

**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CIVIL DIVISION**

STATE OF FLORIDA
OFFICE OF FINANCIAL REGULATION,

Plaintiff,

v.

CASE NO.: 50-2021-CA-008718-XXXX-MB

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,
INTERGRITY 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 SPV I 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.

**RECEIVER’S NOTICE OF FILING RESPONSE IN OPPOSITION TO
DEFENDANT DANIEL CUCUIAT’S MOTION TO DISMISS PLAINTIFF’S
ORIGINAL COMPLAINT AND AMENDED COMPLAINT**

Receiver, Daniel J. Stermer (the “**Receiver**”) for the property, assets, and business of the thirty-three (33) Receivership entities¹ (the “**Receivership Defendants**”), by and through counsel, files a copy of the attached *Response in Opposition to Defendant Daniel Cucuiat’s Motion to Dismiss Plaintiff’s Original Complaint and Amended Complaint* which was filed on October 11, 2024, in the supplemental proceeding captioned *Daniel J. Stermer, Receiver v. Jason Sussman, individually, Scott Genad, individually, Daniel Cucuiat, individually, Joseph Corozza, individually, Anthony Lombardo, individually, Darrin Carlomagno, individually, Melody Wilder, individually, Daryl Kutner, individually, Kim Skidmore, individually, Joseph Paluzzi, individually*

¹ The Receivership entities include: NATIONAL SENIOR INSURANCE, INC. D/B/A SEEMAN HOLTZ, CENTURION INSURANCE SERVICES GROUP, LLC, EMERALD ASSETS 2018, LLC, INTEGRITY ASSETS 2016, LLC, INTERGRITY 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, 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 SPV I LLC, CENTURION FUNDING SPV II LLC, PARA GLOBAL 2019, LLC, ALLOY ASSETS, LLC, SEEMAN HOLTZ WEALTH MANAGEMENT, INC. AGENCY ACQUISITION FUNDING, LLC, AMERICA’S FAVORITE INSURANCE SERVICES LLC, and GRACE HOLDINGS FINANCIAL, LLC.

and Peter Beck, individually, Palm Beach Circuit Court Case No. 50-2023-CA-015245-XXXXA-MB.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 11, 2024, a true and correct copy of the foregoing document was filed electronically through the Florida Court's E-Filing Portal, which will, in turn, send a notice of electronic filing to all parties on the attached Service List.

BERGER SINGERMAN LLP
Counsel for Receiver
525 Okeechobee Boulevard, Suite 1250
West Palm Beach, FL 33401
Tel. (561) 241-9500
Fax (561) 998-0028

By: /s/ Brian G. Rich

Brian G. Rich, FBN 38229
brich@bergersingerman.com
Gavin C. Gaukroger, FBN 76489
ggaukroger@bergersingerman.com
Michael J. Niles, FBN 107203
mniles@bergersingerman.com
DRT@bergersingerman.com
drt@bergersingerman.com

SERVICE LIST

A. Gregory Melchior, Esq., Chief Counsel
George C. Bedell, III, Esq., Chief Counsel
Office of General Counsel
Florida Office of Financial Regulation
200 East Gaines Street
Tallahassee, FL 32309
Greg.Melchior@flofr.gov
George.Bedell@flofr.gov
Sharon.Sutor@flofr.gov
Counsel for Plaintiff

Daniel J. Stermer, Esq.
Development Specialists, Inc.
500 E. Broward Boulevard
Suite 1700
Fort Lauderdale, Florida 33394
dsterner@DSIConsulting.com
Receiver

Victoria R. Morris, Esq.
Andrew C. Lourie, Esq.
Kobre & Kim LLP
201 South Biscayne Boulevard, Suite 1900
Miami, FL 33131
Andrew.Lourie@kobrekim.com
Victoria.Morris@kobrekim.com
*Attorneys for Relief Defendant Seeman Holtz
Property and Casualty LLC*

Joshua W. Dobin, Esq.
James C. Moon, Esq.
Meland Budwick, P.A.
3200 Southeast Financial Center
200 South Biscayne Boulevard
Miami, FL 33131
jdobin@melandbudwick.com
jmoon@melandbudwick.com
mramos@melandbudwick.com
*Attorneys for Teleios LS Holdings V DE, LLC
and Teleios LS Holdings IV DE, LLC*

Scott Alan Orth, Esq.
Law Offices of Scott Alan Orth
3860 Sheridan Street, Ste. A
Hollywood, FL 33021
scott@orthlawoffice.com
service@orthlawoffice.com
eserviceSAO@gmail.com
*Attorney for Defendant Marshal Seeman, Twenty-
six Defendant Entities*

Susan Yoffee, Esq.
Gary A. Woodfield, Esq.
Nason Yeager Gerson Harris & Fumero, P.A.
3001 PGA Boulevard, Suite 305
Palm Beach Gardens, FL 33410
syoffee@nasonyeager.com
gwoodfield@nasonyeager.com
sdaversa@nasonyeager.com
Counsel for The Estate of Eric Charles Holtz

David L. Luikart III, Esq.
Hill, Ward & Henderson, P.A.
101 East Kennedy Boulevard, Suite 3700
Tampa, FL 33602
Dave.luikart@hwlaw.com
Michelle.armstrong@hwlaw.com
Attorneys for Prime Short Term Credit, Inc.

Bernard Charles Carollo, Jr., Esq.
John J. Truitt, Esq.
William Leve, Esq.
Vernon Litigation Group
8985 Fontana Del Sol Way
Naples, FL 34109
bcarollo@vernonlitigation.com
jtruitt@vernonlitigation.com
wleve@vernonlitigation.com
nzumaeta@vernonlitigation.com
*Attorneys for Edwin and Karen Ezrine,
Intervenors And Tom Echolds, Interested Party*

Gary M. Murphree, Esq.
Brandy Abreu, Esq.
AM Law, LC
10743 SW 104th Street
Miami, FL 33186
gmm@amlaw-miami.com
babreu@amlaw-miami.com
mramirez@amlaw-miami.com
pleadings@amlaw-miami.com
*Attorneys for Zoe Seijas and Victor Seijas,
Jr., Trustees of Victor Seijas Living Trust*

Angela C. Flowers, Esq.
Kubicki Draper
13906 N.E. 20th Avenue, Building 500
Ocala, FL 34470
Af-kd@kubickidraper.com
*Attorneys for Pelican Capital Management,
LLC*

Todd A. Zuckerbrod, Esq.
Todd A. Zuckerbrod, P.A.
40 SE 5th Street
Suite 400
Boca Raton, FL
tz@tzbrokerlaw.com
Attorney for Richard Donoff

Harris J. Koroglu, Esq.
Shutts & Bowen LLP
200 South Biscayne Boulevard, Suite 4100
Miami, FL 33131
hkoroglu@shutts.com
Attorneys for MCM 301 Yamato LLC

Adam J. Ruttenberg, Esq.
Arent Fox Schiff, LLP
800 Boylston Street, 32nd Floor
Boston, MA 02199
Adam.ruttenberg@afslaw.com
Attorney for Pelican Capital Management, LLC

**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CIVIL DIVISION**

DANIEL J. STERMER, as Receiver for CASE NO.: 50-2023-CA-015245-XXXAMB
NATIONAL SENIOR INSURANCE, INC.
D/B/A SEEMAN HOLTZ, CENTURION INSURANCE
SERVICES GROUP, 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 2019-6, LLC, PARA LONGEVITY
VI, LLC, SH GLOBAL, LLC N/K/A PARA LONGEVITY V,
LLC, , PARA GLOBAL 2019, LLC, PRIME SHORT TERM
CREDIT, INC., and GRACE HOLDINGS FINANCIAL, LLC,
PARA GLOBAL 2019, LLC,

Plaintiff,

v.

JASON SUSSMAN, individually, SCOTT GENAD,
individually, DANIEL CUCUIAT, individually,
JOSEPH COROZZA, individually, ANTHONY
LOMBARDO, individually, DARRIN
CARLOMAGNO, individually, MELODY WILDER,
individually, ANDREA MATTHEWS, individually,
DARYL KUTNER, individually, KIM SKIDMORE,
individually, JOSEPH PALUZZI, individually, and
PETER BECK, individually,

Defendants.

STATE OF FLORIDA
OFFICE OF FINANCIAL REGULATION,

Plaintiff,

v.

CASE NO.: 50-2021-CA-008718-XXXX-MB

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,
INTERGRITY 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 SPV I 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.

**RESPONSE IN OPPOSITION TO DEFENDANT DANIEL CUCUIAT'S MOTION TO
DISMISS PLAINTIFF'S ORIGINAL COMPLAINT AND AMENDED COMPLAINT**

Daniel J. Stermer, in his capacity as Receiver for the Plaintiffs (the “**Receiver**” or “**Plaintiff**”), files this Response in Opposition (“**Response**”) to Defendant, Daniel Cucuiat’s (“**Cucuiat**” or “**Defendant**”) Motion to Dismiss Plaintiff’s Original Complaint and Amended Complaint (“**Motion**”):

I. INTRODUCTION

Defendant is clearly confused. He filed the Motion in the wrong case¹. He apparently believes that the Receiver is the same entity as the OFR (which the Receiver is not)², and refers to them interchangeably throughout the 22-page Motion. He confoundingly seeks to dismiss two complaints filed by two different plaintiffs in two separate cases, including the complaint filed by the OFR where Cucuiat is not even named as a defendant or even referenced in any paragraph of the OFR Enforcement Action.³

Even more perplexing, Defendant starts by conceding “the court must assume that all facts alleged in the complaint are true” (MTD at ¶ 3), then spends the next 22 pages categorizing the Receiver’s allegations as “erroneous assertions,” having “no factual basis proffered,” “no evidence,” “salacious and false,” “untrue,” “unsubstantiated,” and “incorrect.” *See e.g.*, Mot. at ¶¶ 10, 18, 24, 28, 33, 34, 39, 40, *passim*. Defendant’s arguments are clearly premised on a tenuous and misconceived understanding of the purpose of a motion to dismiss, and his gripes with the

¹ The Motion was filed as [D.E. 387] in the OFR Enforcement Action, Case No. 50-2021-CA-008718-XXXX-MB, to which this case, Case No. 50-2023-CA-015245-XXXAMB, is related but is a separate and distinct Supplemental Proceeding as governed by this Court’s September 5, 2023 *Order Establishing Procedures Governing Recovery Actions to be Commenced by the Receiver*. Procedurally, however, Defendant has not filed any response to the Complaint filed in this case. In the abundance of caution and for efficiency, the Receiver hereby files this Response in both the correct case and the OFR Enforcement Action.

² Capitalized terms not defined herein shall have the same meaning as in the Amended Complaint.

³ Cucuiat’s attorney, Todd A. Zuckerbrod, Esq., is counsel to several SH Agents, including Richard Donoff, who recently sought reconsideration of two separate orders in two distinct cases using one motion filed in Case No.: 50-2021-CA-008718 [D.E. 386], which the Court denied. *Id.* [D.E. 393].

allegations should be tested through discovery and trial, not here. The Amended Complaint pleads sufficient allegations to meet the elements of each claim, and the Motion should be denied.⁴

II. LEGAL STANDARD

When considering a motion to dismiss, a Court's gaze is limited to the four corners of the complaint, the facts alleged therein must be accepted as true, and all reasonable inferences must be drawn in favor of the pleader. *Gladstone v. Smith*, 729 So. 2d 1002, 1003 (Fla. 4th DCA 1999). The motion should not be granted unless the movant can establish “*beyond any doubt* that the claimant could prove no set of facts whatever in support of his or her claim.” *Greenfield v. Manor Care, Inc.*, 705 So. 2d 926 (Fla. 4th DCA 1997) (emphasis in original). “[A] motion to dismiss must be denied if a plaintiff’s well pled complaint has alleged all necessary elements of a cause of action.” *Gladstone*, 729 So. 2d at 1003.

III. ARGUMENT

A. The Receiver is not the OFR

The Receiver is an individual appointee, officer, and arm of **this Court**; the Receiver is not an agent or representative of the State of Florida or the OFR. While this is clear to the Court, it is apparently lost on Defendant. Defendant spuriously refers to the OFR’s Complaint⁵ and the Receiver’s Amended Complaint⁶ as the “Complaints,” and comingles their allegations as if they are one pleading throughout the Motion. Yet, Defendant only filed the Motion in the OFR Enforcement Action and has not responded to the Receiver’s direct claims against him in this case.

⁴ The Receiver will not address Defendants’ arguments against the OFR Enforcement Action because the Receiver did not file that complaint, the motion is filed in the wrong case, and Cucuiat has no standing because he is not a defendant in the OFR Enforcement Action Complaint.

⁵ Filed by the OFR on July 12, 2021, in Case No.: 50-2021-CA-008718 (“**OFR Enforcement Action**”).

⁶ Filed by the Receiver on May 9, 2024, in Case No.: 20-2023-CA-015245 (“**Receiver Case**”).

This alone is a basis for denial because the Amended Complaint is not in the record of the OFR Enforcement Action where the Motion was filed.

Notwithstanding this fatal procedural defect that Defendant created himself, Defendant's attempt to conjure a conflict in the allegations by pulling paragraphs from each pleading is improper and ineffective. The Florida Supreme Court has already held the "examination of one complaint and its attachments to determine the sufficiency of a separate complaint to state a cause of action *clearly contravenes* the longstanding four-corners rule. . ." *Santiago v. Mauna Loa Inv., LLC*, 189 So. 3d 752, 757 (Fla. 2016) (emphasis added). In *Santiago*, the Third District Court of Appeal found that the allegations in one complaint in a consolidated case contradicted and thus negated the allegations of the sister case. *Id.* at 756. The Florida Supreme Court held that in doing so, the court "improperly merged" the two complaints, because "the review of the sufficiency of a complaint to state a cause of action is limited *solely* to the complaint at issue and its attachments." *Id.* at 756-7 (emphasis added).

For example, the Receiver has not asserted a claim based on a violation of Florida Statutes, Section 517.211 (regarding remedies for the sale of unregistered securities), yet Defendant spends most of the Motion arguing the Amended Complaint's failure to plead elements under the statute because of its reference in the OFR's Enforcement Action Complaint.

The allegations in the Amended Complaint cannot be negated by any allegations in the OFR's Enforcement Action Complaint because it is neither attached nor incorporated by reference for its truth. The OFR's Enforcement Action Complaint is merely referenced as part of the procedural history of this case. *Goines v. Valley Cmty. Serv. Bd.*, 822 F. 3d 159, 167 (4th Cir. 2016) ("[I]n cases where the plaintiff attaches or incorporates a document for purposes other than the truthfulness of the document, it is inappropriate to treat the contents of that documents as true.")

The Amended Complaint stands alone and is based upon the Receiver's independent investigation of the facts and occurrences giving rise to his claims and is separate and distinct from the OFR Enforcement Action.

B. The MTD Ignores the Four Corners Rule and Improperly Contests the Truth of the Receiver's Allegations in the Amended Complaint

Defendant is free to disagree with the Receiver's allegations, but the Court must accept them as true. The Motion is a diatribe of unsubstantiated arguments of counsel drawing on facts outside the Amended Complaint's four corners to conclude the Receiver's allegations are "false," "salacious," and "incorrect." The Receiver has the evidence to prove his claims at trial, but is not required to do so in response to a motion to dismiss.

Each of Defendant's arguments is premised entirely on plain denials. For example:

- i. Fraudulent Transfers: "since there is no evidence that Cucuiat knew of or even received any remuneration arising from the sale of Note Securities, the Florida Fraudulent Transfer statute does not apply to him at all. Plaintiff's knowingly false characterization of payments reflected in its exhibit D does nothing to establish a well-founded allegation." (Mot. at ¶ 53).
- ii. Aiding and Abetting Fraud and Breach of Fiduciary Duties: "Cucuiat never solicited a single customer to purchase a Note Security, had no knowledge of any misrepresentations in PPM's, or otherwise, never knowingly made any misrepresentation of any kind regarding Note Securities (Mot. at ¶ 61).
- iii. Unjust Enrichment: "the commission was not derived from any funds arising out of a fraudulent transfer the Cucuiat directly caused or even knew about. Plaintiff's [Amended Complaint] does nothing more than total the insurance commissions, which Plaintiff mischaracterizes and grossly inflates." (Mot. at ¶ 76).

As explained in more detail below, the Receiver has alleged in painstaking details the facts underlying his claims for damages from the Ponzi Scheme referred to as the Para Longevity Scheme (Amended Complaint ¶¶ 43 – 91), the pivotal role that the Defendant SH Agents (including Defendant Cucuiat here) played in the Para Longevity Scheme (*Id.* at ¶¶ 92 – 112), the

specific acts Cucuiat personally committed in furthering the Para Longevity Scheme by selling and soliciting investments in unregistered securities from unaccredited investors, notwithstanding he was not licensed as a security broker or investment advisor (*Id.* at ¶¶ 125 – 127), the dates and investment amounts personally solicited by Cucuiat (*Id.* at ¶ 101, Exhibit D), and the illegal commissions and compensation received by Cucuiat for his role in the Para Longevity Scheme, which were disguised as salaries, client service fees, management fees, or RIA fees to evade regulatory scrutiny (*Id.* at ¶¶ 94, 127).

For purposes of the Motion, all these allegations are true. Defendant may deny them in an answer and contest them at trial, but the premise of his Motion is misconceived and warrants denial.

C. The Statute of Limitations has Not Run

Defendant does not present any explanation apart from his conclusory statements that the “the allegations are precluded by the applicable statutes of limitation.” Mot. at p. 21. Defendant strangely suggests the Amended Complaint should be dismissed because it should not relate back to the OFR’s Enforcement Action Complaint, failing again to appreciate that these are different cases filed by different plaintiffs and assigned separate and distinct case numbers that could not relate-back to one another. Mot. at ¶¶ 55-58. The Amended Complaint was filed within the statute of limitations for all the asserted claims.

In paragraph 64, Defendant acknowledges that the Court’s Receivership Order began tolling claims of the Receivership Estate, which states: “For the avoidance of doubt, the period of time from September 14, 2021 through the date of the entry of the Receivership Order should be excluded from the computation of any statute of limitations applicable to a cause of action accrued or accruing in favor of the Receivership Defendants. The timing of the Receiver’s knowledge,

discovery, or duty to discover facts for purposes of third-party claims would commence upon the entry of the order appointing the Receiver [May 12, 2023].” Order Appointing Receiver at ¶ 44 (OFR Enforcement Action at D.E. 255).

The Amended Complaint was filed on May 9, 2024. The statutes of limitation for aiding and abetting fraud, aiding and abetting breach of fiduciary duties, and unjust enrichment are four years. Section 95.11(3)(i), (o). A claim under Fla. Stat. § 726.105(1)(a) must be brought “within 4 years after the transfer was made or the obligation was incurred or, if later, within 1 year after the transfer or obligation was or could reasonable have been discovery by the claimant.”

The fraud and breaches of fiduciary duties were continuing until the Agreed Order Granting Plaintiff’s Consent Motion for Appointment of Corporate Monitor and Related Injunctive Relief was entered on September 14, 2021. *See* Amended Complaint at ¶ 34. Defendant aided and abetted these torts by selling illegal Notes from December 9, 2013, through July 15, 2019. *Id.* at ¶¶ 101, 125-127, Exhibit D. Defendant received commissions and compensation from these Note sales during the same period and shortly thereafter. *Id.* These commissions and compensation also form the basis of the Receiver’s fraudulent transfer actions, which were initiated within one year of discovery of the transfers, as the timing of any discovery began running on May 12, 2023, and the Amended Complaint was filed on May 9, 2024.

Therefore, none of the Receiver’s claims against the Defendant are barred by the statute of limitations.

D. All the Receiver’s Claims are Properly Pled

The Receiver has sufficiently pled each and every claim against the Defendant in the Amended Complaint, all of which *must* be accepted as true on a motion to dismiss.

i. Aiding and Abetting Fraud and Breach of Fiduciary Duties

“To state a claim for aiding and abetting a tort in Florida, a plaintiff must allege: (1) the existence of an underlying fraud; (2) knowledge of the underlying violation by the alleged aider and abetter; and (3) the rendering of substantial assistance in committing the wrongdoing by the alleged aider and abetter.” *Taubenfeld v. Lasko*, 324 So. 3d 529, 543 (Fla. 4th DCA 2021).

The existence of the underlying fraud and breaches of fiduciary duties to the Receivership Entities has been pled in great detail throughout paragraphs 43-91 of the Amended Complaint. Paragraphs 92 -112 allege the integral role the SH Agents all played in the Para Longevity Scheme, through selling unregistered Notes to unaccredited investors, most of them seniors, while the SH Agents all knew they were not registered as securities brokers or investment advisors. Paragraphs 125-127 depict Cucuiat’s personal involvement in furthering the Para Longevity Scheme, and Exhibit D depicts how over the course of six (6) years, Cucuiat solicited, sold, and serviced at least one hundred and one (101) illegal Notes with a value of **\$9,879,540**, most of which has been lost as a result of the Para Longevity Scheme.

“A defendant has knowledge of an underlying fraud if it has a general awareness that its role was part of an overall improper activity.” *Gilison v. Flagler Bank*, 303 So. 3d 999, 1003 (Fla. 4th DCA 2020). “If one is aware that he has a role in an improper activity then surely he knows that the primary party’s conduct is tortious.” *Angell v. Allergen Sales, LLC*, 2019 WL 3958262 at *9 (M.D. Fla. Aug. 22, 2019). Therefore, a plaintiff is not required to plead with particularity actual knowledge of each specific tortious act because “actual knowledge of another’s wrongful conduct is nearly universally found based on circumstantial evidence.” *Cabot E. Broward 2 LLC v. Cabot*, 2016 WL 8740484 at *1 (S.D. Fla. Dec. 2, 2016). The facts need only be sufficient to raise a plausible inference that the defendant had actual knowledge of the scheme. *Perlman v. Wells Fargo Bank, N.A.*, 559 Fed. App’x. 998, 990 (11th Cir. 2014). The facts alleged in the Amended

Complaint clearly show that Cucuiat had a role in an improper activity and had general knowledge of the Para Longevity Scheme.

Finally, the Receiver alleges substantial assistance in so far as the Para Longevity Scheme's primary source of cash flow was the sale of Notes, and the primary vehicle for the sale of Notes were the SH Agents, including Cucuiat. Amended Complaint at ¶¶ 48, 92. Therefore, the Para Longevity Scheme would not have been possible without Cucuiat and the other SH Agents.

ii. Fraudulent Transfers Under Fla. Stat. § 726.105(1)(a)

Under FUFTA, “a transfer is fraudulent as to a creditor if the debtor made the transfer [w]ith actual intent to hinder, delay, or defraud any creditor of the debtor.” *Mane FL Corp. v. Beckman*, 355 So. 3d 418, 425 (Fla. 4th DCA 2023) (citing Section 726.105(1)(a), Florida Statutes).

Receiver has alleged that the Cucuiat Transfers were made by the Transferor Receivership Entities, namely NSI, to Cucuiat with actual intent to hinder, delay or defraud creditors. Am. Compl. ¶ 196. The Cucuiat Transfers are comprised of commissions, bonuses, and commissions concealed as salaries for Cucuiat's illegal sale of unregistered Notes, as well as the hundreds of thousands of dollars extorted from the Receivership Entities. *Id.* at ¶ 126-127. Receiver attached Exhibit D showing more than 100 illegal Note investments solicited by Cucuiat and Composite Exhibit N showing more than 60 resulting fraudulent transfers which identify the transferor, check number, account number, recipient, transferred amount, and exact date of the transfer, totaling **\$316,348.00** as of the date of the Amended Complaint. These allegations are made in great detail, albeit are not required to comply with Florida's heightened pleading standard. *See Perlman v. Five Corners Investors I*, 2010 WL 962953, at *4 (S.D. Fla. March 15, 2010) (“Rule 9(b)'s heightened pleading standard does not apply to claims brought under FUFTA.”).

In response, Defendant asserts that he “earned his commissions in good faith and for reasonable exchange of services.” MTD at ¶ 48. This is an affirmative defense that is not appropriately raised or considered on a motion to dismiss. Defendant also argues “[t]here is no allegation in either Complaint that Cucuiat transferred funds with the intent to defraud creditors.” MTD at ¶ 52. This confuses the issue again because “the state of mind of the transferee is irrelevant.” *In re Engler*, 480 B.R. 622 (Bankr. M.D. Fla. 2013). Actual fraudulent transfer claims hinge on the intent of the debtor making the transfer. *See In re Rothstein Rosenfeldt Adler, P.A.*, 2010 WL 5173796 at *4 (Bankr. S.D. Fla. Dec. 14, 2010) (also stating “actual fraudulent intent . . . may . . . be established as a matter of law in cases which the debtor runs a Ponzi scheme or a similar illegitimate enterprise, because transfers made in the course of a Ponzi operation could have been made for no purpose other than to hinder, delay or defraud creditors.”) (quoting *In re Bayou Gp. LLC*, 439 B.R. 284, 305 (S.D. N.Y. 2010)).

The Receiver has alleged that the Para Longevity Companies were used to perpetrate a Ponzi Scheme and were made with intend to defraud creditors, alleging six different badges of fraud. Amended Complaint at ¶ 6, 196-203. *See In re Jennings*, 332 B.R.465, 472 & n.7 (Bankr. M.D. Fla. 2005) (holding two or three badges of fraud can be enough to support a finding of actual intent to defraud).

iii. Unjust Enrichment

The elements of a cause of action for unjust enrichment are: (1) plaintiff has conferred a benefit on the defendant, who has knowledge thereof; (2) defendant voluntarily accepts and retains the benefit conferred; and (3) the circumstances are such that it would be inequitable for the defendant to retain the benefit without paying the value thereof to the plaintiff. *Hillman Const. Corp. v. Wainer*, 636 So. 2d 576, 577 (Fla. 4th DCA 1994). Receiver alleges that Cucuiat received

the Cucuiat Transfers and knowingly and voluntarily accepted and retained the benefit conferred upon him. Amended Complaint at ¶¶ 305-306. And it would be inequitable for him to retain the benefits under the circumstances because he was not licensed to render the services provided, and the services provided were illegal and in substantial assistance of a fraud and breach of fiduciary duty against the Receivership Entities. *Id.* at ¶ 307.

IV. CONCLUSION

The Motion is filed in the wrong case and should be denied on that procedural basis alone. The Amended Complaint is not even in the record before the Court. However, if the Court is willing to consider the Motion, it is deeply flawed on its merits and clearly misguided. It constantly confuses the Receiver with the OFR (separate and distinct Plaintiffs in separate and distinct pieces of litigation), it rejects, denies, and argues alternatives to the allegations instead of accepting them as true, and it attempts to argue a statute of limitations defense that is plainly rejected by the record. Receiver has pled every element of his claims against Defendant and the Motion should be denied in its entirety.

WHEREFORE, the Receiver respectfully requests this Court enter an Order denying the Motion, awarding the Receiver attorney's fees and costs, and for such further relief as the Court

deems just and proper.

Dated: October 11, 2024

Respectfully submitted,

BERGER SINGERMAN LLP
Counsel for Receiver
201 E. Las Olas Boulevard, Suite 1500
Fort Lauderdale, FL 33301
Tel. (954) 525-9900
Fax (954) 523-2872

By: /s/ Gavin C. Gaukroger
Brian G. Rich
Florida Bar No. 38229
brich@bergersingerman.com
Gavin C. Gaukroger
Florida Bar No. 76489
ggaukroger@bergersingerman.com
Michael J. Niles
Florida Bar No. 107203
mniles@bergersingerman.com
William O. Diab
Florida Bar No. 1010215
wdiab@bergersingerman.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the October 11, 2024, a true and correct copy of the foregoing was filed using the Florida E-filing Portal, which will serve electronic notice upon all parties on the attached Service List.

I FURTHER CERTIFY that on October 11, 2024, a true and correct copy of the foregoing was served by upon all parties listed below in the manner indicated.

By: /s/ Gavin C. Gaukroger
Gavin C. Gaukroger

<p><u>Via Electronic Transmission and First Class, U.S. Mail</u> Todd A. Zuckerbrod, Esq. Todd A. Zuckerbrod, P.A. <i>Counsel for Defendant Daniel Cucuiat</i> 40 SE 5th Street, Ste. 400 Boca Raton, FL 33432 tz@tzbrokerlaw.com</p>	<p><u>Via First Class, U.S. Mail</u> Joseph Corozza 6100 NE 7th Avenue, Apt. 17 Boca Raton, FL 33487</p>
---	--

SERVICE LIST

<p>Daniel J. Stermer, Esq. Development Specialists, Inc. 500 E. Broward Boulevard Suite 1700 Fort Lauderdale, Florida 33394 dstermer@DSIConsulting.com <i>Plaintiff/Receiver</i></p>	<p>Robert Wayne Pearce, Esq. Robert Wayne Pearce, P.A. 1499 W. Palmetto Park Road Suite 400 Boca Raton, FL 33486 pearce@rwpearce.com <i>Attorneys for Defendant Jason Sussman</i></p>
<p>C. Cory Mauro, Esq. Mauro Law, P.A. 1001 Yamato Road, Suite 401 Boca Raton, FL 33431 cory.mauro@maurolawfirm.com paralegal@maurolawfirm.com service@maurolawfirm.com <i>Attorney for Defendant Melody Wilder</i></p>	