

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

Ramkrishna S. Tare,
Plaintiff
vs.
**Bank of America,
Donald E. Guinn,
O. Temple Sloan, Jr.
Steven McMillan**
Defendants

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U.S. DISTRICT COURT
2008 APR 29 A 10:47

Jury Trial Demanded

VERIFIED COMPLAINT

**Pursuant to Judge Linares' Order in 07-cv-00583-JLL-CCC
(Tare v. Bank of America, et al.)**

Ramkrishna S. Tare
7 Redbud Road
Piscataway, New Jersey 08854

- 1) Plaintiff Ramkrishna S. Tare alleges for this Complaint as follows:

JURISDICTION AND VENUE

- 2) Jurisdiction is proper under 28 U.S.C. § 1331 because it involves the resolution of a Federal question and issues of the violation of constitutional rights (See *Bivens v. Six Unknown Drug Agents*, 403 U.S. 388 (1971)).
- 3) Jurisdiction is also proper under 28 U.S.C. §1332 as there is a complete diversity of citizenship between the Plaintiff and Defendants, and the amount in controversy exceeds \$75,000.
- 4) Plaintiff is a citizen/resident of New Jersey. All Defendants are citizens of other states.
- 5) Venue in this District is proper because a substantial part of the events giving rise to this action occurred in the District of New Jersey and/or took place in proceedings in this District. Plaintiff is a citizen of New Jersey.

PARTIES

- 6) Plaintiff Ramkrishna S. Tare ("**Tare**") is a citizen of the United States of America.
- 7) Defendant Bank of America ("**Bank of America**" or "**Fleet**") is a National Bank organized and existing under the laws of the State of Delaware, with its main office at 100 North Tyron Street, Charlotte, North Carolina 28255. Bank of America is also successor in interest to FleetBoston Financial Corp., Fleet National Bank, and/or their affiliates and subsidiaries.
- 8) Defendant O. Temple Sloan, Jr. ("**Sloan**"), Donald E. Guinn ("**Guinn**") and Steven McMillan ("**McMillan**") are and/or were at times material to this complaint, Members of the Board of Directors of Bank of America.

**THE TRUSTEES AND THEIR COUNSEL IN THE WEBSKI AND TARE
BANKRUPTCIES FILED FALSE AFFIDAVITS TO CONCEALED CONFLICTS.**

- 9) WebSci Technologies, Inc. (“WebSci”) is a New Jersey Corporation in Chapter 11 bankruptcy. Plaintiff Tare is the sole shareholder and founder of WebSci.
- 10) In or around July 2002, WebSci had filed for a Chapter 11 bankruptcy in the Bankruptcy Court in the District of New Jersey. This bankruptcy is docketed in the New Jersey Bankruptcy Court as 02-38258-RG.
- 11) Gary N. Marks (“**Marks**”) was appointed as trustee at Bank of America’s insistence. Subsequently two firms served as Marks’ counsel in the WebSci bankruptcy. First Marks’ own law firm Norris McLaughlin Marcus, PA (“**Norris Firm**”) served as his counsel. Later the Norris Firm withdrew and the law firm of Hellring Lindeman Goldstein & Siegal, LLP (“**Honig’s Firm**”) was appointed upon motion by Marks. Richard Honig, Esq., (“**Honig**”) a member of Honig’s Firm, was the lead counsel for Marks in the WebSci bankruptcy.
- 12) Tare also filed for a personal bankruptcy (“Tare Bankruptcy”). It is docketed as 02-38316-RG in the New Jersey Bankruptcy Court.
- 13) Steven Kartzman (“**Kartzman**”) was the trustee assigned to the Tare Bankruptcy until Tare discovered certain conflicts and reported them to the Executive Office of the U. S. Trustee.
- 14) These conflicts led to the appointment of Robert Wasserman, Esq. in place of Kartzman.
- 15) Tare and WebSci continuously tried to voluntarily seek dismissal of their bankruptcies.
- 16) Fleet, Honig, Kartzman, Marks and/or their law firms, continuously opposed motions filed by Tare and WebSci, seeking voluntary dismissal of both the bankruptcies.
- 17) Richard B. Honig, counsel for Marks in the WebSci bankruptcy, had filed a sworn Bankruptcy Rule 2014 Affidavit (Bankruptcy docket: 02-38258-RG at Docket Entry 70).
- 18) In his sworn affidavit, Honig made the following statement under penalty of perjury:

To the best of deponent's knowledge, deponent's firm does not have any connections with the above named Trustee, the Debtor, any creditors including Fleet Bank, or any other party in interest herein or their respective attorneys.

- 19) At the very time that Honig filed this affidavit, Honig was representing Kartzman in several bankruptcies, including 00-36021-RG, 00-31251-RG.
- 20) At the very time that Honig filed this affidavit, Kartzman and at least one of the many law firms in which Kartzman was a partner, were representing Fleet and even Fleet Bank, in many proceedings (See Appendix B-36 thru B-38).
- 21) Honig at least had a connection to Fleet Bank's attorney(s) during the WebSci bankruptcy.
- 22) Fleet's attorney Kartzman, and/or at least one of Kartzman's law firms, paid Honig and/or Honig's firm at times material to the WebSci bankruptcy.
- 23) Furthermore, at the time that Honig filed the affidavit, Tare was the sole shareholder of WebSci and had filed for personal bankruptcy.
- 24) Kartzman was the trustee appointed to the Tare bankruptcy.
- 25) Honig, as an attorney of Kartzman, also had a concealed connection with the Debtor, a fact that he had expressly denied in his sworn affidavit.
- 26) Honig filed several motions in the bankruptcy court, including a bankruptcy Rule 9019 settlement which granted releases to Fleet and even Kartzman.
- 27) At no time in the WebSci bankruptcy did Honig or Honig's firm disclose that he had a connection with Kartzman and/or Fleet Bank.
- 28) Honig and/or his law firm earned Hundreds of Thousands of dollars in fees in the WebSci bankruptcy.
- 29) Honig and/or his law firm earned Hundreds of Thousands of dollars in fees from Kartzman and/or his law firm.

- 30) Kartzman and/or his law firm earned Hundreds of Thousands of Dollars, possibly Millions of Dollars, in fees from Fleet.
- 31) Kartzman, himself, had not only concealed his connections with Fleet, but was actually using two law firms at the same time. One law firm, Mellinger Sanders Kartzman, LLC, in which he was a named partner, was used by him to receive business from Fleet (Exhibit B-36 thru B-38).
- 32) Another law firm, Wachs Mullen Kartzman, LLC was used by Kartzman to be a trustee in bankruptcy estates in which Fleet was a creditor (Exhibit B-18 thru B-24).
- 33) At the time that Kartzman was using the law firm of Wachs Mullen Kartzman, LLC (See Exhibit B, B-18 thru B-24), that law firm had stopped operating as confirmed in writing by Kartzman's former partners, Mr. Wachs and Mr. Mullen (See Exhibit B-13 thru B-15).
- 34) One or more Defendants conspired with Kartzman to sabotage Plaintiff's claims against Fleet by writing to different Judges about the claims but never disclosing his multi-dimensional relationships with Fleet. (See Exhibit B-20, B-25).
- 35) Kartzman as part of the conspiracy with one or more Defendants redacted, deleted, edited and/or was responsible for the incompleteness of the Bankruptcy statute/rule 341(a) tape recordings of Plaintiff.
- 36) Sections affected by Kartzman's acts, as part of the conspiracy with one or more Defendants, were those which were detrimental to Fleet.
- 37) Kartzman suspecting that Plaintiff had taped it separately, acknowledged the redaction, but providing a ridiculous explanation (Appendix B-27: Letter from Kartzman):

"Since I cannot take notes as fast as you can speak, it was necessary for me to stop the tape of the 341(a) meeting intermittently to make notes and outline actions I felt need to be taken promptly."

- 38) The Norris Firm, which was initially retained by Marks in the WebSci bankruptcy, had also, as part of a conspiracy with one or more Defendants, filed a falsified Rule 2014 affidavit by stating in the affidavit that at the time of the filing of the affidavit, the total business of the Norris Firm in the 12 months preceding the filing of the affidavit, was only \$25,000.00.
- 39) Marks had subsequently asserted that this number was actually only \$3500.00.
- 40) Marks did not disclose that his law firm was representing Fleet at the time that his law firm filed the Rule 2014 affidavit of disinterestedness.
- 41) Tare later discovered that the Norris Firm was representing Fleet in at least one, possibly other litigations (Example, in the District of New Jersey, docket number 00-cv-971-DRD).
- 42) The attorney from the Norris Firm, Mr. Sales, subsequently resigned from the Norris Firm and therefore the docket appears not to list the firm at this time, which it should.

MARKS HAD SOLD ESTATE ASSETS AND DEPOSITED THE SALE PROCEEDS IN ACCOUNTS TOTALLY UNRELATED TO THE ESTATE.

- 43) Marks had sold a contract that WebSci had to provide services to AT&T.
- 44) He had sold that contract without competitive bidding.
- 45) The contract was fetching, at the time of the sale, a net annual profit of at least \$600,000.00.
- 46) The contract was sold for \$135,000.00.
- 47) Marks filed falsified financial statements in the bankruptcy at least with respect to the sale.
- 48) The false financial statements Marks filed were under penalty of perjury.
- 49) Marks then claimed, when the sale proceeds were found missing by Tare in the financial statements filed by him, that he (Marks) had deposited the proceeds of the sale of that contract in accounts which were totally unrelated to the estate.
- 50) Upon information and belief, there is much more accounting fraud above and beyond this, which fraud would have been uncovered earlier had Tare prevailed in his appeals.

TARE FILED APPEALS CHALLENGING CERTAIN BANKRUPTCY ORDERS

- 51) Tare discovered concealed conflicts and other frauds such as the ones described above and opposed motions, such as a Rule 9019 settlement, and a bankruptcy plan that granted releases to Fleet, Kartzman, Honig, Marks and their law firms.
- 52) The bankruptcy Court overruled Tare's objections.
- 53) Tare timely filed appeals in the Bankruptcy Court giving jurisdiction to the District Court.
- 54) The appeals were docketed in the District Court as four separate appeals and were assigned to Judge William Walls with docket number 03-cv-5444-WHW as the lead case with other appeals docketed as 04-cv-3657-WHW, 04-cv-3658-WHW, 04-cv-3659-WHW.
- 55) In his appeals, among other issues of fraudulent conduct, Tare raised issues on concealed conflicts, which existed between the trustees, their counsel, and Fleet.
- 56) In his appeals, among other issues of fraudulent conduct, Tare raised issues of other frauds committed by one or more Defendants as part of the conspiracy with Marks, Honig, Kartzman and their respective law firms.
- 57) Tare had numerous evidence and arguments to present to Judge Walls and to get the Orders overturned.

TARE AND WEBSCI ARE ALSO PLAINTIFFS IN A DISTRICT COURT ACTION IN WHICH BANK OF AMERICA WAS ONE OF THE DEFENDANTS

- 58) In or around July 2002, but prior to the filing of the bankruptcies, Tare and WebSci, as co-plaintiffs, filed a complaint in the District Court of New Jersey against Bank of America (and/or its predecessor) alleging that the bank had violated Anti-Trust, Anti-Tying and related Federal laws.
- 59) Subsequently a Civil RICO action was initiated by Tare in which Bank of America and/or its predecessor was a defendant.

- 60) The two actions were consolidated into a single complaint with Docket number 02-cv-3598-WJM (The “**RICO-Complaint**”).
- 61) The RICO-Complaint was administratively dismissed without prejudice pending the resolution of certain bankruptcy proceedings and/or related appeals.
- 62) Judge Hedges was the Magistrate Judge assigned to this complaint.
- 63) Judge Hedges was not the Magistrate Judge assigned to the bankruptcy appeals.
- 64) The “final resolution of related bankruptcy proceedings appealing decisions of Bankruptcy Judge Gambardella” (Order from RICO-Complaint at Appendix A-43) in Plaintiff’s favor would have favorably impacted Plaintiff in the resolution of the RICO-Complaint and would also have enabled Plaintiff to assert additional claims, and seek additional relief, above and beyond the claims asserted in the RICO-Complaint.

DEFENDANTS INITIATED A CRIMINAL CONTEMPT PROCEEDING WHICH WAS DOCKETED IN THE DISTRICT COURT AS 05-1306-JLL (“CONTEMPT-COMPLAINT”) SEEKING TARE’S IMPRISONMENT FOR MORE THAN SIX MONTHS.

- 65) On or around April 3, 2005, a criminal contempt proceeding was docketed in the District Court of New Jersey which was initiated by Bank of America. In that complaint, Bank of America sought Tare’s imprisonment for several months.
- 66) This contempt proceeding was docketed in the District Court of New Jersey as 05-cv-1306 (JLL) and the case was assigned to the Hon. Jose Linares, U.S.D.J. This District Court proceeding is hereinafter referred to as the “**Contempt-Complaint.**”
- 67) The Hon. Ronald Hedges was Judge Linares’ Magistrate Judge for the Contempt-Complaint.
- 68) In this Contempt-Complaint, one or more Defendants sought imprisonment of Plaintiff Tare for more than 6 months (See complaint filed by Bank of America to withdraw the reference, which complaint was docketed at New Jersey docket 05-1306-JLL).

DEFENDANTS, DIRECTLY, OR INDIRECTLY, GAVE CERTAIN BENEFITS AND/OR BUSINESS, AND/OR PROMISES THEREOF, TO JUDGE HEDGES IN TEMPORAL PROXIMITY TO THE RESOLUTION OF THE BANKRUPTCY APPEALS AND/OR THE JUDGE'S INVOLVEMENT IN THE RICO AND THE CONTEMPT-COMPLAINTS.

- 69) Attorneys Louis T. DeLucia ("DeLucia"), Todd Chasin ("Chasin"), and other attorneys from the Buchanan Firm were counsels on record for Bank of America, in the District Court and in the Bankruptcy Court.
- 70) At the time the Contempt-Complaint was initiated, Attorney Mary Sue Henifin ("Henifin"), another member of the Buchanan Firm, had never before submitted any pleading, in any proceeding, in any Court, involving Plaintiff and Bank of America, even though the litigation had been ongoing for more than four years.
- 71) Henifin had previously worked as a law clerk in the District Court of New Jersey.
- 72) Upon information and belief, Henifin had worked as a law clerk for, or with Judge Hedges.
- 73) Upon information and belief, during times material to the Contempt-Complaint, the RICO-Complaint and/or the resolution of the bankruptcy appeals, there were *Ex Parte* talks between Judge Hedges with one or more Defendants and/or their attorneys, including but not limited to Henifin, which *Ex Parte* talks were not disclosed to Tare.
- 74) During times material to the Contempt-Complaint, the RICO-Complaint and/or the resolution of the bankruptcy appeals, Judge Hedges was a speaker for at least one conference that was co-sponsored by the Buchanan Firm and organized by Henifin (See *Appendix A-35*).
- 75) At times material to the Contempt-Complaint, the RICO-Complaint, and the Bankruptcy appeals, Judge Hedges was paid or offered certain benefits, or promised certain benefits or offers, directly or indirectly, by the Buchanan Firm, and/or by one or more of the s, and/or by their counsel.

DEFENDANTS USED THE CONTEMPT-COMPLAINT TO PERFORM FURTHER ACTS, WHICH REPRESENT THE PERVERSION OR ABUSE OF THE PURPORTED LEGITIMATE PURPOSE OF THE ORIGINAL PROCESS.

- 76) On or around September 7, 2005, in the Contempt-Complaint, a letter was sent by the Buchanan Firm, as counsel to Bank of America, informing Tare, among others, that a case management conference was scheduled by Magistrate Judge Hedges on September 12, 2005 (Exhibit at *Appendix A-17*).
- 77) On or around September 12, 2005, a telephone conference was held purportedly as a pre-trial Case Management conference. Judge Hedges, throughout the conference, was speaking as if His Honor was a counsel for Bank of America and not a Judge.
- 78) Upon information and belief, all Case Management conferences are required to be recorded in accordance with the rules and/or statutes for holding such proceedings in Federal Courts. The Case Management telephone conference held on September 12, 2005 was not recorded.
- 79) **One or more of the Defendants knew and have even admitted that “Moreover, the contempt proceeding is unrelated to the Bankruptcy Appeal”** (See Defendants’ submission in this very complaint at Docket Entry 12, page 2).
- 80) On Sept. 21, 2005, immediately after the Case Management conference, a “CASE MANAGEMENT ORDER # 1” with the following provision, or substantially most of it, was proposed by one or more of the Defendants through their counsel (*Appendix A-18*):
- “Tare and any person acting on his behalf or at his direction (including but not limited to Sherry Ballance and Edward Andrescavage, two non-parties who sought and were previously denied leave to intervene in this action) are hereby prohibited from filing further papers with the United States District Court for the District of New Jersey, or submitting other correspondence, or other documents to the Court, without prior leave from the undersigned Magistrate Judge. The Clerk of the Court shall not file or accept for filing any papers from Tare, Ballance, or Andrescavage without prior authorization from the undersigned Magistrate Judge.”

- 81) The Order proposed by one or more Defendants was overbroad in scope and prohibited Plaintiff from filing any papers in the United States District Court without prior authorization from Magistrate Judge Hedges.
- 82) All Defendants conspired with each other to propose this Order through counsel for Bank of America.
- 83) Judge Hedges, signed an Order ordering these or substantially most of these provisions, as proposed by one or more Defendants.
- 84) Bank of America did not pursue these provisions or injunction “in accordance with proper motion practice.” (Judge Linares’ Order vacating Judge Hedges’ Order: Appendix A-27).

THE FURTHER ACTS OF DEFENDANTS HAD THE ULTERIOR OBJECTIVE TO OBSTRUCT THE RESOLUTION OF THE APPEALS FROM THE BANKRUPTCY COURT AND THEREBY IMPACT OTHER PROCEEDINGS AND CLAIMS OF PLAINTIFF.

- 85) Defendants committed “further acts” when they directly, and/or through their attorneys offered, paid, or gave promises of benefits to Judge Hedges.
- 86) Defendants committed “further acts” when they directly, and/or through their attorneys, submitted a proposed Order to Magistrate Judge Hedges, provisions in which Order were intended to impact, and did impact bankruptcy appeals proceedings, which the Defendants knew to be unrelated to the Contempt-Complaint.
- 87) Defendants committed “further acts” when they directly, and/or through their attorneys, submitted a proposed Order to Magistrate Judge Hedges and did so without following proper motion practice.
- 88) When Bank of America asked Judge Hedges to issue the Order, certain appeals were pending before Judge Walls (03-5444-WHW, 04-3657-WHW, 04-3658-WHW, 04-3659-WHW). These appeals required the filing of briefs, motions, responses and/or replies by Tare, who was the Appellant. Defendant Bank of America was one of the Appellees in those

appeals.

- 89) A resolution of these appeals in Plaintiff's favor would have favorably impacted Plaintiff in the RICO-Complaint and would have allowed Plaintiff to seek additional relief and/or assert more claims against Bank of America and other Defendants in the Bankruptcy and/or other courts.
- 90) Subsequently, as a result of the further acts of Defendants, any and all submissions to the District Court of New Jersey, including those which were addressed to Judge Walls, where Judge Hedges had no jurisdiction, were first routed to Judge Hedges.
- 91) Many documents, filings, and/or pleadings which were submitted by Tare in support of his appeals and which were intended for Judge Walls neither reached Judge Walls nor were they docketed but were returned back to Tare. See for example, *Appendix A-36, A-37* dated Dec. 11, 2005, and Dec. 15, 2005, which are cover-letters of some of the filings, which Judge Hedges returned to Tare, even though the submissions were clearly for Judge Walls.
- 92) In returning such submissions to Plaintiff Tare, Judge Hedges merely wrote comments such as: "*Unauthorized filing. Return to Sender.*" Similarly, no explanation whatsoever was provided to Tare in returning other submissions made by him to Judge Walls.

DEFENDANTS WERE SUCCESSFUL IN THEIR ULTERIOR OBJECTIVES OF THE PERVERSION OR ABUSE OF THE PURPORTED LEGITIMATE PURPOSE OF THE ORIGINAL PROCESS.

- 93) Evidence and arguments submitted by Plaintiff to Judge Walls on the conflicts with one or more Defendants, which were concealed by one or more of the Defendants themselves and were also concealed by the trustees, their counsel and/or their law firms did not reach Judge Walls and this directly reflected in Judge Walls' Opinion on the appeals.
- 94) Evidence and arguments submitted by Plaintiff on numerous other frauds committed by

Defendants as part of their conspiracy with Marks, Honig, Kartzman and/or their law firms, also did not reach Judge Walls and this too directly reflected in Judge Walls' opinion on the appeals.

95) Among the overwhelming evidence and arguments that did not reach Judge Walls was that which unambiguously and incontrovertibly established Honig's relationships with Fleet and/or its attorneys. Judge Walls also did not receive evidence of the false affidavit of disinterestedness filed by Gary N. Marks' law firm linking Marks' law firm to Fleet in the representations of Fleet in numerous litigations.

96) Judge Walls most certainly did not receive the evidence and arguments that Kartzman was representing Fleet and that Kartzman was using two law firms, including a dummy law firm to conceal his conflicts vis-à-vis Fleet. At the minimum, this obstructed the evidence and arguments linking Honig to Fleet as Honig's connection to Fleet was through Kartzman.

97) For example, in one of Tare's submissions to Judge Walls, which did not reach Judge Walls as a result of Defendants acts, Tare had asserted and provided evidence in support that (Appendix A-27, emphasis in original):

"The attached documents and notice of hearing are relevant to the hearing on the appeals, and I respectfully believe that the relevance is for Judge Walls to decide... Certainly Your Honor will agree that the use of a non-operating law firm by an attorney to conceal conflicts and to accept business from a creditor through another law firm, is a serious matter. And that's just the tip of the iceberg..."

98) In the absence of such evidence, Judge Walls' rulings were impacted. For example, on one of the issue of conflicts with Fleet and the debtors, concealed by Richard Honig, Judge Walls ruled:

"Here Tare has made no allegation that the debtor's counsel Mr. Honig had a relationship with anyone other than Mr. Marks."

99) If Judge Walls had the benefit of all of Tare's submissions, His Honor would have most

certainly ruled in Tare's favors on such issues, especially because Tare's obstructed submissions had overwhelming evidence establishing that Mr. Honig had numerous relationships with one or more Defendants and/or their attorneys as well as the trustee of the debtor's sole shareholder, through Kartzman and/or Kartzman's law firms.

100) This would have unambiguously proven to Judge Walls that Honig's following statement in his sworn affidavit, denying his relationship with one or more Defendants, as part of the conspiracy with one or more Defendants, was patently false:

To the best of deponent's knowledge, deponent's firm does not have any connections with the above named Trustee, the Debtor, any creditors including Fleet Bank, or any other party in interest herein or their respective attorneys.

101) Even those submissions by Tare to Judge Walls, which were ultimately docketed, were not docketed promptly because Judge Hedges held on to them before forwarding them to the Clerk for docketing. Plaintiff Tare's time, attention, and resources were continually digressed away from the bankruptcy appeals pending before Judge Walls, because Plaintiff Tare was continually required to trace the whereabouts of his submissions which were made to Judge Walls.

102) Additionally, Plaintiff Tare was severely emotionally distressed upon knowing that his free access to the Courts was maliciously obstructed and that all his submissions to an appeal Judge were obstructed by a Magistrate Judge who had no jurisdiction over the appeals.

103) Plaintiff Tare lost his confidence in the judiciary, which in turn also impacted his submissions and arguments made in the appeals proceedings.

104) Such further acts of one or more of the Defendants as described above, prevented Tare from getting a resolution in his favor in the bankruptcy appeals before Judge Walls.

105) The further acts were with the full knowledge of their adverse impact on Plaintiff.

DEFENDANTS' INTENTIONAL ACTS OF OBSTRUCTING PLAINTIFF'S SUBMISSIONS WAS WITH THE FULL KNOWLEDGE OF ITS ADVERSE IMPACT ON PLAINTIFF TARE'S BANKRUPTCY APPEALS BEFORE JUDGE WALLS AS WELL AS ON SUBSEQUENT APPELLATE PROCEEDINGS BEFORE THE COURT OF APPEALS.

- 106) Defendants knew or should have knows that their acts would adversely impact Tare in the resolution of the bankruptcy appeals before Judge Walls.
- 107) Defendants acts did adversely impact Tare in the resolution of the bankruptcy appeals before Judge Walls.
- 108) Defendants also knew that Tare could not "*raise an argument or proffer evidence*" in the Court of Appeals in the Third Circuit if the underlying submissions were not on the docket in the District Court or had not reached Judge Walls in the first instance. Defendant Bank of America made precisely such arguments to the Court of Appeals for the Third Circuit. For example, Defendant Bank of America, as Appellee in the Court of Appeals for the Third Circuit, argued: "*It is well settled that an appellant's failure to raise an argument or proffer evidence below operates as a waiver of his right to do so on appeal*" (See Appendix A-64,65 which is p.65 of Bank of America's brief filed in the Court of Appeals for the Third Circuit).
- 109) As a result of the acts of one or more Defendants, the Third Circuit could only review arguments and evidence that was before Judge Walls and accordingly, in the absence of the benefit of the entire record, affirmed Judge Walls opinion and the Bankruptcy Court Orders.
- 110) As a result of the affirmation of the Bankruptcy Court Orders, Plaintiff could not pursue his numerous claims against one or more Defendants which were pending in different courts.
- 111) As a result of the affirmation of the Bankruptcy Court Orders, Plaintiff could not pursue new claims which he could have pursued if the appeals were ruled in Plaintiff's favor.
- 112) The denial of the constitutionally protected rights to free access to the Courts also hindered Tare's efforts to pursue his legal and other claims against Bank of America.

JUDGE LINARES' ORDER PROVE THAT DEFENDANTS PERFORMED FURTHER ACTS WHICH REPRESENT THE PERVERSION OR ABUSE OF THE PURPORTED LEGITIMATE PURPOSE.

113) On or around May 4, 2006, Judge Linares, the District Court Judge, issued an Order vacating Judge Hedges' Order. In that Order, Judge Linares ruled (Order - *Appendix A-27*, *emphasis added*):

"The Court also notes that the injunctive relief set forth by the September 21 Order undoubtedly implicates Tare's Constitutional rights, most noticeably, his access to the courts. By prohibiting Tare from filing papers with the Court or sending correspondence to the Court without prior leave from Judge Hedges, Tare's access to the courts appears to have been hindered."

114) It is also clear from Judge Linares' Order that Defendants performed further acts, which represent the perversion or abuse of the purported legitimate purposes for initiating the Contempt-Complaint (*Id*, *emphasis added*):

The record does not indicate that Bank of America pursued injunctive relief in accordance with proper motion practice. Further, the Court is presently unable to review the basis for Judge Hedges' September 21 Order since it was based on a telephonic case management conference of which there is no transcript. In light of these factors, it does not appear to this Court that Judge Hedges handled Bank of America's request in accordance with the Local Civil Rules. Since the September 21 Order imposed clear restraints on Tare and other individuals which implicate their access to the courts, it seems that this matter should have been disposed of by report and recommendations, not by case management order alone. Judge Hedges' utilization of a case management order to impose injunctive relief appears to have been contrary to law and thus constitutes a proper basis to vacate the Order. Accordingly, this Court will GRANT Tare's appeal of the September 21 Order and will VACATE such Order [Docket # 36] of the Honorable Magistrate Judge Ronald J. Hedges." (*Id*, *emphasis added*).

115) Upon information and belief, Defendants, including Defendants Guinn, McMillan and Sloan, as part of the conspiracy, either authorized this strategy, or took no action in the face of a duty to take one, when they knew that Tare's constitutionally protected rights were violated by the Bank through attorneys of the Buchanan Firm.

DEFENDANTS GUINN, MCMILLAN AND SLOAN KNEW OF THE ALLEGED FRAUDS AND WERE EVEN PART OF A CONSPIRACY AS ALLEGED IN THIS COMPLAINT. THEY KNEW OR SHOULD HAVE KNOWN OF THEIR DUTIES.

116) Tare had written to Defendants, informing them of the allegations of frauds by Honig,

Kartzman, Marks and others, as part of a conspiracy with one or more Defendants, as alleged above.

117) For example, in support of the Contempt-Complaint, Assistant General Counsel for Bank of America, Albert Rocha provided a Certification (*Appendix B: Rocha Certification with its exhibits, See also Appendix A-2, p.2, ¶4*) that Defendants Guinn, McMillan and Sloan, as members of the Board of Directors of Bank of America, received certain submissions made by Tare.

118) Appendix/Exhibit B itself suffices to prove that Defendants Sloan, McMillan, and Guinn fully knew of substantially all the acts and events establishing the frauds of Kartzman vis-à-vis Fleet and/or Bank of America.

119) Defendants Guinn, McMillan and Sloan knew or should have known of the impact of such submissions reaching Judge Walls and therefore conspired to prevent submission evidencing these very crimes, in addition to preventing other submissions, from reaching Judge Walls.

120) The relevant chapter of the "Director's Book" issued by the Office of the Comptroller of the Currency is provided at *Appendix A-44 through A-62*. It states:

"This chapter discusses how the law defines these responsibilities [of Directors] and the ways in which a director may be held personally accountable for wrongdoing (Appendix A-45).

"An individual director who fails to meet these standards may be liable for losses or injury incurred by the bank or others..." (Appendix A-45)

"A bank director may authorize bank management to taken only those actions or perform only those activities that are legally permitted for the bank." (Appendix A-46)

"The courts usually hold a director responsible for knowing what a reasonable and prudent director would have known, and the courts evaluate the director's conduct based on that knowledge." (Appendix A-47).

"When circumstances alert a director to an actual or potential problem, the 'duty to investigate' requires that the director takes steps to learn the facts and to resolve the situation." (Appendix A-48)

"A party seeking redress against a director could therefore sue alleging a violation of either of both sources of law [common law and statutory provisions]" (Appendix A-48)

121) Director's individual liability under Anti-Trust and Anti-Tying laws are described at

Appendix A-59 and A-60.

- 122) The RICO-Complaint includes allegations of the violation of Anti-Trust and Anti-Tying laws by Bank of America.
- 123) Defendants Guinn, McMillan and Sloan, therefore, had a personal material intent in obstructing the pursuit of the RICO-Complaint and the resolution of the bankruptcy appeals.
- 124) Even though circumstances alerted Defendants Guinn, McMillan and Sloan of an actual or potential problem, they failed in their 'duty to investigate' and/or to takes steps to learn the facts and to resolve the situation.
- 125) Defendants Guinn, McMillan and Sloan knew or should have known what a reasonable and prudent director would have known, that the conduct of the bank and/or its management and/or its attorneys as brought to their notice was not permitted by law.

BANK OF AMERICA HAD REPEATEDLY TRIED EARLIER TO OBSTRUCT TARE'S FREE ACCESS TO THE COURTS.

- 126) Shortly after the RICO-Complaint was initiated, Defendant Bank of America approached the Bankruptcy Court demanding that Tare seek permission from the Bankruptcy Court before "*commencing any civil action or administrative proceeding, or filing any complaint, amended complaint, or any type of pleading or paper seeking affirmative relief adverse to...*" the bank.
- 127) On or around December 11, 2002, the Bankruptcy Court denied this relief sought by Bank of America, which relief, if granted, would have required Tare to approach Judge Gambardella before making any submission, adverse to Bank of America, in any Court (Bankruptcy Court Order at *Appendix A-3 through A-9*, striking corresponding provisions sought by the bank).
- 128) In or around June 2003, Bank of America, through its counsel Louis T. DeLucia ("DeLucia"), tried again to prevent Tare from directly and unconditionally making filings to

the Court. Bank of America, through DeLucia, submitted an Order, asserting it to be a consent Order, with the following provision:

“No papers shall be filed in this Chapter 7 case hereafter by or on behalf of Tare, unless signed by Tare’s Chapter 7 Trustee as appointed herein, or by the attorneys for the Chapter 7 Trustee.”

See Order at *Appendix A-10* – The final Order shows that this provision was ultimately struck (*Id.*, *A-11*). This struck-out provision in the purported consent order, submitted by Bank of America through its counsel DeLucia, if enforced, would have prevented Tare from unconditionally making submissions to at least the Bankruptcy Court, even in his own personal bankruptcy.

129) The Bankruptcy Court, in a hearing held to discuss the alleged falsity of the consent Order, agreed that Tare could not have agreed to the consent Order and that it was not what was discussed in the Court hearing. The Bankruptcy Court emphasized that the Court was assuming that “certifications of consent were obtained” because the orders had “consent signatures.” The Bankruptcy Court’s ruling is quoted below (Transcript at *Appendix A-15 @* lines 7 - 25):

THE COURT: I did not recall that I indicated that he was without authority in his own Chapter 7 case as a pro se debtor to submit pleadings on his own. In fact, I can’t imagine that scenario being working at points where he may be at odds -- he may take positions contrary to the Trustee. So, I -- but I think that the issue that had been raised by Mr. Tare, in the letter that I received, was that the orders were submitted as consent orders, and Mr. Tare indicated he had not consented to those orders, so I -- did want to raise that with counsel. There were -- as I recall those orders were electronically filed, and they had consent signatures. I assume that there’s a certification of consents that were obtained and that’s a requirement that certifications of the signatures be obtained.

130) Neither DeLucia nor any member of the Buchanan Firm discussed with Tare the provisions in the Consent Order or informed Tare that one would be filed with his electronic signature before it was filed. Tare’s electronic consent signature was put on the consent Order by Louis T. DeLucia.

131) No “certification of consents” or “consent signatures” were obtained from Tare prior to filing the purported consent Order.

132) Defendants Guinn, McMillan and Sloan were fully aware of DeLucia’s filing of a consent Order in flagrant violation of the procedures for doing so. Contrary to their duties¹ as set forth by the Office of the Comptroller of the Currency (OCC), Guinn, McMillan and Sloan took no action against either DeLucia or his law firm.

ONLY AFTER IT HAD SUCCEEDED IN MALICIOUSLY BUT UNSUCCESSFULLY PROSECUTING TARE AND SEEKING TARE’S IMPRISONMENT, DEFENDANTS CONCEDED TO THE BANKRUPTCY COURT THAT THERE WAS NEVER A NEED FOR TARE’S IMPRISONMENT AND THAT A CLARIFICATION OF THE BANKRUPTCY COURT ORDER WAS SUFFICIENT.

133) After Judge Linares had asked the Bankruptcy Court to clarify the alleged injunctions, but only after the ulterior motive to harass Tare by maliciously prosecuting him was served, Bank of America conceded in its submission to the Bankruptcy Court that there was never a need to imprison Tare and that the purpose of the contempt proceeding would be served by clarifying the injunction. Specifically, Bank of America wrote to the Bankruptcy Court:

“Movants maintain that the Injunctions as originally entered by this Court prohibited Tare from communicating with members of the Bank of America Corp. board of directors in December 2004 and January 2005. In so finding, this Court would clarify the Injunctions as mandated by the District Court, and make it abundantly clear to Tare that such violations of the Injunctions will not be tolerated in the future. Movants would then withdraw this criminal contempt proceeding without prejudice, since its purpose will have been achieved.”

134) After their ulterior purpose of the initiation of the contempt proceeding was served, Defendants conceded that the purpose of the proceeding could have been achieved without seeking Tare’s imprisonment.

¹ Appendix A-45 thru A-62 describes the duties of members of the board of directors of National Banks like Bank of America as set forth by the Office of the Comptroller of the Currency.

135) Tare was never imprisoned by any Court or Jury for a single day, let alone for more than six months, as sought by Bank of America in 05-cv-1306-JLL.

136) No Judge, who had subject-matter jurisdiction to determine if Tare could be imprisoned for the number of months that Defendants sought Tare to be imprisoned, found any probable cause to initiate a jury trial to imprison Tare for several months, as sought by Defendants.

137) Judge Linares, the only Judge who had subject-matter jurisdiction over the criminal allegations, actually ruled that:

“However, after further review of the bankruptcy record in both Tare’s Chapter 11 case and Bank of America’s adversary case, this Court has reached the conclusion that **a criminal contempt trial is likely unnecessary**” (*District Court Order at Appendix A-33*).

ONE OR MORE DEFENDANTS CONCURRENTLY CONSPIRED TO INITIATE ANOTHER CRIMINAL PROCEEDING AGAINST TARE

138) In temporal proximity of initiating the Contempt-Complaint, Richard B. Honig and Gary N. Marks initiated another criminal contempt proceeding against Tare (Docketed as 05-cv-770-GEB-MF).

139) The two contempt proceedings were submitted within 5 business days of each other.

140) In temporal proximity to the initiation of the second criminal contempt proceeding by Marks and Honig, both Marks and Honig, and/or their law firms, received monies and/or business and/or fees from Bank of America, its affiliates and/or subsidiaries, and/or their attorneys.

141) The contempt proceeding against Tare initiated by Marks at that time, based upon the alleged conduct of Tare until that time, was terminated in Tare’s favor and Chief Judge Brown neither held Tare in contempt of Judge Gambardella nor sentenced Tare to several months of imprisonment as maliciously demanded by Gary N. Marks. In fact, at that time, the motion to withdraw the reference to Bankruptcy Court was denied by Judge Brown. The

corresponding docket entry in the Bankruptcy Court reads (emphasis added):

12/29/2006	<u>629</u>	Certified Copy of Order by District Judge Garrett E. Brown Denying Motion to Withdraw the Reference. (related document: <u>588</u> Motion for Withdrawal of Reference. Fee Amount \$ 150. filed by Trustee Gary Marks). Signed on 12/29/2006. (ekp,) (CV#05-770) (Entered: 01/09/2007)
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142) Therefore, the contempt proceeding seeking Tare's imprisonment for more than six months, filed by Gary N. Marks and his counsel Richard B. Honig also ended in Tare's favor.

COUNT 1: MALICIOUS ABUSE OF PROCESS

143) Plaintiff alleges and incorporates by reference all the foregoing facts and allegations, as if set forth fully herein.

144) Defendants initiated the Contempt-Complaint with the purported purpose of initiating criminal contempt proceedings against Tare alleging that Tare had intentionally violated a Court Order.

145) Defendants then engaged in further acts by maliciously abusing the Contempt-Complaint to prevent Judge Walls from having the full record needed to rule on the appeals.

146) Defendants initiated a criminal proceeding and then maliciously abused process with an ulterior motive to impact unrelated civil matters.

147) Defendants' ulterior motive in their further acts was to obstruct the fair resolution of the bankruptcy appeals.

148) These improper further acts resulted in the resolution of the appeals in Defendant Bank of America's favor.

149) Defendants' further acts as described in the foregoing, represent the perversion or abuse of their purported legitimate purpose of initiating the Contempt-Complaint.

150) The further acts taken by Defendants also represent a clearly illegitimate use of the judicial

process.

- 151) Defendants demonstrably used the process as a means to coerce or oppress Tare as the further acts of Defendants also constitute acts of obstructing the due administration of justice because these acts ultimately resulted in hindering Tare's access to the Court.
- 152) Defendants knew or should have reasonably known that their numerous further acts, as described in the foregoing, were a perversion of the initial purported purpose.
- 153) Defendants fully knew that the unlawful relief they sought through the further acts, was repeatedly denied to them earlier and yet they maliciously abused process to seek it again through improper motion practice and other improper and/or even illegal means.
- 154) Defendants were successful in accomplishing their ulterior motive of maliciously abusing process to meet an end other than that which it was designed to accomplish. Defendants' use of the further improper acts resulted in the affirmation of the bankruptcy appeals.
- 155) Defendants' actions were an extreme deviation from reasonable standards of conduct.
- 156) As a direct, proximate, foreseeable and intended result of the malicious abuse of process, Plaintiff suffered significant injuries, damages and losses.
- 157) The actions of Defendants, alleged above, were undertaken intentionally, with actual malice, and/or reckless disregard for their likely consequences. As a result, Plaintiff is also entitled to an award of punitive damages.

COUNT 2: CONSPIRACY TO MALICIOUSLY ABUSE PROCESS

- 158) Plaintiff alleges and incorporates by reference all the foregoing facts and allegations, as if set forth fully herein.
- 159) Defendants also conspired with each other, in a concerted series of acts, with the objective of the conspiracy to maliciously abuse process in order to meet their ulterior objectives.
- 160) Defendants also conspired with Judge Hedges, in a concerted series of acts, with the

objective of the conspiracy to maliciously abuse process to meet their ulterior objectives.

- 161) The further acts also included conspiring with the Magistrate Judge Hedges and/or improperly influencing the Judge to violate Plaintiff's constitutional rights.
- 162) Defendants' actions were an extreme deviation from reasonable standards of conduct.
- 163) As a direct, proximate, foreseeable and intended result of the conspiracy to maliciously abuse process, Plaintiff suffered significant injuries, damages and losses.
- 164) The actions of Defendants, alleged above, were undertaken intentionally, with actual malice, and/or reckless disregard for their likely consequences. As a result, Plaintiff is also entitled to an award of punitive damages.

COUNT 3: FRAUD UPON THE COURT

- 165) Plaintiff realleges and incorporates by reference all the foregoing facts and allegations, as if set forth fully herein.
- 166) Henifin, DeLucia, Chasin, and other attorneys of the Buchanan Firm, as attorneys for Bank of America, are officers of the Court.
- 167) Judge Hedges, as a Magistrate Judge at times relevant to this complaint, was also an officer of the Court.
- 168) The fraud perpetrated by Defendants, directly or through their attorneys, was directed to the judicial machinery itself in that the targets of the fraud included Judge Walls, Judge Martini, Judge Linares and even the Court of Appeals for the Third Circuit.
- 169) The fraud was intentional, willfully blind to the truth, and/or was in reckless disregard for the truth.
- 170) The fraud actually deceived the Court as Judge Walls certainly did not get all the submissions made by Plaintiff Tare to His Honor and the Court of Appeals was similarly deceived as its review was only limited to those which Judge Walls was able to review.

- 171) The fraud on the Court also constitutes affirmative acts to obstruct the due administration of justice.
- 172) The conduct of Defendants is clearly a scheme to interfere with the judicial machinery performing the task of impartial adjudication.
- 173) Defendants' conduct also implicated the integrity of the normal process of adjudication.
- 174) The conduct of Defendants also tantamount to bribery of Judge Hedges.
- 175) Defendants' actions were an extreme deviation from reasonable standards of conduct. As a direct, proximate, foreseeable and intended result of the fraud upon the Court and/or the conspiracy to commit this fraud, Plaintiff suffered significant injuries, damages and losses.
- 176) The actions of Defendants, alleged above, were undertaken intentionally, with actual malice, and/or reckless disregard for their likely consequences. As a result, Plaintiff is also entitled to an award of punitive damages.

COUNT 4: CONSPIRACY TO COMMIT FRAUD UPON THE COURT

- 177) Plaintiff realleges and incorporates by reference all the foregoing facts and allegations, as if set forth fully herein.
- 178) Defendants conspired with each other to commit fraud upon the Court.
- 179) Defendants conspired with attorneys of the Buchanan Firm to commit fraud upon the Court.
- 180) Defendants conspired with Judge Hedges to commit fraud upon the Court.
- 181) The objective of the conspiracies was to commit fraud upon the Court.
- 182) Defendants' actions were an extreme deviation from reasonable standards of conduct. As a direct, proximate, foreseeable and intended result of the fraud upon the Court and/or the conspiracy to commit this fraud, Plaintiff suffered significant injuries, damages and losses.
- 183) The actions of Defendants, alleged above, were undertaken intentionally, with actual

malice, and/or reckless disregard for their likely consequences. As a result, Plaintiff is also entitled to an award of punitive damages.

COUNT 5: MALICIOUS PROSECUTION
Or in the alternative
MALICIOUS USE AND/OR MISUSE OF PROCESS

184) Plaintiff realleges and incorporates by reference all the foregoing facts and allegations, as if set forth fully herein.

185) The Contempt-Complaint, as Bank of America has now effectively acknowledged, was initiated, without reasonable or probable cause and it was actuated by malice.

186) Defendants maliciously used and/or misused process, and maliciously prosecuted Plaintiff.

187) Defendants' actions were an extreme deviation from reasonable standards of conduct.

188) As a direct, proximate, foreseeable and intended result of the malicious prosecution, and/or malicious use and/or misuse of process, Plaintiff suffered significant injuries, damages and losses.

189) The actions of Defendants, alleged above, were undertaken intentionally, with actual malice, and/or reckless disregard for their likely consequences. As a result, Plaintiff is also entitled to an award of punitive damages.

COUNT 6: CONSPIRACY TO MALICIOUSLY PROSECUTE
Or in the alternative
CONSPIRACY TO MALICIOUSLY USE AND/OR MISUSE PROCESS

190) Plaintiff realleges and incorporates by reference all the foregoing facts and allegations, as if set forth fully herein.

191) Defendants conspired with each other to maliciously prosecute, maliciously use and/or maliciously misuse process.

192) As a direct, proximate, foreseeable and intended result of the malicious prosecution, and/or malicious use and/or misuse of process, Plaintiff suffered significant injuries, damages and

losses.

193) The actions of Defendants, alleged above, were undertaken intentionally, with actual malice, and/or reckless disregard for their likely consequences. As a result, Plaintiff is also entitled to an award of punitive damages.

COUNT 7: BIVENS CONSPIRACY

194) Plaintiff realleges and incorporates by reference all the foregoing facts and allegations, as if set forth fully herein.

195) Defendants Guinn, McMillan and Sloan are sophisticated business persons with decades of experience.

196) These Defendants knew or should have known that preventing and delaying Tare's submissions from reaching the Judge to whom the submissions were targeted would impede Tare from seeking or pursuing legal claims and that such obstruction would be a violation of Tare's constitutional rights such as the free access to the Courts.

197) Defendants Guinn, McMillan and Sloan, directly and/or through attorneys of the Buchanan Firm, conspired with a Federal Judge, Judge Ronald Hedges, to violate Plaintiff's constitutional rights, including Plaintiff's rights to free access to the Courts, as described in the foregoing, giving rise to Bivens conspiracy claims (See *Bivens v. Six Unknown Named Agents of the Federal Bureau of Investigation*, 403 U.S. 388 (1971)).

198) As a result of this conspiracy to violate Plaintiff's constitutional rights, Plaintiff suffered significant injuries, damages and losses.

199) The actions of Defendants were undertaken intentionally, with actual malice, and/or reckless disregard for their likely consequences, which entitles Plaintiff to punitive damages.

COUNT 8: CONSPIRACY WITH MARKS AND HONIG TO MALICIOUSLY PROSECUTE TARE AND TO MALICIOUSLY MISUSE/USE PROCESS

- 200) Plaintiff alleges and incorporates by reference all the foregoing facts and allegations, as if set forth fully herein.
- 201) The bankruptcy appeals pending before Judge Walls included issues on conflicts with Bank of America and/or their attorneys concealed by Gary N. Marks, Richard B. Honig, and/or their law firms.
- 202) Defendants conspired with Gary N. Marks and Richard B. Honig to have them file another criminal contempt proceeding against Tare on almost the same day as they filed their own Contempt-Complaint.
- 203) Upon information and belief, in temporal proximity to the filing of the second criminal contempt proceeding by Marks and Honig, one or more Defendants, directly, or through one or more of their attorneys, paid Marks, Honig, and/or their law firms, directly or indirectly as legal fees or in some other form, which payment was not disclosed to either the Bankruptcy Court or to Judge Walls or to the Court of Appeals in the Third Circuit.
- 204) **Such payments, without disclosing them to the Court in which they had filed affidavits of disinterestedness or the Court in which they had filed contempt proceedings, constitutes payment of bribes.**
- 205) The purported purpose of the second criminal contempt proceeding was to seek Tare's imprisonment for several months on allegations that Tare had offended Judge Gambardella (See complaint at PACER docket # 06-cv-770-JCL-MF).
- 206) Judge Gambardella herself had never held Tare in contempt of Court.
- 207) Judge Gambardella herself had never warned Tare for potential contempt of Court.
- 208) Defendants conspired with Gary N. Marks and Richard B. Honig to have them file the

second contempt proceeding against Tare without reasonable or probable cause and it was actuated by malice.

209) The outcome of this second criminal contempt proceeding initiated by Marks would have had no impact on the equitable distribution in the bankruptcy proceeding yet Defendants conspired with Marks and Honig and encouraged them to initiate this complaint and do so at the very time that they initiated their own Contempt-Complaint.

210) This second criminal contempt proceeding against Tare terminated in Tare's favor.

211) The ulterior motives of the conspiracy to initiate the second criminal contempt proceeding included, but were not limited to the following:

- To digress Tare's attention from the bankruptcy appeals which were pending before Judge Walls and to take Tare's limited resources away from pursuing these appeals and other claims, including the RICO claims against one or more Defendants.
- To intentionally inflict emotional distress on Tare by intimidating him with fear of imprisonment of several months.
- To obstruct justice because **a successful reversal of the appeals would have resulted in the imprisonment² of Gary N. Marks, Richard B. Honig, Steven Kartzman and attorneys of the Buchanan Firm**, among others, for the filing of materially falsified Rule 2014 sworn affidavits of disinterestedness.

212) Defendants' actions were an extreme deviation from reasonable standards of conduct.

213) As a direct, proximate, foreseeable and intended result of the malicious use/misuse of process, malicious prosecution, and/or the conspiracy to maliciously use/misuse process, and/or maliciously prosecute, Plaintiff suffered significant injuries, damages and losses.

214) The actions of Defendants, alleged above, were undertaken intentionally, with actual malice, and/or reckless disregard for their likely consequences. As a result, Plaintiff is also entitled to an award of punitive damages.

² See *U.S. v. Gellene* 192 F.3d 578 (7th Cir. 1999).

**MINIMUM ESTIMATE OF DAMAGE CLAIM – TWO BILLION U. S. DOLLARS
MINIMUM EXPOSURE FOR BANK OF AMERICA INCLUDING EXPOSURE
RESULTING FROM INVESTIGATIONS INTO OTHER SUCH ACTS IMPACTING
OTHER CUSTOMERS – TWENTY BILLION U.S. DOLLARS**

- 215) Defendant Bank of America, and/or its officer, valued Plaintiff at \$30 Million (See Appendix A-63) prior to the commencement of litigation between the bank and Plaintiff.
- 216) This dispute subsequently gave rise to a litigation resulting in the RICO-Complaint in which in addition to Civil RICO claims, there were additional claims such as those based upon allegations of violations of Anti-Tying and Anti-Trust laws. Plaintiff is seeking compensatory and punitive damages in the RICO-Complaint alone of more than \$230 Million.
- 217) Therefore, Consequential and punitive damages arising out of the obstruction of the RICO-Complaint would be several fold \$230 Million but not less than \$1 Billion.
- 218) In addition, Plaintiff would be entitled to payment for various types of damages, including but not limited to compensatory, consequential and punitive damages based upon other claims and damages arising out of new claims resulting from the actions and inaction of Defendants as described in the foregoing. Such payments of compensatory, consequential and punitive damages, would exceed another \$1 Billion, given the enormity and reprehensibility of the repeated offenses.
- 219) Bank of America is a major global financial institution with Millions of customers worldwide and it is therefore in the public interest to impose punitive damages that will deter Defendants from future such malicious, fraudulent and even criminal practices and particularly so because victims of such practices simply do not have the financial resources to litigate this financial behemoth. Defendants' misconduct is illegal not just in New Jersey but in all states of New Jersey or even in any civilized country.

- 220) The harm caused was a result of intentional malice, trickery, and/or deceit, and certainly not through acts of negligence.
- 221) Defendants knew that Plaintiff Tare was financially vulnerable as a result of bankruptcy proceedings in which he and his company were tied into as a result of Defendant Bank of America's refusal to allow voluntary dismissal of their bankruptcy petitions.
- 222) Bank of America has total assets of \$1.3 Trillion (Appendix A-40 shows relevant Balance Sheet information from a 10-K form of Bank of America for Financial Year 2005). Bank of America's total revenues from interest and non-interest income for financial year 2005 alone was about \$56 Billions (See Appendix A-39 showing Statement of Income for 2005). Even a \$2 Billion in damages would have no deterrence on Bank of America and/or Members of its Board of Directors.

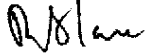
PRAYER FOR RELIEF

- 223) WHEREFORE, Plaintiff Tare respectfully requests that this Court enter judgment in his favor and against the Defendants, and grant the following relief:
- (a) Directing Defendant Bank of America to pay Plaintiff, as compensatory damages, an amount not less than \$2 Billion.
 - (b) Directing Defendant Bank of America to pay Plaintiff additional punitive damages several times the compensatory damages.
 - (c) Directing Defendants Guinn, McMillan and Sloan, to pay Plaintiff, additional compensatory and punitive damages.
 - (d) If Plaintiff decides to retain an attorney in the future, directing Defendants to pay Attorney fees, and costs associated with this action, including costs for expert witness testimony.
 - (e) **Order a complete investigation into the pattern of racketeering by Bank of America and its attorneys in improperly influencing and bribing Judges, bankruptcy trustees and attorneys of their adversaries and Order the Bank to set aside a fund of not less than U.S. \$20 Billion as compensation to such victims.**

- (f) Any further relief that this court in its discretion deems just and proper, and any other relief allowed by law, and/or initiation of any other action and imposition of penalties pursuant to 18 U.S.C. §§ 241, 242.

PLAINTIFF REQUESTS A TRIAL BY JURY ON ALL ISSUES SO TRIABLE

Dated April 22, 2008



/s/Ramkrishna S. Tare