

**UNITED STATES DISTRICT COURT
FOR THE UNITED STATES VIRGIN ISLANDS**

JEFFREY J. PROSSER, DAWN PROSSER,)
ADRIAN PROSSER, and JOHN P. RAYNOR,)

Case No. 1:08 CV 107 RLF-GWC

PLAINTIFFS,)

V.)

JURY TRIAL DEMANDED

NATIONAL RURAL UTILITIES COOPERATIVE)
FINANCE CORPORATION; RURAL)
TELEPHONE FINANCE COOPERATIVE;)
NATIONAL RURAL ELECTRIC COOPERATIVE)
ASSOCIATION; SHELDON C. PETERSEN; JOHN)
J. LIST; STEVEN L. LILLY; R. WAYNE)
STRATTON; GREENLIGHT CAPITAL, INC.;)
GREENLIGHT CAPITAL QUALIFIED, L.P.;)
GREENLIGHT CAPITAL, L.P.; GREENLIGHT)
CAPITAL OFFSHORE, LTD.; FULBRIGHT &)
JAWORSKI L.L.P.; GLENN L. ENGLISH;)
DELOITTE TOUCHÉ USA LLP; and ERNST &)
YOUNG LLP,)

DEFENDANTS.)

AMENDED COMPLAINT TO REDRESS –

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- (i) VIOLATIONS OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT;**
 - (ii) THE VIRGIN ISLANDS CRIMINALLY INFLUENCED AND CORRUPT ORGANIZATIONS ACT (CICO);**
 - (iii) TORTS ACTIONABLE UNDER VIRGIN ISLANDS LAW; AND**
 - (iv) A COMMON LAW CIVIL CONSPIRACY.**
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Comes now Plaintiffs and for their Claims for Relief against the Defendants state:

JURISDICTION AND VENUE

1. This action arises under the Racketeer Influenced and Corrupt Organizations Act of 1970, 18 U.S.C. § 1961, and the U. S. Virgin Islands' Criminally Influenced and Corrupt Organizations Act. The court's jurisdiction is invoked under 28 U.S.C. § 1331; 28 U.S.C. § 1332; 18 U.S.C. § 1964(c); and under the doctrine of pendent jurisdiction.

2. Venue is proper under 18 U.S.C. § 1965(a).

PARTIES TO THE ACTION

Plaintiffs

3. The Plaintiffs are as follows:

a. Plaintiff **JEFFREY J. PROSSER** ("Jeff Prosser") is a citizen and resident of the United States Virgin Islands. Jeff Prosser is married to Dawn Prosser ("Dawn Prosser"). Jeff Prosser joins to action, at this time, for the limited purpose of seeking recompense for his wrongful termination –an *in personam* action. Jeff Prosser, upon filing this complaint, will have made a demand upon the Trustee to pursue the damages for the loss in his property interest in Innovative Communication Company, L.L.C. ("ICC-LLC"), a Virgin Islands limited liability company, by reason of the actions of the Defendants set forth hereinafter.

b. Plaintiff **DAWN PROSSER** ("Dawn Prosser") is a citizen and resident of the United States Virgin Islands. Dawn Prosser is married to Plaintiff Jeff Prosser. Dawn Prosser seeks damages for the loss in her property interest in Innovative Communication Company, L.L.C. ("ICC-LLC"), a Virgin Islands limited liability company, by reason of the actions of the Defendants set forth hereinafter. The term "Prossers" refers collectively to Jeff Prosser and Dawn Prosser.

c. Plaintiff **ADRIAN PROSSER** (“Adrian Prosser”) is the son of the Prossers and was, until the Innovative Communication Corporation (“New ICC”), a management employee of New ICC. Adrian Prosser was then a citizen and resident of the United States Virgin Islands and, at this time, is a citizen of a state other than the U.S. Virgin Islands.

d. Plaintiff **JOHN P. RAYNOR** (“Raynor”) was the long-time confidant of Jeff Prosser whom served as a director, consultant and attorney to Innovative Communication Corporation (known as “New ICC”) and its affiliates. The Plaintiff is a citizen of a state other than the U.S. Virgin Islands.

Defendants

4. The Defendants are as follows:

a. Defendant **NATIONAL RURAL UTILITIES COOPERATIVE FINANCE CORPORATION** (“CFC”) is a tax-exempt (not-for-profit) financing cooperative formed pursuant to the laws of the District of Columbia and operates out of its offices at 2201 Cooperative Way, Herndon, VA 20171. CFC is an unregulated, privately-owned entity. CFC, through the Rural Telephone Finance Cooperative, the Enterprise, has conducted business and transacted its affairs in the U.S. Virgin Islands including having sought relief in the Virgin Islands courts. Defendant CFC is a citizen of a state other than the U.S. Virgin Islands.

b. Defendant **RURAL TELEPHONE FINANCE COOPERATIVE** (“RTFC”), the Enterprise, is a taxable cooperative legally domiciled in the District of Columbia, created by CFC in 1987 purportedly to serve the financial needs of the rural telecommunications industry. RTFC’s headquarters is co-located with CFC at 2201 Cooperative Way, Herndon, Virginia 20171. RTFC is under the dominion and control of CFC as more fully described hereinafter. RTFC has conducted business and transacted its affairs in the U.S. Virgin Islands

including having sought relief in the Virgin Islands courts. Defendant RTFC is therefore a citizen of a state other than the U.S. Virgin Islands.

c. Defendant **NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION** (“NRECA”), founded in 1942, is a cooperative organization representing the interests of cooperative electric utilities. NRECA was formed pursuant to the laws of the District of Columbia and is located at 4301 Wilson Blvd., Arlington, VA 22203. NRECA has indirectly conducted business and transacted its affairs in the U.S. Virgin Islands through RTFC, a cooperative under the dominion and control of CFC, a legal entity created by NRECA. CFC was established by NRECA and is managed by NRECA and by NRECA’s members. Defendant NRECA is therefore a citizen of a state other than the U.S. Virgin Islands.

d. Defendant **SHELDON C. PETERSEN** (“Petersen”) is and has been the Governor and Chief Executive Officer (“CEO”) of **CFC and RTFC** since 1995. Defendant Petersen is a citizen of a state other than the U.S. Virgin Islands. Petersen, as CEO of CFC and RTFC, has conducted business within, and transacted affairs within, the U.S. Virgin Islands including having sought relief in the Virgin Islands courts. Upon information and belief, Petersen resides at 510 Fortress Circle, SE, Leesburg, Virginia. Defendant Petersen is therefore a citizen of a state other than the U.S. Virgin Islands. Petersen is hereinafter referred to as “CFC’s Management Defendants”.

e. Defendant **JOHN J. LIST** (“List”) is and has been the Senior Vice President of Member Services and General Counsel of **CFC and RTFC** since 1995. Defendant List is a citizen of a state other than the U.S. Virgin Islands. List, as General Counsel of CFC and RTFC, has conducted business within, and transacted affairs within, the U.S. Virgin Islands including having sought relief in the Virgin Islands courts. Upon information and belief, List

resides at 3919 Aspen Street, Baltimore, Maryland. Defendant List is therefore a citizen of a state other than the U.S. Virgin Islands. List is hereinafter referred to as “CFC’s Management Defendants”.

f. Defendant **STEVEN L. LILLY** (“Lilly”) is and has been the Senior Vice President and Chief Financial Officer (“CFO”) of **CFC and RTFC** since 1995. Lilly resides at 4285 Phoenix Road, Bealeton, Virginia. Lilly, as CFO of CFC and RTFC, has conducted business within, and transacted affairs within, the U.S. Virgin Islands including having sought relief in the Virgin Islands courts. Upon information and belief, Lilly resides at 4285 Phoenix Road, Bealeton, Virginia. Defendant Lilly is a citizen of a state other than the U.S. Virgin Islands. Lilly is hereinafter referred to as “CFC’s Management Defendants”.

g. Defendant **R. WAYNE STRATTON** (“Stratton”) since March of 2007 has served and continues to serve as the Financial Expert (as defined by Section 407 of the Sarbanes-Oxley Act of 2002) to the CFC's board of directors and CFC’s Audit Committee. Stratton practices public accountancy with the accounting firm of Jones, Nale & Mattingly PLC Certified Public Accountants, 642 South Fourth Avenue, Suite 300 Louisville, KY 40202-9975. As a director of CFC, Stratton, through CFC and RTFC, has conducted business and transacted its affairs in the U.S. Virgin Islands including having sought relief in the Virgin Islands courts. Upon information and belief, Stratton is a resident of Kentucky. Defendant Stratton is a citizen of a state other than the U.S. Virgin Islands. **R. WAYNE STRATTON** is hereinafter referred to as “CFC’s Financial Expert”.

h. Defendant **GREENLIGHT CAPITAL, INC.** (“Capital”) is a Delaware Corporation; Defendant **GREENLIGHT CAPITAL QUALIFIED, L.P.** (“Capital Qualified”), a Delaware limited partnership; Defendant **GREENLIGHT CAPITAL, L.P.** (“Greenlight

Capital”), is a limited partnership, and Defendant **GREENLIGHT CAPITAL OFFSHORE, LTD.** (“Offshore”), all have their principal office in New York and are legally domicile in New York or Delaware. Capital, Capital Qualified, Greenlight Capital, and Offshore shall be collectively referred to as “Greenlight”. Greenlight has conducted business and transacted its affairs in the U.S. Virgin Islands including having sought relief in the Virgin Islands courts. Defendant Greenlight is therefore a citizen of a state other than the U.S. Virgin Islands.

i. Defendant **FULBRIGHT & JAWORSKI L.L.P.** (“Fulbright”) is a full-service international law firm, serves the needs of businesses, governments, non-profit organizations and individual clients around the world. Fulbright simultaneously purportedly represented CFC, RTFC, CFC’s Audit Committee, and CFC’s management that served as the management of RTFC: Defendants Petersen, Lilly, and List. Fulbright is located at Fulbright Tower, 1301 McKinney, Suite 5100, Houston, TX 77010-3095. Three partners or more of Defendant Fulbright have been admitted to practice in the Courts of the United States Virgin Islands. Fulbright has conducted business and transacted its affairs in the U.S. Virgin Islands including having sought relief in the Virgin Islands courts. Defendant Fulbright is a citizen of a state other than the U.S. Virgin Islands.

j. Defendant **DELOITTE TOUCHÉ USA LLP** (“Deloitte”) is an international public accounting firm that has performed the individual audits of CFC, RTFC, and the National Cooperative Services Corporation (“NCSC”) as well as the Consolidated Audits of CFC, RTFC, and NCSC for the fiscal years ended May 31st 2005, 2006, 2007 and 2008, which are collectively hereinafter referred to as the “Deloitte Audits”. The Deloitte office which provided the audit is located at Suite 800, 1750 Tysons Boulevard, McLean, Virginia. Upon

information and belief, Deloitte has conducted business and transacted its affairs in the U.S. Virgin Islands. Defendant Deloitte is a citizen of a state other than the U.S. Virgin Islands.

k. Defendant **ERNST & YOUNG LLP** (“Ernst”) is an international public accounting firm that has performed the audits of CFC, RTFC, and the National Cooperative Services Corporation (“NCSC”). Ernst issued Audit Reports with respect to the Combined Audits of CFC and RTFC for fiscal years 2002 and 2003 as well as the Consolidated Audit for CFC, RTFC, and NCSC for fiscal year 2004. Ernst also issued Audit Reports for the Audits of RTFC for fiscal years 2002, 2003, and 2004. The Combined Audits for the fiscal years ended May 31st 2002 and 2003 and the Consolidated Audit for fiscal year ended May 31, 2004 is hereinafter referred to as the “Ernst Audits”. The Ernst office which was responsible for the audit services is located at McLean, Virginia. Upon information and belief, Ernst has conducted business and transacted its affairs in the U.S. Virgin Islands. Defendant Ernst is a citizen of a state other than the U.S. Virgin Islands.

l. Defendant **GLENN L. ENGLISH** (“English”) has been Chief Executive Officer of NRECA since March 1994. English served on CFC’s Board from 1994 through fiscal year 2005. English previously served in the United States House of Representatives from 1975 to 1994. English served on the House Agriculture Committee from 1975 to 1994, and was Chairman of the House Agricultural Subcommittee on Environment, Credit and Rural Development in 1989. As a former director of CFC and as Chief Executive Officer of NRECA, English, through CFC and RTFC, has conducted business and transacted its affairs in the U.S. Virgin Islands including having sought relief in the Virgin Islands courts. Upon information and belief, Stratton is a resident of Virginia. Defendant English is a citizen of a state other than the U.S. Virgin Islands.

RELEVANT NON-PARTIES TO THE ACTION

5. The entities beneficially owned by ICC-LLC and therefore, beneficially owned by the Prossers before various bankruptcy filings are:

a. The Virgin Islands Telephone Corporation (“Vitelco”) is a corporation duly formed pursuant to the laws of the United States Virgin Islands, having its principal office in the United States Virgin Islands. Vitelco is local telephone exchange carrier regulated by the Virgin Islands Public Services Commission and as such is a corporation affected with public interest. Vitelco was a member and Patron of RTFC from 1987 until 2005. Dawn Prosser is the beneficial owner of one-half of Vitelco. Dawn Prosser and the Estate of Jeffrey J. Prosser are beneficial owners of Vitelco. The term “ICC” as used herein shall include Vitelco.

b. Innovative Communication Corporation (“New ICC”), the parent corporation of Vitelco, is a corporation duly formed pursuant to the laws of the United States Virgin Islands, having its principal office in the United States Virgin Islands. New ICC was formerly known as Atlantic Tele-Network Co. (“ATN”). Dawn Prosser and the Estate of Jeffrey J. Prosser were beneficial owners of New ICC. New ICC also owns and operates cable television (“CATV”) franchises in the U. S. Virgin Islands. New ICC was an associate (non-voting) member and Patron of RTFC from 1987 until 2005. The term “ICC” as used herein shall include New ICC and its affiliates.

c. New ICC owned numerous operating subsidiaries which shall be included in the term “ICC”.

d. Emerging Communications Inc. (“ECM”) is a Delaware Corporation, the parent corporation of New ICC, having its principal office in the United States Virgin Islands. The term “ICC” as used herein shall include ECM.

e. Innovative Communication Company, L.L.C. (“ICC-LLC”), the parent entity of ECM, is a Delaware Limited Liability Company having its principal office in the United States Virgin Islands. Dawn Prosser and the Estate of Jeffrey J. Prosser were beneficial owners of ICC-LLC. The term “ICC” as used herein shall include ICC-LLC.

6. The only other relevant non-party to this action is: National Cooperative Services Corporation (“NCSC”) results of operations and financial condition has been and continues to be consolidated with the financial statements of CFC and RTFC for purposes of CFC’s information filed with the Securities and Exchange Commission (the “SEC”).

Accounting Fraud

7. The racketeering activities are premised upon the relationship of two cooperative associations (hereinafter “coops”): CFC, the perpetrator of the fraud and racketeering activities, and RTFC, the Enterprise.

8. RTFC is a coop engaged in a legitimate business of lending to rural Telephone companies which are members of RTFC (“Telephone members”).

9. CFC is a coop which is a niche lender. CFC lends:

a. directly to rural Electric companies which are its members (“Electric members”); and

b. indirectly, to rural Telephone companies (i.e., RTFC’s Telephone members) through loans to RTFC.

10. CFC is a tax exempt coop. The tax exempt status is pursuant to 26 U.S.C. § 501(c)(4).

11. RTFC is a taxable coop that pays income tax based on its net margins, excluding net margins allocated to its members, as allowed by law under Subchapter T of the Internal Revenue Code.

12. The racketeering activities involve CFC's unlawful operation of RTFC pursuant to a long-term scheme to systematically embezzle funds that belong to RTFC. A fraud upon RTFC is a fraud upon rural Telephone companies that are RTFC members and to which RTFC's income is allocated in the form of patronage income.

Coops - Generally

13. Coops can be incorporated or unincorporated entities which operate the business "on a cooperative basis". There are three fundamental characteristics to coops, which are:

- (i) Subordination of capital;
- (ii) Democratic control of the coop (one-member, one-vote principle) by the worker-members themselves; and
- (iii) The vesting in and the allocation among the worker-members of all fruits and increases arising from their cooperative endeavor in proportion to the worker-members' active participation in the cooperative endeavor (referred to as the "operation at cost" principle or the Internal Revenue Service's characterization as "operating as a conduit").

IRS General Counsel Memorandum on Cooperative Netting, GCM 38061, 1979 WL 52855.
Racketeering Activities & Coops

14. The systematic embezzlement of funds from one coop (RTFC) by another coop (CFC) is antithetical to the legitimate purpose of adopting the coop form of business.

15. The Internal Revenue Service describes “true cooperative associations” as “acting in the capacity of **agents or conduits** for the earnings generated by the cooperatives on behalf of their patrons. In other words, such cooperatives had to continue to return the excess of receipts over expenses to the particular patrons whose business generated the excess”. *IRS General Counsel Memorandum on Cooperative Netting*, GCM 38061, 1979 WL 52855, at p. 5. (Emphasis added)

16. The following are all coops:

- a. NRECA, formed by rural electric utilities in 1942;
- b. CFC, formed by NRECA members and by NRECA in 1969; and
- c. RTFC, formed in 1987 by CFC.

The financial underpinnings of the pattern of racketeering activity (hereinafter described) involves CFC’s embezzlement of funds from RTFC and its Telephone members which were distributed or used to subsidize loans made to CFC’s Electric members and which are also members (and owners) of Defendant NRECA.

CFC’s Financial Dilemma

17. CFC is a niche lender that has a competitive disadvantage because:

- a. Competition from CoBank. CFC acknowledges that its “... primary bank competitor is CoBank, ACB (“CoBank”), a government sponsored entity and member of the Farm Credit System whose status as such gives it the ability to **offer lower interest rates** in select situations”. (2006 Form 10-K, page 10 – Emphasis Added).
- b. Competition from the U.S. Department of Agriculture (the “USDA”) which includes the Rural Utilities Services (“RUS”). The USDA, which includes the RUS, has programs which make grants and long-term low interest loans available to rural

Electric companies. Until 2005, CFC principally relied upon the public debt markets to raise capital at rates which were substantially higher than agency rates available to CoBank.

c. NRECA's success in accessing the Federal largess. NRECA is the "trade association and lobbying arm of co-ops". SEE: *Electric Co-operatives: From New Deal to Bad Deal?*, Harvard Journal on Legislation, page 339 by Representative Jim Cooper. NRECA has been very successful in accessing Federal funds through the USDA, RUS, and CoBank.

d. CFC's reliance upon the public debt markets to raise capital at rates substantially higher than rates on funds available to CoBank and the funds that the USDA (and its RUS division) make available directly to rural Electric companies.

Consequently, CFC is a lender that has had to develop alternative methods to remain competitive with CoBank and the RUS.

18. NRECA caused the establishment of CFC. CFC's web page states: "In 1967, the National Rural Electric Cooperative Association (NRECA) proposed the creation of a not-for-profit financing institution that would be cooperatively owned by the rural electric cooperative network."

19. Had not the NRECA turned its efforts to accessing the Federal largess for the benefit of CFC beginning in 2005, CFC would have financially collapsed and, as it is, CFC exists only because of CFC's racketeering activities, which CFC developed to illegally subsidize its otherwise competitively disadvantaged position in the market place.

One Answer to CFC's Financial Dilemma

20. CFC is imbued and instilled with fraudulent practices and racketeering activities because CFC can not otherwise compete in its niche market.

21. In 1987, CFC formed RTFC, purportedly to provide loans to rural Telephone companies.

22. Upon information and belief, CFC formed RTFC to embezzle funds from rural Telephone companies which were used to subsidize loans and for distribution to rural Electric companies. Note that:

a. CFC's published audited financial information evidences the systematic defalcation of RTFC and its rural Telephone companies for fiscal years 2000 through 2005;

b. CFC's departure from generally accepted accounting principles ("GAAP") in its financial statements and reports filed with the SEC has been an attempt to conceal CFC's systematic defalcation of RTFC in other years; and

c. There is no other reason for explaining CFC's pervasive and continuing pattern of accounting fraud except to conceal its systematic defalcation of RTFC and the RTFC Telephone member.

23. RTFC functions as a financial façade for CFC, .i.e., an entity through which CFC could place loans to rural telephone companies such as Vitelco and rural Telephone companies' affiliates such as New ICC for purposes of carrying out CFC's systematic defalcation of rural Telephone companies.

24. The purpose of CFC's racketeering activities and the pervasive and continuing pattern of accounting fraud is CFC's survival. CFC uses funds unlawfully procured through

loans made to rural Telephone companies and money laundering to subsidize loans made and allocations of patronage income to rural Electric companies.

How the Systematic Defalcation of Rural Telephone Companies is Accomplished

25. Absolute control over RTFC is essential for the racketeering activities.

26. From its formation in 1987 through this day, CFC maintains absolute control over the operations of RTFC through the following means:

a. From 1987 through fiscal year (“FY” means fiscal year) 2001, for a \$1,000 investment, CFC controlled RTFC through an ‘unlawful’ voting arrangement whereby CFC designated a majority of RTFC’s directors. The voting arrangement violated SDCL § 47-16-10 (RTFC was then a South Dakota coop), which codifies the one-member one-vote coop principle¹ (known as democratic control). (2001 10K, FN 1(a), page 58).

b. The unlawfully appointed RTFC Board entered into a long-term management agreement and other contracts with CFC whereby CFC exercised absolute control over the business affairs of RTFC. The 2001 Form 10-K, Footnote (“FN”) 1(B), page 58, states: “CFC manages the affairs of RTFC through a long-term management agreement”.

c. CFC “is the sole lender to and ... All amounts borrowed from CFC may be accelerated if RTFC obtains financing from another source”. (2002 Form 10-K, FN 1(b), page 72).

¹ This is a second fundamental difference between coops and corporations. The three differences are referred to as subordination of capital (the patron is entitled to allocation of patronage income but not necessarily distribution), democratic control (one member, one vote), and conduit or operation at costs principle.

d. CFC's management serves as RTFC's management. The RTFC 2004 Annual Report sets forth six officers, five of which were employees of CFC.

e. RTFC has no independent authority to loan money. The 2002 Form 10-K, FN 1(b), page 72, states: "All loans that require RTFC board approval also require the approval of the CFC loan advisory committee".

f. Except for limited engagements, RTFC does not have the benefit of independent counsel or independent outside auditors.

g. All assets of RTFC, except for a \$30,000 bank account and sums loaned to rural telephone companies, are invested within CFC and all liabilities of RTFC are principally liabilities to CFC.

27. RTFC functions as a convenient vehicle or entity for CFC to record loans and conduct other activities related to loans made to rural telephone companies, i.e., the RTFC Telephone members.

28. CFC uses its inordinate control over RTFC to sweep the majority of RTFC's profits into CFC through inter-coop loans and other contractual arrangements (the "First Step of the Racketeering Scheme") and then, CFC embezzles funds legally belonging to RTFC and the RTFC Telephone members by allocating patronage income that belongs to RTFC's Telephone members to CFC's Electric members (the "Second Step of the Racketeering Scheme").

The First Step of Defalcation pursuant to the Racketeering Scheme

29. Up until the demise of the international accounting firm of Arthur Andersen LLP ("AA"), CFC did not publish transparent accounting information in the Segment Information contained in its financial statements included in its quarterly Form 10-Q filings and annual Form 10-K filings with the Securities and Exchange Commission (the "SEC"). In the Segment

Information note (a required GAAP disclosure) in its financial statements that that are included in its Form 10-Q and Form 10-K SEC filings, CFC is required to disclose the Electric companies' (i.e., the CFC Electric members) collective contribution to its reported earnings and the Telephone companies' (i.e., the RTFC Telephone members) collective contribution to its reported earnings.

30. After the demise of AA, Ernst, an international accounting firm, was the auditor for CFC and RTFC for fiscal years ended May 31, 2002, 2003, and 2004.

31. In its Form 10-K for FY 2002, filed under penalties of perjury, CFC in FN 13, page 97, admitted that previously, reported earnings of Electric companies included RTFC earnings stating:

“The amount reported for the electric systems represented the total earned on loans from CFC to its electric members *and RTFC*. The amount reported for the telecommunications systems represented [only] *the incremental amount earned* on its CFC loans that it re-lent to the telecommunications systems.” (Emphasis added)

This meant that whatever earnings was swept into CFC through loans to RTFC and other contractual arrangements with RTFC was reported as income contributed by Electric companies.

32. The import of the change in reporting is evident when comparing the Segment Information for FY 2000 and FY 2001 reported by CFC in its financial statements for FY 2001 as audited by AA to the Segment Information for FY 2000 and FY 2001 reported by CFC in its financial statements for FY 2002 as audited by Ernst:

	<u>As Reported in CFC's</u>	
	FY 2001	FY 2002
	Financial	Financial
	Statements	Statements
	Audited	Audited
	<u>by AA</u>	<u>by Ernst</u>
Net Margin (income) for FY 2000 –		
Electric companies -----	\$ 111,836	\$ 65,127

Telephone companies -----	\$ 3,497	\$ 50,206
Net Margin (income) for FY 2001 –		
Electric companies -----	\$ 128,949	\$ 66,193
Telephone companies -----	\$ 3,817	\$ 66,573

The above numbers are reported in thousands so that \$ 111,836 is actually \$ 111,836,000.

33. For FY 2000, CFC reported (and as audited by AA) over \$46 Million of income actually generated by RTFC as income generated by Electric companies.

34. For FY 2001, CFC reported (and as audited by AA) over \$62 Million of income actually generated by RTFC as income generated by Electric companies.

The Second Step of Defalcation pursuant to the Racketeering Scheme

35. The second step of the racketeering scheme involves CFC’s misappropriation of income belonging to RTFC and the RTFC Telephone members by allocating it as patronage income to CFC’s Electric members. A large portion of the income RTFC (or rural Telephone companies collectively) contributed to the then combined Income of CFC and RTFC was unlawfully allocated to CFC’s Electric members as if these Electric companies collectively contributed such income.

36. The significance, as well as the proof, of the foregoing is established by comparing the Telephone companies (i.e., the RTFC Telephone members) reported contribution to CFC/RTFC earnings reported in the Segment Information for FY 2000 and FY 2001 of CFC’s financial statements for FY 2002 as audited by Ernst, to RTFC’s Income Statements for FY 2000 and FY 2001 as audited by AA:

<u>As Reported In:</u>	
<u>CFC’s Segment</u>	<u>RTFC’s</u>
<u>Information</u>	<u>Income</u>
<u>in FY 2002</u>	<u>Statements</u>
<u>Financial</u>	<u>for FY 2000 and</u>
<u>Statements</u>	<u>FY 2001</u>

RTFC Net Margin (income) for FY 2000 – Telephone companies -----	\$ 50,206	\$ 26,880
RTFC Net Margin (income) for FY 2001 – Telephone companies -----	\$ 66,193	\$ 38,098

37. The amount unlawfully embezzled from RTFC by CFC for FY 2000 is in excess of \$23 Million.

38. The amount unlawfully embezzled from RTFC by CFC for FY 2001 is in excess of \$28 Million.

39. CFC, in the 2002 Form 10-K, FN 13, page 97 admits:

“The new presentation [Ernst presentation] provides a breakout of the income statement between electric loans and telecommunications loans that reflects the full gross margin earned by each portfolio. The telecommunications system income statement *now represents the total earned on telecommunications loans at both the CFC and RTFC levels*. The electric system income statement is *now only the amount earned on loans to electric member systems*.” (Emphasis added)

40. The foregoing statement made by CFC under the penalties of perjury by CFC in the FY 2002 Form 10-K coupled with the comparison of the audited results of operations for same period for the same loan portfolio, one in the Form 10-K and the other RTFC Financial Statements, establishes unequivocally that CFC is using its dominance and control over RTFC to embezzle funds from the RTFC Telephone members.

41. During the period in which Ernst was the auditor (FY 2002 through FY 2004) and in which transparent Segment Information for FYs 2000 through 2004 was reported, the comparison of CFC’s Segment Information for Telephone companies to RTFC’s Income Statements, adjusted for CFC’s loan indemnification² of RTFC, reveals and establishes that CFC embezzled over \$262 Million from the RTFC Telephone members.

² CFC indemnified RTFC from loan losses for a fee.

42. Upon information and belief, this racketeering scheme for the unlawful systematically defalcation of rural Telephone companies was the reason why RTFC was formed by CFC and exists as a separate legal entity.

The Embezzlement is both Unlawful and Ultra Vires

43. The allocation of any of RTFC's patronage income captured within CFC for rural Electric companies is Ultra Vires because Article XI, section 1 and section 4 of CFC's bylaws state:

Section 1: Nonprofit Operation. The Association shall at all times be operated ... for the primary and **mutual benefit** of its patrons. ... **All net savings**, representing the excess of revenues over operating costs and expenses, **shall be received** by the Association **with the understanding** that they **are furnished by its patrons as capital** and that the Association is obligated to pay by credits to a capital account ... for each patron ... **in proportion to their patronage**. (Emphasis Added)

Section 4. Patronage Capital Certificates. ... that at the end of each fiscal year the amount of patronage capital, if any, in the form of **net savings so furnished by each patron** is clearly reflected and credited in an appropriate record to the capital account of **each patron**. ... (Emphasis Added)

44. CFC's bylaws are clear and unequivocal that income earned by CFC from a patron's business is to be allocated to the patron with that same status as if it was a capital contribution by the patron. RTFC is a patron of CFC.

45. The racketeering scheme is the systematic defalcation of capital contributions made by RTFC to CFC (pursuant to CFC's bylaws).

46. CFC is incorporated pursuant to the District of Columbia Cooperative Association Act.

47. CFC's 2004 Form 10-K, FN 1(b), page 101, states: "RTFC is a class E member of CFC". The failure to allocate patronage income is unlawful because this Act provides that:

a. Operating on a “cooperative basis” requires “That the net savings ... [be] allocated or distributed to member patrons, or to all patrons, in proportion to their patronage ...”. DC ST § 29-901(5)(c);

b. incorporation under the chapter is authorized for “the primary and mutual benefit of the patrons of the association (or their patrons, if any) as ultimate consumers.” DC ST § 29-903; and

c. DC ST § 29-901(3) defining net savings and DC ST § 29-901(3) and 29-931(4)(a) dealing with allocation make it clear that a patron’s “proportionate amount of savings returns” determined in “proportion to their patronage” must be allocated to the patron.

The concept of mutuality, which when used in conjunction with coops, is violated when one group of patrons derives a benefit at the expense of another group of patrons.

47. CFC’s management, concurrently serving as RTFC’s management, consistently and routinely represents to rural Telephone companies that CFC’s Electric members are subsidizing loans to the RTFC Telephone members when just the opposite is true.

48. CFC’s embezzlement of RTFC’s patronage income violates the “theft by deception” criminal statutes of the over forty states in which RTFC operates.

The Embezzlement Violates Tax Law

49. In a thorough analysis of the tax law, the Internal Revenue Service (“IRS”), in a General Counsel Memorandum, GCM 38061, issued August 22, 1979, with respect the Operation at Cost principle states:

To conclude, as some representatives of the cooperative industry have concluded, that a multi-activity, exempt cooperative may divert earnings produced by one patronage activity to the patrons of another distinct activity, we believe is plainly inconsistent with the characterization of the cooperative as an agent or conduit. (at page 5)

We believe the Service's characterization of patronage dividends as **price rebates** in the case of a purchasing cooperative and as **part payment** for produce furnished in the case of a marketing cooperative is merely an alternative means of stating that a nonexempt cooperative must function as a conduit. (at page 6) (Emphasis added)

* * *

As already indicated, we do not believe the diversion by a cooperative of earnings from one patronage department to another department or from one function to another function is consistent with the essential nature of a cooperative as a mere agent or conduit. (at page 7)

* * *

Therefore, we believe the early characterization of the cooperative as an **agent or conduit** has been sanctioned by Congress and the courts and has been woven into the fabric of operation on a cooperative basis for purposes of Subchapter T. (at pages 7-8) (Emphasis added)

50. The 2006 Form 10-K, page 1, CFC states: "CFC is exempt from payment of federal income taxes under the provisions of Section 501(c)(4) of the Internal Revenue Code".

51. 26 U.S.C. § 501(c)(4)(B) expressly provides that: "no part of the net earnings of such entity inures to the benefit of any private shareholder or individual" (the "No Private Benefit Rule").

52. The IRS fiction that patronage allocations are "price rebates" for a purchasing coop transmutes to "interest rebates" in the case of a financing coop such a CFC to avoid violating the No Private Benefit Rule: in essence, distributing a patron their own money is not a prohibited benefit under IRC § 501(c)(4)(B).

53. Allocating patronage income to the CFC Electric members that rightfully belongs to the RTFC Telephone members violates the No Private Benefit Rule and CFC's tax exemption.

54. The income CFC derives from its unlawful systematic defalcation of RTFC and the RTFC Telephone members (an act under the racketeering scheme) is "unrelated business

income” subject to taxation pursuant to IRC § 511. However, CFC has not been paying tax on the income derived from the racketeering scheme.

55. RTFC’s income allocated to the RTFC Telephone members is reported as taxable income by those Telephone members subject to income taxes. CFC’s unlawful systematic defalcation of RTFC and those RTFC Telephone members subject to income taxes companies unlawfully defeats the income taxes payable by those said Telephone members: this is the commission of tax evasion by CFC pursuant IRC § 7201.

56. CFC bylaws were submitted to and approved by IRS as part of its application for tax exempt status. By operating in a manner inconsistent with coop principles as well as CFC’s bylaws, CFC is operating in contravention of its tax exemption.

Money Laundering

57. CFC’s systematic defalcation of RTFC and the RTFC Telephone members is unlawful because the scheme:

- a. Violates the District of Columbia Cooperative Association Act;
- b. Violates numerous provisions of the tax laws of the United States;
- c. Constitutes embezzlement; and
- d. Violates the theft by deception criminal statutes of every state in which CFC makes loans to rural Telephone companies through RTFC.

58. CFC’s actions are intentional, necessitated by the fact that CFC is not competitive, and can not survive without the systematic defalcation of RTFC and its members, rural Telephone companies.

59. Every year the patronage income that would be taxable to RTFC is allocated and distributed to CFC’s Electric members under the *fiction* that the allocation is a rebate of interest

pursuant the coop principle of operations at cost. The scheme is money laundering (a violation of 18 U.S.C. § 1956(a)) because:

a. The scheme is unlawful and constitutes a felony under the criminal statutes of every state in which RTFC lends money (18 U.S.C. § 1956(c)(1))

The scheme requires CFC and RTFC to both file a false return in violation of 26 U.S.C. § 7206 (18 U.S.C. § 1956(a)(1)(A)(ii));

b. The scheme causes the RTFC members to under-report income in violation of 26 U.S.C. § 7201 (18 U.S.C. § 1956(a)(1)(A)(ii));

c. CFC fails to report its unlawful “for profit” business (lending to rural Telephone companies) as unrelated business income as required by 26 U.S.C. § 511 and pay tax violating 26 U.S.C. § 7201 (18 U.S.C. § 1956(a)(1)(A)(ii));

d. Pursuant to the scheme CFC does not operate on a cooperative basis in contravention of 26 U.S.C. § 501(c)(4)(B) because a benefit is inuring to Electric members from the unrelated business income – the allocation of income belonging to the RTFC Telephone members; and

e. As set out hereinafter, the scheme is accomplished through mail and wire fraud both Predicate Acts under 18 U.S.C. § 1961(1).

ACCOUNTING FRAUD ALLEGATIONS

60. The embezzlement or systematic defalcation of RTFC and the RTFC Telephone members is augmented by a pervasive and extensive pattern of accounting fraud to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity.

Fraudulent RTFC Financial Statements

61. It was essential for CFC's successful implementation of its racketeering activities that CFC's management, acting as RTFC's management, publish fraudulent audited RTFC Financial Statements.

62. The audited RTFC Financial Statements previously published from the inception of RTFC to this day and to be published in the future are false and deceptive in that the financial statements:

(a) Reflect (report) as patronage income only such amounts allocated by CFC to RTFC by CFC's Board *in contrast to* RTFC's legal entitlement to patronage income (the allocation of RTFC's capital contributions pursuant to CFC's bylaws); and

(b) Do not report (accrued) as a receivable (an RTFC asset) in the RTFC's Financial Statements, the cumulative defalcation of patronage income from past years which under CFC's bylaws represent capital contributions by RTFC to CFC.

The failure to report as an RTFC asset the true sums due RTFC from CFC materially understates both assets and members' equity making the RTFC Financial Statements materially misleading.

63. Ernst issued Audit Reports for RTFC with actual knowledge that the Financial Statements were fraudulent for fiscal years 2002, 2003 and 2004.

64. Deloitte issued Audit Reports for RTFC with actual knowledge that the Financial Statements were fraudulent for fiscal year 2005 through fiscal year 2008.

Departures from GAAP.

65. 17 C.F.R. § 210.4-01(a)(1) provides that "Financial statements filed with the Commission which are not prepared in accordance with GAAP will be presumed to be misleading or inaccurate ..." CFC, as a reporting entity, files quarterly and annual financial statements with the SEC.

GAAP Departures: The “One Entity” Financial Presentation

66. CFC improperly files Combined Financial Statements of CFC and RTFC in its SEC filings (quarterly and annual) for fiscal years ended before 2004 because:

a. For fiscal years prior to 2002, the combination was allegedly justified because of CFC’s unlawful voting interest in RTFC; and

b. For fiscal years ended 2002 and 2003, the combination is not premised upon either CFC’s or CFC’s members ownership of RTFC: there was no cross ownership.

Under GAAP, a ‘One Entity’ presentation by combining financial statements is justifiable and proper if there exists at the members’ level material cross ownership, e.g., brother-sister corporations.

67. Combining CFC and RTFC Financial Statements is a material departure from GAAP (“Generally Accepted Accounting Standards”) making the Combined Financial Statements materially misleading as well as making the financial information materially inaccurate.

68. CFC-RTFC Combined Financial Statements prevented the auditor from opining in the Audit Report as to CFC’s allocations to RTFC and obligations and liabilities due to RTFC. Combined Financial Statements present two entities as one entity (the “One Entity Presentation”) lessening the relevance of inter-coop liabilities and transactions to the financial presentation.

69. For fiscal years 2004 and each fiscal year thereafter, CFC, RTFC and NCSC continue the One Entity Presentation by filing Consolidated Financial Statements in CFC’s SEC filings.

70. CFC justifies the Consolidation citing Financial Accounting Standards Board ("FASB") Interpretation No. ("FIN") 46(R), Consolidation of Variable Interest Entities. FIN 46(R) (FASB Interpretation No. 46) is a limited exception³ to the GAAP requirement of material common ownership (over 50%) among entities in order to be presented as "One Financial Entity" whether the presentation presents consolidated or combined financial statements.

71. FASB Interpretation No. 46(R) states on page 4, paragraph 1, that "Not-for-profit organizations are **not** subject to this interpretation". (Emphasis Added) That statement is reinforced in other paragraphs of FIN 46(R). FIN46(R) states in paragraphs D8 and E8 that "The Board considered it inappropriate to extend the requirements of this Interpretation to not-for-profit organizations because the document being interpreted does not specifically apply to them".

72. Consolidating CFC and RTFC Financial Statements is a departure from GAAP since CFC is tax exempt pursuant to IRC § 501(c)(4) making the Consolidated Financial Statements materially misleading as well as the financial information materially inaccurate.

73. While asserting 'for profit' status (to consolidate with RTFC), CFC asserted nonprofit status nonprofit status to qualify for \$3 Billion in USDA loans under the REDLG program.

74. CFC-RTFC Consolidated Financial Statements were necessary so that the auditor did not have to (and in the future does not have to) opine as to CFC's allocations to RTFC or obligations and liabilities due to RTFC. Consolidated Financial Statements present the One Entity Presentation lessening the relevance of inter-coop liabilities and transactions.

³ FIN 46(R) "aims directly at the reporting abuses arising from the use of unconsolidated SPEs [special purpose entities] and similar entities". SEE: *Advanced Financial Accounting*, Tenth Edition by Heufner, Largay & Hamlen.

75. Ernst issued the Audit Report for the first CFC-RTFC Combined Financial Statements for fiscal years 2003 and 2004 and the CFC-RTFC Consolidated Financial Statements for fiscal year 2004.

76. Deloitte issued the Audit Reports for the first CFC-RTFC Consolidated Financial Statements for fiscal years 2005, 2006, 2007 and 2008.

GAAP Departures: Fraudulent Segment Information

77. The AA (CFC's previous auditors at one time) approved presentation of Segment Information (the "AA Segment Methodology") as a mandatory footnote in the Financial Statements in CFC's SEC filings prior to FY 2002, did not conform to GAAP, FAS 131, *Disclosures about Segments of an Enterprise and Related Information*.

78. Paragraph 27 of FAS 131 requires that revenues and expenses from transactions with other operating segments must be separately disclosed in the presentation of Segment Information. Disclosing the income earned from different business segments is the *sine qua non* for the mandated footnote.

79. In trying to explain the AA Segment Methodology in its FY 2002 financial statements audited by Ernst and contained in its Form 10-K, CFC states in FN 13, page 96, that "The amount reported for the electric systems represented the total earned on loans from CFC to its electric members and RTFC". This is an admission that Electric members reported income in the Segment Information previously included income that was RTFC's income (i.e., RTFC Telephone members' income) and therefore an undisclosed departure from GAAP.

80. There was no disclosure in the AA Segment Methodology that over \$46 Million of RTFC income⁴ was presented as the Electric companies' income in fiscal year 2000 and that

⁴ CFC did not embezzle the whole \$46 Million; rather, just over \$23 Million.

over \$62 Million of RTFC income⁵ was presented as Electric companies' income in fiscal year 2001.

81. The AA Segment Methodology for disclosing and presenting CFC's Segment Information was a material departure from GAAP.

82. Due to the presentation of Segment Information accepted by Ernst that it was presented in conformity to GAAP, Plaintiffs Jeff Prosser and Raynor made inquiry to RTFC seeking an explanation of why RTFC's audited Income Statement differed from the Segment Information contained in CFC's SEC filings.

83. Plaintiffs stumbled upon CFC's money laundering scheme because the Segment Information note as examined by Ernst provided transparent information.

84. After commencing the retaliatory foreclosure on June 1, 2004 against ICC, CFC changed the independent auditors of CFC and RTFC from Ernst to Deloitte for the purpose of concealing the income from its racketeering activities.

85. Deloitte re-adopted the AA Segment Methodology to present Segment Information for the Consolidated Financial Statements in CFC's SEC filings for fiscal years 2005, 2006, 2007, and 2008.

86. The Deloitte partner-in-charge of the CFC audit engagement, Randall B. Johnston, was a former partner of AA and the former AA partner of the CFC audit engagement when AA was CFC's auditor.

87. Upon information and belief, Mr. Johnston's duties with respect to the Deloitte audits of CFC unlawfully violates Sarbanes-Oxley Act of 2002 ("SOX"), § 203, as implemented by 17 C.F.R. § 210.2-01, requiring audit partner rotation and a 5 year time out period (the "Johnston Factor").

⁵ CFC did not embezzle the entire \$62 Million; rather, just over \$28 Million.

88. Upon information and belief, the Johnston Factor makes Deloitte's audits of CFC unlawful pursuant to 15 U.S.C. 78j-1.

89. The presentation of the Segment Information using the AA Segment Methodology in CFC's SEC filings for fiscal years 2005, 2006, 2007, and 2008 is a material and intentional departure from GAAP to conceal the income from CFC's racketeering activities.

GAAP Departures: The Electric Loan Deficiency

90. CFC, under the auspices and cover of its new auditor Deloitte (but with the familiar former AA audit partner, Randall B. Johnston, at the helm of the Deloitte audit engagement), redeployed the AA Segment Methodology in its audited financial statements for the fiscal year 2005 SEC filings to conceal that the fact that the Electric members' loan portfolio was not making a material contribution to CFC's operating results. The term "Contribution" refers to the Gross Margin (income less cost of funds) LESS the allocated General and Administrative Expenses as set forth in the Segment Information.

91. The Contribution from Electric members' loans shrank from \$44.8 Million or 0.31% (less than a third of one percent) return of the gross Electric loan portfolio for FY 2003 to a 'loss' of over \$15.3 Million or a negative 0.10% (a tenth of one percent) return of the gross Electric loan portfolio for FY 2004.

92. The redeployment of the AA Segment Methodology under the auspices of Deloitte changes the presentation of the Contribution from Electric members' loans materially, as follows:

- a. CFC's Contribution from Electric members' loans for fiscal year 2003 as presented in the fiscal year 2005 Segment Information was \$90.6 Million (more than doubled) or 0.62% return of the gross Electric loan portfolio; and

b. CFC's Contribution from Electric members' loans for fiscal year 2004 as presented in the fiscal year 2005 Segment Information was \$30 Million (a loss became a profit) or 0.20% return of the gross Electric loan portfolio.

93. The change back to the AA Segment Methodology concealed the negative trend in the lending profit CFC was achieving on the Electric members' loan portfolio which had become a loss by fiscal years 2005. The Electric members' loan portfolio is CFC's single largest asset constituting over 70% of CFC's assets.

94. 17 C.F.R. § 229.303, *Management's discussion and analysis of financial condition and results of operations* requires frank and honest discussion of numerous aspects of the financial condition of the reporting company including trends:

- § 229.303(a)(1) Liquidity.
- § 229.303(a)(2) Capital resources.
- § 229.303(a)(3) Results of operations.

95. CFC resorted to deception and fraud to conceal the deterioration of the returns on the Electric members' loan portfolio intentionally shrinking CFC's responsibilities under 17 C.F.R. § 229.303.

96. The Form 10-Ks for fiscal years 2005 and later years included a "Volume Rate Variance Table" in Managements discussion of financial results.

97. The Volume Rate Variance Table is based upon the AA Segment Methodology as redeployed by CFC under Deloitte's auspices was an intentional and affirmative attempt to mislead investors (the public and Government) as to the performance of the Electric members' loan portfolio as well as to conceal or disguise the nature and the source of the proceeds of

specified unlawful activity (the racketeering activities with respect to the Telephone loan portfolio) within the meaning of 18 U.S.C. § 1956(a)(1)(B)(i).

98. The presentation of the Segment Information using the AA Segment Methodology in CFC's audited financial statements in its SEC filings for fiscal years 2005, 2006, 2007, and 2008 is a material and intentional departure from GAAP to conceal CFC's faltering Electric loan portfolio.

GAAP Departures: CFC's Fair Value Insolvency

99. CFC commits accounting fraud with respect to Fair Value disclosures, a mandatory footnote to Financial Statements to conform to GAAP, in two ways: (i) as disclosed, CFC fails to discuss the implications of the disclosures and (ii) CFC's disclosures materially depart from GAAP.

100. GAAP, FAS 107, requires disclosure in the footnotes to Financial Statements of the Fair Value of CFC's assets and liabilities.

101. If the Fair Values as reported by CFC were substituted for those values in CFC's Balance Sheets it would establish **CFC's insolvency** on a Fair Value basis. Using CFC's own disclosures as a basis to compute CFC's Total Equity on a Fair Value basis establishes CFC's Fair Value insolvency for fiscal years 2005, 2006, 2007, and 2008. CFC's Total Equity at Fair Value, which is not reported, is:

- a. (\$699,694,000) as of May 31st 2005.
- b. (\$1,965,382,000) as of May 31st 2006.
- c. (\$1,276,288,000) as of May 31st 2007.
- d. (\$549,991,000) as of May 31st 2008.

This is material nondisclosure which conceals the racketeering activities by avoiding an explanation and examination of the relevant profit derived from the Electric members' loan portfolio in contrast to the Telephone members' loan portfolio.

102. Additionally GAAP, FAS 107, paragraph 5, defines Fair Value of Financial Instruments (loans) "as the amount at which the instrument could be exchanged in a current transaction between willing parties, other than in a forced or liquidation sale".

103. CFC departs from GAAP by using its current loan rate as of May 31st each year (which is subject to manipulation – a one day rate) to determine the Fair Value of members' loans. For instance, the 2006 Form 10K, FN 13, page 98, states: "Fair values [of members' loans] are estimated by discounting the future cash flows **using the current rates** at which similar loans would be made to borrowers with similar credit ratings and for the same remaining maturities". (Emphasis added).

104. Members' loans constitute such a large part of CFC's assets (over 95% for fiscal year 2006) that the general statement made at the outset of Footnote 13 that "The following disclosure of the estimated fair value of financial instruments is made in accordance with FAS 107, Disclosure about Fair Value of Financial Instruments" false and misleading.

105. CFC Fair Value disclosures are a material departure from GAAP making CFC's Financial Statements in its SEC annual filings material misleading.

GAAP Departures: CoServ Loan Loss: A Catastrophic Loss

106. As a niche lender competing against the USDA, RUS, and CoBank, CFC can ill afford loan losses.

107. CFC's answer to large loan losses is fraud.

108. Denton County Electric Coop., doing business as CoServ, by 2002 had been financed by CFC for over 20 years by FY 2001. Here is the relevant history:

a. On March 15, 2001, CoServ and CFC restructured the CFC CoServ loan in a private restructuring.

b. By November 1, 2001 affiliates of CoServ Electric began filing bankruptcy.

c. By February 1, 2002, all the CoServ affiliated entities had filed bankruptcy.

d. CoServ and CFC, acting as joint plan proponents, submitted a Reorganization Plan (the “CoServ Plan”) for CoServ which was approved by the Bankruptcy Court on November 22, 2002.

109. CFC’s Form 10Q/A for the quarter ended November 30, 2002, reported that the CoServ Loan had been \$1.003 Billion as of May 31, 2001 (note that the 2001 Form 10-K reported the same loan at \$914 Million – an \$89 Million unexplained discrepancy) and further, stated that the CoServ loan after the CoServ Plan was \$652 Million.

110. The \$652 Million represented the original loan balance of \$1.003 Billion less the value of foreclosed assets booked by CFC as part of the reorganization of CoServ’s affiliates.

111. CFC recognized NO loss related to CoServ’s bankruptcy reorganization (the “CoServ Reorganization”).

112. As an Exhibit to the Disclosure Statement for CoServ Plan, the Plan proponents, CoServ and CFC, submitted financial projections (the “Plan Projections”) to the Bankruptcy Court and to CoServ’s creditors.

113. The Plan Projections reflected the balance of CoServ's indebtedness owed to CFC as of December 31, 2002 at less than \$362 Million. The \$362 Million was the net present value of payments payable by CoServ to CFC over the 35 year loan term (the "CoServ Debt Service Payments") discounted at an interest rate of 6.75%.

114. At the same time CFC recorded the CoServ Loan at \$652 Million, CoServ booked the same loan at less than \$362 Million.

115. The difference between the same loan booked on CFC's accounts and CoServ's accounts is \$290 Million.

116. Since the CoServ Reorganization, CFC has been reporting payments received since the CoServ Plan as recovery of principal.

117. Upon information and belief, CFC has intentionally overstated the value of foreclosed assets received from the CoServ affiliates and credited against the CoServ Loan.

118. GAAP, SFAS 114, paragraph 13, provides that:

a. "When a loan is impaired ..., a creditor shall measure impairment based on the present value of expected future cash flows discounted at the loan's effective interest rate...".

b. SFAS 114, paragraph 14, states: "The effective interest rate for a loan restructured in a troubled debt restructuring is *based on the original contractual rate*, not the rate specified in the restructuring agreement". (Emphasis added)

119. GAAP requires that the loan be carried on CFC's books at the loan's impaired value rather than carried at its historical costs in a trouble company's restructuring.

120. CFC materially and fraudulently departed from GAAP in the treatment of the CoServ Loan resulting from the CoServ Reorganization, for which CFC was a proponent. As a proponent, CoServ's Plan Projections are CFC's Plan Projections for the CoServ Loan.

121. The intentional improper booking of the CoServ Loan resulted in an overstatement of CFC's fiscal year income for 2003 by over \$266 Million and overstatement of Members' Equity for fiscal year 2003. Members' equity was improperly reported at \$454 Million (Per 2007 Form 10-K, page 54); an overstatement of \$266 Million (s/b reported as \$188 Million).

122. In each year reported after fiscal year 2003, CFC materially overstated Members' Equity and materially understated earnings with respect the reporting of transactions revolving around CFC's treatment of the CoServ Loan.

123. The difference between the CoServ Loan as reported by CFC on November 30, 2007 and as reported by CoServ in CoServ's December 31, 2007 Financial Statements is still approximately \$200 Million: a material sum.

124. Given the fact that the CoServ's Plan Projections reflected that CoServ would have negative Equity through fiscal year 2010, CFC should have also established a substantial reserve for CoServ Loan balance even if recorded at \$362 Million.

125. CFC as part of the CoServ Reorganization agreed to a \$204 lending commitment to fund CoServ capital expenditures. (2008 Form 10-K, FN 15(c), p. 113) In 2007, CoServ has announced the execution of a \$50 Million Capital Expenditure loan with CoBank. Upon information and belief, Plaintiff's deduce that:

- a. (i) CFC is under such cash flow pressure that CFC could not fund CoServ's capital expenditure as committed; or

(ii) As an alternative to (a) above, CoServ breached the capital expenditure loan agreement with CFC; and

b. CFC has subordinated CFC's lien on CoServ's assets to accommodate the CoBank Loan (as CFC did with respect to the CoBank loan as part of the CoServ reorganization).

CFC's reporting in the SEC Filings with respect to the CoServ loan has been, and continues to be, fraudulent.

126. Upon information and belief, but for the original fraudulent reporting of the loss resulting from the CoServ reorganization CFC would have financially collapsed in calendar year 2003 and CFC would NOT have accessed the Government Fisc.

127. Standing alone, the non-disclosure revolving around the CoServ Loan Fraud violates SEC regulations, does not comport with required disclosure by GAAP, and is materially false and misleading.

GAAP Departures: ICC Loan Loss: A Second Catastrophic Loss

128. CFC's management decision to foreclose upon ICC was an impoverished decision motivated to suppress Plaintiffs Prosser and Raynor information and cut-off any recourse for CFC's racketeering activities related to the systematic defalcation of RTFC and the RTFC Telephone members (rural Telephone companies), by CFC, and to retaliate in violation of Sarbanes-Oxley Act of 2002, § 1107 – a Predicate Act under RICO.

129. CFC misled the investing public and the Government as to the reasons for the foreclosure and the financial implications of the foreclosure which, if not known before the filing of the 2007 Form 10-K, was clearly known by the filing of the 2008 Form 10-K on August 29, 2008.

130. The facts known as of the filling of the 2008 Form 10-K is:

a. The ICC Loan carried on CFC's Financial Statement as of May 31, 2008 was \$492 Million. (2008 Form 10-K, FN 15(e), p. 143)

b. In an internal memo, CFC acknowledged that as of August 18, 2004, CFC had a reserve for losses on the ICC Loan as a result of commencing the foreclosure of \$92 Million.

c. A single ICC subsidiary, Vitelco, constituted over 70% of RTFC's valuation of ICC in 2003.

d. Under the management of the ICC Court appointed Trustee, most of the ICC subsidiaries other than Vitelco are now producing little, if any, positive EBITDA.

e. All of the subsidiaries of ICC, including Vitelco, have been put up for sale by the Trustee. In open Court, the counsel for the Trustee acknowledged that there has been no qualified bid for any of the ICC subsidiaries except of the newspaper which was sold for a substantial loss.

f. Vitelco, under the operation of the Trustee, is in shambles.

g. After paying Greenlight the \$27.5 Million due pursuant to the Intercreditor Agreement, CFC will be most fortunate if it recovers as much as \$150 Million. CFC will have at least a \$450 Million loss in the ICC loan. This loss was largely unreserved for as of May 31, 2008.

h. Continued deterioration (the current trend) in the value of the loan collateral will likely result in nearly a complete write-off of the ICC Loan.

i. CFC published Financial Statements for fiscal years 2007 and 2008 knowing reported income and equity were overstated because, based upon facts known

CFC's Management, CFC should have had additional provisions to loan loss reserves of at least \$250 Million.

j. The treatment of the ICC Loan in CFC's SEC Filings is a material departure from GAAP, SFAS 114. Further, CFC intentionally misled and continues to mislead investors about the ICC Loan Loss. For instance, the following conversation took place in the January 22, 2009 conference call with investors discussing the financial results for the quarter ending November 30, 2008:

"JIM FERGUSON: Good morning, Steve. On the -- referring to page 16, the group 2 asset sale at ICC. Can you tell us, is it public information as to what the sale proceeds were?

MR. LILLY: It is not public information at this time, and as I indicated earlier to someone who asked a question, we are working through the distribution of the net sale proceeds with the Chapter 11 trustee.

JIM FERGUSON: Okay. Who is the trustee, and are there any public documents regarding the trustee or the sale, or is it completely private and --

MR. LILLY: Again, the net proceeds are still under discussion --

JIM FERGUSON: Yeah.

MR. LILLY: --with the Chapter 11 trustees, so there's no public documents with regard to the --

JIM FERGUSON: The trustee doesn't have to file anything- with the court?

MR. LILLY: Once those discussions have been settled then there will be a filing with the court.

JIM FERGUSON: Okay. Are there any other creditors who are -- (inaudible) pursue with NRU --with the RTFC regarding those proceeds for the group 2 assets, or are you the only creditor?

MR. LILLY: Well, we are the only senior-secured creditor with regard to the distribution of those assets.

JIM FERGUSON: So what's the nature of any discussions? I mean, shouldn't it all go to NRUC?

MR. LILLY: We are under discussion with the trustee as to how to apply those proceeds that have been received.

JIM FERGUSON: But the application should be all to RTFC, shouldn't it?

MR. LILLY: We're in a bankruptcy court setting, and in that regard the court has directed the Chapter 11 trustee and National Rural, which is us acting on behalf of RTFC, to review and discuss how the application of the net proceeds.”

Defendant Lilly intentionally misrepresented that the sales proceeds was “not public information at this time” (The contract had been filed in the bankruptcy proceedings and a public court hearing held) and otherwise his answers were intentionally misleading and evasive.

k. CFC had added legal fees⁶ to the ICC Loan increasing the Loan from \$475 Million (2006 Form 10-K, FN 14(e), p. 102) to \$492 Million (2008 Form 10-K, FN 15(e), p. 114) in contravention of SFAS 15, as amended, paragraph 38 which dictates: “Legal fees and other direct costs incurred by a creditor to effect a troubled debt restructuring shall be included in expense when incurred”.

131. Standing alone, the misleading and non-disclosure revolving around ICC Loan violates SEC regulations, does not comport with required GAAP disclosure, and is materially misleading.

GAAP Departures: its Relationship to Mail Fraud & Wire Fraud

132. The CFC Financial Statements present a fictional entity (the “One Entity Approach”) and are so imbued with fraud and cozening that the Financial Statements are

⁶ In the 2/29/2008 10Q, FN 13(e), page 25, CFC admits: “Loans outstanding to ICC continue to increase due to accrued legal costs associated with ongoing litigation to recover the outstanding loan balance”.

themselves a work of fiction. The law and GAAP present no obstacle to CFC's liberties taken with regard to CFC's financial reporting with survival and concealment of the racketeering activities as CFC's end.

133. Since RTFC's formation, annually, in furtherance of the systematic defalcation of RTFC which is a fraudulent and a unlawful scheme, CFC through RTFC annually engaged Mail Fraud in violation of 18 U.S.C. § 1341. CFC caused RTFC to mail annual reports and other communications to the RTFC Telephone members that contained the RTFC Financial Information, including patronage allocation, which CFC knew to be false.

134. Annually, in furtherance of the systematic defalcation of RTFC which is a fraudulent and unlawful scheme, CFC engaged Mail Fraud in violation of 18 U.S.C. § 1341. Annually, CFC, through the use of the mails, sent annual reports and other information to CFC members and others that contained the CFC Financial Information or discussed patronage allocations that CFC knew to be materially false and misleading. Further, the CFC Financial Information that was materially false and misleading was reported at least quarterly and annually in CFC's SEC Filings.

135. Since RTFC's formation, annually, in furtherance of the systematic defalcation of RTFC which is a fraudulent and a unlawful scheme, CFC through RTFC annually engaged in Wire Fraud in violation of 18 U.S.C. § 1343. CFC caused RTFC by means of electronic communication to disseminate RTFC's Annual Reports and other communications to the RTFC Telephone members that contained the RTFC Financial Information, including patronage allocation, which CFC knew to be false and misleading.

136. Quarterly, in furtherance of the systematic defalcation of RTFC, which is a fraudulent and unlawful scheme, CFC engaged Wire Fraud in violation of 18 U.S.C. § 1343.

Quarterly, CFC, through means of electronic communication, filed Reports (Form 10-Qs and Form 10-Ks) with the SEC and disseminated other information to CFC members and others that contained the CFC Financial Information or discussed patronage allocations that CFC knew to be materially false and misleading.

Summation: Accounting Fraud Allegations

137. CFC's money laundering scheme, which tramples upon the laws of every state that CFC operates (49 states, the District of Columbia and two U.S. territories per the 2006 Form 10-K), the tax law, and CFC's own bylaws, is augmented by an extensive and continuous pattern of accounting fraud making CFC's Financial Statements a fabrication and RTFC's Financial Statements materially false and materially misleading. These items are so utterly contrived and misleading that CFC's communication, or CFC's communication through RTFC, regarding the Financial Statements and patronage allocations whether by mail or electronic means violates either the mail fraud provisions of 18 U.S.C. § 1341 or the wire fraud provisions of 18 U.S.C. § 1343.

138. CFC on a regular and recurring basis engages in money laundering and commits mail and/or wire fraud abusing its tax exemption, violating tax laws, and mocking the concept of operating upon a "cooperative basis".

ICC RELATED ALLEGATIONS

139. The following allegations set forth CFC's unbridled and unlawful recourse against the Plaintiffs. Due to the publication of transparent Segment Information, Plaintiffs stumbled upon CFC's money laundering scheme: the systematic defalcation of RTFC and the RTFC Telephone members.

The ICC Foreclosure Action

140. Twice the Plaintiffs raised the systematic defalcation of RTFC by CFC and twice, CFC caused RTFC to breach its fiduciary duty and used RTFC's status as the primary lender to quash inquiries regarding membership issues: the allocation of patronage income.

141. The systematic defalcation of RTFC by CFC was raised on two occasions:

a. In early 2003 the patronage allocation issue was raised and by March of 2003 CFC caused RTFC to instigate a foreclosure proceeding: *Rural Telephone Finance Cooperative v. Innovative Communication Corp. and Virgin Islands Telephone Corp.*, Civil Action No. 03-277-A, in the United States District Court for the Eastern District of Virginia.

b. In late May of 2004, Plaintiff Jeff Prosser threatened a derivative action against RTFC and within a week, on June 1, 2004, RTFC instigated a foreclosure proceeding (the "June 2004 Foreclosure").

142. The abuse of RTFC's status as a lender to quash RTFC Telephone members' legitimate inquiries as to patronage allocations is a breach of Fiduciary duty and the commission of a Predicate Acts, unlawful Retaliation violating 18 U.S.C. § 1513(e), to suppress truthful information relating to the commission of CFC's racketeering activities.

143. The June 2004 Foreclosure, itself a retaliatory action, coupled with a pattern of retaliatory and extortionary acts eventually resulted in the a taking of ICC from the Prossers and the wrongful discharge of Jeff Prosser and others loyal to Jeff Prosser.

An Admission Of The Unlawful Purpose of the June 2004 Foreclosure

144. A CFC internal document establishes *mens rea*. In an August 18, 2004 memo (the "Grier Memo"), the current controller of CFC, Bob Grier, memorialized his discussions with Ernst stating:

I think that I satisfied them with the following

- **ICC is a viable business** that can be operated in a manner to pay the debt service
- existing management continually is pushing the edge and **we have finally decide we have had enough and want to replace management.**

- while we believe that the **company has the ability to pay debt service**, the green light litigation and the company's issuance of preferred stock - one of issues in our litigation - has increased the uncertainty related to the credit.

- that while we initially moved the reserve up to \$99 million, we subsequently reduced it to \$92 million based on the analysis and adding the pat cap to that analysis as an offset.

Cain has asked us to provide with what ICC would have been at the minimum - we gave them the calculation - \$87 million.

I think that they should be ok with the slight increase due to the increase in uncertainty related to green light and RTFC litigation. (Emphasis added)

145. The Grier Memo establishes that:

- a. CFC believed that ICC under the management of Jeff Prosser could repay, in full, all indebtedness;

- b. CFC adopted a reckless course of conduct by instigating the June 2004 Foreclosure with indifference to CFC's investors; and

- c. CFC was willing to assume a \$92 Million loss to replace the management of ICC.

146. With economics dictating business decisions, no lender would voluntarily take a \$92 Million loss that could be avoided.

147. The Grier Memo examined in light of the CFC's actual fiscal condition offers no rational explanation for the foreclosure and voluntary incurrence of at least a \$92 Million loss other than a retaliatory motive: one intended to conceal CFC's racketeering activities.

148. As of May 31, 2004, a month before the June 2004 Foreclosure, CFC reported the balance of the CoServ loan at \$618 Million (2004 Form 10-Q, FN 14(c), page 131): an overstatement of \$256 Million. Members Equity, unadjusted for the CoServ loan, was \$483 Million (2004 Form 10-K, page 76) and, after adjusting for the CoServ loan, was \$227 Million

(the “True-up Members’ Equity”). CFC knew that Members’ Equity should be reported at \$227 Million but for CFC’s unlawful departure from GAAP.

149. The Grier Memo, in context to the facts known by CFC’s management, demonstrates that CFC was willing to absorb a loss of \$92 Million which is over 40% of CFC’s True-up Members’ Equity: a self-decapitation considering that CFC had, at the time, over \$18.5 Billion in publicly issued indebtedness and a \$15.5 Billion Electric loan portfolio that was making no Contribution to CFC’s earnings (in fact, the Electric loan portfolio was a drag on earnings).

150. Management of CFC was clearly motivated solely by concealing CFC’s racketeering activities by instigating the June 2004 Foreclosure. CFC was acting in contravention of –

- a. CFC’s obligations (i) to the public investors and (ii) to the members of CFC, and
- b. CFC’s fiduciary duties to ICC and the Plaintiffs.

151. The Grier Memo’s stated objective - a change of management - could only be achieved under the circumstance in which the Prossers beneficially owned all ICC by taking ICC away from the Prossers and discharging Jeff Prosser and management loyal to Jeff Prosser.

152. The June 2004 Foreclosure was the commission of a Predicate Act in violation of 18 U.S.C. § 1513(e). The purpose of the Predicate Act, and indeed the reason the recompense is sought in this action, was to separate the Prossers from ICC (the RTFC member) and discharge of Jeff Prosser and others loyal to Jeff Prosser.

The ICC Loss

153. CFC, through RTFC, engaged in the commission of retaliatory and extortionary acts by deploying a scorched earth approach to the June 2004 Foreclosure (a four year campaign that is still continuing) that has in fact increased CFC's loss exposure on the ICC loans. Through its retaliatory and extortionary acts, CFC intentionally –

- a. hurt the value of its collateral; and
- b. hurt the debt service capability the ICC assets.

154. Even today the ICC Estate, at the direction of CFC acting through RTFC, wastes millions of dollars in vindictive litigation. The court appointed Examiner of the Prosser Chapter 7 Estate, a former bankruptcy Judge, stated in a document filed November 3, 2008, that:

- a. “this bankruptcy case—ostensibly a means for Mr. Prosser to satisfy his debts in an orderly manner—has deteriorated into a war of attrition.”
- b. “Meanwhile, money continues to pour out of these debtors’ estates to fund the parties’ insatiable appetite for brawling litigation.”
- c. “Mr. Prosser’s major creditors unnecessarily litigate every issue raised in this case in order to exasperate and humble Mr. Prosser while extracting their pound of flesh . . .”.

155. CFC's complete abandonment and reckless disregard of any concern for the investing public (which as of July of 2005 included the Federal fisc) and the financial welfare other members of CFC and RTFC is substantiated by how the foreclosure litigation has expanded. The loss of the ICC loan has increased as follows:

- a. According to the Grier Memo as of June of 2004, there was no loss in the ICC Loan before the June 2004 Foreclosure;

b. to August of 2004 whereby CFC willingness to accept a \$92 loss to change management;

c. to a situation whereby it is *highly probable* that CFC/RTFC will experience at least a \$350 Million loss; and

d. to a situation where it is *probable* that CFC will lose the full \$492 Million carried on CFC's accounts (2008 10K, FN 15(e), page 114) and will be paying Defendant Greenlight another \$27.5 Million for a loss of at least \$519 Million.

156. CFC disclosures in its SEC filings regarding matters of ICC and the ICC loans are a continuous commission of repeated instances of false and misleading disclosure coupled with accounting fraud.

The June 2004 Foreclosure – Bad Faith & Predicate Acts

157. CFC's June 2004 Foreclosure was retaliatory, a commission of a Predicate Act, and also -

a. The filing of the June 2004 Foreclosure was itself a commission of a wholly separate Predicate Act: filing in a Federal Court the False 2001 Loan Agreement, a violation of 18 U.S.C. § 1512(c), Tampering with a Witness, Victim, or an Informant.

b. Further, even under the Authentic 2001 Loan Agreement, there were no defaults augmenting the evidence that the June 2004 Foreclosure was retaliatory.

158. The Loan Agreement that served as the basis for foreclosure by CFC, acting through RTFC, on the Loan Agreement between RTFC and ICC which is dated August 21, 2001 (the "2001 Loan Agreement").

159. After RTFC and ICC executed the 2001 Loan Agreement, the following occurred:

(i) Frank Vaughan ("Vaughan") was, at all times relevant to this complaint,

an employee of CFC performing the function of RTFC's assistant general counsel;

(ii) Without the knowledge or consent of ICC, Vaughan removed the signature pages from both originals of the Authentic 2001 Loan Agreement and attached them to a different version of the agreement, the **False 2001 Loan Agreement**; and

(iii) Vaughan then destroyed the pages from the Authentic 2001 Loan Agreement.

160. CFC's attorney serving as RTFC's counsel, Vaughan, admitted under oath that the **False 2001 Loan Agreement** was not the agreement executed by Jeff Prosser. Mr. Vaughan testified as follows:

13 Q. Can you sit here today and tell me that
14 each and every word on the physical loan document
15 that Mr. Prosser signed is identical to the words in
16 the loan documents, the four versions of the loan
17 documents that Mr. Siegfried asked you about? That's
18 a yes or no question, sir.

19 A. No.

161. Neither ICC nor Jeff Prosser discovered the alteration until 2005. On May 20, 2005, ICC took the deposition of RTFC's counsel, Vaughan, and confirmed that Vaughan had taken the signature pages from the Authenticate 2001 Loan Agreement executed by the parties and attached them to False 2001 Loan Agreement that Vaughan had created, destroying all other pages of the Authentic 2001 Loan Agreement.

162. The fraudulent alteration by RTFC of the Authentic 2001 Loan Agreement makes the RTFC loans to the ICC Entities legally uncollectible by RTFC as a matter of law pursuant to

UCC 3-601(a).

163. Under U.S. Virgin Islands law, RTFC's loans to ICC, by virtue of the fraudulent alteration the Authentic 2001 Loan Agreement, are uncollectible pursuant to 11A V.I.C. § 11A/3-407, of the U.S. Virgin Islands UCC.

164. Acting through RTFC, CFC's fraudulent conduct in altering the Authentic 2001 Loan Agreement was a fraud upon the Courts violating 18 U.S.C. § 1512(c) and upon at least three additional groups: (i) ICC, (ii) Jeff Prosser, and (iii) CFC's public investors and lenders, including the Government, relying upon CFC's SEC filings.

165. CFC knew that the ICC defaults were contrived for purposes of retaliation for discovery of the systematic defalcation of RTFC, as is evident by –

- a. RTFC's voluntary dismissal on September 9, 2005, of 16 of the alleged 31 defaults;
- b. The Federal District Court finding on December 29, 2005 that dismissed 5 of the remaining 15 defaults; and
- c. The remaining 10 defaults based upon the False 2001 Loan Agreement are void as a matter of law because of the terms and conditions of a April 19, 1998 Agreement with the Virgin Islands Public Services Commission (the "VI Commission") to which RTFC was a party (hereinafter the "1989 Tri-Party Agreement").

166. The 1989 Tri-Party Agreement settled litigation of ICC's predecessor's acquisition of Vitelco which as a conditioned to the settlement and for good and valuable consideration, RTFC agreed (i) to decouple RTFC's loan to Vitelco from the RTFC loan to ICC's predecessor and (ii) never again couple the loans without VI Commission approval.

167. The remaining ten (10) claimed defaults of the False 2001 Loan Agreement are all premised upon Vitelco's sale of Preferred Stock: an unlawful coupling of ICC and Vitelco. Pursuant to the terms of the 1989 Tri-Party Agreement the coupling is *void ab initio* since neither ICC nor RTFC obtained VI Commission approval of re-coupling of Vitelco and ICC.

168. After setting out the decoupling of the Vitelco loan from the ICC predecessor loan, the 1989 Tri-Party Agreement stated:

“Vitelco and ATN [ICC's predecessor] agree that any additional financing (i.e., any financing not now in place and disclosed to the Commission) undertaken by ATN shall in no way require Vitelco to guarantee or collateralize such financing or any part thereof, and **shall in no way impact on Vitelco's access to financial markets**, without the Commission's prior approval. Any such purported guarantee or collateralization shall be void.” (Para. 8 on page 16 of the 1989 Tri-Party Agreement – Emphasis added)

169. CFC's interpretation of the False 2001 Loan Agreement upon which the other defaults are premised would indeed “impact on Vitelco's access to financial markets” because the purpose of the Preferred Stock sale and the application of the proceeds from the sale of the preferred stock must, in contravention of the offering documents, be applied to liquidate ICC's debt to RTFC. CFC's interpretation is *void ab initio* because of the failure to obtain VI Commission approval.

170. Plaintiff's interpretation of the 1989 Tri-Party Agreement is further emboldened in that Vitelco was the only ICC subsidiary (i) to have a separate loan agreement directly with RTFC and (ii) that it did not sign a guarantee for all the ICC indebtedness that was collateralized by the other ICC subsidiaries' assets.

171. No rational explanation exists for RTFC's actions other than they were retaliatory actions, a Predicate Act, taken using the False 2001 Loan Agreement in many actions against ICC, additional Predicate Acts.

Deployment by CFC of the False 2001 Loan Agreement

172. Each use of the False 2001 Loan Agreement is a separate Predicate Act and thus a separate racketeering activity. CFC acting through RTFC took the following actions directly or indirectly based upon the False 2001 Loan Agreement:

a. The 2004 Foreclosure Litigation filed in Federal District Court for the Eastern District of Virginia on June 1, 2004;

b. The Guaranty Litigation filed in Federal District Court for the Eastern District of Virginia on September 22, 2004;

c. The RTFC Derivative Litigation filed Federal District Court for the U.S. Virgin Islands on September 30, 2004;

d. The deemed re-filing of the 2004 Foreclosure Litigation filed in Federal District Court for the U.S. Virgin Islands on November 9, 2004 based upon the October 19, 2004 transferring the case;

e. The bankruptcy proceedings for ECM, Jeff Prosser, and ICC-LLC filed in the V.I. District Court on July 31, 2006; and

f. The bankruptcy proceeding of New ICC commenced through an involuntary petition filed in the U.S. Virgin Islands Bankruptcy Court July 5, 2007 for which an Order for Relief was granted on September 21, 2007.

Each of the foregoing submissions of the False 2001 Loan Agreement constitutes a separate violation of 18 U.S.C. § 1512(c), a Predicate Act.

The Derailment of the 2004 Foreclosure

173. In 2005, ICC's counsel deduced the unimaginable:

a. Counsel noticed that footer's on the bottom of the page the False 2001 Loan Document did match – 8 pages had a “4” at the bottom of the page; and

b. The page preceding the signature page and the signature page both contained “In witness whereas ...” clauses.

174. ICC's litigation counsel checked with the ICC's counsel (the “Loan Counsel”) that negotiated the document that became the 2001 Loan Agreement. The draft sent to Loan Counsel by RTFC and represented as the copy being sent to Jeff Prosser for signature (i) did not have a double “In witness whereas ...” clauses and (ii) further, each page had a footnote “2” and no pages were footnoted “4”.

175. Because of time constraints in August of 2001, Jeff Prosser signed the version sent to him of the 2001 Loan Agreement and then sent the signature page from the business in Florida to RTFC and at his direction, the corporate seals for ICC and Vitelco were sent from the Virgin Islands to RTFC.

176. On May 20, 2005, ICC counsel took the deposition of Frank Vaughan, a CFC employee serving, as needed, as RTFC associate general counsel.

177. In the deposition, Mr. Vaughan acknowledged:

a. attaching the executed signature page he received from Mr. Prosser to Loan Agreement that was different than the documents sent to Prosser; and

b. affixing the corporate seals.

178. The foregoing took place notwithstanding the representation that RTFC had already executed the version of the 2001 Loan Agreement sent to Mr. Prosser.

179. Mr. Vaughan acknowledged destroying the 2001 Loan Agreement executed by both Jeff Prosser and RTFC.

180. In proceedings before the Federal District Court of the U.S. Virgin Islands, it became apparent that RTFC could not authenticate the 2001 Loan Agreement (offering in open court three different versions of the same loan agreement).

181. This eventually became a reality when the Court denied RTFC's Motion for Summary Judgment citing in footnote 2 to the December 29, 2005 Order that: "While the loan transaction was not in dispute, the Parties dispute the very document that RTFC claims reduced the loan transaction and ICC's obligations to a writing."

182. RTFC 2004 Foreclosure action had become for all intents and purposes stymied because RTFC had started the action without a payment default and RTFC had no document to establish any default.

183. CFC faced the fact that it was highly likely that ICC would be entitled to damages for the retaliatory foreclosure coupled with being held accountable for CFC's systematic defalcation of RTFC.

The RTFC-Greenlight Joint Venture

184. In May of 2004, Greenlight became the beneficiary of a decision by the Delaware Chancery first issued in May 3, 2004 related to ICC's privatization: *In Re Emerging Communications, Inc. Shareholders Litigation*, 2004 WL 1305745 (Del.Ch., June 2004) (the "State Case").

185. Greenlight had sued Jeff Prosser and the companies that either directly or indirectly owned New ICC⁷ but did not sue New ICC. Upon the issuance of a judgment, Greenlight would become a judgment creditor of Jeff Prosser and others but would not have a

⁷ New ICC owned all the operating subsidiaries and companies (except for Belize Telecommunication Ltd.) and which constituted ICC's Enterprise Value.

judgment against New ICC, the operating holding company that owned all of the ICC operating companies except for Belize Telecommunication Ltd. (hereinafter “BTL”).

186. All of the assets of New ICC including all of the outstanding stock of Vitelco and all of the assets of every subsidiary, except for Vitelco, of New ICC were subject to a RTFC lien which at the time appeared to be in a clearly superior position to the prospective Greenlight judgment which did not reach to New ICC.

187. The Greenlight judgment was worthless unless the Enterprise Value of ICC was maintained and ICC could be sold for more than ICC’s indebtedness to RTFC.

188. Excluding the value of BTL, all the Enterprise Value of ICC exists in New ICC.

189. Greenlight’s assessment of the situation is reflected in the following:

a. In a March 11, 2002 letter to RTFC in which Greenlight stated:

“... I believe that the RTFC and Greenlight have a mutual interest in maximizing the value of Innovative's and Prosser's operations. That means it is in our mutual interest to prevent: (i) a voluntary bankruptcy, (ii) a distress sale of assets, and (iii) my fraudulent conveyance of assets.”

b. In a June 24, 2004 Letter to ICC’s counsel in which Greenlight’s counsel stated:

“Please be advised that the Company’s commencement of a voluntary chapter 11 case at this time will destroy value and opportunities for creditor recoveries - - and, accordingly, would be an actionable breach of fiduciary duties owed by the Company and its officers and directors to creditors, including Greenlight.”

c. ICC and Greenlight had negotiated one settlement that faltered because of RTFC’s unlawful interference with the financing of ICC-LLC’s acquisition of Belize Telecommunications Ltd.

d. On August 17, 2005, ICC and Greenlight entered into a partial settlement (the "Partial Settlement") in which Greenlight was paid \$4.4 Million and agreed to further negotiations to resolve the dispute.

e. The Partial Settlement between ICC and Greenlight had an implied covenant of good faith and fair dealing.

f. Greenlight did not seek a judgment from May 3, 2004 through September of 2005, a seventeen (17) month period.

190. Meanwhile, the retaliatory RTFC June 2004 Foreclosure was stifled and stalemated.

191. In October of 2005, CFC, through RTFC, approached Greenlight with a proposal to effectively use Greenlight's claim which could be reduced to a judgment as a means to move the retaliatory foreclosure forward.

192. RTFC suborned Greenlight with a monetary incentive that was not largely dependent upon the Enterprise Value of ICC. As a result, RTFC and Greenlight entered into the Intercreditor Agreement on October 24, 2005.

193. The Intercreditor Agreement is a 'joint venture' between RTFC and Greenlight which pursues CFC's retaliatory objectives through RTFC, i.e., separate ICC from the Prossers; discharge Jeff Prosser and management loyal to Jeff Prosser; and strip the Prossers of all assets and the ability to seek recompense.

194. The monetary incentive (the "Bounty") agreed to by and between RTFC and Greenlight is as follows:

a. RTFC would pay Greenlight \$15 Million upon forcing New ICC into bankruptcy;

b. RTFC would pay Greenlight \$12.5 Million upon a court approval of an ICC plan of reorganization;

c. Greenlight would be entitled to ten percent (10%) of any recovery from proceeds in excess of \$327.5 Million from the sale of ICC's assets;

d. Greenlight and RTFC would split evenly any recovery by ICC-LLC from the aborted acquisition (which has been attributed to RTFC's interference) of Belize Telecommunications Ltd.; and

e. RTFC would subordinate its interest in Jeff Prosser's personal assets to Greenlight in the first \$35 Million recovered from Mr. Prosser's personal estate.

195. As a result of the Intercreditor Agreement, Greenlight's economic interest and priorities were no longer driven to preserve and ensure ICC's well-being and its Enterprise Value. Rather, Greenlight shifted its direction and priorities to serving as RTFC's surrogate to place ICC into bankruptcy and forcing the sale of the ICC assets as soon as possible.

196. The Intercreditor Agreement made Greenlight and RTFC **partners** (a joint venture) joined at the hip with CFC as the implicit and complicit partner through its dominant and active control of RTFC in the retaliatory foreclosure action against ICC and the attempts to discredit the Prossers. Stripping the Prossers of all assets and discharging management loyal to Jeff Prosser was a joint enterprise by and between CFC (acting through RTFC) and Greenlight as evidenced by the Intercreditor Agreement.

197. If Greenlight did not understand RTFC's motivation for the Intercreditor Agreement (Greenlight followed the saga between ICC and RTFC) when it entered into the

Intercreditor Agreement, it did after a February 26, 2006, a letter from ICC's counsel to Greenlight's counsel put Greenlight on notice of the motivation.

198. Greenlight pursued, under the color of law, lawful actions for an unlawful purpose: CFC's and RTFC's retaliatory and extortionary objectives.

199. As a willing participant in a joint venture (the "Joint Venture"), a partnership for limited purposes as evidenced by the Intercreditor Agreement, Greenlight, RTFC and CFC acting through RTFC are jointly and severally liable for the actions of the other in pursuit of the objectives: CFC's and RTFC's actions are ascribed to Greenlight and Greenlight's actions are ascribed to CFC and RTFC. Nevertheless, Greenlight was not a partner in the conduct of the RTFC business operations.

Wrongful Conduct

200. The acts which constitute the pattern of conduct which is retaliatory, extortionary, or both, and which is actionable and chargeable to each member of the Joint Venture, i.e., CFC, RTFC and Greenlight, are as follows:

a. RTFC's June 2004 Foreclosure - The foreclosure was without justification (neither the Authenticate nor False 2001 Loan Agreement support the foreclosure) and was instigated by CFC through RTFC to conceal CFC's racketeering activities: the systematic defalcation of RTFC by CFC, a money laundering scheme, which routinely and regularly required the commission of mail and wire fraud. As a result of retaliatory and extortionary conduct the following occurred:

i. On September 21, 2007, the V.I. Bankruptcy Court entered an Order of Relief granting Greenlight's involuntary bankruptcy petition against New ICC.

ii. On October 3, 2008, Stan Springel was appointed as Trustee of New ICC.

iii. Stan Springel was not independent and acted as an agent or surrogate of RTFC.

iv. Prosser was wrongfully removed on October 8, 2008 and beginning on that date, others loyal to Jeff Prosser were removed.

The unlawful end (a retaliatory end in violation of 18 U.S.C. § 1513(e)), separating the Prossers from ICC as well as the wrongful discharge of Jeff Prosser and others loyal to Jeff Prosser was accomplished directly by the commission of numerous Predicate Acts.

b. Violations of 18 U.S.C. § 1512(c), a Predicate Act, related to the use of the False 2001 Loan Agreement are as follows:

i. The destruction of the Authenticate 2001 Loan Agreement.

ii. The submission of the False 2001 Loan Agreement or basing claims thereon in the Federal District Court for the Eastern District of Virginia and Federal District Court for the U.S. Virgin Islands including the foreclosure action, an action against Jeff Prosser under the guarantee, and an derivative action against the Board of ICC.

iii. The submission of Judgment premised upon the False 2001 Loan Agreement and obtained as a result of extortion to the Federal Bankruptcy Court for the U.S. Virgin Islands in the July 31, 2006 Bankruptcy proceedings of Jeff Prosser, ICC-LLC, and Emerging Communications Inc. (“EmCom”).

iv. The submission of Judgment premised upon the False 2001 Loan Agreement and obtained as a result of extortion to the Federal Bankruptcy

Court for the U.S. Virgin Islands in the September 21, 2007 involuntary bankruptcy proceedings of New ICC.

c. CFC, acting through RTFC, engaged in numerous Retaliatory and Extortionary Acts before the advent of the Intercreditor Agreement. In a September 2004 meeting held in Chicago CFC, acting through RTFC, and represented by Defendants Lilly and Lists, as well as their then outside counsel, acknowledged to Plaintiff Raynor of RTFC's extortion plan to cut-off all direct and indirect sources of financing to ICC to cause the capitulation of Jeff Prosser forcing him into a pre-packaged bankruptcy.

d. From the instigation of the June 2004 Foreclosure Action, CFC acting through RTFC, did the following:

i. Using the bogus 31 defaults, RTFC met with the Virgin Islands Public Services Commission ("VIPSC"), Vitelco's regulator, to proclaim the 31 defaults in order to tortiously interfere in ICC's relationship with the VIPSC.

ii. Using the bogus 31 defaults, RTFC on or about September 10, 2004, publicly declared that RTFC would own ICC by January of 2005.

iii. RTFC approached the unions in the Virgin Islands (tortiously interfered with ICC's relationship) to enlist their aid in RTFC's retaliatory campaign against Mr. Prosser.

iv. Using the bogus 31 defaults, RTFC caused a derogatory article to be published on October 4, 2004, by "Telephony.online".

v. Using the bogus 31 defaults, RTFC caused a derogatory article to be published on November 1, 2004, by Forbes.

vi. Using NRECA's influence with RUS (the administrator of RUS had served 16 years on NRECA's board and 2 years on CFC's Board) and the bogus 31 defaults, CFC induced RUS to cut-off and/or suspend a \$100 Million Capital Improvement credit facility to Vitelco, after Vitelco had let contracts for several of its capex projects, thus severely and negatively impairing the value of Vitelco and the cash flow produced by Vitelco.

vii. Using the bogus 31 defaults, RTFC called the Royal Bank of Trinidad and Tobago ("RBTT") and tortiously interfered with ICC-LLC's financing of the acquisition of BTL thus killing the financing, impairing Vitelco's loan of \$30 Million related to the BTL acquisition, decreasing ICC-LLC's Enterprise Value by over \$200 Million, and negatively impacting the debt service capability of ICC.

e. Being stalemated in the June 2004 Foreclosure Action and thereby entering their Joint Venture to carry on with their retaliatory and extortionary actions with the objective of separating the Prossers from ICC and discharging Jeff Prosser and others loyal to Jeff Prosser, CFC, RTFC and Greenlight acted conjointly in the following:

i. Form a Joint Venture by execution of the Intercreditor Agreement dated October 24, 2005 to pursue CFC's and RTFC's retaliatory and extortionary agenda rather than pursue its previous agenda to maximize the Enterprise Value of ICC.

ii. RTFC induced Greenlight and Greenlight did breach the August 7, 2005 Partial Settlement Agreement with ICC and the implied covenant of good faith and fair dealings.

iii. Greenlight wrongly sought to obtain a Delaware judgment against New ICC, an entity not sued⁸ in the combined actions in the Emerging Communication Shareholder Litigation.

iv. RTFC and Greenlight manipulated the circumstances around correcting a transcription error wrongly relied upon by Delaware Chancery so that the correcting affidavit arrived after the January 9, 2006 judgment against EmCom, ICC-LLC and Jeff Prosser (but not against New ICC) was granted on January 9, 2006.

v. Greenlight intentionally recorded the Delaware January 9, 2006 Judgment against New ICC on or about January 17, 2006 in the U.S. Virgin Islands and Florida knowing that their Judgment against New ICC had not been granted.

vi. Upon obtaining the Delaware judgment dated January 9, 2006, to avoid a TRO, Greenlight and RTFC mislead the V.I. Federal District Court by representing a set forth on page 14 of the February 10, 2006 Memorandum Opinion of the Court:

“Greenlight and RTFC have agreed, to the extent a bankruptcy petition is filed, to inform the PSC and Vitelco of such proceeding and to provide Vitelco and the PSC with an opportunity to be heard before seeking the appointment of a trustee. See Hr'g Tr. 7, Feb. 1, 2006.”

The foregoing is referred to as the “Greenlight/RTFC District Court Representation”

⁸ At the time of the Delaware litigation, Greenlight had no incentive to sue New ICC; the assets of which were fully encumbered by RTFC.

vii. In the evening of February 10, 2006, after the above Memorandum Opinion, Greenlight filed involuntary bankruptcy petitions against EmCom, ICC-LLC, and Prosser.

viii. Under fear of losing everything even if Mr. Prosser won the Delaware Appeal and the June 2004 Foreclosure action, Prosser capitulated⁹ and on April 26, 2006 CFC, RTFC and Greenlight entered into the Term Sheet (Heads of Agreement) to settle the litigation with Prosser:

A. Prosser received a sixty (60) day period to buyout RTFC's and Greenlight's claims for \$402 Million; illusory consideration.

B. RTFC received the judgment in the June 2004 Foreclosure action.

C. Greenlight obtained the dismissal of ICC's appeals of the Delaware judgment making that judgment unassailable.

ix. To further insure that Prosser did not succeed in his refinancing, upon information and belief, RTFC and Greenlight coordinated their efforts with the Preferred Shareholders so that the Preferred Shareholders would instigate litigation against Vitelco.

x. The Heads of Agreement was an extortionary agreement in which Prosser surrendered all defenses and property rights for illusionary consideration.

xi. Prosser, EmCom, and ICC-LLC filed voluntary bankruptcy as the Heads of Agreement (which was implemented in June 2006) expired July 31, 2006.

⁹ Extortion includes the voluntary surrender of property rights by fear.

xii. On or about June 28, 2007, Prosser obtained a Financing Commitment (a \$620 Million financing package) from Silver Point Finance LLC (“Silver Point”) which would yield RTFC and Greenlight the \$402 Million agreed to in the Heads of Agreement plus interest.

xiii. On July 5, 2007, Greenlight filed an involuntary bankruptcy proceeding against New ICC even though their attempt to obtain a judgment against New ICC was rejected by the Delaware Chancery.

xiv. RTFC and Greenlight rejected the Silver Point financing which represented the highest ICC Enterprise Value because they would not have achieved RTFC’s primary retaliatory objective of removing Jeff Prosser because Jeff Prosser still have an equity interest in ICC. This rejection proves RTFC’s retaliatory objectives and motivations overrode all economic considerations.

xv. On September 26, 2008, in contravention of the Greenlight/RTFC District Court Representation, RTFC moved for the appointment of a Trustee without notification and hearing before the VIPSC.

xvi. By October 15, 2008, RTFC and Greenlight finally realized the objectives of the retaliatory foreclosure: Prossers had lost control of ICC; Jeff Prosser had been dismissed; and others loyal to Jeff Prosser were dismissed or targeted for dismissal.

f. CFC responded to an April 30, 2007 Letter from Plaintiff Raynor to the CFC’s newly appointed Financial Expert and the SEC by having Fulbright file a grievance against Raynor with the Nebraska Bar Association: a direct attack on Raynor’s livelihood.

g. Operating through the Trustee, Greenlight and RTFC adopted a vindictive and spurious litigation and actions designed to cripple the Prossers by -

i. Accusing Jeff Prosser of tax fraud and then delivering the Trustee's analysis of Prosser's purported tax fraud to the Virgin Islands Internal Revenue Bureau ("IRB") that wrongfully and materially misstated items.

ii. The Trustee instigated unwarranted and vexatious litigation against Jeff Prosser, Dawn Prosser, and each of the Prosser Children.

iii. The Trustee suborned perjury to contrive criminal violation of laws by Jeff Prosser.

RTFC and Greenlight joined into litigation that has wasted millions in fees and expenses with only one apparent objective: leave the Prossers and their family penniless.

201. The wrongful conduct constitutes a continuous pattern of retaliatory and extortionary actions which is devoid of any economic rationale or motivation.

RICO ALLEGATIONS

The Enterprise and Each Defendant's RICO Standing in Relationship to the Enterprise

202. RTFC, a rural telephone cooperative initially organized in South Dakota, and later in 2005, re-domiciled in the District of Columbia, is an Enterprise within the meaning of 18 U.S.C. § 1961(4).

203. RTFC's legitimate business is the financing of rural telephone companies or companies that own rural telephone companies. RTFC is engaged in interstate commerce and makes loans to companies that are instrumentalities of interstate commerce (common carriers).

204. Defendants Petersen, List, and Lilly, CFC's Management Defendants, were and are employed by RTFC, the Enterprise, within the meaning of 18 U.S.C. § 1962, as RTFC's

Chief Executive Officer, RTFC's General Counsel, and RTFC's Chief Financial Officer, respectively. They were and are concurrently employed by CFC in the same capacity and served as RTFC's officers only in furtherance of the Misappropriation Scheme.

205. CFC's Management Defendants on behalf of themselves and CFC engaged in a continuing pattern of racketeering activities in furtherance of the Misappropriation Scheme.

206. Defendant CFC was and is directly associated with RTFC, the Enterprise, and through its unlawful exercise of dominion and control of RTFC has neutered RTFC's ability to control any of its business activities. CFC did engage in, and continues to engage in, a continuing pattern of racketeering activities in furtherance of the Misappropriation Scheme

207. Defendant NRECA, Defendant English, and Defendant Stratton are "associated with" RTFC, the Enterprise, indirectly through their affiliation with CFC within the meaning of 18 U.S.C. § 1962.

208. Defendant NRECA and Defendant English through CFC's management serving as RTFC's management, through RTFC and directly as CFC, engaged in a continuing pattern of racketeering activities in furtherance of the systematic defalcation of RTFC.

209. Defendant Stratton through serving as CFC's Financial Expert and Board Members assisted in filing the CFC Financial Information for fiscal years 2007 and 2008 with actual knowledge of the systematic defalcation of RTFC by CFC. Since his appointment in March of 2007, Stratton has become a false front presenting the appearance that CFC is complying with Sarbanes-Oxley Act and the REDLG loan provisions while CFC continues to engage in a continuing pattern of racketeering activities with Mr. Stratton's consent.

210. CFC, CFC's Management Defendants (Petersen, Lilly and List), NRECA, English and Stratton are collectively referred to as "**RICO DEFENDANT PERSONS**".

211. The RICO DEFENDANT PERSONS did engage, and continue to engage in, a “pattern of racketeering activity” conducted through the Enterprise, RTFC, and in the name of CFC, all in furtherance of (including covering up) the systematic defalcation of RTFC by CFC.

212. The RICO DEFENDANT PERSONS did conspire within the meaning of 18 U.S.C. § 1962(d) as follows:

(i) Defendant GREENLIGHT, with actual knowledge or by consciously avoiding knowing the truth of CFC’s racketeering activities and for the consideration set forth in the Intercreditor Agreement, willingly served as RTFC’s joint venture partner in retaliatory and extortionary actions committed in furtherance of the racketeering enterprise and willingly assisted and engaged in numerous acts of retaliation and extortion against all of the Plaintiffs.

(ii) Defendant FULBRIGHT served as RTFC’s counsel, CFC’s counsel, CFC’s Audit Committee’s counsel, and CFC’s Management Defendants counsel, and as a consequence thereof, had actual knowledge of CFC’s racketeering activities. Fulbright engaged in numerous overt actions to further and advance RTFC’s retaliatory and extortionary purposes including the grievance filed against Plaintiff Raynor.

(iii) Defendant DELOITTE committed material and overt acts in furtherance of racketeering enterprise and racketeering activities including issuing audit reports on CFC’s Financial Statements and RTFC’s Financial Statements that Deloitte knew to be materially false and misleading to deceive the Plaintiffs and the investing public. Deloitte had actual knowledge of RTFC’s retaliation and extortion against all the Plaintiffs and failed to disclose CFC’s unlawful activities. Deloitte issued Audit Reports on Financial Statements which had numerous and material departures from GAAP, failed

to disclose the systematic defalcation of RTFC by CFC, and failed to report the catastrophic loan loss CFC experienced on the ICC Loan. Deloitte's actions involved material and overt acts in furtherance of racketeering enterprise and racketeering activities.

(iv) Defendant ERNST issued audit reports on CFC Financial Statements that materially departed from GAAP and issued Audit Reports on RTFC Financial Statements that Ernst knew to be materially false and misleading. Ernst ignored related party disclosures required by GAAP, failed to disclose the systematic defalcation of RTFC by CFC, and failed to report the catastrophic loan loss CFC experience on the CoServ Loan in conflict with GAAP. Ernst's actions involved material and overt acts in furtherance of racketeering enterprise and racketeering activities.

Defendants GREENLIGHT, FULBRIGHT, DELOITTE, and ERNST are hereinafter collectively referred to as the "**RICO CONSPIRATORS**".

213. Consistent with the conspiracy, the RICO CONSPIRATORS, individually and collectively, did act to further and advance RTFC's retaliatory and extortionary purposes.

The Predicate Acts – Summary

214. The Predicate Acts include, but are not limited to -

- i. Money laundering; *see* 18 U.S.C. § 1956;
- ii. Mail fraud ; *see* 18 U.S.C. § 1341 ;
- iii. Wire fraud; *see* 18 U.S.C. § 1343;
- iv. Tampering with a Witness, Victim, or an Informant; *see* 18 U.S.C. § 1512(c);
- v. Retaliation; *see* 18 U.S.C. § 1513(e); and

vi. A Hobbs Act (Extortion); *see* 18 U.S.C. § 1951(a).

215. The Predicate Acts fall into two classifications: those committed on a regular and continuous basis to effect and conceal the systematic defalcation of RTFC by CFC; and those directed at Plaintiffs and others once the systematic defalcation of RTFC by CFC was discovered by ICC.

CICO ALLEGATIONS: 14 V.I.C. § 600 et seq.

216. The Predicate Acts pursuant to RICO constitute Predicate Acts under Virgin Islands laws. Additionally, there are violations of Federal laws which constitute Predicate Acts under CICO that are not predicate acts under RICO.

217. The following are additional violations under Federal law that constitute and are violations of CICO:

a. Violations of law in accessing the Federal fisc. CFC has accessed the Federal fisc to the extent of nearly \$4 Billion. This access, based upon the CFC Financial Information, violates the following:

i. 18 U.S.C. § 286 by obtaining the payment or allowance of any false, fictitious or fraudulent claim;

ii. 18 U.S.C. § 287 by knowingly cause the Federal Agencies to pay false claims; and

iii. 18 U.S.C. § 1014 by knowingly making any false statement or report, and willfully overvaluing any land, property or security, for the purpose of influencing in any way the action of the (x) Farm Credit Administration and (y) the Secretary of Agriculture acting through the Rural Development Administration.

b. As a recipient of Federal Funds from Farmer Mac and the RUS, the systematic defalcation of RTFC by CFC violates 18 U.S.C. § 666.

c. CFC's Accounting Fraud, sets forth numerous instances of willful and intentional accounting fraud making CFC's SEC filings materially misleading in violation of 15 U.S.C. § 78ff.

218. The RICO DEFENDANT PERSONS have violated CICO in that they have engaged in, and conspired to engage in, a pattern of Criminal Activity that violates the following Virgin Islands statutes within the meaning of 14 V.I.C. § 604 (e):

a. As set forth in the foregoing allegations, by means of extortion within the meaning of 14 V.I.C. § 701, the RICO DEFENDANT PERSONS caused the ICC Entities to create a debt to RTFC that was otherwise unenforceable pursuant to 11A V.I.C. § 11A/3-407(b) (the debt represented by the false 2001 Loan Agreement) and waived causes of action against RTFC (both pending suits and causes of action not yet pursued), both in prohibition of 14 V.I.C. § 702.

b. As set forth in the foregoing allegations, the RICO DEFENDANT PERSONS did knowingly and willfully violate 14 V.I.C. § 791 by creating the False 2001 Loan Agreement and by submitting the False 2001 Loan Agreement in official proceedings knowing the same to be false.

c. The RICO DEFENDANT PERSONS, acting as or through officers of RTFC who owe fiduciary obligations to the ICC Entities as set forth in the foregoing allegations, with knowledge and intent, did willfully violate 14 V.I.C. § 1087 (embezzlement) and 14 V.I.C. § 1091(embezzlement by fiduciaries) by the systematic and long-term scheme of embezzlement from RTFC and ICC. Upon information and

belief, the ICC Entities (as well as the U.S. Virgin Islands ratepayers) were defrauded by a sum in excess of \$50 Million.

d. As set forth in the foregoing allegations, the RICO DEFENDANT PERSONS with knowledge did willfully violated 14 V.I.C. § 1261 by destroying the Authenticate 2001 Loan Agreement and replacing it with the False 2001 Loan Agreement. The course of conduct revolving around the false 2001 Loan Agreement also violated 14 V.I.C. § 1503, Preparing false evidence; 14 V.I.C. § 1504, Offering false documents in evidence; and 14 V.I.C. § 1506, Destruction of evidence.

e. As set forth in the foregoing allegations, the RICO DEFENDANT PERSONS did, with the intent of suppressing knowledge of the systematic defalcation of RTFC by CFC, unlawfully retaliate against the Prossers and management loyal to Jeff Prosser in violation of 14 V.I.C. § 1510.

f. As set forth in the foregoing allegations, the RICO DEFENDANT PERSONS did receive money from Vitelco and the other ICC Entities by false or fraudulent representation or pretenses in violation of 14 V.I.C. § 834.

CULPABILITY OF THE RICO CONSPIRATORS

219. The RICO CONSPIRATORS have acted in violation of 18 U.S.C. § 1962 (d) by committing numerous overt acts in furtherance of the racketeering enterprise and CFC's intent to retaliate and extort the Plaintiffs to conceal the Misappropriation Scheme; itself an illegal scheme that is at the heart of the racketeering enterprise.

220. Defendant Fulbright's culpability is premised in part upon the following:

a. Fulbright purports to represent RTFC.

b. A bedrock principle recognized in Rule 1.13(a) of the ABA Model Rules of Professional Conduct is that a lawyers' **responsibility is to the corporation**, and not to the corporate directors, officers or other corporate agents with whom they necessarily communicate in representing the corporation. Fulbright has in fact been representing CFC and its management under the guise and pretext of representing RTFC.

c. RTFC stood in a fiduciary position to ICC, an RTFC Member, whose membership was unlawfully terminated as part of RTFC's retaliatory and extortionary actions.

d. Fulbright had actual knowledge of systematic defalcation of RTFC by CFC as well of the False 2001 Loan Agreement.

e. As RTFC's counsel, Fulbright had a duty to seek redress against CFC for systematic defalcation of RTFC by CFC and further, to not participate in extortionary and retaliatory actions of CFC to conceal the systematic defalcation of RTFC by CFC.

f. In fact, Fulbright intentionally misrepresented to the Federal District Court in the U.S. Virgin Islands and the Bankruptcy Court in the U.S. Virgin Islands that Fulbright was representing RTFC when in fact Fulbright was representing the interest of CFC in continuing and concealing the racketeering enterprise.

g. Fulbright committed numerous acts set forth above misleading all that Fulbright was representing RTFC.

221. Although Defendant Greenlight did not directly conduct the Enterprise's business affairs, but as RTFC's joint venture partner via the Intercreditor Agreement, Greenlight committed many overt acts in pursuit of RTFC's retaliatory and extortionary objectives thus making Greenlight culpable.

222. Defendant's Deloitte's overt acts of accounting fraud supporting the racketeering activities. At a high level, Deloitte's overt acts included, but are not limited to the following:

a. Accepting the consolidation of RTFC with CFC in contravention of GAAP in order to conceal the Misappropriation Scheme.

b. Ignoring and accepting the failure of CFC to disclose the current liabilities and cumulative liability CFC owes to RTFC from the systematic defalcation of RTFC by CFC.

c. Accepting the re-implementation of the AA Segment Information reporting methodology that Deloitte knew did not comport with GAAP to conceal the systematic defalcation of RTFC by CFC and the fact that the Electric Systems loans were not contributing to CFC's profitability.

d. Providing an Audit Report to the RTFC Financial Statements that Deloitte knew to be false to conceal the systematic defalcation of RTFC by CFC.

e. Providing an Audit Report to the CFC Financial Statements that Deloitte knew contain statements about the ICC loan that were materially false, materially misleading, and had material omissions.

f. Filing false tax returns for both CFC and RTFC.

223. Defendant Ernst's overt acts of accounting fraud supported the racketeering activities. Generally, Ernst discovered the systematic defalcation of RTFC by CFC which resulted in CFC correcting and conforming its Segment Information to GAAP. However, Ernst provided Audit Reports to the RTFC Financial Statements for fiscal years 2002, 2003 and 2004 that Ernst knew to be false and misleading. Ernst did not require disclosure in the CFC and RTFC Financial Statements for fiscal years 2002, 2003 and 2004 of the systematic defalcation of

RTFC by CFC or the underlying transactions supporting the systematic defalcation of RTFC by CFC. Further, Ernst improperly accepted the consolidation and/or combining of RTFC and CFC financial statements knowing that there was no requisite common ownership and which affirmatively assisted in concealing the systematic defalcation of RTFC by CFC. Additionally, Ernst filed false tax returns for CFC and RTFC.

LOSS OF LIVELIHOOD

224. In an internal CFC memo, dated August 18, 2004, **the CFC defendants** showed their ulterior motive in instigating the June 2004 Foreclosure (by acknowledging to Ernst that): “ICC is a viable business that can be operated in a manner to pay the debt service” but “**we [CFC] ... want to replace management**”.

225. In fact CFC instigated the June 2004 Foreclosure because principals at ICC as well as certain members of its management discovered CFC’s racketeering activities. CFC sought “to replace management” and discredit them in order to prevent management from bringing CFC’s racketeering activities to the attention of law enforcement.

226. 18 U.S.C. § 1513(e), as enacted by the Sarbanes-Oxley Act of 2002, § 1107, provides “whistleblowers” with the unprecedented protection of making retaliation a criminal act.

227. 18 U.S.C. § 1513(e) establishes broad Whistle Blower Protection (Federal Public Policy) from “**any action harmful**” including specifically “**interference with the lawful employment or livelihood of any person**”.

228. 18 U.S.C. § 1513(e) does not require a pending investigation; a reasonable belief that Jeff Prosser, Adrian Prosser, John Raynor, and/or other management loyal to Jeff Prosser

would communicate information to a law enforcement officer is sufficient to create liability under the statute.

229. Jeff Prosser, Adrian Prosser, John Raynor, and management loyal to Jeff Prosser are protected by the Federal Public Policy emanating from 18 U.S.C. § 1513(e).

230. With respect to the discharge of Jeff Prosser, Adrian Prosser, and John Raynor -

(i) Each Plaintiff had a relationship or expectancy as to their employment with, the ICC;

(ii) Each Plaintiff had a reasonable expectancy of economic gain from the relationship with the ICC;

(iii) Each Defendant, including RTFC, had engaged in conduct that was the proximate cause of the termination of each Plaintiffs relationship with the ICC;

(iv) Each Defendant, including RTFC, intended to cause the destruction of or harm to each Plaintiff's lawful employment or livelihood derived from the relationship to the ICC; and

(v) Each Defendant's conduct, including RTFC's conduct, was a proximate cause of the destruction of or harm of each Plaintiff's relationship to the ICC.

231. The June 2004 Foreclosure Action coupled with the defendants actions and course of conduct, which required joint venture in the foreclosure with Greenlight, accomplished CFC's end, the termination of Jeff Prosser, Adrian Prosser, John Raynor relationship with ICC and the interference with their lawful employment or livelihood derived from that relationship.

232. The termination of the Plaintiffs' relationship or expectancy from the ICC relationship as well as the termination of their lawful employment or livelihood derived from that relationship is a racketeering injury.

233. Additionally, as a member of RTFC and by reason of RTFC's membership interest in CFC, RTFC, CFC's management serving as RTFC's management, and CFC owed ICC and, as beneficiaries of that relationship, the Plaintiffs, a fiduciary duty.

234. The June 2004 Foreclosure was a breach of contract and a breach of RTFC, CFC's management serving as RTFC's management, and CFC's duty of Good Faith and Fair Dealing.

235. The breach of the Fiduciary duty of Good Faith and Fair Dealing was the proximate cause of Plaintiffs Jeff Prosser, Adrian Prosser, and John Raynor termination of their lawful employment or livelihood derived from that relationship with ICC

COUNT ONE
RICO: VIOLATION OF 18 U.S.C. § 1962(b)

236. Plaintiffs repeat, replead, and hereby incorporate each and every one of the foregoing allegations set forth in paragraphs 1-235, inclusive, as though fully set forth herein.

237. RTFC, a rural telephone cooperative with over 500 members as of May 31, 2007, is an Enterprise within the meaning of 18 U.S.C. § 1961(4).

238. RTFC is engaged in interstate commerce by making loans to rural telecommunications companies located in 40 or more states. The member-borrowers of RTFC are generally instrumentalities (common carriers) of interstate commerce.

239. Defendants CFC, NRECA, Petersen, List, Lilly, English, and Stratton have an interest in RTFC and exercise control over RTFC through a pattern of racketeering activity within the meaning of 18 U.S.C. § 1962(b) including, but not limited to, money laundering within the meaning of 18 U.S.C. § 11956; mail fraud within the meaning of 18 U.S.C. § 1341;

and wire fraud within the meaning of 18 U.S.C. § 1343. This control has existed by unlawful means since RTFC's formation in 1987 and continues through this day.

240. For the purpose of preventing Plaintiffs from interfering with their interest in RTFC (the Enterprise) and exercise control over RTFC (the Enterprise), Defendants CFC, NRECA, Petersen, List, Lilly, English, and Stratton have engaged, and continue to engage, in a pattern of retaliation against informants within the meaning of 18 U.S.C. § 1513(e), a pattern of extortionary acts against informants within the meaning of 18 U.S.C. § 1951(a), and have destroyed and altered evidence to achieve their ends within the meaning of 18 U.S.C. § 1512(c).

241. The Plaintiffs and each of them discovered money laundering scheme and Defendants CFC, Peterson, Lists, Lilly, NRECA and English fraudulent interest in and control of RTFC (the Enterprise) notwithstanding their mail fraud, wire fraud, and accounting fraud.

242. The Plaintiffs, whistleblowers, were subjected to racketeering acts including (i) retaliatory acts, (ii) extortionary acts, and (iii) the destruction and altering of evidence for the purpose of intending to quash and overpower the Plaintiffs and Plaintiffs did suffer harm to their business and/or property.

243. Defendants CFC, Peterson, Lists, Lilly, NRECA, English, and Stratton have acted in violation of 18 U.S.C. § 1962 (b) and are liable to the Plaintiffs by reason of said actions, as follows:

- (i) Plaintiff Dawn Prosser is entitled to recover treble damages for the loss of the ICC Enterprise Value resulting from the commission of numerous predicate acts with the intent of depriving her of ICC;

(ii) Plaintiff Jeff Prosser is entitled to recover treble damages incurred for his wrongful termination of his employment which is a racketeering injury – the objective of the commission of numerous predicate acts;

(iii) Plaintiff Adrian Prosser is entitled to recover treble damages incurred for his wrongful termination of his employment which is a racketeering injury – the objective of the commission of numerous predicate acts; and

(iv) Plaintiff John Raynor is entitled to recover treble damages for (i) the retaliatory grievance filed with the Nebraska Bar Association and (ii) his wrongful termination of his employment and his business as a consultant, board member and attorney of New ICC and Vitelco which is a racketeering injury, the proximate cause thereof was the predicate acts.

WHEREFORE, with respect to Count One, each of the Plaintiffs asks for:

- A. Judgment in accordance with 18 U.S.C. § 1964 (b) against Defendants CFC, Peterson, Lists, Lilly, NRECA, English, and Stratton in an amount equal to three times the amount of the damages sustained by each of the Plaintiffs as a result of Defendants' conduct;
- B. Such equitable relief pursuant to 18 U.S.C. § 1964 (a) that the Court deems just and proper; and
- C. Attorney's fees and costs according to proof.

COUNT TWO
RICO: VIOLATION OF 18 U.S.C. § 1962(c)

244. Plaintiffs repeat, replead, and hereby incorporate each and every one of the foregoing allegations set forth in paragraphs 1-243, inclusive, as though fully set forth herein.

244. Defendants Petersen, List, and Lilly were employed by RTFC (the Enterprise) and directly participated in the conduct of the affairs of RTFC (the Enterprise).

245. Defendant CFC was and is associated with RTFC (the Enterprise) and directly participated in the conduct of the affairs of RTFC (the Enterprise) through its employees Defendants Petersen, List, and Lilly (and others) and through domination and control of RTFC (the Enterprise).

246. Defendants NRECA, English, and Stratton were and are associated with RTFC (the Enterprise) and indirectly participated in the conduct of the affairs of RTFC (the Enterprise) through their participation in CFC.

247. Defendants CFC, Peterson, Lists, Lilly, NRECA, English, and Stratton participated RTFC (the Enterprise) through a pattern of racketeering activity that includes money laundering, mail fraud and wire fraud.

248. Through their participation in RTFC (the Enterprise), Defendants CFC, Peterson, Lists, Lilly, NRECA, English, and Stratton caused RTFC to commit numerous racketeering acts including (i) retaliatory acts, (ii) extortionary acts, and (iii) the destruction and altering of evidence for the purpose of intending to quash and overpower the Plaintiffs and Plaintiffs did suffer harm to their business and/or property (whistleblowers' racketeering injury).

249. Defendants CFC, Peterson, Lists, Lilly, NRECA, English, and Stratton have acted in violation of 18 U.S.C. § 1962 (c) and are liable to the Plaintiffs by reason of said actions, as follows:

- (i) Plaintiff Dawn Prosser is entitled to recover treble damages for the loss of the ICC Enterprise Value resulting from the commission of numerous predicate acts with the intent of depriving her of ICC;

(ii) Plaintiff Jeff Prosser is entitled to recover treble damages incurred for his wrongful termination of his employment which is a racketeering injury – the objective of the commission of numerous predicate acts;

(iii) Plaintiff Adrian Prosser is entitled to recover treble damages incurred for his wrongful termination of his employment which is a racketeering injury – the object of the commission of numerous predicate acts; and

(iv) Plaintiff John Raynor is entitled to recover treble damages for (i) the retaliatory grievance filed with the Nebraska Bar Association and (ii) his wrongful termination of his employment and his business as a consultant, board member and attorney of New ICC and Vitelco which is a racketeering injury, the proximate cause thereof was the predicate acts. (i) Plaintiff Jeff Prosser is entitled to recover for damages incurred for his wrongful termination of his employment which is a racketeering injury the legal cause thereof was the predicate acts.

WHEREFORE, with respect to Count One, each of the Plaintiffs asks for:

- A. Judgment in accordance with 18 U.S.C. § 1964 (c) against Defendants CFC, Peterson, Lists, Lilly, NRECA and English in an amount equal to three times the amount of the damages sustained by each of the Plaintiffs as a result of Defendants' conduct;
- B. Such equitable relief pursuant to 18 U.S.C. § 1964 (a) that the Court deems just and proper; and
- C. Attorney's fees and costs according to proof.

COUNT THREE
RICO: VIOLATION OF 18 U.S.C. § 1962(d)

250. Plaintiffs repeat and replead and hereby incorporate each and every one of the foregoing allegations set forth in paragraphs 1-249, inclusive, as though fully set forth herein.

251. Defendants Greenlight Capital, Inc., Greenlight Capital Qualified, L.P., Greenlight Capital, L.P., Greenlight Capital Offshore, LTD., Fulbright, Deloitte, and Ernst did conspire with Defendants CFC, Peterson, Lists, Lilly, NRECA, English, and Stratton to commit numerous racketeering acts including (i) money laundering, (ii) mail fraud, (iii) wire fraud, (iv) retaliatory acts, (v) extortionistic acts, and (vi) to avail Greenlight of the other Defendants destruction and altering of evidence for the purpose of intending to quash and overpower the Plaintiffs and Plaintiffs did suffer harm to their business and/or property (whistleblowers' racketeering injury).

252. Defendants Greenlight Capital, Inc., Greenlight Capital Qualified, L.P., Greenlight Capital, L.P., Greenlight Capital Offshore, LTD., Fulbright, Deloitte, Ernst, CFC, Peterson, Lists, Lilly, NRECA, English, and Stratton have acted in violation of 18 U.S.C. § 1962 (d) and are liable to the Plaintiffs by reason of said actions, as follows:

(i) Plaintiff Dawn Prosser is entitled to recover treble damages for the loss of the ICC Enterprise Value resulting from the commission of numerous predicate acts with the intent of depriving her of ICC;

(ii) Plaintiff Jeff Prosser is entitled to recover treble damages incurred for his wrongful termination of his employment which is a racketeering injury – the objective of the commission of numerous predicate acts;

(iii) Plaintiff Adrian Prosser is entitled to recover treble damages incurred for his wrongful termination of his employment which is a racketeering injury – the object of the commission of numerous predicate acts; and

(iv) Plaintiff John Raynor is entitled to recover treble damages for (x) the retaliatory grievance filed with the Nebraska Bar Association and (y) his wrongful termination of his employment and his business as a consultant, board member and attorney of New ICC and Vitelco which is a racketeering injury, the proximate cause thereof was the predicate acts.

WHEREFORE, with respect to Count One, each of the Plaintiffs asks for:

- A. Judgment in accordance with 18 U.S.C. § 1964 (c) against Defendants Greenlight Capital, Inc., Greenlight Capital Qualified, L.P., Greenlight Capital, L.P., Greenlight Capital Offshore, LTD., Fulbright, Deloitte, Ernst, CFC, Peterson, Lists, Lilly, NRECA, English, and Stratton in an amount equal to three times the amount of the damages sustained by each of the Plaintiffs as a result of Defendants' conduct;
- B. Such equitable relief pursuant to 18 U.S.C. § 1964 (a) that the Court deems just and proper; and
- C. Attorney's fees and costs according to proof.

COUNT FOUR

CICO: VIOLATION OF 14 V.I.C. § 605 (a)

253. Plaintiffs repeat, replead and hereby incorporate each and every one of the foregoing allegations set forth in paragraphs 1-252, inclusive, as though fully set forth herein.

254. Defendants CFC, Peterson, Lists, Lilly, NRECA, English, and Stratton intentionally sought to deprive Plaintiffs Dawn Prosser, Jeff Prosser, Adrian Prosser, and John Raynor of their lawful employment with the ICC entities and/or lawful property by their culpable conduct to suppress knowledge of the systematic defalcation of RTFC by CFC and to deliver

retribution for raising the systematic defalcation of RTFC by CFC, a patently illegal course of conduct.

255. Defendants CFC, Peterson, Lists, Lilly, NRECA, English, and Stratton have violated 14 V.I.C. § 605 (a)—to wit, Defendants Peterson, Lists, and Lilly were employed by RTFC (the Enterprise); Defendant CFC was directly associated with RTFC (the Enterprise); and Defendants NRECA, English, and Stratton were indirectly associate with the RTFC (the Enterprise).

256. Defendants CFC, Peterson, Lists, Lilly, NRECA, English, and Stratton have acted in violation of 14 V.I.C. § 605 (a) and are liable to the Plaintiffs by reason of said actions, as follows:

(i) Plaintiff Dawn Prosser is entitled to recover treble damages for the loss of the ICC Enterprise Value resulting from the commission of numerous predicate acts with the intent of depriving her of ICC;

(ii) Plaintiff Jeff Prosser is entitled to recover treble damages incurred for his wrongful termination of his employment which is a racketeering injury – the objective of the commission of numerous predicate acts;

(iii) Plaintiff Adrian Prosser is entitled to recover treble damages incurred for his wrongful termination of his employment which is a racketeering injury – the objective of the commission of numerous predicate acts; and

(iv) Plaintiff John Raynor is entitled to recover treble damages for (i) the retaliatory grievance filed with the Nebraska Bar Association and (ii) his wrongful termination of his employment and his business as a consultant, board member and

attorney of New ICC and Vitelco which is a racketeering injury, the proximate cause thereof was the predicate acts.

WHEREFORE, with respect to Count Four, each Plaintiff asks for:

- A. Judgment in accordance with 14 V.I.C. § 607 (c) against Defendants CFC, Peterson, Lists, Lilly, NRECA and English in an amount equal to three times the amount of the damages sustained by the Plaintiffs as a result of Defendants' conduct;
- B. Such equitable relief pursuant to 14 V.I.C. § 607 that the Court deems just and proper; and
- C. Attorney's fees and costs according to proof.

**COUNT FIVE
CICO: VIOLATION OF 14 V.I.C. § 605 (b)**

257. Plaintiffs repeat, replead, and hereby incorporate each and every one of the foregoing allegations set forth in paragraphs 1-256, inclusive, as though fully set forth herein.

258. Defendants CFC, Peterson, Lists, Lilly, NRECA, English, and Stratton violated 14 V.I.C. § 605 (b)—to wit, through a pattern of criminal activity, the foregoing Defendants maintain, directly or indirectly, control of RTFC (the Enterprise) for purposes of the systematic defalcation of RTFC by CFC, an unlawful activity.

259. Defendants CFC, Peterson, Lists, Lilly, NRECA, English, and Stratton have acted in violation of 14 V.I.C. § 605 (b) and are liable to each of the Plaintiffs by reason of said actions.

260. Each Plaintiff did suffer injury to their property and/or gainful employment by reason of the Defendants CFC, Peterson, Lists, Lilly, NRECA, English, and Stratton violations of 14 V.I.C. § 605 (b).

WHEREFORE, with respect to Count Five, each Plaintiff asks for:

- A. Judgment in accordance with 14 V.I.C. § 607 (c) against Defendants CFC, Peterson, Lists, Lilly, NRECA, English, and Stratton in an amount equal to three times the amount of the damages sustained by the Plaintiffs as a result of Defendants' conduct;
- B. Such equitable relief pursuant to 14 V.I.C. § 607 that the Court deems just and proper; and
- C. Attorney's fees and costs according to proof.

COUNT SIX
CICO: VIOLATION OF 14 V.I.C. § 605 (d)

261. Plaintiffs repeat, replead, and hereby incorporate each and every one of the foregoing allegations set forth in paragraphs 1-260, inclusive, as though fully set forth herein.

262. Defendants Greenlight Capital, Inc., Greenlight Capital Qualified, L.P., Greenlight Capital, L.P., Greenlight Capital Offshore, LTD., Fulbright, Deloitte, Ernst, CFC, Peterson, Lists, Lilly, NRECA, English, and Stratton violated 14 V.I.C. § 605 (d)—to wit, the Defendants Greenlight Capital, Inc., Greenlight Capital Qualified, L.P., Greenlight Capital, L.P., Greenlight Capital Offshore, LTD., Fulbright, Deloitte, and Ernst did conspire with Defendants CFC, Peterson, Lists, Lilly, NRECA, English, and Stratton to violate, either directly or indirectly, the provisions of 14 V.I.C. § 605, subsections (a) and (b).

263. Defendants CFC, Peterson, Lists, Lilly, NRECA, English, and Stratton have acted in violation of 14 V.I.C. § 605 (d) and are liable to each of the Plaintiffs by reason of said actions.

264. Defendants Greenlight Capital, Inc.; Greenlight Capital Qualified, L.P.; Greenlight Capital, L.P.; Greenlight Capital Offshore, LTD. Fulbright, Deloitte, and Ernst have acted in violation of 14 V.I.C. § 605 (d) and are liable to each of the Plaintiffs by reason of said actions.

265. Each Plaintiff did suffer injury to their property and/or gainful employment by reason of said violations of 14 V.I.C. § 605 (d).

WHEREFORE, with respect to Count Six, each Plaintiff asks for:

- A. Judgment in accordance with 14 V.I.C. § 607 (c) against each of the Defendants Greenlight Capital, Inc., Greenlight Capital Qualified, L.P., Greenlight Capital, L.P., Greenlight Capital Offshore, LTD., Fulbright, Deloitte, Ernst, CFC, Peterson, Lists, Lilly, NRECA and English in an amount equal to three times the amount of the damages sustained by each Plaintiff as a result of Defendants' conduct;
- B. Such equitable relief pursuant to 14 V.I.C. § 607 that the Court deems just and proper; and
- C. Attorney's fees and costs according to proof.

COUNT SEVEN
TORT: VIOLATION OF RESTATEMENT (Second) OF TORTS § 766B
(Tortious Interference with a Contract or Prospective Contract)

266. Plaintiffs repeat and replead and hereby incorporate each and every one of the foregoing allegations set forth in paragraphs 1-265, inclusive, as though fully set forth herein.

267. Each of the Defendants, including RTFC, tortious conduct did, and continue to, violate Restatement (Second) of Torts § 766B¹⁰, *Interference With Contract Or Prospective Contractual Relation*-to wit.

268. Each of the Defendants, including RTFC, did intentionally transgress each Plaintiff's legal entitlements as set forth in Restatement (Second) of Torts § 766B, *Interference With Contract Or Prospective Contractual Relation*.

269. By reason thereof, each Defendant shall be jointly and severally liable to each Plaintiff for damages.

WHEREFORE, with respect to Count Seven, each Plaintiff asks for:

1. Compensatory damages sustained by each Plaintiff as a result of Defendants' conduct;
2. Punitive damages to punish each Defendant for outrageous conduct and to deter them and others like them from similar conduct in the future;
3. Such equitable relief as the Court deems just and proper; and
4. Attorney's fees and costs according to proof.

COUNT EIGHT
TORT: VIOLATION OF RESTATEMENT (Second) OF TORTS § 871
(Intentional Harm to a Property Interest)

270. Plaintiffs repeat and replead and hereby incorporate each and every one of the foregoing allegations set forth in paragraphs 1-269, inclusive, as though fully set forth herein.

¹⁰ One who intentionally and improperly interferes with another's prospective contractual relation (except a contract to marry) is subject to liability to the other for the pecuniary harm resulting from loss of the benefits of the relation, whether the interference consists of

- (a) inducing or otherwise causing a third person not to enter into or continue the prospective relation or
- (b) preventing the other from acquiring or continuing the prospective relation. REST 2d §766B.

271. Each of the Defendants, including RTFC, did intentionally transgress each Plaintiff's legal entitlements as set forth in Restatement (Second) of Torts § 871, *Intentional Harm To A Property Interest*. A right to continue employment constitutes a property right.

272. By reason thereof, each Defendant shall be jointly and severally liable to each Plaintiff for damages.

WHEREFORE, with respect to Count Eight, each Plaintiff asks for:

1. Compensatory damages sustained by each Plaintiff as a result of Defendants' conduct;
2. Punitive damages to punish each Defendant for outrageous conduct and to deter them and others like them from similar conduct in the future;
3. Such equitable relief as the Court deems just and proper; and
4. Attorney's fees and costs according to proof.

COUNT NINE
TORT: VIOLATION OF RESTATEMENT (Second) OF TORTS § 46
(Tortious Conduct Causing Severe Emotional Distress)

273. Plaintiffs repeat and replead and hereby incorporate each and every one of the foregoing allegations set forth in paragraphs 1-272, inclusive, as though fully set forth herein.

274. Each of the Defendants, including RTFC, did intentionally transgress each Plaintiff's legal entitlements as set forth in Restatement (Second) of Torts § 46, *Outrageous Conduct Causing Severe Emotional Distress*.

275. By reason thereof, each Defendant shall be jointly and severally liable to each Plaintiff for damages.

WHEREFORE, with respect to Count Nine, each Plaintiff asks for:

1. Compensatory damages sustained by each Plaintiff as a result of Defendants' conduct;

2. Punitive damages to punish each Defendant for outrageous conduct and to deter them and others like them from similar conduct in the future;
3. Such equitable relief as the Court deems just and proper; and
4. Attorney's fees and costs according to proof.

COUNT TEN
TORT: VIOLATION OF RESTATEMENT (Second) OF TORTS § 874A

276. Plaintiffs repeat and replead and hereby incorporate each and every one of the foregoing allegations set forth in paragraphs 1-275, inclusive, as though fully set forth herein.

277. Each of the Defendants, including RTFC, did intentionally transgress each Plaintiff's legal entitlements as set forth in Restatement (Second) of Torts § 874A, *Tort Liability for Violation of Legislative Provision*.

278. By reason thereof, each Defendant shall be jointly and severally liable to each Plaintiff for damages.

WHEREFORE, with respect to Count Nine, each Plaintiff asks for:

1. Compensatory damages sustained by each Plaintiff as a result of Defendants' conduct;
2. Punitive damages to punish each Defendant for outrageous conduct and to deter them and others like them from similar conduct in the future;
3. Such equitable relief as the Court deems just and proper; and
4. Attorney's fees and costs according to proof.

COUNT ELEVEN
VIOLATION OF FIDUCIARY DUTY

279. Plaintiffs repeat and replead and hereby incorporate each and every one of the foregoing allegations set forth in paragraphs 1-278, inclusive, as though fully set forth herein.

280. Each of the Defendants, including RTFC, did intentionally transgress each Plaintiff's legal entitlements as set forth in Restatement (Second) of Torts, § 874, Violation of Fiduciary Duty, by using RTFC's status as ICC's primary creditor to quash a members' legitimate inquiries into the allocation of patronage income by instigating the June 2004 Foreclosure action to remove Plaintiffs from their livelihood.

281. By reason thereof, each Defendant shall be jointly and severally liable to each Plaintiff for damages.

WHEREFORE, with respect to Count Nine, each Plaintiff asks for:

1. Compensatory damages sustained by each Plaintiff as a result of Defendants' conduct;
2. Punitive damages to punish each Defendant for outrageous conduct and to deter them and others like them from similar conduct in the future;
3. Such equitable relief as the Court deems just and proper; and
4. Attorney's fees and costs according to proof.

**COUNT TWELVE
COMMON LAW CIVIL CONSPIRACY**

282. Plaintiffs repeat and replead and hereby incorporate each and every one of the foregoing allegations set forth in paragraphs 1-281, inclusive, as though fully set forth herein.

283. Each of the Defendants, including RTFC, did intentionally engage in a common law conspiracy for an unlawful objective and in furtherance thereof did commit numerous torts and did violated numerous statutes of the Virgin Islands, the U.S. Government, the State of South Dakota, and the District of Columbia.

284. By reason thereof, each Defendant shall be jointly and severally liable to each Plaintiff for compensatory and punitive damages.

WHEREFORE, with respect to Count One, each Plaintiff asks for:

1. Compensatory damages sustained by each Plaintiff as a result of Defendants' conduct;
2. Punitive damages to punish each Defendant for outrageous conduct and to deter them and others like them from similar conduct in the future;
3. Such equitable relief as the Court deems just and proper; and
4. Attorney's fees and costs according to proof.

PLAINTIFFS REQUEST A JURY TRIAL.

Dated: February 9, 2009.

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