

Case No.: 09-062943 (19)
Amended Complaint

WHEREFORE, LINDA VON ALLMEN as Trustee of the VON ALLMEN DYNASTY TRUST; D&L PARTNERS, LP; DAVID VON ALLMEN, as Trustee of the DAVID VON ALLMEN LIVING TRUST; ANN VON ALLMEN, as Trustee of the ANN VON ALLMEN LIVING TRUST; and DEAN KRETSCHMAR request judgment against BANYON INCOME FUND, LP, and BANYON USVI, LLC., for compensatory damages, together with court costs and such further relief as the Court deems proper.

COUNT 49 - AIDING AND ABETTING FRAUD
(against Michael Szfranski)

462. Plaintiffs incorporate the allegations contained in paragraphs 1 through 121 as if restated herein.

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

464. 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.

465. Szfranski knew of Rothstein's fraudulent scheme.

466. Szfranski actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of the Banyon Investors through fraud. Szfranski's assistance included, but was not limited to, verifying false bank statements and deal documents.

467. Szfranski'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; DAVID VON ALLMEN, as Trustee of the DAVID VON ALLMEN LIVING TRUST; ANN VON ALLMEN, as Trustee of the ANN VON ALLMEN

LIVING TRUST; and DEAN KRETSCHMAR request judgment against MICHAEL SZFRANSKI for compensatory damages, together with court costs and such further relief as the Court deems proper.

COUNT 50 - AIDING AND ABETTING FRAUD
(against Onyx Capital Management)

468. Plaintiffs incorporate the allegations contained in paragraphs 1 through 121 as if restated herein.

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

470. 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.

471. At all times material hereto, Szfranski was acting in the scope of his employment as president of Onyx.

472. Onyx knew of Rothstein's fraudulent scheme.

473. Onyx, through Szfranski, actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of the Banyon Investors through fraud. Onyx's assistance included, but was not limited to, verifying false bank statements and deal documents.

474. Onyx'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; DAVID VON ALLMEN, as Trustee of the DAVID VON ALLMEN LIVING TRUST; ANN VON ALLMEN, as Trustee of the ANN VON ALLMEN LIVING TRUST; and DEAN KRETSCHMAR request judgment against ONYX CAPITAL

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

COUNT 51 - AIDING AND ABETTING FRAUD
(against Berenfeld Spritzer Shechter Sheer, LLP)

475. Plaintiffs incorporate the allegations contained in paragraphs 1 through 121 as if restated herein.

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

477. 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.

478. Berenfeld knew of Rothstein's fraudulent scheme.

479. Berenfeld actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of the Banyon Investors through fraud. Berenfeld's assistance included, but was not limited to, providing false auditing documents relating to Banyon and RRA.

480. Berenfeld'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; DAVID VON ALLMEN, as Trustee of the DAVID VON ALLMEN LIVING TRUST; ANN VON ALLMEN, as Trustee of the ANN VON ALLMEN LIVING TRUST; and DEAN KRETSCHMAR request judgment against BERENFELD SPRITZER SHECHTER SHEER, LLP, for compensatory damages, together with court costs and such further relief as the Court deems proper.

COUNT 52 – CONVERSION
(against Scott Rothstein)

481. Plaintiffs incorporate the allegations contained in paragraphs 1 through 407121 as if restated herein.

482. This is a claim for conversion.

483. 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.

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

485. 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.

486. 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; DAVID VON ALLMEN, as Trustee of the DAVID VON ALLMEN LIVING TRUST; ANN VON ALLMEN, as Trustee of the ANN VON ALLMEN LIVING TRUST; 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 XIX53 - AIDING AND ABETTING CONVERSION
(against Jennifer Kerstetter Frank Spinosa)

487. ~~Plaintiff's incorporate~~ Plaintiff incorporates the allegations contained in paragraphs 1 through 407121 as if restated herein.

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

489. 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 the Banyon Investors' \$60,000,550,000.00 in funds.

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

491. 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.

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

493. Spinosa'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; DAVID VON ALLMEN, as Trustee of the DAVID VON ALLMEN LIVING TRUST; ANN VON ALLMEN, as Trustee of the ANN VON ALLMEN

LIVING TRUST; and DEAN KRETSCHMAR request judgment against FRANK A. SPINOSA for compensatory damages, together with court costs and such further relief as the Court deems proper.

COUNT 54 - AIDING AND ABETTING CONVERSION
(against Jennifer Kerstetter)

494. Plaintiffs incorporate the allegations contained in paragraphs 1 through 121 as if restated herein.

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

496. 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 \$60,550,000.00 in funds.

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

498. 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.

499. 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.

500. 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; DAVID VON ALLMEN, as Trustee of the DAVID VON ALLMEN LIVING TRUST; ANN VON ALLMEN, as Trustee of the ANN VON ALLMEN LIVING TRUST; 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 XX55 - AIDING AND ABETTING CONVERSION
(against Roseanne Caretsky)

501. Plaintiffs incorporate the allegations contained in paragraphs 1 through 407121 as if restated herein.

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

503. 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 \$60,000,550,000.00 in funds.

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

505. 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.

506. 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.

507. 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; DAVID VON ALLMEN, as Trustee of the DAVID VON ALLMEN LIVING TRUST; ANN VON ALLMEN, as Trustee of the ANN VON ALLMEN LIVING TRUST; 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 XXV56 - AIDING AND ABETTING CONVERSION
(against TD Bank, N.A.)

508. Plaintiffs incorporate the allegations contained in paragraphs 1 through 47121 as if restated herein.

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

510. 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 \$60,000550,000.00 in funds.

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

512. 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.

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

514. 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.

515. 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.

516. 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; DAVID VON ALLMEN, as Trustee of the DAVID VON ALLMEN LIVING TRUST; ANN VON ALLMEN, as Trustee of the ANN VON ALLMEN LIVING TRUST; 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 XXH57 - AIDING AND ABETTING CONVERSION
(against Debra Villegas)

517. Plaintiffs incorporate the allegations contained in paragraphs 1 through 47121 as if restated herein.

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

519. 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.

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

521. 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.

522. 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.

523. 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; DAVID VON ALLMEN, as Trustee of the DAVID VON ALLMEN LIVING TRUST; ANN VON ALLMEN, as Trustee of the ANN VON ALLMEN

LIVING TRUST; 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 - AIDING AND ABETTING CONVERSION
(against Irene Stay)

524. Plaintiffs incorporate the allegations contained in paragraphs 1 through 121 as if restated herein.

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

526. 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' \$60,550,000.00 in funds.

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

528. 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.

529. Stay 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.

530. Stay'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; DAVID VON ALLMEN, as Trustee of the DAVID VON ALLMEN LIVING TRUST; ANN VON ALLMEN, as Trustee of the ANN VON ALLMEN LIVING TRUST; and DEAN KRETSCHMAR request judgment against IRENE STAY for compensatory damages, together with court costs and such further relief as the Court deems proper.

COUNT 59 - AIDING AND ABETTING CONVERSION
(against George G. Levin)

531. Plaintiffs incorporate the allegations contained in paragraphs 1 through 121 as if restated herein.

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

533. 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 \$60,550,000.00 in funds.

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

535. 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.

536. Levin actively assisted, and provided substantial assistance, to Rothstein in either temporarily or permanently depriving the Banyon Investors of their property by representing that

the settlement agreements purchased by investors were real, that they had been fully funded, that they would be paid out to investors over a predetermined schedule, and by deceiving the Banyon Investors into turning its property over to Rothstein under false pretenses.

537. Levin'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; DAVID VON ALLMEN, as Trustee of the DAVID VON ALLMEN LIVING TRUST; ANN VON ALLMEN, as Trustee of the ANN VON ALLMEN LIVING TRUST; and DEAN KRETSCHMAR request judgment against GEORGE G. LEVIN for compensatory damages, together with court costs and such further relief as the Court deems proper.

COUNT 60 - AIDING AND ABETTING CONVERSION
(against Frank Preve)

538. Plaintiffs incorporate the allegations contained in paragraphs 1 through 121 as if restated herein.

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

540. 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 \$60,550,000.00 in funds.

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

542. 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.

543. Preve actively assisted, and provided substantial assistance, to Rothstein in either temporarily or permanently depriving the Banyon Investors of their property by representing that the settlement agreements purchased by investors were real, that they had been fully funded, that they would be paid out to investors over a predetermined schedule, and by deceiving the Banyon Investors into turning its property over to Rothstein under false pretenses.

544. Preve'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; DAVID VON ALLMEN, as Trustee of the DAVID VON ALLMEN LIVING TRUST; ANN VON ALLMEN, as Trustee of the ANN VON ALLMEN LIVING TRUST; and DEAN KRETSCHMAR request judgment against MICHAEL SZFRANSKI for compensatory damages, together with court costs and such further relief as the Court deems proper.

COUNT 61 - AIDING AND ABETTING CONVERSION
(against Banyon Income Fund, LP, and Banyon USVI, LLC)

545. Plaintiffs incorporate the allegations contained in paragraphs 1 through 121 as if restated herein.

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

547. 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 \$60,550,000.00 in funds.

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

549. 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.

550. At all times material hereto, Levin was acting in the scope of his employment as the chief executive officer of Banyon USVI and BIF.

551. At all times material hereto, Preve was acting in the scope of his employment as the chief operating officer or agent of Banyon USVI and BIF.

552. Banyon USVI and BIF, 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 representing that the settlement agreements purchased by investors were real, that they had been fully funded, that they would be paid out to investors over a predetermined schedule, and by deceiving the Banyon Investors into turning its property over to Rothstein under false pretenses.

553. Banyon USVI's and BIF'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; DAVID VON ALLMEN, as Trustee of the DAVID VON ALLMEN LIVING TRUST; ANN VON ALLMEN, as Trustee of the ANN VON ALLMEN

LIVING TRUST; and DEAN KRETSCHMAR request judgment against BANYON INCOME FUND, LP, and BANYON USVI, LLC., for compensatory damages, together with court costs and such further relief as the Court deems proper.

COUNT 62 - AIDING AND ABETTING CONVERSION
(against Michael Szfranski)

554. Plaintiffs incorporate the allegations contained in paragraphs 1 through 121 as if restated herein.

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

556. 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 \$60,550,000.00 in funds.

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

558. 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.

559. Szfranski actively assisted, and provided substantial assistance, to Rothstein in either temporarily or permanently depriving the Banyon Investors of their property by verifying false bank statements and deal documents and by deceiving the Banyon Investors into turning its property over to Rothstein under false pretenses.

560. Szfranski'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; DAVID VON ALLMEN, as Trustee of the DAVID VON ALLMEN LIVING TRUST; ANN VON ALLMEN, as Trustee of the ANN VON ALLMEN LIVING TRUST; and DEAN KRETSCHMAR request judgment against MICHAEL SZFRANSKI for compensatory damages, together with court costs and such further relief as the Court deems proper.

COUNT 63 - AIDING AND ABETTING CONVERSION
(against Onyx Capital Management)

561. Plaintiffs incorporate the allegations contained in paragraphs 1 through 121 as if restated herein.

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

563. As described more fully above, the deals in which the Banyon Investors invested were hogus 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 \$60,550,000.00 in funds.

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

565. 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.

566. At all times material hereto, Szfranski was acting in the scope of his employment as president of Onyx.

567. Onyx, 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 verifying false bank statements and deal documents and by deceiving the Banyon Investors into turning its property over to Rothstein under false pretenses.

568. Onyx'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; DAVID VON ALLMEN, as Trustee of the DAVID VON ALLMEN LIVING TRUST; ANN VON ALLMEN, as Trustee of the ANN VON ALLMEN LIVING TRUST; and DEAN KRETSCHMAR request judgment against ONYX CAPITAL MANAGEMENT for compensatory damages, together with court costs and such further relief as the Court deems proper.

COUNT 64 - AIDING AND ABETTING CONVERSION
(against Berenfeld Spritzer Shechter Sheer, LLP)

569. Plaintiffs incorporate the allegations contained in paragraphs 1 through 121 as if restated herein.

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

571. 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 \$60,550,000.00 in funds.

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

573. 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.

574. Berenfeld actively assisted, and provided substantial assistance, to Rothstein in either temporarily or permanently depriving the Banyon Investors of their property by providing false auditing documents relating to Banyon and RRA and by deceiving the Banyon Investors into turning its property over to Rothstein under false pretenses.

575. Berenfeld'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; DAVID VON ALLMEN, as Trustee of the DAVID VON ALLMEN LIVING TRUST; ANN VON ALLMEN, as Trustee of the ANN VON ALLMEN LIVING TRUST; and DEAN KRETSCHMAR request judgment against BERENFELD SPRITZER SHECHTER SHEER, LLP, for compensatory damages, together with court costs and such further relief as the Court deems proper.

COUNT 65 - NEGLIGENT SUPERVISION
(against TD Bank, N.A.)

576. Plaintiffs incorporate the allegations contained in paragraphs 1 through 121 as if restated herein.

577. This is a claim for negligent supervision.

578. As described more fully above, Spinosa, 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.

579. 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.

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

581. 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.

582. 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.

583. 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; DAVID VON ALLMEN, as Trustee of the DAVID VON ALLMEN LIVING TRUST; ANN VON ALLMEN, as Trustee of the ANN VON ALLMEN LIVING TRUST; 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.

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COUNT XXIV-66 - FRAUDULENT MISREPRESENTATION
(against Scott Rothstein)

584. Plaintiff incorporates the allegations contained in paragraphs 1 through 407121 as if restated herein.

585. This is a claim for fraudulent misrepresentation.

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

587. 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.

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

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

590. 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-67 - FRAUDULENT MISREPRESENTATION
(against Frank Spinoso)

591. Plaintiff incorporates the allegations contained in paragraphs 1 through 407121 as if restated herein.

592. This is a claim for fraudulent misrepresentation.

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

594. 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.

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

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

597. 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 XXVI68 - FRAUDULENT MISREPRESENTATION
(against Jennifer Kerstetter)

598. Plaintiff incorporates the allegations contained in paragraphs 1 through 407121 as if restated herein.

599. This is a claim for fraudulent misrepresentation.

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

601. 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.

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

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

604. 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 XXVH69 - FRAUDULENT MISREPRESENTATION
(against Roseanne Caretsky)

605. Plaintiff incorporates the allegations contained in paragraphs 1 through 407121 as if restated herein.

606. This is a claim for fraudulent misrepresentation.

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

608. 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.

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

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

611. 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 XXVIII70 - FRAUDULENT MISREPRESENTATION
(against TD Bank, N.A.)

612. Plaintiff incorporates the allegations contained in paragraphs 1 through 407121 as if restated herein.

613. This is a claim for fraudulent misrepresentation.

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

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

616. 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.

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

618. In furtherance of the Ponzi scheme, TD Bank, through Spinoso, 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.

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

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

621. 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-71 - FRAUDULENT MISREPRESENTATION
(against Frank Preve George G. Levin)

622. Plaintiff incorporates the allegations contained in paragraphs 1 through 407121 as if restated herein.

623. This is a claim for fraudulent misrepresentation.

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

625. In furtherance of the Ponzi scheme, Levin 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.

626. Levin intended Razorback to act on his knowingly false representations.

627. Razorback justifiably relied upon Levin's representations to its detriment.

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

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

COUNT 72 - FRAUDULENT MISREPRESENTATION
(against Frank Preve)

629. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

630. This is a claim for fraudulent misrepresentation.

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

632. 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.

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

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

635. 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--NEGLIGENT73 - FRAUDULENT MISREPRESENTATION
(against Frank SpinosoBanyon Income Fund, LP, and Banyon USVI, LLC)

636. Plaintiff incorporates the allegations contained in paragraphs 1 through 407121 as if restated herein.

637. This is a claim for fraudulent misrepresentation.

638. At all times material hereto, Levin was acting in the scope of his employment as the chief executive officer of Banyon USVI and BIF.

639. At all times material hereto, Preve was acting in the scope of his employment as the chief operating officer or agent of Banyon USVI and BIF.

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

641. In furtherance of the Ponzi scheme, Banyon USVI and BIF, through Levin and Preve, 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.

642. Banyon USVI and BIF, through Levin and Preve, intended Razorback to act on their knowingly false representations.

643. Razorback justifiably relied upon Banyon USVI's and BIF's, through Levin's and Preve's, representations to their detriment.

644. As a direct and proximate result of Banyon USVI's and BIF's, made through Levin's and Preve's, false statements and representations, Razorback has sustained damages.

WHEREFORE, RAZORBACK FUNDING, LLC, requests judgment against BANYON INCOME FUND, LP, and BANYON USVI, LLC., for compensatory damages, together with court costs and such further relief as the Court deems proper.

COUNT 74 - FRAUDULENT MISREPRESENTATION
(against Michael Szfranski)

645. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

646. This is a claim for fraudulent misrepresentation.

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

648. In furtherance of the Ponzi scheme, Szfranski knowingly made material false statements and representations including, but not limited to, verifying false bank statements and deal documents.

649. Szfranski intended Razorback to act on his knowingly false representations.

650. Razorback justifiably relied upon Szfranski's representations to its detriment.

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

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

COUNT 75 - FRAUDULENT MISREPRESENTATION
(against Onyx Capital Management)

652. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

653. This is a claim for fraudulent misrepresentation.

654. At all times material hereto, Szfranski was acting in the scope of his employment as president of Onyx.

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

656. In furtherance of the Ponzi scheme, Onyx, through Szfranski, knowingly material false statements and representations, including, but not limited to, verifying false bank statements and deal documents.

657. Onyx, through Szfranski, intended Razorback to act on its knowingly false representations.

658. Razorback justifiably relied upon Onyx's, through Szfranski's, representations to its detriment.

659. As a direct and proximate result of Onyx's, made through Szfranski's, false representations, Razorback has sustained damages.

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

COUNT 76 - FRAUDULENT MISREPRESENTATION
(against Berenfeld Spritzer Shechter Sheer, LLP)

660. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

661. This is a claim for fraudulent misrepresentation.

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

663. In furtherance of the Ponzi scheme, Berenfeld knowingly made material false statements and representations including, but not limited to, providing false auditing documents relating to Banyon and RRA.

664. Berenfeld intended Razorback to act on its knowingly false representations.

665. Razorback justifiably relied upon Berenfeld's representations to its detriment.

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

WHEREFORE, RAZORBACK FUNDING, LLC, requests judgment against BERENFELD SPRITZER SHECHTER SHEER, LLP, for compensatory damages, together with court costs and such further relief as the Court deems proper.

COUNT 77 - NEGLIGENT MISREPRESENTATION
(against Frank Spinoso)

667. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

668. This is a claim for negligent misrepresentation.

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

670. 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.

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

672. 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.

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

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

675. 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 XXXI78 - NEGLIGENT MISREPRESENTATION
(against Jennifer Kerstetter)

676. Plaintiff incorporates the allegations contained in paragraphs 1 through 407121 as if restated herein.

677. This is a claim for negligent misrepresentation.

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

679. 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.

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

681. 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.

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

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

684. 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 XXXH79 - NEGLIGENT MISREPRESENTATION
(against Roseanne Caretsky)

685. Plaintiff incorporates the allegations contained in paragraphs 1 through 407121 as if restated herein.

686. This is a claim for negligent misrepresentation.

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

688. 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.

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

690. 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.

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

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

693. 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 XXXIII80 - NEGLIGENT MISREPRESENTATION
(against TD Bank, N.A.)

694. Plaintiff incorporates the allegations contained in paragraphs 1 through 407121 as if restated herein.

695. This is a claim for negligent misrepresentation.

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

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

698. 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.

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

700. 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.

701. 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.

702. 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.

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

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

705. 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~~
COUNT 81 - NEGLIGENT MISREPRESENTATION
(against Frank SpinosoGeorge G. Levin)

706. Plaintiff incorporates the allegations contained in paragraphs 1 through 407121 as if restated herein.

707. This is a claim for negligent misrepresentation.

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

709. In furtherance of the Ponzi scheme, Levin 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.

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

711. Levin 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 them.

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

713. Razorback justifiably relied upon Levin's representations to its detriment.

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

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

COUNT 82 - NEGLIGENT MISREPRESENTATION
(against Frank Preve)

715. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

716. This is a claim for negligent misrepresentation.

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

718. In furtherance of the Ponzi scheme, Preve 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.

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

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

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

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

723. 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 83 - NEGLIGENT MISREPRESENTATION
(against Banyon Income Fund, LP, and Banyon USVI, LLC)

724. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

725. This is a claim for negligent misrepresentation.

726. At all times material hereto, Levin was acting in the scope of his employment as the chief executive officer of Banyon USVI and BIF.

727. At all times material hereto, Preve was acting in the scope of his employment as the chief operating officer or agent of Banyon USVI and BIF.

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

729. In furtherance of the Ponzi scheme, Banyon USVI and BIF, through Levin and Preve, 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.

730. When making the false statements and representations, Banyon USVI and BIF, through Levin and Preve, either knew or reasonably should have known that they were false.

731. Banyon USVI and BIF owed Razorback a duty of care because it knew or had reason to know that Razorback was placing trust and confidence in it and relying on it to inform them.

732. Banyon USVI and BIF breached its duty to Razorback by making false representations, through Levin and Preve, with the intention that Razorback rely on them.

733. Razorback justifiably relied upon Banyon USVI's and BIF's, through Levin's and Preve's, representations to its detriment.

734. As a direct and proximate result of Banyon USVI's and BIF's representations, made through Levin and Preve Razorback has sustained damages.

WHEREFORE, RAZORBACK FUNDING, LLC, requests judgment against BANYON INCOME FUND, LP, and BANYON USVI, LLC., for compensatory damages, together with court costs and such further relief as the Court deems proper.

COUNT 84 - NEGLIGENT MISREPRESENTATION
(against Michael Szfranski)

735. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

736. This is a claim for negligent misrepresentation.

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

738. In furtherance of the Ponzi scheme, Szfranski made material false statements and representations including, but not limited to, verifying false bank statements and deal documents.

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

740. Szfranski owed Razorback a duty of care because he knew or had reason to know that, as an independent verifier, Razorback was placing trust and confidence in him and relying on him to inform them.

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

742. Razorback justifiably relied upon Szfranski's representations to its detriment.

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

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

COUNT 85 - NEGLIGENT MISREPRESENTATION
(against Onyx Capital Management)

744. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

745. This is a claim for negligent misrepresentation.

746. At all times material hereto, Szfranski was acting in the scope of his employment as president of Onyx.

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

748. In furtherance of the Ponzi scheme, Onyx, through Szfranski, made material false statements and representations, including, but not limited to, verifying false bank statements and deal documents.

749. When making the false statements and representations, Onyx, through Szfranski, either knew or reasonably should have known that they were false.

750. Onyx owed Razorback a duty of care because it knew or had reason to know that, as an independent verifier, Razorback was placing trust and confidence in it and relying on Onyx to inform it.

751. Onyx breached its duty to Razorback by making false representations, through Szfranski, with the intention that Razorback rely on them.

752. Razorback justifiably relied upon Onyx's, through Szfranski's, representations to its detriment.

753. As a direct and proximate result of Onyx's representations, made through Szfranski, Razorback has sustained damages.

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

COUNT 86 - NEGLIGENT MISREPRESENTATION
(against Berenfeld Spritzer Shechter Sheer, LLP)

754. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

755. This is a claim for negligent misrepresentation.

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