

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 0:21-cv-61749

GILMER BAUTISTA, JUAN MENDOZA,
HILDA MENDOZA, and ALEJANDRO
DIAZ on behalf of themselves and all others
similarly situated,

Plaintiffs,

CLASS ACTION

vs.

WELLS FARGO BANK, N.A.,

Defendant.

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs, Gilmer Bautista, Juan Mendoza, Hilda Mendoza, and Alejandro Diaz (“Plaintiffs”), bring this Complaint individually and on behalf of all others similarly situated, against Wells Fargo Bank N.A. (“Wells Fargo”), and allege as follows:

INTRODUCTION

1. This is an action against Wells Fargo for aiding and abetting a massive Ponzi scheme orchestrated by Johanna Garcia through her companies, MJ Capital Funding, LLC (“MJ Capital”) and MJ Taxes and More Inc. (“MJ Taxes”) (together, the “MJ Companies”). Through a set of uniform agreements, the MJ Companies misrepresented to investors that the MJ Companies would use investor funds to make merchant cash advances (“MCAs”) to small businesses. Garcia and the MJ Companies told investors they would receive high monthly returns from merchant loan repayments and interest received, with investors’ principal investments guaranteed by the MJ Companies.

2. In reality, Garcia used accounts at Wells Fargo to operate a classic Ponzi scheme. Garcia paid returns to investors using new investor money, raising between \$70 to \$120 million from investors before the Securities and Exchange Commission (“SEC”) filed an action and obtained a temporary restraining order freezing Garcia and the MJ Companies’ assets and the district court appointed a receiver for the MJ Companies. *See SEC v. MJ Capital Funding LLC*, No. 0:21-cv-61644-AHS (S.D. Fla.).

3. Wells Fargo knew based on its Know Your Customer inquiries that the MJ Companies were supposed to use investor monies to lend to small merchants, which would then repay the loans, the proceeds of which would be used to pay back investors. Wells Fargo monitored the MJ Companies’ accounts and saw that’s not what happened. Very little money that left the MJ Companies’ accounts went to merchants. Millions instead went to Garcia’s personal account at Wells Fargo, to MJ Companies’ sales agents or back to other investors.

4. Despite this knowledge, Wells Fargo substantially assisted the MJ Companies by allowing them to continue operating with Wells Fargo accounts, commingle investor funds and make payments via wire, transfer and check. Garcia and the MJ Companies’ banking activities at Wells Fargo were integral to her scheme to defraud investors.

PARTIES

A. Plaintiffs

5. Plaintiff Gilmer Bautista (“Bautista”) is a resident and citizen of the state of Florida, who resides in Broward County, Florida.

6. Plaintiff Juan Mendoza (“Mr. Mendoza”) is a resident and citizen of the state of Florida, who resides in Miami-Dade County, Florida.

7. Plaintiff Hilda Mendoza (“Ms. Mendoza”) is a resident and citizen of the state of Florida, who resides in Miami-Dade County, Florida.

8. Plaintiff Alejandro Diaz (“Diaz”) is a resident and citizen of the state of Florida, who resides in Miami-Dade County, Florida.

B. Defendant

9. Defendant Wells Fargo is a nationally chartered bank headquartered in Sioux Falls, South Dakota, and conducts its business nationwide, including in Florida. Wells Fargo provided banking services in Florida to Garcia individually and her businesses in Florida.

C. Relevant Non-Parties

10. MJ Capital is a Florida limited liability company formed by Johanna Garcia in June 2020. Its principal place of business is in Pompano Beach, Florida.

11. MJ Taxes is a Florida limited liability company formed by Johanna Garcia in 2016. Its principal place of business is in Pompano Beach, Florida, in the same office as MJ Capital.

12. Johanna Garcia is a resident of Broward County, Florida. She controls the MJ Companies. She is the manager, president, and an authorized member of MJ Capital. She is the president of MJ taxes.

JURISDICTION AND VENUE

13. Subject Matter Jurisdiction. The Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because (i) the matter in controversy exceeds \$5 million, exclusive of interest and costs; (ii) there are members of the proposed Class who are citizens of different states than Defendant Wells Fargo; and (iii) there are in the aggregate more than 100 members of the proposed class.

14. Personal Jurisdiction. This Court has specific personal jurisdiction over Wells Fargo pursuant to Section 48.193(1)(a), Fla. Stat. because the causes of action alleged arise from Wells Fargo's tortious acts within Florida, its engaging in business in Florida, and causing injury to persons or property within Florida while engaged in business Florida. This Court has general personal jurisdiction over Wells Fargo pursuant to Section 48.193(2), Fla. Stat., because Wells Fargo is engaged in substantial and not isolated activity within this state.

15. Venue. Venue is proper in this forum pursuant to 28 U.S.C. § 1391 because a substantial part of the events and omissions giving rise to the claim occurred in this District, and because Defendant is subject to this Court's personal jurisdiction with respect to this action.

FACTUAL BACKGROUND

A. The MCA Investment Scheme

16. From at least June 2020 and continuing through the present, the MJ Companies and Garcia have raised between \$70.9 million and \$128.6 million from more than 2,150 investors across the United States through a fraudulent investment scheme.

17. To raise money from investors, Garcia and the MJ Companies falsely represented to investors and prospective investors that their funds would be used to fund small business loans called merchant cash advances, or MCAs. In exchange, the MJ Companies promised investors they would receive highly monthly returns of typically 10% per month (120% annually), along with the return of their principal.

18. Garcia and the MJ Companies solicited and raised money from investors through several means, including the websites and social media accounts for MJ Capital and MJ Taxes, their employees, external sales agents, and word-of-mouth. Whatever the form of solicitation, the message was the uniform: that MJ Capital would use the investor's money to fund MCAs. MJ

Capital would lend the money to small business merchants, then use those borrowers' repayments to repay the investor with monthly interest and ultimately the investor's principal.

19. To make the investments appear safe, Garcia and the MJ Companies touted that MJ Capital had a team of underwriters to ensure its clients could repay the MCAs plus interest. They also claimed that MJ Capital held liens on merchant projects.

20. The MJ Companies would enter into standardized, uniform agreements with investors (the "Investor Agreement"). The Investor Agreement refers to the investor as the "Purchaser," and provide that MJ Capital agrees that it will use the investor's money to fund an MCA. The Investor Agreement promises investors a high annual return, typically 120%. The term of each investment is either six months, nine months, 12 months or six months with an option by the investor to extend the term for an additional six months. As part of the Investor Agreements with investors, MJ Capital guarantees repayment of principal if the merchant defaults.

21. The representations that the MJ Companies were using investor money to fund MCAs and that their money was secure were false. Garcia and the MJ Companies failed to use investor funds to finance merchant cash advances to small businesses as promised to investors. Instead, through her control of the MJ Companies' bank accounts, Garcia steered investor funds to pay returns to other investors, made cash withdrawals on investor funds, and misspent investor funds on sales agent commissions and loan repayments benefitting MJ Taxes.

22. According to the SEC, the MJ Companies made very few MCAs and filed no liens in connection with the few MCAs they did make. Investors' ability to receive the promised returns and repayment of principal was dependent on Garcia's ability to continue to raise new investor money and convince existing investors to extend the term of agreements.

23. According to the SEC, for the period June 1, 2020 through April 30, 2021, the MJ Companies received between \$51.1 million and \$67.2 million in investor funds from investors in Florida and several other states. However, the SEC alleges that the MJ Companies made no more than \$3 million in payments to MCA recipients, and likely much less than that.

24. Because the MJ Companies made few MCAs and were diverting substantial investor money, the MJ Companies were not earning anywhere near the revenue needed to pay the promised returns to investors.

25. From June 1, 2020, through April 30, 2021, the MJ Companies paid between \$20 million and \$29.3 million in purported returns to investors. However, instead of paying investors out of the revenue of the business, the MJ Companies used new investor money to pay returns to existing investors.

26. Contrary to the representations to investors, the investments in the MJ Companies were not secure. The only way the MJ Companies could honor their obligations to investors would be by successful continuation of their fraudulent scheme. Once the supply of new investors was exhausted, the MJ Companies would be unable to pay the promised returns to existing investors.

27. As a result of MJ Companies' uniform misrepresentations within the Investor Agreements, Plaintiffs and investors each believed their investments were relatively safe. Had they known about the misrepresentations and omissions, they would not have invested.

B. Wells Fargo Knew About and Substantially Assisted the Fraudulent Scheme

28. Garcia and the MJ Companies used Wells Fargo as the primary bank to operate the Ponzi scheme. MJ Capital and MJ Taxes each held an account at Wells Fargo. Garcia also held two individual accounts at Wells Fargo.

29. Wells Fargo's actions and inaction were integral to Garcia's scheme to defraud investors. It was through Wells Fargo account transactions that Garcia applied new investor funds to pay existing investor returns, made cash withdrawals on investor funds and misspent investor funds on sales agent commissions and MJ Taxes loan repayments.

30. Garcia could not have carried out her scheme without first raising a large amount of funds from investors and then depositing and transferring those funds among bank accounts. Garcia's use of Wells Fargo accounts to commingle investor money enabled her to use new money to pay older investors, in classic Ponzi fashion, instead of funding payments with interest earned from bona fide MCAs. Garcia made little effort to hide her misuse of investor funds from Wells Fargo.

31. According to the SEC, the flow of funds in the MJ Companies' bank accounts shows that the funds used to pay investors their principal and interest were derived primarily from other investors' deposits and it is "obvious that the MJ Companies' purported MCA business is really just a front for a growing Ponzi scheme."

C. Wells Fargo's Know Your Customer Requirements

32. Under applicable banking regulations, Wells Fargo must "know its customers" — in this case Garcia and the MJ Companies — and maintain a customer due diligence program to predict the types of transactions, dollar volume and transaction volume each customer is likely to conduct, thereby providing the bank with a means of identifying unusual or suspicious transactions for each customer.

33. Customer due diligence requires Wells Fargo to identify its customers, report indications of suspicious activity and assign a "customer risk rating." Customer due diligence

requires Wells Fargo to know what business the customer is in, and to understand the types of transactions a customer should, and actually does, make.

34. When monitoring its customers' accounts, Wells Fargo is obligated to comply with the Bank Secrecy Act (BSA), including regulations broadening its anti-money laundering provisions. Wells Fargo and its personnel must be able to identify and take appropriate action once put on notice of any of a series of money laundering indicia set forth in the FFIEC BSA/AML Examination Manual. These include: (1) repetitive or unusual fund transfer activity; (2) fund transfers sent or received from the same person to or from different accounts; (3) transactions inconsistent with the account holder's business; (4) transfers of funds among related accounts; (5) depositing of funds into several accounts that are later consolidated into a single master account; (6) large fund transfers sent in round dollar amounts; (7) multiple accounts established in various corporate names that lack sufficient business purpose to justify the account complexities; (8) multiple high-value payments or transfers between shell companies without a legitimate business purpose; (9) payments unconnected to legitimate contracts or revenue sources; (10) fund transfers containing limited content or related party information; (11) transacting businesses sharing the same address; and (12) an unusually large number of persons or entities receiving fund transfers from one company.

35. Furthermore, the FFIEC Manual identifies "lending activities" and "nondeposit account services" — including nondeposit investment products — as services requiring enhanced due diligence and carrying a high risk of money laundering because they facilitate a higher degree of anonymity and involve high volumes of currency. Thus, the FFIEC Manual requires heightened due diligence on the part of banks like Wells Fargo when such services occur, including determining the purpose of the account, ascertaining the source and funds of wealth, identifying

account control persons and signatories, scrutinizing the account holders' business operations, and obtaining explanations for account activity.

36. Here, Wells Fargo engaged in a Know Your Customer analysis of the MJ Companies and monitored the MJ Companies' accounts for anomalous or suspicious behavior. Wells Fargo collected and reviewed information about MJ Capital's business operations, the source of its funds and the purpose of its accounts.

37. Wells Fargo knew that fraud relating to the MJ Companies' line of business, MCAs, have proliferated in Florida and throughout the country in recent years and have been the subject of multiple enforcement actions.

38. Wells Fargo understood MJ Capital's claimed business model: raise money from investors and use it to make MCAs to generate money to repay investors. Wells Fargo expected to see banking activity consistent with this business model. That is, MJ Capital's banking activity should have reflected its receipt of investor funds, use of those funds to make loans to borrowers, receipt of interest payments from borrowers, and use of those funds to pay returns to investors. But that was not what Wells Fargo saw. Instead, it saw a great deal of investor money entering the MJ Companies' accounts — and an array of other banking activities blatantly at odds with the MJ Companies' claimed business model.

39. Importantly, Wells Fargo knew that MJ Capital's accounts received *investor* funds. Indeed, according to the SEC's forensic accountant, the MJ Companies deposited \$20.8 million from over 1,090 separate payors. Those deposits featured transaction memos that specifically notified Wells Fargo of the purpose of the payment as "investment," "Merchant cash advance," "contract," or similar terminology.

40. Also, there were literally thousands and thousands of transactions in and out of the MJ Companies' accounts in a short period of time. Wells Fargo knew that the velocity of transactions, the direction of those transactions and the amount of those transactions did not sync with the MJ Companies' stated business model.

41. Also, Wells Fargo knew that the investor funds were commingled in the accounts for MJ Capital and MJ Taxes — a completely different business. Commingling of funds among related accounts is a hallmark of a Ponzi scheme, particularly where that commingling fails to comport with a customer's business purpose.

42. As a further example of banking activity that conflicted with MJ Capital's business model, one would expect to see a regular flow of interest payments from borrowers reflected in MJ Capital's bank accounts. According to the SEC, however, the accounts took in only minimal cash from actual borrowers. Wells Fargo processed the incoming interest payments and knew that only a limited number of borrowers were making interest payments to MJ Capital and those interest payments did not come close to matching MJ Capital's committed outlays and purported business operations.

43. A forensic accountant retained by the SEC examined the MJ Companies' bank account records and concluded that the transactional activity in the accounts was not consistent with their purported business models. Indeed, only a small portion (1%) of investor funds was used to make MCAs.

44. The SEC concluded that MJ Capital used at least \$20 million (or 32%), and possibly another \$9.3 million, to pay investors what appear to be interest and principal payments. Only \$588,561 (or 1%) of the withdrawals appeared to be payments to MCA recipients. Thus, instead of using the funds to provide MCAs as promised, Garcia used the majority of investor funds to

make interest and principal payments to other investors in classic Ponzi fashion. Additionally, Defendants diverted investor funds to pay commissions to sales agents promoting investment in the MJ Companies and to repay loans owed by MJ Taxes. Garcia also misappropriated investor assets through cash withdrawals.

45. The loan agreements and MCA agreements are investment contracts. Investors looked solely to the MJ Companies to produce returns, and the MJ Companies' ability to do so depended entirely on their ability to either fund profitable MCAs or attract new investors to cover payments to existing investors. Wells Fargo knew that the MJ Companies were raising considerable investor funds from multiple small investors but were not properly registered to sell securities or qualify for any exemption for the sale of securities.

46. Despite of these unambiguous signs of an illicit enterprise, Wells Fargo failed to timely act upon the accounts connected with the Garcia and MJ Companies. Wells Fargo continued to accept deposits of investor money and carry out the transfers needed to consummate the fraud.

D. Victims Included Class Plaintiffs

Gilmer Bautista

47. Bautista, 30, works as an IT help desk consultant for the non-profit Cross Catholic Outreach in Boca Raton, Florida, where he earns \$55,000 annually. On June 28, 2021, Bautista attended a Zoom conference hosted by MJ Capital with at least 100 other potential investors.

48. The MJ Capital representative presented a convincing narrative that if Bautista invested, MJ Capital would put those dollars to work in the form of merchant loans to small businesses. Those merchant loans would then be used to pay him 10% per month on his investment. MJ Capital did not allow any questions.

49. Bautista was presented with a Merchant Cash Advance Agreement and a detailed payment schedule in which MJ Capital promised to pay him 10% monthly returns. Convinced that he was investing in a legitimate MCA agreement, Bautista signed the Agreement and invested \$1,000.

50. A month later, on July 30, 2021, MJ Capital paid Bautista \$100, his initial 10% monthly return. Encouraged, on August 9 Bautista decided to invest his life savings of \$45,000. That same day, the SEC filed a civil complaint for injunctive and other relief against MJ Capital, alleging that Garcia ran a “classic Ponzi scheme.” Two days later, the district court in the SEC case appointed a receiver over MJ Capital and MJ Taxes.

51. Plaintiffs Juan Mendoza and Hilda Mendoza (“Mr. and Ms. Mendoza”) are residents and citizens of the state of Florida. Mr. and Ms. Mendoza reside in Miami-Dade County, Florida.

Juan and Hilda Mendoza

52. As adolescents, Juan and Hilda Mendoza fled Cuba with their families to escape the communist Castro regime. In 1980, they met in Miami, where they married and raised three children.

53. Mr. Mendoza is a retired post office worker. At 18, he joined the U.S Army and was honorably discharged two years later. In 1978, he joined the United States Post Office, where he worked until his retirement in 2015. For the last 25 years, Ms. Mendoza has worked as a Property Manager for various real estate companies.

54. In March 2021, the Mendozas attended a Zoom conference hosted by MJ Capital representatives Karina Fernandez and Pavel Ruiz. The MJ Capital representatives presented a convincing narrative that if the Mendozas invested, MJ Capital would use those funds to extend

merchant loans to small businesses. The interest on those merchant loans would then be used to pay a 10% monthly return on their investment. MJ Capital did not allow any questions.

55. On March 11, 2021, Mr. Mendoza was presented with a Merchant Cash Advance Agreement and a detailed payment schedule in which MJ Capital promised to pay him 10% monthly returns. Convinced that he was investing in a legitimate MCA agreement, Mr. Mendoza signed the Agreement on March and invested \$50,000.

56. Over the next three months, Mr. Mendoza received the first three monthly installments, each 10% of his \$50,000 investment. MJ Capital gave Mendoza the opportunity to roll over his initial investment and invest more, which he did. On June 17, 2021, Mr. Mendoza invested an additional \$20,000, bringing his total investment up to \$70,000.

57. In April 2021, Ms. Mendoza was presented with a Merchant Cash Advance Agreement and a detailed payment schedule in which MJ Capital promised to pay her 10% monthly returns. Convinced that she was investing in a legitimate MCA agreement, she withdrew from her 401k retirement account, signed the Agreement and invested \$18,000 with MJ Capital. She received her first three monthly payments and then reinvested an additional \$4,000 in July 2021, bringing her total investment up to \$22,000.

Alejandro Diaz

58. Diaz, 38, is a licensed physical therapist.

59. On or about March of 2021, Diaz attended a Zoom conference hosted by MJ Capital representatives Karina Fernandez and Pavel Ruiz. The MJ Capital representatives presented a convincing narrative that if Diaz invested, MJ Capital would use those funds to extend merchant cash loans to small businesses. The interest on those merchant loans would then be used to pay

him a 10% monthly return on his investment. MJ Capital did not allow any questions at this Zoom call.

60. Shortly thereafter, Diaz was presented with a Merchant Cash Advance Agreement and a detailed payment schedule in which MJ Capital promised to pay him 10% monthly returns. Convinced that he was investing in a legitimate MCA agreement, Diaz signed the Agreement and invested \$35,000.

61. From April 2021 through June 2021, Diaz received his first monthly installments equal to 10% of his investment, or \$3,500. When his Agreement was up for renewal in June, MJ Capital enticed Diaz to sign a second Agreement and invest more funds. In June of 2021, Diaz invested an additional \$60,000, bringing his total investment up to \$95,000.

E. SEC Enforcement

62. On August 9, 2021, the SEC filed a civil complaint for injunctive and other relief in the Southern District of Florida against Garcia, MJ Capital and MJ Taxes. The complaint charges that Garcia ran a “classic Ponzi scheme,” commingled investor funds, paid existing investors with money garnered from new investors, and misappropriated millions of dollars.

63. The SEC alleged that the MJ Companies’ business model was a sham — instead of paying investor returns with payments obtained from legitimate MCAs, the MJ Companies and Garcia aggressively raised funds from new investors and used those incoming funds to pay old investor returns.

64. The district court acted immediately on the SEC’s emergency *ex parte* motions for a temporary restraining order and for appointment of a receiver, granting the motions on August 11, 2021. The SEC court found “The Court also finds good cause to believe that unless immediately restrained and enjoined by Order of this Court, Defendants will continue to dissipate,

conceal or transfer from the jurisdiction of this Court assets which could be subject to an Order of Disgorgement.”

CLASS ACTION ALLEGATIONS

65. Plaintiffs bring this lawsuit as a class action on behalf of themselves and all others similarly situated, on behalf of a class of all persons who invested in the MJ Companies and suffered damages.

66. Excluded from the class is Wells Fargo and its employees; the Relevant Non-Parties and their employees; and the Judge to whom the Action is assigned and any member of the Judge’s staff and immediate family.

67. This action may be maintained as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, because it meets all the requirements of Rule 23(a)(1-4), including the numerosity, commonality, typicality and adequacy requirements, and it satisfies the requirements of Rule 23(b)(3) in that the predominance and superiority requirements are met.

68. Numerosity. The members of the Classes are so numerous that joinder of all members is impracticable. Since June 2020, more than 2,150 people invested in the MJ Companies.

69. Commonality. There are numerous questions of fact or law that are common to Plaintiffs and all the members of the Class. Common issues of fact and law predominate over any issues unique to individual class members. Issues that are common to all class members include, but are not limited to the following:

- (a) Whether Garcia and the MJ Companies committed fraud and/or breached duties to Plaintiffs and members of the class;
- (b) Whether Wells Fargo had actual knowledge of the scheme;

(c) Whether Wells Fargo, despite actual knowledge of the scheme, substantially assisted it;

(d) Whether Class Plaintiffs and class members suffered damages;

70. Typicality. Plaintiffs have claims that are typical of the claims of all of the members of the Class. Plaintiffs and each class member invested in MJ Capital and were subject to the wrongful conduct alleged in this complaint. Furthermore, the claims arise under legal theories that apply to Plaintiffs and all other class members.

71. Adequacy of Representation. Plaintiffs will fairly and adequately represent the interests of the members of the Classes. Plaintiffs do not have claims that are unique to Plaintiffs and not the other class members, nor are there defenses unique to Plaintiffs that could undermine the efficient resolution of the claims of the Class. Further, Plaintiffs are committed to the vigorous prosecution of this action and have retained competent counsel, experienced in class action litigation, to represent them. There is no hostility between Plaintiffs and the unnamed class members. Plaintiffs anticipate no difficulty in the management of this litigation as a class action.

72. Predominance. Common questions of law and fact predominate over questions affecting only individual class members. The only individual issues likely to arise will be the amount of damages recovered by each class member, the calculation of which does not bar certification.

73. Superiority. A class action is superior to all other feasible alternatives for the resolution of this matter. Individual litigation of multiple cases would be highly inefficient and would waste the resources of the courts and of the parties. The damages sought by Plaintiffs and class members are relatively small and unlikely to warrant individual lawsuits given the fees and costs, including expert costs, required to prosecute the claims.

74. Manageability. This case is well suited for treatment as a class action and easily can be managed as a class action since evidence of both liability and damages can be adduced, and proof of liability and damages can be presented, on a class-wide basis, while the allocation and distribution of damages to class members would be essentially a ministerial function.

75. Ascertainability. Class members are readily ascertainable. The class members are identifiable from information and records in the possession, custody or control of Wells Fargo or the Relevant Non-Parties.

76. All conditions precedent to this action have occurred or have been waived.

COUNT I – AIDING AND ABETTING FRAUD

77. Plaintiffs re-allege and incorporate paragraphs 1 through 76 above as if fully set forth herein.

78. As set forth above, Garcia and the MJ Companies perpetrated a fraud upon Plaintiffs and class members through materially false and misleading statements and omissions that misled Plaintiffs and class members to believe they were investing in MCAs. Garcia and the MJ Companies knew these statements to be false. Among other fraudulent conduct, Garcia and the MJ Companies:

- a. through a uniform set of agreements, falsely told inventors that their investments would be used to fund MCAs;
- b. falsely promised high monthly returns on their investments;
- c. falsely promised that the MJ Companies would guarantee repayment of principal if the merchant defaulted;

- d. concealed from investors that they were operating a Ponzi scheme by, among other unlawful acts, commingling investor funds and paying earlier investors with funds obtained from later investors; and
- e. concealed from investors that Garcia and the MJ Companies misappropriated and misused millions of investor funds for improper purposes.

79. Plaintiffs and class members reasonably relied to their detriment upon those misrepresentations when they invested in the MJ Companies.

80. Wells Fargo substantially assisted Garcia and the MJ Companies, with knowledge that they were defrauding consumers like Class Plaintiffs and class members. In connection with providing substantial and material assistance to Garcia and MJ Capital, Wells Fargo knew of its role in their scheme, and acted knowingly in assisting.

81. Wells Fargo substantially benefited from their participation in the scheme, earning substantial fees from Garcia and the MJ Companies.

82. As a direct and proximate result of Wells Fargo aiding and abetting the fraud, Plaintiffs and class members have suffered damages in an amount to be determined at trial.

WHEREFORE, Plaintiffs, on behalf of themselves and all similarly situated class members, respectfully demand judgment against Wells Fargo for their damages; pre- and post-judgment interest; and such other and further relief as the Court deems just and proper.

COUNT II – AIDING AND ABETTING BREACH OF FIDUCIARY DUTY

83. Plaintiffs re-allege and incorporate paragraphs 1 through 76 above as if fully set forth herein.

84. Garcia and the MJ Companies fostered a special relationship with Class Plaintiffs and class members that engendered fiduciary duties of loyalty, care, honesty and/or good faith.

85. Garcia and the MJ Companies knew that investors, including Class Plaintiffs and class members, were relying on them to properly invest their hard-earned money. These investors were vulnerable. They relied on and trusted Garcia and the MJ Companies, and Garcia and the MJ Companies knew and encouraged that reliance and trust.

86. At all relevant times, Garcia maintained complete or substantially complete control over the MJ Companies, investments and assets, investors' funds, and the communications to investors. Garcia had complete control over the Wells Fargo bank accounts in which investor funds were deposited.

87. By reason of Garcia's controlling positions, actions and direct and indirect representations to Plaintiffs and class members, and by reason of the investors having deposited funds into Garcia's control with the understanding she would act in accordance with her promises in regard to the use of such funds, Garcia and the MJ Companies owed investors fiduciary duties of loyalty and care and to deal honestly and in good faith.

88. As set forth above, Garcia and the MJ Companies breached those fiduciary duties by perpetrating a scheme that misled Plaintiffs and class members to believe they were investing in MCA's, by misappropriating, commingling, and otherwise misusing investor funds, and otherwise acting as alleged herein in violation of his fiduciary duties to investors, Garcia breached fiduciary duties she owed to Plaintiffs and class members.

89. Based on its knowledge of MJ Capital's business model and banking activity and its knowledge that MJ Capital's accounts held funds raised by investors, Wells Fargo knew that MJ Capital and Garcia owed fiduciary duties to investors, including Plaintiffs and the class.

90. Wells Fargo substantially assisted in Garcia and the MJ Companies' breaches of fiduciary duty with knowledge that Garcia and the MJ Companies were breaching those duties.

91. As a direct and proximate result of Wells Fargo's aiding and abetting Garcia and the MJ Companies' breaches of fiduciary duty, Plaintiffs and class members have suffered damages in an amount to be determined at trial.

WHEREFORE, Plaintiffs, on behalf of themselves and all similarly situated class members, respectfully demand judgment against Wells Fargo for their damages; pre- and post-judgment interest; and such other and further relief as the Court deems just and proper.

COUNT III- UNJUST ENRICHMENT

92. Plaintiffs re-allege and incorporate paragraphs 1 through 76 above as if fully set forth herein.

93. Wells Fargo provided banking services to the MJ Companies through various bank accounts. Those bank accounts were used to carry out the Ponzi scheme.

94. Wells Fargo provided banking services in support of the scheme. Wells Fargo received the fees from the MJ Companies in connection with and in furtherance of that scheme.

95. The fund held in the MJ Companies accounts belonged to investors. Thus, Plaintiffs and class members conferred benefits upon Wells Fargo in the form of transfer fees, service fees, transaction fees and online banking fees. Wells Fargo knowingly and voluntarily accepted, and retained, those benefits.

96. For the reasons described above, it would be inequitable for Wells Fargo to retain those benefits, including profits derived from those benefits.

WHEREFORE, Plaintiffs, on behalf of themselves and all similarly situated class members, respectfully demand judgment against Wells Fargo for the return of the fees retained by Wells Fargo; pre- and post-judgment interest; and/or such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs request a jury trial for any and all Counts for which a trial by jury is permitted by law.

Dated: August 20, 2021

Respectfully submitted,

LEVINE KELLOGG LEHMAN
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