

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case Number: 1:24-cv-22142-DPG

FANNY B. MILLSTEIN and
MARTIN KLEINBART,

Plaintiffs,

v.

WELLS FARGO BANK, N.A.,

Defendant.

**PLAINTIFFS' UNOPPOSED MOTION FOR ENLARGEMENT OF TIME TO
RESPOND TO DEFENDANT'S MOTION TO DISMISS FIRST AMENDED CLASS
ACTION COMPLAINT AND MOTION TO STAY DISCOVERY
PENDING DISPOSITION OF ITS DISPOSITIVE MOTION TO DISMISS**

Plaintiffs Fanny B. Millstein and Martin Kleinbart, on behalf of themselves and all others similarly situated, pursuant to Rule 7.1 of the Local Rules for the United States District Court for the Southern District of Florida, hereby move for an enlargement of time to file their responses to Defendant's Motion to Dismiss First Amended Class Action Complaint ("MTD") and Motion to Stay Discovery Pending Disposition of its Dispositive Motion to Dismiss ("MTS").

BACKGROUND

Plaintiffs in this putative class action allege that Defendant Wells Fargo aided and abetted a massive Ponzi Scheme resulting in catastrophic losses by Plaintiffs and the Class, most of whom were elderly and lost substantial life savings. Wells Fargo denies any wrongdoing. The FAC alleges that the misconduct by Wells Fargo dates back as far as 2011. The parties thus anticipate voluminous discovery, in addition to complex motion practice.

On June 6, 2024, Plaintiffs filed their First Amended Complaint. D.E. 1.¹ On June 10, 2024, Wells Fargo filed a Waiver of the Service of the Summons. D.E. 4. Therefore, pursuant to Fed. R. Civ. P. 12, Wells Fargo had sixty (60) days to file a responsive pleading to the FAC. Wells Fargo's response to the FAC would thus have been due August 5, 2024.

On July 24, 2024, the Court held a status conference in the matter. D.E. 18. Following the status conference, the Court granted Wells Fargo an additional seven (7) days to respond to the FAC, up to and including August 12, 2024. D.E. 18. Trial is currently scheduled for the Court's two-week trial calendar beginning on December 1, 2025. D.E. 24.

On August 12, 2024, Wells Fargo filed its MTD and MTS. D.E. 25 & 26. The MTD argues, among other things, that Plaintiffs have failed to sufficiently allege actual knowledge of the fraud. Plaintiffs' response to the MTD will thus be fact-intensive. And, Plaintiffs' response to the MTS will need to reference the arguments that will be made in Plaintiffs' response to the MTD, because one of the factors courts consider in determining whether to stay discovery during the pendency of a motion to dismiss is the likelihood that the motion will be case dispositive.

Pursuant to Local Rule 7.1(c)(1) Plaintiffs' responses to the MTD and MTS are due to be filed August 26, 2024. Plaintiffs' counsel requires a brief, two-week enlargement of time due to a variety of professional and personal conflicts. Among other things, the lead attorneys for Plaintiffs are preparing for a final arbitration hearing that will be conducted in New York the week of August 19, 2024, and will also be traveling to take their children to college.

¹ On June 7, 2024, Wells Fargo removed to this Court a related action filed by a receiver for some of the entities involved in the alleged underlying fraud. *Stermer, as Receiver for National Senior Insurance, Inc. et al. v. Wells Fargo Bank, N.A.*, 9:24-cv-80722-DPG, (S.D. Fla. June 7, 2024).

ARGUMENT

District courts have “broad discretion over the management of pre-trial activities, including discovery and scheduling.” *Johnson v. Bd. of Regents of Univ. of Georgia*, 263 F.3d 1234, 1269 (11th Cir. 2001). Pursuant to Fed. R. Civ. P. 6(b)(1)(A), this Court may, for good cause shown, extend time when an act may or must be done within a specified time. Although the Eleventh Circuit has not addressed the good cause standard under Rule 6(b)(1)(A) in a published opinion, it has relied on the good cause standard in Rule 16(b)(4)—which concerns scheduling orders—in reviewing a district court’s denial of a motion for extension of time. *Hermann v. McFarland*, 2022 WL 4489427, at *4 (11th Cir. Sept. 28, 2022), *citing Sosa v. Airprint Sys., Inc.*, 133 F.3d 1417, 1418 (11th Cir. 1998). Under that standard, a motion for enlargement of time should be granted where the deadline “cannot be met despite the diligence of the party seeking the extension.” *Sosa*, 133 F.3d at 1418 (internal quotations omitted).

Here, Plaintiffs’ counsel cannot respond to the MTD and the MTS within the fourteen (14) days allowed by the Local Rules despite their due diligence. This is a complex class action, and the FAC alleges that the wrongdoing by Wells Fargo dates back to 2011. Because the MTD argues, among other things, that Plaintiffs have failed to sufficiently allege actual knowledge of the fraud, Plaintiffs will have to synthesize for the Court approximately fifty (50) pages of factual allegations to demonstrate that they have. Plaintiffs’ counsel must also conduct extensive legal research and analysis to properly address Wells Fargo’s arguments. Furthermore, Plaintiffs’ response to the MTS must be briefed on a parallel track due to the simultaneous filings, and must also reference the MTD as it is developed, due to the relatedness of the two motions. *See Feldman v. Flood*, 176 F.R.D. 651, 652–53 (M.D. Fla. 1997) (court presented with a motion to stay discovery pending resolution of a motion to dismiss must, *inter alia*, “take a preliminary peek at the merits of the

motion to dismiss to see if it appears to be clearly meritorious and truly case dispositive.”). This, combined with the other demands on Plaintiffs’ counsel’s time, make the standard fourteen (14)-day response time insufficient despite Plaintiffs’ counsel’s due diligence. Indeed, Wells Fargo availed itself of its right to waive service and thereby have sixty (60) days to respond to the FAC, rather than the twenty-one (21) days it would have otherwise had. Fed. R. Civ. P. 12. The Court then granted Wells Fargo an additional seven (7) days beyond that. D.E. 18. Wells Fargo has thus had sixty-seven (67) days to prepare its two motions, as opposed to the mere fourteen (14) days that the Local Rules provide for Plaintiffs to respond to those motions. And, Plaintiffs seek only an additional fourteen (14) days to prepare their responses to the MTD and the MTS, which would result in a total of only twenty-eight (28) days to respond to the two motions that Wells Fargo had sixty-seven (67) days to prepare.

CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that the Court grant them an enlargement of time up to and including September 9, 2024 to respond to Wells Fargo’s Motion to Dismiss First Amended Class Action Complaint and Motion to Stay Discovery Pending Disposition of its Dispositive Motion to Dismiss.

CERTIFICATE OF GOOD FAITH CONFERENCE

Pursuant to Local Rule 7.1(a)(3)(A), I hereby certify that counsel for the movant has conferred with all parties or non-parties who may be affected by the relief sought in this motion and Defendant does not oppose the relief sought in the motion.

Dated: August 13, 2024.

Respectfully submitted,

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Counsel for Plaintiffs and the Class

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed with the Clerk of the Court using CM/ECF and served electronically on August 13, 2024 on all counsel or parties of record on the Service List below.

/s/ Seth Miles

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**[PROPOSED] ORDER GRANTING PLAINTIFFS' UNOPPOSED MOTION FOR
ENLARGEMENT OF TIME TO RESPOND TO DEFENDANT'S MOTION TO DISMISS
FIRST AMENDED CLASS ACTION COMPLAINT AND MOTION TO STAY
DISCOVERY PENDING DISPOSITION OF ITS DISPOSITIVE MOTION TO DISMISS**

THIS CAUSE came before the Court upon Plaintiffs' Unopposed Motion for Enlargement of Time to Respond to Defendant's Motion to Dismiss First Amended Class Action Complaint and Motion to Stay Discovery Pending Disposition of its Dispositive Motion to Dismiss. D.E. [XX]. The Court has considered the parties' submissions, the record, and been otherwise duly advised. Accordingly, it is hereby

ORDERED AND ADJUDGED that

1. Plaintiffs' Unopposed Motion for Enlargement of Time to Response to Defendant's Plaintiffs' Motion for Enlargement of Time to Respond to Defendant's Motion to Dismiss First Amended Class Action Complaint and Motion to Stay Discovery Pending Disposition of its Dispositive Motion to Dismiss, D.E. [XX], is hereby GRANTED.

2. Plaintiffs shall have up to and including September 9, 2024 to respond to Defendant's Motion to Dismiss First Amended Class Action Complaint and Motion to Stay Discovery Pending Disposition of its Dispositive Motion to Dismiss.

DONE AND ORDERED this ____ day of August, 2024.

Darrin P. Gayles
United States District Judge