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 AMENDED COMPLAINT

Defendant, David Manoukian, moves to dismiss Plaintiff's Amended Complaint (Doc. 36) under Federal Rule of Civil Procedure 12(b)(6) for among other reasons lack of standing under *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 such tort claims 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.'"), and for failing to plausibly plead the requisite knowledge or acts by Manoukian that can support any actionable claims against him. *Id.*; *Lawrence v. Bank of Am., N.A.*, 455 F. App'x 904, 906–07 (11th Cir. 2012); *Wiand v. Wells Fargo Bank, N.A.*, 938 F. Supp. 2d 1238, 1244–45 (M.D. Fla. 2013).

INTRODUCTION

In this case, the Receiver is standing in the shoes of two overseas, licensed broker dealers, Oasis Global FX Ltd. (NZ) and Oasis Global FX S.A. (Belize), which opened omnibus trading accounts at ATC Brokers Ltd. ("ATC UK"), a London-based brokerage, to engage in foreign exchange ("FOREX") trading through foreign financial institutions. These Oasis entities operated a Ponzi scheme unbeknownst to either ATC UK or its principal, Manoukian. The Receiver, on behalf of these tortfeasors, improperly seeks to reach legitimate earnings from ATC UK for having provided legitimate trading services.

Manoukian moves to dismiss the Receiver's Complaint against him for lack of standing under *Isaiah*. In addition, while the Receiver does as much as he can to (1) cloud events by describing a Ponzi scheme in which Manoukian *did not participate and had no knowledge of*, *CFTC v. Oasis International Group, Ltd.*, Case No. 8:19-cv-00886-VMC-SPF, (2) allege what Manoukian *should have known regarding a scheme undertaken by others*, and (3) confuse matters in an effort to reach funds in which the Receiver has no right, he nonetheless fails to plausibly plead any knowledge or acts by Manoukian that can support any actionable claims against him.

The Receiver's overreach permeates his pleading. He fails to plead any knowledge Manoukian had regarding a Ponzi scheme in which he had no involvement. He fails to plead any duty that Manoukian owed to the specific receivership entities, Oasis Global FX Ltd. (NZ) and Oasis Global FX S.A. (Belize), or any breach. And he fails to plead any property in California on which to even base

jurisdiction. Worse, as the representative of the entities that carried out the Ponzi scheme, the Receiver now seeks to be rewarded for their wrongdoing. Under *Isaiah*, the Eleventh Circuit prohibits such a recovery—which in this case would only be aggravated because it would be against an innocent person. Because the Receiver is without standing and because he has failed to allege any plausible facts to support a claim against Manoukian, his Amended 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 broker dealer trading services and software provided by 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 FOREX trading through foreign financial institutions.[1] Oasis Global FX Ltd. (NZ) and Oasis Global FX S.A. (Belize) used a white label brokerage solution[2] provided by ATC UK that allowed the licensed

[1] Am. Compl., Doc. 110 ¶ 28, *CFTC v. Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF (M.D. Fla. Sept. 14, 2020). Filings referenced outside of this action are to the main CFTC action in which the Receiver was appointed. They are public record of which 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

entities to act as FOREX brokers for their underlying clients.[3] ATC UK had no relationship with the omnibus brokers' underlying clients.[4]

These 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.[5] These principals of the Oasis entities controlled all the FOREX trading on their wholly-owned omnibus accounts.[6] The principals of the Oasis entities managed their underlying customers without involvement from ATC UK.[7]

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 using omnibus accounts at ATC UK.[8]

QuickBooks to manage its accounting and generate statements available to third parties with the businesses name on the document.

[3] Report and Recommendation, Doc. 316 at 3, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.

[4] *Id.*

[5] Am. Compl., Doc. 110 ¶ 28, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.

[6] *See id.* ¶¶ 38–39; Anile Plea Agreement, Doc 1-4 at 26–27, DaCorta Indictment, Doc 1-5 at 7–8, Anile Declaration, Doc. 295-2 ¶¶ 6–7, and Paniagua Declaration, Doc. 295-3 ¶ 11, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.

[7] *See* Am. Compl., Doc. 110 ¶¶ 38–39, Anile Plea Agreement, Doc 1-4 at 26–27, DaCorta Indictment, Doc 1-5 at 7–8, Anile Declaration, Doc. 295-2 ¶¶ 6–7, and Paniagua Declaration, Doc. 295-3 ¶ 11, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.

[8] 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, and Receiver's Ninth Interim Report, Doc. 419 at 17, *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.[9] Neither ATC UK nor any of its principals were named as a defendant or a relief defendant by the CFTC.[10] The CFTC alleged that the Oasis entities placed trades and lost almost all the money placed for trading through the ATC UK omnibus accounts.[11] The CFTC never 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, ATC UK has voluntarily cooperated with government investigations of 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 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

[9] Complaint, Doc. 1, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.
[10] *Id.*
[11] *Id.* ¶¶ 37–39; Am. Compl., Doc. 110 ¶¶ 38–40, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.

secure and will not be dissipated pending the resolution of these issues.[12]

III. The Receiver's history of overreach.

In contrast to the improper actions taken by the Receiver, ATC UK cooperated with the Receiver and held several meetings with his counsel in spring 2019 to explain the trading undertaken by the Oasis entities.[13] Yet, in his zeal to reach commissions paid to ATC UK, 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").[14] 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 principals of ATC US and ATC UK personally.[15] When ATC US resisted the Receiver's overreach, the Receiver subpoenaed Manoukian in his personal capacity.[16] Manoukian timely objected, which the Receiver did not contest.[17] Instead, the Receiver waited months and then demanded documents from ATC UK, ATC US, and Manoukian under the threat of a sanction for contempt of his appointment order.[18] The Receiver, however, refused to send his demand letter to ATC UK and instead addressed the letter only to counsel for ATC US and

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[12] *See, e.g.*, Doc. 113 at 14, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.
[13] Response in Opposition, Doc. 284 at 7, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF (citing Time Entries, Doc. 114-6).
[14] Doc. 278-2, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.
[15] Doc. 284-4 at 2–3, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.
[16] Doc. 278-3, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.
[17] Doc. 284-6, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.
[18] Doc. 278-5, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.

Manoukian.[19] Counsel for ATC US and Manoukian informed the Receiver's counsel that the letter had not been sent to a representative of ATC UK, which the Receiver refused to correct.[20]

Counsel for ATC US even offered to arrange a videoconference between the Receiver, counsel for ATC UK, counsel for ATC US and Manoukian, *and the CFTC*, which the Receiver rejected.[21] Instead, the Receiver tried to have the court hold ATC UK, ATC US, and Manoukian in contempt of the court's order appointing him as Receiver.[22] And only just before filing his motion, did the Receiver finally ask who represented ATC UK, which was U.K. counsel.[23]

The court rebuffed the Receiver's argument that the appointment order provided such power to reach third-party documents without following the Rules of Civil Procedure.[24] 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.[25] Accordingly, the court denied the Receiver's motion.[26] Yet, despite that admonition, the Receiver continued his overreach by now suing 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

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19 *Id.*
20 Doc. 278-6, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.
21 *Id.*
22 Doc. 278, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.
23 Doc. 284-8, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.
24 Doc. 316, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.
25 *Id.* at 2 n. 1.
26 *Id.*

to plead any plausible allegations stating a claim against Manoukian.[27]

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, 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.[28] *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 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

[27] ATC UK has filed a separate motion to dismiss for lack of jurisdiction.
[28] *See also* n.1, *supra*.

govern." *Griffin Indus., Inc. v. Irvin,* 496 F.3d 1189, 1205–06 (11th Cir. 2007).

ARGUMENT

I. The Receiver lacks standing to assert tort claims against third parties under *Isaiah v. JPMorgan Chase Bank*, 960 F.3d 1296 (11th Cir. 2020).

"Although a receivership is typically created to protect the rights of creditors, the receiver is not the class representative for creditors and cannot pursue claims owned directly by the creditors. Rather, he is limited to bringing only those actions previously owned by the party in receivership." *Isaiah*, 960 F.3d at 1306 (citing *Freeman v. Dean Witter Reynolds, Inc.*, 865 So. 2d 543, 550 (Fla. Dist. Ct. App. 2003)). This is precisely the extent of authority given to the Receiver by the court order appointing him, and on which he has relied.[29] And a receiver has no standing on behalf of a receivership corporation when investor money is used for authorized purposes:

> even where a corporation is operated by a Ponzi schemer, it is still in the eyes of the law a separate legal entity with rights and duties. The money it receives from investors should be used for the corporation's stated purpose, and so when assets are transferred for an unauthorized purpose to the detriment of the defrauded investors, who are tort creditors of the corporation, the corporation itself is harmed.

Isaiah, 960 F.3d at 1306 (citation omitted).[30]

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[29] Doc. 177, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.

[30] The Receiver should be abundantly aware of absence of standing. *See Wiand v. Lee*, 753 F. 3d 1194, 1202 (11th Cir. 2014) ("The money they receive from investors should be used for their stated purpose of investing in securities, and thus the corporations are harmed when assets are transferred for an unauthorized purpose to the detriment of the defrauded investors, who are tort creditors of the corporations. Although the corporations participate in the fraudulent transfers, once the Ponzi schemer is removed and the receiver is appointed, the receivership entities are no more the 'evil zombies' of the Ponzi operator but are '[f]reed from his spell' and become entitled to the return of the money diverted for unauthorized purposes.") (citations omitted).

This is a predicament from which the Receiver cannot extricate himself. He pled in the Amended Complaint, in reliance on a Ponzi-schemer's Plea Agreement:

> The defendant and coconspirators made false and fraudulent representations to victim-investors and potential investors to persuade them to transmit their funds, via wire and mail, to entities and accounts controlled by conspirators to be traded in the foreign exchange market ("FOREX"). In fact, the defendant and coconspirators used only a portion of the victim-investors' funds for FOREX trading, and the trading resulted in losses which conspirators concealed. **They used the balance of the victim-investors' funds to make Ponzi-style payments, to perpetuate the scheme**, and for their own personal enrichment. . . .

Doc. 36 ¶ 5 (emphasis in original). The Receiver repeats the substance of this allegation with detail from which he cannot now recede:

> The CFTC Defendants were supposed to trade all investor-derived funds in forex for the benefit of investors. Instead, the CFTC Defendants traded only a small fraction of the funds, specifically transferring $21,925,000 to forex trading accounts at ATC out of over $75 million raised. However, the CFTC Defendants lost every penny traded at ATC in poor forex trading, and the only funds remaining – approximately $2 million in cash – had not been deployed trading.

Doc. 36 ¶ 68. By his own admissions, the Receiver lacks standing.

Even if authorized FOREX trading could be called unauthorized—which it cannot—the Receiver still lacks standing to assert a claim against Manoukian. The Eleventh Circuit prohibits a Receiver from enjoying the sins of sham corporation used to perpetrate a Ponzi scheme in the absence of an honest director or an innocent shareholder: "a 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.'" *Isaiah*, 960

F.3d 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). Such is the case here.

A. The Receiver has pled that the Oasis entities were the "robotic tools of the Ponzi schemers" and, accordingly lack standing to sue for torts related to their Ponzi Scheme.

As in *Isaiah*, the Amended 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. 36 ¶ 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.[31] All three persons who "owned and controlled OIG" are named in the CFTC Complaint underlying this action for perpetrating a Ponzi scheme.[32] The Receiver also filed declarations confirming that the owners and principals of the Receivership entities controlled the FOREX trading that are at the core of his Complaint:

[31] Compl., *Wiand v. Montie*, No. 8:20-cv-00863-TPB-SPF (M.D. Fla. Apr. 14, 2020).
[32] Am. Compl., Doc. 110, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.

- 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.[33]

- 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."[34]

- 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."[35]

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." Isaiah, 960 F.3d at 1306.

B. Unspecified shareholders that exited their positions during the ongoing Ponzi scheme and received compensation from it cannot cleanse the entities from their unlawful activities.

The Receiver attempts to circumvent his lack of standing in response to Manoukian's first motion to dismiss (Doc. 25) by alleging there are unnamed "shareholders" holding an unspecified percentage of OIG's stock. Doc. 36 ¶¶ 53, 56. This fails to absolve the Oasis entities of their sins. First, the Receiver does not allege that there were any innocent shareholders of Oasis Global FX Ltd. (NZ) or Oasis

[33] Anile Plea Agreement, Doc. 1-4 at 26–33, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.
[34] Doc. 295-2 ¶ 6, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.
[35] Doc. 295-3 ¶ 11, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.

Global FX S.A. (Belize), which were the two Oasis entities that used ATC UK's services. Second, the unnamed shareholders were not shareholders when the Receiver was appointed and the alleged Ponzi scheme continued to the date of the CFTC action leading to the Receiver's appointment, which was well past any 2017 stock sale. *See id.* The owners and controllers of the Oasis entities were the Ponzi-schemers who have pled guilty, been indicted, or are being prosecuted. As alleged, the Receiver cannot purport to represent the corporations based on claims of innocent shareholders, when these Ponzi scheme investors exited their positions while the Ponzi scheme continued following their departure. *Cf. Isaiah*, 960 F.3d at 1307. Third, these shareholders are alleged to be "innocent," but sold their shares and benefited from the Ponzi scheme. These shareholders profited from the scheme and may even be some of the same "investors" the Receiver has sued in a separate action, *Wiand v. Arduini*, No. 8:20-cv-00862-VMC-TGW (M.D. Fla.), alleging that they took false profits from that scheme. In other words, these shareholders benefited from the very torts that form the basis of the Receiver's lawsuit.

Finally, the Receiver conflates innocent shareholders with individuals that invested money with the Receivership entities. *See, e.g.*, Doc. 36 ¶ 57. However, these where individuals tempted by the "services" the Oasis entities offered and were not controlling or owning any interest in those corporations. These individuals cannot cure the corporations and if they were harmed, only they have standing.

The Receiver's innocent shareholder allegation also fails to overcome contrary allegations and admissions the Receiver has made—that control of the Receivership

entities and the operation of the Ponzi scheme were vested in Anile, DaCorta, and Montie. 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." *Isaiah*, 960 F.3d at 1306. Indeed, "[t]he torts that occurred when [the Receivership entities] deceptively solicited investments are not 'injuries suffered by the plaintiff' in this case. Therefore, to the extent the Complaint asserts claims based on these torts, such claims must be dismissed for lack of standing." *Perlman v. Bank of Am., N.A.*, No. 11-80331-CV, 2011 WL 13108060, at *2 (S.D. Fla. Dec. 22, 2011).

C. The Receivership entities were completely controlled by the Ponzi schemers. Accordingly, no duty to notify was owed to the corrupt corporations and the Receiver has no standing to sue.

The Receiver can neither create standing by claiming that Manoukian had any obligation to disclose the conduct of the entities he now represents. *See e.g.*, Doc. 36 ¶¶ 135, 146, 170, 186. This allegation is important because, once the lawful services provided by ATC UK to Oasis Global FX Ltd. (NZ) and Oasis Global FX S.A. (Belize) are removed from the Amended Complaint, the only remaining allegations against Manoukian are that he failed to notify someone of those entities' conduct. *See Freeman v. Dean Witter Reynolds, Inc.*, 865 So. 2d 543, 552 (Fla. Dist. Ct. App. 2003) ("Merely conducting normal, lawful banking operations for the corporation is not

enough to establish aiding and abetting an intentional tort against the corporation."). This cannot create standing for a Receivership that represents the very companies whose conduct they now claim Manoukian should have exposed. Indeed, even had Manoukian known of the Receivership entities wrongdoing, there was no one he could expose it to at the corporations. At the time, the Receivership entities were the "robot or zombie" of the perpetrators of the Ponzi scheme and, "[a]s a result, a theory based on a duty to disclose misconduct to that corporation during a time prior to the receivership simply cannot stand because no honest person existed within the corporation to whom such conduct could be reported." *Id.*

Nor could the Receiver bring a claim for failure to notify the investors or regulators. The Receiver only represents the Receivership entities. Accordingly, only allegations relating to acts or omissions that affected those entities are relevant to the standing analysis. *Id.* at 553 ("In the end, the damages suffered in this case were suffered by the individual customers and not by a corporation created and controlled by the [perpetrators of the Ponzi scheme].").

Under the binding precedent of *Isaiah*, 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 Amended Complaint that any such property exists. *See* Doc. 36 ¶ 32(f). Moreover, even accepting the Receiver's allegations as true, any receivership property is 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. 36 ¶ 68, or is in an account frozen by the U.K.'s National Crime Agency.[36] The Receiver has represented this repeatedly to the court that appointed him.[37]

To the extent the Receiver believes commissions earned by ATC UK are receivership property, that money resided in ATC UK's bank account in the U.K. and the Receiver has not alleged otherwise. 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 Manoukian and the Receiver's claim fails as a matter of law.

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[36] Doc. 113 at 14, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.

[37] 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, and Receiver's Ninth Interim Report, Doc. 419 at 17, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.

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, 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 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 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 Manoukian's individual capacity, the Receiver's allegations against him fail as a matter of law.

IV. The Receiver fails to plausibly allege that Manoukian possessed the requisite knowledge of a 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 abettor; 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 (emphasis added). Not only was there no knowledge on the part of Manoukian of the Ponzi scheme, but the Receiver also fails to plausibly *allege* that there was any actual knowledge of the Ponzi scheme.

Rather, the Receiver generally alleges that "the Defendants"[38] had knowledge of underlying problematic conduct, i.e., red flags. *See, e.g.*, Doc. 36 ¶ 134. 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)).

[38] Notably, the Receiver does not state which Defendant allegedly had knowledge of which conduct.

Three times, the Receiver alleges that Defendants knew "specific facts" that were "evidence of a crystal-clear Ponzi scheme." Doc. 36 ¶¶ 119, 121, 127. Not once, however, does the Receiver allege that Defendants had knowledge of a Ponzi scheme. This failure is fatal as the authority is clear: allegations that a defendant *should have known* about an underlying fraud are insufficient to state a claim for aiding and abetting. *Wiand*, 938 F. Supp. 2d at 1246.

The Amended Complaint is the Receiver's second attempt at alleging actual knowledge, with the benefit of an investigation conducted in the CFTC action, yet the Receiver still fails to allege that Manoukian knew the Oasis entities were running a Ponzi scheme. The most the Receiver can allege that Manoukian knew was that the Oasis entities lost money and adjusted the accounts of the Oasis entities' investors. Neither demonstrates actual knowledge of a fraud or a breach of fiduciary duty. Loses from speculative foreign exchange trading, even the nearly total loses alleged here does not indicate fraud. And adjustments could indicate a credit of previously charged fees or sharing a portion of the spread pay traditionally kept by the broker, in this instance the Oasis entities, with their underlying investors. Far from even "red flags" or "crystal-clear evidence" of a Ponzi scheme, these allegations only reflect speculative trading.

Where the Receiver does attempt to allege actual knowledge, he fails to do so plausibly. He alleges that the Defendants knew the "investor online portal showed and published purported profitable trading," but fails to explain how the Defendants would know that. Doc. 36 ¶ 112. He alleges that Defendants knew that profits were

"false and fictitious," but again fails to allege how Defendants knew how any profits were represented or in what manner, and fails to account for any period of profitable trading prior to the "catastrophic losses."[39] Finally, he alleges that Defendants knew "the total amount of actual, exorbitant liabilities owed to investors," but never states why or how the Defendants would have any knowledge of the interior workings and finances of a completely separate group of companies or why this would suggest that the Receivership entities were operating a Ponzi scheme. *Id.*

The other allegations of knowledge are conclusory and cannot be considered. *See Iqbal*, 556 U.S. at 678. The Receiver fails to support with any allegations showing how 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 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 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), Manoukian could only confirm he had no access to the account.[40] In fact, an attached agreement specifies that only the authorized

[39] Indeed, basic logic suggests the loses were not the continuous losses the Receiver alleges. Even trading on margin, to lose $60 million on a deposit of $20 million would require some profitable trading.

[40] Doc. 295-3 at 8, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.

account holder (i.e., Oasis Global FX, S.A.) can make trades on the account.[41] Accordingly, the Receiver himself has demonstrated that his allegation of actual knowledge 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 by Manoukian to the Receivership entities or any breach.

Both the gross and simple negligence counts (Counts VI and VII) fail to state a clear duty Manoukian owed to the Receivership entities. This 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. 36 ¶ 171 ("Defendants ATC, Manoukian and Spotex owed duties of care to administer the ATC accounts for the Oasis Pools in accordance with, as opposed to in violation of, minimum industry standards as forex exchange participants."). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678. It

[41] *Id.* at 13.

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 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."[42] Accordingly, the "duty to administer" the account must accrue to the Oasis entities to be actionable.

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*, 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

[42] Report and Recommendation, Doc. 316 at 8, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.

shareholders."). 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 the corporation, which Manoukian acted on behalf of, breached a duty. The Complaint is purposefully unclear. The best guess at what the Receiver meant is that Manoukian owed some duty to protect the investments the Oasis entities made, 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.[43]

The Receiver also makes a vague gesture of CFTC industry standards. 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. Manoukian's actions through ATC UK

[43] A CFTC license is not required for entities formed outside the U.S. that trade on foreign markets for non-U.S. entities. Accordingly, the Receiver's allegations that the Oasis Pools were not registered with the CFTC is irrelevant in any inquiry into liability of such non-U.S. entities.

are not regulated by the CFTC. They are regulated by the U.K.'s Financial Conduct Authority.[44] 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 again 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.

Neither can the Receiver cure this failure. 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

[44] *See* Report & Recommendation, Doc. 316 at 4 n. 3, *Oasis International Group, Ltd.*, No. 8:19-cv-00886-VMC-SPF.

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.[45]

Finally, if any duty existed to police the accounts the Oasis entities provided to its customers, that duty would accrue not to the Oasis entities, but to the underlying customers of those entities, which the Receiver has no standing to assert.

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 Manoukian owed no actionable duty to the entities the Receiver represents.

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 a one-hour meet and confer on July 21, 2021, to address the many pleading failures by the Receiver, (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 prior to the filing of a Motion to Dismiss, and (4) in a prior Motion to Dismiss, (Doc. 25), mooted by a subsequent amended pleading, Manoukian now requests that the Receiver's complaint be dismissed with prejudice.

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

Dated: October 22, 2021

Respectfully submitted,

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RULE 3.01(g) CERTIFICATION

The undersigned certifies that he conferred with Plaintiff's counsel, who opposes the requested relief.

/s/ Christopher Torres
Attorney

CERTIFICATE OF SERVICE

I certify that on October 22, 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

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