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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' MOTION FOR CLASS CERTIFICATION

Judge: Hon. Gloria M. Navarro
Hon. Nancy J. Koppe

REDACTED - FILED UNDER SEAL

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I. INTRODUCTION

This case arises out of Wells Fargo's complicity in furthering a five-year Ponzi scheme perpetrated by Matthew Beasley through his attorney trust account at Wells Fargo. Plaintiffs are investors who lost money in the scheme. They now move to certify a class of similarly situated investors. They seek to certify their claims against Wells Fargo for (i) aiding and abetting Beasley's fraud, (ii) aiding and abetting his breach of fiduciary duties, and (iii) for violating Nevada's Uniform Fiduciaries Act ("UFA"). As courts have consistently recognized, investment fraud cases like this one are particularly well-suited to class certification. This case is no exception.

Plaintiffs meet the four requirements of Rule 23(a). Joinder of over a thousand investors in a single case would be impracticable. Those investors' claims all involve common questions centered on what Wells Fargo knew about Beasley's misconduct. The claims of the class representatives are typical of other class members, since they are based on the same legal theories and underlying facts. And Plaintiffs will also fairly and adequately represent the interests of the class: they have complied with Wells Fargo's discovery demands, actively participated in the litigation, and are committed to prosecuting this case in the interest of all similarly situated investors—as are their experienced counsel.

Plaintiffs also meet the requirements of Rule 23(b)(3). All three claims depend primarily on what Wells Fargo knew and what Wells Fargo did—not facts specific to any individual investor. Plaintiffs will prove what Wells Fargo knew and did using common evidence, mostly bank records. Those records show that [redacted] The bank records also show that [redacted] Yet the bank continued servicing Beasley's accounts. Because these facts can all be proved with evidence common to the class, the case will either succeed or fail on a classwide basis. Considering that reality, a class action is far superior to any other method for adjudicating the claims. The alternative, a multiplicity of individual suits, would be inefficient compared to a single, classwide resolution.

For these reasons, and those that follow, the Court should certify the class.

II. FACTS

A.

[redacted]

B. The investment scheme depended on a cooperative bank: Wells Fargo.

With the investment money flowing in and then immediately back out to earlier investors, the whole scheme depended on the participation of a cooperative bank.

Before he began banking at Wells Fargo, Beasley maintained his accounts at Bank of Nevada. Ex. 4, PL_003244 at ¶ 1. [redacted]

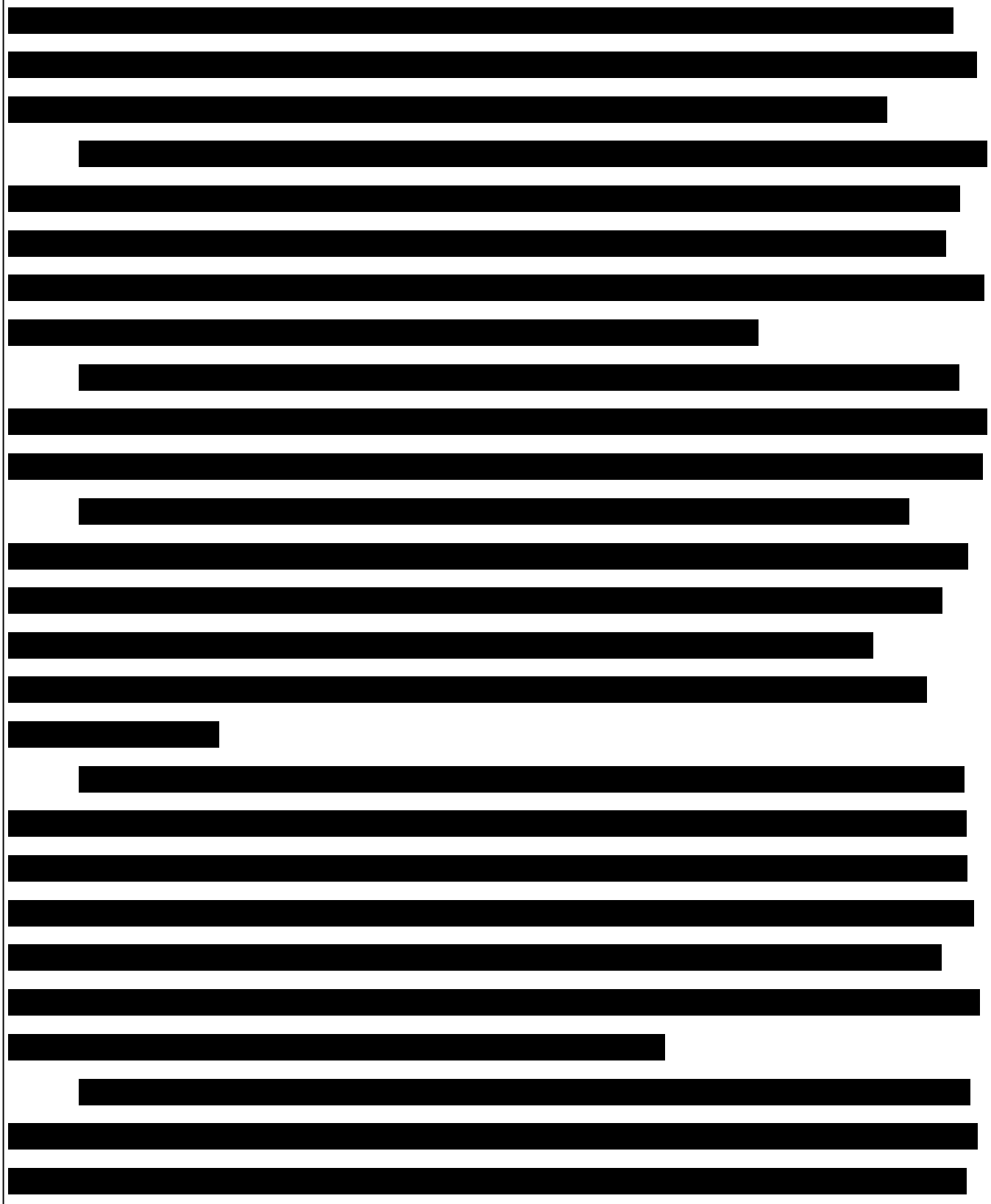
[1] All exhibits are attached to the accompanying the Joint Declaration of Interim Class Counsel ("Joint Dec.").

[redacted]

C. Wells Fargo was required to detect and prevent money laundering and fraud.

[redacted]

[2] The account is also called an Interest On Lawyers' Trust Account (IOLTA) because the interest on the account is collected by the state bar and used to fund Nevada legal services organizations.



[redacted] Beasley even texted Nelson about gambling strategy and gifted him liquor in thanks for his assistance. Ex. 19, REV0000010; Ex. 20, REV0000022-23; Ex. 21, REV0000033; Ex. 22, REV0000034; Ex. 4, PL_003244 at ¶ 10.

These employees not only knew Beasley personally, but also frequently scrutinized his account activity. [redacted]

D. Beasley's banking activity was particularly suspicious given his use of an attorney trust account to perpetrate the scheme.

[redacted]

[redacted]

E. Wells Fargo received repeated, explicit warnings that Beasley was committing financial crimes—yet the bank continued servicing his accounts.

In addition to the omnipresent red flags, Wells Fargo also received a series of warnings—and drew damning conclusions—about Beasley engaging in illegal activity. But each time, Wells Fargo chose to continue providing Beasley with all requested banking services.

1. [redacted]

[redacted]

2. [redacted]

[redacted]

[redacted]

3. [redacted]

[redacted]

[redacted]

4. [redacted]

[redacted]

[redacted]

5. [redacted]

[redacted]

III. PROCEDURAL BACKGROUND

Plaintiff Barrett Henzel, among others, filed the first in a series of complaints on March 25, 2022. ECF No. 1. On June 3, 2024, the Court entered a stipulation consolidating cases and appointing interim co-lead counsel for the putative class. ECF No. 34. A month later, Plaintiffs filed the operative consolidated class action complaint. ECF No. 37. Plaintiffs brought four claims against Wells Fargo: (1) aiding and abetting fraud, (2) aiding and abetting breach of fiduciary duty, (3) violation of Nevada's UFA, Nev. Rev. Stat. Ann. §§ 162.010, *et seq.*, and (4) negligence. *Id.*

On March 18, 2023, the Court largely denied a motion to dismiss the complaint. The Court dismissed Plaintiffs' negligence claim, ruling that Nevada's UFA displaced negligence duties under Nevada law. ECF No. 74 at 14. In sustaining the other claims, the Court found that Plaintiffs "have plausibly alleged that Wells Fargo had actual knowledge of the scheme[,]" that allegations of executing "ordinary banking transactions" sufficed to plead substantial assistance, and that Plaintiffs alleged the existence of a fiduciary duty because they alleged Beasley and others "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 9-11, 13 (citations omitted).

IV. LEGAL STANDARD

Rule 23 permits class certification if all four elements of Rule 23(a) and at least one prong of Rule 23(b) are satisfied by a preponderance of the evidence. *See Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 664 (9th Cir. 2022) (en banc). Here, the prong of Rule 23(b) at issue is Rule 23(b)(3).

The question at class certification differs from whether Plaintiffs will ultimately prevail on the merits. "Merits questions may be considered to the extent—but only to the extent—that they are relevant to determining whether the Rule 23 prerequisites for class certification are satisfied." *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 466 (2013). "[W]hen presented with a motion to certify, a court should not '"turn class certification into a mini-trial" on the merits.'" *Tyus v. Wendy's of Las Vegas, Inc.*, 407 F. Supp. 3d 1088, 1097 (D. Nev. 2019) (Navarro, J.) (quoting *Edwards v. First Am. Corp.*, 798 F.3d 1172, 1178 (9th Cir. 2015)).

V. ARGUMENT

Plaintiffs move to certify the following class with respect to their claims against Wells Fargo for (1) aiding and abetting fraud; (2) aiding and abetting breach of fiduciary duty, and (3) violations of the UFA:

> All natural and legal persons who invested in a J&J Entity lawsuit settlement contract between January 2017 and March 2022.[3]

As a preliminary matter, this class definition meets the requirement that "any valid proposed class must be ascertainable based on objective criteria, and the proposed class definition should describe a set of common characteristics sufficient to allow a prospective plaintiff to identify himself or herself as having a right to recover based on the description." *In re HCV Prison Litig.*, 2020 WL 806170, at *4 (D. Nev. Feb. 18, 2020) (internal quotation marks omitted); *Kristensen v. Credit Payment Servs.*, 12 F. Supp. 3d 1292, 1303 (D. Nev. 2014) (similar). Whether a person or entity invested in a J&J settlement contract is an objective, rather than subjective, criterion, as are the exclusions. In addition, class members have largely been identified by the Receiver. *See* Ex. [redacted], Hall Rpt. at Exhibit A. Thus, identifying class members will not require extensive individualized inquiry. No more is required because "Rule 23 does not impose a freestanding administrative feasibility prerequisite to class certification." *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1126 (9th Cir. 2017).

A. The requirements of Rule 23(a) are met.

1. The Class is sufficiently numerous to make joinder impracticable.

For purposes of Rule 23(a)(1), "courts have held that numerosity is satisfied when the class size exceeds forty members." *Tyus*, 407 F. Supp. 3d at 1097; *La Caria v. Northstar Location Servs., LLC*, 2020 WL 2771185, at *3 (D. Nev. May 28, 2020) (Navarro, J.) ("[A] forty–member class is often regarded as sufficient to meet the numerosity requirement."). The numerosity requirement is met here because [redacted] Ex. [redacted] Hall Rpt. at 3.[4]

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[3] Excluded from the class are Defendant and the Relevant Non-Parties; their parents, affiliates, subsidiaries, legal representatives, predecessors, successors, assigns, and employees; persons who received back from the J&J enterprise either more money or the same amount of money that they put in; and any judge to whom this case is assigned, his or her spouse, and all persons within the third degree of relationship to either of them, as well as the spouses of such persons.

[4] [redacted] *See* Ex. 9, Hall Rebuttal Rpt. ¶¶ 8-9.

2. Plaintiffs' claims involve common issues of fact and law.

Rule 23(a)(2) requires that there be one or more questions of law or fact common to the class. The commonality requirement is satisfied when class members' claims "depend upon a common contention such that determination of its truth or falsity will resolve an issue that is central to the validity of each claim in one stroke." *Jimenez v. Allstate Ins. Co.*, 765 F.3d 1161, 1165 (9th Cir. 2014) (quotation marks and citation omitted). "'[E]ven a single common question will do' for the purposes of Rule 23(a)(2)." *Tyus*, 407 F. Supp. 3d at 1098 (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2011)).

Courts have repeatedly found commonality satisfied in similar cases, since a bank's liability for aiding and abetting turns on questions common to the entire class. *See, e.g.*, *Takiguchi v. MRI Int'l, Inc.*, 2016 WL 1091090, at *3-5 (D. Nev. Mar. 21, 2016) (common issues included whether Ponzi scheme existed and whether defendants aided and abetted the fraud); *Camenisch v. Umpqua Bank*, 2022 WL 17740285, at *8-9 (N.D. Cal. Dec. 16, 2022) (common issues included whether there was a global fraud and whether defendant knew about the fraud); *Gonzales v. Lloyds TSB Bank*, 2007 WL 9711433, at *4 (C.D. Cal. May 2, 2007) (commonality satisfied by investor claims that defendant bank aided and abetted Ponzi scheme).

This case is no different. Among the common questions raised by Plaintiffs' aiding-and-abetting and UFA claims against Wells Fargo are:

(1) Whether Beasley owed a fiduciary duty to those who invested in the J&J scheme;

(2) Whether Beasley uniformly concealed from investors the material facts surrounding the purported investment opportunity, including the lack of underlying personal injury clients or settlements, and the fact that he was commingling and dissipating the funds rather than investing them;

(3) Whether Beasley's misuse of investors' funds breached fiduciary duties owed to investors;

(4) Whether Wells Fargo knew that Beasley was misusing the money in his attorney trust account;

(5) Whether Wells Fargo knew that Beasley was engaging in fraud;

(6) Whether Wells Fargo otherwise knew of such facts that its actions in continuing to service Beasley's accounts amounted to bad faith; and

(7) Whether Wells Fargo substantially assisted Beasley and his scheme by keeping his accounts open and accepting investor deposits and processing transfers at Beasley's request.

The answers to each of these questions, whether favorable or unfavorable, will be the same for all class members. For instance, common evidence shows that [redacted] *See, e.g.*, Ex. [redacted] WF_JJ_00104725 [redacted]; Ex. [redacted] WF_JJ_00044848 [redacted]; Ex. [redacted] WF_JJ_00045260 [redacted]; Ex. 28, WF_JJ_00045255 [redacted]. This and other common evidence go to the heart of Plaintiffs' claims, enabling these questions to be answered for all class members at once, thereby satisfying commonality.

3. Plaintiffs' claims are typical of those of the class.

Under Rule 23(a)(3), "[t]he test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct." *La Caria*, 2020 WL 2771185, at *5 (quoting *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010)). But "[t]he named plaintiff's injuries need not be 'identically positioned' with those of the class to satisfy the typicality requirement." *Tyus*, 407 F. Supp. 3d at 1098 (quoting *Parsons v. Ryan*, 754 F.3d 657, 686 (9th Cir. 2014)). "The purpose of the typicality requirement is to assure that the interest of the named representative aligns with the interests of the class." *La Caria*, 2020 WL 2771185, at *5 (quoting *Wolin*, 617 F.3d at 1175).

In this case, all class members' claims arise from Wells Fargo's common course of conduct: maintaining Beasley's accounts, accepting his deposits and processing his transactions, and thereby facilitating Beasley's scheme. All members of the class lost their investments due to this same conduct and now seek to recover for their losses under the same theories. Each Plaintiff is among those who invested in the scheme, and each is among those who lost money when the scheme collapsed. *See* Ex. [redacted] Hall Rpt. Ex. A. Their claims are substantially identical to those of the rest of the class, making them typical. *See Greene v. Jacob Transp. Servs., LLC*, 2017 WL 4158605, at *4 (D. Nev. Sept. 19, 2017) (Navarro, J.) (finding typicality satisfied when "the proposed class has conceivably been injured by the same course of conduct" as the named plaintiffs).

4. Plaintiffs and their counsel will adequately represent the class.

Rule 23(a)(4)'s adequacy requirement has two elements: "(1) whether the named plaintiffs and their counsel have any conflicts of interest with other class members, and (2) whether the named plaintiffs and their counsel will prosecute the action vigorously on behalf of the class." *Tyus*, 407 F. Supp. 3d at 1099 (internal quotation marks omitted). Here, the class is adequately represented.

With regard to the named plaintiffs, "the Ninth Circuit applies a low bar for qualifying as an adequate class representative[.]" *Id.* "The Court need only find one class representative to be adequate[.]" *Id.* Here, all Plaintiffs have "a shared interest with class members to recover compensation." *Greene*, 2017 WL 4158605, at *5. And all Plaintiffs have demonstrated their commitment to advancing the interests of the class. They produced documents, responded to written discovery, and appeared for depositions. Joint Dec. at ¶ 5. They understand their responsibilities as class representatives and have no conflicts with other class members. *Id.*; *La Caria*, 2020 WL 2771185, at *6.

Interim class counsel have similarly demonstrated their adequacy. The Court previously found that counsel meets Rule 23(g)'s standards, when it appointed them interim class counsel at the beginning of this case. ECF No. 34 at 4; *see also* ECF No. 33-3 – 33-4, 33-6 – 33-7 (firm resumes). Since then, counsel have prosecuted the class's claims, largely defeated Wells Fargo's motion to dismiss, completed both fact and expert discovery, and are now working diligently to prepare this case for trial. Interim class counsel meet all the requirements for appointment as class counsel under Rule 23(g)(1). *See Tyus*, 407 F. Supp. 3d at 1099-100 ("The Court further finds that class counsel, having thirty-five years of legal experience and overseeing class action and complex high damages litigation for his firm, will competently and vigorously prosecute the instant case with the assistance of Tyus and other named Plaintiffs.").

B. The requirements of Rule 23(b)(3) are satisfied.

A class may be certified under Rule 23(b)(3) if the Court "finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). Both predominance and superiority are present here.

1. Common issues predominate.

"The predominance inquiry asks whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues." *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 453 (2016) (internal quotation marks omitted). "An individual question is one where members of a proposed class will need to present evidence that varies from member to member, while a common question is one where the same evidence will suffice for each member to make a prima facie showing [or] the issue is susceptible to generalized, class-wide proof." *Id.* (internal quotation marks omitted). "'When common questions present a significant aspect of the case and they can be resolved for all members of the class in a single adjudication, there is clear justification for handling the dispute on a representative . . . basis.'" *Greene*, 2017 WL 4158605, at *5 (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1022 (9th Cir. 1998)). "[P]redominance does not require that all questions be common[.]" *DZ Rsrv. v. Meta Platforms, Inc.*, 96 F.4th 1223, 1238 (9th Cir. 2024).

"Considering whether 'questions of law or fact common to class members predominate' begins, of course, with the elements of the underlying cause of action." *Erica P. John Fund, Inc. v. Halliburton Co.*, 563 U.S. 804, 809 (2011). Plaintiffs propose to try their three remaining claims under Nevada law[5] on a classwide basis. ECF 37 at ¶¶ 200-23. To recover, Plaintiffs will need to demonstrate: (1) Beasley defrauded Plaintiffs or breached fiduciary duties to Plaintiffs; (2) Wells Fargo knew sufficient facts to be held liable (either by having actual knowledge of Beasley's wrongdoing or at least having knowledge of such facts that its actions in continuing to service Beasley's accounts amounted to bad faith); (3) Wells Fargo nevertheless continued to service his accounts and process his requested transactions; and (4) Plaintiffs suffered damages as a result. *See* ECF 74 at 7-8, 13.

[5] The parties and the Court have applied Nevada law already in this case, since Nevada was the locus of the fraud. *E.g.*, Dkt. 39 at 10, 16 (Wells Fargo argues in motion to dismiss that under Nevada law, Plaintiffs failed to allege knowledge sufficient to state an aiding and abetting claim); *id.* at 19-22 (asserting that Nevada does not recognize a fiduciary relationship under the circumstances of this case); Dkt. 74 at 14 (dismissing Plaintiffs' negligence claim because, under Nevada law, the UFA displaces common law negligence claims involving a fiduciary and a bank); *see also* Restatement (Third) of Conflict of Laws § 6.09(a) TD No 4 (2023) ("When conduct in one state causes injury in another, the law of the state of conduct governs . . . ."); *Julian-Ocampo v. Air Ambulance Network, Inc.*, 2001 WL 34039480, at *3 (D. Or. Dec. 13, 2001) (judicial estoppel precluded party's choice of law argument after all parties relied on Oregon law in prior briefing and some claims were dismissed, "to the advantage" of the estopped party).

The core disputes therefore center on Wells Fargo's corporate practice—namely, its decision to continue banking Beasley despite [redacted] This type of case is routinely certified, since "a uniform corporate practice . . . carries great weight for certification purposes." *Tyus*, 407 F. Supp. 3d at 1101 (internal quotation marks omitted). As many courts have held, such claims are not subject to individual variation because they focus on the conduct of the defendant, not the class members' conduct. *See In re First All. Mortg. Co.*, 471 F.3d 977, 990 (9th Cir. 2006) (affirming class certification of claims for aiding and abetting fraud); *Camenisch*, 2022 WL 17740285, at *9 ("the critical and central question of whether Umpqua had knowledge of the alleged scheme can be decided based on common evidence"); *Takiguchi*, 2016 WL 1091090, at *11 ("Whether Sterling Escrow was aware of its role in promoting a fraud and knowingly assisted the other defendants in committing the fraud are clearly common questions subject to class certification."); *Newton v. Am. Debt Servs., Inc.*, 2015 WL 3614197, at *8 (N.D. Cal. June 9, 2015) ("Newton's aiding and abetting claim against RMBT will similarly raise only common issues that admit no variation between class members. Either RMBT had actual knowledge of ADS's and QSS's law violations, and acted with the intent to substantially assist ADS and QSS in violating the Proraters Law, or it did not. RMBT's liability is an all-or-nothing proposition that does not admit individual variation."); *Joint Equity Comm. of Invs. of Real Est. Partners, Inc. v. Coldwell Banker Real Est. Corp.*, 281 F.R.D. 422, 434 (C.D. Cal. 2012) ("Predominance is satisfied on Plaintiffs' claim for aiding and abetting because questions of assistance and knowledge focus on Coldwell, not the alleged victims.").

As in those cases, common proof will determine the elements of Plaintiffs' claims, listed below.

a. Common evidence will show that Beasley committed fraud.

The first element of Plaintiffs' aiding and abetting fraud claim is that "the primary violator committed fraud that injured the plaintiff[.]" ECF No. 74 at 7 (cleaned up). "Fraud claims are … particularly well suited to class treatment under Rule 23(b)(3) . . . ." *DZ Rsrv.*, 96 F.4th at 1234.

Common evidence shows that Beasley defrauded investors. *See Camenisch*, 2022 WL 17740285, at *9 ("Plaintiffs will either succeed in proving there was such a global fraud, or they will not, but the question is one that is suitable for resolution on a class-wide basis."). [redacted] Ex. [redacted] Winkler Dec.

at ¶ 11. Forensic accountants, employed first by the SEC and later by the SEC-appointed Receiver, have studied Beasley's Wells Fargo account transactions and found no indication that Beasley ever purchased investment assets. *Sec. & Exch. Comm'n v. Beasley*, No. 2:22-CV-00612-CDS-EJY, ECF No. 2-8 at ¶ 12 (D. Nev. Apr. 13, 2022); Ex. 2, Winkler Dec. at ¶ 11, 50, 54-55. And of course, [redacted] Ex. [redacted], Winkler Dec. at ¶¶ 11, 40, 54. [redacted] *Id.* at ¶¶ 11, 54, 59-61. Accordingly, the forensic analyses, as well as the underlying bank records, will serve as common evidence of the underlying fraud.

Similarly, reliance can be presumed for all class members because when material information is concealed from every member of the class, "an inference of reliance arises as to the entire class." *DZ Rsrv.*, 96 F.4th at 1237 (quoting *Mirkin v. Wasserman*, 858 P.2d 568, 575 (Cal. 1993));[6] *see also Audet v. Fraser*, 332 F.R.D. 53, 81 (D. Conn. 2019) ("no reasonable investor would have [invested with Beasley had he] disclosed the fact [to investors that] they were being sold as part of a Ponzi scheme."). Courts have recognized that a classwide inference of reliance is appropriate in Ponzi scheme cases. *Audet*, 332 F.R.D. at 81 (citing cases). The Ninth Circuit in particular has "followed an approach that favors class treatment of fraud claims stemming from a 'common course of conduct.'" *First Alliance*, 471 F.3d at 990. That is because where a centrally orchestrated scheme to mislead is alleged, it is the scheme, not the precise details of any individual's experience, that forms the nucleus of the class claims. *Joint Equity Comm. of Invs.*, 281 F.R.D. at 430 (discussing *First Alliance*).

In a Ponzi scheme, the fundamental nature of the investment is concealed from investors. Each investor believes they are investing, when in fact their money is actually being used to repay prior investors and to enrich the scheme's perpetrators. *Gonzales*, 2007 WL 9711433, at *7-9 (certifying claim for aiding and abetting fraud); *Jenson v. Fiserv Tr. Co.*, 256 Fed. App'x 924, 926 (9th Cir. 2007) (affirming class certification where "[t]he Ponzi scheme itself would have to be proved or controverted

[6] It does not appear that any court has directly addressed a presumption of reliance for common law fraud claims under Nevada law. "Nevada courts look to California law where Nevada case law is silent." ECF No. 74 at 12 n.5 (citing *InjuryLoans.com, LLC v. Buenrostro*, 529 F. Supp. 3d 1178, 1185 (D. Nev. 2021) (Navarro, J.)).

over and over were the case not to proceed as a class action"); *Camenisch*, 2022 WL 17740285, at *9 (certifying class since evidence showed that "all members of the proposed class were defrauded in the course of the same overall scheme"); *cf. Basic Inc. v. Levinson*, 485 U.S. 224, 246-47 (1988) ("[I]t is hard to imagine that there ever is a buyer or seller who does not rely on market integrity. Who would knowingly roll the dice in a crooked crap game?") (quoting *Schlanger v. Four–Phase Systems Inc.*, 555 F. Supp. 535, 538 (S.D.N.Y. 1982)).

The underlying fraud here thus presents a common issue.

b. Common evidence will show Beasley breached his fiduciary duty.

Two elements of Plaintiffs' claim for aiding and abetting breach of fiduciary duty are "(1) that a fiduciary relationship exists; [and] (2) that the fiduciary breached the fiduciary relationship[.]" ECF No. 74 at 11. Similarly, the UFA claim requires that "an underlying fiduciary relationship exists[.]" *Id.* at 13.

Here, common evidence shows that Beasley owed a fiduciary duty to investors and breached it. Much of this evidence will align with the evidence of fraud just discussed, since overlapping conduct can give rise to both fraud and breach of fiduciary duty claims. Thus, when certifying Ponzi scheme cases for class treatment, courts often certify claims for breach of fiduciary duty alongside fraud claims based on the same or overlapping evidence. *See, e.g.*, *Gonzales*, 2007 WL 9711433, at *10; *Jenson*, 256 F. App'x at 927; *Takiguchi*, 2016 WL 1091090, at *10; *Camenisch*, 2022 WL 17740285, at *8-9.

Much the common evidence discussed above thus bears on Beasley's breaches of fiduciary duty. He owed a fiduciary duty upon accepting money into his attorney trust account, Ex. [redacted] Clark Rpt. at ¶¶ 18, 21-23, and because he and the promoters "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." ECF 74 at 13 (citation omitted). Beasley then breached that duty by [redacted]. Ex. [redacted] Winkler Dec. at ¶ 11. Determining whether Beasley breached fiduciary duties owed to investors is therefore a common issue that will drive the resolution of this case. *See Camenisch*, 2022 WL 17740285, at *9; *Bruhl v. Price Waterhousecoopers Int'l*, 257 F.R.D. 684, 698 (S.D. Fla. 2008) (certifying aiding and abetting claim because the claim's elements were not unique to each class member).

c. Common evidence will show that Wells Fargo knew about Beasley's fraud and breach of duty.

What Wells Fargo knew is relevant to all of Plaintiffs' claims. ECF No. 74 at 7, 11, 13. To prove what Wells Fargo knew, Plaintiffs will rely on many of the documents and testimony cited in the Facts section above. This includes [redacted] *See, e.g.*, Ex. [redacted] WF_JJ_00104725; Ex. [redacted] WF_JJ_00044848; Ex. [redacted] WF_JJ_ 00045263; Ex. [redacted] WF_JJ_00045260; Ex. [redacted] WF_JJ_00045255; Ex. [redacted] WF_JJ_00101863; Ex. [redacted] Simmons Rpt. at ¶ 102. The evidence in the record shows that [redacted] Ex. 17, Becnel Tr. at 15:10-17:3, 18:2-9. [redacted] Ex. [redacted] Simmons Rpt. at ¶ 226 (emphasis added).

In short, Plaintiffs will prove what Wells Fargo knew using the same documents and testimony that any other investor could use to prove Wells Fargo's knowledge. This means that the issue of knowledge presents a common issue. *See Camenisch*, 2022 WL 17740285, at *9 ("the critical and central question of whether Umpqua had knowledge of the alleged scheme can be decided based on common evidence").

d. Common evidence will show that Wells Fargo provided substantial assistance by continuing to process Beasley's transactions.

Wells Fargo's decision to continue processing Beasley's transactions (despite what it knew) is relevant to all of Plaintiffs' claims, including because it amounts to substantial assistance. ECF No. 74 at 10, 11, 13. Wells Fargo's actions, just like its knowledge, can be proved using common documents and testimony. For example, Wells Fargo's bank records, as well as the Receiver's forensic analysis, all show that [redacted] *See, e.g.*, Ex. [redacted] Winkler Dec. ¶¶ 36-41; Ex. [redacted] Hall Rpt. at 3. This common evidence will prove Wells Fargo's uniform course of conduct: [redacted]

[redacted] Ex. 4, PL_003244 at ¶¶ 2-10; Ex. [redacted] Hall Rpt. at 52-56; Ex. [redacted] Simmons Rpt. at ¶¶ 24, 26-46; *see Jordan v. Paul Fin., LLC*, 285 F.R.D. 435, 454 (N.D. Cal. 2012) (jury could reasonably find bank provided substantial assistance where "[h]undreds of millions of dollars, if not billions, flowed through Paul Financial because of RBS' involvement.").

e. Common evidence can show the amount of classwide damages.

A classwide damages model must "measure damages resulting from the particular . . . injury on which [defendants'] liability in this action is premised." *Comcast Corp. v. Behrend*, 569 U.S. 27, 36 (2013). Plaintiffs seek to recover the money they lost in the scheme. The Receiver's comprehensive forensic accounting, presented here by Plaintiffs' expert John B. Hall, calculates investors' losses and thus serves as proof of the class's damages. Ex. [redacted] Hall Rpt. at 3 [redacted] *Id.* at 51-52. The accounting is substantially complete and will serve as the basis for claims in the receivership. It likewise can serve as the basis for an award of classwide damages. As a result, the issue of damages also raises a question that can be proved using common evidence.

2. A class action is superior to any other means of resolving this controversy.

Finally, Rule 23(b)(3) also requires that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Rule 23(b)(3) lists four non-exhaustive factors to be considered in the superiority analysis:

> (A) the class members' interests in individually controlling the prosecution or defense of separate actions;
>
> (B) the extent and nature of any litigation concerning the controversy already begun by or against class members;

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[7] [redacted] Any other exclusions or subtractions that the Court or the jury finds appropriate can be performed just as easily.

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) the likely difficulties in managing a class action.

There are no individual actions filed by class members, Joint Dec. at ¶ 5, suggesting that the first two factors favor a finding of superiority here. The court-appointed Receiver for the J&J entities, who is tasked with recovering assets for investors, supports this action and is litigating alongside it to maximize efficiencies. *See* ECF No. 110. "Furthermore, each class member will be notified of the right to be excluded from the class. Thus, any class member who wishes to bring an individual case in hopes of recovering greater damages may do so." *La Caria*, 2020 WL 2771185, at *8.

As to the third factor, concentrating the litigation of the claims in the District of Nevada is desirable because the scheme originated in the Las Vegas area, and class members are mostly from Nevada or nearby states.[8] *See Grays Harbor Adventist Christian Sch. v. Carrier Corp.*, 242 F.R.D. 568, 574 (W.D. Wash. 2007) ("[I]t is desirable to litigate the claims of this case in Washington state, where all named Plaintiffs and class members reside or resided."). As a result of its handling this litigation so far, this Court "has significant experience regarding this action[,]" and "[s]treamlining the litigation in one forum will simplify the process and avoid inconsistency." *In re Currency Conversion Fee Antitrust Litig.*, 264 F.R.D. 100, 117 (S.D.N.Y. 2010). Regarding the final factor, Plaintiffs' proposed trial plan (Ex. 58) shows that a class proceeding will be manageable because each element required to determine Wells Fargo's liability will be decided for or against the class based on classwide proof.

In addition to the enumerated factors above, a class action is superior because it is the only realistic means of recovery for most class members here. "The most compelling rationale for finding superiority in a class action is the existence of a negative value suit . . . in which the costs of enforcement in an individual action would exceed the expected individual recovery." *In re Inter-Op Hip Prosthesis Liab. Litig.*, 204 F.R.D. 330, 348 (N.D. Ohio 2001) (cleaned up); *see also Tyus*, 407 F. Supp. 3d at 1102 (finding superiority met when "the potential recovery for each claimant would be greatly disproportionate

[8] [redacted] Ex. Hall Rebuttal Rpt. ¶ 84. [redacted] *Id.*

to litigation costs if each employee were to bring their claim individually"). [redacted] [redacted] *See* Hall Rpt. at 3.[9] In light of the several years of litigation required to bring this case to trial and the multiple expert witnesses retained by each side, many class members would face negative-value claims if brought individually. *See Epifano v. Boardroom Bus. Prods., Inc.*, 130 F.R.D. 295, 299 (S.D.N.Y. 1990) (finding superiority met when individual damages ranged from $50,000 to $285,000 "given the complexity of securities law cases, and the high cost of litigation" and based on evidence that "there are class members with very small claims who would not be able to proceed on their own"); *Joint Equity Comm. of Invs.*, 281 F.R.D. at 436 (finding class action superior where the average class member invested tens of thousands of dollars).

Finally, because nearly all of the evidence in this case will be common across the entire class, "the class mechanism preserves resources of the Court and parties by avoiding thousands of individual lawsuits that would involve duplicative discovery." *Tyus*, 407 F. Supp. 3d at 1102; *see also Greene*, 2017 WL 4158605, at *6 (superiority met when "Plaintiffs additionally claim that the denial of class certification would 'necessitate filing hundreds of individual actions involving the exact same factual and legal questions.'"). "[A] class action will promote a unity of analysis and outcome, compared to potentially conflicting outcomes across a multitude of individual suits." *La Caria*, 2020 WL 2771185, at *8 (citation omitted).

Hundreds of individual cases in which the facts of the Ponzi scheme, Wells Fargo's knowledge, and Wells Fargo's assistance must be proven over and over again would be less efficient than a single case handling these common issues in a single proceeding.

VI. CONCLUSION

For all the reasons set forth above, the Court should certify the proposed class under Rule 23(a) and (b)(3), appoint interim class counsel to serve as class counsel under Rule 23(g)(1), and direct the Plaintiffs to submit a proposed notice plan within 30 days of the Court's certification order consistent with Rule 23(c)(2).

[9] [redacted] Ex. [redacted] Hall Rpt. at 3. [redacted] *See* Ex. 9, Hall Rebuttal Rpt. ¶¶ 8-9.

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Respectfully submitted,

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