

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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In re AGAPE LITIGATION	:	Master File No. 2:09-cv-01606-ADS(AKT)
_____	:	
	:	<u>CLASS ACTION</u>
This Document Relates To:	:	
	:	CONSOLIDATED AMENDED
ALL ACTIONS.	:	COMPLAINT FOR VIOLATION OF THE
_____	X	FEDERAL SECURITIES LAWS
		<u>DEMAND FOR JURY TRIAL</u>

Plaintiffs, by and through their attorneys, file this Second Amended Class Action Complaint against Bank of America, N.A. (“Bank of America” “BofA” or the “Bank”), Nicholas Cosmo (“Cosmo”), Agape Merchant Advance LLC and Agape World Bridges LLC (collectively, “Agape”),¹ on behalf of themselves and other similarly situated individuals or businesses who invested into fraudulent schemes operated by Agape and lost all or a portion of their investment.² Plaintiffs allege as follows based upon, *inter alia*, the investigation conducted by their counsel, which investigation has included a comprehensive review of Agape and Bank of America documents produced in accordance with the Court-ordered subpoena to the Trustee; an analysis of Agape investor documents; scores of interviews with former Agape employees and Agape investors; consultations with a former Federal Reserve official and banking compliance expert; independent research concerning Bank of America procedures; and the review of news accounts, court papers and other publicly available documents.

As demonstrated herein, Bank of America acquired actual knowledge of Cosmo’s fraudulent schemes (referred to herein as a “Ponzi scheme”) at every stage of its banking relationship, including, but not limited to, at the opening of the account, at the extension of credit to Cosmo and Agape, at the issuance of a remote depository facility to Agape, through the frequent account analyses and constant monitoring it performed in return for substantial fees paid to Bank of America,

¹ The bankrupt entity Agape World Inc. was also integrally involved in the scheme and is included within the definition of “Agape.” However, Agape World Inc. is not named as a defendant herein because it is currently in bankruptcy. Agape World is a New York corporation that was organized in August 2000. Nicholas Cosmo was the President and controlling owner of this company. At all relevant times, its headquarters were located at 150 Motor Parkway, Hauppauge, New York, within this District.

² Pursuant to the Court’s Order dated January 29, 2010, Plaintiffs have not asserted claims against the Defendant commodities firms, *i.e.*, MF Global, Inc., Transact Futures, Alaron Trading Corporation d/b/a Alaron Futures and Options and XYZ Corps. 1 through 10.

through the placement of a Bank of America employee within Agape's office and through the concrete allegations of fraud presented to a Bank of America Vice President by a bank customer and Agape investor.

Moreover, Bank of America substantially assisted the operation, velocity and growth of the Agape Ponzi scheme over at least a five-year period. Both knowledge and assistance is demonstrated by, among other things, evidence that Bank of America provided an array of extraordinary services to Cosmo including: (1) account monitoring and analysis in exchange for tens of thousands of dollars in fees; (2) regular advice from a senior bank manager designed to facilitate Agape's fraudulent operations; (3) access to bank personnel for assistance in its fraudulent operations; (4) access to confidential bank customer account deposit information to help Agape solicit new victims; and (5) state-of-the-art banking tools that allowed Agape to more swiftly process and steal investor deposits without interacting with a teller or setting foot inside a bank.

In short, Bank of America, both as an institution and through the extraordinary actions of its employees, acted in concert with Agape to enable this massive Ponzi scheme.

PRELIMINARY STATEMENT

1. Newly obtained bank records concerning Agape's accounts at Bank of America reflect that with the Bank's knowledge and assistance, more than \$2.7 billion flowed into Agape's account and nearly an identical amount flowed out from January 2006 through the end of the scheme at the beginning of 2009. In one month alone, Agape took in more than \$286 million. Not a penny was retained for the funding of "bridge loans" to real estate investors, which was the stated purpose of Agape. And only a tiny fraction of the amounts received was maintained (in December 2007, less than 0.8% of deposits) in Agape's account; hardly enough to run a multi-billion-dollar business. Meanwhile, Agape's purported "escrow account" remained dormant and empty for years. Reviewing these bank records leads to one inference and one inference alone: Agape was running a

Ponzi scheme in which each month old victims were being paid with funds from new victims, and Bank of America knew it.

2. Indeed, from the start, Agape was “joined at the hip” with Bank of America and maintained a special relationship. Agape’s torrent of cash movement took place under the watchful eye of senior account managers of Bank of America, who were being paid fees by Agape to monitor and analyze its bank accounts. Bank of America and its executives consulted on a regular basis with Agape’s founder and driving force, Nicholas Cosmo. At the time he opened the Agape accounts, Cosmo had recently completed a twenty-one-month sentence for felony investor fraud in federal prison in Allenwood, Pennsylvania. Bank of America’s consulting generated for the bank tens of thousands of dollars of bank fees and revenues paid by Agape. This consultation resulted in the bank’s intimate and full knowledge that Cosmo was running a Ponzi scheme through a single commingled account of converted investor money. Indeed, Bank of America knew from Agape’s empty “escrow account” that it had no legitimate business operations.

3. Cosmo fraudulently convinced Plaintiffs and other members of the Class that their investments were funding bridge loans for real estate developments such as construction projects. Cosmo would offer investors participation interests in the return on these loans, but fraudulently resold those same interests hundreds of times to other unknowing investors. Bank of America became a *de facto* partner of Cosmo in the operation of his fraudulent scheme. The Bank’s active and ongoing efforts, lasting over five years, were carried out by several bank employees including Cosmo’s senior account manager and his deputy. Substantial evidence from bank records and others compiled by Plaintiffs through a thorough investigation details the Bank’s integral role in: (1) allowing the scheme to launch; (2) designing the structure of its bank accounts; (3) facilitating

the scheme's growth and acceleration; and (4) forestalling its demise, resulting in many more millions of dollars lost by investors.

4. In short, without Bank of America's support and assistance, Agape could not have grown to become the multi-billion-dollar operation that it was. Through consulting and "analysis" services, remote unsupervised use of banking equipment, and access to confidential bank customer information for solicitations, Bank of America enabled Agape to ultimately reach over \$200 million in deposits and withdrawals per month. This explosion in the size and scope of Agape's fraud was the direct result of Bank of America's knowledge and substantial assistance of the Agape Ponzi scheme.

5. Finally, in mid-2008, Bank of America became aware that Cosmo and Agape were under criminal investigation but continued to provide the extraordinary assistance it had been providing all along. One aggrieved investor not only complained to Bank of America, but also followed up by filing a formal complaint with the Office of the Controller of the Currency (the "OCC"). Even after being told of the OCC investigation, Bank of America continued assisting Agape and knowingly helped Agape conceal its fraud and avoid detection. The Bank's continued assistance enabled Agape to perpetrate its fraud for several additional months while more investors lost millions.

JURISDICTION AND VENUE

6. This Court has original jurisdiction pursuant to 28 U.S.C. §1332(d) as the aggregate amount in controversy exceeds \$5,000,000 and at least one class member is a citizen of a State different from a defendant, and more than one third of all Class members may reside outside of the State of New York. This Court has personal jurisdiction over Defendants pursuant to 18 U.S.C. §1965(b) and (d).

7. Venue is proper under 28 U.S.C. §§1391(a) and (b), because the Defendants' unlawful course of conduct occurred in large part in this District. Venue is also proper under 18 U.S.C. §1965(a) because all Defendants transact or have transacted business in this District at times material to this action.

PARTIES

8. Plaintiffs Kay and George Sullivan reside in Rockaway Park, New York. The Sullivans invested money with Agape during the Class Period and were damaged by virtue of losing most or all of their investment when the Agape scheme collapsed.

9. Plaintiffs Michael and Kathleen Tirelli reside in Patchogue, New York. The Tirellis invested money with Agape during the Class Period and were damaged by virtue of losing most or all of their investment when the Agape scheme collapsed.

10. Plaintiff Steve Bonnano resides in Wantagh, New York. Mr. Bonnano invested money with Agape during the Class Period and was damaged by virtue of losing most or all of his investment when the Agape scheme collapsed.

11. Plaintiff Roseann M. Bologna resides in Howard Beach, New York. Ms. Bologna invested money with Agape during the Class Period and was damaged by virtue of losing most or all of her investment when the Agape scheme collapsed.

12. Plaintiff Talin Conti is a resident of Little Neck, New York. Ms. Conti invested money with Agape during the Class Period and was damaged by virtue of losing most or all of her investment when the Agape scheme collapsed.

13. Plaintiff Josephine Davi is a resident of Glendale, New York. Ms. Davi invested money with Agape during the Class Period and was damaged by virtue of losing most or all of her investment when the Agape scheme collapsed.

14. Plaintiff Marilyn Weshnak is a resident of Somerset, New Jersey. Ms. Weshnak invested money with Agape during the Class Period and was damaged by virtue of losing most or all of her investment when the Agape scheme collapsed.

15. Plaintiff Erica C. Jung is a resident of Bernardsville, New Jersey. Ms. Jung invested money with Agape during the Class Period and was damaged by virtue of losing most or all of her investment when the Agape scheme collapsed.

16. Defendant Agape World Bridges LLC is a corporation organized under the laws of New York. Nicholas Cosmo was the founder, owner and President of this company. At all relevant times, its headquarters were located at 150 Motor Parkway, Hauppauge, New York, within the District.

17. Defendant Agape Merchants Advance LLC (“AMA”) is a New York limited liability company that was organized in November 2007. Nicholas Cosmo was the Managing Member and controlling member of AMA. It shared headquarters with Agape.

18. Defendant Cosmo was the President and controlling owner of Agape World, AMA and Agape World Bridges LLC. He resided in Lake Grove, New York. Cosmo is a prior felon who, on January 15, 1999, pled guilty to mail fraud relating to an investment scheme and served twenty-one months in prison and was ordered to pay restitution of \$177,000. As a result of the guilty plea, in 2000, FINRA revoked his stockbroker’s license, fined him \$68,209 and barred him for life from association with any investment or securities broker-dealer.

(a) Defendant Bank of America 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 thirty-two states including New York State. At relevant times,

Bank of America had branches located at 190 Vanderbilt Motor Parkway, Hauppauge, New York and at 60 Hempstead Avenue, West Hempstead, New York.

FACTS

PART I

The Nature of the Wrongdoing (The Cosmo/Agape Ponzi Scheme)

19. Commencing in 2003, and through to his arrest on January 19, 2009, Cosmo operated an elaborate Ponzi scheme. Initially through Agape World, and later AMA, Cosmo purportedly provided secured bridge loans and merchant advances to businesses or individuals who could not obtain financing through commercial banks. The bridge loans offered were short term and supposedly secured by the underlying real estate or other assets. Cosmo and Agape sought investor money as capital for its bridge loans and promised investors returns of twelve to fifteen percent. Later, Cosmo supplemented his scheme by claiming to provide an investment vehicle into bridge loans for merchants carrying credit card accounts payable from month to month.

20. Agape's website provided the scheme with an air of legitimacy by, among other things, using background pictures of construction and infrastructure projects. At relevant times the website stated that "project developers and contractors have sealed our services thru 2008." This statement, like so many others made by Defendants, was false and fraudulent.

21. Agape's website also contained information for investors. Investors were advised that Agape did not decide to lend until it did "due diligence on the borrowers" and was "fully secure in [the] decision to take on the loan." Agape represented that its "approved investors" would benefit from "99% security of [their] investment by first position UCC filing"; "investors are in complete control of their funds and are able to access at any time"; "each loan is collateralized by 100%

commercial asset lien”; “clients are consulted directly and personally with their executive every loan term”; and “loan terms range from 60 days to 18 months.”

22. These and similar misrepresentations and omissions were made to Plaintiffs and the Class, who were attracted to Agape’s seemingly safe and professional business plan and model. Based largely upon the strength of its purported plan, its burgeoning reputation and its close ties to Bank of America, Agape successfully attracted hundreds of millions of dollars from investors.

23. To further attract investor funds, Agape developed relationships with approximately twelve “brokers” and “sub-brokers,” who worked as employees or agents of Agape. These brokers were given handsome cash payments for soliciting new investors to Agape, and thereby raising new capital to feed the scheme. According to filings made by the Trustee, some of these individuals received in excess of \$1 million.

24. These brokers also each had a bank sub-account established at Bank of America, into which they fed investor funds they had solicited. Bank of America enabled Cosmo’s direct control over these funds, which would be “swept” into Agape’s operating account at Bank of America on a daily basis. This and many other related behind-the-scenes services performed by Bank of America for Cosmo and Agape were highly unusual and in violation of recognized banking compliance regulations and standard anti-money-laundering procedures.

25. Based upon a review of monthly statements of Agape’s Bank of America accounts, we know that Cosmo directly and through his brokers raised an estimated \$2.7 billion from investors. The Agape investors were located nationwide; however, a large percentage of investors were middle-income residents situated on Long Island. These investors included police officers, post office employees, social security clerks and other blue-collar investors.

26. Using various fraudulent devices, Agape rapidly obtained investment funds from the public, allowing to it upgrade its office space and hire numerous employees. Agape's success, however, was not real. It existed only for Cosmo and the other Defendants and was based entirely upon lies.

27. In truth, Agape was a "house of cards" that made only a handful of loans using investor funds. Rather than conduct its business in the manner represented to investors, Agape would sell and repeatedly resell the same interests in a loan using identical underlying documentation such as UCC-1 filings to trick unsophisticated investors. For example, Cosmo would provide a \$1 million dollar loan to a developer and collect \$60 million from investors, effectively selling and reselling the same loan over and over. Agape never actually made anywhere near enough legitimate loans (nor did it transact other legitimate business) to repay the hundreds of millions of investor dollars it received.

28. Instead, Agape operated as a classic Ponzi scheme. As the statements of Agape's Bank of America accounts reflect, large returns paid to early investors simply came from investments made by later investors. Each month large amounts of money came in, but a nearly identical amount was withdrawn to pay earlier investors, Bank of America's fees and commissions, Agape's employees and to fund the lavish lifestyle of Cosmo and his family.

29. Under Cosmo's direction, Bank of America converted investor money and commingled all of the funds into one Agape operating account. Funds were never segregated by investor or held for their benefit, or segregated by underlying loan or project. In fact, as Bank of America was fully aware, Agape had an "escrow account" opened to hold customer money for projects, yet the account sat dormant and empty for over five years. Using new investor money, Agape would issue returns from these commingled accounts to the early investors, pay interest to

investors, pay its “brokers” handsome and outlandish commissions and fees and pay Bank of America for myriad fees it charged for monitoring, analysis and other services. Finally, Cosmo also personally benefitted from this success with a lavish house and expensive automobiles.

30. In short, Agape and Cosmo, with the knowing substantial assistance of Bank of America, detailed herein, engaged in a massive fraud and deceit upon Plaintiffs and other investors to solicit billions of dollars from unsuspecting victims, then covered up the scheme and lies for as long as possible until the cash finally ran out.

31. On January 26, 2009, Cosmo was arrested and charged with bank and mail fraud, among other charges. He awaits trial in prison and faces up to thirty years in prison if convicted. *See U.S. v. Cosmo*, E.D.N.Y. Docket No. 09-CR-255.

PART II

Bank of America Had Actual Knowledge of the Agape Ponzi Scheme

32. Bank of America acquired actual knowledge of the Agape Ponzi scheme through inference, circumstantial and direct evidence. That knowledge can be ascertained from several sources beginning with the opening of the original Agape account, the bank extending credit to Cosmo, years of admitted formal monitoring and analysis of Agape’s account activity by senior executives, frequent meetings between Cosmo and senior bank executives, and finally the access provided Bank of America employees to the inner sanctum and day-to-day operations of Agape.

33. For example, Cosmo maintained an extraordinary relationship with Tom Sullivan, a senior bank manager with decades of experience. Mr. Sullivan, Senior Client Manager within the Business Banking Department, frequently met with Cosmo to discuss Agape’s fortunes and how Bank of America could better serve its needs. His compensation depended upon maintaining large accounts like Agape at his branch. He was privy to ample facts, as described herein, to create a strong inference that he and others had actual knowledge that Cosmo was operating a Ponzi scheme.

Know Your Customer/Enhanced Due Diligence

34. In October 2003, when Cosmo first applied to Bank of America's predecessor, Fleet Bank, to open Agape's operating account, the bank was mandated by industry "Know-Your-Customer" rules to conduct a background check of Cosmo. At that moment, before Cosmo even opened the account, the bank learned of his recent felony conviction for defrauding securities customers, and the accompanying lifetime ban from the securities industry that regulators had imposed on him. Second, it learned that he purported to run a financial firm. And third, it learned that his business would be headquartered on Long Island, in one of a handful of locations designated by federal law as a "high-impact area" for financial crimes.

35. These three risk factors triggered what is known in commercial banking as "Enhanced Due Diligence" or "EDD." (In fact, any one of them would have triggered EDD, and when all three were presented together, the bank went on high alert.) When EDD is triggered, the bank must fulfill the strict requirements of its "Customer Identification Program" or "CIP." The watchword at this stage was "Banker Beware."

36. Together, these factors drew the attention of the bank's risk, compliance and fraud-prevention departments and led the bank to maintain a watchful eye on Agape's accounts from that point forward. From this point forward, the bank's watchful eye gathered actual knowledge of Agape's Ponzi scheme.

Due Diligence Accompanying the Extension of Credit Expanded Actual Knowledge

37. Sometime in 2006, Bank of America approved both personal and commercial lines of credit for Agape and Cosmo. From that point forward, Bank of America had access to virtually all information concerning Agape's assets and financial transactions. This additional knowledge is sufficient to create another inference of the bank's actual knowledge of Agape's ongoing fraudulent scheme.

38. This new level of knowledge was obtained when the bank explicitly put its own capital at risk through this lender/borrower relationship. In that context, Bank of America conducted due diligence into the source of Cosmo's assets and the nature of Agape's business. This due diligence revealed a lack of any legitimate business enterprise and the illegality of the scheme. Thus, in the process of safeguarding its own assets, Bank of America acquired actual knowledge of Agape's fraud.

Account Monitoring and "Analysis" Provided Specific and Real-Time Knowledge of the Scheme's Fraudulent Nature

39. In June 2006, Bank of America began charging Agape extraordinary "account analysis fees" that were far higher and different in nature than ordinary banking fees. At first the fee was charged quarterly. Later it was charged monthly. As the size and magnitude of the account's transactions exploded, the bank came to charge Agape several thousand dollars per month to monitor and analyze Agape's accounts. These fees and comprised a steady revenue stream for the bank and for Sullivan. In exchange for these fees, which ultimately totaled over \$70,000, Bank of America actively monitored and analyzed Agape's network of accounts. Through these frequent official analyses, Bank of America gained intimate knowledge of the goings-on inside Agape.

40. From its analyses, Bank of America saw that Agape was running a Ponzi scheme. For example, in the month of August 2007, which was not unusual, Agape took in customer deposits of \$163 million, and had withdrawals of \$162 million, but maintained an average balance of just \$168,500. As soon as money was received, it was wired out. Agape did not set aside funds in a dedicated account for a project or a group of investors. Rather, as Bank of America knew, Agape had an escrow account for this purpose that lay dormant and empty for over five years while hundreds of millions of dollars flowed rapidly in and out of its operating account.

41. From its analyses, Bank of America could also see that Agape did not segregate investor funds. Instead, those funds were immediately swept into the operating account, allowing them to be commingled and converted. Agape paid its bills, payroll and Cosmo's personal expenses including payments to his Bank of America mortgage and line of credit from this single account of investor money. Agape had no payroll account or long-term working capital account. Bank of America knew from its account analyses and monitoring that Agape's single account with investor money was run as if it were Cosmo's personal bank account.

42. To assist in this monitoring function, Bank of America Premier Bankers, including Sullivan, were provided with a computer system known as "Connection," which updated them regarding major deposits and wires each morning on their clients' accounts. Additionally, client wire transfers over \$10,000 were required to be approved by the Premier Banker or other authorized officer of BofA. The approval process, combined with the Connection program, gave Bank of America actual knowledge of the day-to-day transactions in the Agape accounts.

43. Agape wired funds greater than \$10,000 out of its account several times each month. These wire transfers are scrutinized and reviewed by Bank of America and Agape's Premier Banker. These transfers were further evidence of the fraudulent nature of transfers to Cosmo personally, to the Agape "brokers" and to existing investors.

44. Bank of America's constant monitoring of Agape's accounts revealed deposits (revenues) in an amount akin to a Fortune 1000 company, most of which have thousands of employees and dozens of locations. In fact, deposits during the lifetime of the scheme exceeded \$2.7 billion. For perspective, in the twelve months between May 2007 and April 2008, Agape took in deposits of approximately \$1.796 billion. That number would have placed Agape on the "Fortune 1000" list for 2008. In fact, it would have exceeded the revenues of firms like Dun & Bradstreet,

Duane Reade, Sealy, Louisiana-Pacific, Guess and American Greetings. The chart below, created using Bank of America's Agape account records, illustrates the pattern of account activity that the bank witnessed.

Date	End Bal.	Avg Bal.	Deposit Amts	Withdrawal Amts	# Deps	# WDs
1/31/2006	\$279,822	\$545,830	\$1,022,173	\$1,476,239	69	218
2/28/2006	\$671,376	\$593,819	\$1,452,375	\$1,060,821	85	214
3/31/2006	\$775,623	\$775,623	\$3,275,575	\$1,713,868	139	301
4/30/2006	\$240,594	\$559,637	\$266,318	\$1,739,592	13	232
5/31/2006	\$183,000	\$905,714	\$3,200,031	\$3,257,624	75	377
6/30/2006	\$318,500	\$117,412	\$11,402,398	\$11,266,898	36	179
7/31/2006	\$100,000	\$383,146	\$23,880,488	\$24,098,988	95	499
8/31/2006	\$1,010,188	\$251,413	\$39,025,866	\$38,115,878	93	157
9/30/2006	\$100,000	\$387,236	\$75,044,361	\$75,954,549	89	544
10/31/2006	\$252,320	\$421,911	\$18,473,341	\$18,321,021	117	300
11/30/2006	\$140,000	\$312,799	\$54,864,676	\$54,976,996	74	486
12/31/2006	\$150,000	\$561,920	\$31,758,671	\$31,748,671	117	402
1/31/2007	\$130,000	\$433,955	\$40,597,370	\$40,617,370	103	497
2/1/2007	\$130,000	\$689,560	\$42,503,662	\$42,503,662	135	490
3/1/2007	\$289,000	\$843,642	\$79,570,206	\$79,411,206	213	499
4/1/2007	\$105,000	\$713,321	\$108,854,543	\$109,038,543	168	589
5/1/2007	\$1,012,425	\$677,518	\$149,698,885	\$148,791,460	195	642
6/1/2007	\$100,000	\$967,372	\$134,896,442	\$135,808,867	199	664
7/1/2007	\$885,962	\$1,103,877	\$103,038,267	\$102,252,305	196	602
8/1/2007	\$168,500	\$441,961	\$162,471,731	\$163,189,193	105	452
9/1/2007	\$1,082,550	\$1,584,997	\$151,517,575	\$150,603,525	320	868
10/1/2007	\$3,110,613	\$926,466	\$286,104,313	\$284,076,250	290	1004
11/1/2007	\$624,858	\$421,359	\$210,758,374	\$213,271,129	177	578
12/1/2007	\$171,400	\$1,027,438	\$213,874,222	\$214,327,680	218	1125
1/31/2008	\$2,063,634	\$1,213,273	\$151,005,390	\$149,113,146	405	1294
2/1/2008	\$338,600	\$519,254	\$45,611,726	\$47,336,760	89	1069
3/1/2008	\$185,000	\$1,810,294	\$86,685,039	\$86,808,639	432	998
4/1/2008	\$1,010,113	\$1,936,251	\$101,697,824	\$100,872,711	230	1284
5/1/2008	\$1,000,000	\$1,330,580	\$93,918,699	\$93,928,812	113	851
6/1/2008	\$1,462,216	\$1,509,591	\$80,021,060	\$59,558,844	145	1109
7/1/2008	\$1,345,000	\$2,391,571	\$94,971,902	\$95,089,118	183	1509
8/1/2008	\$1,719,975	\$1,403,603	\$47,895,063	\$47,520,088	91	860
9/1/2008	\$1,336,593	\$1,815,078	\$84,782,570	\$85,165,952	158	1503
10/1/2008	\$1,809,000	\$1,398,476	\$30,408,427	\$29,936,020	112	769
11/1/2008	\$714,112	\$1,152,841	\$14,758,167	\$15,853,055	94	718
12/1/2008	\$943,620	\$645,140	\$8,435,082	\$8,205,574	82	890
1/1/2009	\$493,577	\$785,199	\$5,475,744	\$5,925,786	43	403

45. These enormous revenues were matched with near-equal distributions. This inflow and precise outflow of cash on a monthly basis provided to Bank of America actual knowledge of Agape's fraudulent enterprise. No legitimate business takes in hundreds of millions of dollars per month only to disburse an equal amount the same month, while retaining relatively tiny balances for operating expenses.

46. The thousands of pages of bank records reviewed during the course of Plaintiffs' investigation demonstrate that Bank of America had actual knowledge of the fraud.

Frequent Meetings with Senior Bank Officials

47. Frequently Tom Sullivan, a Bank of America senior manager responsible for the Agape accounts, met with Cosmo over lunch. They discussed the business of Agape and Sullivan made clear he understood and tracked the flow of funds, in and out of the business. Sullivan had knowledge that Agape converted and commingled investor funds by depositing them into a single account from which Agape also paid its bills, payroll and expenses. Sullivan knew that Agape had an empty escrow account that did not receive any of the millions upon millions of investor deposits. Sullivan also knew that Agape emptied its own account each month, with deposits and withdrawals far beyond the minimal balances it maintained.

48. During the course of the relationship, Sullivan recommended the structure of the Agape accounts and sub-accounts, giving Agape the ability to easily sweep all funds into a single account. He also recommended and advocated for the issuance of a remote deposit facility to simplify the acceptance and processing of investor funds while avoiding inconvenient and potentially troublesome interactions with bank branch personnel.

49. Given his review of Agape's accounts, Sullivan had actual knowledge that Cosmo, through Agape, was running a fraudulent Ponzi scheme.

Bank of America's Direct On-Site Access to Agape's Inner Workings

50. In addition to the bank's multiple employees who learned of the Agape fraud by virtue of: (1) opening the account; (2) extending credit; and (3) monitoring the day-to-day flow of funds, one Bank of America employee actually worked in Agape's offices and from that position learned of the scheme and its fraudulent nature.

51. Rebecca Campagnuolo (“Campagnuolo”), then a Bank of America employee, spent substantial time inside Agape’s back office, where the company’s accounting, flow of funds and other sensitive operations took place.

52. Campagnuolo was implanted by Bank of America within Agape’s accounting department where she had Bank of America equipment and full access to internal bank systems and account records. She also had full access to Cosmo, Agape’s Controller and Agape’s computers, accounting systems and files.

53. Agape’s accounting department, where Campagnuolo was situated, was located in a private office located behind but directly connected to Agape’s main boardroom. The office was located entirely within Agape’s office space. Campagnuolo shared space with Agape’s Financial Controller and two other accounting employees. She had full run of its files, records and computer systems.

54. Based upon both a review of the newly produced records and Plaintiffs’ independent investigation, it appears Campagnuolo helped solicit victims to the Agape Ponzi scheme. As a Bank of America employee, she had access to confidential bank customer data, and it appears that she gathered and utilized that data to assist in the solicitation. For example, on information and belief she learned when multiple Bank of America customers received substantial deposits into their Bank of America accounts and passed that information along so that brokers could solicit those potential victims.

55. As a Bank of America employee dealing with Agape, Campagnuolo actually knew of the transaction patterns described earlier. So she knew of the high-volume, high-velocity flow of funds. She knew of the web of accounts and sub-accounts being deployed to speed up the flow of

funds. She knew of the comparatively small average account balances. She knew of Agape's dormant and empty Escrow Account. She knew no material construction loans were being made.

56. Then, beginning in late 2008, Campagnuolo acquired additional knowledge regarding the details of the Agape Ponzi scheme. Around this time, Agape Controller Elizabeth Steele took maternity leave. Shortly thereafter, Campagnuolo began spending an even greater amount of time in Agape's back office and, on information and belief, became Agape's *de facto* Controller in Steele's absence. In this role, she had a close-up view of the striking ramping up of investor withdrawals. She knew that Cosmo held meetings for investors twice a day to calm and reassure investors, and to desperately solicit more investor money to keep Agape afloat. She also watched as dozens of anxious investors demanded the return of their money in a "run on the bank."

57. Through a review of bank records and independent investigation, Plaintiffs have also learned that during 2007 and 2008, Campagnuolo's husband, Anthony Campagnuolo, received the following payments totaling \$32,120.68 from Agape: \$5,888.25 on December 3, 2007; \$14,857.43 on December 21, 2007; and \$11,375.00 on March 20, 2008.

PART III

Bank of America Provided Substantial Assistance to the Agape Scheme

58. As described herein, Bank of America provided Agape and Cosmo with myriad services that provided substantial assistance and enabled the success of their fraudulent scheme. In addition to the complex account / sub-account structure, the personal and commercial loans to Cosmo and the assignment of a full-time employee (Campagnuolo) to work at Agape, Bank of America provided even more extraordinary services that substantially assisted the fraud.

Senior Banking Representative Set Up a System by Which Investor Funds Were Commingled, Swept into One Account and Converted

59. Tom Sullivan, Senior Client Manager and Bank of America's account representative for Cosmo and Agape, recommended to Cosmo that Agape employ a complex web of broker sub-accounts that would feed the main operating account, which functioned as the hub of the scheme.

60. The structure recommended by Sullivan facilitated the rapid flow of funds into the scheme and allowed Cosmo to quickly ramp up the scheme's revenues.

61. Both Sullivan's technical advice and ability to put in place an account structure that allowed Cosmo to move money from broker accounts over to the Agape account was extraordinary. Sullivan enabled Cosmo to have dominion and control over those accounts. Sullivan's highly unusual services constituted substantial assistance to Cosmo and his fraudulent scheme.

Bank of America Provided Agape with a Remote Deposit Facility

62. In or about March 2008, Sullivan approached Cosmo with an idea to help Agape more easily process its hundreds of fraudulently obtained monthly deposits. He proposed that Agape apply for access to a Bank of America Remote Depository System ("RDS"). An RDS allows commercial customers to deposit large batches of checks from their own headquarters. This high-speed processing enables more efficient handling of high-velocity deposits.

63. In addition, the RDS enabled Agape to avoid face-to-face interaction with lower-level bank personnel who may have questioned Agape's operations. When recommending the RDS to Cosmo, Sullivan told him, "You will never have to see the inside of a bank again." Thus, the RDS sped the clearance of checks so that Cosmo could increase the size and scope of his Ponzi scheme by making funds available more quickly and without detection by tellers and others who may have raised red flags. Bank of America also had an information link to Agape so that the banking records

could be downloaded into Agape's accounting systems. Thus, the RDS made Agape's accounting and ability to run its Ponzi scheme far more efficient.

64. Agape was not an appropriate customer for this type of device and Sullivan knew it. Indeed, by this point, Sullivan knew Agape was run by a convicted fraudster who had been barred for life from the securities industry. Sullivan also knew it had sometimes taken in as much as \$286 million in a single month and disbursed over \$284 million that same month, total turnover of *\$570 million in a single month*, all the while maintaining an average balance of less than *\$1 million* and never placing a dime into escrow. Sullivan further knew by virtue of his careful monitoring and analysis of the web of accounts – the structure he had recommended – that Agape was simply not funding any sizeable construction projects. He knew that this failure to fund construction projects directly contravened all of Agape's public statements, most notably the contents of its website.

65. Before an RDS device could be issued to Agape, bank protocols require a searching due-diligence process within the bank and sign-off of not only Sullivan but also of multiple risk-control officials. The way the RDS-issuance approval process works is as follows. First, after processing the customer's written application, a Bank of America employee on the sales side – here, Sullivan – must nominate the customer to receive the device. Next, Bank of America officials conduct an extensive internal review, assessing the fraud risk presented by the customer. This review, conducted by Bank of America personnel in the Fraud, Security, Compliance and Treasury Departments, carefully examined Cosmo's recent criminal history of financial fraud, the fact that he was again operating a financial firm, the volume and velocity of the transactions in his accounts as well as all the other risk factors routinely assessed since the earliest days of Agape's relationship with Bank of America.

66. In addition to these macro concerns, the RDS-issuance approval process revealed other telltale signals that would have been obvious to the bank's Fraud, Security and Compliance Departments, comprised of seasoned professionals trained to sniff out criminality. Specifically, by this time, Agape had a years-long track record of "round-trip" transactions, *i.e.*, equivalent amounts of money coming into and out of the account in a short period. Banks flag an account for round-trip transactions of three days or less. Here, Agape's round trips were often completed in a single day. Next, Agape had dozens and dozens of large "even-dollar" transactions each month. These types of transactions require an explanation of their legitimacy, since they suggest a money-laundering scheme. And finally, the low balances – when compared to the massive deposits and withdrawals – would have spurred a "check-kiting" investigation.

67. During Bank of America's internal review process, the following was certainly revealed: Cosmo was a felon convicted of financial fraud, now running a financial firm; Agape's operating account simply acted as a pass-through, with *billions* of investor dollars coming in and going out to fund Cosmo's commodities trading habit, pay brokers outlandish commissions, pay "interest" to early investors and to fund the lifestyles of himself, his family and his associates; and its escrow account sat empty despite consistent claims to the investing public and to Sullivan that Agape funded loans for discrete construction projects.

68. Despite its actual knowledge of the Agape Ponzi scheme, Bank of America provided Agape with a RDS, which only enabled the fraud to grow stronger, work more efficiently and further defraud innocent investors. On the procurement and operation of this device, Bank of America worked with Agape, hand in glove.

Bank of America Provided Agape with Access to Confidential Bank Customer Deposit Information

69. Rebecca Campagnuolo had access to Bank of America's confidential customer data. It appears that she utilized that data to learn when Bank of America customers received significant deposits into their bank accounts. When that occurred, she provided that information to Agape. Those individuals were promptly solicited by Agape and several ended up investing in Agape and suffering losses.

70. Bank employees providing investment leads using confidential bank customer information about their recent cash deposits constitutes substantial assistance.

Bank Employee Provided Investor Leads and Allayed Fears of Angry Investors

71. Campagnuolo also provided substantial assistance to Agape while working as Agape's *de facto* Controller in late 2008 and early 2009. The scheme was beginning to unravel and there was, in effect, a "run on the bank" with dozens of investors coming into Agape's office demanding the return of their money.

72. Campagnuolo, time and again, helped hold off angry investors and brokers, in order to forestall the scheme's collapse and discovery. She assuaged their concerns and falsely propped up the legitimacy of Agape. To do so, she made false and misleading statements with the goal of persuading investors to keep their money with Agape.

73. For example, during the December 2008 holiday season, when there were increasing concerns about the state of the economy, numerous Agape investors wanted to withdraw cash. In particular, one investor wanted to withdraw approximately \$200,000 of the funds he had invested in Agape.

74. On December 24, 2008, an Agape broker went to Agape's office at 9:00 a.m. hoping to meet with Cosmo to obtain a check for the investor. At approximately 10:00 a.m., the Agape

broker spoke with Cosmo and demanded that the investor receive the \$200,000 immediately. The Agape broker was then directed to go to the “back office” at Agape, where he met with Campagnuolo.

75. The Agape broker requested a check for the investor, and Campagnuolo then directly accessed an Agape account from her linked computer system, and issued a check from one of Agape’s accounts to the investor for \$162,500. Campagnuolo then took the check to Cosmo’s office, where Cosmo signed the check and then gave it to the Agape broker who then gave it over to the investor.

76. This incident reveals how integrated Bank of America’s operations were with Agape’s and how the proximity of a Bank of America representative with full access to bank computers and systems substantially assisted Agape’s fraudulent schemes allowing it to move its monies rapidly, and (by acting as Agape’s personal on-site banker) adding a patina of legitimacy to plainly illegitimate acts.

77. These actions constitute substantial assistance, and are well beyond the provision of standard banking practices.

PART IV

Bank of America Had a Financial Incentive and Motive to Aid and Abet the Fraud

78. Bank of America received substantial revenues in connection with the Agape accounts, which motivated it to allow and assist the conduct.

79. Like any bank, Bank of America charges fees to its customers for conducting transactions. Here, Agape’s high-velocity, high-volume business generated substantial revenues for the bank. These revenues served as the motive for the bank to substantially assist Agape in its scheme.

80. Bank of America received from Agape in excess of \$70,000 in fees in exchange for the thirty-one times it analyzed Agape's accounts. This income constitutes a motive for the bank to substantially assist Agape in its scheme.

81. Sullivan's income was determined in part by the average balance maintained in his customers' accounts. Here, the Agape operating account typically maintained an average balance in the hundreds of thousands of dollars, sometimes reaching as high as nearly \$2 million. Sullivan received substantial commissions as a result, in contrast to the relatively small commissions he would have received had Agape actually segregated investor funds into its escrow account in order to fund bridge loans. Sullivan's commission income constitutes a motive for Bank of America to substantially assist the Agape Ponzi scheme.

82. From early on in the banking relationship, Agape extended lines of credit to Cosmo and Agape. Throughout the relationship, Bank of America collected interest payments as a result of these lines of credit. This interest income constitutes a further motive for the bank to substantially assist the Agape Ponzi scheme.

PART V

Bank of America's Conscious Avoidance of the Fraud Is Not a Defense to Liability

83. As described herein, over the course of several years, Bank of America gained actual knowledge and provided substantial assistance to Agape and Cosmo. In addition, because Cosmo was a source of significant funds, for both the branch employees and the corporate bottom line, Bank of America at times consciously "looked the other way" in hopes of avoiding liability. This conduct is present in the following three examples.

Bank of America Disbanded Its High-Risk Compliance Group

84. Until early 2006, Bank of America had a specialized compliance group located at its 100 Federal Street office in Boston, Massachusetts. This group reviewed and supervised the activities of its “Premier Banking & Investments” customers such as Agape. This compliance group enforced Bank of America’s Know Your Customer and anti-money-laundering rules against any perceived “high-risk” customers, and became known as the “High-Risk Group.” Any customer perceived as “high risk” was subjected to the heightened rigors of the High-Risk Group.

85. The EDD factors described earlier, in addition to information provided to Plaintiffs by a Confidential Informant who formerly worked in the High-Risk Group, indicate that Agape’s business, its wire transfers and its account transfers, would have been subjected to strict scrutiny by the High-Risk Group. The Confidential Informant also advised us that Cosmo’s prior conviction would have been flagged and known to Bank of America. This Confidential Informant advised us that Bank of America’s internal procedures would have led to Agape being turned away and/or referred to law enforcement authorities.

86. In early 2006, just as Agape’s scheme was taking off, Bank of America dismantled its High-Risk Group, released its fifteen to twenty employees and halted its enhanced scrutiny and compliance procedures. Bank of America chose to shut down the High-Risk Group because its compliance efforts were impeding profits. At first, Bank of America pressured employees of its High-Risk Group to circumvent bank rules and/or approve business without proper due diligence. Eventually, Bank of America simply shut down the High-Risk Group.

87. In short, with foreknowledge that illicit or suspicious activity was occurring, Bank of America shut down its High-Risk Group and chose revenue over compliance. This conscious decision by Bank of America to dismantle its compliance and supervisory infrastructure, personnel and surveillance systems designed to detect and prevent frauds further facilitated and aided Agape’s

fraud. Bank of America's dismantling of the High-Risk Group permitted it to consciously avoid confirming the ultimate facts of Agape's Ponzi scheme, so that it could later deny liability.

Bank of America Chose Not to Conduct an On-Site Audit of Agape

88. As described earlier, after it conducted an internal review concerning whether it should issue an RDS to Agape, Bank of America had the right to conduct an on-site audit of Agape's business.

89. Despite the multiple, obvious risk factors known to the bank, it chose not to conduct such an audit. That choice allowed it to avoid confirming its suspicions so that it could later deny knowledge of the fraud, precisely as it has done in this litigation.

Concrete Allegations of Fraud Reported to a Bank of America VP

90. In September 2008, Bank of America's Premier Banking Vice President Gregory Bowes received information from a longtime Bank of America customer and Agape investor indicating that Agape was engaged in a fraudulent scheme.

91. Upon receipt of these allegations, Bowes asked rhetorically "What do you expect me to do with this information?" and said it was beyond the scope of the bank's duties to investigate such a charge, even a highly specific one such as this.

92. This customer then reported Agape to the Office of the Controller of the Currency. In later correspondence with the Comptroller of the Currency, the complaining customer heard another version of the same view: allegations that one of the bank's customers is defrauding another is simply not the bank's problem and therefore it would not conduct an investigation.

93. Bank of America also became aware that the U.S. Postal Inspector's Office was conducting a criminal investigation of Agape.

94. Bank of America apparently chose not to conduct an investigation of the charges so that it could avoid confirming the facts that it suspected and later deny knowledge of the Agape Ponzi scheme.

95. Notwithstanding, Bank of America continued to provide extraordinary assistance to Agape with the use of an RDS, the deployment of Campagnuolo, account monitoring and analysis and meetings with Sullivan. Bank of America failed to warn investors or pull services from Agape.

96. As a result, investors suffered millions of losses during the last several months of Agape's scheme.

CLASS ACTION ALLEGATIONS

97. Pursuant to Fed. R. Civ. P. 23(b)(2) and (b)(3), Plaintiffs bring this nationwide class action on behalf of themselves and all other persons in the United States who within the applicable statute of limitations as of the date of the commencement of this action have lost any money invested in or paid to Agape. Plaintiffs seek certification of claims for declaratory and injunctive relief, and for damages caused by common law fraud, breach of fiduciary duty, and aiding and abetting common law fraud, and aiding and abetting a breach of fiduciary duty.

98. Excluded from the Class are all Defendants and the directors, officers, predecessors, successors, affiliates, agents, co-conspirators and employees of all Defendants, as well as the immediate family members of such persons.

99. All Class members have suffered injury to their property by reason of all Defendants' unlawful course of conduct.

100. The Class is reasonably estimated to be in the range of 1,500 to 6,000 members, and is thus so numerous that joinder of all its members is impracticable. The precise number of Class members and their addresses are unknown to Plaintiffs, but can be ascertained through appropriate

discovery of all of Defendants' records. Class members may be notified of the pendency of this action by publication and/or other notice.

101. There is a well defined community of interest in the relevant questions of law and fact affecting putative Class members. Common questions of law and fact predominate over any individual questions affecting Class members, including but not limited to whether:

- (a) Defendants' conduct violated the common law;
- (b) Class members were damaged by Defendants' unlawful conduct and the measure of damages;
- (c) injunctive relief is appropriate; and
- (d) a constructive or actual trust should be imposed upon the ill-gotten gains obtained by Defendants as fruits of their misconduct.

102. The claims of Plaintiffs and other Class members have a common origin and share a common basis. The claims originate from the same illegal conduct alleged herein on the part of all Defendants and other unnamed co-conspirators and their acts in furtherance of the illegal conduct. Plaintiffs' claims are typical of those of the absent Class members. If brought and prosecuted individually, the claims of each Class member would require proof of many of the same material and substantive facts, rely upon the same remedial theories, and seek the same relief.

103. Plaintiffs will fairly and adequately protect the interests of the Class and have no interests adverse to or that directly and irrevocably conflict with the interests of other Class members. Plaintiffs are willing and prepared to serve the Court and the putative Class in a representative capacity with all of the obligations and duties material thereto. Plaintiffs have retained the services of Counsel, identified below on the signature page, who are experienced in complex class-action litigation and litigation. Plaintiffs' Counsel will adequately prosecute this

action and will otherwise assert, protect, and fairly and adequately represent Plaintiffs and all absent Class members.

Rule 23(b)(3)

104. The prosecution of separate action by individual Class members would create a risk of inconsistent or varying adjudications, which would establish incompatible standards of conduct for the parties opposing the class. Such incompatible standards of conduct and varying adjudications on the same essential facts, proof, and legal theories would also create and allow the existence of inconsistent and incompatible rights within the Class.

105. A class action is superior to other methods for the fair and efficient adjudication of the controversies raised in this Complaint. Individual claims by the Class members would be impracticable in light of the expected complexity and cost of prosecuting Class members' claims. The concentration of litigation of these claims in one forum will achieve efficiency and promote judicial economy, and the proposed class action is manageable.

Rule 23(b)(2)

106. The Defendants have acted or refused to act on grounds generally applicable to the Class, making final declaratory or injunctive relief appropriate.

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

108. Defendants owed duties to Plaintiffs and Class members to truthfully and accurately communicate to them and to disclose material facts and information about Agape and Cosmo, their backgrounds and experience, their loan investment plan, their business and operations, the returns earned by investors, the source and application of Agape's operating funds, and Agape's handling of funds received from investors. These Defendants had further duties to truthfully and accurately

communicate to investors Agape's true financial condition and any other information which might reasonably be expected to affect an investor's decision-making.

109. In furtherance of the unlawful course of conduct alleged herein, and with intent to deceive investors, the Defendants employed a scheme and artifice to defraud, as a part of which Defendants made and/or participated in the making of the misrepresentations and omissions of fact concerning Agape alleged herein. Also in furtherance of their unlawful scheme and artifice to defraud, defendants converted investor funds to Cosmo's personal use as well as to unauthorized commodities trading in accounts and unlawfully operated Agape as an unregistered Commodity Pool.

110. These Defendants breached their obligations to investors by deceiving, misrepresenting, lying and materially omitting numerous facts or information about their backgrounds, business and operations, handling of investor money, and source and application by Agape of investor funds. These Defendants made false representations, among other things, about the business reputation of principals of Agape, the legality of the Agape's program, the ability of Agape investors members to earn investment returns while their investment principal was secure, and the ability of Agape investors to redeem their investments and receive the return of their money. Furthermore, these Defendants touted and utilized Agape's relationship with Bank of America to enhance the apparent legitimacy of the scheme and to promote the ease of financial transactions with Agape through Bank of America. These Defendants induced the investors based upon deceit, fraud and false pretenses into making investments through Agape, and entrusting funds to Agape. By so doing, these Defendants committed common law fraud, deceit and misrepresentation towards Plaintiffs and Class members. Plaintiffs and Class members thereby lost money that was paid to Agape.

111. Defendants at all times had actual knowledge of the Agape Ponzi Scheme.

112. In addition, Defendants at times consciously avoided confirming facts that they suspected were true in order to preserve their ability to later deny knowledge.

113. Had Plaintiffs and the Class at any time learned that they were victims of this sophisticated fraudulent scheme, they would have not invested with the Agape Ponzi Scheme and/or withdrawn their investments.

114. Defendants' misstatements of material fact and holding Agape out as a legitimate business were rendered false and misleading by (and plaintiffs and the Class may be presumed to have relied upon), *inter alia*, the following omissions of material fact:

(a) that Agape was a "house of cards" that made only a handful of loans using investor funds and, in reality, Agape would sell and repeatedly re-sell the same interests in a loan;

(b) that Agape operated as a classic Ponzi scheme under which large returns paid to early investors simply came from investments made by later investors;

(c) that Cosmo was diverting money invested in Agape to pay his personal expenses (including restitution payments stemming from his previous felony conviction);

(d) that Agape was secretly engaged in highly speculative and risky commodities and futures trading with investor money that would ultimately reportedly result in trading losses of approximately \$80 million; and

(e) that Agape was unlawfully operating as an unregistered Commodity Pool.

115. Plaintiffs relied on Defendants' fraudulent misrepresentations and omissions in making the decision to invest with Cosmo and the Agape Ponzi Scheme. As a result of Defendants' common law fraud, deceit and misrepresentation, Plaintiffs and the Class have suffered and continue

to suffer economic and non-economic losses, all in an amount to be determined according to proof at trial.

116. The unlawful conduct complained of herein constitutes a pattern of fraudulent conduct directed at the public generally. Additionally, Defendants acted with a culpable state of mind. Defendants engaged in their unlawful scheme wantonly, willfully, deliberately, intentionally, with an evil state of mind, with indifference to their civil obligations, with circumstances of aggravation and outrage, with wanton dishonesty, with conscious disregard of the rights of others, and in a manner that was morally culpable to an extreme degree. Punitive damages are therefore appropriate.

COUNT I

Breach of Fiduciary Duty (Cosmo and Agape)

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

118. Defendants owed a fiduciary duty to Plaintiffs and Class members. These Defendants gained the trust and confidence of Plaintiffs and Class members by creating the appearance of the legality, safety, honesty and success of Agape's loan investment program.

119. These Defendants breached the obligations and fiduciary duties of care, loyalty, reasonable inquiry, oversight, good faith and supervision by, *inter alia*, making false representations and promises about Agape's non-existent loan investments, by withholding from Plaintiffs and Class members the return of principal on investments Plaintiffs and Class members made or paid to Agape, by speculatively trading in the commodities markets and by engaging in a Ponzi scheme, and by converting Agape funds for defendant Cosmo's personal use. Plaintiffs and Class members thereby lost money that was paid to Agape.

120. As a result of these Defendants' breaches of their fiduciary duty, Plaintiffs and the Class members have suffered and continue to suffer economic and non-economic losses, all in an amount to be determined according to proof at trial.

COUNT II

Conversion (Cosmo and Agape)

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

122. Cosmo and Agape through the unlawful "sale" of "loan participations in real estate developments, misappropriated and converted funds belonging to plaintiffs and the class members.

123. As a result of Cosmo's conversion, and Bank of America's assistance thereof, plaintiffs and the class members suffered economic losses in an amount to be proven at trial.

COUNT III

Aiding and Abetting Common Law Fraud (Bank of America)

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

125. Defendants Cosmo and Agape owed duties to Plaintiffs and Class members to truthfully and accurately communicate to them and to disclose material information about Agape and Cosmo, their backgrounds and experience, their loan investment plan, their business and operations, the returns earned by investors, the source and application of Agape's operating funds, and Agape's handling of funds received from investors. These Defendants breached their obligations to investors by deceiving, misrepresenting, lying and materially omitting numerous facts or information about their backgrounds, business and operations, handling of investor money, and source and application

by Agape of investor funds. By so doing, these Defendants committed fraud, deceit and misrepresentation towards Plaintiffs and Class members.

126. Bank of America knowingly aided and abetted, encouraged, and rendered substantial assistance to these Defendants to accomplish the fraud and wrongful acts complained of herein as further alleged above.

127. Bank of America had actual knowledge of Agape's Ponzi scheme, or consciously avoided knowledge so as to later be able to deny it, by virtue of the facts alleged above.

128. Bank of America rendered substantial assistance to Agape's Ponzi scheme by virtue of the facts alleged *supra*.

129. As a result of the wrongful conduct of Bank of America, Plaintiffs and the Class have suffered and continue to suffer economic and non-economic losses, all in an amount to be determined according to proof at trial.

130. The unlawful conduct complained of herein constitutes a pattern of fraudulent conduct directed at the public generally. Additionally, Defendants acted with a culpable state of mind. Defendants engaged in their unlawful scheme wantonly, willfully, deliberately, intentionally, with an evil state of mind, with indifference to their civil obligations, with circumstances of aggravation and outrage, with wanton dishonesty, with conscious disregard of the rights of others, and in a manner that was morally culpable to an extreme degree. Punitive damages are therefore appropriate.

COUNT IV

Aiding and Abetting Breach of Fiduciary Duty (Bank of America)

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

132. Defendants Cosmo and Agape owe a fiduciary duty to Plaintiffs and Class members. These Defendants breached the obligations and fiduciary duties of care, loyalty, reasonable inquiry, oversight, good faith and supervision as further alleged *supra*.

133. Bank of America knowingly aided and abetted, encouraged, and rendered substantial assistance to these Defendants to accomplish the breaches of fiduciary duty and wrongful acts complained of herein.

134. As a result of the wrongful conduct of Bank of America, Plaintiffs and the Class have suffered and continue to suffer economic and non-economic losses, all in an amount to be determined according to proof at trial.

COUNT V

Aiding and Abetting Conversion (Bank of America)

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

136. Cosmo, through the unlawful “sale” of loan participations in real estate developments, misappropriated and converted funds belonging to plaintiffs and the class members.

137. Bank of America had actual knowledge of the conversion of funds belonging to plaintiffs and the class members by Cosmo and his associates. Specifically, Bank of America had actual knowledge of this conversion as set forth herein.

138. Bank of America substantially assisted Cosmo in converting funds belonging to plaintiffs and the class members.

139. Without Bank of America’s substantial assistance, Cosmo would not have been able to convert the funds of plaintiffs and the class members.

140. As a result of Cosmo's conversion, and Bank of America's assistance thereof, plaintiffs and the class members suffered economic losses in an amount to be proven at trial.

JURY DEMAND

141. Plaintiffs demand a trial by jury on all issues triable as a matter of right.

142. WHEREFORE, Plaintiff and the Class pray for relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs and Class members pray for a judgment in their favor: (1) for an order certifying the Class as defined herein; (2) for an order requiring disgorgement and restitution of Defendants' ill-gotten gains and payment of restitution to Plaintiffs and the Class all funds acquired by means of the fraudulent scheme complained of above; (3) for compensatory, special and general damages according to proof but in an amount estimated to be not less than, and likely in excess of \$400 million; (4) for an order authorizing Plaintiffs and the Class an equitable accounting and impressing a trust on the ill-gotten gains of Defendants in the ultimate *res* of which each Class member shall have an undivided interest; (5) for reasonable attorneys' fees and costs of investigation and litigation under 18 U.S.C. §1964(c); (6) for punitive damages in an amount sufficient to punish and deter future similar conduct; (7) for prejudgment interest; and (8) for such other and further relief as the interests of law or equity may require.

DATED: March 31, 2010

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Additional Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2010, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such public filing to all counsel registered to receive such notice.

ROBBINS GELLER RUDMAN & DOWD LLP

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