

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

1677. As described more fully above, the deals in which BFMC invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1678. Spinosa knew of Rothstein's fraudulent scheme.

1679. Spinosa actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of BFMC through fraud. Spinosa's assistance included, but was not limited to, supplying BFMC with false bank account statements and misleading and untrue written assurances concerning the settlement accounts.

1680. Spinosa's actions have directly caused injury and damage to BFMC.

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

COUNT C218 - AIDING AND ABETTING FRAUD
(against TD Bank, N.A.)

1681. Plaintiff incorporates the allegations contained in paragraphs 1 through 107121 as if restated herein.

1682. This is a claim for aiding and abetting fraud.

1683. 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.

1684. At all times material hereto Spinosa was acting in the scope of his employment for TD Bank.

1685. TD Bank knew of Rothstein's fraudulent scheme.

1686. TD Bank, through Spinosa, actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of BFMC through fraud. TD Bank's assistance

included, but was not limited to, providing false documentation to BFMC that the RRA trust accounts contained substantial funds when they did not and supplying investors with misleading and untrue written assurances concerning the settlement accounts.

1687. TD Bank's actions have directly caused injury and damage to BFMC.

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

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COUNT CH219 - AIDING AND ABETTING FRAUD
(against David Boden)

1688. Plaintiff incorporates the allegations contained in paragraphs 1 through 107121 as if restated herein.

1689. This is a claim for aiding and abetting fraud.

1690. As described more fully above, the deals in which BFMC invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1691. Boden knew of Rothstein's fraudulent scheme.

1692. Boden actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of BFMC through fraud. Boden's assistance included, but was not limited to, making assurances to BFMC that there were safeguards in place to protect its deposits, all the time knowing that no such safeguards existed.

1693. Boden's actions have directly caused injury and damage to BFMC.

WHEREFORE, BFMC INVESTMENT, LLC, requests judgment against DAVID BODEN for compensatory damages, together with court costs and such further relief as the Court deems proper.

COUNT CH220 - AIDING AND ABETTING FRAUD
(against Debra Villegas)

1694. Plaintiff incorporates the allegations contained in paragraphs 1 through 107121 as if restated herein.

1695. This is a claim for aiding and abetting fraud.

1696. As described more fully above, the deals in which BFMC invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1697. Villegas knew of Rothstein's fraudulent scheme.

1698. Villegas actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of all of the investor victims of Rothstein's Ponzi scheme, including BFMC, through fraud by furnishing false bank account statements and wire transfers to investors in order to induce them to invest despite having actual or constructive knowledge that the investments were a Ponzi scheme.

1699. Villegas's actions have directly caused injury and damage to BFMC.

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

COUNT CH221 - AIDING AND ABETTING FRAUD
(against Andrew Barnett Irene Stay)

1700. Plaintiff incorporates the allegations contained in paragraphs 1 through 107121 as if restated herein.

1701. This is a claim for aiding and abetting fraud.

1702. As described more fully above, the deals in which BFMC invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1703. Stay knew of Rothstein's fraudulent scheme.

1704. Stay actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of all of the investor victims of Rothstein's Ponzi scheme, including BFMC, through fraud by furnishing false bank account statements and wire transfers to investors in order to induce them to invest despite having actual or constructive knowledge that the investments were a Ponzi scheme.

1705. Stay's actions have directly caused injury and damage to BFMC.

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

COUNT 222 - AIDING AND ABETTING FRAUD
(against Andrew Barnett)

1706. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1707. This is a claim for aiding and abetting fraud.

1708. As described more fully above, the deals in which BFMC invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1709. Barnett knew of Rothstein's fraudulent scheme.

1710. Barnett actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of all of the investor victims of Rothstein's Ponzi scheme, including BFMC, through fraud. Barnett's assistance included, but was not limited to, supplying BFMC with false information about the identity of the defendant who was purportedly funding the settlement despite having actual or constructive knowledge that the settlements were part of a Ponzi scheme.

1711. Barnett's actions have directly caused injury and damage to BFMC.

WHEREFORE, BFMC INVESTMENT, LLC, requests judgment against ANDREW BARNETT for compensatory damages, together with court costs and such further relief as the Court deems proper.

COUNT CIV223 - CONVERSION
(against Scott Rothstein)

1712. Plaintiff incorporates the allegations contained in paragraphs 1 through 407121 as if restated herein.

1713. This is a claim for conversion.

1714. As described more fully above, the deals in which BFMC invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of BFMC when he absconded with BFMC's \$2,400,000.00 in funds.

1715. Rothstein's conversion of BFMC's funds has permanently deprived BFMC of its property.

1716. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by BFMC to make demand upon him for the return of its property would be futile.

1717. Rothstein's actions have directly caused injury and damages to BFMC.

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

COUNT CIV224 - AIDING AND ABETTING CONVERSION
(against Frank Spinosa)

1718. Plaintiff incorporates the allegations contained in paragraphs 1 through 407121 as if restated herein.

1719. This is a claim for aiding and abetting conversion.

1720. As described more fully above, the deals in which BFMC invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of BFMC when he absconded with D3's \$2,400,000.00 in funds.

1721. Rothstein's conversion of BFMC's funds has permanently deprived BFMC of its property.

1722. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by BFMC to make demand upon him for the return of its property would be futile.

1723. Spinosa actively assisted, and provided substantial assistance, to Rothstein in either temporarily or permanently depriving BFMC of its property by deceiving BFMC into turning its property over to Rothstein under false pretenses.

1724. Spinosa's actions have directly caused injury and damages to BFMC.

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

COUNT CV1225 - AIDING AND ABETTING CONVERSION
(against TD Bank, N.A.)

1725. Plaintiff incorporates the allegations contained in paragraphs 1 through 1721 as if restated herein.

1726. This is a claim for aiding and abetting conversion.

1727. As described more fully above, the deals in which BFMC invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In

furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of BFMC when he absconded with BFMC \$2,400,000.00 in funds.

1728. Rothstein's conversion of BFMC's funds has permanently deprived BFMC of its property.

1729. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by BFMC to make demand upon him for the return of its property would be futile.

1730. At all times material hereto Spinosa was acting in the scope of his employment for TD Bank.

1731. TD Bank, through its employees while acting within the scope of their employment, actively assisted, and provided substantial assistance, to Rothstein in either temporarily or permanently depriving BFMC of its property by allowing Rothstein to make unauthorized withdrawals of its funds and by deceiving BFMC into turning its property over to Rothstein under false pretenses.

1732. TD Bank's actions have directly caused injury and damages to BFMC.

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

COUNT CVH226 - AIDING AND ABETTING CONVERSION
(against David Boden)

1733. Plaintiff incorporates the allegations contained in paragraphs 1 through 107121 as if restated herein.

1734. This is a claim for aiding and abetting conversion.

1735. As described more fully above, the deals in which BFMC invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of D3 when he absconded with BFMC's \$2,400,000.00 in funds.

1736. Rothstein's conversion of BFMC's funds has permanently deprived BFMC of its property.

1737. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by BFMC to make demand upon him for the return of its property would be futile.

1738. Boden actively assisted, and provided substantial assistance, to Rothstein in either temporarily or permanently depriving BFMC of its property by deceiving BFMC into turning its property over to Rothstein under false pretenses.

1739. Boden's actions have directly caused injury and damages to BFMC.

WHEREFORE, BFMC INVESTMENT, LLC, requests judgment against DAVID BODEN for compensatory damages, together with court costs and such further relief as the Court deems proper.

COUNT CVIII227 - AIDING AND ABETTING CONVERSION
(against Debra Villegas)

1740. Plaintiff incorporates the allegations contained in paragraphs 1 through 407121 as if restated herein.

1741. This is a claim for aiding and abetting conversion.

1742. As described more fully above, the deals in which BFMC invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In

furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of D3 when he absconded with BFMC's \$2,400,000.00 in funds.

1743. Rothstein's conversion of BFMC's funds has permanently deprived BFMC of its property.

1744. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by BFMC to make demand upon him for the return of its property would be futile.

1745. Villegas actively assisted, and provided substantial assistance, to Rothstein in either temporarily or permanently depriving BFMC of its property by deceiving BFMC into turning its property over to Rothstein under false pretenses.

1746. Villegas's actions have directly caused injury and damages to BFMC.

1747. WHEREFORE, BFMC INVESTMENT, LLC, requests judgment against DEBRA VILLEGAS for compensatory damages, together with court costs and such further relief as the Court deems proper.

COUNT SIX228 - AIDING AND ABETTING CONVERSION
(against Andrew Barnett Irene Stay)

1748. Plaintiff incorporates the allegations contained in paragraphs 1 through 107121 as if restated herein.

1749. This is a claim for aiding and abetting conversion.

1750. As described more fully above, the deals in which BFMC invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of D3 when he absconded with BFMC's \$2,400,000.00 in funds.

1751. Rothstein's conversion of BFMC's funds has permanently deprived BFMC of its property.

1752. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by BFMC to make demand upon him for the return of its property would be futile.

1753. Stay actively assisted, and provided substantial assistance, to Rothstein in either temporarily or permanently depriving BFMC of its property by deceiving BFMC into turning its property over to Rothstein under false pretenses.

1754. Stay's actions have directly caused injury and damages to BFMC.

1755. WHEREFORE, BFMC INVESTMENT, LLC, requests judgment against IRENE STAY for compensatory damages, together with court costs and such further relief as the Court deems proper.

COUNT 229 - AIDING AND ABETTING CONVERSION
(against Andrew Barnett)

1756. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1757. This is a claim for aiding and abetting conversion.

1758. As described more fully above, the deals in which BFMC invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of BFMC when he absconded with BFMC's \$2,400,000.00 in funds.

1759. Rothstein's conversion of BFMC's funds has permanently deprived BFMC of its property.

1760. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by BFMC to make demand upon him for the return of its property would be futile.

1761. Barnett actively assisted, and provided substantial assistance, to Rothstein in either temporarily or permanently depriving BFMC of its property by deceiving BFMC into turning its property over to Rothstein under false pretenses.

1762. Barnett's actions have directly caused injury and damages to BFMC.

WHEREFORE, BFMC INVESTMENT, LLC, requests judgment against ANDREW BARNETT for compensatory damages, together with court costs and such further relief as the Court deems proper.

COUNT EX230 - NEGLIGENT SUPERVISION
(against TD Bank, N.A.)

1763. Plaintiff incorporates the allegations contained in paragraphs 1 through 107121 as if restated herein.

1764. This is a claim for negligent supervision.

1765. As described more fully above, Spinosa participated, with actual or constructive knowledge, in Rothstein's Ponzi scheme. Spinosa's participation included, but was not limited to, providing BFMC with false information concerning the amounts deposited in RRA trust accounts and supplying investors with misleading and untrue written assurances concerning the settlement accounts.

1766. In reliance on Spinosa's representations, on October 15, 2009, BFMC wired \$2,400,000.00 to RRA's TD Bank account.

1767. BFMC's reliance on Spinosa's representations was reasonable and justified.

1768. TD Bank owed a duty to BFMC to ensure that its employees were not actively defrauding depositors by making false representations in order to trick them into making unsafe deposits into trust accounts that they knew or reasonably should have known were being raided by Rothstein.

1769. TD Bank breached its duties to BFMC because it had actual or constructive notice that its assistant manager and assistant vice president and branch manager were either fraudulently or negligently participating in a scheme which resulted in the unauthorized raiding of investors' deposits, and acted unreasonably by failing to investigate or take corrective action.

1770. As a direct and proximate result of TD Bank's failure to investigate or take corrective action against Spinosa, BFMC has sustained damages.

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

COUNT CX1231 - CIVIL CONSPIRACY
(against Scott Rothstein)

1771. Plaintiffs incorporate the allegations contained in paragraphs 1 through 407121 as if restated herein.

1772. This is a claim for civil conspiracy.

1773. As described more fully above, Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, and Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld knowingly acted in concert to market and implement the illegal Ponzi scheme. In doing so, Rothstein acted with full knowledge and awareness that the activities of his and the other co-conspirators were designed to give the false impression of the existence of legitimate

investment opportunities when in fact the investments were no more than his own blatant fabrications.

1774. Rothstein, Spinoso, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, and Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld acted in their respective roles, as described *supra*, according to a predetermined and commonly understood and accepted plan of action all for the purpose of obtaining substantial funds from investors, including Plaintiffs.

1775. The overt acts of Rothstein, Spinoso, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, and Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld were contrary to law, as stated above.

1776. There was a meeting of the minds between and among Rothstein, Spinoso, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld, and other individuals and entities, both known and unknown, to commit the unlawful acts alleged herein. This conspiracy to commit these unlawful overt acts proximately caused and continues to cause Plaintiffs damages.

1777. Rothstein and his co-conspirators' conduct has directly caused injury and damage to Plaintiffs.

WHEREFORE, RAZORBACK FUNDING, LLC.; D3 CAPITAL CLUB, LLC.; BFMC INVESTMENT INVESTMENT, LLC.; LINDA VON ALLMEN; as Trustee of the VON ALLMEN DYNASTY TRUST.; D&L PARTNERS, LP.; DAVID VON ALLMEN, as Trustee of the DAVID VON ALLMEN LIVING TRUST; ANN VON ALLMEN, as Trustee of the ANN VON ALLMEN LIVING TRUST; 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 CXH232 - CIVIL CONSPIRACY
(against TD Bank, N.A.)

1778. Plaintiffs incorporate the allegations contained in paragraphs 1 through 107121 as if restated herein.

1779. This is a claim for civil conspiracy.

1780. At all times material hereto, Spinosa was acting in the scope of his employment as Regional Vice President of T.D. Bank.

1781. At all times material hereto, Kerstetter was acting in the scope of her employment as an assistant manager of T.D. Bank.

1782. 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.

1783. As described more fully above, TD Bank, acting through its employees, and Rothstein, Boden, Villegas, Barnett, and Stay, Preve, Szfranski, Levin, Onyx, Banyon USVI, BIF, and Berenfeld knowingly acted in concert to market and implement the illegal Ponzi scheme. In doing so, TD Bank acted with full knowledge and awareness that the activities of Rothstein and the other co-conspirators were designed to give the false impression of the existence of legitimate investment opportunities when in fact the investments were no more than blatant fabrications by Rothstein.

1784. TD, through its employees, and Rothstein, Boden, Villegas, Barnett, and Stay, Preve, Szfranski, Levin, Onyx, Banyon USVI, BIF, and Berenfeld acted in their respective roles.

as described *supra*, according to a predetermined and commonly understood and accepted plan of action all for the purpose of obtaining substantial funds from investors, including Plaintiffs.

1785. The overt acts of TD Bank, Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, Szfranski, Levin, Onyx, Banyon USVI, BIF, and Preve Berenfeld were contrary to law, as stated above.

1786. There was a meeting of the minds between and among TD Bank, through its employees, ~~and~~ Rothstein, Boden, Villegas, Barnett, Stay, Preve, Szfranski, Levin, Onyx, Banyon USVI, BIF, and Berenfeld, and other individuals and entities, both known and unknown, to commit the unlawful acts alleged herein. This conspiracy to commit these unlawful overt acts proximately caused and continues to cause Plaintiffs damages.

1787. TD Bank's and its co-conspirators' conduct has directly caused injury and damage to Plaintiffs.

WHEREFORE, RAZORBACK FUNDING, LLC.; D3 CAPITAL CLUB, LLC.; BFMC INVESTMENT INVESTMENT, LLC.; LINDA VON ALLMEN, as Trustee of the VON ALLMEN DYNASTY TRUST.; D&L PARTNERS, LP.; DAVID VON ALLMEN, as Trustee of the DAVID VON ALLMEN LIVING TRUST; ANN VON ALLMEN, as Trustee of the ANN VON ALLMEN LIVING TRUST; 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 EXH233 - CIVIL CONSPIRACY
(against Frank Spinosa)

1788. Plaintiffs incorporate the allegations contained in paragraphs 1 through 407121 as if restated herein.

1789. This is a claim for civil conspiracy.

1790. As described more fully above, Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, and Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld knowingly acted in concert to market and implement the illegal Ponzi scheme. In doing so, Spinosa acted with full knowledge and awareness that the activities of Rothstein and the other co-conspirators were designed to give the false impression of the existence of legitimate investment opportunities when in fact the investments were no more than blatant fabrications by Rothstein.

1791. Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, and Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld acted in their respective roles, as described *supra*, according to a predetermined and commonly understood and accepted plan of action all for the purpose of obtaining substantial funds from investors, including Plaintiffs.

1792. The overt acts of Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, and Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld were contrary to law, as stated above.

1793. There was a meeting of the minds between and among Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld, and other individuals and entities, both known and unknown, to commit the unlawful acts alleged herein. This conspiracy to commit these unlawful overt acts proximately caused and continues to cause Plaintiffs damages.

1794. Spinosa's and his co-conspirators' conduct has directly caused injury and damage to Plaintiffs.

WHEREFORE, RAZORBACK FUNDING, LLC.; D3 CAPITAL CLUB, LLC.; BFMC INVESTMENT INVESTMENT, LLC.; LINDA VON ALLMEN, as Trustee of the VON ALLMEN DYNASTY TRUST.; D&L PARTNERS, LP.; DAVID VON ALLMEN, as Trustee of the DAVID VON ALLMEN LIVING TRUST; ANN VON ALLMEN, as Trustee of the ANN VON ALLMEN LIVING TRUST; and DEAN KRETSCHMAR request judgment against FRANK SPINOSA for compensatory damages, together with court costs and such further relief as the Court deems proper.

COUNT CXIV-234 - CIVIL CONSPIRACY
(against Jennifer Kerstetter)

1795. Plaintiffs incorporate the allegations contained in paragraphs 1 through 407121 as if restated herein.

1796. This is a claim for civil conspiracy.

1797. As described more fully above, Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, and Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld knowingly acted in concert to market and implement the illegal Ponzi scheme. In doing so, Kerstetter acted with full knowledge and awareness that the activities of Rothstein and the other co-conspirators were designed to give the false impression of the existence of legitimate investment opportunities when in fact the investments were no more than blatant fabrications by Rothstein.

1798. Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, and Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld acted in their

respective roles, as described above *supra*, according to a predetermined and commonly understood and accepted plan of action all for the purpose of obtaining substantial funds from investors, including Plaintiffs.

1799. The overt acts of Rothstein, Spinoso, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, and Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld were contrary to law, as stated above.

1800. There was a meeting of the minds between and among Rothstein, Spinoso, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld, and other individuals and entities, both known and unknown, to commit the unlawful acts alleged herein. This conspiracy to commit these unlawful overt acts proximately caused and continues to cause Plaintiffs damages.

1801. Kerstetter's and her co-conspirators' conduct has directly caused injury and damage to Plaintiffs.

WHEREFORE, RAZORBACK FUNDING, LLC.; D3 CAPITAL CLUB, LLC.; BFMC INVESTMENT INVESTMENT, LLC.; LINDA VON ALLMEN, as Trustee of the VON ALLMEN DYNASTY TRUST.; D&L PARTNERS, LP.; DAVID VON ALLMEN, as Trustee of the DAVID VON ALLMEN LIVING TRUST; ANN VON ALLMEN, as Trustee of the ANN VON ALLMEN LIVING TRUST; 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 CXV235 - CIVIL CONSPIRACY
(against Roseanne Caretsky)

1802. Plaintiffs incorporate the allegations contained in paragraphs 1 through 407121 as if restated herein.

1803. This is a claim for civil conspiracy.

1804. As described more fully above, Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, and Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld knowingly acted in concert to market and implement the illegal Ponzi scheme. In doing so, Caretsky acted with full knowledge and awareness that the activities of Rothstein and the other co-conspirators were designed to give the false impression of the existence of legitimate investment opportunities when in fact the investments were no more than blatant fabrications by Rothstein.

1805. Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, and Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld acted in their respective roles, as described *supra*, according to a predetermined and commonly understood and accepted plan of action all for the purpose of obtaining substantial funds from investors, including Plaintiffs.

1806. The overt acts of Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, and Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld were contrary to law, as stated above.

1807. There was a meeting of the minds between and among Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld, and other individuals and entities, both known and unknown,

to commit the unlawful acts alleged herein. This conspiracy to commit these unlawful overt acts proximately caused and continues to cause Plaintiffs damages.

1808. Caretsky's and her co-conspirators' conduct has directly caused injury and damage to Plaintiffs.

WHEREFORE, RAZORBACK FUNDING, LLC.; D3 CAPITAL CLUB, LLC.; BPMC INVESTMENT INVESTMENT, LLC.; LINDA VON ALLMEN, as Trustee of the VON ALLMEN DYNASTY TRUST.; D&L PARTNERS, LP.; DAVID VON ALLMEN, as Trustee of the DAVID VON ALLMEN LIVING TRUST; ANN VON ALLMEN, as Trustee of the ANN VON ALLMEN LIVING TRUST; 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 CXV1236 - CIVIL CONSPIRACY
(against David Boden)

1809. Plaintiffs incorporate the allegations contained in paragraphs 1 through 407121 as if restated herein.

1810. This is a claim for civil conspiracy.

1811. As described more fully above, Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, ~~and~~ Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld knowingly acted in concert to market and implement the illegal Ponzi scheme. In doing so, Boden acted with full knowledge and awareness that the activities of Rothstein and the other co-conspirators were designed to give the false impression of the existence of legitimate investment opportunities when in fact the investments were no more than blatant fabrications by Rothstein.

1812. Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, and Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld acted in their respective roles, as described *supra*, according to a predetermined and commonly understood and accepted plan of action all for the purpose of obtaining substantial funds from investors, including Plaintiffs.

1813. The overt acts of Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, and Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld were contrary to law, as stated above.

1814. There was a meeting of the minds between and among Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld, and other individuals and entities, both known and unknown, to commit the unlawful acts alleged herein. This conspiracy to commit these unlawful overt acts proximately caused and continues to cause Plaintiffs damages.

1815. Boden's and his co-conspirators' conduct has directly caused injury and damage to Plaintiffs.

WHEREFORE, RAZORBACK FUNDING, LLC.; D3 CAPITAL CLUB, LLC.; BFMC INVESTMENT INVESTMENT, LLC.; LINDA VON ALLMEN, as Trustee of the VON ALLMEN DYNASTY TRUST.; D&L PARTNERS, LP.; DAVID VON ALLMEN, as Trustee of the DAVID VON ALLMEN LIVING TRUST; ANN VON ALLMEN, as Trustee of the ANN VON ALLMEN LIVING TRUST; and DEAN KRETSCHMAR request judgment against DAVID BODEN for compensatory damages, together with court costs and such further relief as the Court deems proper.

COUNT CXVH237 - CIVIL CONSPIRACY
(against Debra Villegas)

1816. Plaintiffs incorporate the allegations contained in paragraphs 1 through 107121 as if restated herein.

1817. This is a claim for civil conspiracy.

1818. As described more fully above, Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, and Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld knowingly acted in concert to market and implement the illegal Ponzi scheme. In doing so, Villegas acted with full knowledge and awareness that the activities of Rothstein and the other co-conspirators were designed to give the false impression of the existence of legitimate investment opportunities when in fact the investments were no more than blatant fabrications by Rothstein.

1819. Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, and Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld acted in their respective roles, as described *supra*, according to a predetermined and commonly understood and accepted plan of action all for the purpose of obtaining substantial funds from investors, including Plaintiffs.

1820. The overt acts of Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, and Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld were contrary to law, as stated above.

1821. There was a meeting of the minds between and among Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld, and other individuals and entities, both known and unknown,

to commit the unlawful acts alleged herein. This conspiracy to commit these unlawful overt acts proximately caused and continues to cause Plaintiffs damages.

1822. Villegas's and her co-conspirators' conduct has directly caused injury and damage to Plaintiffs.

WHEREFORE, RAZORBACK FUNDING, LLC.; D3 CAPITAL CLUB, LLC.; BFMC INVESTMENT INVESTMENT, LLC.; LINDA VON ALLMEN, as Trustee of the VON ALLMEN DYNASTY TRUST.; D&L PARTNERS, LP.; DAVID VON ALLMEN, as Trustee of the DAVID VON ALLMEN LIVING TRUST; ANN VON ALLMEN, as Trustee of the ANN VON ALLMEN LIVING TRUST; and DEAN KRETSCHMAR request judgment against DEBRA VILLEGAS for compensatory damages, together with court costs and such further relief as the Court deems proper.

COUNT CXVIII238 - CIVIL CONSPIRACY
(against Andrew Barnett)

1823. Plaintiffs incorporate the allegations contained in paragraphs 1 through 407121 as if restated herein.

1824. This is a claim for civil conspiracy.

1825. As described more fully above, Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, ~~and~~ Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld knowingly acted in concert to market and implement the illegal Ponzi scheme. In doing so, Villegas acted with full knowledge and awareness that the activities of Rothstein and the other co-conspirators were designed to give the false impression of the existence of legitimate investment opportunities when in fact the investments were no more than blatant fabrications by Rothstein.

1826. Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, and Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld acted in their respective roles, as described *supra*, according to a predetermined and commonly understood and accepted plan of action all for the purpose of obtaining substantial funds from investors, including Plaintiffs.

1827. The overt acts of Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, and Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld were contrary to law, as stated above.

1828. There was a meeting of the minds between and among Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld, and other individuals and entities, both known and unknown, to commit the unlawful acts alleged herein. This conspiracy to commit these unlawful overt acts proximately caused and continues to cause Plaintiffs damages.

1829. Barnett's and his co-conspirators' conduct has directly caused injury and damage to Plaintiffs.

WHEREFORE, RAZORBACK FUNDING, LLC.; D3 CAPITAL CLUB, LLC.; BFMC INVESTMENT INVESTMENT, LLC.; LINDA VON ALLMEN, as Trustee of the VON ALLMEN DYNASTY TRUST.; D&L PARTNERS, LP.; DAVID VON ALLMEN, as Trustee of the DAVID VON ALLMEN LIVING TRUST; ANN VON ALLMEN, as Trustee of the ANN VON ALLMEN LIVING TRUST; and DEAN KRETSCHMAR request judgment against ANDREW BARNETT for compensatory damages, together with court costs and such further relief as the Court deems proper.

COUNT EX-239 - CIVIL CONSPIRACY
(against Frank Preve)

1830. Plaintiffs incorporate the allegations contained in paragraphs 1 through 107121 as if restated herein.

1831. This is a claim for civil conspiracy.

1832. As described more fully above, Rothstein, ~~Spinoza~~ Spinoso, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, and Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld knowingly acted in concert to market and implement the illegal Ponzi scheme. In doing so, Preve acted with full knowledge and awareness that the activities of Rothstein and the other co-conspirators were designed to give the false impression of the existence of legitimate investment opportunities when in fact the investments were no more than blatant fabrications by Rothstein.

1833. Rothstein, ~~Spinoza~~ Spinoso, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, and Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld acted in their respective roles, as described *supra*, according to a predetermined and commonly understood and accepted plan of action all for the purpose of obtaining substantial funds from investors, including Plaintiffs.

1834. The overt acts of Rothstein, ~~Spinoza~~ Spinoso, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, and Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld were contrary to law, as stated above.

1835. There was a meeting of the minds between and among Rothstein, Spinoza Spinoso, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld, and other individuals and entities, both known and unknown, to commit the unlawful acts alleged herein. This conspiracy to commit these unlawful overt acts proximately caused and continues to cause Plaintiffs damages.

1836. Preve's and his co-conspirators' conduct has directly caused injury and damage to Plaintiffs.

WHEREFORE, RAZORBACK FUNDING, LLC.; D3 CAPITAL CLUB, LLC.; BFMC INVESTMENT INVESTMENT, LLC.; LINDA VON ALLMEN, as Trustee of the VON ALLMEN DYNASTY TRUST.; D&L PARTNERS, LP.; DAVID VON ALLMEN, as Trustee of the DAVID VON ALLMEN LIVING TRUST; ANN VON ALLMEN, as Trustee of the ANN VON ALLMEN LIVING TRUST; 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 240 - CIVIL CONSPIRACY
(against Irene Stay)

1837. Plaintiffs incorporate the allegations contained in paragraphs 1 through 121 as if restated herein.

1838. This is a claim for civil conspiracy.

1839. As described more fully above, Rothstein, Spinoso, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld knowingly acted in concert to market and implement the illegal Ponzi scheme. In doing so, Stay acted with full knowledge and awareness that the activities of Rothstein and the

other co-conspirators were designed to give the false impression of the existence of legitimate investment opportunities when in fact the investments were no more than blatant fabrications by Rothstein.

1840. Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld acted in their respective roles, as described *supra*, according to a predetermined and commonly understood and accepted plan of action all for the purpose of obtaining substantial funds from investors, including Plaintiffs.

1841. The overt acts of Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld were contrary to law, as stated above.

1842. There was a meeting of the minds between and among Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld, and other individuals and entities, both known and unknown, to commit the unlawful acts alleged herein. This conspiracy to commit these unlawful overt acts proximately caused and continues to cause Plaintiffs damages.

1843. Stay's and her co-conspirators' conduct has directly caused injury and damage to Plaintiffs.

WHEREFORE, RAZORBACK FUNDING, LLC; D3 CAPITAL CLUB, LLC; BFMC INVESTMENT, LLC; LINDA VON ALLMEN as Trustee of the VON ALLMEN DYNASTY TRUST; D&L PARTNERS, LP; DAVID VON ALLMEN, as Trustee of the DAVID VON ALLMEN LIVING TRUST; ANN VON ALLMEN, as Trustee of the ANN VON ALLMEN

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

COUNT 241 - CIVIL CONSPIRACY
(against Michael Szfranski)

1844. Plaintiffs incorporate the allegations contained in paragraphs 1 through 121 as if restated herein.

1845. This is a claim for civil conspiracy.

1846. As described more fully above, Rothstein, Spinoso, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld knowingly acted in concert to market and implement the illegal Ponzi scheme. In doing so, Szfranski acted with full knowledge and awareness that the activities of Rothstein and the other co-conspirators were designed to give the false impression of the existence of legitimate investment opportunities when in fact the investments were no more than blatant fabrications by Rothstein.

1847. Rothstein, Spinoso, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld acted in their respective roles, as described *supra*, according to a predetermined and commonly understood and accepted plan of action all for the purpose of obtaining substantial funds from investors, including Plaintiffs.

1848. The overt acts of Rothstein, Spinoso, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld were contrary to law, as stated above.

1849. There was a meeting of the minds between and among Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld, and other individuals and entities, both known and unknown, to commit the unlawful acts alleged herein. This conspiracy to commit these unlawful overt acts proximately caused and continues to cause Plaintiffs damages.

1850. Szfranski and his co-conspirators' conduct has directly caused injury and damage to Plaintiffs.

WHEREFORE, RAZORBACK FUNDING, LLC; D3 CAPITAL CLUB, LLC; BFMC INVESTMENT, LLC; LINDA VON ALLMEN as Trustee of the VON ALLMEN DYNASTY TRUST; D&L PARTNERS, LP; DAVID VON ALLMEN, as Trustee of the DAVID VON ALLMEN LIVING TRUST; ANN VON ALLMEN, as Trustee of the ANN VON ALLMEN LIVING TRUST; 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 242 - CIVIL CONSPIRACY
(against Onyx Capital Management)

1851. Plaintiffs incorporate the allegations contained in paragraphs 1 through 121 as if restated herein.

1852. This is a claim for civil conspiracy.

1853. At all times material hereto, Szfranski was acting in the scope of his employment as president of Onyx.

1854. As described more fully above, Onyx, through Szfranski, and Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, Levin, TD Bank, Banyon USVI, BIF,

and Berenfeld knowingly acted in concert to market and implement the illegal Ponzi scheme. In doing so, Onyx acted with full knowledge and awareness that the activities of Rothstein and the other co-conspirators were designed to give the false impression of the existence of legitimate investment opportunities when in fact the investments were no more than blatant fabrications by Rothstein.

1855. Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld acted in their respective roles, as described *supra*, according to a predetermined and commonly understood and accepted plan of action all for the purpose of obtaining substantial funds from investors, including Plaintiffs.

1856. The overt acts of Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld were contrary to law, as stated above.

1857. There was a meeting of the minds between and among Onyx, through Szfranski, and Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, Levin, TD Bank, Banyon USVI, BIF, and Berenfeld, and other individuals and entities, both known and unknown, to commit the unlawful acts alleged herein. This conspiracy to commit these unlawful overt acts proximately caused and continues to cause Plaintiffs damages.

1858. Onyx's and its co-conspirators' conduct has directly caused injury and damage to Plaintiffs.

WHEREFORE, RAZORBACK FUNDING, LLC; D3 CAPITAL CLUB, LLC; BFMC INVESTMENT, LLC; LINDA VON ALLMEN as Trustee of the VON ALLMEN DYNASTY

TRUST; D&L PARTNERS, LP; DAVID VON ALLMEN, as Trustee of the DAVID VON ALLMEN LIVING TRUST; ANN VON ALLMEN, as Trustee of the ANN VON ALLMEN LIVING TRUST; 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 243 - CIVIL CONSPIRACY
(against George G. Levin)

1859. Plaintiffs incorporate the allegations contained in paragraphs 1 through 121 as if restated herein.

1860. This is a claim for civil conspiracy.

1861. As described more fully above, Rothstein, Spinoso, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld knowingly acted in concert to market and implement the illegal Ponzi scheme. In doing so, Levin acted with full knowledge and awareness that the activities of Rothstein and the other co-conspirators were designed to give the false impression of the existence of legitimate investment opportunities when in fact the investments were no more than blatant fabrications by Rothstein.

1862. Rothstein, Spinoso, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld acted in their respective roles, as described *supra*, according to a predetermined and commonly understood and accepted plan of action all for the purpose of obtaining substantial funds from investors, including Plaintiffs.

1863. The overt acts of Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld were contrary to law, as stated above.

1864. There was a meeting of the minds between and among Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld, and other individuals and entities, both known and unknown, to commit the unlawful acts alleged herein. This conspiracy to commit these unlawful overt acts proximately caused and continues to cause Plaintiffs damages.

1865. Levin's and his co-conspirators' conduct has directly caused injury and damage to Plaintiffs.

WHEREFORE, RAZORBACK FUNDING, LLC; D3 CAPITAL CLUB, LLC; BFMC INVESTMENT, LLC; LINDA VON ALLMEN as Trustee of the VON ALLMEN DYNASTY TRUST; D&L PARTNERS, LP; DAVID VON ALLMEN, as Trustee of the DAVID VON ALLMEN LIVING TRUST; ANN VON ALLMEN, as Trustee of the ANN VON ALLMEN LIVING TRUST; and DEAN KRETSCHMAR request judgment against GEORGE G. LEVIN for compensatory damages, together with court costs and such further relief as the Court deems proper.

COUNT 244 - CIVIL CONSPIRACY
(against Banyon Income Fund, LP, and Banyon USVI, LLC)

1866. Plaintiffs incorporate the allegations contained in paragraphs 1 through 121 as if restated herein.

1867. This is a claim for civil conspiracy.

1868. At all times material hereto, Levin was acting in the scope of his employment as the chief executive officer of Banyon USVI and BIF.

1869. 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.

1870. As described more fully above, Banyon USVI and BIF, through its employees, and Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Szfranski, TD Bank, Onyx, and Berenfeld knowingly acted in concert to market and implement the illegal Ponzi scheme. In doing so, Banyon USVI and BIF acted with full knowledge and awareness that the activities of Rothstein and the other co-conspirators were designed to give the false impression of the existence of legitimate investment opportunities when in fact the investments were no more than blatant fabrications by Rothstein.

1871. Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld acted in their respective roles, as described *supra*, according to a predetermined and commonly understood and accepted plan of action all for the purpose of obtaining substantial funds from investors, including Plaintiffs.

1872. The overt acts of Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld were contrary to law, as stated above.

1873. There was a meeting of the minds between and among Banyon USVI and BIF, through its employees, and Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Szfranski, TD Bank, Onyx, and Berenfeld, and other individuals and entities, both known

and unknown, to commit the unlawful acts alleged herein. This conspiracy to commit these unlawful overt acts proximately caused and continues to cause Plaintiffs damages.

1874. Banyon USVI's and BIF's and their co-conspirators' conduct has directly caused injury and damage to Plaintiffs.

WHEREFORE, RAZORBACK FUNDING, LLC; D3 CAPITAL CLUB, LLC; BFMC INVESTMENT, LLC; LINDA VON ALLMEN as Trustee of the VON ALLMEN DYNASTY TRUST; D&L PARTNERS, LP; DAVID VON ALLMEN, as Trustee of the DAVID VON ALLMEN LIVING TRUST; ANN VON ALLMEN, as Trustee of the ANN VON ALLMEN LIVING TRUST; 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 245 - CIVIL CONSPIRACY
(against Berenfeld Spritzer Shechter Sheer, LLP)

1875. Plaintiffs incorporate the allegations contained in paragraphs 1 through 121 as if restated herein.

1876. This is a claim for civil conspiracy.

1877. As described more fully above, Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld knowingly acted in concert to market and implement the illegal Ponzi scheme. In doing so, Berenfeld acted with full knowledge and awareness that the activities of Rothstein and the other co-conspirators were designed to give the false impression of the existence of legitimate investment opportunities when in fact the investments were no more than blatant fabrications by Rothstein.

1878. Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld acted in their respective roles, as described *supra*, according to a predetermined and commonly understood and accepted plan of action all for the purpose of obtaining substantial funds from investors, including Plaintiffs.

1879. The overt acts of Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld were contrary to law, as stated above.

1880. There was a meeting of the minds between and among Rothstein, Spinosa, Kerstetter, Caretsky, Boden, Villegas, Barnett, Stay, Preve, Szfranski, Levin, TD Bank, Onyx, Banyon USVI, BIF, and Berenfeld, and other individuals and entities, both known and unknown, to commit the unlawful acts alleged herein. This conspiracy to commit these unlawful overt acts proximately caused and continues to cause Plaintiffs damages.

1881. Berenfeld's and its co-conspirators' conduct has directly caused injury and damage to Plaintiffs.

WHEREFORE, RAZORBACK FUNDING, LLC; D3 CAPITAL CLUB, LLC; BFMC INVESTMENT, LLC; LINDA VON ALLMEN as Trustee of the VON ALLMEN DYNASTY TRUST; D&L PARTNERS, LP; DAVID VON ALLMEN, as Trustee of the DAVID VON ALLMEN LIVING TRUST; ANN VON ALLMEN, as Trustee of the ANN VON ALLMEN LIVING TRUST; 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.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demands a trial by jury as to all issues so triable by right.

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THE FLORIDA BAR

Daily News Summary

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Nov. 1, 2010

--Legal Profession--

ON HER TOES-- *Florida Trend*, <http://www.floridatrend.com>, Nov. 1, 2010.

Not only is Pamela C. Marsh the first woman to be appointed U.S. Attorney for Florida's Northern District, she's also the district's first U.S. Attorney who's a former ballerina. Marsh says she's honored that President Barack Obama picked her to lead the U.S. Attorney's Northern District office, but she says being a woman has less impact on her approach to her job than her ballet experience. Dancing professionally for ballet companies in Seattle and Fort Worth in the mid-1980s, she says, helped her become a more dogged prosecutor. Marsh manages the district's 36 assistant U.S. attorneys and helps them focus on the department's priorities, including healthcare fraud, drug trafficking and Internet crimes against children.

STAYING ATOP THE PILE-- *Pensacola News Journal/Pensacola Business Journal*, <http://www.pnj.com>, Oct. 31, 2010.

The mountain of lawsuits piling up as a result of the BP oil spill could become the largest and most expensive collection of tort damage cases in American legal history. Billions of dollars in damages are at stake as thousands of individuals and business owners sue BP, Transocean and Halliburton. Pensacola attorney Brian Barr is one of four lawyers chosen from a national pool by U.S. District Judge Carl Barbier to guide the damage suits — all consolidated in his court — to trial. Barr's job as a member of the Plaintiffs' Steering Committee's four-person executive council will be to coordinate litigation procedures for hundreds of other lawyers representing individual plaintiffs.

--Judiciary--

JUDGE TURNER: PLEASE LET ME BACK ON THE BENCH. NO DECISION EXPECTED FOR WEEKS-- *Orlando Sentinel*, <http://www.orlandosentinel.com>, Oct. 29, 2010.

He admitted breaking campaign-finance regulations, financial-disclosure requirements and tax law, but Orange-Osceola Circuit Judge N. James Turner asked the Judicial Qualifications Commission Thursday [Oct. 28] not to throw him out of office. Turner, 64, was on trial, accused of being a bad judge. Among the many allegations was that he touched women at the Osceola County Courthouse, where he worked, as well as hugged and kissed one deputy clerk several times a day. Turner has been off work since April, when Chief Judge Belvin Perry Jr. suspended him. Testimony concluded Thursday, but there was no immediate verdict. The JQC will produce a written report and forward it to the Florida Supreme Court, which will make the final decision.

--Lawyer Ethics/Legal Discipline--

SCOTT ROTHSTEIN SCANDAL: ONE YEAR LATER-- *Sun-Sentinel*, <http://www.sun-sentinel.com>, Oct. 31, 2010.

Fallout from the largest fraud in South Florida history continues after the dark secret behind Scott Rothstein's success was revealed a year ago this week. The Ponzi schemer now sits in prison with limited contact from the outside world. While Rothstein's name has been wiped from buildings and billboards, the path of financial destruction left in his wake remains. With the one-year anniversary of the scandal, questions still loom. The Florida Bar has investigated 64 complaints against 49 RRA attorneys and all but four attorneys have been cleared by the Bar of any wrongdoing. Rothstein was disbarred.

--Civil Justice Issues--

JUDGE: 357 IDLE FORECLOSURE SUITS GONE IN 2 1/2 HOURS-- *The Bradenton Herald*, <http://www.bradenton.com>, Oct. 30, 2010.

The foreclosure case was filed in March 2007. Within a month, all of the parties were served with copies of the suit. Then, nothing. The court case sat idle for the next 3 1/2 years, seemingly forgotten among the thousands of foreclosures clogging the legal system. That was until Thursday, when 12th Circuit Court Judge Paul E. Logan dismissed it for inactivity. In the span of 2 1/2 hours, he threw out 357 foreclosure cases because they had been inactive for at least 10 months. The purge was part of an effort to reduce the backlog of open foreclosure cases, estimated at 12,000 in Manatee County alone. The target: A 62-percent reduction, or nearly 7,500 cases, before July.

JOE FRANCIS NOT THE ISSUE IN THIS CASE-- *Walton Sun/Panama City News Herald*, column, <http://www.waltonsun.com>, Oct. 30, 2010.

The column by *News Herald* editor Mike Cazalas states: "There is a reason media companies — and newspapers particularly — fight so hard to protect the rights provided by the First Amendment. And whether the proceedings against 'Girls Gone Wild' founder Joe Francis in federal civil court should remain open to the public, and the media, is a much bigger issue than the case itself. . . . Now we have the current case, the one that had Freedom Communications' First Amendment and public records attorney John Bussian giving oral arguments before the 11th Circuit Court of Appeals in Atlanta last week. In that case, four women sued Francis, saying they were under 18 when they were filmed in various stages of undress. They are now in their early-to-mid-20s. But as this case moves near trial, attorneys for the plaintiffs have become desperate in their attempts to protect the women's identities. . . . Freedom Communications fought that under the basic premise that courtrooms are open forums and it is not the government's job to tell the media what to report."

TOBACCO MISTRIAL: SPLIT JURY CAN'T AGREE ON SMOKER'S ADDICTION-- *Daytona Beach News-Journal*, <http://www.news-journalonline.com>, Oct. 30, 2010.

The case to decide the first of more than 130 local cigarette smokers' lawsuits against the tobacco industry ended in a mistrial Friday [Oct. 29], after a jury deliberated for more than 10 hours but could not break a deadlock. Seventh Circuit Judge Robert K. Rouse Jr. told the three men and three women on the jury of *Koballa v. R.J. Reynolds Tobacco Co.* that it "was the second time in 15 years" a verdict could not be reached in his courtroom. Stella Koballa, 77, of Daytona Beach smoked for more than 48 years, beginning in 1948 when she was a teenager. Koballa's attorneys said she suffered lung cancer and chronic obstructive pulmonary disease as a result of her long addiction to cigarettes. Jurors, who asked not to be identified, said they couldn't agree on the meaning of the word addiction.

--Criminal Justice Issues--

POST-CONVICTION HEARING FOR TAJ MAHAL OWENS CENTERS ON FAIR TRIAL--

Florida Today, <http://www.floridatoday.com>, Oct. 30, 2010.

Three years ago, Taj Mahal Owens was sent away to prison for 45 years after a jury found him guilty of attempted second-degree murder and shooting into an occupied motor vehicle. In 2004, Owens waited at a street corner in Melbourne and then shot into a vehicle occupied by his former girlfriend Anntwinnett Dixon and Edmund Cochrane, according to law enforcement authorities. On Friday [Oct. 29], attorneys representing Owens at a post-conviction relief hearing granted by Judge George Maxwell said the two public defenders representing Owens at the time failed to interview two potential alibi witnesses and did not provide Owens proper advice regarding a plea offer. The two public defenders -- Christopher Beres and Terry Locy -- who no longer work for that office, were subpoenaed to appear in court Friday. Beres said the state offered Owens a plea deal of 25 years but he advised his client to reject it, in part, because he believed Cochrane was not going to show up as a witness. Cochrane turned up at the trial and testified identifying Owens as the shooter.

SHERIFF MORGAN WILL LIMIT HIS HELLOS-- *Pensacola News Journal*, <http://www.pnj.com>, Oct. 30, 2010.

Escambia County Sheriff David Morgan agreed Friday [Oct. 29] to a judge's request to stop greeting jury pools who assemble in the courthouse Monday mornings for jury duty. Meanwhile, at least two defense attorneys said Friday they are filing motions for retrials for their convicted clients, claiming Morgan could have unduly influenced jury members. Public Defender James Owens and a group of criminal defense attorneys complained in letters to Chief Judge Terry Terrell on Thursday [Oct. 28] that Morgan's talks with jurors may unfairly sway them to law enforcement's side in criminal cases. For the past several months, Morgan has appeared before citizens summoned to the M.C. Blanchard Judicial Building on Monday mornings to thank them for their public service. Before that, as prospective jurors board a trolley for the ride from a parking lot near the Pensacola Civic Center to the state or federal courthouse, Morgan greets them, hands them a business card and thanks them for their service. Morgan agreed to discontinue his greetings to jury assemblies, but Terrell declined to stop Morgan from going to the trolley stop because the parking lot is a public place.

BABY SHANNON'S MOTHER RELEASED AFTER FELONY CHARGE DROPPED-- *Northwest Florida Daily News*, <http://www.nwfdailynews.com>, Oct. 30, 2010.

The case that made national headlines last year when "Baby Shannon" went missing came to a quiet end Friday for the baby's mother, as she pleaded no contest to a misdemeanor charge and was released from jail. Crystina Mercer, who was jailed for providing false information to law enforcement, was given credit for time served. Shannon Dedrick disappeared from her home Oct. 31, 2009. The ensuing five-day search for Baby Shannon was the largest operation in the history of the Washington County Sheriff's Office. The child was located Nov. 4 in a latched wooden box under the bed of her baby sitter, Susan Baker. Baker was convicted Oct. 1 after a weeklong trial on charges of aggravated child abuse, interference with custody and providing false information to law enforcement. Because the state maintains Baker stole the baby, Mercer's 911 call after Shannon's disappearance was legitimate, authorities said. Since Baker stole the baby, Mercer didn't interfere with custody.

--Other--

MONEY WOES CAN BE EARLY CLUE OF ALZHEIMER'S-- *The Gainesville Sun*, <http://www.gainesville.com>, Oct. 31, 2010.

The article is by *The New York Times*. One day, it all came crashing down. The homeowners' association called asking for their fees. To Mrs. Packel's surprise, her husband had simply stopped paying them. Then she learned he had stopped writing checks to his creditors, too. It turned out that Mr. Packel was developing Alzheimer's disease and had forgotten how to handle money. New research shows that one of the first signs of impending dementia is an inability to understand money and credit, contracts and agreements. It is not just families who are affected -- financial advisers and lawyers say they are finding themselves in a bind when their clients' minds seem to be slipping. For lawyers, the main question is at what point a client lacks the