

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 24-CV-80722-GAYLES/GOODMAN

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,

Plaintiff,

v.

WELLS FARGO BANK, N.A.,

Defendant.

**RECEIVER'S RESPONSE TO DEFENDANT WELLS FARGO'S
MOTION TO STAY DISCOVERY PENDING DISPOSITION OF ITS
MOTION TO DISMISS (ECF NO. 31)**

Daniel J. Stermer, in his capacity as Receiver for the Plaintiffs (the “Receiver”), files this Response (“Response”) in opposition to Defendant, Wells Fargo Bank, N.A.’s (“Wells Fargo”) Motion to Stay Discovery Pending Disposition of its Dispositive Motion to Dismiss and Accompanying Memorandum of Law (“Motion”):

I. INTRODUCTION

The Court has directed that:

Discovery. The parties may stipulate to extend the time to answer interrogatories, produce documents, and answer requests for admissions. The parties shall not file with the Court notices or motions memorializing any such stipulation unless the stipulation interferes with the deadlines set forth above. The Court must approve all stipulations that would interfere with the schedule deadlines. See Fed. R. Civ. P. 29.

ECF No. 33 at 3.

As such, the Receiver respectfully submits that the Parties can, among themselves, consistent with the Court’s directive quoted above, negotiate when discovery can be commenced, without entry of an Order staying discovery. Indeed, the Receiver would be agreeable to a not indefinite standdown from issuing written discovery, taking depositions, etc., for some period of time after the pending motion to dismiss is ripe for adjudication, should Wells Fargo wish to engage in a discussion on an agreeable duration that will not prejudice the Parties or endanger the case schedule recently entered by the Court (*id.*).

II. LEGAL STANDARD

The Court “has broad discretion to stay discovery pending decision on a dispositive motion.” See *Panola Land Buyers Ass’n v. Shuman*, 762 F.2d 1550, 1560 (11th Cir. 1985) (citations omitted). While motions to stay discovery may be granted pursuant to Fed. R. Civ. P. 26(c), the moving party bears “the burden of showing good cause and reasonableness.” *Cuhaci v. Kouri Grp., LP*, 540 F. Supp. 3d 1184, 1186 (S.D. Fla. 2021) (quoting *Feldman v. Flood*, 176

F.R.D. 651, 652 (M.D. Fla. 1997) (seeking to stay discovery requires a “specific showing of prejudice or burdensomeness”). However, such motions “are not favored because when discovery is delayed or prolonged it can create case management problems which impede the Court’s responsibility to expedite discovery and cause unnecessary litigation expenses and problems.” *Randy Rosenberg, D.C., P.A. v. GEICO Gen. Ins. Co.*, No. 19-61422-CIV, 2019 WL 6052408, at *1 (S.D. Fla. Nov. 15, 2019) (quoting *Feldman*, 176 F.R.D. at 652); see *Cuhaci*, 540 F. Supp. 3d at 1187 (“Motions to stay discovery pending ruling on a dispositive motion are generally disfavored in this district.”) (cleaned up).

“Although the Court has discretion to stay discovery, this District’s Local Rules make clear that a stay of discovery pending the determination of a motion to dismiss is the exception, rather than the rule.” *Vechten v. Elenson*, No. 12-80668-CIV, 2012 WL 12978270, at *1 (S.D. Fla. July 20, 2012) (citations omitted); *Keegan v. Minahan*, No. 23-61148-CIV, 2023 WL 4546253, at *1 (S.D. Fla. July 14, 2023) (same); *Cabrera v. Progressive Behav. Sci., Inc.*, 331 F.R.D. 185, 186 (S.D. Fla. 2019) (same). “[D]iscovery stay motions are generally denied except where a specific showing of prejudice or burdensomeness is made.” *United States ex rel. Sedona Partners LLC v. Able Moving & Storage, Inc.*, No. 20-23242-CIV, 2021 WL 4749803, at *2 (S.D. Fla. Oct. 12, 2021) (denying motion to stay). “Ultimately, the proponent of the stay bears the burden of demonstrating its necessity, appropriateness, and reasonableness.” *Ray v. Spirit Airlines, Inc.*, No. 12-61528-CIV, 2012 WL 5471793, at *2 (S.D. Fla. Nov. 9, 2012) (citing *McCabe v. Foley*, 233 F.R.D. 683, 685 (M.D. Fla. 2006)).

Moreover, “[a] request to stay discovery pending a resolution of a motion is rarely appropriate unless a resolution of the motion will dispose of the entire case.” *Vechten*, 2012 WL 12978270, at *1 (quoting *McCabe*, 233 F.R.D. at 685); see also *Dorado v. Bank of Am., N.A.*, No.

16-21147-CIV, 2016 WL 10859786, at * 1 (S.D. Fla. June 3, 2016) (quoting *McCabe*, 233 F.R.D. at 685) (“[A] request to stay discovery pending a resolution of a motion is rarely appropriate unless resolution of the motion will dispose of the entire case.”).

III. ARGUMENT

Despite Wells Fargo’s self-serving arguments in the Motion, regarding its anticipated success on its motion to dismiss, (*i.e.*, ECF No. 31 at 3) (“Wells Fargo simply provided routine banking services to the Receivership Entities and is not responsible for the alleged losses”), the Receiver rejects them, as explained in the Receiver’s Response in Opposition to the Motion to Dismiss (ECF No. 35). In any event, should the Court determine that any of the Receiver’s claims should be re-pled (which the Receiver does not anticipate), the Receiver submits that his claims against Wells Fargo will survive. Even in the off chance that the Court dismisses any of the Receiver’s claims as currently pled, the Court should grant the Receiver leave to amend pursuant to Federal Rule of Civil Procedure Rule 15(a)(2). Thus, it certainly cannot be said that Wells Fargo’s motion to dismiss (ECF No. 30) “will dispose of the entire case,” particularly where the Receiver has not even filed amended pleading, added other claims, or, if necessary, provided additional context and background for the already-pled claims.

Moreover, with the deadline to complete fact discovery set for May 16, 2025 (ECF No. 33 at 2), the Receiver can, within reason, agree with Wells Fargo to a temporary durational scope to standdown from full-blown discovery but asserts that can be achieved without Court intervention. Otherwise, staying discovery through Court intervention may create case management problems which can and should be avoided. Effectively, as discussed with the Court at the initial case scheduling conference held on July 24, 2024 (ECF No. 24), this case and the class action case filed by the investors (*Millstein v. Wells Fargo Bank, N.A.*, Case No. 24-22142-CIV) (the “Class Action

case”), will run in parallel and utilize the efficiencies available from consolidated discovery to the extent possible. Staying discovery with Receiver in this case alone will very likely make consolidated discovery very difficult, if not impossible. To be clear, the Receiver does not suggest or request that discovery be stayed in the Class Action case either, although the Receiver is informed that Wells Fargo will seek similar relief in that case when it responds to the complaint on August 12, 2024.

Accordingly, the Receiver submits that a Court order staying discovery, which in this District is the exception not the rule, would be prejudicial, disrupt the case management plan, and undo the benefits of efficiencies intended by the Parties and the Court in respect of consolidated discovery with the Class Action case. The Receiver respectfully requests the Court deny Wells Fargo’s Motion.

Lastly, Wells Fargo asks the Court to take a “preliminary peek” at the pending motion to dismiss which, given the consolidated nature of discovery in this case and the Class Action case, would require the Court to also take a “preliminary peek” at the response to the complaint in the Class Action case – a response Wells Fargo has not yet filed. Because it is impossible for courts to take a “preliminary peek” at motions that have yet to be filed, Florida courts consistently deny motions to stay discovery based on a forthcoming motion. *See Carey v. Kirk*, No. 21-20408-CIV, 2021 WL 9347056, at *1 (S.D. Fla. Sept. 20, 2021) (“Without a motion to dismiss pending, it is impossible for the Court to take a ‘preliminary peek’ to balance the interest in this case.”); *Jackson v. Anheuser-Busch InBev SA/NV, LLC*, No. 20-23392-CIV, 2021 WL 493959, at *2 (S.D. Fla. Feb. 10, 2021) (denying motion to stay because, without a motion to dismiss before it, there was nothing for the court to take a “preliminary peek” at in order to determine the merits of the forthcoming motion); *www.TrustScience.com Inc. v. Bloom Ltd.*, No. 18-cv-1174-Orl-41, 2018 WL 8368844

(M.D. Fla. Oct. 11, 2018) (denying motion to stay discovery where plaintiff was unable to respond to defendants' summary assertions that its anticipated motion to dismiss was clearly meritorious); *Krukever v. TD Ameritrade, Inc.*, No. 18-21399-CIV, 2018 WL 2382008, at *2 (S.D. Fla. May 23, 2018) (denying the defendants' motion to stay and stating that "with only a two-page summary of a forthcoming motion to dismiss, 'the [c]ourt cannot say that this case is surely destined for dismissal.'" (citation omitted)).

In sum, the Receiver reiterates that he is willing to work cooperatively with Wells Fargo informally but submits that Court intervention at this time is unnecessary and will be prejudicial to the ability of the Parties in this case and in the Class Action case to meaningfully consolidate discovery if the Court stays discovery in this case.

IV. CONCLUSION

For the reasons stated above, the Motion to Stay Discovery should be DENIED.

Dated: August 12, 2024

Respectfully submitted,

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