UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

BURTON W. WIAND, not individually but solely in his capacity as Receiver for OASIS INTERNATIONAL GROUP, LIMITED, et al., Plaintiffs, v. ATC BROKERS LTD., DAVID MANOUKIAN, and SPOTEX LLC, Defendants.	No. 21-cv-1317

DAVID MANOUKIAN's RULE 12(b)(6)
MOTION TO DISMISS PLAINTIFF'S COMPLAINT

Defendant, David Manoukian, moves to dismiss Plaintiff's Complaint (Doc. 1) under Federal Rule of Civil Procedure 12(b)(6).

INTRODUCTION

Mr. Manoukian, a director of ATC Brokers Ltd. ("ATC UK"), moves to dismiss the Receiver's Complaint against him. While the Receiver does as much as he can to (1) cloud events by describing a Ponzi scheme in which Mr. Manoukian did not participate, *CFTC v. Oasis International Group, Ltd.*, Case No. 8:19-cv-00886-VMC-SPF, (2) allege what Mr. Manoukian *should have known regarding a scheme undertaken by others*, and (3) blur entities in an effort to reach funds in which the Receiver has no right, he

fails to plausibly plead any knowledge or acts by Mr. Manoukian that can support any actionable claims against him.

The Receiver's blinding zeal and overreach permeates his pleading. The Receiver fails to plead any property in California on which to base jurisdiction. The Receiver fails to plead any knowledge that Mr. Manoukian had regarding a Ponzi scheme in which he was not involved. And the Receiver fails to plead any duty that Mr. Manoukian owed to the Receivership entities. This is because Mr. Manoukian never aided and abetted a Ponzi scheme and was never negligent to the entities the Ponzi scheme insiders controlled.

Worse, the Receiver has brought a claim for which he lacks standing. As the representative of the entities that carried out the Ponzi scheme, the Receiver now seeks a reward for their wrongdoing. The Eleventh Circuit prohibits such a recovery—which in this case would only be exacerbated because it would be against an innocent person. Because he is without standing and because he has failed to allege any plausible facts to support a claim against Mr. Manoukian, the Receiver's Complaint must be dismissed as a matter of law.

BACKGROUND

I. Oasis Global FX Ltd. (NZ) and Oasis Global FX S.A. (Belize) used legitimate omnibus trading services and software provided by ATC Brokers Ltd. ("ATC UK") to undertake an unlawful Ponzi scheme.

It is uncontroverted that two licensed, overseas Oasis entities, Oasis Global FX Ltd. (NZ) and Oasis Global FX S.A. (Belize) opened omnibus trading accounts at ATC UK, a London-based brokerage, to engage in foreign exchange ("FOREX")

trading through foreign financial institutions. Amended Complaint, Doc. 110 ¶ 28, *CFTC v. Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF (M.D. Fla. Sept. 14, 2020).[1] The Oasis entities used a white label brokerage solution provided by ATC UK that allowed the licensed entities to act as FOREX brokers for their underlying clients.[2] Report and Recommendation, Doc. 316 at 3, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF. ATC UK has no relationship with the omnibus brokers' underlying clients. *Id.*

The Oasis entities that undertook the Ponzi scheme were owned or controlled by Joseph Anile, Michael DaCorta, and Raymond Montie, who traded FOREX through the Oasis entities' omnibus trading accounts using ATC UK's white label brokerage software. Amended Complaint, Doc. 110 ¶ 28, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF. These principals of the Oasis entities controlled the FOREX trading, which they conducted using omnibus trading accounts and white label software. *See id.* ¶¶ 38–39; Anile Plea Agreement, Doc 1-4 at 26–27, *Oasis*

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[1] Although this and other filings referenced here are outside of the Complaint, they are public record and the Court may take judicial notice of their content to decide a motion to dismiss. *Mitchell v. McManus*, No. 8:14-cv-1822-T-27JSS, at *6 n.3 (M.D. Fla. Apr. 19, 2017) ("In ruling on a motion to dismiss, a district court may take judicial notice of certain facts, including public records, without converting a motion to dismiss into a motion for summary judgment because they are capable of accurate and ready determination." (citing *Harvey v. United States*, 2017 U.S. Dist. LEXIS 4152, at *23 (S.D. Fla. Jan. 10, 2017))).

[2] A "white label" software solution refers to software provided by one company (i.e., ATC UK) that other companies (i.e., the Oasis entities) rebrand to make it appear as if it were their own. In this case, the Oasis entities used legitimate software and omnibus trading accounts provided by ATC UK to conduct legitimate FOREX trading and then report results to their underlying clients, which the Ponzi scheme insiders later admitted to altering to disguise trading losses. This is similar to a business using QuickBooks to manage its accounting and generate statements available to third parties with the businesses name on the document.

International Group, Ltd., No. 8:19-cv-00886-VMC-SPF; DaCorta Indictment, Doc 1-5 at 7–8, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF; Anile Declaration, Doc. 295-2 ¶¶ 6–7, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF; Paniagua Declaration, Doc. 295-3 ¶ 11, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF. The principals of the Oasis entities managed their underlying customers without involvement from ATC UK. *See* Amended Complaint, Doc. 110 ¶¶ 38–39, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF; Anile Plea Agreement, Doc 1-4 at 26–27, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF; DaCorta Indictment, Doc 1-5 at 7–8, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF; Anile Declaration, Doc. 295-2 ¶¶ 6–7, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF; Paniagua Declaration, Doc. 295-3 ¶ 11, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.

When the Ponzi scheme was discovered, the U.K.'s National Crime Agency requested that ATC UK freeze the funds in any Oasis entities' omnibus trading accounts, which ATC UK did, thus terminating any additional trading by the Oasis entities through accounts at ATC UK. Receiver's First Interim Report, Doc. 113 at 11, Receiver's Second Interim Report, Doc. 195 at 9, Receiver's Third Interim Report, Doc. 229 at 9, Receiver's Fourth Interim Report, Doc. 266 at 9, Receiver's Fifth Interim Report, Doc. 294 at 9, Receiver's Sixth Interim Report, Doc. 327 at 9, Receiver's Seventh Interim Report, Doc. 367 at 11, Receiver's Eighth Interim Report, Doc. 393 at 11, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.

II. The CFTC Action

In April 2019, the CFTC sued the Oasis entities, their principals, and several companies associated with the Oasis entities. Complaint, Doc. 1, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF. Neither ATC UK nor any of its principals were named as a defendant or a relief defendant by the CFTC. *Id.* The CFTC alleged that the Oasis entities placed trades and lost almost all the money placed for trading through the ATC UK omnibus accounts. *Id.* ¶¶ 37–39; Amended Complaint, Doc. 110 ¶¶ 38–40, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF. The CFTC never then or at any point thereafter alleged any wrongdoing by ATC UK or any of its principals—because there was never any wrongdoing on the part of ATC UK or any of its principals. In fact, to this day ATC UK is assisting the CFTC by providing information regarding the Oasis entities.

ATC UK cooperated with the government investigation into the Oasis entities throughout the entire process. Indeed, since the First Interim Report filed with the court that appointed him on June 14, 2019, the Receiver himself has repeatedly represented that ATC UK is a U.K. entity and that it has cooperated with U.S. law enforcement through its U.K. regulators:

> On April 18, 2019, the Receiver served London-based ATC Brokers LTD ("ATC") with a copy of the TRO and requested that ATC freeze all accounts associated with the defendants and relief defendants. In cooperation with domestic law enforcement and the United Kingdom's National Crime Agency, ATC identified and froze one account in the name of Oasis Global FX, S.A., which contained $2,005,368.29. The repatriation of that money has been complicated by jurisdictional issues, including international treaties and other agreements. The Receiver understands that the DOJ has assumed the responsibility of repatriating

> the money for the ultimate benefit of the Receivership Estate. The Receiver will cooperate with the DOJ, the National Crime Agency, the CFTC, and ATC to facilitate that process within the scope of the Receivership Orders. At present, the Receiver believes the money is secure and will not be dissipated pending the resolution of these issues.

See, e.g., Doc. 113 at 14, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.

III. The Receiver's history of overreach.

ATC UK also cooperated with the Receiver and held several voluntary meetings with his counsel in spring 2019 to explain the trading undertaken by the Oasis entities. Response in Opposition, Doc. 284 at 7, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF. However, in his apparent zeal to reach trading commissions paid by the Oasis entities to ATC UK to which he was not entitled, the Receiver unilaterally ceased communication with ATC UK and in October 2019 demanded that ATC UK documents be provided to him through a separate U.S.-based company, ATC Brokers ("ATC US"). Doc. 278-2, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF. When counsel for ATC US informed the Receiver that it was the incorrect recipient of a document request and that such documents could not be provided by a distinct corporate entity, the Receiver threatened to subpoena the owners of ATC US and ATC UK personally. Doc. 284-4 at 2–3, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF. When ATC US pushed back against the Receiver's overreach, the Receiver issued a subpoena to Mr. Manoukian in his personal capacity. Doc. 278-3, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF. Mr. Manoukian timely objected and the Receiver did not contest the objection. Doc. 284-6, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF. Instead, the Receiver waited

months and then demanded documents from ATC UK, ATC US, and Mr. Manoukian under the threat of a sanction for contempt. Doc. 278-5, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF. The Receiver, however, refused to send his demand letter to ATC UK and instead addressed the letter only to counsel for ATC US and Mr. Manoukian. *Id.* Counsel for ATC US and Mr. Manoukian informed the Receiver's counsel that the letter had not been sent to a representative of ATC UK, yet the Receiver never corrected his conduct. Doc. 278-6, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.

In an effort to provide additional cooperation, counsel for ATC US offered arranging a videoconference between the Receiver, counsel for ATC UK, counsel for ATC US and Mr. Manoukian, *and the CFTC*, which the Receiver rejected. *Id.* Instead, the Receiver tried to have the court hold ATC UK, ATC US, and Mr. Manoukian in contempt of the order appointing him. Doc. 278, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF. Only just before filing his motion, did the Receiver finally ask who represented ATC UK, which at the time did not have U.S. counsel, it had only U.K. counsel. Doc. 284-8, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.

The court rejected the Receiver's argument that the order appointing gave him any such power to reach third-party documents without following and respecting the Rules of Civil Procedure. Doc. 316, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF. The court also noted that there were "issues regarding this Court's jurisdiction over ATC Brokers Ltd., a non-party located in the United Kingdom,"

which the Receiver also failed to address. *Id.* at 2 n. 1. Accordingly, the court denied the Receiver's motion. *Id.*

The Receiver is now overreaching again by suing Mr. Manoukian, a California resident, and ATC UK, a London-based, foreign business in a case in which he lacks standing and in which he has failed to plead any plausible allegations stating a claim against Mr. Manoukian.[3]

STANDARD

Under Rule 12(b)(6), "only a complaint that states a plausible claim for relief survives a motion to dismiss." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). "A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.'" *Id.* at 678 (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Similarly, a complaint will not survive a motion to dismiss pursuant to Rule 12(b)(6) if "it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* (quoting *Twombly*, 550 U.S. at 557).

In addressing a motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6), a district court may consider the facts alleged in the complaint, documents attached to the complaint as exhibits, and documents incorporated by reference in the complaint. *Gill as Next Friend of K.C.R. v. Judd*, 941 F.3d 504, 511 (11th Cir. 2019); *Fin. Sec. v. Stephens, Inc.*, 500 F.3d 1276, 1284 (11th Cir. 2007) ("[I]n cases in which a plaintiff refers to a document in its complaint, the document is central to its claim, its

[3] ATC UK has filed a separate motion to dismiss for lack of jurisdiction.

contents are not in dispute, and the defendant attaches the document to its motion to dismiss." (citing *Harris v. Ivax Corp.*, 182 F.3d 799, 802 n. 2 (11th Cir. 1999))). The Court's "duty to accept the facts in the complaint as true does not require [it] to ignore specific factual details of the pleading in favor of general or conclusory allegations. Indeed, when the exhibits contradict the general and conclusory allegations of the pleading, the exhibits govern." *Griffin Indus., Inc. v. Irvin,* 496 F.3d 1189, 1205–06 (11th Cir. 2007).

ARGUMENT

I. Based on his allegations and repeated admissions to the court, the Receiver lacks standing to assert common law tort claims against third parties "because the corporation [it stands in the shoes of], 'whose primary existence was as a perpetrator of the Ponzi scheme, cannot be said to have suffered injury from the scheme it perpetrated.'"

A "receiver is limited to bringing only those actions previously owned by the party in receivership." *Isaiah v. JPMorgan Chase Bank*, 960 F.3d 1296, 1306 (11th Cir. 2020). "The corporation—and the receiver who stands in the shoes of the corporation—lacks standing to pursue" tort claims against a third-party "because the corporation, 'whose primary existence was as a perpetrator of the Ponzi scheme, cannot be said to have suffered injury from the scheme it perpetrated.'" *Id.* at 1306 (quoting *O'Halloran v. First Union Nat'l Bank of Fla.*, 350 F.3d 1197, 1203 (11th Cir. 2003)). In some instances, where a corporation is "an honest corporation with rogue employees" it "can pursue claims for the fraud or intentional torts of third parties while in receivership," but "a sham corporation created as the centerpiece of a Ponzi scheme . . . cannot pursue such claims." *Id.* at 1307 (quoting 865 So. 2d at 552).

As in *Isaiah*, the Complaint "depicts the Receivership Entities as the robotic tools of the Ponzi schemers . . . ." *Id.* The Receiver alleges that "OIG was a Cayman Islands limited corporation formed by Anile, DaCorta and Montie in or around March 2013. Anile, DaCorta and Montie owned and controlled OIG and served as its Board of Directors." (Doc. 1 ¶ 14). Anile has pled guilty to running a Ponzi scheme. *Id.* ¶ 5. DaCorta has been indicted for running a Ponzi scheme. *Id.* ¶ 6. And the Receiver has sued Montie for conduct in relation to running a Ponzi scheme. Complaint, *Wiand v. Montie*, No. 8:20-cv-00863-TPB-SPF (M.D. Fla. Apr. 14, 2020). All three persons who "owned and controlled OIG" are named in the CFTC Complaint underlying this action for perpetrating a Ponzi scheme. Amended Complaint, Doc. 110, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF. Because the Receiver alleges that Anile, DaCorta and Montie were the "owners and controllers" of the Ponzi-scheme entities "[t]he corporation—and the receiver who stands in the shoes of the corporation—lacks standing to pursue such tort claims" as it does in this action. *Isaiah*, 960 F.3d at 1306.

Worse, the Receiver has filed declarations confirming that the owners and principals of the Receivership entities (i.e., the Oasis entities) controlled the FOREX trading that form the core allegations of the Receiver's Complaint:

- Ponzi-scheme insider Joseph Anile certified in his Plea Agreement that it was he and coconspirators who perpetrated the Ponzi-scheme, including by forming various foreign companies, securing broker-dealer licenses from offshore regulatory entities, conducting trades via an offshore broker, and concealing trading losses. Anile Plea Agreement, Doc. 1-4 at 26–33, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.

- Ponzi-scheme insider Anile, who opened the trading accounts for the Receivership Entities, declared under penalty of perjury in a declaration the Receiver filed with a sister court: "The trades of investors' funds in forex were executed by affiliated entities, Oasis Global FX, S.A. and Oasis Global FX, Ltd." Doc. 295-2 ¶ 6, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.

- Ponzi-scheme insider Joseph Paniagua declared under penalty of perjury: "ATC also provided a trading software platform called MetaTrader 4 ('**MT4**'). Mr. DaCorta opened and closed trades through MT4." Doc. 295-3 ¶ 11, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.

Not one government filing (e.g., the Anile Plea Agreement or the DaCorta Indictment) and not one of the alleged Ponzi scheme insiders (e.g., the filed Anile and Paniagua Declarations) on which the Receiver relies ever once assert that Mr. Manoukian or any entity for which he is a director had knowledge of the Ponzi scheme. Yet, the Receiver, in his overreach, conflates knowledge of legitimate FOREX trades with knowledge of the Ponzi scheme operated by the Oasis entities. The Receiver cites no support for this conflation.

Even if the victims of the Ponzi scheme insiders were innocent, that cannot overcome the allegations and admissions the Receiver has made—that control of the unlawful acts alleged were vested in the Receivership entities. The result under the binding authority of *Isaiah* is that the Receiver lacks standing to bring third-party tort actions because the "Ponzi schemers' fraudulent acts are imputed to the Receivership Entities," which are divested of standing because "intentional torts of the insiders cannot be separated from those of the corporation itself and the corporation cannot be said to be an entity separate and distinct from the individual tortfeasors." *Id*. at 1306.

As a matter of law, the Receiver lacks standing to bring tort claims based on the Receivership entities' own wrongdoing.

II. Because no receivership property exists in Central District of California—nor does the Receiver allege any such property in California—28 U.S.C. § 754 does not extend jurisdiction to that district.

The Receiver again overreaches his authority by improperly trying to leverage the federal receivership statute to expand his reach to a jurisdiction without receivership property. The expansion of the Receiver's reach to sue in "each district in which [receivership] property is located" simply does not expand his reach to a jurisdiction without such property.

Indeed, the Receiver fails to allege that any receivership property *is located* in the Central District of California. The Receiver does not allege in his Complaint that any such property exists. Moreover, even accepting the Receiver's allegations as true, any receivership property is located in the U.K., not in California. To the extent the Receiver alleges that the receivership property at issue is the funds placed with ATC UK for FOREX trading, that money has either been lost in the market, (Doc. 1 ¶ 56), or is in an account frozen by the U.K.'s National Crime Agency, *id.* ¶ 93. The Receiver has represented this repeatedly to the court that appointed him. Receiver's First Interim Report, Doc. 113 at 11, Receiver's Second Interim Report, Doc. 195 at 9, Receiver's Third Interim Report, Doc. 229 at 9, Receiver's Fourth Interim Report, Doc. 266 at 9, Receiver's Fifth Interim Report, Doc. 294 at 9, Receiver's Sixth Interim Report, Doc. 327 at 9, Receiver's Seventh Interim Report, Doc. 367 at 11, Receiver's

Eighth Interim Report, Doc. 393 at 11, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.

To the extent the Receiver believes commissions earned by ATC UK are receivership property, that money also resides in ATC UK's bank account in the U.K. and the Receiver has not alleged otherwise. The Receiver's allegation that receivership property is in the Central District of California is belied by his repeated representations to the court that appointed him. Because the Receiver has failed to plausibly allege the existence of any receivership property in the Central District of California, 28 U.S.C. § 754 cannot expand his jurisdiction to reach Mr. Manoukian and the Receiver's claim fails.

III. The Receiver brings claims against an owner of a company for the company's actions but does not allege that the owner committed a tort in his individual capacity.

The Receiver overreaches yet again by trying to impute allegations against ATC UK, a foreign corporation, to one of its directors, Mr. Manoukian. It is axiomatic that "[a] corporate officer or agent must be alleged to have acted tortiously in his individual capacity in order to be individually liable." *McElveen By and Through McElveen v. Peeler*, 544 So. 2d 270, 271 (Fla. Dist. Ct. App. 1989). "Officers of a corporation are not liable for corporate acts simply by reason of the officer's relation to the corporation." *E & A Produce Corp. v. Olmo*, 864 So. 2d 447, 448 (Fla. Dist. Ct. App. 2003). Accordingly, the mere allegation that the corporation took or failed to take some action, cannot assign liability to Mr. Manoukian by default. *See White v. Wal-Mart Stores, Inc.*, 918 So. 2d 357, 358 (Fla. Dist. Ct. App. 2005) ("officer or agent

may not be held personally liable 'simply because of his general administrative responsibility for performance of some function of his employment'—he or she must be actively negligent." (quoting *McElveen*, 544 So. 2d at 272)). This failure alone should preclude the entirety of the Receiver's Complaint, but at minimum the Court should only consider allegations against Mr. Manoukian and not the alleged actions or knowledge of ATC UK when ruling on the sufficiency of the allegations. Because the Receiver has failed to assert any allegations of tortious acts in Mr. Manoukian's individual capacity, the Receiver's allegations against him fail.

IV. The Receiver fails to allege actual knowledge of any Ponzi scheme or breach of fiduciary duty.

The Receiver has failed to state a claim for aiding and abetting (Counts I and II). "In Florida, a plaintiff must allege: (1) an underlying violation on the part of the primary wrongdoer; (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 abettor." *Lawrence v. Bank of Am., N.A.*, 455 F. App'x 904, 906–07 (11th Cir. 2012) (citing *AmeriFirst Bank v. Bomar,* 757 F. Supp. 1365, 1380 (S.D. Fla. 1991)). "To be liable, the [defendant] would have had to have actual knowledge of [plaintiff]'s fraudulent activities." *Id.* at 907. Not only was there no knowledge on the part of Mr. Manoukian of the Ponzi scheme, *the Receiver fails to allege that there was any actual knowledge of the fraudulent activities*. The vast majority of the Receiver's allegations claim that "Defendants knew or should have known" or ignored "red flags." (*See, e.g.*, Doc. 1 ¶ 84). These allegations are simply insufficient to state a claim

for aiding and abetting. As the Receiver knows from a prior admonishment in this District: "These 'red flags,' however, are insufficient to establish a claim for aiding and abetting because 'although they may have put the banks on notice that some impropriety may have been taking place, those alleged facts do not create a strong inference of actual knowledge' of wrongdoing." *Wiand v. Wells Fargo Bank, N.A.*, 938 F. Supp. 2d 1238, 1244–45 (M.D. Fla. 2013) (quoting *Lerner v. Fleet Bank N.A.,* 459 F.3d 273, 294 (2d Cir. 2006)).

In fact, the Receiver alleges that "Defendants actually knew" only once:

> Defendants actually knew that (a) the investor online portal showed purported profitable trading for the benefit of the Oasis investors; (b) the purported profits were completely false and fictitious (again, the forex trading at ATC suffered losses on a daily, weekly, monthly, and yearly basis and ultimately totaled catastrophic losses beyond the $21,925,000 transferred to ATC); and (c) the total amount of actual, exorbitant liabilities owed to investors.

(Doc. 1 ¶ 100). Ignoring the fact that the allegation is untrue, the allegation is nonetheless based on the Receiver's belied statement that the Oasis investments always lost money, which is not even remotely plausible. The Receiver directly contradicts his own allegation. The Receiver alleges that Oasis Global FX, Limited, and Oasis Global FX, S.A. deposited approximately $20 million with ATC UK for trading, but that the Oasis entities lost over $60 million trading. (Doc. 1 ¶ 56). The undeniable rule of mathematical reasoning at play here is that the Oasis entities must have made more than $40 million trading in order to lose more than $60 million when they only deposited $20 million. The Receiver makes no allegation that the Oasis entities made losses exceeding their deposits. Indeed, although Oasis Global FX, Limited, and Oasis

Global FX, S.A. ultimately lost money, it was not a continuous pattern of losses and Oasis Global FX, Limited, and Oasis Global FX, S.A. managed to make a significant profit on trades before eventually losing most of it.[4] In fact, as the Receiver acknowledges, the Oasis entities never withdrew money from the omnibus trading accounts with ATC UK. (Doc. 1 ¶ 87).

The other allegations in this paragraph are conclusory statements of knowledge that the Receiver fails to support with any allegations showing how Mr. Manoukian knew anything about the relationship between the Receivership Entities, i.e., his company's client, and the "investors," i.e., the Receivership Entities' clients. Moreover, the Receiver has already filed declarations by Ponzi scheme insiders disproving any allegations that Mr. Manoukian peered into the client accounts under the Oasis entities' omnibus accounts. The declarations, filed by the Receiver in an attempt to seek discovery against Mr. Manoukian before the filing of the Complaint, demonstrated through attached exhibits that when asked to access an omnibus sub-account (i.e., an investor account), Mr. Manoukian could only confirm he had no access to the account. Doc. 295-3 at 8, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF. In fact, an attached agreement attached specifies that only the authorized account holder (i.e., Oasis Global FX, S.A.) can make trades on the account. *Id.* at 13. Accordingly, the Receiver himself has demonstrated that his *only*

[4] As the Receiver represented to the court that appointed him, "In cooperation with domestic law enforcement and the United Kingdom's National Crime Agency, ATC [UK] identified and froze one account in the name of Oasis Global FX, S.A., which contained $2,005,368.29."

allegation of actual knowledge, outside of his conclusory and contradicted statement in the Counts, is simply not plausible. Indeed, Courts correctly dismiss claims for aiding and abetting when the plaintiff makes a "non-specific statement [that] fails to demonstrate that Defendant [] had knowledge." *Groom v. Bank of America*, No. 8:08-cv-2567-JDW-EAJ, at *5 (M.D. Fla. Jan. 9, 2012).

V. The Receiver fails to identify any duty owed to the Receivership entities by Mr. Manoukian.

Both the gross and simple negligence counts (Counts VI and VII) fail to state a clear duty Mr. Manoukian owed to the Receivership entities. This failure is fatal to the legal viability of the Counts. *Davis v. Dollar Rent a Car Sys.*, 909 So. 2d 297, 302 (Fla. 5th DCA 2005) ("The issue of duty is a question of law to be determined by the trial court as 'a minimal threshold *legal* requirement for opening the courthouse doors' before the 'more specific *factual* requirement' to prove causation can go to the trier of fact." (*McCain v. Florida Power Corp.*, 593 So. 2d 500, 502 (Fla. 1992) (footnote omitted)).

As a threshold matter, the Receiver fails to allege more than the conclusory statement that a duty was breached. (Doc. 1 ¶ 148 ("ATC/Manoukian and Spotex, respectively, had duties of care to administer the ATC accounts for the Oasis Pools in accordance with, as opposed to in violation of, minimum industry standards for forex exchanges and providers of FX ECN-based technology, respectively.")). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, at 678. It is not clear what duty the Receiver refers to or what

actions the Receiver claim created or breached the undefined duty. "Rule 8 marks a notable and generous departure from the hyper-technical, code-pleading regime of a prior era, but it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions." *Id.* at 678–79. Here, the Receiver lacks even clear conclusory statements.

The Receiver "must do more than recite these statutory elements in conclusory fashion. Rather, his allegations must proffer enough factual content to 'raise a right to relief above the speculative level.'" *Speaker v. U.S. D.H.S*, 623 F.3d 1371, 1381 (11th Cir. 2010) (quoting *Twombly*, 550 U.S. at 555). Neither the Court nor Mr. Manoukian have been put on notice of what duty the Receiver believed was breached, what allegations lead to the breach, or to whom the duty was owed.

Worse, the Receiver cannot remedy this problem with any amendment. Even trying to piece together potential duties that the Receiver fails to articulate with any clarity—a task not required of this Court or a defendant—yields no actionable duty. The Receiver stands in the shoes of the Receivership entities, so he can only assert claims for those entities. *Fleming v. Lind-Waldock Co.*, 922 F.2d 20, 25 (1st Cir. 1990) ("it has been well settled that 'the plaintiff in his capacity of receiver has no greater rights or powers than the corporation itself would have.'" (quoting *McCandless v. Furlaud*, 296 U.S. 140, 148 (1935) (Cardozo, J.))). This District has already told the Receiver that "[a]s is typical, the Order gives the Receiver the same rights or powers to which the Receivership Entities would be entitled." Report and Recommendation, Doc. 316 at 8, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.

Accordingly, the Receiver cannot bring a claim based on any duty owed to the investors of Oasis or to the CFTC.

Mr. Manoukian owed no duty to the Oasis entities. Indeed, an officer or director acting on behalf of a corporation *only* owes a duty to that corporation. *See Kurlander v. Kaplan*, No. 8:19-cv-00644-T-02CPT, at *17 (M.D. Fla. Aug. 21, 2019) (finding in the context of a shareholder suit "[a]ny fiduciary duty owed by directors 'runs . . . to the corporation . . . .'" (citing *Werbowsky v. Collomb*, 766 A.2d 123, 133 (Md. 2001)); *Bank Hapoalim*, CASE NO: 8:07-cv-170-T-23MSS, at *5 (M.D. Fla. Jan. 10, 2008) ("A director or officer of a corporation owes a duty of care and loyalty to only the corporation and shareholders."). Mr. Manoukian is only alleged to have acted in his role as an employee of ATC UK, which could not have created a *personal* duty to the Receivership entities.

Still more problematic, it does not appear that the Receiver even alleged that corporation, which Mr. Manoukian acted on behalf of, breached a duty. As the Complaint is purposefully unclear, the best guess at what the Receiver meant is that Mr. Manoukian owed some duty to protect the investments of the Oasis entities placed through ATC UK, either through policing the trades or the individuals appointed to place the trades. The Eleventh Circuit, however, has made clear that no such duty exists:

> TDA executed the transactions on behalf of the parties, but did not procure the investments for Appellants or recommend them; they reported values of the securities to the investors but expressly disclaimed any investigation; and they held the securities on behalf of the

> Appellants, but undertook no duty to scrutinize the financial health of the investment funds.

Curry v. TD Ameritrade, Inc., 662 F. App'x 769, 10 (11th Cir. 2016). Like TD Ameritrade, ATC UK only facilitated trading, it never undertook a responsibility to police the soundness of those trades or the internal structures of the licensed Oasis entities placing those trades.

Finally, the Receiver makes a vague gesture towards industry standards set by the CFTC. This too is problematic for many reasons. As discussed above, the Receiver makes a vague and conclusory statement so the standard allegedly violated is not clear. Even so, a more definitive statement would not state a claim.

First, Mr. Manoukian's actions through ATC UK are not regulated by the CFTC. They are regulated by the U.K.'s Financial Conduct Authority. *See* Report & Recommendation, Doc. 316 at 4 n. 3, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF. The Receiver does not—and cannot—allege that ATC UK was subject to CFTC regulation.

Second, the Receiver cannot create a private right of action through the common law. The Receiver attempts to cite to some CFTC regulation, although he is purposefully vague in the Count. To maintain a private right of action, the Receiver must show a private right of action in the underlying law "in clear and unambiguous terms." *Gonzaga Univ.* v. *Doe*, 536 U.S. 273, 290 (2002). The Receiver does not cite a specific cause of action granted and so fails this requirement.

Nor can the Receiver cure this ailment through the common law. When a plaintiff's suit is "in essence a suit to enforce" federal law lacking a private right of action, it is "incompatible with the statutory regime" to allow common-law claims predicated on alleged violations of that federal standard. *See Astra USA, Inc. v. Santa Clara Cnty.*, 563 U.S. 110, 118 (2011). "Plaintiff cannot manipulate the common law to state a private, statutory cause of action where none exists." *Brush v. Miami Beach Healthcare Grp. Ltd.*, 238 F. Supp. 3d 1359, 1367 (S.D. Fla. 2017). "Florida law is clear that no private right of action exists for alleged statutory violations, even on common law theories, unless the text or legislative history of the statute at issue confirms that the Legislature intended to confer such a right." *Patel v. Catamaran Health Solutions, LLC*, No. 15-cv-61891, 2016 WL 5942475, at *8 (S.D. Fla. Jan. 14, 2016).

In other words, if the only support for a common-law claim is the violation of a statute with no private right of action, the common law cannot supersede the legislative branch's authority to create one.[5]

The Receiver did not allege a duty or satisfy his requirement to plead a plausible cause of action. Worse, he cannot remedy these shortcomings because Mr. Manoukian owed no actionable duty to the entities the Receiver represents.

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[5] Plaintiff cites a regulation, not a statute. But since regulations are created by agencies through congressional delegation, the same standard applies.

VI. The Receiver's Complaint is an improper shotgun pleading, which fails to put Mr. Manoukian or the Court on notice.

Shotgun pleadings are routinely dismissed in the Eleventh Circuit. *See Weiland v. Palm Beach Cnty. Sheriff's Off.*, 792 F.3d 1313, 1322 n. 11 (11th Cir. 2015) (collecting cases). "The typical shotgun complaint contains several counts, each one incorporating by reference the allegations of its predecessors, leading to a situation where most of the counts (i.e., all but the first) contain irrelevant factual allegations and legal conclusions." *Strat. Income Fund v. Spear, Leeds Kellogg*, 305 F.3d 1293, 1295 (11th Cir. 2002). Each count of the Complaint incorporates every paragraph that precedes it. (*See, e.g.*, Doc. 1 ¶¶ 141, 154). Accordingly, it fits the definition of a shotgun pleading exactly.

This is not just a harmless technical error, the Receiver has "commit[ed] the mortal sin of re-alleging all preceding counts." *Weiland*, 792 F.3d at 1322. The harm from this form of pleading is that now "the trial court must sift out the irrelevancies, a task that can be quite onerous." *Strat. Income Fund*, 305 F.3d at 1295. For instance, the Receiver's simple negligence count, Count VII, incorporates all the allegations of gross negligence, fraudulent transfer (a cause of action only alleged against ATC UK), and the intentional torts of aiding and abetting. This leaves the Defendants and the Court with the task of attempting to sort out which allegations actually apply. Plaintiff has failed in his burden of putting the parties on notice of what he alleges. Accordingly, the Complaint must be dismissed.

CONCLUSION

Because these arguments have been made to the Receiver in great detail (1) over the last two years of being forced to resist the Receiver's efforts to overreach his discovery authority, which this District denied, (2) in various meet and confers, including most recently a one-hour meet and confer on July 21, 2021, to address the many pleading failures by the Receiver, and (3) a detailed follow-up letter again addressing many of the Receiver's failures argued here, which the Receiver refused to correct in an amended pleading though given the opportunity by counsel, Mr. Manoukian now requests that the Receiver's complaint be dismissed with prejudice.

Dated: August 9, 2021

Respectfully submitted,

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RULE 3.01(g) CERTIFICATION

The undersigned certifies that he conferred with Plaintiff's counsel, who does not oppose the requested relief.

/s/ Christopher Torres
Attorney

CERTIFICATE OF SERVICE

I certify that on August 9, 2021, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to counsel of record.

/s/ Christopher Torres
Attorney