

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

RITA LAWRENCE, BARBARA)	
KANN and RAYMOND K.)	
FERWERDA, individually and on)	
behalf of all others similarly situated,)	
)	
Plaintiffs,)	
v.)	Case No.: _____
)	
BANK OF AMERICA, N.A.,)	
)	
Defendant.)	
_____)	

**CLASS ACTION COMPLAINT
AND DEMAND FOR JURY TRIAL**

Plaintiffs RITA LAWRENCE, BARBARA KANN and RAYMOND K. FERWERDA (“Plaintiffs”), by and through their attorneys, file this Class Action Complaint against Bank of America, N.A. (“BOA” or “Defendant”), on behalf of themselves and other similarly situated individuals or businesses who invested in fraudulent schemes operated by Beau Diamond (the “class members”). Plaintiffs allege as follows:

I. INTRODUCTION

1. Bank of America, N.A., working through its Premier Banking & Investment (“Premier Banking”) division and in conjunction with 27 year-old Beau Diamond, aided and abetted the defrauding of innocent investors in Florida and throughout the United States, the conversion of property of those investors, and the breach of fiduciary duties owed to those investors. Many of the investors lost their life

savings and entire 401(k)/IRA accounts. At a minimum, BOA shares the responsibility for losses of \$37 million.

2. As this complaint alleges, BOA had actual knowledge of and, over the course of 32 months, provided substantial assistance to a fraudulent scheme offering investors a guaranteed return based on trading in the off-exchange foreign currency (“forex”) markets.

3. This fraudulent scheme was conducted through Diamond Ventures LLC (“Diamond Ventures”). From 2006 until early 2009, Diamond solicited friends and family members for funds to trade in the forex market through Diamond Ventures.

4. From the beginning, BOA actively assisted Diamond’s fraudulent scheme. Initially, BOA began by providing an essential banking platform for Diamond. BOA’s relationship with Diamond rapidly grew more intertwined, however, as millions of investor dollars were deposited and BOA’s Premier Banking division provided Diamond and Diamond Ventures with a growing array of services. Despite an intimate understanding of Diamond’s fraudulent enterprise, BOA asked no questions and instead bolstered its relationship with Diamond and Diamond Ventures.

5. This alliance continued over the course of 32 months as BOA supported and facilitated Diamond’s Ponzi scheme. Premier Banking even assigned representatives to Diamond to provide “close, personal attention” and “comprehensive financial strategies” to support the activities of Diamond and Diamond Ventures.

6. Premier Banking put Diamond and Diamond Ventures through a process to design and implement Diamond’s financial strategies. That process included a

“discovery” phase, during which BOA learned about Diamond’s financial situation and goals, and “monitoring” phase, during which Diamond’s financial activities were tracked and evaluated.

7. Diamond acknowledged to BOA he was operating an “investment club.” Acknowledging this so called “investment club” to BOA was tantamount to admitting he was operating an illegal enterprise. Nevertheless, BOA put profits before compliance and assisted Diamond in every way possible so that he would succeed.

8. Continuously over 32 months, BOA, directly and through its Premier Banking division, provided services to facilitate Diamond’s defrauding of investors. Those services included: (1) wire transfer capability so investor funds could be rapidly diverted off shore; (2) the co-mingling of accounts to facilitate and make possible the operations of Diamond Ventures; (3) access to unlicensed trading in the forex markets; and (4) a banking platform that made the conversion of investor funds possible. All the while, BOA’s Premier Bankers had firsthand knowledge of lifestyle, gambling expenditures and other indicators of illegal activity that left no doubt that Diamond was running an illegal enterprise.

9. From April 2006 through December 2008, upwards of thirty-seven million, six hundred thousand dollars (\$37,600,000) was transferred into Diamond Ventures’ Bank of America account – an account wholly controlled by 27 year-old Diamond who had no securities or commodities licenses, no management team or employees, and no legitimate business model.

10. As a direct and proximate result of BOA's aiding and abetting Diamond's fraudulent, improper, tortious and illegal conduct, Plaintiffs and the Class members have suffered the loss of millions of dollars.

II. JURISDICTION AND VENUE

11. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1332(a) and 1332(d)(2)(A), and has supplemental jurisdiction pursuant to 28 U.S.C. §1367.

12. Venue in this judicial district is proper pursuant to 28 U.S.C. §1391(a) because, at all relevant times, Beau Diamond and Diamond Ventures LLC operated in this District. In addition, Plaintiffs Barbara Kann and Raymond K. Ferwerda reside in this District and the Defendant maintained offices and branches and conducted business in this District.

III. PARTIES

13. Plaintiff Rita Lawrence is an individual who resides in Gainesville, Florida. Ms. Lawrence transferred \$103,000.00 to Diamond Ventures' Bank of America account. She later received payouts totaling only \$6,162.39. In all, Ms. Kann was defrauded in an amount totaling \$96,837.61.

14. Plaintiff Barbara Kann is an individual who resides in Nokomis, Florida. Ms. Kann wired \$195,000.00 from her Bank of America account directly into Diamond Ventures' Bank of America account. She later received payouts totaling only \$36,750.71. In all, Ms. Kann was defrauded in an amount totaling \$158,429.29.

15. Plaintiff Raymond K. Ferwerda is an individual who resides in Tampa Florida. Mr. Ferwerda wired \$100,000.00 from his Entrust 401K account to Diamond Ventures' Bank of America account. He later received payouts totaling only \$8,000.00. In all, Mr. Ferwerda was defrauded in an amount totaling \$92,000.00.

16. Plaintiffs bring this action individually and on behalf of all others similarly situated who invested monies with Diamond and Diamond Ventures, which were deposited into BOA or other subsequently used bank accounts. The total number of such investors is believed to be in excess of 200 persons and the total amount of such investments is believed to be in excess of \$37.6 million.

17. Defendant Bank of America, National Association ("BOA") is a subsidiary of Bank of America Corporation, a Delaware corporation headquartered in Charlotte, North Carolina. Bank of America provides a diverse range of banking services in 32 states including Florida. At relevant times, Bank of America had a branch located at 1237 Old Stickney Point Road, Sarasota, Florida 34242.

IV. SUBSTANTIVE ALLEGATIONS

18. The Ponzi scheme underlying the issues in this class action was orchestrated by Florida resident Beau Diamond. Diamond formed Diamond Ventures LLC on March 30, 2006, for the purported purpose of trading in the off-exchange foreign currency markets.

19. Diamond had a personal banking relationship and an account ("BD Account") with BOA that predated the March 2006 formation of Diamond Ventures.

20. Once Diamond Ventures was launched, Diamond needed a banking platform from which to execute his fraudulent scheme. On April 21, 2006, less than one month after the formation of Diamond Ventures LLC, BOA opened an account for Diamond Ventures at its Siesta Key, Florida branch (“DV Account”).

21. In or about April 2006, Diamond began soliciting his family and friends to invest in Diamond Ventures. He told these individuals that he had participated in forex trading for approximately 8 years – a time period that would indicate that he had been trading since he was only 19 years old. He falsely advised investors that he had learned from mistakes trading in the forex market and had developed a very successful trading strategy.

22. Notably, neither Diamond nor Diamond Ventures has ever been registered with the CFTC.

23. From the beginning of this fraudulent enterprise Diamond banked and fostered a relationship with BOA. That relationship fueled DVs growth and ability to secure and convert millions of dollars in investor funds.

Diamond’s Scheme

24. Diamond promised his investors that investment in Diamond Ventures was risk-free, explaining to them that he would only be trading with a small percentage of their principal, around 15%. He further promised that stop gaps were in place to shut down trading if more than 15% of the investors’ principal was lost and that, if losses occurred, Diamond would guarantee the losses with the profits Diamond realized on previous trades.

25. The Diamond Ventures promotional materials, authored by Diamond, stated that there was a reserve account of money that “just sits there, unused, untouched and ready to cover this 15% maximum loss” and, thus, “no client loses a single penny.”

26. Diamond guaranteed investors a monthly profit of between 2.75% and 5%. Diamond claimed that his trading would generate an average monthly profit of 5-15% and that his fee would only come from any amount above the agreed-upon percentage for each investor.

27. Diamond Ventures offered two funds. The first fund was known as the “rollover program.” In the rollover program, the monthly profits stayed in the account and were added to the principal amount each month. Diamond generally offered a higher percentage profit return with the rollover program to encourage investors to choose it. The second program was known as the “withdrawal program.” In the withdrawal program, investors received a monthly profit check and a statement asserting that their principal investment amount stayed the same from month to month.

28. Importantly, Diamond Ventures never maintained a reserve account.

BOA’s Relationship with Diamond Deepens

29. BOA’s Siesta Key branch is a small, local office that had approximately five employees when the DV Account was opened. As Diamond collected investment monies from his unwitting victims, he began making exceptionally large deposits into the DV Account. Based on the substantial size of those deposits, the DV Account was transferred from the Siesta Key Office to BOA’s Premier Banking & Investments

(“Premier Banking”), where Diamond could expect to receive “close, personal attention,” “priority customer service” and “expertise in banking and investment services.”

30. BOA’s offers the following the following description of Premier Banking on its website:

Premier Banking & Investments brings together **personalized banking and investment expertise** on one team dedicated to you. A Premier Banking Client Manager and a Banc of America Investment Services, Inc. Financial Advisor **work directly with you to provide comprehensive financial strategies and customized banking and investment solutions** to help you manage your financial life and pursue your goals.

You will receive priority service, have access to specialized product solutions, and be recognized as a valued client throughout the Bank of America family.

31. Premier Banking also offers customers “comprehensive financial strategies,” which include the following:

In-depth guidance and solutions

A Dedicated Financial Team: a Premier Banking Client Manager and a Banc of America Investment Services, Inc. Financial Advisor **work closely with you to understand your needs**. They **provide guidance** and customized investment, deposit and credit solutions utilizing the full scope of our company's expert resources and our broad spectrum of investment and banking products. Your Financial Advisor from Banc of America Investment Services, Inc. will focus on investments and your Client Manager from Bank of America will coordinate the credit and cash management portion of your portfolio.

...

A disciplined wealth management process

Working with a Client Manager and a Financial Advisor, you are guided through a thoughtful, four-step consultative process to design and implement your financial strategy.

1. **Discovery.** Your Client Manager and Financial Advisor **meet with you to learn about your financial situation, and to prioritize and document your goals, objectives and obligations.**
2. **Analysis.** Using your profile and Perspectives on Planning³, an exclusive financial analysis tool from Banc of America Investment Services, Inc., your Financial Advisor then **recommends a comprehensive asset allocation strategy** that's consistent with your goals.
3. **Implementation.** Upon your approval, your Financial Advisor puts your strategy into action.
4. **Reviews and monitoring.** Your Financial Advisor then **assists you in tracking, researching and evaluating your investments** to ensure that your overall financial strategy remains focused on your needs and goals.

Highly qualified people

When you work with Premier Banking & Investments, you **work with highly trained and highly skilled professionals.**

- Client Managers, who are **among the most experienced and knowledgeable** when it comes to helping you meet your everyday banking needs.
- Financial Advisors, who **have an average of 10 years experience** in financial and investment guidance and **undergo extensive continuing training.**

32. The Client Manager and Financial Advisors (“Premier Bankers”) regularly review the accounts under their purview, assist the customer with business and banking activities, and cross-sell the customer on other services based on customer needs identified by reviewing the customer accounts. The Premier Bankers’ role is to know and interact with the customer.

33. BOA provides Premier Bankers with a computer system known as “Connection,” which updates the Premier Bankers with major deposits and wires each morning on their clients’ accounts. Additionally, client wire transfers over \$10,000 must be approved by the Premier Banker or other authorized officer of BOA. The approval process, combined with the Connection program, gives the Premier Banker actual knowledge of the day-to-day transactions in his/her client accounts.

34. The Premier Bankers, as well as the Siesta Key Branch, were required to complete BOA “Know Your Customer” forms, which require recording a complete history of the client, the nature of the client’s business, the estimated amount of client wire transfers, check activity, and other specific inquiries of the client’s business.

BOA Provides Further Assistance to Diamond

35. During his Premier Banker Know Your Customer inquiries, Diamond informed BOA that he was operating an “investment club.” BOA policy does not permit investment club accounts but, despite this policy, the Premier Bankers authorized and supervised Diamond Ventures’ so called investment club account.

36. As funds were placed with Diamond Ventures, investors were sent electronic copies of account statements. From approximately June 2006 to December 2008, investors were e-mailed electronic account statements indicating that their investments were accruing the profits that Diamond promised. Investors who had chosen the withdrawal program also received monthly checks in the mail corresponding with the monthly profit amounts. From May 2006 to December 2008, Diamond told investors that the trading program was doing well and realizing the anticipated profits.

37. The first Premier Banker responsible for the DV Account was Joshua Ladwig. At all times material hereto, Mr. Ladwig was an officer of BOA. Mr. Ladwig presumably became familiar with Diamond and his investment club during the “know your customer” and “discovery” phases of the Premier Banking process. BOA’s policies and procedures required Mr. Ladwig to be actively involved in serving and supervising its client accounts.

38. From 2006 through December 2007, Mr. Ladwig oversaw and, ostensibly, approved the activity taking place in the DV Account. In December 2007, Marcy Gilroy replaced Mr. Ladwig as the Premier Banker responsible for the account. At all times material hereto, Ms. Gilroy was an officer of BOA.

39. Diamond completed the “Know Your Customer” information.

40. From 2006 through 2008, Mr. Ladwig and Ms. Gilroy reviewed the account activity and statements for the DV and BD Accounts as part of their ordinary duties. In the execution of those duties, they observed the following:

- The account statements reflect that upwards of \$37,600,000 was deposited by some 200 investors in period of less than 32 months following the formation of an investment company by 27 year-old Diamond.
- Diamond made no startup capital contribution to Diamond Ventures. Diamond Ventures, at its inception, was a single member company with no other officers until Harvey Diamond (Beau Diamond’s father) was named a manager on March 19, 2007.
- Upwards of \$15,400,000 was transferred by Beau Diamond from the DV Account to foreign exchange companies by wire during the 32-month period, with such entities being identified on the wires and statements. The forex account

statements further reveal no profits from BD's foreign exchange trading were transferred back to the DV Account.

- Diamond had no independent wealth, nor did he deposit any of his personal funds into the DV Account.
- Despite the lack of profits realized on forex investments, over \$15,600,000 was paid out of the DV Account in monthly payments over the 32-month period to DV investors in small, incremental amounts as well as larger wires and transfers. Over 2,300 checks to investors were written during this period.
- From May 2006 through December 2008, Diamond used the DV Account's debit card for his own personal expenses. In total, Diamond charged \$182,500 to the DV Account's debit card for his personal expenses and trips, including but not limited to the following:

11/16/06: Kirk Jewelers \$23,320

5/27/08: Wynn Las Vegas \$9,350

5/30/08: Wynn Las Vegas \$8,350

9/2/08: Wynn Las Vegas: \$9,350

9/2/08: MGM Grand Hotel CA \$9,270

9/4/08: MGM Grand Hotel CA \$9,270

9/4/08: MGM Grand Hotel CA \$9,270

11/3/08: MGM Grand Hotel CA \$9,270

11/5/08: MGM Grand Hotel CA \$10,094

11/17/08: MGM Grand Hotel CA \$9,785

11/20/08: MGM Grand Hotel CA \$7,210

- Between November 6, 2006, and October 14, 2008, Diamond made 10 transfers totaling \$795,000 to his personal account from the DV Account, including transfers of \$500,000 on March 30, 2007, and \$100,000 on May 23, 2008.

- Between January 2007 through December 2008, Diamond transferred \$188,000 to a DV subaccount #6543.
- Diamond paid for an assortment of extravagant lifestyle expenditures from his personal account (BD Account), including \$16,000 per month for several months rent for a New Port Beach home and \$2,297 per month for a Lamborghini lease. Funds to pay these expenditures were transferred from the DV Account to the BD Account per Diamond's instructions.
- Diamond wired a total of \$1,625,000 to Attorney Bruce S. Frank, Esquire, of Orange Blossom, New York in late 2006. On November 10, 2006, \$1,225,000 was transferred, and on December 22, 2006, another 400,000 was transferred.
- Between September 5, 2006 and August 10, 2007, Beau Diamond made eleven transfers totaling \$762,683.32 to BOA account # 9069, including \$153,550 in December 2006, \$155,550 in January 2007, and \$250,000 on August 10, 2007. According to Diamond, account #9069 belonged to John DeSylvester, an investor.
- On September 29, 2006, Diamond transferred \$160,000 to BOA account #5940. He claims this was a failed investment.
- Diamond wired \$500,000 to Portugal on March 20, 2007.
- Diamond wired 2,000,000 to Saxo Bank, a Danish corporation, in March and April 2008, to fund a forex trading account.
- In November 2008, Diamond Ventures received a wire of a refund from MGM Grand of Las Vegas, Nevada, representing a refund of a "customer" deposit in the amount of \$230,000.
- On December 16, 2008, Diamond transferred \$100,000 to BOA account #9146. According to Diamond, this account belonged to his associate, Eric Collins.

- The DV Account statements reflect deposit transfers of over \$3,000,000 directly from approximately 25 investors through Entrust, the custodian of the investors' self-directed retirement accounts.
- During the August 2007-October 2008 time period, Diamond made 47 transfers from Diamond Ventures account #7477, apparently through BOA's Jacksonville call center (#3235), totaling \$1,670,352.10. Of particular note is that fact that eleven such transfers made in 2008 were to Diamond's personal account, #4835, totaling \$550,000.
- Numerous other wires were made and approved by the Premier Bankers that were not related to the activities of Diamond Ventures, including transfers to Harvey Diamond (Beau Diamond's father), an entity controlled by Harvey Diamond, and his friends, including Zachary Cubitt.
- At least four transfers totaling \$55,790 were made for Harvey Diamond's benefit, including two to Fit for Life, LLC: \$15,000 on December 1, 2006, and \$10,000 on January 31, 2008. In addition, \$5,790 was wired for Harvey's benefit to purchase tires on March 28, 2008. Finally, \$25,000 was transferred to Professional Business Strategy for Harvey's benefit on October 24, 2008.
- Three wires transfers totaling \$180,400 were made by Diamond to Zachary Cubitt, his "office manager," between September 5, 2008, and December 3, 2008.
- The DV Account was overdrawn at least twice: once in July 2008 and again in November 2008.

Diamond's Scheme Culminates

41. In July 2008, Diamond sent out an e-mail to investors stating that he was trying to reach "institutional" status for trading purposes so that Diamond Ventures would obtain brokerage fee discounts. Diamond represented to investors that the brokerage houses required a minimum account balance in order to obtain an "institutional" status. In an attempt to induce current investors to invest more funds with

Diamond Ventures to obtain the “institutional” status, Diamond offered a 10% bonus to investors. This bonus was to be added to the account principal and would be realized six months after the funds were placed with Diamond Ventures. For example, if an investor invested an additional \$200,000 with Diamond Ventures, the investor would be guaranteed a \$20,000 principal bonus six months after the investment in addition to the normal profit return.

42. In December 2008, investors in the rollover program received their usual electronic account statements showing the promised returns, but none of the investors in the withdrawal program received their monthly interest checks. Investors immediately began contacting Diamond Ventures inquiring about their profit checks. On December 10, 2008, Diamond sent out an e-mail stating the delay in receiving their checks was due to a banking error. Two days later, on December 12, 2008, Diamond sent out an e-mail that he changed banks and checks would be sent out in three days. On December 18, 2008, Diamond sent an e-mail to investors stating that the checks were mailed but there might be a delay in delivery due to the Christmas mail volume. Towards the end of December 2008, Diamond went on vacation to Costa Rica and used investor funds to pay for it. On January 9, 2009, Diamond e-mailed his investors announcing that all of their funds were lost due to the economic crisis.

43. On September 3, 2009, the Commodity Futures Trading Commission (“CFTC”) filed a Complaint against Beau Diamond and Diamond Ventures, alleging that Diamond and Diamond Ventures were carrying out a Ponzi scheme. In this complaint, the CFTC described Diamond’s actions as followed:

From at least April 2006 to the present, Diamond Ventures LLC (“DVL”), by and through its employees and agents, including but limited to its principal and control person, Beau Diamond (“Diamond), (collectively, “Defendants”) solicited approximately \$37 million from at least 200 members of the general public, for the purported purpose of trading off-exchange foreign currency (“forex”) contracts. Defendants deposited only approximately \$15.2 million into forex trading accounts and misappropriated at least \$1.1 million of customer funds for their own benefit.

Defendants guaranteed customers the return of their deposits and monthly returns of between 2.75% and 5% on their investment, depending on the date of the investment and whether monthly returns were withdrawn or compounded. Defendants falsely represented that the guaranteed 2.75% to 5% return on investment was produced by Defendants’ successful forex trading. In fact, Defendants’ forex trading resulted in substantial losses and the purported guaranteed monthly returns paid to costumers came from existing customers’ original principal and/or from money invested by subsequent customers. Defendants, therefore, are operating a Ponzi scheme.

44. BOA and its Premier Bankers had, at the very least, a general awareness of the Diamond Ventures scheme based on inferences drawn from the following facts:
- The numerous wire transfers unrelated to any legitimate business activity on the part of Diamond Ventures;
 - The numerous atypical business transactions on the part of Diamond Ventures;
 - The millions of dollars streaming into the DV Account from investors;
 - The millions of dollars streaming out of the DV Account as returns to investors and to fund personal and gambling expenditures for Diamond;

- That between September 2006 through December 2008, deposits into the DV account ranged from \$474,000 to over \$4.1 million, while withdrawals/debits ranged from \$227,000 to over \$3.51 million;
- That between August 2006 and November 2008, the monthly average ledger balance for the DV account ranged from \$230,000 to over \$1.6 million;
- The fact that Diamond Ventures was running an investment club; and
- Diamond's age and experience in managing monetary funds.

45. The banking history described above shows wire transfers unrelated to, and atypical of, any legitimate business activity on the part of Diamond and Diamond Ventures. Moreover, the Diamond Ventures statements reflect no investment business or any business that generated any revenues whatsoever but, rather, ongoing monthly payouts to clients out of new client deposits. The only inference that can be drawn based on the histories of the DV and BD Accounts is that Diamond was running a Ponzi scheme.

46. Mr. Ladwig and Ms. Gilroy, as the Premier Bankers overseeing the Diamond's accounts, were in charge of reviewing the accounts, knowing how the Diamond Ventures operated, and otherwise being involved in the daily supervision and support of Diamond Ventures' finances. Moreover, to the extent suspicious activities were taking place, Mr. Ladwig and Ms. Gilroy were charged with notifying the compliance officer.

47. Throughout the banking relationship with Diamond and Diamond Ventures, the BOA Premier Bankers knew, based on the DV Account and BD Account activities and histories and Diamond's disclosure that he was operating an investment club, that Diamond Ventures was operating an illegal enterprise. The Premier Banker's authorization of the above-described wires, which were unrelated to Diamond Ventures' business or any legitimate business enterprise, their unexplained failure to notify the compliance officer of Diamond Ventures' activities, and their allowed use of a bank account for an investment club against BOA's own policy, provided Diamond and Diamond Ventures with substantial assistance necessary to carry out the fraudulent scheme.

48. Moreover, BOA and its Premier Bankers knowingly and substantially assisted Diamond despite their awareness of his scheme in ways including but not limited to the following:

- Providing wire transfer capability so investor funds could be rapidly diverted off shore;
- Allowing the co-mingling of accounts to facilitate and make possible the success of Diamond Ventures;
- Providing access to unlicensed trading in the forex markets; and
- Providing a banking platform, complete with hands-on, personal attention and customer service that made the conversion of investor funds possible.

49. BOA Premier Bankers earn commissions based on amounts of deposits, investments, and credit facilities that they secure for BOA. Diamond Ventures

represented substantial commissions by way of deposits to the Diamond Ventures Premier Bankers. In fact, between August 2006 and November 2008, the monthly average ledger balance for the DV account ranged from \$230,000 to over \$1.6 million.

50. BOA Premier Bankers receive training in fraud and other criminal activities, such that the Premier Banker, in the ordinary course of his or her duties, would have easily recognized a pattern of the suspicious activities in the DV and BD Accounts and ordinarily would have reported such activity to compliance.

51. Rather than report Diamond's illegal activities to the authorities, however, BOA's Premier Bankers actively participated in Diamond's blatant conversion of investor funds to pay his substantial personal expenditures set forth above.

52. Plaintiffs file this class action, individually and on behalf of a class (the "Class," as more fully defined below) of all persons who invested funds with Diamond through Diamond Ventures, and whose investment monies were deposited into accounts held by BOA from April 2006 through the present.

53. BOA knowingly provided bank accounts for use by Diamond, which permitted him, through his Ponzi scheme, to commingle, convert to his personal use, and abscond with Plaintiffs' and Class members' investment monies.

54. BOA aided and abetted the fraudulent and illegal activities of Diamond by knowing, but electing to ignore, that (a) Diamond was operating an illegal Ponzi scheme, and (b) Diamond was commingling, converting and absconding with investor monies.

55. As a direct and proximate result of BOA's improper, tortious and illegal conduct, Plaintiffs and the Class members have suffered loss of their investment monies in the millions of dollars, and other damages.

V. CLASS ACTION ALLEGATIONS

56. Plaintiffs bring this nationwide class action on behalf of themselves and two Classes (collectively, the "Class") defined as follows:

- i. All persons or entities residing within the State of Florida who invested money with Diamond and/or Diamond Ventures which was held in a Bank of America account who lost a portion of, or the entirety of their investments.
- ii. All persons or entities who invested money with Diamond and/or Diamond Ventures which was held in a Bank of America account who lost a portion of, or the entirety of their investments.

57. Excluded from the Class are governmental entities, Defendant, any entity in which Defendant has a controlling interest, and Defendant's officers, directors, legal representatives, successors, subsidiaries, and assigns. Also excluded from the Class is any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff.

58. Plaintiffs reserve the right to modify the class description and the class period based on the results of discovery.

59. Plaintiffs and the Class bring this action for equitable, injunctive and declaratory relief pursuant to subdivisions (b)(1), (b)(2) and (b)(3) of Rule 23 of the Federal Rules of Civil Procedure.

60. Numerosity: The proposed Class is so numerous that individual joinder of all its members is impracticable. Plaintiffs do not presently know the exact number of class members. Due to the nature of the trade and commerce involved, however, Plaintiffs believe that the total number of Class members is around 200.

61. Common Questions of Law and Fact Predominate: BOA has acted, with respect to the Class, in a manner generally applicable to each Class member. There is a well-defined community of interest in the questions of law and fact involved in the action, which affect all Class members. There are many questions of law and fact common to Plaintiffs and the Class members, and those questions substantially predominate over any questions that may affect individual Class members. The questions of law and fact common to the Class and which predominate over any questions affecting only individual members include, but are not limited to, the following:

- a. Whether Diamond and/or Diamond Ventures converted property of Plaintiffs and the Class members.
- b. Whether BOA aided and abetted Diamond and/or Diamond Ventures in converting property of Plaintiffs and the Class members.
- c. Whether Diamond and/or Diamond Ventures defrauded Plaintiffs and the Class members.
- d. Whether BOA aided and abetted Diamond and/or Diamond Ventures in defrauding Plaintiffs and the Class members.
- e. Whether Diamond breached a fiduciary duty owed to Plaintiffs and the Class members.

- f. Whether BOA aided and abetted Diamond's breach of a fiduciary duty to Plaintiffs and the Class members.
- g. Whether BOA had actual knowledge of Diamond's scheme.
- h. Whether BOA had actual knowledge of its role in Diamond's scheme.
- i. Whether BOA substantially assisted Diamond in his scheme.
- j. Whether BOA had general awareness that its role was part of an improper activity.
- k. Whether BOA had a duty to disclose Diamond's scheme to Plaintiffs and the Class members or to the authorities.

62. Typicality: Plaintiffs' claims are typical of the claims of the members of the Class. Plaintiffs and Class members have been similarly affected by Defendant's common course of conduct since they were all victims of a fraudulent Ponzi scheme and thus all were harmed in substantially the same way by Defendant's actions.

63. Adequacy of Representation: Plaintiffs will fairly and adequately represent and protect the interests of the Class members. Plaintiffs are committed to prosecuting this action and have retained competent counsel with substantial experience in prosecuting complex and class action litigation. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the Class members, and have the financial resources to do so. Neither Plaintiffs nor their counsel have any interests adverse to those of the Class.

64. Superiority of a Class Action: Plaintiffs and the members of the Class suffered harm as a result of Bank of America's unlawful and wrongful conduct. A class

action is superior to other available methods for the fair and efficient adjudication of the present controversy. Individual joinder of all members of the class is impractical. Even if individual class members had the resources to pursue individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed.

Individual litigation magnifies the delay and expense to all parties in the court system of resolving the controversies engendered by Defendant's common course of conduct. The class action device allows a single court to provide the benefits of unitary adjudication, judicial economy, and the fair and equitable handling of all Class members' claims in a single forum. The conduct of this action as a class action conserves the resources of the parties and of the judicial system, and protects the rights of the Class members.

Furthermore, for many Class members, a class action is the only feasible mechanism that allows them an opportunity for legal redress and justice. Moreover, adjudication of individual Class members' claims with respect to the Defendant would, as a practical matter, be dispositive of the interests of other members not parties to the adjudication, and could substantially impair or impede the ability of other Class members to protect their interests.

VI. CAUSES OF ACTION

COUNT ONE

AIDING AND ABETTING COMMON LAW FRAUD

65. Plaintiffs and Class members reallege and incorporate all the foregoing paragraphs as if set forth fully herein.

66. Diamond and Diamond Ventures defrauded Plaintiffs and the class members.

67. Diamond and his associates knowingly made false representations to Plaintiffs and the Class members. Among the false representations made by Diamond and his associates were the following:

- That Diamond had over eight years of successful experience in trading on the forex markets;
- That funds provided by Plaintiffs and the Class members were to be used for trading on the forex markets;
- That funds provided by Plaintiffs and the Class members were being used for trading on the forex markets;
- That Diamond Ventures maintained a reserve fund;
- That no more than 15% of the investment funds of Plaintiffs and the Class members would be traded on the forex markets;
- That Plaintiffs and the Class members would not lose their investments; and
- That Plaintiffs and the Class members were realizing returns on their investments.

68. Plaintiffs and the Class members relied on those misrepresentations to their detriment by investing funds in Diamond Ventures.

69. Diamond and his associates intended for Plaintiffs and the class members to rely on those misrepresentations.

70. Plaintiffs and the class members were justified in their reliance on the misrepresentations made by Diamond and his associates.

71. BOA had actual knowledge of the fraud being perpetrated on Plaintiffs and the class members by Diamond and his associates. Specifically, Bank of America had actual knowledge that included, but was not limited to, the following:

- Diamond was operating an illegal Ponzi scheme;
- Diamond was representing to investors that monies deposited with Diamond Ventures was going to be used for trading on the forex market;
- Diamond Ventures did not maintain a “reserve account” to protect and guarantee investor funds;
- No profits were being realized by Diamond Ventures from forex trading or, at the very least, no such profits were being deposited into accounts held by Diamond Ventures;
- Most of the funds provided by investors to Diamond and Diamond Ventures was not, in fact, being used for trading on forex markets;
- Diamond was commingling funds intended for investment purposes;
- Diamond was using substantial funds intended for investment purposes for personal and gambling expenses;
- Diamond was transferring large sums of investor funds to his personal account and to his family and friends; and
- Funds retained in the Diamond Ventures accounts were being misappropriated by Diamond for personal use.

72. BOA substantially assisted Diamond and his associates in perpetrating their fraud upon Plaintiffs and the class members. Specifically, BOA assisted in the fraudulent scheme in ways including but not limited to the following:

- By providing accounts for Diamond Ventures and supporting those accounts through ordinary business transactions; and
- By allowing Diamond to operate an investment club account in direct contravention to BOA's own policy;
- By approving wire transfers that were not related to the activities of Diamond Ventures;
- By allowing Diamond to conduct an investment business without confirming that he was properly licensed and registered to do so;
- By providing a banking platform for the fraud;
- By offering close, personal assistance through its Premier Banking; and
- By failing to provide information regarding the fraud to the proper authorities.

73. As a result of Diamond's fraud, and Bank of America's assistance thereof, Plaintiffs and the class members suffered economic losses in an amount to be proven at trial.

COUNT TWO
AIDING AND ABETTING CONVERSION

74. Plaintiffs and Class members reallege and incorporate all the foregoing paragraphs as if set forth fully herein.

75. Diamond and Diamond Ventures permanently deprived Plaintiffs and the Class members of their property.

76. At the time of the conversion, Plaintiffs and the Class members had an immediate right to their property.

77. BOA had actual knowledge of the conversion of funds belonging to Plaintiffs and the class members by Diamond. Specifically, BOA had actual knowledge that included, but was not limited to, the following:

- Diamond was operating an illegal Ponzi scheme;
- Diamond was representing to investors that monies deposited with Diamond Ventures was going to be used for trading on the forex market;
- No profits were being realized by Diamond Ventures from forex trading or, at the very least, no such profits were being deposited into accounts held by Diamond Ventures;
- Most of the funds provided by investors to Diamond and Diamond Ventures was not, in fact, being used for trading on forex markets;
- Diamond was commingling funds intended for investment purposes;
- Diamond was using substantial funds intended for investment purposes for personal and gambling expenses;
- Diamond was transferring large sums of investor funds to his personal account and to his family and friends; and
- Funds retained in the Diamond Ventures accounts were being misappropriated by Diamond for personal use.

78. BOA substantially assisted Diamond and Diamond Ventures in converting funds belonging to Plaintiffs and the class members. Specifically, BOA assisted in the conversion in ways including but not limited to the following:

- By providing accounts for Diamond Ventures and supporting those accounts through ordinary business transactions; and
- By allowing Diamond to operate an investment club account in direct contravention to BOA's own policy;
- By approving wire transfers that were not related to the activities of Diamond Ventures;
- By allowing Diamond to conduct an investment business without confirming that he was properly licensed and registered to do so;
- By providing a banking platform for the fraud;
- By offering close, personal assistance through its Premier Banking; and
- By failing to provide information regarding the fraud to the proper authorities.

79. As a result of Diamond's conversion, and BOA's assistance thereof, Plaintiffs and the class members suffered economic losses in an amount to be proven at trial.

COUNT THREE
AIDING AND ABETTING BREACH OF FIDUCIARY DUTY

80. Plaintiffs and Class members reallege and incorporate all the foregoing paragraphs as if set forth fully herein.

81. Diamond owed a fiduciary duty to Plaintiffs and the Class members in that they reposed their trust in Diamond to invest and protect their funds and Diamond accepted the reposal in him by Plaintiffs and the Class members.

82. Diamond breached his fiduciary duty to Plaintiffs and the Class members in ways that include but are not limited to the following:

- By failing to disclose his inexperience in forex trading and that he was not licensed with the CFTC or any other Federal or State regulatory authority;
- By not maintaining a reserve fund as represented;
- By investing or converting more than 15% of the investment funds of Plaintiffs and the Class members;
- By self-dealing at the expense of Plaintiffs and Class members;
- By converting investment funds of Plaintiffs and the Class members;
- By converting returns realized on the investments of Plaintiffs and the Class members; and
- By failing to disclose to the Plaintiffs and Class members, the actual status of their accounts and his misappropriation of their funds.

83. BOA had actual knowledge of Diamond's breach of his fiduciary duty to Plaintiffs and the Class members. Specifically, BOA had actual knowledge that included, but was not limited to, the following:

- Diamond was operating an illegal Ponzi scheme;
- Diamond was operating an investment club;

- Diamond was representing to investors that monies deposited with Diamond Ventures was going to be used for trading on the forex market;
- No profits were being realized by Diamond Ventures from forex trading or, at the very least, no such profits were being deposited into accounts held by Diamond Ventures;
- Most of the funds provided by investors to Diamond and Diamond Ventures was not, in fact, being used for trading on forex markets;
- Diamond was commingling funds intended for investment purposes;
- Diamond was using substantial funds intended for investment purposes for personal and gambling expenses;
- Diamond was transferring large sums of investor funds to his personal account and to his family and friends; and
- Funds retained in the Diamond Ventures accounts, including any returns on investments in Diamond's "rollover program," were being misappropriated by Diamond for personal use.

84. BOA substantially assisted Diamond in the breach of his fiduciary duty to Plaintiffs and the class members. Specifically, BOA assisted in the breach in ways including but not limited to the following:

- By providing accounts for Diamond Ventures and supporting those accounts through ordinary business transactions; and
- By allowing Diamond to operate an investment club account in direct contravention to BOA's own policy;

- By approving wire transfers that were not related to the activities of Diamond Ventures;
- By allowing Diamond to conduct an investment business without confirming that he was properly licensed and registered to do so;
- By providing a banking platform for the fraud;
- By offering close, personal assistance through its Premier Banking; and
- By failing to provide information regarding the fraud to the proper authorities.

85. As a result of Diamond's breach of his fiduciary duty, and BOA's assistance thereof, Plaintiffs and the class members suffered economic losses in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and members of the Class request that the Court enter an order or judgment against the Defendant as follows:

1. Certifying the proposed Class and ordering notice thereto to be paid by Defendant;
2. Adjudging and decreeing that Defendant has engaged in the conduct alleged herein;
3. Awarding compensatory and general damages according to proof on certain causes of action;
4. Awarding both pre and post-judgment interest at the maximum allowable rate on any amounts awarded;

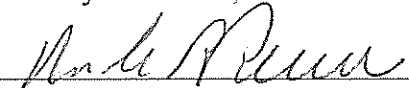
5. Awarding costs of the proceedings herein;
6. Awarding reasonable attorneys fees as allowed by statute; and
7. Any and all such other and further relief that this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all claims so triable.

DATED: October 22, 2009

Respectfully submitted,

By: 

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