

2009CA040800

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

38. 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.

39. 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

40. 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 at a discount in the range of 20-40% of the settlements' face-value. 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.

41. Rothstein claimed to want nothing from the deal and was only presenting the "opportunity" for a putative plaintiff's benefit and to facilitate recovery of RRA's contingent fee. Notwithstanding, Rothstein would often boast that if not for his professional and legal conflicts he would be the one purchasing these assignments.

42. 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.

43. 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.

44. 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 provided by himself or Stay³ or, he would "authorize" TD Bank to provide copies of account statements and wire transfers prepared and delivered by TD Bank executives

³ See Exhibit "W" *infra*, which is an October 6, 2009 on-line screen shot of RRA's TD Bank accounts accessed (logged in) by Irene Shannon which is Irene Stay's maiden name. ("Welcome, Irene Shannon! You last logged in on Tuesday, October 06, 2009 4:37 PM.")

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.

45. 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 a vital component which tacitly lent credibility and security to the transaction.

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

47. 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

48. 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.

49. Additionally, Rothstein used RRA's representation in the Epstein case to pursue issues and evidence unrelated to the underlying litigation but which was 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.

50. Conspicuously, and contrary to Banyon's allegations⁴, Preve and Szafranski shared an office at RRA one floor down from Rothstein providing them access to Rothstein to assist in the furtherance of the Ponzi scheme. This fact helps explain why Preve attended the aforementioned D3 meeting despite his lack of involvement as an investor or representative.

51. 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.

⁴ In a November 23, 2009, "Confidential Update From Banyon", Levin erroneously alleges that "The allegation that Mr. Preve had an office at the Rothstein law firm, or that he may have helped the Rothstein firm to mislead potential investors is a total lie. Period."

Plaintiffs' Investments:

1. Banyon Income Fund

52. BIF was formed in May 2009, and served as an original feeder fund for the Principal Conspirators settlement deals.

53. According to the offering materials provided by Levin and Preve, 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."**

54. 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.

55. In fact, the Confidential Offering Memorandum avers that "[o]nce a structure of formal documentation was put in place and a relationship established with Rothstein, the General Partner was able to achieve a large ramp up in business volume . . . [which] have stabilized at approximately \$60,000,000 - \$75,000,000 in funded business per month," and that the "[f]unding for these activities has come from credit facilities with institutional hedge fund lenders as well as the personal capital of Mr. Levin." *Id.*

56. Significantly, Banyon's Confidential Offering Memorandum relies heavily upon an audited financial statement prepared by Berenfeld which purportedly details Banyon's staggering growth and astounding returns verifying, *inter alia*, that:

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

See id.

57. BIF's Confidential Offering Memorandum provided investors a window into the Principal Conspirators' house of cards, as the hedge fund was just one of the investment consortiums feeding the Ponzi scheme's voracious appetite.

58. All or substantially all of BIF's assets were funneled into the Principal Conspirators' scheme which served as rocket fuel blasting the obscure investment vehicle to dizzying heights.

59. In the spring of 2009, Barry Bekkedam from Ballamor Capital Management, LLC (hereinafter, "Ballamor")⁵ and promoter of BIF, met Doug Von Allmen (D&L Partners) to discuss D&L Partners' participation in BIF.

60. During that discussion, Mr. Von Allmen learned that BIF was started by 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.

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

62. Additionally, Mr. Bekkedam told Mr. Von Allmen that the settlements were already fully-funded in the attorneys' trust accounts, that a "Big Four"⁶ auditing firm would verify them quarterly, and that Ballamor had continuous unfettered access to the trust account balances and would oversee Banyon's hiring of an independent verifier to monitor and confirm the settlement transaction.

63. 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.

64. In reliance on these purported security and verification procedures, on or about May 4, 2009, Mr. Von Allmen (through D&L Partners) and his wife Linda Von Allmen (through Dynasty Trust) first wired BIF funds; approximately one month later, his son and daughter-in-law David and Ann Von Allmen (through the DVA Trust and AVA Trust) and his step-son, Dean

⁵ 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

⁶ As it turns out, the "Big Four" accounting firm referenced was Berenfeld.

Kretschmar (collectively referred to herein as "Banyon Investors") also funded investments as directed by Ballamor and Mr. Bekkedam.

65. Prior to investing, each Banyon Investor received a "the aforementioned Confidential Offering Memorandum describing the terms and conditions of the investment structure in greater detail. See Composite Exhibit "D."

66. Significantly, the Confidential Offering Memorandum provided that a receipt of the putative defendant's wire transfer of the full settlement proceeds into RRA's trust account would be verified by an independent third party (see Szafranski, *infra*). Id.

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

68. Furthermore, the Memorandum states that while "Ballamor will receive no compensation for its participation or investment recommendation . . . George Levin has an agreement in principle with Ballamor and its principal, Barry R. Bekkedam, with respect to an equity investment in Ballamor by Mr. Levin and a loan to Mr. Bekkedam, the final terms of which have not been determined."⁷ *Id.*

69. Szafranski, president of Onyx Capital Management, acted as an the designated independent, third-party verifier for the Banyon Investors and BIF. Prior to and during the course of

⁷ In fact we now know that Ballamor and Mr. Bekkedam received \$5,000,000.00 from Levin for their involvement in this Ponzi scheme along with a \$18,000,000.00 investment through Ballamor into Nova Bank, a Pennsylvania bank.

his investigation, Szafranski obtained the following information demonstrative of TD Bank's involvement:

a. October 29, 2008 letter signed by Caretsky, assistant branch manager with Commerce Bank⁸ enclosing three trust account statements for RRA: (1) account number [REDACTED] containing \$166,922,339.00; (2) account number [REDACTED] containing \$40,125,685.44; and (3) account [REDACTED] 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 enclosing three trust account statement for RRA: (1) account number [REDACTED] showing a balance of \$104,211,711.22; (2) account number [REDACTED] showing a balance of \$368,333,133.20; and (3) account number [REDACTED] 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 [REDACTED] showing a balance of \$61,117,111; (2) RRA trust account statement for account number [REDACTED] showing a balance of \$80,978,935.31; (3) RRA trust account statement for account number [REDACTED] showing a balance of \$136,122,322.87; (4) RRA trust account statement for account number [REDACTED] showing a balance of \$198,644,311.13; and (5) RRA trust account statement for account number [REDACTED] showing a balance of \$483,668,999.39. All five trust account

⁸ 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 purchase.

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-
[REDACTED] 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-
[REDACTED] 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-
[REDACTED] 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-
[REDACTED] 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-
[REDACTED] 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 [REDACTED] 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 [REDACTED] 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"**;

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

2. Razorback Funding, LLC

71. 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."**

72. 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."**

73. On or about September 18, 2009, as part of its due diligence, Razorback obtained a copy of a TD Bank "lock letter" signed by Spinosa 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.

74. On October 1, 2009, Szafranski, who was utilized as the independent reviewer for Razorback as well, met with Rothstein to review and verify all of the documents supporting the

Razorback deal. In that meeting, Szafranski purportedly witnessed Rothstein sign on to the TD Bank on-line banking website and verified that all of the wire transfers for the underlying Razorback settlement deals had been received by RRA and were held in RRA's trust account ending in [REDACTED]. A copy of the October 1, 2009 email from Szafranski verifying the above-referenced account is attached hereto and incorporated herein as **Exhibit "R."**

75. Szafranski also verified that a "lock letter" had been received by Spinosa 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: [REDACTED] Account # [REDACTED]. 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."**

76. 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."**

77. 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."**

78. 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."**

79. 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.

80. 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 TD Bank account screen shot is attached hereto as **Exhibit "W."**

81. Finally, on October 22, 2009, Szafranski met again with Rothstein and verified that all of the putative plaintiffs in the Razorback deals received their disbursements by reviewing TD Bank's on-line banking website. A copy of Szafranski October 22, 2009 confirming email is attached hereto and incorporated herein as **Exhibit "X."**

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

3. D3 Capital Club, LLC

83. 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."**

84. 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.

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

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

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 # [REDACTED] belonging to D3 Capital Club, LLC.

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

86. On October 15, 2009, Spinosa 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."**

87. 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.

88. 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 [REDACTED]. A copy of the October 16, 2009 and October 19, 2009 emails are attached hereto and incorporated herein as Composite Exhibit "BB."

89. 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 refused to provide any further details about the Principal Conspirators' accounts.

90. Finally, on October 19, 2009, 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."

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

4. BFMC Investment, LLC

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

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

94. 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.

95. 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 with Florescue's corporate counsel and had actively worked on one of Florescue's previous financing transactions.

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

97. After introductions, Rothstein described an investment opportunity involving purchasing various settlements with structured payments 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 the 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.

98. 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.

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

100. 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.

101. 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."

102. 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."

103. 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, (954) 943-6550, ABA#

[REDACTED] for further credit to: BFMC Investment, LLC Account # [REDACTED]

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 # [REDACTED] belonging to BFMC Investment, LLC.

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

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

Implosion of Rothstein's Ponzi Scheme

105. 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.

106. 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 Israel⁹ 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

⁹ 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.

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.

107. By the end of October 2009, Rothstein and RRA began to default on the investors’ structured payments and the Ponzi scheme began to unravel.

108. On October 26, 2009, Linda Von Allmen spoke with Rothstein at Bova restaurant who, in between martinis, admitted that he was “having a bad day.” Rothstein was joined by a woman and his bodyguard, believed to be Joe Alu, who may have witnessed this exchange.

109. On October 27, 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 payments due to him the week prior. Rothstein attempted to diffuse the situation leaving Spinosa visibly shaken.

110. 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.

111. On the evening of 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.

112. 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.

113. Alarmed investors frantically reached out to RRA executives and attorneys begging for information as to the whereabouts of Rothstein and their more than \$30,000,000.00 in overdue payments. Stuart Rosenfeldt (hereinafter, "Rosenfeldt") assembled a team including Boden, Stay and Grant Smith, at RRA to begin answering the deluge of investor calls by first confirming with Stay (RRA's C.F.O.) that RRA's operating and trust accounts contained more than \$1 billion dollars. Shamefully, Stay refused to provide Rosenfeldt the confirmation requested. Growing ever agitated, Rosenfeldt and the others continued to press Stay demanding to know what was going on and that she produce current account statements. Eventually Stay relented and began inconsolably crying repeating the phrase, "I don't want to go to jail." Rosenfeldt proceeded to conference call Spinosa who initially declined to provide account balance verification but after much cajoling finally informed Rosenfeldt that the RRA accounts had been almost completely depleted.

Devastating Fallout

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

115. 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.

116. 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 is 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 including, but not limited to:

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

- d. in April 2009, \$53,060,000.00 in credits and \$51,560,000.00 in debits were transacted through four RRA trust accounts at TD Bank;
- e. in October 2009 \$235,000,000.00 in credits and \$232,000,000.00 in debits were transacted through the RRA accounts at TD Bank;
- f. 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;
- g. on November 1, 2009, Mel Lifshitz of DE Securities whose group invested nearly \$100,000,000.00 into the Ponzi scheme, advised a group of investor¹⁰ victims that he personally sat with Spinoso at TD Bank and verified investment account balances;
- h. during that same meeting, Levin informed the group that he reached out to Rothstein in Morocco letting him know that Banyon stood ready to provide shortfall financing if he was having trouble making payments. Astoundingly, Levin's revealing admission took the group by surprise because one of the core "deal" tenants insured against any possible deficit by requiring a putative defendant's settlement to be funded prior to an investors lump sum purchase. Thus, any shortfall, even the smallest one, is patently contrary to the investment structure and obvious evidence that the monies are either being misused or are a part of a Ponzi scheme.

¹⁰ The group of investors attending the November 1, 2009 meeting include: Dean Kretschmar, Ted Morse, Ed Morse, Richard Pearson, Ira Sochet, Mel Lifshitz, AJ Discala, Mac Melvin, Mark Nordlicht, Jack Simony, Steve Jackel, Laurence King, Steve Levin, George Levin, Frank Preve, Barry Bekkedam, and Michael Szafranski.

- i. Plaintiffs now believe that Levin's statement was a thinly-veiled attempt to cover his tracks after Rothstein rejected Levin's last-ditch efforts to persuade Rothstein to keep the Ponzi scheme going. In support, Plaintiffs rely on a October 31, 2009 email from Preve to Rothstein stating that "We [Levin and Preve] understand that the shortage is now 300m which is still manageable if we have your cooperation. Let me know," to which Rothstein responds, "[t]hat is not the shortage that is the amount of money needed to give the investors back their money. I really just need to end it frank. It will make it easier for everyone." (emphasis added). The attempt to try and "manage" the hole created now presumes that Levin and Preve had knowledge of a prior deficit and serves as an unwitting admission of their involvement in the perpetuation of the Ponzi scheme;
- j. sometime in the Spring or Summer of 2009, Ted Morse was personally provided with a written account balance statement by Caretsky at TD Bank;
- k. on July 27, 2009 Rothstein transferred a property with an assessed value of \$407,750.00 to Villegas for "love and affection" and \$100.00. Notwithstanding 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;
- l. Berenfeld's audited financial statements for the affiliated Banyon entities confirmed finance receivables of \$517,404,505.00 due from RRA

settlements worth more than \$1,100,000,000.00. See Composite Exhibit "D." As now discovered, these verified finance receivables were pure fiction. Incontrovertibly, Berenfeld either willfully participated in this fraud or knew or should have known as part of the audit process that the finance receivables were fabricated and incapable of being independently verify;

- m. Berenfeld's complicity in the Ponzi scheme is further compounded by their role as accountants for RRA and Rothstein and Rosenfeldt individually providing them with first-hand knowledge of the patent inconsistencies between Banyon's purported verified audited receivables and RRA's actual numbers;
- n. due to the vast complexity in maintaining the Ponzi scheme's fraudulent accounting, it is only sophisticated accountants could have accounted for "phantom" investments over a period of four years allowing the Principal Conspirators to generate falsified statements necessary to dupe investors;
- o. Ballamor and Mr. Bekkedam received a \$5,000,000.00 "loan" from Levin for procuring investor funds along with a \$18,000,000.00 investment through Ballamor into Nova Bank, a Pennsylvania bank;
- p. the TD Bank account statements provided and verified by Szafranski were completely fabricated and incapable of being confirmed. In most instances, there was either no money in the settlement accounts or the amounts contained were hundreds of millions less than what was

represented in the statements (see Comparison Chart of Actual Account Balances with Provided Deal Account Statements as attached hereto and incorporated herein as Composite Exhibit "GG."); and

- q. 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.

117. 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

118. 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.

119. 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.

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

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

COUNT 11 - FRAUDULENT MISREPRESENTATION
(against Scott Rothstein)

122. Plaintiffs incorporate the allegations contained in paragraphs 1 through 121 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, 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.

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

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

128. 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; 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 H2 - FRAUDULENT MISREPRESENTATION
(against Jennifer Kerstetter)

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

130. This is a claim for fraudulent misrepresentation.

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

132. 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.

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

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

135. 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; 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 III - FRAUDULENT MISREPRESENTATION
(against Roseanne Caretsky)

136. Plaintiffs incorporate the allegations contained in paragraphs 1 through 147/121 as if restated herein.

137. This is a claim for fraudulent misrepresentation.

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

139. 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.

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

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

142. 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; 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 IV - FRAUDULENT MISREPRESENTATION
(against TD Bank, N.A.)

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

144. This is a claim for fraudulent misrepresentation.

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

146. 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.

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

148. 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.

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

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

151. 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; 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 5 - FRAUDULENT MISREPRESENTATION
(against George G. Levin)

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

153. This is a claim for fraudulent misrepresentation.

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

155. 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.

156. Levin intended the Banyon Investors to act on his knowingly false representations.

157. The Banyon Investors justifiably relied upon Levin's representations to their detriment.

158. As a direct and proximate result of Levin'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; 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 LEVIN for compensatory damages, together with court costs and such further relief as the Court deems proper.

COUNT 6 - FRAUDULENT MISREPRESENTATION
(against Frank Preve)

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

160. This is a claim for fraudulent misrepresentation.

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

162. In furtherance of the Ponzi scheme, 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.

163. Preve intended the Banyon Investors to act on his knowingly false representations.

164. The Banyon Investors justifiably relied upon Preve's representations to their detriment.

165. As a direct and proximate result of Preve'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; 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 PREVE for compensatory damages, together with court costs and such further relief as the Court deems proper.

COUNT 7 - FRAUDULENT MISREPRESENTATION
(against Banyon Income Fund, LP, and Banyon USVI, LLC)

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

167. This is a claim for fraudulent misrepresentation.

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

169. 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.

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

171. 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.

172. Banyon USVI and BIF, through Levin and Preve, intended the Banyon Investors to act on their knowingly false representations.

173. The Banyon Investors justifiably relied upon Banyon USVI's and BIF's, through Levin's and Preve's, representations to their detriment.

174. As a direct and proximate result of Banyon USVI's and BIF's, made through Levin's and Preve's, false statements and representations, 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 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 8 - FRAUDULENT MISREPRESENTATION
(against Michael Szfranski)

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

176. This is a claim for fraudulent misrepresentation.

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

178. 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.

179. Szfranski intended the Banyon Investors to act on his knowingly false representations.

180. The Banyon Investors justifiably relied upon Szfranski's representations to their detriment.

181. As a direct and proximate result of Szfranski'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; 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 9 - FRAUDULENT MISREPRESENTATION
(against Onyx Capital Management)

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

183. This is a claim for fraudulent misrepresentation.

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

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

186. 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.

187. Onyx, through Szfranski, intended the Banyon Investors to act on its knowingly false representations.

188. The Banyon Investors justifiably relied upon Onyx's, through Szfranski's, representations to their detriment.

189. As a direct and proximate result of Onyx's, made through Szfranski's, false representations, 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 ONYX CAPITAL MANAGEMENT, for compensatory damages, together with court costs and such further relief as the Court deems proper.

COUNT 10 - FRAUDULENT MISREPRESENTATION
(against Berenfeld Spritzer Shechter Sheer, LLP)

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

191. This is a claim for fraudulent misrepresentation.

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

193. 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.

194. Berenfeld intended the Banyon Investors to act on its knowingly false representations.

195. The Banyon Investors justifiably relied upon Berenfeld's representations to their detriment.

196. As a direct and proximate result of Berenfeld'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; 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 11 - NEGLIGENT MISREPRESENTATION
(against Jennifer Kerstetter)

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

198. This is a claim for negligent misrepresentation.

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

200. 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.

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