UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 9:24-cv-80722-DPG

DANIEL J. STERMER, as Receiver for
NATIONAL SENIOR INSURANCE, INC.
D/B/A SEEMAN HOLTZ,
CENTURION ISG SERVICES, LLC
EMERALD ASSETS 2018, LLC,
INTEGRITY ASSETS 2016, LLC,
INTEGRITY ASSETS, LLC,
PARA LONGEVITY 2014-5, LLC,
PARA LONGEVITY 2015-3, LLC,
PARA LONGEVITY 2015-5, LLC,
PARA LONGEVITY 2016-3, LLC,
PARA LONGEVITY 2016-5, LLC,
PARA LONGEVITY 2018-3, LLC,
PARA LONGEVITY 2018-5, LLC,
PARA LONGEVITY 2019-3, LLC,
PARA LONGEVITY 2019-5, LLC,
PARA LONGEVITY VI, LLC,
SH GLOBAL, LLC N/K/A PARA LONGEVITY V, LLC,

Plaintiffs,

v.

WELLS FARGO BANK, N.A.

Defendant.
_____/

STATE OF FLORIDA
OFFICE OF FINANCIAL REGULATION,

Plaintiff,

v.

NATIONAL SENIOR INSURANCE, INC.
D/B/A SEEMAN HOLTZ,
MARSHAL SEEMAN,
CENTURION INSURANCE SERVICES GROUP, LLC,
BRIAN J. SCHWARTZ,
EMERALD ASSETS 2018, LLC,

INTEGRITY ASSETS 2016, LLC,
INTEGRITY ASSETS, LLC,
PARA LONGEVITY 2014-5, LLC,
PARA LONGEVITY 2015-3, LLC,
PARA LONGEVITY 2015-5, LLC,
PARA LONGEVITY 2016-3, LLC,
PARA LONGEVITY 2016-5, LLC,
PARA LONGEVITY 2018-3, LLC,
PARA LONGEVITY 2018-5, LLC,
PARA LONGEVITY 2019-3, LLC,
PARA LONGEVITY 2019-5, LLC,
PARA LONGEVITY 2019-6, LLC,
PARA LONGEVITY VI, LLC,
SH GLOBAL, LLC N/K/A PARA LONGEVITY V, LLC,
ALTRAI GLOBAL, LLC A/K/A ALTRAI HOLDINGS, LLC,
VALENTINO GLOBAL HOLDINGS, LLC,
AMERITONIAN ENTERPRISES, LLC,
SEEMAN-HOLTZ CONSULTING CORP.,
CENTURION ISG Holdings, LLC,
CENTURION ISG Holdings II, LLC,
CENTURION ISG (Europe) Limited,
CENTURION ISG SERVICES, LLC,
CENTURION ISG FINANCE GROUP, LLC,
CENTURION FUNDING SPVI LLC,
CENTURION FUNDING SPV II LLC,
GRACE HOLDINGS FINANCIAL, LLC,
PRIME SHORT TERM CREDIT INC.,

Defendants.

THE ESTATE OF ERIC CHARLES HOLTZ,
SEEMAN HOLTZ PROPERTY AND CASUALTY, LLC
F/K/A SEEMAN HOLTZ PROPERTY AND CASUALTY, INC.,
SHPC HOLDINGS I, LLC,

Relief Defendants.
_____/

DEFENDANT WELLS FARGO BANK, N.A.'S MOTION TO STAY DISCOVERY PENDING DISPOSITION OF ITS DISPOSITIVE MOTION TO DISMISS AND ACCOMPANYING MEMORANDUM OF LAW

Wells Fargo Bank, N.A. ("Wells Fargo"), pursuant to S.D. Fla. Local Rule 7.1 and Federal Rule of Civil Procedure 26(c), respectfully moves the Court for entry of an order staying discovery in this matter until the Court has fully adjudicated Wells Fargo's Motion to Dismiss ("Motion to Dismiss"), [DE 30], the Complaint filed by Plaintiff Daniel J. Stermer (the "Complaint"), [DE 1].

INTRODUCTION

A stay of discovery is appropriate here because, as more fully detailed in the Motion to Dismiss, the Complaint filed by Plaintiff Daniel J. Stermer (the "Receiver"), as Receiver for National Senior Insurance, Inc. d/b/a Seeman Holtz ("NSI"), Centurion ISG Services, LLC, Emerald Assets 2018, LLC, Integrity Assets 2016, LLC, Integrity Assets, LLC, Para Longevity 2014-5, LLC, Para Longevity 2015-3, LLC, Para Longevity 2015-5, LLC, Para Longevity 2016-3, LLC, Para Longevity 2016-5, LLC, Para Longevity 2018-3, LLC, Para Longevity 2018-5, LLC, Para Longevity 2019-3, LLC, Para Longevity 2019-5, LLC, Para Longevity VI, LLC, SH Global, LLC n/k/a Para Longevity V, LLC (the "Non-NSI Entities") (NSI and the Non-NSI Entities referred to collectively as the "Receivership Entities"), is fatally flawed.

The Receiver seeks to hold Wells Fargo responsible for the acts of purported Ponzi schemers Marshall Seeman ("Seeman"), Eric Holtz ("Holtz"), and Brian Schwartz (Seeman, Holtz, and Schwartz collectively referred to as the "Perpetrators"). Wells Fargo moved to dismiss the Receiver's claims because he lacks standing and the Complaint fails to state a claim upon which relief can be granted. [DE 30]. The Complaint establishes no material connection between Wells Fargo and the Ponzi scheme. Wells Fargo simply provided routine banking services to the Receivership Entities and is not responsible for the alleged losses.

When a motion to dismiss is pending, Eleventh Circuit law compels a stay of discovery to guard against the "significant costs" of unwarranted discovery requests. *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1367 (11th Cir. 1997). Accordingly, discovery against Wells Fargo should be stayed pending a decision on whether the Receiver can state a viable claim against Wells Fargo.

BACKGROUND

On May 9, 2024, the Receiver filed his Complaint alleging four counts against Wells Fargo: (1) aiding and abetting fraud; (2) aiding and abetting breach of fiduciary duty; (3) negligence; and (4) unjust enrichment. [DE 1].

The Receiver alleges that the investors are victims of a fraudulent investment Ponzi scheme operated by the Perpetrators whereby the Perpetrators solicited investors, non-parties here, to invest in life insurance policies. Compl. ¶¶ 49, 50, 51, 68, 89, 94; *see also* Compl. ¶¶ 11, 12. In exchange for their investment, the Receiver alleges that the investors were promised a high rate of return. *See* Compl. ¶ 62. The Receiver contends the Perpetrators used investor funds to operate a Ponzi scheme instead of fulfilling their assurances to the investors. Compl. ¶ 68. The Receiver alleges that Wells Fargo benefitted in no way other than receipt of payment for routine services and interest on account funds but nonetheless seeks to hold Wells Fargo responsible for losses that arise entirely from the Perpetrators' dealings with the investors in the Ponzi scheme.

The Complaint fails to state a claim against Wells Fargo. The Receiver does not represent the alleged victims here, the investors, and thus has no standing to bring claims against Wells Fargo on behalf of virtually all Receivership Entities. Further, the Receiver seeks to link Wells Fargo to the Ponzi Scheme based solely on Wells Fargo's banking relationship with fifteen of the Receivership Entities. But the Receiver alleges no facts establishing that Wells Fargo or its

employees participated in, or even knew about, the purported scheme. In fact, the Receiver affirmatively alleges that the scheme went undetected by Wells Fargo. The Receiver's own admissions foreclose his aiding and abetting claims because he cannot demonstrate that Wells Fargo had knowledge of the scheme.

The Receiver's negligence and unjust enrichment claims further fail because of the contractual banking relationship between the Receivership Entities and Wells Fargo. The negligence claim is barred under the independent tort doctrine and the equitable unjust enrichment claim fails because there is an adequate contractual remedy. The unjust enrichment claim also fails because any fees that Wells Fargo received were contractually bargained-for account fees, and they are not considered direct benefits conferred on Wells Fargo. Thus, the Complaint clearly fails to state a claim against Wells Fargo and should be dismissed as a matter of law.

On July 29, 2024, Wells Fargo filed its Motion to Dismiss the Receiver's Complaint. [DE 30]. As set forth above, Wells Fargo seeks dismissal on multiple bases. If the Court were to grant its Motion to Dismiss on the basis that the Receiver lacks standing, it would result in a dramatic narrowing of the scope of the case and issues. If the Court were to grant the Motion to Dismiss on the basis that the Receiver has failed to state a viable legal claim for relief, it would end the case entirely.

Accordingly, to avoid unnecessary burden on the parties and the Court, and consistent with Eleventh Circuit law, Wells Fargo respectfully requests that discovery in this action be stayed until such time as Wells Fargo's Motion to Dismiss is fully adjudicated.

MEMORANDUM OF LAW

I. Legal Standard

The Eleventh Circuit has drawn a clear rule that "[f]acial challenges to the legal sufficiency of a claim or defense, such as a motion to dismiss based on failure to state a claim for relief, should . . . be resolved before discovery begins." *Chudusama*, 123 F.3d at 1367. This type of dispute "always presents a purely legal question; there are no issues of fact because the allegations contained in the pleading are presumed to be true. Therefore, neither the parties nor the court have any need for discovery before the court rules on the motion." *Id.* (internal citation omitted). Moreover, "any legally unsupported claim that would unduly enlarge the scope of discovery should be eliminated before the discovery stage, if possible." *Id.* at 1368; *see also Moore v. Potter*, 141 F. App'x 803, 807-08 (11th Cir. 2005) (affirming district court's order staying discovery pending ruling on defendants' motion to dismiss); *Solar Star Sys., LLC v. Bellsouth Telecomm., Inc.*, 2011 U.S. Dist. LEXIS 38150, at *2 (S.D. Fla. Mar. 30, 2011) (granting motion to stay discovery pending ruling on motion to dismiss and noting that "[p]otentially dispositive motions filed prior to discovery weigh heavily in favor of issuing a stay"); *Carcamo v. Miami- Dade County*, 2003 U.S. Dist. LEXIS 27130, at *2 (S.D. Fla. Aug. 1, 2003) (granting motion to stay discovery during pendency of motion to dismiss and explaining that discovery is not a device to enable a plaintiff to make a case when his complaint has failed to state a claim); *Isaiah v. JPMorgan Chase Bank, N.A.*, 1:16-cv-21771-JEM, Dkt. 17 (S.D. Fla., complaint filed May 18, 2016) (granting motion to stay discovery during pendency of motion to dismiss).

In *Staup v. Wachovia Bank, N.A.*, the court observed that "[t]he Eleventh Circuit has held that the District Court has the responsibility to manage the discovery process in a manner that avoids abuse of the process and prejudice to the parties." 2008 U.S. Dist. LEXIS 31397, at *1

(S.D. Fla. Apr. 16, 2008). The court held that because discovery was not necessary to determine the legal sufficiency of the plaintiff's claim, and discovery would place an undue burden on the defendant, the defendant would not be required to comply with the initial disclosure requirements and discovery would not commence until after the court ruled on the motion to dismiss. *Id.*; *see also Koger v. Cir. County Ct. ex rel. Broward County Fla.*, 2007 U.S. Dist. LEXIS 62542, at *3 (S.D. Fla. Aug. 24, 2007) (finding discovery should remain stayed until the court ruled following the filing of an amended complaint); *Lawrence v. Governor of Georgia*, 721 F. App'x 862, 864–65 (11th Cir. 2018) (affirming stay of discovery and pretrial deadlines during pendency of motion to dismiss).

In evaluating whether a moving party has met its burden, a court "must balance the harm produced by a delay in discovery against the possibility that the [dispositive] motion will be granted and *entirely* eliminate the need for such discovery." *Bocciolone v. Solowsky*, 2008 U.S. Dist. LEXIS 59170, at *6 (S.D. Fla. July 24, 2008) (quoting *McCabe v. Foley*, 233 F.R.D. 683, 685 (M.D. Fla. 2006)). When making that determination, a court may "take a preliminary peek at the merits of the [dispositive motion] to see if it appears to be clearly meritorious and truly case dispositive." *Feldman v. Flood,* 176 F.R.D. 651, 652–53 (M.D. Fla. 1997); *see also Glynn v. Basil Street Partners, LLC*, 2010 U.S. Dist. LEXIS 68646, at *2 (M.D. Fla. June 16, 2010) (staying discovery where court took preliminary peek at dispositive motion to determine whether it was "clearly meritorious and truly case dispositive"). A preliminary peek here makes it clear that a stay is appropriate.

II. Wells Fargo Is Entitled to a Stay to Avoid Unnecessary and Costly Discovery.

a. A Preliminary Peek at the Merits of Wells Fargo's Motion to Dismiss Warrants a Stay of Discovery.

If granted, Wells Fargo's Motion to Dismiss will dispose of the case entirely for the Receiver's failure to state a claim. As set forth more fully in Wells Fargo's Motion to Dismiss, the Receiver alleges no facts sufficient to establish the claims he pleads.

Fist, the Non-NSI Entities do not have standing to bring common law tort claims against Wells Fargo. *See Isaiah v. JPMorgan Chase Bank, N.A.*, 960 F.3d 1296, 1306 (11th Cir. 2020). The Perpetrators controlled the Non-NSI Entities, which were sham entities created solely to perpetrate the Ponzi scheme and conducted no legitimate business activities. Compl. ¶¶ 11, 12, 36, 51, 89, 91, 199; *see also* Compl. ¶¶ 49, 50. A receiver does not have standing to bring common law tort claims on behalf of receivership entities if it is alleged that the entities were "wholly dominated by persons engaged in wrongdoing" and the entities did not engage in any legitimate activities. *Wiand v. ATC Brokers Ltd.*, 96 F.4th 1303, 1311 (11th Cir. 2024). As such, the alleged wrongdoings of the Perpetrators cannot be separated from the Non-NSI Entities, barring the Receiver from bringing any tort claims against Wells Fargo based on such wrongdoings.

Second, the Receiver alleges no facts to establish Wells Fargo or any of its employees operated, had actual knowledge of, or participated in the purported scheme, dooming both aiding and abetting claims. The Receiver conclusorily asserts that Wells Fargo "knew or should have known" of the purported scheme based on alleged atypical transactions in the Receivership Entities' accounts, and Wells Fargo's duties under banking and anti-money laundering statutes and regulations. But these bald assertions that Wells Fargo *knew or should have known* of the Perpetrators' Ponzi scheme do not create a plausible inference that Wells Fargo had actual knowledge of the Perpetrators' alleged wrongdoing. *Perlman v. Wells Fargo Bank, N.A.*, 559 F.

App'x 988, 993 (11th Cir. 2014). The Eleventh Circuit and this District have rejected these "knew or should have known" theories of aiding and abetting liability, and Florida law does not require banking institutions to investigate its customers' transactions. *Lawrence v. Bank of Am., N.A.*, 455 F. App'x 904, 907 (11th Cir. 2012); *Peng v. Mastroinni*, 2021 U.S. Dist. LEXIS 86220, at *3 (S.D. Fla. May 3, 2021) ("The conclusory statement '[t]he Regional Center and the Developer, with knowledge of Mastroianni and the General Partner's breaches of fiduciary duty, aided and abetted, provided substantial assistance, and encouraged those breaches of duty'… does not present any facts from which a claim for aiding and abetting can be plausibly supported."); *Ajwani v. Carnival Corp.*, 2024 U.S. Dist. LEXIS 51257, at *7 (S.D. Fla. Mar. 22, 2024) (conclusory allegations without any specific detail about *how* defendant knew or should have known are insufficient to plausibly allege actual or even constructive notice).

The Receiver's aiding and abetting fraud claim further fails as there are no allegations sufficient to plead the underlying fraud. *See Isaiah*, 2017 U.S. Dist. LEXIS 190051, at *7 (finding that "the Receiver did not adequately plead actual knowledge of *any underlying violation*. . . . Under Florida law, aiding and abetting claims must sufficiently establish-or allow the fair inference-that the defendant had actual knowledge of the *underlying tort*.") (emphasis added). The Complaint is devoid of any specificity required for a fraud claim.

Third, the Receiver's negligence and unjust enrichment claims fail because of the existence of contractual banking relationships and express contracts between Wells Fargo and the Receivership Entities. As account holders, the Receivership Entities have a contractual relationship with Wells Fargo as a matter of Florida law. *Pastor v. Bank of America, N.A.*, 664 F. Supp. 3d 1365, 1367 (S.D. Fla. Mar. 27, 2023). The negligence claim is premised on the Receiver's allegations that Wells Fargo owed a duty to the Receivership Entities to maintain and

manage their accounts, a duty which Wells Fargo then purportedly breached by failing to adequately do. *Id.* ¶¶ 246, 248; *see also id.* ¶ 9. And the unjust enrichment claim is based on Wells Fargo allegedly retaining "interest, transfer fees, service fees, transaction fees and online banking fees" in exchange for the "banking services" it provided the account holders. Compl. ¶¶ 251, 252. These are nothing more than restatements of the parties' contractual obligations under the account agreements. *See Pastor*, 664 F. Supp. at 1367; *Rife v. Newell Brands, Inc.*, 632 F. Supp. 3d 1276, 1316 (S.D. Fla. 2022) (a party may not maintain an action for unjust enrichment if the damages sought are covered by an express contract).

Finally, the Receiver's reliance on the equitable theory of unjust enrichment to pursue disgorgement of the account services fees Wells Fargo collected from the Receivership Entities in exchange for providing routine banking services is untenable. The Receiver does not allege that the Receivership Entities conferred any direct benefit on Wells Fargo required for an unjust enrichment claim. *See Hakim-Daccach v. Knauf Int'l GmbH*, 2017 U.S. Dist. LEXIS 193058, at *14 (S.D. Fla Nov. 21, 2017) (noting that earning fees or interest on an account is "not a *direct* benefit as required under Florida law"). Wells Fargo would not be unjustly enriched by retaining the bargained-for fees between itself and the Receivership Entities. The Receiver thus does not allege facts to plead an unjust enrichment claim upon which relief can be granted.

b. Neither the Parties Nor the Court Have Any Need for Discovery at This Juncture, So a Stay of Discovery Is Appropriate.

Wells Fargo's Motion to Dismiss implicates no factual issues; therefore, neither the parties nor the Court have any need for discovery at this time. *Chudasama*, 123 F.3d at 1367. Moreover, responding to the anticipated discovery will be unduly burdensome and subject Wells Fargo to "significant costs" that it might not incur if its Motion to Dismiss is granted or if the scope of the case is substantially narrowed. *Id.* Instead, the facial challenges to the Receiver's standing and

the legal sufficiency of the Receiver's claim should be resolved before discovery begins. *Id.* at 1367–68. A stay of discovery thus will not prejudice the Receiver, as the Receiver should be required to overcome the pending threshold challenge before unlocking the doors of discovery.

c. A Stay of Discovery Is Warranted for Judicial Efficiency.

Staying discovery here will "preserve resources for all parties, including the Court." *Chevaldina v. Katz*, 2017 U.S. Dist. LEXIS 137752, at *9 (S.D. Fla. Aug. 28, 2017). "Allowing a case to proceed through the pretrial processes with an invalid claim that increases the costs of the case does nothing but waste the resources of the litigants in the action before the court, delay resolution of disputes between other litigants, squander scarce judicial resources, and damage the integrity and the public's perception of the federal judicial system." *Id.*

Courts in this district "routinely exercise the power to stay a proceeding where a stay would promote judicial economy and efficiency." *Fondo De Proteccion Social De Los Depositos Bancarios v. Diaz Reus & Targ, LLP*, 2016 U.S. Dist. LEXIS 195324, at *2 (S.D. Fla. Dec. 26, 2016); *accord Theodore D'Apuzzo, P.A. v. United States,* 2017 U.S. Dist. LEXIS 173426, at *4 (S.D. Fla. Apr. 11, 2017) (granting stay of discovery where defendant "would suffer prejudice and undue burden should discovery proceed pending the Court's decision on the motion to dismiss").

Here, as detailed in the Motion to Dismiss, the Complaint suffers from multiple procedural and substantive deficiencies, any one of which standing alone is sufficient to support dismissal. Under these circumstances, a stay of discovery is appropriate.

CONCLUSION

WHEREFORE, based on the foregoing, Wells Fargo respectfully requests entry of an order staying all discovery in this matter until such time as Wells Fargo's Motion to Dismiss is fully adjudicated and a grant of such other and further relief as this Court deems just and proper.

Dated: July 29, 2024

Respectfully submitted,

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LOCAL RULE 7.1(3) CERTIFICATION

Pursuant to Local Rule 7.1(3), counsel for Wells Fargo certifies that they conferred with counsel for the Receiver in a good faith effort to resolve the issues raised in the motion. The Receiver does not consent to the relief requested in this motion.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 29, 2024, a copy of the foregoing was filed via the ECF system and therefore furnished by E-Mail to:

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