

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

**COUNT 174 - AIDING AND ABETTING FRAUD**  
**(against Frank Spinosa)**

1372. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1373. This is a claim for aiding and abetting fraud.

1374. As described more fully above, the deals in which D3 invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1375. Spinosa knew of Rothstein's fraudulent scheme.

1376. Spinosa actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of D3 through fraud. Spinosa's assistance included, but was not limited to, supplying D3 with false bank account statements and misleading and untrue written assurances concerning the settlement accounts.

1377. Spinosa's actions have directly caused injury and damage to D3.

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

**COUNT LXXIV-175 - AIDING AND ABETTING FRAUD**  
**(against Jennifer Kerstetter)**

1378. Plaintiff incorporates the allegations contained in paragraphs 1 through 107/121 as if restated herein.

1379. This is a claim for aiding and abetting fraud.

1380. As described more fully above, the deals in which D3 invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1381. Kerstetter knew of Rothstein's fraudulent scheme.

1382. Kerstetter actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of D3 through fraud. Kerstetter's assistance included, but was not limited to, providing false documentation to D3 that the RRA trust accounts contained substantial funds when they did not.

1383. Kerstetter's actions have directly caused injury and damage to D3.

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

**COUNT LXXV176 - AIDING AND ABETTING FRAUD**  
**(against Roseanne Caretsky)**

1384. Plaintiff incorporates the allegations contained in paragraphs 1 through 407121 as if restated herein.

1385. This is a claim for aiding and abetting fraud.

1386. As described more fully above, the deals in which D3 invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1387. Caretsky knew of Rothstein's fraudulent scheme.

1388. Caretsky actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of D3 through fraud by representing to D3 that the RRA trust accounts contained substantial funds, all the time knowing that the accounts contained, at most, minimal balances and that, to the extent the accounts were funded, that Rothstein routinely raided the accounts for his own use.

1389. 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 LXXVI177 - AIDING AND ABETTING FRAUD**  
**(against TD Bank, N.A.)**

1390. Plaintiff incorporates the allegations contained in paragraphs 1 through 117121 as if restated herein.

1391. This is a claim for aiding and abetting fraud.

1392. 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.

1393. At all times material hereto Spinosa was acting in the scope of his employment for TD Bank.

1394. At all times material hereto, Kerstetter was acting in the scope of her employment as an assistant manager of TD Bank.

1395. 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.

1396. TD Bank knew of Rothstein's fraudulent scheme.

1397. TD Bank, through Spinosa, Kerstetter, and Caretsky, actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of D3 through fraud. TD Bank's assistance included, but was not limited to, providing false documentation to the D3 that the RRA trust accounts contained substantial funds when they did not and supplying investors with misleading and untrue written assurances concerning the settlement accounts.

1398. 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 LXXXVII-178 - AIDING AND ABETTING FRAUD**  
**(against Debra Villegas)**

1399. Plaintiff incorporates the allegations contained in paragraphs 1 through 1407 as if restated herein.

1400. This is a claim for aiding and abetting fraud.

1401. As described more fully above, the deals in which D3 invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1402. Villegas knew of Rothstein's fraudulent scheme.

1403. Villegas actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of all of the investor victims of Rothstein's Ponzi scheme, including D3, through fraud by furnishing false bank account statements and wire transfers to investors in order to induce them to invest despite having actual or constructive knowledge that the investments were a Ponzi scheme.

1404. 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 LXXXVIII 179 - AIDING AND ABETTING FRAUD**  
**(against Irene Stay)**

1405. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1406. This is a claim for aiding and abetting fraud.

1407. As described more fully above, the deals in which D3 invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1408. Stay knew of Rothstein's fraudulent scheme.

1409. 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 D3, through fraud by furnishing false bank account statements and wire transfers to investors in order to induce them to invest despite having actual or constructive knowledge that the investments were a Ponzi scheme.

1410. 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 180 - AIDING AND ABETTING FRAUD**  
**(against George G. Levin)**

1411. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1412. This is a claim for aiding and abetting fraud.

1413. As described more fully above, the deals in which D3 invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1414. Levin knew of Rothstein's fraudulent scheme.

1415. Levin actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of D3 through fraud. Levin's assistance included, but was 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.

1416. 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 181 - AIDING AND ABETTING FRAUD**  
**(against Frank Preve)**

1417. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1418. This is a claim for aiding and abetting fraud.

1419. As described more fully above, the deals in which D3 invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1420. Preve knew of Rothstein's fraudulent scheme.

1421. Preve actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of D3 through fraud. Preve's assistance included, but was 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.

1422. 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 182 - AIDING AND ABETTING FRAUD**  
**(against Banyon Income Fund, LP, and Banyon USVI, LLC)**

1423. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1424. This is a claim for aiding and abetting fraud.

1425. As described more fully above, the deals in which D3 invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1426. At all times material hereto, Levin was acting in the scope of his employment as the chief executive officer of Banyon USVI and BIF.

1427. 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.

1428. Banyon USVI and BIF knew of Rothstein's fraudulent scheme.

1429. Banyon USVI and BIF, through Levin and Preve, actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of D3 through fraud. Banyon USVI's and BIF's assistance included, but was 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.

1430. 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 183 - AIDING AND ABETTING FRAUD**  
**(against Michael Szfranski)**

1431. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1432. This is a claim for aiding and abetting fraud.

1433. As described more fully above, the deals in which D3 invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1434. Szfranski knew of Rothstein's fraudulent scheme.

1435. Szfranski actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of D3 through fraud. Szfranski's assistance included, but was not limited to, verifying false bank statements and deal documents.

1436. 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 184 - AIDING AND ABETTING FRAUD**  
**(against Onyx Capital Management)**

1437. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1438. This is a claim for aiding and abetting fraud.



1439. As described more fully above, the deals in which D3 invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1440. At all times material hereto, Szfranski was acting in the scope of his employment as president of Onyx.

1441. Onyx knew of Rothstein's fraudulent scheme.

1442. Onyx, through Szfranski, actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of D3 through fraud. Onyx's assistance included, but was not limited to, verifying false bank statements and deal documents.

1443. 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 185 - AIDING AND ABETTING FRAUD**  
**(against Berenfeld Spritzer Shechter Sheer, LLP)**

1444. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1445. This is a claim for aiding and abetting fraud.

1446. As described more fully above, the deals in which D3 invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1447. Berenfeld knew of Rothstein's fraudulent scheme.

1448. Berenfeld actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of D3 through fraud. Berenfeld's assistance included, but was not limited to, providing false auditing documents relating to Banyon and RRA.

1449. 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 186 - CONVERSION**  
**(against Scott Rothstein)**

1450. Plaintiff incorporates the allegations contained in paragraphs 1 through 407121 as if restated herein.

1451. This is a claim for conversion.

1452. As described more fully above, the deals in which D3 invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of D3 when he absconded with D3's \$13,500,000.00 in funds.

1453. Rothstein's conversion of D3's funds has permanently deprived D3 of its property.

1454. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by D3 to make demand upon him for the return of its property would be futile.

1455. Rothstein's actions have directly caused injury and damages to D3.

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

**COUNT LXXIX 187 - AIDING AND ABETTING CONVERSION**  
**(against Frank Spinosa)**

1456. Plaintiff incorporates the allegations contained in paragraphs 1 through 107121 as if restated herein.

1457. This is a claim for aiding and abetting conversion.

1458. As described more fully above, the deals in which D3 invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of D3 when he absconded with D3's \$13,500,000.00 in funds.

1459. Rothstein's conversion of D3's funds has permanently deprived D3 of its property.

1460. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by D3 to make demand upon him for the return of its property would be futile.

1461. Spinosa actively assisted, and provided substantial assistance, to Rothstein in either temporarily or permanently depriving D3 of its property by deceiving D3 into turning its property over to Rothstein under false pretenses.

1462. Spinosa's actions have directly caused injury and damages to D3.

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

**COUNT LXXX188 - AIDING AND ABETTING CONVERSION**  
**(against Jennifer Kerstetter)**

1463. Plaintiff incorporates the allegations contained in paragraphs 1 through 147121 as if restated herein.

1464. This is a claim for aiding and abetting conversion.

1465. As described more fully above, the deals in which D3 invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of D3 when he absconded with D3's \$13,500,000.00 in funds.

1466. Rothstein's conversion of D3's funds has permanently deprived D3 of its property.

1467. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by D3 to make demand upon him for the return of its property would be futile.

1468. Kerstetter actively assisted, and provided substantial assistance, to Rothstein in either temporarily or permanently depriving D3 of its property by deceiving D3 into turning its property over to Rothstein under false pretenses.

1469. Kerstetter's actions have directly caused injury and damages to D3.

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

**COUNT LXXXI189 - AIDING AND ABETTING CONVERSION**  
**(against Roseanne Caretsky)**

1470. Plaintiff incorporates the allegations contained in paragraphs 1 through 407121 as if restated herein.

1471. This is a claim for aiding and abetting fraud.

1472. As described more fully above, the deals in which D3 invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1473. Caretsky knew of Rothstein's fraudulent scheme.

1474. Caretsky actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of D3 through fraud. Caretsky's assistance included, but was not limited to, providing false documentation to D3 that the RRA trust accounts contained substantial funds when they did not.

1475. Caretsky's actions have directly caused injury and damage to D3.

1476. Caretsky's actions have directly caused injury and damages to D3.

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

**COUNT LXXXI190 - AIDING AND ABETTING CONVERSION**  
**(against TD Bank, N.A.)**

1477. Plaintiff incorporates the allegations contained in paragraphs 1 through 407121 as if restated herein.

1478. This is a claim for aiding and abetting conversion.

1479. As described more fully above, the deals in which D3 invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of D3 when he absconded with D3's \$13,500,000.00 in funds.

1480. Rothstein's conversion of D3's funds has permanently deprived D3 of its property.

1481. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by D3 to make demand upon him for the return of its property would be futile.

1482. At all times material hereto Spinosa was acting in the scope of his employment for TD Bank.

1483. At all times material hereto, Kerstetter was acting in the scope of her employment as an assistant manager of TD Bank.

1484. 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.

1485. TD Bank, through its employees while acting within the scope of their employment, actively assisted, and provided substantial assistance, to Rothstein in either temporarily or permanently depriving D3 of its property by allowing Rothstein to make unauthorized withdrawals of its funds and by deceiving D3 into turning its property over to Rothstein under false pretenses.

1486. TD Bank's actions have directly caused injury and damages to D3.

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

**COUNT LXXXIIII191 - AIDING AND ABETTING CONVERSION**  
**(against Debra Villegas)**

1487. Plaintiff incorporates the allegations contained in paragraphs 1 through 147121 as if restated herein.

1488. This is a claim for aiding and abetting conversion.

1489. As described more fully above, the deals in which D3 invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of D3 when he absconded with D3's \$13,500,000.00 in funds.

1490. Rothstein's conversion of D3's funds has permanently deprived D3 of its property.

1491. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by D3 to make demand upon him for the return of its property would be futile.

1492. Villegas actively assisted, and provided substantial assistance, to Rothstein in either temporarily or permanently depriving D3 of its property by deceiving D3 into turning its property over to Rothstein under false pretenses.

1493. Villegas's actions have directly caused injury and damages to D3.

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

**COUNT LXXXIV 192 - AIDING AND ABETTING CONVERSION**  
**(against Irene Stay)**

1494. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1495. This is a claim for aiding and abetting conversion.

1496. As described more fully above, the deals in which D3 invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of D3 when he absconded with D3's \$13,500,000.00 in funds.

1497. Rothstein's conversion of D3's funds has permanently deprived D3 of its property.

1498. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by D3 to make demand upon him for the return of its property would be futile.

1499. Stay actively assisted, and provided substantial assistance, to Rothstein in either temporarily or permanently depriving D3 of its property by deceiving D3 into turning its property over to Rothstein under false pretenses.

1500. Stay's actions have directly caused injury and damages 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 193 - AIDING AND ABETTING CONVERSION**  
**(against George G. Levin)**

1501. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1502. This is a claim for aiding and abetting conversion.

1503. As described more fully above, the deals in which D3 invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of D3 when he absconded with their \$13,500,000.00 in funds.

1504. Rothstein's conversion of D3's funds has permanently deprived D3 of its property.

1505. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by D3 to make demand upon him for the return of its property would be futile.

1506. Levin actively assisted, and provided substantial assistance, to Rothstein in either temporarily or permanently depriving D3 of its property by representing that the settlement agreements purchased by investors were real, that they had been fully funded, that they would be paid out to investors over a predetermined schedule, and by deceiving D3 into turning its property over to Rothstein under false pretenses.

1507. Levin's actions have directly caused injury and damages 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 194 - AIDING AND ABETTING CONVERSION**  
**(against Frank Preve)**

1508. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1509. This is a claim for aiding and abetting conversion.

1510. As described more fully above, the deals in which D3 invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of D3 when he absconded with their \$13,500,000.00 in funds.

1511. Rothstein's conversion of D3's funds has permanently deprived D3 of its property.

1512. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by D3 to make demand upon him for the return of its property would be futile.

1513. Preve actively assisted, and provided substantial assistance, to Rothstein in either temporarily or permanently depriving D3 of its property by representing that the settlement agreements purchased by investors were real, that they had been fully funded, that they would be paid out to investors over a predetermined schedule, and by deceiving D3 into turning its property over to Rothstein under false pretenses.

1514. Preve's actions have directly caused injury and damages 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 195 - AIDING AND ABETTING CONVERSION**  
**(against Banyon Income Fund, LP, and Banyon USVI, LLC)**

1515. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1516. This is a claim for aiding and abetting conversion.

1517. As described more fully above, the deals in which D3 invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of D3 when he absconded with its \$13,500,000.00 in funds.

1518. Rothstein's conversion of D3's funds has permanently deprived D3 of its property.

1519. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by D3 to make demand upon him for the return of its property would be futile.

1520. At all times material hereto, Levin was acting in the scope of his employment as the chief executive officer of Banyon USVI and BIF.

1521. 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.

1522. Banyon USVI and BIF, through its employees while acting within the scope of their employment, actively assisted, and provided substantial assistance, to Rothstein in either

temporarily or permanently depriving D3 of its property by representing that the settlement agreements purchased by investors were real, that they had been fully funded, that they would be paid out to investors over a predetermined schedule, and by deceiving D3 into turning its property over to Rothstein under false pretenses.

1523. Banyon USVI's and BIF's actions have directly caused injury and damages 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 196 - AIDING AND ABETTING CONVERSION**  
**(against Michael Szfranski)**

1524. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1525. This is a claim for aiding and abetting conversion.

1526. As described more fully above, the deals in which D3 invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of D3 when he absconded with its \$13,500,000.00 in funds.

1527. Rothstein's conversion of D3's funds has permanently deprived D3 of its property.

1528. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by D3 to make demand upon him for the return of their property would be futile.

1529. Szfranski actively assisted, and provided substantial assistance, to Rothstein in either temporarily or permanently depriving D3 of its property by verifying false bank statements and deal documents and by deceiving D3 into turning its property over to Rothstein under false pretenses.

1530. Szfranski's actions have directly caused injury and damages to D3.

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

**COUNT 197 - AIDING AND ABETTING CONVERSION**  
**(against Onyx Capital Management)**

1531. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1532. This is a claim for aiding and abetting conversion.

1533. As described more fully above, the deals in which D3 invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of D3 when he absconded with its \$13,500,000.00 in funds.

1534. Rothstein's conversion of D3's funds has permanently deprived D3 of its property.

1535. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by D3 to make demand upon him for the return of their property would be futile.

1536. At all times material hereto, Szfranski was acting in the scope of his employment as president of Onyx.

1537. Onyx, through its employees while acting within the scope of their employment, actively assisted, and provided substantial assistance, to Rothstein in either temporarily or permanently depriving D3 of its property by verifying false bank statements and deal documents and by deceiving D3 into turning its property over to Rothstein under false pretenses.

1538. Onyx's actions have directly caused injury and damages to D3.

WHEREFORE, D3 CAPITAL CLUB, 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 198 - AIDING AND ABETTING CONVERSION**  
**(against Berenfeld Spritzer Shechter Sheer, LLP)**

1539. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1540. This is a claim for aiding and abetting conversion.

1541. As described more fully above, the deals in which D3 invested were bogus and Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank. In furtherance of the Ponzi scheme, Rothstein exercised unauthorized dominion and control over the property of D3 when he absconded with their \$13,500,000.00 in funds.

1542. Rothstein's conversion of D3's funds has permanently deprived D3 of its property.

1543. Based upon Rothstein having initially fled the country after emptying out the trust accounts, any attempts by D3 to make demand upon him for the return of its property would be futile.

1544. Berenfeld actively assisted, and provided substantial assistance, to Rothstein in either temporarily or permanently depriving D3 of its property by providing false auditing documents relating to Banyon and RRA and by deceiving D3 into turning its property over to Rothstein under false pretenses.

1545. Berenfeld's actions have directly caused injury and damages 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 199 - NEGLIGENT SUPERVISION**  
**(against TD Bank N.A.)**

1546. Plaintiff incorporates the allegations contained in paragraphs 1 through 407121 as if restated herein.

1547. This is a claim for negligent supervision.

1548. As described more fully above, Spinosa, Kerstetter, and Caretsky participated, with actual or constructive knowledge, in Rothstein's Ponzi scheme. Spinosa's, Kerstetter's, and Caretsky's participation included, but was not limited to, providing D3 with false information concerning the amounts deposited in RRA trust accounts and supplying investors with misleading and untrue written assurances concerning the settlement accounts.

1549. In reliance on Spinoso's, Kerstetter's, and Caretsky's representations, on October 21, 2009, D3 began sending payments to RRA's account at TD Bank, eventually funding a total of \$13,500,000.00.

1550. D3's reliance on Spinoso's, Kerstetter's, and Caretsky's representations was reasonable and justified.

1551. TD Bank owed a duty to D3 to ensure that its employees were not actively defrauding depositors by making false representations in order to trick them into making unsafe deposits into trust accounts that they knew or reasonably should have known were being raided by Rothstein.

1552. TD Bank breached its duties to D3 because it had actual or constructive notice that its assistant manager and assistant vice president and branch manager were either fraudulently or negligently participating in a scheme which resulted in the unauthorized raiding of investors' deposits, and acted unreasonably by failing to investigate or take corrective action.

1553. As a direct and proximate result of TD Bank's failure to investigate or take corrective action against Spinoso, Kerstetter, or Caretsky, D3 has sustained damages.

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



**COUNT LXXXV200 - FRAUDULENT MISREPRESENTATION**  
**(against Scott Rothstein)**

1554. Plaintiff incorporates the allegations contained in paragraphs 1 through 407121 as if restated herein.

1555. This is a claim for fraudulent misrepresentation.

1556. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1557. 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.

1558. Rothstein intended BFMC to act on his knowingly false representations.

1559. BFMC justifiably relied upon Rothstein's representations to its detriment.

1560. As a direct and proximate result of Rothstein's false statements, BFMC has sustained damages.

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

**COUNT LXXXV201 - FRAUDULENT MISREPRESENTATION**  
**(against Frank Spinoso)**

1561. Plaintiff incorporates the allegations contained in paragraphs 1 through 407121 as if restated herein.

1562. This is a claim for fraudulent misrepresentation.

1563. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1564. 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.

1565. Spinosa intended BFMC to act on his knowingly false representations.

1566. BFMC justifiably relied upon Spinosa's representations to its detriment.

1567. As a direct and proximate result of Spinosa's false statements, BFMC has sustained damages.

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

**COUNT LXXXVII202 - FRAUDULENT MISREPRESENTATION**  
**(against TD Bank, N.A.)**

1568. Plaintiff incorporates the allegations contained in paragraphs 1 through 407121 as if restated herein.

1569. This is a claim for fraudulent misrepresentation.

1570. At all times material hereto, Spinosa was acting in the scope of his employment as Regional Vice President of TD Bank.

1571. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1572. In furtherance of the Ponzi scheme, TD Bank, through Spinosa, knowingly made material false statements and representations including, but not limited to, supplying investors with false bank account statements and supplying investors with misleading and untrue written assurances concerning the settlement accounts.

1573. TD Bank, through Spinosa, intended BFMC to act on their knowingly false representations.

1574. BFMC justifiably relied upon TD Bank's, through Spinosa's representations, to their detriment.

1575. As a direct and proximate result of TD Bank's, made through Spinosa's, false statements, BFMC has sustained damages.

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

**COUNT LXXXVIII 203 - FRAUDULENT MISREPRESENTATION**  
**(against David Boden)**

1576. Plaintiff incorporates the allegations contained in paragraphs 1 through 107121 as if restated herein.

1577. This is a claim for fraudulent misrepresentation.

1578. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1579. In furtherance of the Ponzi scheme, Boden knowingly made material false statements and representations including, but not limited to, making misleading and untrue assurances concerning the settlement agreements and accounts.

1580. Boden intended BFMC to act on his knowingly false representations.

1581. BFMC justifiably relied upon Boden's representations to its detriment.

1582. As a direct and proximate result of Boden's false statements, BFMC has sustained damages.

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

**COUNT LXXXVIX204 - FRAUDULENT MISREPRESENTATION**  
**(against Andrew Barnett)**

1583. Plaintiff incorporates the allegations contained in paragraphs 1 through 107121 as if restated herein.

1584. This is a claim for fraudulent misrepresentation.

1585. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1586. In furtherance of the Ponzi scheme, Barnett knowingly made material false statements and representations including, but not limited to, supplying BFMC with false information about the identity of the defendant who was purportedly funding the settlement.

1587. Barnett intended BFMC to act on his knowingly false representations.

1588. BFMC justifiably relied upon Barnett's representations to its detriment.

1589. As a direct and proximate result of Barnett's false statements, BFMC has sustained damages.

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

**COUNT ~~X~~205 - NEGLIGENT MISREPRESENTATION**  
**(against Frank Spinosa)**

1590. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1591. This is a claim for negligent misrepresentation.

1592. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1593. 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.

1594. When making the false statements and representations, Spinosa either knew or reasonably should have known that they were false.

1595. Spinosa owed BFMC a duty of care because he knew or had reason to know that BFMC was placing trust and confidence in him and relying on him to inform it.

1596. Spinosa breached his duty to BFMC by making false representations with the intention that BFMC rely on them.

1597. BFMC justifiably relied upon Spinosa's representations to its detriment.

1598. As a direct and proximate result of Spinosa's false statements, BFMC has sustained damages.

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

**COUNT XC1206 - NEGLIGENT MISREPRESENTATION**  
**(against TD Bank, N.A.)**

1599. Plaintiff incorporates the allegations contained in paragraphs 1 through 407121 as if restated herein.

1600. This is a claim for negligent misrepresentation.

1601. At all times material hereto, Spinoso was acting in the scope of his employment as Regional Vice President of T.D. Bank.

1602. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1603. In furtherance of the Ponzi scheme, TD Bank, through Spinoso, 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..

1604. When making the false statements and representations, TD Bank, through Spinoso, either knew or reasonably should have known that they were false.

1605. TD Bank owed BFMC a duty of care because it knew or had reason to know that BFMC was placing trust and confidence in her and relying on it to inform them.

1606. TD Bank breached its duty to BFMC by making false representations, through Spinoso, with the intention that BFMC rely on them.

1607. BFMC justifiably relied upon TD Bank's, through Spinosa's, representations to its detriment.

1608. As a direct and proximate result of TD Bank's representations, made through Spinosa, BFMC has sustained damages.

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

**COUNT XCH207 - NEGLIGENT MISREPRESENTATION**  
**(against David Boden)**

1609. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1610. This is a claim for negligent misrepresentation.

1611. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1612. In furtherance of the Ponzi scheme, Boden knowingly made material false statements and representations including, but not limited to, making misleading and untrue assurances concerning the settlement agreements and accounts.

1613. When making the false statements and representations, Boden either knew or reasonably should have known that they were false.

1614. Boden owed BFMC a duty of care by affirmatively and voluntarily undertaking to offer BFMC information.

1615. Boden breached his duty to BFMC by making false representations with the intention that BFMC rely on them.

1616. BFMC justifiably relied upon Boden's representations to its detriment.

1617. As a direct and proximate result of Boden's false statements, BFMC has sustained damages.

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

**COUNT 208 - NEGLIGENT MISREPRESENTATION**  
**(against Andrew Barnett)**

1618. Plaintiff incorporates the allegations contained in paragraphs 1 through 107121 as if restated herein.

1619. This is a claim for negligent misrepresentation.

1620. As described more fully above, Rothstein was operating a Ponzi scheme through his firm, RRA, and through TD Bank.

1621. In furtherance of the Ponzi scheme, Barnett made material false statements and representations including, but not limited to, supplying BFMC with false information about the identity of the defendant who was purportedly funding the settlement.

1622. When making the false statements and representations, Barnett either knew or reasonably should have known that they were false.

1623. Barnett owed BFMC a duty of care by affirmatively and voluntarily undertaking to offer BFMC information.

1624. Barnett breached his duty to BFMC by making false representations with the intention that BFMC rely on them.

1625. BFMC justifiably relied upon Barnett's representations to its detriment.



1626. As a direct and proximate result of Barnett's false statements, BFMC has sustained damages.

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

**COUNT XCH209 - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**  
**(against Frank Spinosa)**

1627. Plaintiff incorporates the allegations contained in paragraphs 1 through 407121 as if restated herein.

1628. This is a claim for aiding and abetting breach of fiduciary duty.

1629. Spinosa was aware that as trustee of the attorney trust account where BFMC's purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to BFMC. Spinosa was also aware that as trustee of the attorney trust account containing the funds to which D3 had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to BFMC.

1630. Spinosa was aware that Rothstein was financially exploiting the investors to their detriment, and was aware that Rothstein was breaching his fiduciary obligations to BFMC.

1631. Spinosa actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of BFMC and his breaches of fiduciary duty.

1632. 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 XCV210 - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**  
**(against TD Bank, N.A.)**

1633. Plaintiff incorporates the allegations contained in paragraphs 1 through 1632 as if restated herein.

1634. This is a claim for aiding and abetting breach of fiduciary duty.

1635. At all times material hereto, Spinosa was acting in the scope of his employment as Regional Vice President of TD Bank.

1636. TD Bank was aware that as trustee of the attorney trust account where BFMC's purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to BFMC. TD Bank was also aware that as trustee of the attorney trust account containing the funds to which BFMC had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to BFMC.

1637. TD Bank was aware that Rothstein was financially exploiting the investors to their detriment, and was aware that Rothstein was breaching his fiduciary obligations to BFMC.

1638. TD Bank, through its employees acting within the scope of their employment, actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of BFMC and his breaches of fiduciary duty.

1639. TD Bank's actions have directly caused injury and damage to BFMC.

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

**COUNT XCV211 - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**  
**(against David Boden)**

1640. Plaintiff incorporates the allegations contained in paragraphs 1 through 407121 as if restated herein.

1641. This is a claim for aiding and abetting breach of fiduciary duty.

1642. Boden was aware that as trustee of the attorney trust account where BFMC's purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to BFMC. Boden was also aware that as trustee of the attorney trust account containing the funds to which BFMC had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to BFMC.

1643. Boden was aware that Rothstein was financially exploiting the investors to their detriment, and was aware that Rothstein was breaching his fiduciary obligations to BFMC.

1644. Boden actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of BFMC and his breaches of fiduciary duty.

1645. 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 XCV1212 - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**  
**(against Debra Villegas)**

1646. Plaintiff incorporates the allegations contained in paragraphs 1 through 407121 as if restated herein.

1647. This is a claim for aiding and abetting breach of fiduciary duty.

1648. Villegas was aware that as trustee of the attorney trust account where BFMC's purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to BFMC. Villegas was also aware that as trustee of the attorney trust account containing the funds to which BFMC had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to BFMC.

1649. Villegas was aware that Rothstein was financially exploiting the investors to their detriment, and was aware that Rothstein was breaching his fiduciary obligations to BFMC.

1650. Villegas actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of BFMC and his breaches of fiduciary duty.

1651. 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 XCVH213 - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**  
**(against Irene Stay)**

1652. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1653. This is a claim for aiding and abetting breach of fiduciary duty.

1654. Stay was aware that as trustee of the attorney trust account where BFMC's purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to BFMC. Stay was also aware that as trustee of the attorney trust account containing the funds to which BFMC had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to BFMC.

1655. Stay was aware that Rothstein was financially exploiting the investors to their detriment, and was aware that Rothstein was breaching his fiduciary obligations to BFMC.

1656. Stay actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of BFMC and his breaches of fiduciary duty.

1657. 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 214 - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**  
**(against Andrew Barnett)**

1658. Plaintiff incorporates the allegations contained in paragraphs 1 through 121 as if restated herein.

1659. This is a claim for aiding and abetting breach of fiduciary duty.

1660. Barnett was aware that as trustee of the attorney trust account where BFMC's purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to BFMC. Barnett was also aware that as trustee of the attorney trust account containing the funds to which BFMC had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to BFMC.

1661. Barnett was aware that Rothstein was financially exploiting the investors to their detriment, and was aware that Rothstein was breaching his fiduciary obligations to BFMC.

1662. Barnett actively assisted, and provided substantial assistance, to Rothstein in his financial exploitation of BFMC and his breaches of fiduciary duty.

1663. 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 215 - BREACH OF FIDUCIARY DUTY**  
**(against Scott Rothstein)**

1664. Plaintiff incorporates the allegations contained in paragraphs 1 through 407121 as if restated herein.

1665. This is a claim for breach of fiduciary duty.

1666. As trustee of the attorney trust account where BFMC's purported settlement funds were deposited, Rothstein had fiduciary duties of honesty, loyalty, and care to BFMC. Additionally, as trustee of the attorney trust account containing the funds to which BFMC had an exclusive right to collect in the near future, Rothstein had fiduciary duties of honesty, loyalty, and care to BFMC.

1667. Rothstein breached his fiduciary duties by raiding the RRA trust accounts for his personal use.

1668. 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 XCVII216 - BREACH OF FIDUCIARY DUTY**  
**(against TD Bank, N.A.)**

1669. Plaintiff incorporates the allegations contained in paragraphs 1 through 407121 as if restated herein.

1670. This is a claim for breach of fiduciary duty.

1671. At all times material hereto, Spinosa was acting in the scope of his employment as Regional Vice President of TD Bank.

1672. In Florida, a bank assumes a fiduciary duty with its customer under special circumstances where the bank knows or has reason to know that the customer is placing trust and confidence in the bank and is relying on the bank to so counsel and inform him. Under the circumstances outlined above, whereby TD Bank knew that BFMC was relying on Spinosa's assurances to BFMC of the precautions in place to prevent improper withdrawals from its account, TD Bank was a fiduciary of BFMC and owed BFMC the fiduciary duties of honesty, loyalty, and care.

1673. TD Bank breached its fiduciary duties through the actions of its employees by either ignoring or actively assisting and providing substantial assistance to Rothstein in its financial exploitation of BFMC.

1674. TD Bank's actions have directly caused injury and damage to BFMC.

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

**COUNT XCIX 217 - AIDING AND ABETTING FRAUD**  
**(against Frank Spinosa)**

1675. Plaintiff incorporates the allegations contained in paragraphs 1 through 407121 as if restated herein.

1676. This is a claim for aiding and abetting fraud.