

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 1:24-cv-22142-GAYLES/GOODMAN

FANNY B. MILLSTEIN and
MARTIN KLEINBART,

Plaintiffs,

v.

WELLS FARGO BANK, N.A.,

Defendant.

**WELLS FARGO BANK, N.A.'S OPPOSITION TO PLAINTIFF'S PARTIAL
OBJECTIONS TO JUDGE GOODMAN'S ORDER DENYING PLAINTIFF'S
MOTION TO STRIKE WELLS FARGO'S AMENDED AFFIRMATIVE DEFENSES**

INTRODUCTION

Plaintiff Fanny B. Millstein (“Millstein” or “Plaintiff”) spends 17 pages making inapposite arguments about judicial estoppel and pleading sufficiency, but the issues here are actually quite simple: Plaintiff alleges negligent conduct against Wells Fargo in the Complaint,¹ and therefore Wells Fargo is entitled to negligence-based defenses. This is not inconsistent with Wells Fargo’s prior position, as Plaintiff erroneously argues. In fact, Wells Fargo’s posture for this entire case has been that Plaintiff has failed to allege intentional conduct by Wells Fargo to knowingly aid and abet the Seeman Holtz scheme. *See* Wells Fargo Mot. Dismiss (ECF No. 25). Accordingly, judicial estoppel is an inappropriate remedy, especially because Wells Fargo is simply asserting affirmative defenses in response to the plain language in Plaintiff’s own Complaint that survived that motion to dismiss—not to “make a mockery of the judicial system.” *Cf. James v. Penney OpCo, LLC*, No. 24-12086, 2025 WL 883963, at *1 (11th Cir. Mar. 21, 2025) (applying judicial estoppel where a party’s “inconsistent positions were calculated to make a mockery of the judicial system.”). Plaintiff has not removed the negligence language from the Complaint, even though Wells Fargo invited her to do so prior to this dispute being presented to the Court. And so long as Plaintiff alleges negligent conduct by Wells Fargo, Wells Fargo must have the opportunity to defend itself with negligence-based affirmative defenses.

As to the pleading standard, as Judge Goodman noted, “the recent trend of courts hold[s] affirmative defenses to a lower pleading standard.” *See* Magistrate Judge Goodman’s Order Denying Plaintiff’s Mot. to Strike Defendant’s Amended Affirmative Defenses (ECF No. 133) (the “Order”) at 5 (citing *Mad Room, LLC v. City of Miami*, No. 21-cv-23485, 2024 WL 2776173,

¹ “Complaint” refers to the First Amended Complaint filed by Plaintiff on June 6, 2024 (“Complaint” or “FAC”).

at *1 (S.D. Fla. May 30, 2024) (“*Mad Room I*”) (“Recent opinions within this district have reinforced that affirmative defenses need not “satisfy the strictures of *Twombly* and *Iqbal*.”)). Although Plaintiff presumptuously calls Judge Goodman’s citation to recent court trends a “scrivener’s error” in her objections to Judge Goodman’s Order, *see* Pl.’s Obj. at 15 n.8, this should not be assumed to be an error: Judge Goodman correctly observed that more courts are moving away from a plausibility pleading standard for affirmative defenses.² But whether this Court applies a heightened or notice pleading standard, Wells Fargo easily satisfies either one because each of Wells Fargo’s affirmative defenses is supported by sufficient facts and legal bases going far beyond conclusory or bare-bones allegations. *See GPM Indus., Inc. v. United States Citizenship & Immigr. Servs.*, No. 21-CIV-24007, 2022 WL 4181544, at *1 (S.D. Fla. Sept. 13, 2022) (Gayles, J.) (“A defense is insufficient as a matter of law only if: (1) on the face of the pleadings, it is patently frivolous, or (2) it is clearly invalid as a matter of law.”).

Finally, as Plaintiff acknowledges, the standard of review here is “clearly erroneous or contrary to law.” Pl.’s Obj. at 6; 28 U.S.C. § 636(b)(1)(A). By admitting that “[t]here is a split of authority in the Eleventh Circuit regarding the pleading standard that applies to affirmative defenses,” Pl.’s Obj. at 13, Plaintiff has conceded that Judge Goodman’s Order cannot be “clearly erroneous or contrary to law” because many courts in the Eleventh Circuit apply a notice pleading

² “The trend among the courts over the last decade has moved strongly away from extending the plausibility pleading standard to affirmative defenses.” Anthony Gambol, *The Twombly/Iqbal Plausibility Pleading Standard and Affirmative Defenses: Gooses and Ganders Ten Years Later*, 41 PACE L. REV. 193 (2020); *see also e.g., Smith v. Osceola Cnty.*, No. 6:24-CV-1746-CEM-LHP, 2025 WL 934371, at *2 (M.D. Fla. Mar. 27, 2025) (“This Court . . . is among the many and possibly the majority of courts in the Middle District of Florida that have determined the pleading requirements of *Iqbal* and *Twombly* do not extend to affirmative defenses.” (quoting *Gibson v. Am. Express Co.*, No. 6:20-cv-2216-CEM-LRH, 2021 WL 2828314, at *2 (M.D. Fla. Apr. 21, 2021))).

standard for affirmative defenses. Nor can it be contrary to the law or clearly erroneous to allow Wells Fargo to plead negligence-based defenses in response to alleged negligent conduct.

Plaintiff's partial objections should be denied and the Order adopted in full.

BACKGROUND

This lawsuit stems from a Ponzi scheme orchestrated by Marshall Seeman, Eric Holtz, Brian Schwartz, and the Seeman Holtz companies (the "Schemers").³ FAC ¶ 2. Seeman and Holtz created the Para Longevity Companies ("PLCs") "to solicit funds from investors through the sale of Notes purportedly to fund the purchase and payment of premiums for [Stranger-Originated Life Insurance] policies." *Id.* ¶¶ 33, 150; *see also id.* ¶¶ 3, 4. The Schemers, through the PLCs, promised the investors "that the proceeds from the death benefits of STOLIs would be used to fund the interest payments due to those investors and eventually return their principal." *Id.* ¶ 4. The Schemers instead used the funds to "to pay existing investors, and further looted significant sums through improper, exorbitant, or fictitious fees and expenses." *Id.* ¶ 5.

Plaintiff—one of the investors in the PLCs—alleges Wells Fargo aided and abetted the Ponzi scheme in its role as trustee, securities intermediary, and depositor bank for the Seeman Holtz entities. Plaintiff claims Wells Fargo aided and abetted the scheme through a series of inactions, including Wells Fargo's failure to identify red flags, *id.* ¶ 140, not requiring accounts to be opened in person, *id.* ¶ 145, "failure to follow basic due diligence practices and comply with the applicable KYC [know your customer] regulations," *id.* ¶ 151, and doing "nothing to stop the Scheme from continuing," *id.* ¶ 155. In other words, Plaintiff alleges Wells Fargo should be held

³ The Seeman Holtz companies refers to all of the companies owned, operated, controlled, or otherwise directed by Seeman, Holtz, and Schwartz. For the avoidance of doubt, Seeman Holtz Companies includes, but is not necessarily limited to, the entities identified in Footnotes 1 and 2 of the Complaint.

liable under theories of aiding and abetting fraud and breach of fiduciary duty and unjust enrichment because it did not do enough to protect Plaintiff from the Schemers' fraud.

Wells Fargo moved to dismiss Plaintiff's Complaint, arguing that Plaintiff had not pleaded intentional or knowing conduct by Wells Fargo to aid and abet the Ponzi scheme. Judge Goodman disagreed and held that Plaintiff had alleged enough to survive a motion to dismiss. As Plaintiff explains, Wells Fargo then objected to Judge Goodman's opinion and argued that "Plaintiffs' FAC rests on assertions Wells Fargo knew or should have known" about the Schemers' Ponzi scheme. *See* Pl.'s Obj. at 3. This Court denied Wells Fargo's objections and adopted Judge Goodman's opinion denying Wells Fargo's Motion to Dismiss.

THE REPORT AND RECOMMENDATION

After Wells Fargo's motion to dismiss was denied, Wells Fargo filed its Answer to Plaintiff's FAC, which Wells Fargo later amended after meet and confer discussions with Plaintiff's counsel. To avoid waiving any applicable and necessary defenses, and based on the express allegations in the FAC, Wells Fargo included negligence-related defenses among its twenty-five affirmative defenses.⁴ Plaintiff moved to strike every single one of Wells Fargo's affirmative defenses, including sufficiently pled defenses that are unrelated to negligence. (ECF No. 106).

In his well-reasoned opinion, Magistrate Judge Goodman denied Plaintiff's Motion to Strike Wells Fargo's Affirmative defenses in full. In so ruling, Judge Goodman held that under Fed. R. Civ. P. 8(b), a notice pleading standard applies to affirmative defenses. Judge Goodman explained that this view is bolstered by the Eleventh Circuit's rulings, which stress that "the purpose of Rule 8(c) is simply to guarantee that the opposing party has notice of any additional

⁴ Wells Fargo withdrew three defenses (the First, the Thirteenth and the Fourteenth).

issue that may be raised at trial so that he or she is prepared to properly litigate.” Order at 7 (quoting *Hassan v. U.S. Postal Service*, 842 F.2d 260, 263 (11th Cir. 1988)). Judge Goodman also noted that this Court had previously “adopted a magistrate judge’s report and recommendation adopting a heightened pleading standard,” but given that this Court is not obligated to follow that opinion, Judge Goodman “**respectfully recommend[ed]** that Judge Gayles **follow** the recent trend of courts holding affirmative defenses to a lower pleading standard.” *Id.* at 5 (citing *Mad Room I*, at *1) (emphasis in original).

Judge Goodman further observed that “striking defenses from a pleading remains a drastic remedy, to be resorted to only when required for the purposes of justice and only when the stricken material has no possible relation to the controversy.” *Id.* at 9 (internal quotations removed). In addition, “[i]t is often premature to require a defendant to support its defenses with ‘detailed and specific factual assertions which may be established later on in discovery.’” *Id.* (quoting *TRG Oasis (Tower One), Ltd. v. Crum & Forster Specialty Ins. Co.*, No. 22-21346-CIV, 2022 WL 4631917, at *4 (S.D. Fla. Sept. 14, 2022), *report and recommendations adopted*, No. 22-21346-CIV, 2022 WL 4599056 (S.D. Fla. Sept. 30, 2022)). If Plaintiff “believe[s] there is no evidence to support a particular defense, then [Plaintiff] can challenge it at the summary judgment stage.” *Id.* at 10 (quoting *TRG Oasis (Tower One), Ltd.*, 2022 WL 4631917, at *4).

Judge Goodman ultimately found that all of Wells Fargo’s defenses were sufficiently pled and gave Plaintiff sufficient notice of the theory underlying each defense. Although Judge Goodman acknowledged that Plaintiff’s claims are intentional torts, he also found that Plaintiff’s focus on the ultimate nature of their claims “overlooks the reality that the Amended Complaint contains some allegations which appear to assert negligence-type conduct.” Order at 13. “Given that this language comes directly from Plaintiffs’ **own** Amended Complaint, it would be risky to

substantively conclude now that Wells Fargo cannot ever assert the defense here.” *Id.* (emphasis in original). Accordingly, Judge Goodman denied Plaintiff’s Motion to Strike in full.

Importantly, Plaintiff’s motion to strike challenged the following eight affirmative defenses as sounding in negligence: second affirmative defense (negligence), eighth affirmative defense (co-liability), ninth affirmative defense (fault of others), twelfth affirmative defense (lack of causation), sixteenth affirmative defense (assumption of risk), eighteenth affirmative defense (recovery), nineteenth affirmative defense (set-off), twentieth affirmative defense (Plaintiff’s negligence) (ECF 112). The Court ruled on those eight affirmative defenses accordingly, to which Plaintiff now objects.

While nominally cloaked as a challenge to the Court’s rulings on the negligence-based defenses, Plaintiff’s objections also purport to challenge the Court’s ruling on three additional affirmative defenses that do not sound in negligence: fifteenth affirmative defense (consent), seventeenth affirmative risk (ratification), and twenty-third affirmative defense (waiver). (ECF 136 at 3, “Plaintiffs Move to Strike Wells Fargo’s Negligence-Based Defenses”). Plaintiff did not challenge these three defenses on negligence grounds in her motion to strike, and therefore the Court therefore did not rule on them in that regard (ECF 133); nor should the Court do so now.

STANDARD OF REVIEW

“A magistrate judge’s ruling on a non-dispositive matter must be affirmed unless ‘it has been shown that the magistrate judge’s order is clearly erroneous or contrary to law.’” *Scopelliti v. McClean*, No. 8:20-CV-104-CEH-CPT, 2023 WL 1071626, at *1 (M.D. Fla. Jan. 27, 2023) (quoting 28 U.S.C. § 636(b)(1)(A)). “[T]he clearly erroneous or contrary to law standard of review is extremely deferential.” *Mad Room, LLC v. City of Miami*, (“*Mad Room IP*”), No. 21-CV-23485, 2023 WL 4571157, at *3 (S.D. Fla. July 18, 2023). A finding is clearly erroneous if “the reviewing court, after assessing the evidence in its entirety, is left with a definite and firm conviction that a

mistake has been committed.” *Krys v. Lufthansa German Airlines*, 119 F.3d 1515, 1523 (11th Cir. 1997). This is an “exacting standard.” *Cox Enters., Inc. v. News-Journal Corp.*, 794 F.3d 1259, 1272 (11th Cir. 2015). “To be clearly erroneous, a decision must strike us as more than just maybe or probably wrong; it must . . . strike us as wrong with the force of a five-week-old, unrefrigerated dead fish.” *Id.* at 1272 n.92 (quoting *Parts & Elec. Motors, Inc. v. Sterling Elec., Inc.*, 866 F.2d 228, 233 (7th Cir. 1988)).

ARGUMENT

Plaintiff’s objections should be denied in full because nothing in Judge Goodman’s Order is “clearly erroneous” or “contrary to the law.” *Mad Room II*, at *3. First, Plaintiff plainly alleges negligent conduct in the Complaint, meaning Wells Fargo has the right to assert negligence-related defenses. As Judge Goodman succinctly put, “[g]iven that this language comes directly from Plaintiffs’ **own** Amended Complaint, it would be risky to substantively conclude now that Wells Fargo cannot ever assert the defense here.” Order at 13. Second, judicial estoppel is inapplicable because Wells Fargo has always maintained that Plaintiff failed to allege that Wells Fargo intentionally and knowingly aided and abetted the Schemers in their Ponzi scheme.

Finally, as Plaintiff concedes, there is a split in this circuit over the applicable pleading standard—meaning Judge Goodman’s use of a notice pleading standard cannot be “clearly erroneous” or “contrary to the law” because numerous courts have adopted the notice pleading standard. Judge Goodman’s Order is also supported by the Eleventh Circuit, which previously “stressed providing notice as the purpose of Rule 8(c).” Order at 7; *see also Hassan*, 842 F.2d at 263. And even if a heightened pleading standard were to apply, Wells Fargo easily meets it because it has provided sufficient facts and legal bases for each of its affirmative defenses. Fact discovery does not end in this case for months, and “if, after the close of discovery, Plaintiff[]

believe[s] there is no evidence to support a particular defense, then [she] can challenge it at the summary judgment stage.” *TRG Oasis (Tower One), Ltd.*, 2022 WL 4631917, at *4. Plaintiff’s objections must be denied in full.

A. Plaintiff’s Complaint Asserts Negligent Conduct, and Wells Fargo Is Therefore Entitled to Defend Itself with Negligence-Based Defenses

The plain words of Plaintiff’s own Complaint allege that Wells Fargo should be held liable based on negligent conduct. In particular, the Complaint alleges that “questions of law and fact” which “are common to the claims of Plaintiffs and the entire Class” include:

- “i. Whether Defendant owed Plaintiffs and the Class a *duty of reasonable care* applicable to banks and financial institutions;”
- “j. Whether Defendant *breached its duty of reasonable care* applicable to banks and financial institutions . . . ;” and
- “k. Whether Defendant was *negligent* in substantially assisting the Scheme”

See FAC ¶ 173 (emphasis added).

Accordingly, Plaintiff’s pleading is clear that her theories of recovery include attempting to establish Wells Fargo’s supposed negligence and failure to adhere to the appropriate standard of care. And to the extent negligence liability remains in the Complaint after the motion to dismiss was denied, Wells Fargo has the right to defend itself with negligence-based defenses. Judge Goodman certainly was not “clearly erroneous” or “contrary to the law” to find that, “[g]iven [the negligence] language comes directly from Plaintiffs’ **own** Amended Complaint, it would be risky to substantively conclude now that Wells Fargo cannot ever assert [a negligence] defense here.” Order at 13 (emphasis in original).

In addition, Plaintiff is alleging that Wells Fargo aided and abetted a breach of fiduciary duty, and breach of fiduciary duty can also be a negligence-based tort under Florida law. “Breach

of fiduciary duty can certainly be an intentional tort,” but this does not “preclude the existence of a negligent breach of fiduciary duty claim.” *Aviation One of Fla., Inc. v. Airborne Ins. Consultants (PTY), Ltd.*, No. 6:13-cv-1243-Orl-41DAB, 2016 WL 11563312, at *3 (M.D. Fla. Feb. 11, 2016) (citing *Daniel v. Coastal Bonded Title Co.*, 539 So. 2d 567, 568 (Fla. 5th DCA 1989) as “recognizing both intentional and negligent breach of fiduciary duty claims.”), *aff’d*, 722 F. App’x 870 (11th Cir. 2018). Once again, it is clear from Plaintiff’s own pleading and theories of recovery that she has put the concept of negligence in play.

Plaintiff has not moved to amend her Complaint to drop the negligence language, despite Wells Fargo offering, before Plaintiff filed her motion, to withdraw its negligence-based defenses if Plaintiff would agree to delete the negligence-based language from the Complaint. Although Plaintiff would seem to blame Wells Fargo for the fact that Plaintiff’s Complaint still includes allegations of negligence, *see* Pl.’s Obj. at 1 n.1, the fact remains that Plaintiff is attempting to hold Wells Fargo liable under a \$300 million Ponzi scheme in a Complaint that includes alleged negligent conduct. Offering to amend by interlineation now is too little too late: Plaintiff filed a motion to strike Wells Fargo’s affirmative defenses; that motion was fully briefed, and it has been ruled upon. Having gambled and lost, Plaintiff should not now be permitted to take back its bet. And so long as the Complaint alleges negligence against Wells Fargo, it would be patently unfair for Wells Fargo to be denied negligence-based defenses.⁵

Striking affirmative defenses “remains a ‘drastic remedy to be resorted to only when required for the purposes of justice’ and only when the stricken material has ‘no possible relation

⁵ Plaintiff includes three affirmative defenses as “negligence-based defenses” which do not sound in negligence: fifteenth affirmative defense (consent), seventeenth affirmative risk (ratification), and twenty-third affirmative defense (waiver). *See* Pl.’s Obj. at 15-17. Even if the Court were to sustain Plaintiff’s objection that negligence-based defenses should be stricken, these defenses would survive.

to the controversy.’” *Archer W. - De Moya Joint Venture v. Ace Am. Ins. Co.*, No. 1:22-CV-21160, 2023 WL 11802486, at *1 (S.D. Fla. July 12, 2023) (quoting *FAST SRL v. Direct Connection Travel, LLC*, 330 F.R.D. 315, 317 (S.D. Fla. 2018)). Negligence defenses clearly relate “to the controversy” here. *See id.* Judge Goodman was correct to deny Plaintiff’s motion to strike Wells Fargo’s negligence-related affirmative defenses.

B. Wells Fargo Has Not Changed Its Position, and Therefore Judicial Estoppel Does Not Apply

Plaintiff next argues that Wells Fargo is judicially estopped from asserting negligence-based defenses in response to Plaintiff’s negligence allegations. Judicial estoppel is “intended to ‘prevent the perversion of the judicial process’” and can apply when a “party took an inconsistent position under oath in a separate proceeding” and “these inconsistent positions were calculated to make a mockery of the judicial system.” *James*, 2025 WL 883963, at *1 (citations omitted).⁶

Nothing could be further from the situation here. From the beginning, Wells Fargo has maintained that Plaintiff has not alleged intentional or knowing conduct by Wells Fargo to aid and abet the Ponzi scheme. This is the exact argument that Wells Fargo made in its Motion to Dismiss Plaintiff’s FAC. *See* Wells Fargo’s Mot. Dismiss (ECF No. 25). Plaintiff appears to be confusing the legal standard for aiding and abetting with what Plaintiff actually alleges in her Complaint. There is nothing in conflict with 1) Wells Fargo arguing on a motion to dismiss that Plaintiff has not adequately alleged intentional, knowing conduct by Wells Fargo as required for an aiding and abetting claim, and 2) Wells Fargo defending itself against Plaintiff’s negligence allegations in the Complaint after losing its motion to dismiss. *See X-Ray Diagnostics & Ultrasound Consultants*

⁶ Notably, Plaintiff has raised the argument of judicial estoppel for the first time in her Objections—a position not previously asserted in the Motion to Strike Wells Fargo’s Amended Affirmative Defenses (ECF No. 112) or the Reply (ECF No. 122).

Ltd. v. Gen. Elec. Co., No. 20-24492-CIV, 2024 WL 5378325, at *7 (S.D. Fla. Nov. 27, 2024) (“But without a more specific showing that the positions are ‘inherently inconsistent,’ we should not exercise our discretion to apply judicial estoppel.”), *report and recommendation adopted*, No. 20-24492-CIV, 2025 WL 299451 (S.D. Fla. Jan. 26, 2025) (Gayles, J.); *Fleming v. Swisher Int’l, Inc./Broadspire Kemper Ins. Grp.*, 120 So. 3d 160, 162 (Fla. 1st DCA 2013) (affirming trial court’s decision not to apply judicial estoppel because the proponent did not demonstrate that the two positions were “inherently inconsistent”).

Moreover, Plaintiff’s argument that Wells Fargo would gain an “unfair advantage” by asserting negligence defenses in response to negligence allegations does not make sense. It is Plaintiff’s own Complaint that contains the negligence language, so it should come as no surprise to Plaintiff that Wells Fargo would defend itself against such allegations. Further, Plaintiff’s argument that Wells Fargo’s negligence defenses will result in unnecessary discovery is a red herring. The parties have already exchanged written discovery, Wells Fargo has produced hundreds of thousands of pages of documents, and Plaintiff’s deposition has already occurred. The receiver has produced millions of pages of documents from Seeman Holtz to both parties. Plaintiff fails to explain what additional, burdensome discovery would occur if Wells Fargo is allowed to plead its negligence defenses for one simple reason: no additional, unnecessary discovery would occur.

Plaintiff is running in circles to avoid the fact that she alleged negligent conduct in her Complaint, and therefore Wells Fargo can maintain its negligence-based defenses. If anything, it is Plaintiff, in pressing meritless arguments in support of this objection, who is creating unnecessary work for the parties and the Court.

C. Judge Goodman’s Adoption of a Notice Pleading Standard Follows Recent Court Trends and Is Not Clearly Erroneous or Contrary to the Law

Although “[t]here is a split among the district courts in this Circuit regarding the proper pleading standard for an affirmative defense,” Judge Goodman, along with many courts in this circuit, has held that “a defendant need only ‘state in short and plain terms its defenses to each claim asserted against it.’” *Bakshi v. Carnival Corp.*, No. 23-CV-21839-CIV, 2023 WL 6376730, at *2 (S.D. Fla. Aug. 23, 2023) (Goodman, M.J.) (quoting Fed. R. Civ. P. 8(b)(1)(A)), *report and recommendation adopted*, No. 23-21839-CIV, 2023 WL 6376729 (S.D. Fla. Sept. 29, 2023). And while the Eleventh Circuit has not explicitly resolved the split, it “has repeatedly emphasized that the purpose of Rule 8(c) is simply to provide the plaintiff with notice of an affirmative defense that may be raised at trial.” *Adams v. JP Morgan Chase Bank, N.A.*, No. 3:11-CV-337-J-37MCR, 2011 WL 2938467, at *3 (M.D. Fla. July 21, 2011) (citing *Hassan*, 842 F.2d at 263); *see also Modified Atmosphere Enters. LLC v. Fresh Express Inc.*, No. 6:20-CV-1702-PGB-LRH, 2021 WL 2954289, at *1 (M.D. Fla. Mar. 22, 2021) (finding the “‘Eleventh Circuit’s longstanding practice of permitting unpled affirmative defenses to be raised at trial so long as the plaintiff had prior notice of the defendant’s intent to raise them’ support[s] the conclusion that the *Twombly-Iqbal* plausibility standard does not apply to affirmative defenses”).

Not only have Judge Goodman’s reports and recommendations adopting a lower standard been adopted by judges in this district, but courts in general are trending toward that lower pleading standard. *See e.g., Mad Room I*, at *1 (Recent opinions within this district have reinforced that affirmative defenses need not “satisfy the strictures of *Twombly* and *Iqbal*.”)). Plaintiff admits “[t]here is a split of authority in the Eleventh Circuit regarding the pleading standard that applies to affirmative defenses.” Pl.’s Obj. at 13. Plaintiff’s admission should be the end of this argument, since there can be nothing “clearly erroneous” in utilizing a standard that has been previously

adopted by many courts in this circuit. “[T]he clearly erroneous or contrary to law standard of review is extremely deferential,” *Mad Room II*, at *3, and Plaintiff fails to meet such a standard by conceding that Judge Goodman follows split authority in this circuit, particularly when language from the Eleventh Circuit supports his decision. Accordingly, Plaintiff’s objections must be denied.

D. Wells Fargo’s Defenses Are Sufficiently Pled

Plaintiff is wrong that Wells Fargo has not sufficiently pled its defenses under both the Rule 8 standard and the heightened *Twombly/Iqbal* standard.

The Rule 8 pleading standard simply requires that each of Wells Fargo’s affirmative defenses be “state[d] in short and plain terms [so] that ‘the opposing party has **notice** of any additional issue that may be raised at trial so that he or she is prepared to properly litigate it.’” *Archer W.*, 2023 WL 11802486, at *1 (Goodman, M.J.) (quoting Fed. R. Civ. P. 8(b)) (emphasis in original). Indeed, the purpose of affirmative defenses “is to give the opposing party notice of an issue so that party can prepare to properly litigate the issue.” *Amerikooler, LLC v. Americooler, Inc.*, No. 17-24420-CV, 2018 WL 6528019, at *1 (S.D. Fla. Apr. 11, 2018). Each of Wells Fargo’s affirmative defenses includes ample factual and legal bases, and Plaintiff’s absurd argument that Wells Fargo’s affirmative defenses fail to meet even a simple notice pleading standard must be rejected.

Even if a heightened pleading standard were to apply, Wells Fargo satisfies it. As this Court has previously held, “[a] defense is insufficient as a matter of law only if: (1) on the face of the pleadings, it is patently frivolous, or (2) it is clearly invalid as a matter of law.” *GPM Indus., Inc.*, 2022 WL 4181544, at *1 (Gayles, J.). For example, although Plaintiff misrepresents Wells Fargo’s Second Affirmative Defense (Negligence by Third Parties), arguing that it “simply asserts

that Plaintiff's recovery should be barred or reduced in proportion to the amount of negligence attributable to other allegedly culpable parties," Pl.'s Obj. 16, what Wells Fargo actually alleges is far more robust:

*SECOND AFFIRMATIVE DEFENSE
(Negligence By Third Parties)*

The negligence or other culpable conduct of other persons, forces, and/or things over which Wells Fargo is not responsible proximately caused or contributed to the alleged injuries and damages of Plaintiffs and, therefore, any recovery of Plaintiffs is barred or must be reduced in proportion to the amount of the negligence or other culpable conduct attributable to such other persons, entities, forces, and/or things. Wells Fargo asserts this defense to the extent Plaintiffs' claims are premised on Wells Fargo's alleged negligent conduct (see Amended Compl. ¶ 73 and ¶ 173). See Doherty v. Allianz Life Ins. Co. of N. Am., No. 218CV377FTM29NPM, 2019 WL 5268721 (M.D. Fla. Oct. 17, 2019).

Wells Fargo asserts that any damages awarded to Plaintiffs is subject to apportionment pursuant to section 768.81, Florida Statutes, and Fabre v. Marin, 623 So. 2d 782 (Fla. 1993). All at-fault persons or entities are unknown to Wells Fargo, and discovery remains ongoing. At this time, the potential at-fault parties include, but are not limited to, the following in addition to Plaintiffs themselves: Marshal Seeman; Eric Holtz; Alan Hodge; National Senior Insurance, Inc. ("NSI") d/b/a Seeman Holtz Insurance Services, Inc; Integrity Assets 2016, LLC; Integrity Assets, LLC; Integrity Longevity Investments, LLC; Integrity Longevity Investments, LLC; Anthony Lombardo; Para Longevity 2012, LLC; Para Longevity 2012-5 LLC; Para Longevity 2014, 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 2019-7, LLC; Para Longevity Investments, LLC; Para Longevity VI, LLC; Para Longevity Holdings VI LLC; Paraveda Investments V, Inc.; Brian Schwartz; Seeman Holtz Global LLC; Seeman Holtz Property and Casualty, LLC; Seeman Holtz Wealth Management; Seeman-Holtz Consulting Corp.; SH Global, LLC N/K/A Para Longevity V, LLC; Signal Point Capital, LLC; Frederick Tan; and Neal Mellert.

Specifically, the scheme at the heart of Plaintiffs' claims was perpetrated by the above Fabre Defendants, not Wells Fargo. As alleged in the Amended Complaint, the Seeman and Holtz entities—not Wells Fargo—"created the PLCs to solicit funds from investors through the sale of Notes purportedly to fund the purchase and payment of premiums for STOLIs;" "lured" Plaintiffs "to invest in the Notes issued by the PLCs;" and "diverted money from legitimate business operations . . . [i]nstead of paying Plaintiffs and the Class from the funds generated by the death benefits of the STOLIs securing their PLC Notes." See Amended Compl. ¶¶ 33, 35, 42. Moreover, upon information and belief, Plaintiffs

invested in the PLCs through the sale of promissory notes knowing that the Notes and the PLCs business model are subject to numerous potential risks and conflicts of interest. See id. ¶ 37 (“each of the Note offerings that described the purported investment opportunity, risk of loss, and other material matters.”).

Pursuant to Nash v. Wells Fargo, 678 So. 2d 1262 (Fla. 1996), Wells Fargo will seek to amend these Affirmative Defenses as soon as practical upon identifying any other potential non-party Fabre Defendant. Wells Fargo notices its intent to include on the verdict form all persons or entities shown during discovery or investigation to have been at fault, in whole or in part, for the damages alleged to have been suffered by Plaintiffs.

See Wells Fargo’s Am. Answer, Affirmative Defense (“WF AD”) #2 (ECF No. 106) at 43-45.

Wells Fargo’s eighth (co-liability), ninth (fault of others), and twelfth (lack of causation) affirmative defenses contain substantially similar factual underpinnings. Each of these affirmative defenses speaks in some way to the negligence and culpability of Plaintiff and third-parties in the investment scheme perpetrated by the Seeman Holtz entities. To that end, Wells Fargo’s answer includes the many ways that the Seeman Holtz entities, Seeman Holtz individuals, and others, are responsible for the alleged Ponzi scheme relying in large part on the allegations in Plaintiff’s Complaint, particularly because:

the Seeman and Holtz entities—not Wells Fargo—“created the PLCs to solicit funds from investors through the sale of Notes purportedly to fund the purchase and payment of premiums for STOLIs;” “lured” Plaintiffs “to invest in the Notes issued by the PLCs;” and “diverted money from legitimate business operations . . . [i]nstead of paying Plaintiffs and the Class from the funds generated by the death benefits of the STOLIs securing their PLC Notes.” See Am. Compl. ¶¶ 33, 35, 42.

Id., at 44.

Wells Fargo has thus identified the factual and legal bases for these defenses, which explain why Plaintiff and other *Fabre* defendants share culpability for the allegations in the Complaint. This is more than enough to provide Plaintiff with notice of Wells Fargo’s affirmative defenses and the factual and legal bases upon which they rest, whether under a heightened pleading standard

or a notice pleading standard, particularly because the substance of Wells Fargo's allegations comes directly *from Plaintiff's own complaint*. See, e.g., *id.* (citing FAC ¶¶ 33, 35, 42). Accordingly, these defenses are not "patently frivolous" or "clearly invalid as a matter of law," *GPM Indus., Inc.*, 2022 WL 4181544, at *1 (Gayles, J.). Plaintiff's argument that these defenses are not sufficiently pled should be denied.

Plaintiff is similarly wrong that Wells Fargo has not sufficiently pled its fifteenth affirmative defense (consent), sixteenth affirmative defense (assumption of risk), seventeenth affirmative defense (ratification), eighteenth affirmative defense (recovery), nineteenth affirmative defense (set-off), twentieth affirmative defense (Plaintiff's negligence), and twenty-third affirmative defense (waiver). Plaintiff quotes Wells Fargo's Response to Plaintiff's Motion to Strike and admits "that [the defenses] all 'include language regarding the investment risks known to Plaintiffs . . . and thus speak[] . . . to the negligence and culpability of Plaintiffs . . . in the investment scheme,'" and that the "defenses sound in Plaintiff's alleged 'lack of due diligence, failure to monitor their own investments and knowledge of the . . . STOLI policies' and thus 'rest[] on Plaintiffs' own culpability.'" Pl.'s Obj. at 17. Accordingly, Plaintiff herself has already recognized the factual and legal bases for Wells Fargo's fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, and twenty-third affirmative defenses. And as Judge Goodman found, "Wells Fargo is not required to include in its affirmative defense the specific 'information which Plaintiffs could have uncovered that would have revealed the existence of the Ponzi scheme.' That level of additional detail is for discovery, and it does not render the defense strike-worthy." Order at 23. Wells Fargo has provided Plaintiff with ample factual and legal bases for its affirmative defenses, as demonstrated by Plaintiff's own discussion of Wells Fargo's defenses

as well as by Judge Goodman's well-reasoned Order, and this Court should deny Plaintiff's objections in full.

CONCLUSION

Nothing in Judge Goodman's Order is erroneous or contrary to the law.

WHEREFORE, Wells Fargo asks the Court to deny Plaintiff's partial objections, adopt the Report and Recommendations in full, and grant such other and further relief as this Court deems just and proper.

Respectfully submitted on August 6, 2025.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 6, 2025, a true copy of the foregoing was filed with the Court using the CM/ECF system, which will send notice to counsel of record.

/s/ Emily Y. Rottmann

Attorney