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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

IN RE: J&J INVESTMENT LITIGATION

Case No. 2:22-cv-00529-GMN-NJK

PLAINTIFFS' OPPOSITION TO WELLS FARGO'S MOTION TO DISMISS

Judge: The Hon. Gloria M. Navarro

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Introduction

In early 2022, one of the largest Ponzi schemes in Nevada history was uncovered. The scheme was perpetrated by a Las Vegas solo practitioner, Matthew Beasley, who ran the scheme through his attorney trust account at Wells Fargo. Attorney trust accounts (or "IOLTAs") are carefully regulated to ensure lawyers distinguish between client funds and their own money. Wells Fargo knows the rules well: it had to qualify to operate IOLTA accounts in Nevada and is required to file monthly reports with the State Bar.

Although Wells Fargo now argues that its only involvement with Beasley involved "routine banking activity," for the duration of Beasley's Ponzi scheme, Wells Fargo regularly processed transactions that violated the rules governing IOLTAs. Cash withdrawals, for example, are not allowed, which is why Wells Fargo does not issue debit cards for IOLTAs. Yet for Beasley, Wells Fargo repeatedly processed large cash withdrawals—tens of thousands of dollars at a time. And that was only the beginning. Wells Fargo processed improper transactions again and again, including millions of dollars spent on automobiles and real estate. None of these transactions was "routine" for an attorney trust account.

Wells Fargo also attacks the complaint for purportedly alleging only that Wells Fargo "should have known" Beasley was misappropriating funds. But the complaint alleges more: that Wells Fargo *did* know, and that Wells Fargo assisted Beasley along the way. It not only helped Beasley break many of the rules governing attorney trust funds, but when its employees conveyed suspicions, Wells Fargo directed them to execute the suspicious transactions anyway. In all, Wells Fargo processed nearly $500 million of deposits into the IOLTA without any conceivable explanation for how Beasley, with his one-person firm, had generated $500 million lawfully. Wells Fargo was not oblivious: it uses sophisticated software to detect this very type of activity. Wells Fargo simply chose to dismiss its internal alerts, opting to continue profiting from its relationship with Beasley.

Plaintiffs' complaint thus satisfies its burden at the pleading stage: it not only alleges that Wells Fargo had knowledge of Beasley's scheme, but comprehensively details the facts that render that allegation plausible. In three recent cases, district courts in this circuit have sustained

plaintiffs' claims in similar circumstances, and rejected the same heightened-specificity argument that Wells Fargo advances here—that plaintiffs need to identify names of particular bank employees who knew about the scheme (or the dates they first discovered it). Other in-circuit decisions likewise dispense with Wells Fargo's argument that the individual Plaintiffs lack standing; when an individual is defrauded, it doesn't matter if they invested through an LLC—the individual has standing to bring suit. Wells Fargo's motion should be denied in full.

Factual Allegations

1. Beasley perpetrates a Ponzi scheme through his Wells Fargo attorney trust account.

Beginning in January 2017, and continuing through March 2022, Las Vegas solo practitioner Matthew Beasley ran a massive Ponzi scheme centered in Las Vegas, Nevada. ¶¶ 1-2.[1] Beasley perpetrated the scheme alongside Jeffrey Judd, a friend with a background in real estate and pharmaceutical sales. ¶ 1.

Beasley and Judd, with a network of promoters, claimed to be operating a venture to acquire interests in personal injury settlements. ¶¶ 29-30. These investments purportedly came at low risk and offered attractive rates of return. ¶ 32-33. Investors were told their funds would be deposited into Beasley's attorney trust account at Wells Fargo for security. ¶ 34. (The account was an Interest on Lawyers' Trust Account, commonly known as an IOLTA. *Id.*)

In reality, there were no investment assets being acquired. ¶ 30. Investors sent their money into Beasley's IOLTA, ¶ 34. Beasley then promptly transferred the funds into one of a small number of accounts, mostly those belonging to shell companies. ¶¶ 7, 150. The shell company accounts, along with other bank accounts of Beasley, Judd, and the scheme's promoters, were maintained at Wells Fargo. ¶¶ 7, 141, 142, 152.

The Ponzi scheme continued unimpeded for over five years. ¶ 2. Finally, in early 2022, law enforcement received a tip, and the FBI went to Beasley's home. Beasley brandished a firearm, threatened to commit suicide, and was subdued only with the help of a hostage negotiator. *Id.* He ultimately confessed that the entire enterprise had been a Ponzi scheme.

[1] All citations to "¶ _" are to Plaintiffs' consolidated complaint, ECF No. 37.

¶¶ 2, 36. As he was taken into custody, he told the FBI that the Ponzi scheme would be "clear as soon as they go through my bank records." ¶ 36.

2. Throughout the duration of the Ponzi scheme, Wells Fargo actively monitors the Beasley IOLTA.

Until March 2022, Beasley's scheme was visible only to Wells Fargo. The bank actively monitored the Beasley IOLTA activity, along with the activity in the other Wells Fargo accounts connected to the scheme. ¶¶ 9, 99, 106, 132, 145, 152. Wells Fargo monitored the account activity as part of its overarching practice of reviewing transactions for signs of money laundering and fraud. ¶¶ 99-103.

Wells Fargo uses sophisticated processes and systems to detect money laundering and fraud. ¶¶ 9, 103-17. Wells Fargo trains its employees to scrutinize wire transfers and large check deposits and to ask questions about the purpose of the transactions. ¶¶ 107-15. Wells Fargo engages in "Know Your Customer" efforts through which it develops intelligence about account holders and then forecasts their anticipated account activity. ¶¶ 99-101. And Wells Fargo uses automated systems to monitor account activity to confirm, among other things, that a customer's activity matches the forecast. ¶¶ 98, 105, 153.

The software that Wells Fargo uses to monitor account transactions is highly sophisticated. ¶¶ 116-17. It relies on artificial intelligence to review transactions, detect hidden patterns, and identify suspicious activity. *Id.* The software automatically alerts Wells Fargo whenever suspicious activity is detected. *Id.* When either an employee or the software identifies suspicious activity, Wells Fargo reviews the account history more closely. *Id.*

3. Wells Fargo sees numerous indicators of fraud in the Beasley IOLTA.

Wells Fargo's personnel are trained, and the bank's software is designed, to identify specific, well-known signs of fraud and money laundering. ¶¶ 92-97, 102, 103, 105-17. Those well-known signs, often called "red flags," were frequently present in the Beasley IOLTA activity. The IOLTA activity did not just trigger one or two of these well-known red flags. It triggered about 20 distinct red flags, and it did so repeatedly throughout the account's history. ¶¶ 96-97, 132-136.

Particularly glaring, among these red flags, was the disparity between Beasley's stated income and the amount of funds deposited into the IOLTA. ¶¶ 137-45. When Beasley opened the account, he told Wells Fargo he was a solo practitioner with a gross annual income of $350,000. ¶ 129. But the activity in the IOLTA never correlated with the forecast. ¶¶ 137-44. Beasley was quickly depositing millions of dollars into the IOLTA every month. ¶ 139. All told, $491.5 million entered the IOLTA in just over five years. *Id.* These disparities did not go unnoticed at Wells Fargo. The bank's automated surveillance software is programmed to detect this precise red flag. ¶ 145. And Wells Fargo employees also review "balance fluctuation reports" to identify which accounts have increasing amounts of money flowing through them. ¶ 114.

In addition, Wells Fargo's automated systems are designed to detect a number of other well-known red flags that were likewise continually present in the Beasley IOLTA, including:

- The vast majority of the transactions were in large, round-dollar amounts. ¶¶ 146-48.
- The account activity followed a repetitive and suspicious pattern: incoming deposits in recurring amounts, followed promptly by a transfer out, ¶¶ 7, 153, 186, with over $300 million of those transfers going directly from the IOLTA into the accounts of shell companies called "J&J Consulting" or "J&J Purchasing." ¶ 150.
- Despite Beasley's telling Wells Fargo he had a "local" practice in Las Vegas, the IOLTA received deposits from dozens of branches; the single most frequently used branch was not in Nevada, but in Utah. ¶¶ 8, 129, 162-65.

Plaintiffs' complaint provides many examples of these and other red flags, along with images depicting the relevant transactions. These details include the dates, locations, and amounts of many suspicious transactions. ¶¶ 137-86.

Wells Fargo's automated software set off alerts as a result of these transactions. ¶¶ 153. And Wells Fargo personnel grew suspicious. A former Regional Banking District Manager of a Wells Fargo branch in Henderson, Nevada, interviewed for Plaintiffs' complaint, recalled having been informed that individuals had visited a branch in Las Vegas to deposit funds into Beasley's IOLTA. ¶ 135. He recalled that branch personnel concluded that the transactions were suspicious and expressed doubts about their propriety. *Id.* Those personnel, following bank policy,

contacted a corporate group within Wells Fargo to convey their suspicions. *Id.* In each of the multiple instances, however, Wells Fargo responded to the reports by directing the branch employees to execute the suspicious transactions. *Id.*

4. Wells Fargo takes a closer look at the activity, revealing the fraudulent scheme.

Consistent with Wells Fargo protocol, once these suspicions and red flags were identified, bank personnel examined the activity in the IOLTA (and related accounts). ¶¶ 5-9, 98, 135, 145-46, 152, 153, 166, 178. Even a superficial review of the IOLTA records would have revealed the scheme. After all, Beasley's misuse of the account had not been subtle. Consistent with his confession that the Ponzi scheme would be "clear as soon as they go through my bank records," ¶ 36, an SEC accountant has since testified that the IOLTA transactions show a pattern of Ponzi activity throughout its existence—beginning immediately after Wells Fargo first opened the account. ¶ 134.

Throughout its existence, the IOLTA's primary use was to enable the Ponzi scheme. ¶¶ 127, 133-34, 136. Never during the account's existence were regular signs of a law practice present. ¶¶ 133-34, 136. No incoming payments came from law firms or insurance companies, as would be customary. ¶ 169. No outgoing payments went to clients—a central purpose of IOLTA accounts. ¶¶ 168-69. It was all incoming investment money, in large, round-number denominations, frequently from entities that had the word "Investment" or "Capital" in their names. ¶ 170. And the money went straight out—again in huge, round-number transactions—mostly to the shell companies. ¶¶ 150-52, 186. There was no sign of a legitimate investment enterprise: no purchases of investment assets and no returns generated to pay investors. ¶ 185.

5. Wells Fargo chooses not to end its relationship with Beasley, instead allowing him to flout attorney trust account rules, causing investors to lose millions.

Despite realizing that the Beasley IOLTA and related accounts were being used to perpetrate a fraudulent investment scheme, Wells Fargo did not terminate the accounts or insist that the promotors comply with the law. Instead, it not only continued providing banking services to Beasley but permitted him to violate well-established norms for proper IOLTA usage.

IOLTAs are strictly regulated by the State Bar of Nevada, and Wells Fargo reviews the IOLTAs it maintains regularly so that it can send reports to the State Bar about the amount of interest being earned. ¶¶ 118-26. Because the accounts typically hold multiple clients' funds in trust, various IOLTA-specific rules exist to prevent misappropriation of those funds. Certain transactions are outright forbidden. And generally speaking, IOLTA transactions are expected to facilitate a clean audit trail to account for which funds belong to which client. ¶ 123.

Beasley's use of the Wells Fargo IOLTA bore no resemblance to the norms. Most flagrantly, Wells Fargo allowed Beasley to withdraw large sums of cash. ¶¶ 4, 142, 157. Cash withdrawals from IOLTAs are perhaps the single most widely recognized sign that an attorney is misappropriating funds. ¶ 4. As the State Bar of Nevada puts it: "You should never pay out money in cash.…" ¶ 156. For that reason, Wells Fargo does not provide debit cards for IOLTAs. ¶¶ 124, 158. Yet Wells Fargo allowed Beasley to withdraw cash routinely (often in increments of $15,000, $25,000, and $50,000). ¶¶ 142, 157. In all, Wells Fargo processed over a million dollars in cash withdrawals from the IOLTA. ¶ 157.

Another rule prohibits law firms from transferring funds directly from their operating account into their IOLTA. ¶ 125. The sole exception is to pay bank service charges. ¶ 159. Here again, Wells Fargo permitted Beasley to flout the rules. *Id*. The bank processed nearly $2 million in transfers from the Beasley firm's checking account into the IOLTA. *Id*.

Wells Fargo also facilitated a number of payments that—on their face—were not proper IOLTA expenses. ¶ 155. Less than two months after opening the IOLTA, Wells Fargo executed instructions to transfer over $40,000 to pay off a car loan. *Id.* Wells Fargo later processed a payment of over $95,000 for another vehicle purchase. *Id.* In October 2019, Wells Fargo approved a transfer of $80,000 to Beasley's personal account. *Id.* Wells Fargo also executed transfers of over $4 million to title companies to acquire real estate. *Id.*

In short, rather than terminating its relationship with Beasley, Wells Fargo chose to continue carrying out Beasley's instructions. By assisting Beasley in moving nearly $500 million through the IOTLA, Wells Fargo was able to generate significant fee revenue for itself. ¶¶ 5, 137, 210, 216, 222. But while Wells Fargo focused on retaining Beasley's business,

hundreds of investors were being fleeced. ¶¶ 11, 193. Shortly before the FBI apprehended Beasley, less than $4 million remained in the IOLTA, and investors saw devastating losses. ECF No. 22-5 at 171; ¶ 10. Plaintiffs are among those investors. ¶¶ 37-91. They bring this suit to recover their losses and hold Wells Fargo accountable for its contributions to the scheme. ¶¶ 1, 228.

Legal Standard

In deciding a Rule 12(b)(6) motion, the Court accepts all factual allegations in the complaint as true and construes them in the light most favorable to the nonmoving party. *Campidoglio LLC v. Wells Fargo & Co.*, 870 F.3d 963, 970 (9th Cir. 2017). Under Rule 8, Plaintiffs need only set forth enough facts to state a plausible entitlement to relief. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-57 (2007). The test calls for "more than a sheer possibility that a defendant has acted unlawfully." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted).

Argument

I. Plaintiffs have pleaded a viable claim for aiding and abetting fraud.

To state a claim for aiding and abetting fraud, a plaintiff must allege that (1) a third party's fraud injured them; (2) the defendant was aware of its role in promoting the fraud at the time it provided assistance; and (3) the defendant knowingly and substantially assisted the fraud. *Terrell v. Cent. Wash. Asphalt, Inc.*, 168 F. Supp. 3d 1302, 1314 (D. Nev. 2016) (citing *Dow Chem. Co. v. Mahlum,* 114 Nev. 1468 (1998)). "The second and third elements should be weighed together, that is, greater evidence supporting the second element requires less evidence of the third element, and vice versa." *CMB Infrastructure Grp. IX v. Cobra Energy Inv. Fin., Inc.*, 572 F. Supp. 3d 950, 967 (D. Nev. 2021) (citing *Dow*, 114 Nev. at 1490).

A. Plaintiffs plausibly allege Wells Fargo's knowledge of the scheme.

Wells Fargo seeks dismissal on the ground that Plaintiffs fail to allege that Wells Fargo knew about the fraudulent scheme. But Wells Fargo seeks to impose a standard that Ninth Circuit law does not sanction, while ignoring the allegations that plausibly support knowledge.

1. Rule 9(b)'s heightened pleading standard does not apply to allegations of knowledge.

Wells Fargo argues that Plaintiffs must plead the "who, what, when, where, and how" of Wells Fargo's knowledge. But three recent decisions in this circuit have rejected this argument. The court in *Chang v. Wells Fargo Bank N.A.*, rejected the argument, holding, "While Defendants repeatedly argue that Plaintiffs must plead details like '*who* reviewed [the Ponzi accounts]' [and] '*when* the accounts were allegedly reviewed … that is not the standard …." No. 19-cv-01973-HSG, 2020 WL 1694360, at *5 (N.D. Cal. Apr. 7, 2020). In the second case, *In re Woodbridge Investments*, the defendant bank advanced the same argument, and the *Woodbridge* court rejected it too, holding that "Rule 9 is clear that plaintiffs may plead knowledge generally." *See* No. CV 18-103-DMG (MRWx), 2020 WL 4529739, at *5 (C.D. Cal. Aug. 5, 2020). And last year, a third court agreed, rejecting the argument "that plaintiffs must state their allegations with heightened particularity," since "the disputed issue … [was] the element of … knowledge." *Camenisch v. Umpqua Bank*, No. 20-cv-05905-RS, 2021 WL 9181171, at *3 (N.D. Cal. Jan. 28, 2021).

Under *Chang/Woodbridge/Camenisch*, the applicable pleading standard poses two questions: (1) does the complaint allege actual knowledge, and (2) is that allegation of knowledge plausible? *See Chang*, 2020 WL 1694360, at *4-5; *In re Woodbridge Invs. Litig.*, 2020 WL 4529739, at *5-6; *Camenisch*, 2021 WL 9181171, at *3. Here, Plaintiffs allege actual knowledge, and this allegation is made plausible by the facts detailed in the complaint.

2. Plaintiffs allege that Wells Fargo had knowledge of Beasley's scheme.

The first step of the *Chang/Woodbridge/Camenisch* analysis asks whether Plaintiffs allege actual knowledge. Wells Fargo argues that the complaint merely "repackage[s] what are, in effect, allegations suggesting constructive knowledge," *i.e.*, that Wells Fargo should have known about the scheme. (Mot. at 13.) But Plaintiffs explicitly allege *actual* knowledge. Their consolidated complaint alleges that "Wells Fargo knowingly provided material assistance to the Ponzi scheme" and that "Wells Fargo knew the [IOLTA] deposits were to be held in trust, but also knew the funds were being misappropriated." ¶¶ 221, 227. This language from the

complaint clearly alleges that Wells Fargo had actual knowledge of the scheme.

3. Plaintiffs plead facts that plausibly establish Wells Fargo's knowledge.

Turning to the second of the two steps, plausibility, courts deem alleged knowledge to be "plausible" as long as the complaint alleges facts that "allow[] the court to draw the reasonable inference" of knowledge. *Iqbal*, 556 U.S. at 663. Plausible allegations of knowledge can be supported by "circumstantial, rather than direct, evidence." *Camenisch*, 2021 WL 9181171, at *3. This includes facts suggesting the bank's awareness of unusual banking transactions, including activities inconsistent with the client's stated business model. *See Simi Mgmt. Corp. v. Bank of Am., N.A.*, 930 F. Supp. 2d 1082, 1100 (N.D. Cal. 2013) (finding triable issues regarding bank's actual knowledge based on suspicious banking activities); *Evans v. ZB, N.A.*, 779 F. App'x 443, 445 (9th Cir. 2019) (it was "plausible" bank had actual knowledge because it knew that its client had "virtually no income" from its stated business).

Here, Plaintiffs provide more than 100 paragraphs of detail that plausibly establish that Wells Fargo knew the Beasley IOLTA was the hub of a fraudulent investment scheme. *See generally* ¶¶ 2-9, 92-186. These allegations, in general terms, can be summarized as follows:

(a) Wells Fargo monitors accounts for well-known signs of money laundering and fraud,

(b) Those very red flags were routinely present in the Beasley IOLTA transactions,

(c) Multiple bank employees noticed the suspicious activity and alerted Wells Fargo, and

(d) Consistent with its protocols, Wells Fargo reacted to the red flags and employee suspicions by reviewing the IOLTA activity more closely, which in turn revealed the scheme.

The following sections elaborate on these allegations.

a) Wells Fargo monitors accounts for signs of fraud and money laundering.

Federal law requires Wells Fargo to "know its customers" and to monitor transactions for signs of fraud and money laundering. ¶¶ 98-104. Wells Fargo argues that the complaint contains mere "general allegations" about these obligations "without any specific supporting facts." (Mot. at 11.) In reality, the complaint contains substantial detail. *See generally* ¶¶ 98-104; *see also Evans*, 779 F. App'x at 445 (reversing dismissal and explaining "the question isn't whether

[defendant] had a *duty* to supervise the account—the question is whether Plaintiffs allege [defendant] *actually did* monitor the account").

For instance, Plaintiffs detail how in 2011, Wells Fargo was fined for its compliance failings. ¶ 104. After being disciplined, Wells Fargo realigned 5,000 employees and implemented surveillance technology. ¶ 105. So, by 2016, Wells Fargo then testified to Congress that its internal controls and detection capabilities were effective and complied with federal regulations. *Id.*; *see Giron v. Hong Kong & Shanghai Bank Co.*, No. 2:15-cv-08869-ODW-JC, 2016 WL 6662726, at *4 (C.D. Cal. June 29, 2016) (deferred prosecution agreement requiring bank to implement more stringent anti-money laundering procedures "would have alerted" it to the "hallmarks of a Ponzi scheme," thus supporting allegation of actual knowledge).

As part of its anti-fraud efforts, Wells Fargo employees review all new accounts and many wires and check deposits, as well as "balance fluctuation reports." ¶¶ 105-17. Wells Fargo also uses sophisticated artificial intelligence to review transactions, searching for signs of money laundering and fraud, and then to sound alarms when red flags are present. ¶¶ 105, 116-17.

b) Wells Fargo monitors for the very activity present in the Beasley IOLTA.

The complaint details which particular "red flags" Wells Fargo personnel and software search for. ¶ 96. Wells Fargo's systems scan account transactions, searching for these red flags. ¶ 98, 116-17. Many of these red flags were a mainstay of Beasley's banking:

High value transactions not commensurate with income. Upon opening an account, Wells Fargo gathers information to forecast future account activity. It then monitors the account activity and, if the activity doesn't match the forecast, bank personnel are notified. Here, when Beasley opened the IOLTA, he told Wells Fargo his one-person law firm grossed $350,000 a year. ¶¶ 5, 129, 137. Yet in just over five years, he ran nearly $500 million through the IOLTA, with the account receiving constant large deposits—sometimes multiple $1 million deposits each day. ¶¶ 137, 148-49. Beasley also frequently transferred more than $350,000 at a time (his purported gross annual income) into his firm's Wells Fargo operating account. ¶¶ 141-44. The disparity between Beasley's income and the amount he deposited could not have gone unnoticed.

Many transfers sent in large, round dollar amounts. Wells Fargo also looks for account

activity replete with large, round-dollar transactions. ¶¶ 7, 96. Here too, the Beasley IOLTA activity triggered alarms. Nearly every deposit into the IOLTA was $40,000, $50,000, $80,000, or $100,000. ¶ 147. And outgoing transfers were also in large, round-number form—often $1 million each. ¶¶ 148-49.

Transfer activity in unexplained, repetitive patterns. Another well-known red flag: the Beasley IOLTA followed a recurring pattern that made no sense for a law practice, let alone for a solo practitioner like Beasley. ¶¶ 127, 133-34, 136. There was a constant stream of large deposits, followed promptly by large outgoing transfers, with the vast majority going to one of a small number of accounts controlled by Beasley, Judd, or another of the scheme's promoters. ¶¶ 7, 150, 153, 186. This sort of pattern is precisely what Wells Fargo's software is designed to monitor: "hidden connections and relationships between transacting parties across multiple accounts." ¶ 116.

Multiple high-value payments involving shell companies. Relatedly, most of the money leaving the IOLTA (over $313 million) went straight into accounts controlled by the scheme's shell companies "J&J Consulting" and "J&J Purchasing, LLC." ¶ 150; *see Chang*, 2020 WL 1694360, at *5 (transfer of investor proceeds to promoters' LLCs suggested knowledge).

Customer repeatedly uses a geographically distant branch location without sufficient business purpose. Wells Fargo also monitors activity for geographic consistency with the purpose and location of the account. Here, though, Beasley's IOLTA received deposits at no fewer than 43 branch locations around the country and abroad. The most frequently used branch was in Utah. ¶ 164. This too would have triggered alerts, given that Beasley had told Wells Fargo his Las Vegas practice was "local." ¶ 165.

These and many other red flags persisted throughout the IOLTA's existence. ¶ 167. Although Wells Fargo claims that evidence of suspicious activity and red flags is not enough to establish actual knowledge, "[t]he Ninth Circuit … has suggested that a bank's decision to ignore suspicious activity or red flags is sufficient to demonstrate actual knowledge." *In re Woodbridge Invs. Litig.*, 2020 WL 4529739, at *6 (citing *In re First All. Mortg. Co.*, 471 F.3d 977, 999 (9th Cir. 2006)); *see also id.* (referring to "the Ninth Circuit's clear statement that unheeded red flags

'are enough to establish actual knowledge'"). And, as Wells Fargo's own authority recognizes, the law in other circuits (from which Wells Fargo cites multiple decisions) is different. *See Liu Yao-Yi v. Wilmington Tr. Co.*, 301 F. Supp. 3d 403, 422-23 (W.D.N.Y. 2017) (rejecting *Benson v. J.P. Morgan Chase Bank, N.A.*, Nos. C-09-5272 EMC, C-09-5560 EMC, 2010 WL 1526394 (N.D. Cal. Apr. 15, 2010) as persuasive authority because its "holding is not consistent with the law in the Second Circuit").

In this case, the prolonged presence of so many red flags provides strong evidence that Wells Fargo knew about the fraudulent investment scheme. *See In re Woodbridge Invs. Litig.*, 2020 WL 4529739 at *6 (considering red flags as "indicia of actual knowledge" that supported plaintiffs' allegation); *accord Camenisch*, 2021 WL 9181171, at *3 (denying motion to dismiss where "the complaint includes allegations that present circumstantial, rather than direct, evidence relating to [the bank's] knowledge" because the allegations were plausible).

c) Wells Fargo employees voiced suspicions about the Beasley IOLTA.

Plaintiffs do not rely exclusively on the red flags, although they are powerful indicators of knowledge. In addition, multiple Wells Fargo employees noticed and became suspicious of the IOLTA activity. ¶¶ 9, 10, 135. A former Wells Fargo Regional Banking District Manager in Henderson, Nevada, confirmed that he recalled being informed of individuals visiting a branch to deposit funds into the Beasley IOLTA. ¶ 135. The manager recalled that branch personnel found the transactions suspicious and had doubts about their propriety. *Id.* Those personnel, consistent with Wells Fargo protocols, contacted a corporate group within Wells Fargo to convey their suspicions about the transactions. *Id.* Wells Fargo has no response to these allegations.

a) Wells Fargo's review of the account activity revealed the Beasley IOLTA was the center of a fraudulent scheme.

Under Wells Fargo's protocol, once alerted—either by software or personnel—the bank escalates its review. At a minimum, this involves analyzing the account history. Here, no such review could be conducted without uncovering the scheme. As Beasley himself put it, the Ponzi scheme is "clear as soon as" someone "go[es] through my bank records." ¶ 36. This was confirmed by Amir Salimi, an accountant for the SEC, who filed a declaration after looking at

the IOLTA records. Mr. Salimi testified that a pattern of Ponzi activity became apparent by January 2017, the same month the IOLTA was opened. ¶ 134. This pattern only grew starker with time. *See Chang*, 2020 WL 1694360, at *5 (SEC accountant's review of Wells Fargo's records supported actual knowledge allegations).

So, what Wells Fargo saw, upon reviewing the IOLTA more closely after being alerted to red flags, was account activity that met none of the expectations for a law practice—no incoming payments from law firms, lawyers, or insurance companies, no outgoing payments to lien holders or clients. ¶ 169. There would be no need for a bank employee reviewing this account activity to sift through dozens of legitimate law firm transactions in order to find one suspicious transaction. Nearly every transaction from the account's opening to its close was consistent with just one type of enterprise: a fraudulent investment scheme. ¶¶ 168-86.

Wells Fargo nevertheless argues that the transactions were not so obviously suspicious. It argues, for example, that Plaintiffs "fail to explain how Wells Fargo knew that money flowing through" the IOLTA was really "investor capital contributions." (Mot. at 11.) This overlooks large portions of the complaint. *See generally* ¶¶ 3, 6, 170-80. Many transactions listed the name of the entity depositing money into the IOLTA. Time and again, the names were expressly related to finance and investment activity. ¶ 170 (listing about 60 examples, including "5K Investments," "Atma Investments LLC," "Battle Born Funding," and "3D Capital Group Inc"). The complaint also details how investors added notations when sending money into the IOLTA, labeling the deposits "Capital Investment," "Investment," "reinvestment," "dividends," or "NEW Capital." ¶¶ 171-76, 179. Many of these deposits occurred at Wells Fargo branches; the complaint provides dates, identifies the bankers involved, and recounts how bank employees asked questions about the purpose of the wires. ¶¶ 177-78.

There is thus ample basis to conclude Wells Fargo knew investment money was flowing through the IOLTA. And setting aside the elemental point that Beasley's IOLTA was not a proper vehicle for the operation of an investment enterprise, Mr. Salimi's declaration confirms that this particular investment scheme bore the hallmarks of a Ponzi scheme: there were no purchases of investment assets and no returns generated to pay investors. ¶¶ 185-86. As soon as

an employee looked at the Beasley IOLTA activity, the fraudulent scheme was clear.

B. Plaintiffs sufficiently plead Wells Fargo's substantial assistance.

Plaintiffs allege Wells Fargo substantially assisted the scheme by accepting deposits of nearly $500 million, while executing the transfers that dissipated those funds. Wells Fargo says that is not enough. It contends that under *Dow Chemical*, Plaintiffs must allege a "direct communication, or conduct in close proximity, to the tortfeasor" and that Wells Fargo's actions do not qualify. (Mot. at 15 (quoting *Dow Chem.*, 114 Nev. at 1491).) *Dow Chemical* does reference direct communications, but only because the plaintiff in that case was asserting that the defendant's "lack of protest" constituted encouragement and the court was clarifying that "[t]o amount to substantial assistance, *such encouragement* must take the form of a direct communication, or conduct in close proximity, to the tortfeasor." *Dow Chem.*, 114 Nev. at 1491 (emphasis added).

Nevada has adopted the Restatement for aiding-and-abetting liability, and "[u]nder the Restatement, liability attaches … if the defendant substantially assists *or* encourages another's conduct in breaching a duty to a third person." *Id.* at 1490 (citing Restatement (Second) of Torts § 876(b)) (emphasis added). *Dow Chemical* addressed only the encouragement prong of the test and held there must be a direct communication or something similar before one can be said to be encouraging the primary tortfeasor. In support of that interpretation of encouragement, *Dow Chemical* cites *Halberstam v. Welch,* 705 F.2d 472, 482 (D.C. Cir. 1983), which had previously interpreted what it means to encourage a tortfeasor under the Restatement test. *Dow Chem.*, 114 Nev. at 1491. *Halberstam* stresses that encouragement is not the only way to satisfy the Restatement test: "Vicarious liability can of course be based on acts of assistance as well as words of encouragement." *Halberstam*, 705 F.2d at 482. Some cases "deal[ ] with direct encouragement by word or deed at the scene of the tort. But the aiding-abetting action may also be more distant in time and location and still be substantial enough to create liability." *Id.* (citing example of selling a photograph of a model with knowledge that it would be altered to defame her); *see also FLS Transp. Servs. (USA) Inc. v. Casillas,* No. 3:17-cv-00013-MMD-VPC, 2017 WL 4127980, at *10 (D. Nev. Sept. 18, 2017) (employment of primary tortfeasor satisfied

substantial-assistance element).

Here, Plaintiffs sue Wells Fargo for its active participation in the Ponzi scheme, not for providing words of encouragement. Wells Fargo characterizes its acts as nothing more than "ordinary banking transactions," but those transactions were anything but ordinary, and were essential to the commission of the fraud. *See McNamara v. Intercept Corp.*, No. 2:18-cv-02281-GMN-VCF, 2020 WL 1531375, at *11 (D. Nev. Mar. 31, 2020) (processing borrowers' repayments of illegal payday loans constituted substantial assistance where aider-and-abettor knew about the scheme) (applying Kansas law, which also uses the Restatement test); *Rotstain v. Trustmark Nat'l Bank*, No. 3:09-CV-2384-N, 2015 WL 13034513, at *11 (N.D. Tex. Apr. 21, 2015) ("providing even routine banking services," "Defendants inherently facilitated the … operations that formed [its] lifeblood").

Wells Fargo itself cites cases holding that "'ordinary business transactions' a bank performs for a customer can satisfy the substantial assistance element of an aiding and abetting claim if the bank actually knew those transactions were assisting the customer in committing a specific tort." *In re First All. Mortg. Co*., 471 F.3d at 995 (quoting *Casey v. U.S. Bank Nat. Ass'n*, 127 Cal. App. 4th 1138, 1145 (2005)). Nevada law is in accord. *See CMB Infrastructure Grp. IX*, 572 F. Supp. 3d at 967 (the stronger the evidence of knowledge, the less evidence required on substantial assistance, and vice versa). Plaintiffs allege that Wells Fargo repeatedly accepted deposits from investors and processed Beasley's transactions despite knowing of the fraud. That conduct constitutes substantial assistance under the Restatement test and subjects Wells Fargo to secondary liability for knowingly abetting Beasley's fraudulent scheme.

II. Plaintiffs have pleaded a viable claim under the Uniform Fiduciaries Act (UFA).

Nevada's codification of the Uniform Fiduciaries Act imposes liability on banks under certain circumstances when a fiduciary misappropriates funds. Wells Fargo seeks dismissal of the UFA claim because, it argues, it did not know enough facts to be held liable, and no underlying fiduciary duty existed. Both arguments lack merit.

A. Wells Fargo knew sufficient facts to be liable under the UFA.

The UFA makes banks liable if they either (a) had "actual knowledge" of the fiduciary

breach, or (b) knew enough facts so that the failure to stop the breach amounts to "bad faith." *See, e.g.*, Nev. Rev. Stat. Ann. §§ 162.080, 162.100. Here, Plaintiffs allege facts sufficient to meet both the "actual knowledge" and "bad faith" standards. Having already discussed actual knowledge above, Plaintiffs now focus on bad faith.

1. Wells Fargo deliberately closed its eyes after having its suspicions aroused.

Bad faith exists when either (a) a bank suspects misconduct but deliberately refrains from investigating or acting, or (b) the circumstances of the misconduct are so compelling and obvious that it was commercially unjustifiable for the bank to remain passive. This standard derives largely from the Nevada Supreme Court's decision in *Guild v. First National Bank of Nevada*, 92 Nev. 478, 484 (1976). Although the facts in *Guild* bear no resemblance to this case, the Court identified the circumstances amounting to bad faith: when a bank "suspect[s] that funds [a]re being misappropriated" yet "deliberately or willfully close[s] its eyes or refuse[s] to investigate."

The *Guild* decision addressed bad faith only briefly, but other courts have elaborated. In *Caputo*, the Supreme Court of New Jersey cited *Guild*, and *Caputo* has since been cited favorably in this district. *New Jersey Title Ins. Co. v. Caputo*, 163 N.J. 143, 154 (2000); *Dunham Tr. Co. v. Wells Fargo Bank, N.A.*, No. 3:18-cv-000181-LRH-WGC, 2019 WL 5684172, at *4 (D. Nev. Oct. 31, 2019) (calling *Caputo* "instructive"). *Caputo* traces the bad-faith standard back to an influential Fourth Circuit decision, which held that while bad faith requires more than negligence, it does not require "a high degree of moral guilt." *Caputo*, 163 N.J. at 155. As the Fourth Circuit put it: "At some point, obvious circumstances become so cogent that it is 'bad faith' to remain passive." *Id.* (citing *Maryland Cas. Co. v. Bank of Charlotte*, 340 F.2d 550, 554 (4th Cir. 1965)). The *Caputo* court agreed: "where facts suggesting fiduciary misconduct are compelling and obvious, it is bad faith to remain passive and not inquire further because such inaction amounts to a deliberate desire to evade knowledge." *Id.* at 155-56.

Here, the facts alleged plausibly support a finding of actual knowledge or—at the very least—bad faith. As detailed above, Wells Fargo actively monitored for the very types of red flags that were prevalent in the Beasley IOLTA transactions. Under Wells Fargo protocols, upon detecting those indicia of fraud, employees were to review the IOLTA transaction history. Given

Beasley's open use of the IOLTA to run the scheme, if Wells Fargo followed its procedure—as Plaintiffs plausibly allege—Wells Fargo saw that Beasley was operating a fraudulent investment scheme. For purposes of the UFA claim, even if Wells Fargo chose not to take a closer look, its decision to avoid learning the truth constituted bad faith.

1. Wells Fargo also allowed Beasley to violate IOLTA rules, engaging in banking transactions that were improper on their face.

In addition, bad faith is present when a bank allows an accountholder to engage in transactions that are "improper on their face" because, when "bank transactions [are] improper on their face, [this] should trigger a bank's duty to investigate." *Dunham Tr. Co*, 2019 WL 5684172, at *3 (quoting *Manfredi v. Dauphin Deposit Bank*, 697 A.2d 1025, 1029-30 (Pa. Super. Ct. 1997) ("bank cannot ignore an irregularity where it is of a nature to place one on notice of improper conduct by a fiduciary")).

As noted above, Beasley's IOLTA was not a generic trust account; it was subject to specific rules. ¶¶ 4, 118-26. Beasley repeatedly flouted those rules. Wells Fargo permitted Beasley to repeatedly withdraw cash, in person at branches, even though cash withdrawals are the most widely recognized indicator that an attorney is misusing client funds. ¶ 4, ¶¶ 157-58; *see Dunham Tr. Co.*, 2019 WL 5684172, at *3. Wells Fargo also processed large-dollar transactions that bore no resemblance to a possible litigation cost incurred by a client: multiple payments for vehicles, an $80,000 transfer to Beasley's personal account, and over $4 million for real estate. ¶¶ 154-55. And although law firms may not transfer funds from their operating account into their IOLTA, Wells Fargo allowed Beasley to transfer nearly $2 million from his operating account (also at Wells Fargo) into the IOLTA, in amounts as high as $600,000 at a time. ¶ 159.

Each of these transactions was facially improper. *See In re Woodbridge Invs. Litig.*, 2020 WL 4529739, at *6 (citing bank's alleged awareness that fiduciary was making "personal expenditures from investor funds" in support of denying motion to dismiss). With Wells Fargo aware of so many facially impermissible transactions, in addition to the other suspicious activity discussed above, Plaintiffs plausibly allege bad faith.

B. Beasley owed fiduciary duties to Plaintiffs and the class.

Wells Fargo's argument that no underlying fiduciary duty existed fares no better. "Under Nevada law, '[a] fiduciary relationship exists when one has the right to expect trust and confidence in the integrity and fidelity of another.'" *Lopez v. Javier Corral, D.C.*, 126 Nev. 690 (2010) (quoting *Powers v. United Servs. Auto. Ass'n*, 114 Nev. 690, 700 (1998)). Beasley put himself in such a position, requiring the trust and confidence of investors. Investors sent Beasley their money, directly into his attorney trust account for safekeeping, before the funds were purportedly to be used to buy shares of personal injury settlements. ¶¶ 39-42, 47-50, 55-57, 62-65, 70-73, 78-81, 86-89. Upon transferring their money into the IOLTA, Plaintiffs and other investors relinquished control over the funds and were at the mercy of Beasley to safeguard the funds and to invest them as promised. *Id.*; *see Giles v. Gen. Motors Acceptance Corp.*, 494 F.3d 865, 880-81 (9th Cir. 2007) ("a fiduciary relationship is deemed to exist when one party is bound to act for the benefit of the other party").

Courts have found fiduciary duties to exist in analogous situations. *See, e.g.*, *Takiguchi v. MRI Int'l, Inc.*, 47 F. Supp. 3d 1100, 1120 (D. Nev. 2014). In *Takiguchi*, where defendants allegedly perpetrated a Ponzi scheme, the court found that a fiduciary duty existed in light of allegations that "the defendants held themselves out as worthy of trust and confidence and plaintiffs in fact reposed trust and confidence in them to invest plaintiffs' monies wisely and to make truthful statements about the investments." *Id.* at 1108, 1120. Based on those allegations, the court found plaintiffs pleaded sufficient facts to identify a fiduciary duty. *Id.* Here, Plaintiffs have set forth similar facts that support a finding of a fiduciary duty. ¶¶ 39-42, 47-50, 55-57, 62-65, 70-73, 78-81, 86-89; *see Mark Properties, Inc. v. Nat'l Title Co.*, 117 Nev. 941, 947 (2001) (explaining that when funds are being held in escrow there would likely be a breach of fiduciary duty if the funds were to be released for reasons other than those intended) (citing *Broussard v. Hill*, 100 Nev. 325, 329 (1984)).

That Beasley held investors' funds in an attorney trust account independently gives rise to a fiduciary duty. Wells Fargo focuses on whether Beasley had an attorney-client relationship with the investors. But an attorney-client relationship is not a prerequisite to a fiduciary

relationship. *See, e.g.*, *Johnstone v. State Bar*, 64 Cal. 2d 153, 155 (1966) ("When an attorney receives money on behalf of a third party who is not his client, he nevertheless is a fiduciary as to such third party."); *Crooks v. State Bar*, 3 Cal. 3d 346, 355 (1970) (same); *see also Comm. Standard Ins. Co. v. Tab Constr., Inc.*, 583 P.2d 449, 451 (Nev. 1978) (Nevada courts may look to California law); *Drs. Co. v. Bennett Bigelow & Leedom, P.S.*, 187 Wash. App. 1034 (2015) ("a lawyer not only owes a client a fiduciary duty but may also owe a nonclient a fiduciary duty … if [a] transaction was meant to benefit the nonclient").

III. Plaintiffs have pleaded a viable claim for aiding and abetting breach of fiduciary duty.

Wells Fargo seeks dismissal of the claim for aiding and abetting a breach of fiduciary duty on grounds that overlap with its earlier arguments. Wells Fargo claims that no fiduciary duty existed, that Wells Fargo did not know of the misconduct, and that it did not substantially assist. Each argument should be rejected for the reasons already discussed. *See Camenisch*, 2021 WL 9181171, at *4 (having already sustained an aiding-and-abetting-fraud claim, the court held "the claim for aiding and abetting breach of fiduciary duty likewise is sufficiently pleaded").

Worth emphasizing, the knowledge requirement for this claim is less stringent than that for aiding and abetting fraud. As Wells Fargo correctly notes, Nevada's high court "adopt[ed] the standard applied by Delaware courts" for this claim, rather than applying the more general standard for civil aiding and abetting. *In re Amerco Deriv. Litig.*, 252 P.3d 681, 702 (Nev. 2011) (citing *Malpiede v. Townson*, 780 A.2d 1075, 1096 (Del. 2001)). At the time the Nevada Supreme Court adopted Delaware's standard, it was "well-settled" in Delaware that the element of "knowing participation" could be satisfied not only by actual knowledge, but also by "reckless indifference." *See RBC Cap. Markets, LLC v. Jervis*, 129 A.3d 816, 862 & n.169 (Del. 2015) (emphasis added) (quoting *Lord v. Souder*, 748 A.2d 393, 402 (Del. 2000)).

In this way, aiding and abetting a breach of fiduciary duty aligns more with Plaintiffs' UFA claim than with their claim for aiding and abetting fraud. *See, e.g.*, *Caputo*, 748 A.2d at 514 (UFA liability exists where a "[b]ank recklessly disregarded . . . facts suggesting impropriety by" fiduciary). As discussed, Plaintiffs have pleaded facts that plausibly establish Wells Fargo's

knowledge and its bad faith (*i.e.*, reckless indifference). The Court should thus uphold Plaintiffs' claim for aiding and abetting breach of fiduciary duty.

IV. Plaintiffs have pleaded a viable claim for negligence.

Plaintiffs bring their negligence claim in the alternative to their UFA claim, ¶ 225, since the UFA provides that "the rules of law and equity"—such as negligence—"shall continue to apply" in cases not covered by the statute. Nev. Rev. Stat. Ann. § 162.130. As Wells Fargo acknowledges, the UFA applies only to situations involving fiduciaries. (Mot. at 16 (citing *Guild*, 553 P.2d at 958)); *see also* Nev. Rev. Stat. Ann. § 162.080 (setting forth circumstances in which "the bank is liable to the principal if the fiduciary … commits a breach of his or her obligation as fiduciary"). Here, Wells Fargo seeks dismissal of the UFA claim on the ground that no fiduciary relationship exists. (Mot. at 18-19.) Although Plaintiffs disagree with that assertion, in light of that defense by Wells Fargo, Plaintiffs seek to advance their negligence claim in the alternative to their UFA claim. *See generally* Fed. R. Civ. P. 8(d)(2) (allowing alternative pleading).

Wells Fargo's argument that it owed no duty of care to the Plaintiffs fails, first, to the extent Wells Fargo premises the argument on the notion that banks owe no duty to *non*-customers. Here, a number of Plaintiffs were Wells Fargo customers. ¶¶ 173, 177-78. Second, Wells Fargo "will be subject to liability [for negligence] if the facts are 'sufficiently suspicious' that the bank should be alerted to the risk that a wrong is being done." *Aifang v. Velocity VII Ltd. P'ship*, No. CV 14-07060 SJO (MANx), 2015 WL 12745806, at *6 (C.D. Cal. Sept. 30, 2015) (citing *Sun'n Sand, Inc. v. United Cal. Bank*, 21 Cal. 3d 671, 695-96 (1978)); *see InjuryLoans.com, LLC v. Buenrostro*, 529 F. Supp. 3d 1178, 1185 (D. Nev. 2021) ("Nevada courts look to California law where Nevada case law is silent.").

In *Aifang*, as in this case, Ponzi operators opened attorney trust accounts to hold investor funds. The defendant bank allegedly had notice of suspicious circumstances, such as the transfer of funds to accounts controlled by the perpetrators, but continued to accept deposits and executed transfers that commingled and dissipated the funds. 2015 WL 12745806, at *2-3. The court held the bank owed a duty to the non-customer investors because "[t]he circumstances of the accounts

were 'sufficiently suspicious' as to give rise to a 'reasonably foreseeable' risk of loss to" them. *Id.* at *7. Wells Fargo, in similar fashion, was repeatedly put on notice of suspicious circumstances but continued accepting deposits and processing transfers and withdrawals. *See Sun'n Sand*, 21 Cal. 3d at 695 (holding "the bank may not ignore the danger signals"). Wells Fargo therefore owed Plaintiffs a duty of care. *See Aifang*, 2015 WL 12745806, at *6-7.

Wells Fargo's cases are distinguishable. In *InjuryLoans.com*, 529 F. Supp. 3d at 1185, the court dismissed the negligence claim because the U.C.C. provided an employer's exclusive remedy against a bank "to recover instruments fraudulently endorsed by an employee." The court never considered whether the foreseeability of the harm could give rise to a common-law duty because the plaintiff did not allege the bank was on notice of suspicious behavior—let alone that the bank knew of the fraud. *Id*. at 1188. In *Johnson as Trustee of Nina J. Cummings Revocable Living Trust v. Wells Fargo Bank, N.A.*, No. 2:22-cv-00196-JCM-EJY, 2022 WL 2124392 (D. Nev. May 20, 2022), the court did not interpret or even mention § 162.080, contrary to Wells Fargo's argument (Mot. at 22), focusing instead on inapposite provisions that allow a bank to rely on a trust certification without verifying its accuracy. *Id.* at *5-7. The claims in *North v. Bank of America Corp.*, No. 2:11-cv-00136-RLH-PAL, 2011 WL 3419515, at *4-5 (D. Nev. July 29, 2011), did not involve any bank account activity at all, but instead asserted improper foreclosure by a lender. Similarly, the court in *Kerr v. Bank of America, N.A.*, No. 3:15-cv-00306-MMD-WGC, 2016 WL 54670, at *4 (D. Nev. Jan. 5, 2016), addressed the lender-borrower relationship, which is not at issue in this case.

Separately, Wells Fargo argues that alleged negligence did not cause Plaintiffs' injuries. (Mot. at 23-24.) Wells Fargo argues Plaintiffs were injured by Beasley's misconduct, not its own. But Nevada relies on the "substantial factor test" to determine proximate causation. *Holcomb v. Ga. Pac., LLC*, 128 Nev. 614, 627 (2012). Under this standard, "multiple causes may be found to be a substantial factor" and "a defendant cannot avoid responsibility just because some *other person* … was *also* a substantial factor in causing the plaintiff's harm." *Mears v. City of L.A.*, No. LA CV15-08441 JAK (AJWx), 2018 WL 11305362, at *8 (C.D. Cal. May 7, 2018) (emphasis added) (citation omitted).

Also, whether a defendant's conduct was a substantial factor presents a question of fact. *See, e.g.*, *Price v. Blaine Kern Artista, Inc.*, 111 Nev. 515, 521-22 (1995); *Joynt v. Cal. Hotel & Casino*, 108 Nev. 539, 542 (1992); *Desrosiers v. Flight Int'l of Fla. Inc.*, 156 F.3d 952, 956 (9th Cir. 1998). Here, Plaintiffs plausibly allege that Wells Fargo "allowed the IOLTA to be operated in a manner that bore no reasonable resemblance to how such accounts are appropriately used; allowed orders of magnitude more funds to flow through the account that the bank reasonabl[y] anticipated; witnessed ... fraudulent activity, yet took no action ... and instead facilitated the continued operation of an attorney trust account to perpetrate the scheme and continued to execute all requested banking transactions involving the IOLTA; and repeatedly failed to investigate the misuse of the IOLTA despite many indicia of fraud." ¶¶ 229-30. Absent Wells Fargo's misconduct, Plaintiffs would not have lost their investments.

Plaintiffs have thus plausibly alleged that Wells Fargo's conduct was a substantial factor in causing their losses. As in *Benson*, 2010 WL 1526394, at *4-5, where the bank allegedly "played a critical role in the facilitation of the Ponzi scheme … [by] provid[ing] essential banking services," the Court should deny Wells Fargo's motion. *See also Gonzales v. Lloyds TSB Bank, PLC*, 532 F. Supp. 2d 1200, 1213 (C.D. Cal. 2006) (rejecting bank's proximate cause challenge under RICO because its "alleged conduct directly assisted the perpetuation of the Ponzi scheme that injured the investors.").[2]

Plaintiffs' alternatively pleaded negligence claim should be sustained.

V. The Plaintiffs have standing irrespective of whether they invested through their LLCs.

Several Plaintiffs invested their personal funds by passing them through legal entities that they owned. ¶¶ 37, 45, 53, 60, 76, 84. Wells Fargo claims these Plaintiffs lack standing because

[2] In contrast to these cases, Wells Fargo's authorities do not pertain to Ponzi scheme investments. *See Dunham Tr. Co. v. Wells Fargo Bank, N.A.*, No. 3:18-cv-00181-LRH-WGC, 2019 WL 489095, at *1, *3 (D. Nev. Feb. 9, 2019) (no allegations of Ponzi fraud or indeed of "any affirmative act" by bank); *In re ShengdaTech, Inc.*, 519 B.R. 292, 298, 301 (D. Nev. 2014) (no explanation of how outside auditor could have discovered debtor's falsification of sales results and purchase transactions).

they "chose to invest through their LLC and not personally." (Mot. at 6.) Citing only general business law, Wells Fargo argues that the resulting losses belong only to the LLCs and that Plaintiffs lack Article III standing. This argument overlooks authorities directly to the contrary.

When, as with the Plaintiffs here, an LLC "is being used simply as a vehicle through which investments are made," individual investors have standing to seek redress for resulting harms. *Carton v. B & B Equities Grp., LLC*, 827 F. Supp. 2d 1235, 1250 (D. Nev. 2011). There are two key reasons for this rule. First, plaintiffs in these scenarios are the *de facto* investors. *See Baltequera, Inc. v. Bell-Carter Foods, LLC*, No. 21-cv-06368-MMC, 2022 WL 1409234, at *3, *4 (N.D. Cal. May 4, 2022) (collecting cases). And where, like here, plaintiffs allege that promoters made representations directly to them, with the intention that they rely on them to invest with their own money, federal courts regularly find that those investors have standing to sue. *Id.*; *see also* ¶¶ 1, 29-34, 37-42, 45-50, 53-57, 76-81, 84-89. Under these circumstances, plaintiffs' injuries are not "merely incidental" to injuries suffered by the LLCs. *See Solarmore Mgmt. Servs., Inc. v. Bankr. Est. of DC Solar Sols.*, No. 2:19-cv-02544-JAM-DB, 2021 WL 3077470, at *4 (E.D. Cal. July 21, 2021). To the contrary, it is the involvement of the LLCs that is incidental to the transactions at issue. *E.g.*, ¶ 60 (alleging Plaintiff formed LLC in order to invest in the scheme).

Second, where the LLC serves as a pass-through for investments, "there is a direct correlation between the investment and [investors'] membership interests." *Carton*, 827 F. Supp. 2d at 1250 (citing *Burnett v. Rowzee*, No. SA CV 07-641DOCANX, 2007 WL 2735682 (C.D. Cal. Aug. 28, 2007) (Ponzi-investor plaintiffs who used LLCs to fund their contributions could sue personally)). The connection is especially obvious when—like here—plaintiffs pass their investments through closely held entities. *See Carton*, 827 F. Supp. 2d at 1250 (finding an individual cause of action where the investment entity was solely owned by the plaintiff); *cf.* ¶¶ 37, 45, 53, 60, 68, 76, 84.

In sum, courts considering much the same LLC-standing argument have held that the individual plaintiffs have standing to sue.

Conclusion

For the foregoing reasons, Plaintiffs respectfully request that the Court deny Wells Fargo's motion to dismiss in full. Should the Court find the complaint lacking in any respect, Plaintiffs respectfully request leave to amend.

September 6, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 6, 2022, and pursuant to the Federal Rules of Civil Procedure, a true and correct copy of the foregoing **PLAINTIFFS' OPPOSITION TO WELLS FARGO'S MOTION TO DISMISS** was served via the U.S. District Court's electronic filing system to all parties appearing in this case.

/s/ *Lucille Chiusano*
An employee of KNEPPER & CLARK LLC