

2009CA040800

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

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

**COUNT 131 - AIDING AND ABETTING CONVERSION**  
**(against Berenfeld Spritzer Shechter Sheer, LLP)**

1054. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1055. This is a claim for aiding and abetting conversion.

1056. As described more fully above, the deals in which Razorback invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of Razorback when he absconded with their \$32,000,000.00 in funds.

1057. Rothstein's conversion of Razorback's funds has permanently deprived Razorback of its property.

1058. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by Razorback to make demand upon him for the return of its property would be futile.

1059. Berenfeld actively assisted, and provided substantial assistance, to Rothstein in either temporarily or permanently depriving Razorhack of its property by providing false auditing documents relating to Banyon and RRA and by deceiving Razorback into turning its property over to Rothstein under false pretenses.

1060. Berenfeld's actions have directly caused injury and damages to Razorback.

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

1061. Plaintiff incorporates the allegations contained in paragraphs 1 through 107121 as if restated herein.

1062. This is a claim for negligent supervision.

1063. As described more fully above, Spinosa, Kerstetter, and Caretsky participated, with actual or constructive knowledge, in Rothstein's Ponzi scheme. Spinosa's, Kerstetter's, and Caretsky's participation included, but was not limited to, providing the Razorback with false information concerning the amounts deposited in RRA trust accounts and supplying investors with misleading and untrue written assurances concerning the settlement accounts.

1064. In reliance on Spinosa's, Kerstetter's, and Caretsky's representations, on October 2, 2009, Razorback began sending payments to RRA's account at TD Bank, eventually funding a total of \$32,000,000.00.

1065. Razorback's reliance on Spinosa's, Kerstetter's, and Caretsky's representations was reasonable and justified.

1066. TD Bank owed a duty to Razorback to ensure that its employees were not actively defrauding depositors by making false representations in order to trick them into making unsafe deposits into trust accounts that they knew or reasonably should have known were being raided by Rothstein.

1067. TD Bank breached its duties to Razorback because it had actual or constructive notice that its assistant manager and assistant vice president and branch manager were either fraudulently or negligently participating in a scheme which resulted in the unauthorized raiding of investors' deposits, and acted unreasonably by failing to investigate or take corrective action.

1068. As a direct and proximate result of TD Bank's failure to investigate or take corrective action against Spinosa, Kerstetter, or Caretsky, Razorback has sustained damages.

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

**COUNT I-VH133 - FRAUDULENT MISREPRESENTATION**  
**(against Scott Rothstein)**

1069. Plaintiff incorporates the allegations contained in paragraphs 1 through 407121 as if restated herein.

1070. This is a claim for fraudulent misrepresentation.

1071. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1072. 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.

1073. Rothstein intended D3 to act on his knowingly false representations.

1074. D3 justifiably relied upon Rothstein's representations to its detriment.

1075. As a direct and proximate result of Rothstein's false statements, D3 has sustained damages.

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

**COUNT I-VH134 - FRAUDULENT MISREPRESENTATION**  
**(against Frank Spinoso)**

1076. Plaintiff incorporates the allegations contained in paragraphs 1 through 407121 as if restated herein.

1077. This is a claim for fraudulent misrepresentation.

1078. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1079. 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.

1080. Spinosa intended D3 to act on his knowingly false representations.

1081. D3 justifiably relied upon Spinosa's representations to its detriment.

1082. As a direct and proximate result of Spinosa's false statements, D3 has sustained damages.

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

**COUNT LIX135 - FRAUDULENT MISREPRESENTATION**  
**(against Jennifer Kerstetter)**

1083. Plaintiff incorporates the allegations contained in paragraphs 1 through 107121 as if restated herein.

1084. This is a claim for fraudulent misrepresentation.

1085. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1086. 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.

1087. Kerstetter intended D3 to act on her knowingly false representations.

1088. D3 justifiably relied upon Kerstetter's representations to its detriment.

1089. As a direct and proximate result of Kerstetter's false statements, D3 has sustained damages.

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

**COUNT LX-136 - FRAUDULENT MISREPRESENTATION**  
**(against Roseanne Caretsky)**

1090. Plaintiff incorporates the allegations contained in paragraphs 1 through 107121 as if restated herein.

1091. This is a claim for fraudulent misrepresentation.

1092. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1093. 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.

1094. Caretsky intended D3 to act on her knowingly false representations.

1095. D3 justifiably relied upon Caretsky's representations to its detriment.

1096. As a direct and proximate result of Caretsky's false statements, D3 has sustained damages.

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

**COUNT LXI137 - FRAUDULENT MISREPRESENTATION**  
**(against TD Bank, N.A.)**

1097. Plaintiff incorporates the allegations contained in paragraphs 1 through 107121 as if restated herein.

1098. This is a claim for fraudulent misrepresentation.

1099. At all times material hereto, Spinoso was acting in the scope of his employment as Regional Vice President of T.D. Bank.

1100. At all times material hereto, Kerstetter was acting in the scope of her employment as an assistant manager of TD Bank.

1101. 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.

1102. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1103. 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.

1104. TD Bank, through Spinoso, Kerstetter, and Caretsky intended D3 to act on their knowingly false representations.

1105. D3 justifiably relied upon TD Bank's through Spinosa's, Kerstetter's, and Caretsky's representations to its detriment.

1106. As a direct and proximate result of TD Bank's, made through Spinosa's Kerstetter's, and Caretsky's false statements, D3 has sustained damages.

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

**COUNT LXII - NEGLIGENT 138 - FRAUDULENT MISREPRESENTATION**  
**(against Frank Spinosa George G. Levin)**

1107. Plaintiff incorporates the allegations contained in paragraphs 1 through 107121 as if restated herein.

1108. This is a claim for fraudulent misrepresentation.

1109. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1110. 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.

1111. Levin intended D3 to act on his knowingly false representations.

1112. D3 justifiably relied upon Levin's representations to its detriment.

1113. As a direct and proximate result of Levin's false statements, D3 has sustained damages.



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

**COUNT 139 - FRAUDULENT MISREPRESENTATION**  
**(against Frank Preve)**

1114. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1115. This is a claim for fraudulent misrepresentation.

1116. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1117. 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.

1118. Preve intended D3 to act on his knowingly false representations.

1119. D3 justifiably relied upon Preve's representations to their detriment.

1120. As a direct and proximate result of Preve's false statements, D3 has sustained damages.

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

**COUNT 140 - FRAUDULENT MISREPRESENTATION**  
**(against Banyon Income Fund, LP, and Banyon USVI, LLC)**

1121. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1122. This is a claim for fraudulent misrepresentation.

1123. At all times material hereto, Levin was acting in the scope of his employment as the chief executive officer of Banyon USVI and BIF.

1124. 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.

1125. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1126. 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.

1127. Banyon USVI and BIF, through Levin and Preve, intended D3 to act on their knowingly false representations.

1128. D3 justifiably relied upon Banyon USVI's and BIF's, through Levin's and Preve's, representations to their detriment.

1129. As a direct and proximate result of Banyon USVI's and BIF's, made through Levin's and Preve's, false statements and representations, D3 has sustained damages.

WHEREFORE, D3 CAPITAL CLUB, 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 141 - FRAUDULENT MISREPRESENTATION**  
**(against Michael Szfranski)**

1130. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1131. This is a claim for fraudulent misrepresentation.

1132. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1133. 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.

1134. Szfranski intended D3 to act on his knowingly false representations.

1135. D3 justifiably relied upon Szfranski's representations to its detriment.

1136. As a direct and proximate result of Szfranski's false statements, D3 has sustained damages.

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

**COUNT 142 - FRAUDULENT MISREPRESENTATION**  
**(against Onyx Capital Management)**

1137. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1138. This is a claim for fraudulent misrepresentation.

1139. At all times material hereto, Szfranski was acting in the scope of his employment as president of Onyx.

1140. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1141. 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.

1142. Onyx, through Szfranski, intended D3 to act on its knowingly false representations.

1143. D3 justifiably relied upon Onyx's, through Szfranski's, representations to its detriment.

1144. As a direct and proximate result of Onyx's, made through Szfranski's, false representations, D3 has sustained damages.

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

**COUNT 143 - FRAUDULENT MISREPRESENTATION**  
**(against Berenfeld Spritzer Shechter Sheer, LLP)**

1145. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1146. This is a claim for fraudulent misrepresentation.

1147. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1148. 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.

1149. Berenfeld intended D3 to act on its knowingly false representations.

1150. D3 justifiably relied upon Berenfeld's representations to its detriment.

1151. As a direct and proximate result of Berenfeld's false statements, D3 has sustained damages.

WHEREFORE, D3 CAPITAL CLUB, 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 144 - NEGLIGENT MISREPRESENTATION**  
**(against Frank Spinoso)**

1152. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1153. This is a claim for negligent misrepresentation.

1154. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1155. 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.

1156. When making the false statements and representations, Spinosa either knew or reasonably should have known that they were false.

1157. Spinosa owed D3 a duty of care because he knew or had reason to know that D3 was placing trust and confidence in him and relying on him to inform it.

1158. Spinosa breached his duty to D3 by making false representations with the intention that D3 rely on them.

1159. D3 justifiably relied upon Spinosa's representations to its detriment.

1160. As a direct and proximate result of Spinosa's false statements, D3 has sustained damages.

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

**COUNT LXIII145 - NEGLIGENT MISREPRESENTATION**  
**(against Jennifer Kerstetter)**

1161. Plaintiff incorporates the allegations contained in paragraphs 1 through 407121 as if restated herein.

1162. This is a claim for negligent misrepresentation.

1163. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1164. 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.

1165. When making the false statements and representations, Kerstetter either knew or reasonably should have known that they were false.

1166. Kerstetter owed D3 a duty of care because she knew or had reason to know that D3 was placing trust and confidence in her and relying on her to inform it.

1167. Kerstetter breached her duty to D3 by making false representations with the intention that Razorback rely on them.

1168. D3 justifiably relied upon Kerstetter's representations to their detriment.

1169. As a direct and proximate result of Kerstetter's false statements, D3 has sustained damages.

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

**COUNT LXIV-146 - NEGLIGENT MISREPRESENTATION**  
**(against Roseanne Caretsky)**

1170. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1171. This is a claim for negligent misrepresentation.

1172. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1173. 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.

1174. When making the false statements and representations, Kerstetter either knew or reasonably should have known that they were false.

1175. Caretsky owed D3 a duty of care because she knew or had reason to know that D3 was placing trust and confidence in her and relying on her to inform it.

1176. Caretsky breached her duty to D3 by making false representations with the intention that D3 rely on them.

1177. D3 justifiably relied upon Caretsky's representations to their detriment.

1178. As a direct and proximate result of Caretsky's false statements, D3 has sustained damages.

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

**COUNT LXV147 - NEGLIGENT MISREPRESENTATION**  
**(against TD Bank, N.A.)**

1179. Plaintiff incorporates the allegations contained in paragraphs 1 through 107121 as if restated herein.

1180. This is a claim for negligent misrepresentation.



1181. At all times material hereto, Spinosa was acting in the scope of his employment as Regional Vice President of T.D. Bank.

1182. At all times material hereto, Kerstetter was acting in the scope of her employment as an assistant manager of TD Bank.

1183. 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.

1184. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1185. 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..

1186. 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.

1187. TD Bank owed D3 a duty of care because it knew or had reason to know that D3 was placing trust and confidence in her and relying on it to inform them.

1188. TD Bank breached its duty to D3 by making false representations, through Spinosa, Kerstetter, and Caretsky, with the intention that D3 rely on them.

1189. D3 justifiably relied upon TD Bank's, through Spinosa's, Kerstetter's, and Caretsky's, representations to its detriment.

1190. As a direct and proximate result of TD Bank's representations, made through Spinosa, Kerstetter, and Caretsky D3 has sustained damages.

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

~~COUNT LXVI - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY~~  
**COUNT 148 - NEGLIGENT MISREPRESENTATION**  
**(against Frank Spinosa George G. Levin)**

1191. Plaintiff incorporates the allegations contained in paragraphs 1 through 107/121 as if restated herein.

1192. This is a claim for negligent misrepresentation.

1193. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1194. 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.

1195. When making the false statements and representations, Levin either knew or reasonably should have known that they were false.

1196. Levin owed D3 a duty of care because he knew or had reason to know that D3 was placing trust and confidence in him and relying on him to inform them.

1197. Levin breached his duty to D3 by making false representations with the intention that D3 rely on them.

1198. D3 justifiably relied upon Levin's representations to its detriment.

1199. As a direct and proximate result of Levin's false statements, D3 has sustained damages.

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

**COUNT 149 - NEGLIGENT MISREPRESENTATION**  
**(against Frank Preve)**

1200. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1201. This is a claim for negligent misrepresentation.

1202. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1203. 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.

1204. When making the false statements and representations, Preve either knew or reasonably should have known that they were false.

1205. Preve owed D3 a duty of care because he knew or had reason to know that D3 was placing trust and confidence in him and relying on him to inform them.

1206. Preve breached his duty to D3 by making false representations with the intention that D3 rely on them.

1207. D3 justifiably relied upon Preve's representations to its detriment.

1208. As a direct and proximate result of Preve's false statements, D3 has sustained damages.

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

**COUNT 150 - NEGLIGENT MISREPRESENTATION**  
**(against Banyon Income Fund, LP, and Banyon USVI, LLC)**

1209. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1210. This is a claim for negligent misrepresentation.

1211. At all times material hereto, Levin was acting in the scope of his employment as the chief executive officer of Banyon USVI and BIF.

1212. 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.

1213. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1214. 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.

1215. 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.

1216. Banyon USVI and BIF owed D3 a duty of care because it knew or had reason to know that D3 was placing trust and confidence in it and relying on it to inform them.

1217. Banyon USVI and BIF breached its duty to D3 by making false representations, through Levin and Preve, with the intention that D3 rely on them.

1218. D3 justifiably relied upon Banyon USVI's and BIF's, through Levin's and Preve's, representations to its detriment.

1219. As a direct and proximate result of Banyon USVI's and BIF's representations, made through Levin and Preve D3 has sustained damages.

WHEREFORE, D3 CAPITAL CLUB, 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 151 - NEGLIGENT MISREPRESENTATION**  
**(against Michael Szfranski)**

1220. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1221. This is a claim for negligent misrepresentation.

1222. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1223. 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.

1224. When making the false statements and representations, Szfranski either knew or reasonably should have known that they were false.

1225. Szfranski owed D3 a duty of care because he knew or had reason to know that, as an independent verifier, D3 was placing trust and confidence in him and relying on him to inform them.

1226. Szfranski breached his duty to D3 by making false representations with the intention that D3 rely on them.

1227. D3 justifiably relied upon Szfranski's representations to its detriment.

1228. As a direct and proximate result of Szfranski's false statements, D3 has sustained damages.

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

**COUNT 152 - NEGLIGENT MISREPRESENTATION**  
**(against Onyx Capital Management)**

1229. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1230. This is a claim for negligent misrepresentation.

1231. At all times material hereto, Szfranski was acting in the scope of his employment as president of Onyx.

1232. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1233. 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.

1234. When making the false statements and representations, Onyx, through Szfranski, either knew or reasonably should have known that they were false.

1235. Onyx owed D3 a duty of care because it knew or had reason to know that, as an independent verifier, D3 was placing trust and confidence in it and relying on Onyx to inform it.

1236. Onyx breached its duty to D3 by making false representations, through Szfranski, with the intention that D3 rely on them.

1237. D3 justifiably relied upon Onyx's, through Szfranski's, representations to its detriment.

1238. As a direct and proximate result of Onyx's representations, made through Szfranski, D3 has sustained damages.

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

**COUNT 153 - NEGLIGENT MISREPRESENTATION**  
**(against Berenfeld Spritzer Shechter Sheer, LLP)**

1239. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1240. This is a claim for negligent misrepresentation.

1241. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1242. In furtherance of the Ponzi scheme, Berenfeld made material false statements and representations including, but not limited to, providing false auditing documents relating to Banyon and RRA.

1243. When making the false statements and representations, Berenfeld either knew or reasonably should have known that they were false.

1244. Berenfeld owed D3 a duty of care because it knew or had reason to know that, as an independent auditor, D3 was placing trust and confidence in it and relying on it to inform them.

1245. Berenfeld breached its duty to D3 by making false representations with the intention that D3 rely on them.

1246. D3 justifiably relied upon Berenfeld's representations to its detriment.

1247. As a direct and proximate result of Berenfeld's false statements, D3 has sustained damages.

WHEREFORE, D3 CAPITAL CLUB, 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 154 - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**  
**(against Frank Spinosa)**

1248. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1249. This is a claim for aiding and abetting breach of fiduciary duty.

1250. Spinosa was aware that as trustee of the attorney trust account where D3's purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to D3. Spinosa was also aware that as trustee of the attorney trust account containing the funds to which D3 had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to D3.



1251. Spinosa was aware that Rothstein was financially exploiting the investors to their detriment, and was aware that Rothstein was breaching his fiduciary obligations to D3.

1252. Spinosa actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of D3 and his breaches of fiduciary duty.

1253. Spinosa's actions have directly caused injury and damage to D3.

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

**COUNT LXVH155 - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**  
**(against Jennifer Kerstetter)**

1254. Plaintiff incorporates the allegations contained in paragraphs 1 through 407121 as if restated herein.

1255. This is a claim for aiding and abetting breach of fiduciary duty.

1256. Kerstetter was aware that as trustee of the attorney trust account where D3's purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to D3. Kerstetter was also aware that as trustee of the attorney trust account containing the funds to which D3 had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to D3.

1257. Kerstetter was aware that Rothstein was financially exploiting the investors to their detriment, and was aware that Rothstein was breaching his fiduciary obligations to D3.

1258. Kerstetter actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of D3 and his breaches of fiduciary duty.

1259. Kerstetter's actions have directly caused injury and damage to D3.

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

**COUNT LXVIII156 - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**  
**(against Roseanne Caretsky)**

1260. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1261. This is a claim for aiding and abetting breach of fiduciary duty.

1262. Caretsky was aware that as trustee of the attorney trust account where D3's purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to D3. Caretsky was also aware that as trustee of the attorney trust account containing the funds to which D3 had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to D3.

1263. Caretsky was aware that Rothstein was financially exploiting the investors to their detriment, and was aware that Rothstein was breaching his fiduciary obligations to D3.

1264. Caretsky actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of D3 and his breaches of fiduciary duty.

1265. Caretsky's actions have directly caused injury and damage to D3.

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

**COUNT LXIX157 - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**  
**(against TD Bank, N.A.)**

1266. Plaintiff incorporates the allegations contained in paragraphs 1 through 107121 as if restated herein.

1267. This is a claim for aiding and abetting breach of fiduciary duty.

1268. At all times material hereto, Spinosa was acting in the scope of his employment as Regional Vice President of TD Bank.

1269. At all times material hereto, Kerstetter was acting in the scope of her employment as an assistant manager of TD Bank.

1270. 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.

1271. TD Bank was aware that as trustee of the attorney trust account where D3's purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to D3. TD Bank was also aware that as trustee of the attorney trust account containing the funds to which D3 had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to D3.

1272. TD Bank was aware that Rothstein was financially exploiting the investors to their detriment, and was aware that Rothstein was breaching his fiduciary obligations to D3.

1273. TD Bank, through its employees acting within the scope of their employment, actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of D3 and his breaches of fiduciary duty.

1274. TD Bank's actions have directly caused injury and damage to D3.

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

**COUNT LXX158 - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**  
**(against Debra Villegas)**

1275. Plaintiff incorporates the allegations contained in paragraphs 1 through 407121 as if restated herein.

1276. This is a claim for aiding and abetting breach of fiduciary duty.

1277. Villegas was aware that as trustee of the attorney trust account where D3's purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to D3. Villegas was also aware that as trustee of the attorney trust account containing the funds to which D3 had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to D3.

1278. Villegas was aware that Rothstein was financially exploiting the investors to their detriment, and was aware that Rothstein was breaching his fiduciary obligations to D3.

1279. Villegas actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of D3 and his breaches of fiduciary duty.

1280. Villegas's actions have directly caused injury and damage to D3.

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

**COUNT LXXI159 - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**  
**(against Irene Stay)**

1281. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1282. This is a claim for aiding and abetting breach of fiduciary duty.

1283. Stay was aware that as trustee of the attorney trust account where D3's purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to D3. Stay was also aware that as trustee of the attorney trust account containing the funds to which D3 had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to D3.

1284. Stay was aware that Rothstein was financially exploiting the investors to their detriment, and was aware that Rothstein was breaching his fiduciary obligations to D3.

1285. Stay actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of D3 and his breaches of fiduciary duty.

1286. Stay's actions have directly caused injury and damage to D3.

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

**COUNT 160 - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**  
**(against George G. Levin)**

1287. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1288. This is a claim for aiding and abetting breach of fiduciary duty.

1289. Levin was aware that as trustee of the attorney trust accounts where D3's purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to D3. Levin was also aware that as trustee of the attorney trust accounts containing the funds to which D3 had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to D3.

1290. Levin was aware that Rothstein was financially exploiting the investors to their detriment, and was aware that Rothstein was breaching his fiduciary obligations to D3.

1291. Levin actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of D3 and his breaches of fiduciary duty.

1292. Levin's actions have directly caused injury and damage to D3.

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

**COUNT 161 - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**  
**(against Frank Preve)**

1293. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1294. This is a claim for aiding and abetting breach of fiduciary duty.

1295. Preve was aware that as trustee of the attorney trust accounts where D3's purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to D3. Preve was also aware that as trustee of the attorney trust accounts containing the funds to which D3 had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to D3.

1296. Preve was aware that Rothstein was financially exploiting the investors to their detriment, and was aware that Rothstein was breaching his fiduciary obligations to D3.

1297. Preve actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of D3 and his breaches of fiduciary duty.

1298. Preve's actions have directly caused injury and damage to D3.

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

**COUNT 162 - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**  
**(against Banyon Income Fund, LP, and Banyon USVI, LLC)**

1299. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1300. This is a claim for aiding and abetting breach of fiduciary duty.

1301. At all times material hereto, Levin was acting in the scope of his employment as the chief executive officer of USVI and BIF.

1302. 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.

1303. Banyon USVI and BIF were aware that as trustee of the attorney trust accounts where D3's purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to D3. Banyon USVI and BIF were also aware that as trustee of the attorney trust accounts containing the funds to which D3 had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to D3.

1304. Banyon USVI and BIF were aware that Rothstein was financially exploiting the investors to their detriment, and were aware that Rothstein was breaching his fiduciary obligations to D3.

1305. Banyon USVI and BIF, through its employees acting within the scope of their employment, actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of D3 and his breaches of fiduciary duty.

1306. Banyon USVI's and BIF's actions have directly caused injury and damage to D3.

WHEREFORE, D3 CAPITAL CLUB, 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 163 - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**  
**(against Michael Szfranski)**

1307. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1308. This is a claim for aiding and abetting breach of fiduciary duty.

1309. Szfranski was aware that as trustee of the attorney trust accounts where the D3's purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to D3. Szfranski was also aware that as trustee of the attorney trust accounts containing the funds to which D3 had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to D3.

1310. Szfranski was aware that Rothstein was financially exploiting the investors to their detriment, and was aware that Rothstein was breaching his fiduciary obligations to D3.



1311. Szfranski actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of D3 and his breaches of fiduciary duty.

1312. Szfranski's actions have directly caused injury and damage to D3.

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

**COUNT 164 - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**  
**(against Onyx Capital Management)**

1313. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1314. This is a claim for aiding and abetting breach of fiduciary duty.

1315. At all times material hereto, Szfranski was acting in the scope of his employment as president of Onyx.

1316. Onyx was aware that as trustee of the attorney trust accounts where D3's purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to D3. Onyx was also aware that as trustee of the attorney trust accounts containing the funds to which D3 had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to D3.

1317. Onyx was aware that Rothstein was financially exploiting the investors to their detriment, and was aware that Rothstein was breaching his fiduciary obligations to D3.

1318. Onyx, through its employees acting within the scope of their employment, actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of D3 and his breaches of fiduciary duty.

1319. Onyx's actions have directly caused injury and damage to D3.

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

**COUNT 165 - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**  
**(against Berenfeld Spritzer Shechter Sheer, LLP)**

1320. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1321. This is a claim for aiding and abetting breach of fiduciary duty.

1322. Berenfeld was aware that as trustee of the attorney trust accounts where D3's purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to D3. Berenfeld was also aware that as trustee of the attorney trust accounts containing the funds to which D3 had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to D3.

1323. Berenfeld was aware that Rothstein was financially exploiting the investors to their detriment, and was aware that Rothstein was breaching his fiduciary obligations to D3.

1324. Berenfeld actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of D3 and his breaches of fiduciary duty.

1325. Berenfeld's actions have directly caused injury and damage to D3.

WHEREFORE, D3 CAPITAL CLUB, 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 166 – BREACH OF FIDUCIARY DUTY**  
**(against Scott Rothstein)**

1326. Plaintiff incorporates the allegations contained in paragraphs 1 through 407121 as if restated herein.

1327. This is a claim for breach of fiduciary duty.

1328. As trustee of the attorney trust account where D3's purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to D3. Additionally, as trustee of the attorney trust account containing the funds to which D3 had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to D3.

1329. Rothstein breached his fiduciary duties by raiding the RRA trust accounts for his personal use.

1330. Rothstein's actions have directly caused injury and damages to D3.

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

**COUNT LXXH167 – BREACH OF FIDUCIARY DUTY**  
**(against TD Bank, N.A.)**

1331. Plaintiff incorporates the allegations contained in paragraphs 1 through 407121 as if restated herein.

1332. This is a claim for breach of fiduciary duty.

1333. At all times material hereto, Spinosa was acting in the scope of his employment as Regional Vice President of TD Bank.

1334. At all times material hereto, Kerstetter was acting in the scope of her employment as an assistant manager of TD Bank.

1335. 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.

1336. In Florida, a bank assumes a fiduciary duty with its customer under special circumstances where the bank knows or has reason to know that the customer is placing trust and confidence in the bank and is relying on the bank to so counsel and inform him. Under the circumstances outlined above, whereby TD Bank knew that D3 was relying on Spinosa's assurances to D3 of the precautions in place to prevent improper withdrawals from its account, TD Bank was a fiduciary of D3 and owed D3 the fiduciary duties of honesty, loyalty, and care. Additionally, where TD Bank knew that D3 was relying on Kerstetter's representations to D3 that the settlement trust accounts had been funded, TD Bank was a fiduciary of D3 and owed D3 the fiduciary duties of honesty, loyalty, and care. In addition, TD knew that D3 was relying on Caretsky's representations that the RRA trust accounts contained substantial funds, TD Bank was a fiduciary of D3 and owed D3 the fiduciary duties of honesty, loyalty, and care.

1337. TD Bank breached its fiduciary duties through the actions of its employees by either ignoring or actively assisting and providing substantial assistance to Rothstein in its financial exploitation of D3.

1338. TD Bank's actions have directly caused injury and damage to D3.

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

**COUNT LXXIII - AIDING AND ABETTING FRAUD**  
**COUNT 168 - BREACH OF FIDUCIARY DUTY**  
**(against Frank Spinoso George G. Levin)**

1339. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1340. This is a claim for breach of fiduciary duty.

1341. By holding himself out as a co-investor, Levin became a fiduciary of D3 and owed D3 the fiduciary duties of honesty, loyalty, and care.

1342. Levin breached his fiduciary duties by either ignoring or actively assisting and providing substantial assistance to Rothstein in his financial exploitation of D3.

1343. Levin's actions have directly caused injury and damage D3.

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

**COUNT 169 - BREACH OF FIDUCIARY DUTY**  
**(against Frank Preve)**

1344. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1345. This is a claim for breach of fiduciary duty.

1346. By holding himself out as a co-investor, Preve became a fiduciary of D3 and owed D3 the fiduciary duties of honesty, loyalty, and care.

1347. Preve breached his fiduciary duties by either ignoring or actively assisting and providing substantial assistance to Rothstein in his financial exploitation of D3.

1348. Preve's actions have directly caused injury and damage to D3.

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

**COUNT 170 - BREACH OF FIDUCIARY DUTY**  
**(against Banyon Income Fund, LP, and Banyon USVI, LLC)**

1349. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1350. This is a claim for breach of fiduciary duty.

1351. At all times material hereto, Levin was acting in the scope of his employment as the chief executive officer of Banyon USVI and BIF.

1352. 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.

1353. Banyon USVI and BIF were fiduciaries of D3 and owed it the fiduciary duties of honesty, loyalty, and care.

1354. Banyon USVI and BIF breached their fiduciary duties through the actions of its employees by either ignoring or actively assisting and providing substantial assistance to Rothstein in its financial exploitation of D3.

1355. Banyon USVI's and BIF's actions have directly caused injury and damage to D3.

WHEREFORE, D3 CAPITAL CLUB, 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 171 - BREACH OF FIDUCIARY DUTY**  
**(against Michael Szfranski)**

1356. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1357. This is a claim for breach of fiduciary duty.

1358. Szfranski, as an independent verifier, was a fiduciary of D3 and owed it the fiduciary duties of honesty, loyalty, and care.

1359. Szfranski breached his fiduciary duties by either ignoring or actively assisting and providing substantial assistance to Rothstein in his financial exploitation of D3.

1360. Szfranski's actions have directly caused injury and damage to D3.

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

**COUNT 172 - BREACH OF FIDUCIARY DUTY**  
**(against Onyx Capital Management)**

1361. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1362. This is a claim for breach of fiduciary duty.

1363. At all times material hereto, Szfranski was acting in the scope of his employment as president of Onyx.

1364. Onyx, as an independent verifier, was a fiduciary of D3 and owed it the fiduciary duties of honesty, loyalty, and care.

1365. Onyx breached its fiduciary duties through the actions of its employees by either ignoring or actively assisting and providing substantial assistance to Rothstein in its financial exploitation of D3.

1366. Onyx's actions have directly caused injury and damage to D3.

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

**COUNT 173 - BREACH OF FIDUCIARY DUTY**  
**(against Berenfeld Spritzer Shechter Sheer, LLP)**

1367. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1368. This is a claim for breach of fiduciary duty.

1369. Berenfeld, as an independent auditor, was a fiduciary of D3 and owed them the fiduciary duties of honesty, loyalty, and care.

1370. Berenfeld breached its fiduciary duties by either ignoring or actively assisting and providing substantial assistance to Rothstein in his financial exploitation of D3.

1371. Berenfeld's actions have directly caused injury and damage to D3.

WHEREFORE, D3 CAPITAL CLUB, 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.