

**UNITED STATES DISTRICT COURT FOR
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO. 24-22142-CIV-GAYLES/GOODMAN

**FANNY B. MILLSTEIN and
MARTIN KLEINBART,**

Plaintiffs,

v.

WELLS FARGO BANK, N.A.,

Defendant.

**PLAINTIFFS' RESPONSE IN PARTIAL OPPOSITION TO DEFENDANT'S
PARTIALLY UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE
OBJECTION AND FOR ADDITIONAL PAGES TO RESPOND TO REPORT AND
RECOMMENDATIONS [D.E. 76]**

Plaintiffs Fanny Millstein and Martin Kleinbart ("Plaintiffs") hereby file their response in partial opposition to Defendant Wells Fargo Bank, N.A.'s Partially Unopposed Motion for Extension of Time to File Objection and for Additional Pages to Respond to Report and Recommendations [D.E. 76]. The parties agreed weeks ago that Defendant's objections to those portions of Judge Goodman's report recommending Defendant's Motion to Dismiss Plaintiffs' First Amended Class Action Complaint ("Motion to Dismiss the FAC") be denied would be limited to twenty (20) pages. Now that the Receiver has dismissed its related action also addressed in the consolidated report, Defendant seeks thirty (30) pages for their objections to that portion of the report that recommends denying Defendant's Motion to Dismiss the FAC. That violates the parties' agreement. Furthermore, thirty (30) pages is unnecessary and excessive in light of the fact that Defendant's original motion was less than eighteen (18) pages, the R & R devotes approximately twenty-one (21) pages to its substantive discussion of Plaintiffs' claims and Defendant's Motion to Dismiss them, and twenty (20) pages is the page limit in the Local Rules.

BACKGROUND

This putative class action to recover losses sustained by victims of a Ponzi scheme was consolidated for discovery purposes with the related matter *Stermer et al v. Wells Fargo Bank, N.A.*, Case No. 24-cv-80722 (“*Stermer*”). Defendant Wells Fargo filed motions to dismiss in both cases. Its Motion to Dismiss Plaintiffs’ First Amended Class Action Complaint (“Motion to Dismiss the FAC”) in this case was less than eighteen (18) pages. D.E. 25.

On January 15, 2025, Judge Goodman entered a 75-page consolidated Report and Recommendations on Motions to Dismiss Related Lawsuits (“R & R”), which addressed the motions to dismiss filed in both cases. D.E. 53. In the R & R, Judge Goodman recommends that Motion to Dismiss the FAC in this case be denied. Other than a combined background and procedural history, and a factual recitation with extensive block quotes, the R & R devotes approximately twenty-one (21) pages to its substantive discussion of Plaintiffs claims and Defendant’s Motion to Dismiss the FAC in this case. D.E. 53 at 41-48, 52-62, 69-73.

On January 17, 2025, Plaintiffs, the Receiver in *Stermer*, and Defendant Wells Fargo negotiated and agreed to a briefing schedule and page limitations for Defendant’s consolidated objections to the R & R. Email between Brett von Borke and Jarrod Shaw, dated January 17, 2025, attached hereto as Exhibit 1. Pertinent here, Defendant agreed that:

[T]he total number of pages of argument is limited in the consolidated brief to what would be allowed for standalone briefs (e.g., 20 pages against the Receiver and 20 pages against Class Counsel). To be clear, if your position with regard to the receiver is that Judge Goodman’s ruling is correct and thus you don’t need to brief that issue, you would still be limited to 20 pages to address his ruling with regard to the Class.

Exhibit 1.

On January 21, 2025, this Court granted Defendant’s Unopposed Motion for Extension of Time to Object and File Consolidated Objection in Excess of Page Limit to Report and

Recommendations on Motion to Dismiss Related Lawsuits, memorializing the parties' agreement. D.E. 55. Therein, the Court ordered that Defendant could file consolidated objections "not to exceed twenty (20) pages as to argument specific to either Case." D.E. 55.

Pursuant to the parties' agreement and the Court's order, Defendant's consolidated objections are due today, February 12, 2025. D.E. 55. On February 11, 2025, the Receiver voluntarily dismissed the *Stermer* action. See Case No. 24-80722, D.E. 66. Immediately thereafter, Defendant asked for an additional extension of time to revise its objections, to which Plaintiffs agreed, conditioned upon a reciprocal extension for Plaintiffs to file their response. Of course, had Wells Fargo adhered to its agreement with Plaintiffs and this Court's ruling, it should have been able to simply cut the twenty or fewer pages in its brief addressing the Receiver's case and filed today. However, in direct contravention to its previous agreement to limit its objections to the recommendation that its Motion to Dismiss the FAC be denied to twenty (20) pages, Defendant now seeks thirty (30) pages to object to that recommendation.

ARGUMENT

Plaintiffs and this Court have a right to expect Defendant will live up to its agreements. *In re High Fructose Corn Syrup Antitrust Litig.*, 2000 WL 33180835, at *2 (C.D. Ill. July 19, 2000) ("This Court fully expects all parties to this action to honor their agreements and will not permit any party, absent a proper showing, to break such agreements."); see also *Pesaplastic, C.A. v. Cincinnati Milacron Co.*, 799 F.2d 1510, 1522 (11th Cir. 1986) ("Moreover, attorneys also have a duty to deal honestly and fairly with opposing counsel."). Here, Defendant after negotiations agreed to limit its objections to those portions of the R & R recommending its Motion to Dismiss the FAC be denied, and cannot make any showing why the Receiver's voluntary dismissal of *Stermer* should relieve it of that agreement. The agreed-upon twenty (20) pages is what is allowed

under Rule 4(b) of the Magistrate Judge Rules contained in this Court's Local Rules, Defendant's original Motion to Dismiss to FAC was less than eighteen (18) pages, and the R & R devotes approximately twenty-one (21) pages to its substantive discussion of Plaintiffs' claims and Defendant's Motion to Dismiss them. The agreed-upon twenty (20) pages is thus sufficient for Defendant to lodge its objections to that portion of the R & R, which must be succinct, specific and focused. *Macort v. Prem, Inc.*, 208 Fed. Appx. 781, 784 (11th Cir. 2006) ("It is critical that the objection be sufficiently specific and not a general objection to the report."); *Santiago v. Univ. of Miami*, 2021 WL 1165441, at *1 (S.D. Fla. Mar. 26, 2021) (Gayles, J.) ("Several courts in this district have found that it is improper for an objecting party to submit papers to a district court which are nothing more than a rehashing of the same arguments and positions taken in the original papers submitted to the Magistrate Judge.") (collecting cases). Indeed, Defendant admits it could meet those page limits if it had more time to conform its existing draft objections. D.E. 76, ¶12. If Defendant needed a few additional days to conform its objections to the page limits agreed-upon by the parties and provided for in the Local Rules, all it had to do was ask.

CONCLUSION

Based on the foregoing, Plaintiff respectfully requests this Court deny that portion of Defendant's Partially Unopposed Motion for Extension of Time to File Objection and for Additional Pages to Respond to Report and Recommendations that seeks pages in excess of the twenty (20) pages agreed upon by the parties.

Dated: February 12, 2025.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by CM/ECF on February 12, 2025, on all counsel or parties of record on the Service List below.

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EXHIBIT 1

From: Brett E Von Borke
Sent: Friday, January 17, 2025 12:58 PM
To: Shaw, Jarrod D.; Rottmann, Emily Y.; Gavin Gaukroger
Cc: Kerry Burns; Seth Miles; David M. Buckner; jds@sallahlaw.com; jak@sallahlaw.com; ssilver@silverlaw.com; rschwamm@silverlaw.com; pspett@silverlaw.com; Hestin, Nellie E.; McCamey, Zachary L.; Amelie Escobio; Elena Marlow; Alex Llanos; Brian Rich; Michael J. Niles; Maxwell H. Sawyer; William O. Diab; Kinghorn, Mark W.
Subject: RE: SH Litigation

Jarrod,

We do not oppose the requested extension of time to file objections to the R&R, provided the extension is reciprocal.

We also have no objection to a consolidated response, so long as the total number of pages of argument is limited in the consolidated brief to what would be allowed for standalone briefs (e.g., 20 pages against the Receiver and 20 pages against Class Counsel). To be clear, if your position with regard to the receiver is that Judge Goodman's ruling is correct and thus you don't need to brief that issue, you would still be limited to 20 pages to address his ruling with regard to the Class.

Finally, we agree with the proposed discovery schedule. However, given the state of production, we believe it is necessary to move the Court for a six-month extension of the current deadlines. Plaintiffs will need this additional time to review Wells Fargo's production once it is complete. Thank you.

Regards,

Brett

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