investment opportunities when in fact the investments were no more than blatant fabrications by Rothstein.

937. Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Preve, and TD Bank acted in their respective roles, as described *supra*, according to a predetermined and commonly understood and accepted plan of action all for the purpose of obtaining substantial funds from investors, including Plaintiffs.

938. The overt acts of Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Preve, and TD Bank were contrary to law, as stated above.

939. There was a meeting of the minds between and among Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Preve, TD Bank, and other individuals and entities, both known and unknown, to commit the unlawful acts alleged herein. This conspiracy to commit these unlawful overt acts proximately caused and continues to cause Plaintiffs damages.

940. Caretsky's and her co-conspirators' conduct has directly caused injury and damage to Plaintiffs.

WHEREFORE, RAZORBACK FUNDING, LLC, D3 CAPITAL CLUB, LLC, BFMC INVESTEMENT, LLC, LINDA VON ALLMEN, as Trustee of the VON ALLMEN DYNASTY TRUST, D&L PARTNERS, LP, and DEAN KRETSCHMAR request judgment against ROSEANNE CARETSKY for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT CXVI - CIVIL CONSPIRACY
(against David Boden)**

941. Plaintiffs incorporate the allegations contained in paragraphs 1 through 107 as if restated herein.

942. This is a claim for civil conspiracy.

943. As described more fully above, Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Preve, and TD Bank knowingly acted in concert to market and implement the illegal Ponzi scheme. In doing so, Boden acted with full knowledge and awareness that the activities of Rothstein and the other co-conspirators were designed to give the false impression of the existence of legitimate investment opportunities when in fact the investments were no more than blatant fabrications by Rothstein.

944. Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Preve, and TD Bank acted in their respective roles, as described *supra*, according to a predetermined and commonly understood and accepted plan of action all for the purpose of obtaining substantial funds from investors, including Plaintiffs.

945. The overt acts of Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Preve, and TD Bank were contrary to law, as stated above.

946. There was a meeting of the minds between and among Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Preve, TD Bank, and other individuals and entities, both known and unknown, to commit the unlawful acts alleged herein. This conspiracy to commit these unlawful overt acts proximately caused and continues to cause Plaintiffs damages.

947. Boden's and his co-conspirators' conduct has directly caused injury and damage to Plaintiffs.

WHEREFORE, RAZORBACK FUNDING, LLC, D3 CAPITAL CLUB, LLC, BFMC INVESTEMENT, LLC, LINDA VON ALLMEN, as Trustee of the VON ALLMEN DYNASTY TRUST, D&L PARTNERS, LP, and DEAN KRETSCHMAR request judgment against DAVID BODEN for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT CXVII - CIVIL CONSPIRACY
(against Debra Villegas)**

948. Plaintiffs incorporate the allegations contained in paragraphs 1 through 107 as if restated herein.

949. This is a claim for civil conspiracy.

950. As described more fully above, Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Preve, and TD Bank knowingly acted in concert to market and implement the illegal Ponzi scheme. In doing so, Villegas acted with full knowledge and awareness that the activities of Rothstein and the other co-conspirators were designed to give the false impression of the existence of legitimate investment opportunities when in fact the investments were no more than blatant fabrications by Rothstein.

951. Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Preve, and TD Bank acted in their respective roles, as described *supra*, according to a predetermined and commonly understood and accepted plan of action all for the purpose of obtaining substantial funds from investors, including Plaintiffs.

952. The overt acts of Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Preve, and TD Bank were contrary to law, as stated above.

953. There was a meeting of the minds between and among Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Preve, TD Bank, and other individuals and entities, both known and unknown, to commit the unlawful acts alleged herein. This conspiracy to commit these unlawful overt acts proximately caused and continues to cause Plaintiffs damages.

■ Villegas's and her co-conspirators' conduct has directly caused injury and damage to Plaintiffs.

WHEREFORE, RAZORBACK FUNDING, LLC, D3 CAPITAL CLUB, LLC, BFMC INVESTEMENT, LLC, LINDA VON ALLMEN, as Trustee of the VON ALLMEN DYNASTY TRUST, D&L PARTNERS, LP, and DEAN KRETSCHMAR request judgment against DEBRA VILLEGAS for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT CXVIII - CIVIL CONSPIRACY
(against Andrew Barnett)**

955. Plaintiffs incorporate the allegations contained in paragraphs 1 through 107 as if restated herein.

956. This is a claim for civil conspiracy.

957. As described more fully above, Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Preve, and TD Bank knowingly acted in concert to market and implement the illegal Ponzi scheme. In doing so, Villegas acted with full knowledge and awareness that the activities of Rothstein and the other co-conspirators were designed to give the false impression of

the existence of legitimate investment opportunities when in fact the investments were no more than blatant fabrications by Rothstein.

958. Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Preve, and TD Bank acted in their respective roles, as described *supra*, according to a predetermined and commonly understood and accepted plan of action all for the purpose of obtaining substantial funds from investors, including Plaintiffs.

959. The overt acts of Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Preve, and TD Bank were contrary to law, as stated above.

960. There was a meeting of the minds between and among Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Preve, TD Bank, and other individuals and entities, both known and unknown, to commit the unlawful acts alleged herein. This conspiracy to commit these unlawful overt acts proximately caused and continues to cause Plaintiffs damages.

961. Barnett's and his co-conspirators' conduct has directly caused injury and damage to Plaintiffs.

WHEREFORE, RAZORBACK FUNDING, LLC, D3 CAPITAL CLUB, LLC, BFMC INVESTEMENT, LLC, LINDA VON ALLMEN, as Trustee of the VON ALLMEN DYNASTY TRUST, D&L PARTNERS, LP, and DEAN KRETSCHMAR request judgment against ANDREW BARNETT for compensatory damages, together with court costs and such further relief as the Court deems proper.

**COUNT CXIX - CIVIL CONSPIRACY
(against Frank Preve)**

962. Plaintiffs incorporate the allegations contained in paragraphs 1 through 107 as if restated herein.

963. This is a claim for civil conspiracy.

964. As described more fully above, Rothstein, Spinoza, Kerstetter, Caretsky, Boden, Villegas, Barnett, Preve, and TD Bank knowingly acted in concert to market and implement the illegal Ponzi scheme. In doing so, Preve acted with full knowledge and awareness that the activities of Rothstein and the other co-conspirators were designed to give the false impression of the existence of legitimate investment opportunities when in fact the investments were no more than blatant fabrications by Rothstein.

965. Rothstein, Spinoza, Kerstetter, Caretsky, Boden, Villegas, Barnett, Preve, and TD Bank acted in their respective roles, as described *supra*, according to a predetermined and commonly understood and accepted plan of action all for the purpose of obtaining substantial funds from investors, including Plaintiffs.

966. The overt acts of Rothstein, Spinoza, Kerstetter, Caretsky, Boden, Villegas, Barnett, Preve, and TD Bank were contrary to law, as stated above.

967. There was a meeting of the minds between and among Rothstein, Spinoza, Kerstetter, Caretsky, Boden, Villegas, Barnett, Preve, TD Bank, and other individuals and entities, both known and unknown, to commit the unlawful acts alleged herein. This conspiracy to commit these unlawful overt acts proximately caused and continues to cause Plaintiffs damages.

968. Preve's and his co-conspirators' conduct has directly caused injury and damage to Plaintiffs.

WHEREFORE, RAZORBACK FUNDING, LLC, D3 CAPITAL CLUB, LLC, BFMC INVESTEMENT, LLC, LINDA VON ALLMEN, as Trustee of the VON ALLMEN DYNASTY TRUST, D&L PARTNERS, LP, and DEAN KRETSCHMAR request judgment against FRANK PREVE for compensatory damages, together with court costs and such further relief as the Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demands a trial by jury as to all issues so triable by right.

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