No. 23A401

IN THE
Supreme Court of the United States

R. ALLEN STANFORD,

Applicant,

v.

RALPH S. JANVEY, ET AL.,

Respondent.

On Application for an Extension of Time to File Petition for a Writ of Certiorari from the United States Court of Appeals for the Fifth Circuit

RESPONDENTS' APPLICATION TO VACATE ORDER GRANTING PETITIONER'S APPLICATION FOR EXTENSION OF TIME TO FILE PETITION FOR A WRIT OF CERTIORARI

To the Honorable Samuel A. Alito, Associate Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Fifth Circuit

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RULE 29.6 DISCLOSURE

Respondent Ralph S. Janvey confirms that, as an individual and a court-appointed receiver, he has no disclosure to make under this Court's Rule 29.6. Likewise, Respondent the Official Stanford Investors Committee has no such disclosure.

Respondents respectfully request that the order granting Petitioner R. Allen Stanford's ("Stanford") request for an extension of time to file a petition for writ of certiorari be vacated because Stanford failed to provide any notice to Respondents that he had filed such a request. For the past several months, Respondents have been locked in litigation with Stanford over his efforts to obstruct court-approved settlements that Respondents obtained arising out the Stanford Financial Receivership. Stanford has filed numerous (and frivolous) objections and motions in the district court and motions and appeals (also frivolous) in the Fifth Circuit, all of which he served on Respondents. Yet Stanford did not serve his extension request on Respondents nor provide any other notice that he had filed such a request, thereby depriving Respondents of an opportunity to respond. Respondents only learned of Stanford's application on Monday November 6, 2023 and immediately began preparing a response in opposition. As Respondents prepared to file their opposition on November 7, 2023, this Court's docket was updated and revealed that Stanford's application had already been granted on November 3, 2023—the same day the case was docketed.

Although Respondents would not ordinarily oppose a request for a scheduling accommodation, this is the rare case that warrants opposition given that the arguments Stanford intends to pursue have been found to be frivolous by three different panels of the Fifth Circuit and that Stanford's continued appellate litigation activity is delaying payment of more than a billion dollars in settlement funds that would otherwise be available to compensate the victims of Stanford's crimes. This Court's rules make clear that "application[s] to extend the time to file a petition for a writ of certiorari [are] not favored."

U.S. Sup. Ct. R. 13.5, and Stanford's request falls far short of demonstrating the "good cause" required for an extension. For that reason, the order granting Stanford's request for an extension should be vacated and the original deadline reinstated.

I. Background

Petitioner R. Allen Stanford ("Stanford") was convicted of numerous federal crimes and given a 110-year sentence for perpetrating one of the largest financial frauds in history. See *United States* v. *Stanford*, 805 F.3d 557, 564 (5th Cir. 2015). His conviction is long since final. See *United States* v. *Stanford*, 580 U.S. 1105 (2017) (denying rehearing of this Court's denial of Stanford's petition for writ of certiorari in which he sought to challenge his criminal conviction). Stanford's scheme collapsed more than fourteen years ago when the SEC filed suit against Stanford and his wholly-owned companies and asked for the appointment of a receiver. See *Janvey* v. *Democratic Senatorial Campaign Comm., Inc.*, 712 F.3d 185, 188–89 (5th Cir. 2013). The district court appointed Ralph S. Janvey ("Receiver") to take over Mr. Stanford's far-flung financial empire and established the Official Stanford Investors Committee ("OSIC") to represent the interests of investors. See *Rotstain* v. *Mendez*, 986 F.3d 931, 934–35 (5th Cir. 2021).

For more than a decade, the Receiver and OSIC have been pursuing asset recoveries to help compensate Stanford's 18,000 fraud victims who have suffered billions of dollars in losses. One of these proceedings involved a lawsuit against five banks that helped Mr. Stanford run his investment fraud. See *Rotstain*, 986 F.3d at 934, 940. In early 2023—on the eve of trial—the Receiver and OSIC settled this long-running lawsuit through five settlement agreements (one per defendant) adding up to a total of $1.602 billion (collectively the "Bank Settlements"). Each settlement requires court approval. This proceeding

concerns Stanford's frivolous objections to the final three Bank Settlements (collectively, the "Final Three Settlements").[1]

Stanford's objection to the Final Three Settlements had nothing to do with the settlements themselves but instead challenged the very existence of the fourteen-year-old Stanford Financial Receivership based on largely unintelligible arguments that had been repeatedly rejected by the district court. See App., *infra*, 1a–6a.

The district court overruled Stanford's objections and approved the Final Three Settlements in separate orders. See App., *infra*, 7a–40a. Stanford appealed those orders even though the Fifth Circuit had already twice rejected identical arguments as frivolous in his appeals of the first two Bank Settlements. See App., *infra*, 41a–42a (dismissing appeal of first Bank Settlement as frivolous); App., *infra*, 43a–44a (dismissing appeal of second Bank Settlement as frivolous). As he had done in his first two appeals of Bank Settlements, Stanford argued that the district court had been deprived of "jurisdiction" over the receivership because the Receiver allegedly moved his "principal place of business" from Dallas to Houston and outside the territorial confines of the Northern District of Texas. See App., *infra*, 52a–53a. Because of this, Stanford argued, every order entered by the receivership court, and every action taken by the Receiver, was void for lack of jurisdiction. *Ibid.*

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[1] The district court approved the settlements in three batches. The first two settlements—not at issue in this proceeding—were approved in May and June of 2023. The Final Three Settlements—which are the subject of this proceeding—were approved on August 8, 2023. Stanford objected to all five Bank Settlements, urging an identical "jurisdictional" argument. He also appealed the first two batches of settlement approvals, just as he appealed the Final Three Settlements. See App., *infra*, 41a–44a.

The Receiver moved to dismiss Stanford's latest appeal as frivolous. And just as it had done twice before in Stanford Bank Settlement appeals, the Fifth Circuit granted the motion and dismissed Stanford's purported appeal as frivolous. See App., *infra*, 65a. It is from this determination that Stanford seeks to pursue relief in this Court.

II. Stanford's application does not demonstrate the required good cause to extend the deadline to file his petition.

Stanford has not demonstrated the "good cause" required to receive an extension. In support of his application, Stanford cites two arguments: 1) the "legal complexities" of the case and 2) the "legal research and document filing constraints which are commonplace at a maximum security penitentiary." Pet.'s Application at 2. Neither argument has merit.

First, while the typical case this Court agrees to hear may be complex, Stanford's arguments are complex only in the sense that they are legally incoherent. Stanford argues the district court lost jurisdiction over the Stanford Financial Receivership when, more than a decade ago, the Receiver allegedly relocated his "principal place of business" from Dallas to Houston.[2] Despite his significant volume of district court and appellate filings raising this argument, Stanford has yet to provide any basis for it. There is none. The supposed "complexity" of this case does not justify Stanford's extension request.

Second, Stanford's status as a prisoner has not deterred him from filing numerous frivolous pleadings over the fourteen-year course of the Stanford Financial Receivership. See App., *infra*, 68a–69a (recounting Stanford's history of filing frivolous pleadings).

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[2] See App., *infra*, 52a–53a ("Appellant will show . . . that on February 16, 2009 . . . , the Receiver-Appellee promptly departed the confines of the Northern District of Texas . . . and established his 'principle [sic] place of business' for the . . . Stanford Receivership Estate . . . to . . . the southern District of Texas . . . . [which] served to divest the District Court in the Northern District of Texas of its original . . . subject-matter jurisdiction[.]")

Indeed, Stanford has filed so many frivolous pleadings in this case that the district court has ruled that Stanford is a "vexatious litigant" and has enjoined him from filing further documents in the district court without first obtaining leave of court. See *ibid.* Thus, Stanford's objection that his status as a prisoner frustrates his ability to timely file a petition in this case is not well taken. Stanford has not demonstrated good cause to extend his deadline.

Quite to the contrary, good cause exists to deny Stanford's application. Stanford's frivolous appeals have delayed payments of Bank Settlement funds to the very investors that he defrauded. At least one bank that is a party to a Bank Settlement has refused to pay the funds due under the settlement, citing Stanford's appeal as evidence that the settlement is not yet "final." See App., *infra*, 74a (arguing that Stanford's appeal of one of the Bank Settlements precluded the settlement from becoming final under its terms). The district court and three separate panels of the Fifth Circuit have dismissed Stanford's objection to the Bank Settlements as frivolous. Yet Stanford, undeterred, now seeks to file—with a 60-day extension—a petition for review in this Court. It is clear that Stanford's appellate filings are merely attempts to further obstruct and delay payment of funds to his fraud victims.[3]

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[3] The district court considering Stanford's motion for compassionate release from prison agreed, citing Stanford's obstructionist efforts as a reason to deny his motion. See *United States* v. *Stanford*, No. 22-20388, 2023 WL 6546656, at *1 (5th Cir. Oct. 9, 2023) (per curiam) (affirming district court's denial of Stanford's motion for compassionate release and holding that it was not error for the district court to consider Stanford's "obstructing efforts to compensate victims" in so doing).

Stanford does not need another two months to assert arguments that three panels of the Fifth Circuit have found to be frivolous. His litigiousness serves only to delay payment of settlement funds to the investors he defrauded. He has not shown good cause required to obtain an extension. Thus, the order granting his application for an extension of time should be vacated and the original deadline reinstated.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court (1) vacate the order granting Stanford's application for an extension of time in which to file a petition for writ of certiorari and (2) enter an order denying the requested extension of time.

Dated: November 8, 2023

Respectfully submitted,

By: */s/ Kevin M. Sadler*

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ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff

vs. **Case No 3:09-cv-00298-N**

STANFORD INTERNATIONAL BANKL, LTD, et al,
Defendants
_____/

R. ALLEN STANFORD'S (SECOND) WRITTEN OBJECTION TO PROPOSED SETTLEMENT AGREEMENT IN THE ROTSTAIN/TRUSTMARK LITIGATION, AS TO 'BANK DEFENDANTS' INDEPENDENT BANK, HSBC, AND TORONTO DOMININION REQUEST TO APPEAR, BY ELECTRONIC MEANS, AT THE FINAL APPROVING HEARING

TO: HONORABLE DAVID C. GODBEY, CHIEF U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

R. Allen Stanford, defendant proceeding *pro se* in the above entitled (and underlying) **'main action case'**, filed against him and his global group of financial services companies by the Securities and Exchange Commission, herein files this **(second)** Written Objection, as to the proposed settlement agreement reached with ***Rotstain/Trustmark*** defendants Independent Bank, HSBC, and Toronto Dominion and makes this **(second)** request to appear by electronic means. This **(second)** Written Objection and request to appear at Final Approval Hearing is made pursuant to the Court's March 14, Scheduling Orders (Docs. 3256, 3257, 3258).

As Mr. Stanford stated in his previous Written Objection, the institution where he is currently incarcerated has the means to provide electronic audio/video connection with this and any other Court, upon request and Court order.

Statement and Basis for Objection

In light of the foundational jurisdictional defect as presented below, which is indisputably dispositive and affects not only the **'main action'** case, but all litigation arising out of the **'main action'**, to include the ***Rotstain/Trustmark litigation***, this Court has an obligation to address this matter prior to the approval of any of the proposed Settlement Agreements, totaling approximately $2 billion, between the parties in the pending ***Rotstain/Trustmark litigation***.
See, ***'Rotstain Litigation'*** (***Rotstain, et al, v. Trustmark National Bank, et al***, Case No. 4:22-cv-00800) (S.D. Tex.)

In direct terms, the jurisdictional defect that exists in these proceedings concerns the court-appointed Receiver's unlawful relocation of the administration of the Stanford Receivership Estate from the **'host district'** in the Northern District of Texas, Dallas Division, to the Southern District of Texas, Houston Division, in its entirety, immediately upon his appointment...in direct defiance of the Order Appointing Receiver (Doc. 10), the Local Rules of this Court, and the vast and governing body of jurisdictional and receivership law; an ***'ultra vires'*** action that indisputably exceeded the legislatively-defined territorial boundaries of the Northern District Court, and thus immediately nullified the Receiver's judicially-provided immunity, and, in so doing, served to confirm Mr. Stanford's '**improper forum manipulation**' argument, as presented by him in a Rule 12(b)(3) 'Motion To Dismiss' (procedurally barred by this Court); an action taken by the Receiver that also, and most importantly, both exceeded the Receiver's limited (assets sales)

authority under **28 U.S.C. 754**, and immediately divested the **'host district'** Court of all jurisdiction, in all Stanford Entities Litigation, from February 16, 2009, forward.

In simple terms, this foundational jurisdictional defect - that since 2009 the Securities and Exchange Commission and this Court have refused to address, or even acknowledge at all - affects the entirety of the Stanford Entities Litigation, in all of its many stages and phases, and ancillary proceedings.
And yet no matter the many challenges made by Mr. Stanford since 2009, a defect that has consistently been avoided by the Securities and Exchange Commission, and this Court through the usage or manipulation of inapplicable procedural rules; an extraordinary jurisdictional event that, in equal measure, is factually impossible to deny or defend, and cannot be **'waived'** or **'forfeited'**; an event that both the Securities and Exchange Commission and this Court have made equally extraordinary efforts to cover up, because, when it is finally addressed, will serve to destroy the validity of the progenitor **'main action'** case, and all ancillary actions and judgments flowing from it, since February 16, 2009.

Conclusion

For this reason, prior to any further actions taken or authorized by this Court, including but not limited to any approvals of proposed settlement agreements reached in the ***Rotstain/Trustmark litigation***, this Court has a constitutional obligation to Mr. Stanford, the parties in the ***Rotstain Litigation***, and all other parties involved in the Stanford Entity Litigation, to address this dispositive foundational jurisdictional defect, as presented in the pending 'Motion To Intervene' (Doc. 3240), and each of the docket entries cited therein.

FINAL NOTE: Even though Mr. Stanford has reliable reason to expect the Court's enduring disregard for these jurisdictional facts and controlling law will continue, right through the pending ***Rotstain/Trustmark*** Settlement Proceedings, and beyond, as he previously stated in the pending 'Motion To Alter Or Amend Judgment' (Doc. 3231) - wherein this factually indisputable foundational jurisdictional defect was presented to the Court, apart from all of the many other legal deficiencies in the 'main action' case - he stands ready to provide the Court (or any interested party) with overwhelming documentation of the Receiver's unlawful removal of all administrations of the Stanford Receivership Estate to location(s) outside the legislatively established territorial boundaries of the Northern District Court.

Mr. Stanford possesses this proof, as for the past 14 years the Receiver, Ralph S. Janvey, and his counsel, Kevin M. Sadler, have mailed to him a virtual truckload of court-filed documents, beginning with his first 'Report of the Receiver' (Doc. 336), filed on April 23, 2009; the sum of which confirm, with indisputable facts and clarity, that since February 16, 2009, to date, the Receiver and his "team of professionals" have conducted the entirety of Stanford Receivership Estate operations and administrative activities in, and from, and only in and from, the Southern District of Texas, in Houston, and **NEVER**, at any time, from the Northern District of Texas...in defiance of the stringent requirements for general jurisdiction established by the Supreme Court in ***Daimler AG v. Bauman***, 571 U.S. 117, 127 (2014) the doctrine of ***stare decisis***, and, most importantly, with total disregard for the legislatively-set territorial boundaries of the Northern District Court.

See, e.g., ***Rotstain v. Trustmark National Bank***, 2021 U.S. Dist LEXIS 144520 (August 3, 2021, N. D. Texas), wherein this Court (Hon. David C. Godbey)

acknowledged, ironically, the controlling weight of ***Daimler AG v. Bauman***, 571 U.S. 117, 127 (2014).

Date: March 16, 2023.

Respectfully submitted,

R. Allen Stanford

R. Allen Stanford, *pro se*
Reg. # 35017-183
FCC Coleman USP II
P.O. Box 1034
Coleman, Florida 33521

Certificate of Service

I, R. Allen Stanford, proceeding *pro se*, hereby certify that on this 16th day of March 2023, I placed a copy of this (Second) 'Written Objection To Proposed Settlement Agreement' in the U.S. Mail addressed to:

Securities and Exchange Commission
Fort Worth Division Regional Office
Burnett Plaza, Suite 1900
801 Cherry Street, Unit # 18
Fort Worth, Texas 76102-6882

United States Judicial Panel
on Multi-District Litigation
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, NE
Room G-255, North Lobby
Washington, DC 20544-0005
Karen K. Caldwell, Chair

In Re: Stanford Entities Securities
Litigation (MDL – 2099)

...and to counsel for all parties in the pending ***'Rotstain Litigation'*** Settlement Agreement Proceedings.

R. Allen Stanford

R. Allen Stanford, *pro se*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. STANFORD INTERNATIONAL BANK, LTD, *et al.*, Defendants.	:	Case No. 3:09-cv-00298

FINAL BAR ORDER

Before the Court is the Expedited Request for Entry of Scheduling Order and Motion to Approve Proposed Settlement with Independent, to Approve the Proposed Notice of Settlement with Independent, and to Enter the Bar Order (ECF No. 3241, the "Motion") filed by Ralph S. Janvey, in his capacity as the Court-appointed Receiver for the Stanford Receivership Estate (the "Receiver"), and the Court-appointed Official Stanford Investors Committee (the "Committee"), the latter being a plaintiff in *Rotstain, et al. v. Trustmark National Bank, et al.*, Civil Action No. 4:22-cv-00800 (S.D. Tex.) (the "*Rotstain* Litigation").[1] The Motion concerns a proposed settlement (the "Settlement") between and among, on the one hand, the Receiver, the Committee, and the *Rotstain* Investor Plaintiffs, and on the other hand, Independent Bank formerly known as

[1] Terms used in this Final Bar Order that are defined in the settlement agreement that is attached as Exhibit 1 of the Appendix to the Motion (ECF No. 3242) (the "Settlement Agreement"), unless expressly otherwise defined herein, have the same meaning as in the Settlement Agreement (which is deemed incorporated herein by reference).

Bank of Houston ("Independent"). The Receiver, the Committee, and the *Rotstain* Investor Plaintiffs are collectively referred to as "Plaintiffs." Plaintiffs, on the one hand, and Independent, on the other hand, are referred to individually as a "Party" and together as the "Parties." John J. Little signed the Settlement Agreement as chair of the Committee. Mr. Little, the Court-appointed Examiner (the "Examiner"), also signed the Settlement Agreement in his capacity as Examiner solely to evidence his support and approval of the Settlement and to confirm his obligation to post the Notice on his website; but Mr. Little as Examiner is not otherwise individually a party to the Settlement Agreement, this litigation, or the *Rotstain* Litigation.

Following notice and a hearing, and having considered the filings and heard the arguments of counsel, the Motion is hereby GRANTED.

I. INTRODUCTION

This litigation and the *Rotstain* Litigation arise from a series of events leading to the collapse of Stanford International Bank, Ltd. ("SIBL") and other companies owned or controlled by Robert Allen Stanford (with SIBL, the "Stanford Entities").[2] On February 16, 2009, this Court appointed Ralph S. Janvey to be the Receiver for the Receivership Estate. (ECF No. 10.) After years of investigation, Plaintiffs believe that they have identified claims against a number of third parties, including Independent, which Plaintiffs allege enabled the Stanford Ponzi scheme. In the *Rotstain* Litigation, some or all of Plaintiffs assert claims against Independent and other defendants for (i) aiding, abetting, or participation in violations of the Texas Securities Act; and (ii) knowing

[2] All references in this Order to the *Rotstain* Litigation and the action titled *Smith, et al. v. Independent Bank, et al.*, CA No. 4-20-CV-00675 (S.D. Tex.) (the "*Smith* Litigation") shall also apply to any actions severed from that case.

participation in breach of fiduciary duty.[3] Independent denies that it is liable under any of those claims and asserts numerous defenses to each of those claims.

The Parties have engaged in good-faith, arm's-length negotiations.. In these negotiations, potential victims of the Stanford Ponzi scheme were well-represented. The Committee—which the Court appointed to "represent[] in this case and related matters" the "customers of SIBL who, as of February 16, 2009, had funds on deposit at SIBL and/or were holding certificates of deposit issued by SIBL (the 'Stanford Investors')" (ECF No. 1149)—the Receiver, and the Examiner—who the Court appointed to advocate on behalf of "investors in any financial products, accounts, vehicles or ventures sponsored, promoted or sold by any Defendant in this action" (ECF No. 322)—all participated in these extensive, arm's-length negotiations. On February 24, the Parties reached an agreement in principle resulting in the Settlement. The Parties continued negotiating in order to document the exact terms of the Settlement in the written Settlement Agreement.

Under the terms of the Settlement Agreement, Independent will pay $100 million ($100,000,000.00) (the "Settlement Amount") to the Receivership Estate, which (less Attorneys' Fees and expenses) will be distributed to Stanford Investors. In return, Independent is to obtain total peace with respect to all claims that have been, or could have been, asserted against Independent or any other of the Independent Released Parties, arising in any respect out of the events leading to these proceedings. Accordingly, the Settlement is conditioned on the Court's approval and entry of this Final Bar Order enjoining Interested Parties and other Persons holding

[3] Claims were also brought against Independent for (1) aiding, abetting, or participation in fraudulent transfers; (2) aiding, abetting, or participation in a fraudulent scheme; (3) aiding, abetting, or participation in conversion; (4) civil conspiracy, and (5) breach of fiduciary duty. Those claims were either dismissed by the Court or abandoned by Plaintiffs over the course of the litigation.

any potential claim against Independent relating to these proceedings from asserting or prosecuting claims against Independent or any of the Independent Released Parties.

On March 8, 2023, Plaintiffs filed the Motion. (ECF No. 3241). The Court thereafter entered a Scheduling Order on March 14, 2023 (ECF No. 3256), which, *inter alia*, authorized the Receiver to provide notice of the Settlement, established a briefing schedule on the Motion, and set the Motion for a hearing. On August 8, 2023, the Court held the scheduled hearing. For the reasons set forth herein, the Court finds that the terms of the Settlement Agreement are adequate, fair, reasonable, and equitable, and that the Settlement should be and is hereby **APPROVED**. The Court further finds that entry of this Final Bar Order is appropriate and necessary.

II. ORDER

It is hereby **ORDERED, ADJUDGED, AND DECREED** as follows:

1. The Court has "broad powers and wide discretion to determine the appropriate relief in [this] equity receivership," including the authority to enter the Final Bar Order. *SEC v. Kaleta*, 530 F. App'x 360, 362 (5th Cir. 2013) (internal quotations omitted); *see also Zacarias v. Stanford Int'l Bank, Ltd.,* 945 F.3d 883, 897 (5th Cir. 2019) (receivership court authority includes entering "bar orders foreclosing suit against third-party defendants with whom the receiver is also engaged in litigation"). Moreover, the Court has jurisdiction over the subject matter of this action, and the Receiver and the Committee are proper parties to seek entry of this Final Bar Order.

2. The Court finds that the methodology, form, content, and dissemination of the Notice: (i) were implemented in accordance with the requirements of the Scheduling Order; (ii) constituted the best practicable notice; (iii) were reasonably calculated, under the circumstances, to apprise all Interested Parties of the Settlement, the releases and dismissal therein, and the injunctions provided for in this Final Bar Order; (iv) were reasonably calculated, under the circumstances, to apprise all Interested Parties of the right to object to the Settlement and this Final

Bar Order, and to appear at the final approval Hearing; (v) were reasonable and constituted due, adequate, and sufficient notice; (vi) met all applicable requirements of law, including, without limitation, the Federal Rules of Civil Procedure, the United States Constitution (including Due Process), and the Rules of the Court; and (vii) provided to all Persons a full and fair opportunity to be heard on these matters.

3. The Court finds that the Settlement, including, without limitation, the Settlement Amount, was reached following an extensive investigation of the facts and resulted from vigorous, good faith, arm's-length negotiations involving experienced and competent counsel. The Court further finds that (i) significant issues exist as to the merits and value of the claims asserted against Independent by Plaintiffs and by others whose potential claims are foreclosed by this Final Bar Order; (ii) such claims contain complex and novel issues of law and fact that would require a substantial amount of time and expense to litigate, with uncertainty regarding whether such claims would be successful; (iii) a significant risk exists that future litigation costs would dissipate Receivership Assets and that Plaintiffs and Claimants may not ultimately prevail on their claims; (iv) Plaintiffs and other Claimants will receive partial satisfaction of their claims from the Settlement Amount being paid pursuant to the Settlement; and (v) Independent would not have agreed to the terms of the Settlement in the absence of this Final Bar Order and assurance of "total peace" with respect to all claims that have been, or could be, asserted by any Persons arising from any aspect of Independent's relationship with the Stanford Entities. *See SEC v. Kaleta*, No. 4:09-3674, 2012 WL 401069, at *4 (S.D. Tex. Feb. 7, 2012), *aff'd*, 530 F. App'x 360 (5th Cir. 2013) (approving these factors for consideration in evaluating whether a settlement and bar order are sufficient, fair, and necessary). The injunction against such claims as set forth herein is therefore a necessary and appropriate order ancillary to the relief obtained for victims of the Stanford Ponzi

scheme pursuant to the Settlement. *See Kaleta*, 530 F. App'x at 362 (affirming a bar order and injunction against investor claims as "ancillary relief" to a settlement in an SEC receivership proceeding). After careful consideration of the record and applicable law, the Court concludes that the Settlement is the best option for maximizing the net amount recoverable from Independent for the Receivership Estate, Plaintiffs, and the Claimants.

4. Pursuant to the Settlement Agreement and upon motion by the Receiver, this Court will approve a Distribution Plan that will fairly and reasonably distribute the net proceeds of the Settlement to Stanford Investors who have Claims approved by the Receiver. The Court finds that the Receiver's claims process and the Distribution Plan contemplated in the Settlement Agreement have been designed to ensure that all Stanford Investors have received an opportunity to pursue their Claims through the Receiver's claims process previously approved by the Court (ECF No. 1584).

5. The Court further finds that the Parties and their counsel have at all times complied with the requirements of Rule 11 of the Federal Rules of Civil Procedure.

6. Accordingly, the Court finds that the Settlement is, in all respects, fair, reasonable, and adequate, and in the best interests of all Persons claiming an interest in, having authority over, or asserting a claim against Independent, the Stanford Entities, or the Receivership Estate, including but not limited to Plaintiffs and the Interested Parties. The Court also finds that this Final Bar Order is a necessary component to achieve the Settlement. The Settlement, the terms of which are set forth in the Settlement Agreement, is hereby fully and finally approved. The Parties are directed to implement and consummate the Settlement in accordance with the terms and provisions of the Settlement Agreement and this Final Bar Order.

7. Pursuant to the provisions of paragraph 42 of the Settlement Agreement, as of the Settlement Effective Date, Independent and the Independent Released Parties shall be completely released, acquitted, and forever discharged from any action, cause of action, suit, liability, claim, right of action, right of levy or attachment, or demand whatsoever, whether or not currently asserted, known, suspected, existing, or discoverable, and whether based on federal law, state law, foreign law, common law, or otherwise, and whether based on contract, tort, statute, law, equity or otherwise, that Plaintiffs, including without limitation the Receiver on behalf of the Receivership Estate (including the Stanford Entities); the Committee; the Claimants; and the Persons, entities and interests represented by those parties ever had, now has, or hereafter can, shall, or may have, directly, representatively, derivatively, or in any other capacity, for, upon, arising from, relating to, or by reason of any matter, cause, or thing whatsoever, that, in full or in part, concerns, relates to, arises out of, or is in any manner connected with (i) the Stanford Entities; (ii) any certificate of deposit, depository account, or investment of any type with any one or more of the Stanford Entities; (iii) Independent's or any of the Independent Released Parties' relationships with any one or more of the Stanford Entities and/or any of their personnel or any Person acting by, through, or in concert with any Stanford Entity; (iv) Independent's or any of the other Independent Released Parties' provision of services to or for the benefit of or on behalf of any one or more of the Stanford Entities; or (v) any matter that was asserted in, could have been asserted in, or relates in any respect to the subject matter of this action, the *Rotstain* Litigation, the *Smith* Litigation, or any other proceeding concerning any of the Stanford Entities pending or commenced in any Forum.

8. Pursuant to the provisions of paragraph 43 of the Settlement Agreement, as of the Settlement Effective Date, Plaintiffs Released Parties shall be completely released, acquitted, and forever discharged from all Settled Claims by Independent.

9. Notwithstanding anything to the contrary in this Final Bar Order, the foregoing releases do not release the Parties' rights and obligations under the Settlement or the Settlement Agreement or bar the Parties from enforcing or effectuating the terms of the Settlement or the Settlement Agreement. Further, the foregoing releases do not bar or release any claims, including but not limited to the Settled Claims, that Independent may have against any Independent Released Party, including but not limited to Independent's insurers, reinsurers, employees, and agents.

10. The Court hereby permanently bars, restrains, and enjoins Plaintiffs, the Claimants, the Interested Parties, and all other Persons or entities anywhere in the world, whether acting in concert with the foregoing or claiming by, through, or under the foregoing, or otherwise, all and individually, from directly, indirectly, or through a third party, instituting, reinstituting, intervening in, initiating, commencing, maintaining, continuing, filing, encouraging, soliciting, supporting, participating in, collaborating in, or otherwise prosecuting, against Independent or any of the Independent Released Parties, the *Rotstain* Litigation, the *Smith* Litigation, or any action, lawsuit, cause of action, claim, investigation, demand, levy, complaint, or proceeding of any nature in any Forum, including, without limitation, any court of first instance or any appellate court, whether individually, derivatively, on behalf of a class, as a member of a class, or in any other capacity whatsoever, that in any way relates to, is based upon, arises from, or is connected with the Stanford Entities; this case; the subject matter of this case; the *Rotstain* Litigation; the *Smith* Litigation; or any Settled Claim. The foregoing specifically includes any claim, however denominated and whether brought in the *Rotstain* Litigation, the *Smith* Litigation, or any other Forum, seeking

contribution, indemnity, damages, or other remedy where the alleged injury to such Person, entity, or Interested Party, or the claim asserted by such Person, entity, or Interested Party, is based upon such Person's, entity's, or Interested Party's liability to any Plaintiff, Claimant, or Interested Party arising out of, relating to, or based in whole or in part upon money owed, demanded, requested, offered, paid, agreed to be paid, or required to be paid to any Plaintiff, Claimant, Interested Party, or other Person or entity, whether pursuant to a demand, judgment, claim, agreement, settlement or otherwise. Notwithstanding the foregoing, there shall be no bar of any claims, including but not limited to the Settled Claims, that Independent may have against any Independent Released Party, including but not limited to Independent's insurers, reinsurers, employees, and agents. Further, the Parties retain the right to sue for alleged breaches of the Settlement Agreement.

11. The releases and the covenants not to sue set forth in the Settlement Agreement, and the releases, bars, injunctions, and restraints set forth in this Final Bar Order, do not limit in any way the evidence that Plaintiffs may offer against the remaining defendants in the *Rotstain* Litigation or the *Smith* Litigation.

12. Nothing in this Final Bar Order shall impair, affect, or be construed to impair or affect in any way whatsoever, any right of any Person, entity, or Interested Party to (i) claim a credit or offset, however determined or quantified, if and to the extent provided by any applicable statute, code, or rule of law, against any judgment amount, based upon the Settlement or payment of the Settlement Amount; (ii) designate a "responsible third party" or "settling person" under Chapter 33 of the Texas Civil Practice and Remedies Code; or (iii) take discovery under applicable rules in litigation; provided for the avoidance of doubt that nothing in this paragraph shall be interpreted to permit or authorize any action or claim seeking to impose any liability of any kind

(including but not limited to liability for contribution, indemnification or otherwise) upon Independent or any other Independent Released Party.

13. Independent and the Independent Released Parties have no responsibility, obligation, or liability whatsoever with respect to the content of the Notice; the notice process; the Distribution Plan; the implementation of the Distribution Plan; the administration of the Settlement; the management, investment, distribution, allocation, or other administration or oversight of the Settlement Amount, any other funds paid or received in connection with the Settlement, or any portion thereof; the payment or withholding of Taxes; the determination, administration, calculation, review, or challenge of claims to the Settlement Amount, any portion of the Settlement Amount, or any other funds paid or received in connection with the Settlement or the Settlement Agreement; or any losses, attorneys' fees, expenses, vendor payments, expert payments, or other costs incurred in connection with any of the foregoing matters. No appeal, challenge, decision, or other matter concerning any subject set forth in this paragraph shall operate to terminate or cancel the Settlement, the Settlement Agreement, or this Final Bar Order.

14. Nothing in this Final Bar Order or the Settlement Agreement and no aspect of the Settlement or negotiation or mediation thereof is or shall be construed to be an admission or concession of any violation of any statute or law; of any fault, liability, or wrongdoing; or of any infirmity in the claims or defenses of the Parties with regard to any of the complaints, claims, allegations, or defenses in the *Rotstain* Litigation, the *Smith* Litigation, or any other proceeding.

15. The Committee and the *Rotstain* Investor Plaintiffs are hereby ordered to file the agreed motion to dismiss and motion for final judgment in the *Rotstain* Litigation as specified in paragraph 25 of the Settlement Agreement by the deadline set forth in that paragraph. The Receiver and the Committee are hereby ordered to file the agreed motion to enforce the Bar Order

and to dismiss all claims against Independent in the *Smith* Litigation as specified in paragraph 26 of the Settlement Agreement by the deadline set forth in that paragraph. Independent is hereby ordered to deliver or cause to be delivered the Settlement Amount ($100 million) pursuant to the terms and subject to the conditions in paragraph 27 of the Settlement Agreement. Further, the Parties are ordered to act in conformity with all other provisions of the Settlement Agreement.

16. Without in any way affecting the finality of this Final Bar Order, the Court retains continuing and exclusive jurisdiction over the Parties for purposes of, among other things, the administration, interpretation, consummation, and enforcement of the Settlement, the Settlement Agreement, the Scheduling Order, and this Final Bar Order, including, without limitation, the injunctions, bar orders, and releases herein, and to enter orders concerning implementation of the Settlement, the Settlement Agreement, the Distribution Plan, and any payment of Attorneys' Fees and expenses to Plaintiffs' counsel.

17. The Court expressly finds and determines, pursuant to Federal Rule of Civil Procedure 54(b), that there is no just reason for any delay in the entry of this Final Bar Order, which is both final and appealable, and immediate entry by the Clerk of the Court is expressly directed.

18. This Final Bar Order shall be served by counsel for Plaintiffs, via email, first class mail or international delivery service, on any person or entity that filed an objection to approval of the Settlement, the Settlement Agreement, or this Final Bar Order.

Signed on August 8, 2023.

David C. Godbey
Chief United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. STANFORD INTERNATIONAL BANK, LTD, *et al.*, Defendants.	:	Case No. 3:09-cv-00298

FINAL BAR ORDER

Before the Court is the Expedited Request for Entry of Scheduling Order and Motion to Approve Proposed Settlement with HSBC, to Approve the Proposed Notice of Settlement with HSBC, and to Enter the Bar Order (ECF No. 3243, the "Motion") filed by Ralph S. Janvey, in his capacity as the Court-appointed Receiver for the Stanford Receivership Estate (the "Receiver"), and the Court-appointed Official Stanford Investors Committee (the "Committee"), the latter being a plaintiff in *Rotstain, et al. v. Trustmark National Bank, et al.*, Civil Action No. 4:22-cv-00800 (S.D. Tex.) (the "*Rotstain* Litigation").[1] The Motion concerns a proposed settlement (the "Settlement") between and among, on the one hand, the Receiver, the Committee, and the *Rotstain* Investor Plaintiffs, and on the other hand, and HSBC Bank plc ("HSBC") on the other. The

[1] Terms used in this Final Bar Order that are defined in the settlement agreement that is attached as Exhibit 1 of the Appendix to the Motion (ECF No. 3244) (the "Settlement Agreement"), unless expressly otherwise defined herein, have the same meaning as in the Settlement Agreement (which is deemed incorporated herein by reference).

Receiver, the Committee, and the *Rotstain* Investor Plaintiffs are collectively referred to as "Plaintiffs." Plaintiffs, on the one hand, and HSBC, on the other hand, are referred to individually as a "Party" and together as the "Parties." John J. Little signed the Settlement Agreement as chair of the Committee. Mr. Little, the Court-appointed Examiner (the "Examiner"), also signed the Settlement Agreement in his capacity as Examiner solely to evidence his support and approval of the Settlement and to confirm his obligation to post the Notice on his website; but Mr. Little as Examiner is not otherwise individually a party to the Settlement Agreement, this litigation, or the *Rotstain* Litigation.

Following notice and a hearing, and having considered the filings and heard the arguments of counsel, the Motion is hereby GRANTED.

I. INTRODUCTION

This litigation and the *Rotstain* Litigation arise from a series of events leading to the collapse of Stanford International Bank, Ltd. ("SIBL") and other companies owned or controlled by Robert Allen Stanford (with SIBL, the "Stanford Entities").[2] On February 16, 2009, this Court appointed Ralph S. Janvey to be the Receiver for the Receivership Estate. (ECF No. 10.) After years of investigation, Plaintiffs believe that they have identified claims against a number of third parties, including HSBC, which Plaintiffs allege enabled the Stanford Ponzi scheme. In the *Rotstain* Litigation, some or all of Plaintiffs assert claims against HSBC and other defendants for (i) aiding, abetting, or participation in violations of the Texas Securities Act; and (ii) aiding,

[2] All references in this Order to the *Rotstain* Litigation and the action titled *Smith, et al. v. Independent Bank, et al.*, CA No. 4-20-CV-00675 (S.D. Tex.) (the "*Smith* Litigation") shall also apply to any actions severed from those cases.

abetting, or participation in breaches of fiduciary duty.[3] HSBC denies that it is liable under any of those claims and asserts numerous defenses to each of those claims.

The Parties have engaged in extensive, good-faith, arm's-length negotiations, including by participating in a mediation on January 2 and 3, 2023, in Dallas, Texas. In these negotiations, potential victims of the Stanford Ponzi scheme were well-represented. The Committee—which the Court appointed to "represent[] in this case and related matters" the "customers of SIBL who, as of February 16, 2009, had funds on deposit at SIBL and/or were holding certificates of deposit issued by SIBL (the 'Stanford Investors')" (ECF No. 1149)—the Receiver, and the Examiner—who the Court appointed to advocate on behalf of "investors in any financial products, accounts, vehicles or ventures sponsored, promoted or sold by any Defendant in this action" (ECF No. 322)—all participated in these extensive, arm's-length negotiations. On February 24, the Parties reached an agreement in principle resulting in the Settlement. The Parties continued negotiating in order to document the exact terms of the Settlement in the written Settlement Agreement.

Under the terms of the Settlement Agreement, HSBC will pay $40 million ($40,000,000.00) (the "Settlement Amount") to the Receivership Estate, which (less Attorneys' Fees and expenses) will be distributed to Stanford Investors. In return, HSBC is to obtain total peace with respect to all claims that have been, or could have been, asserted against HSBC or any other of the HSBC Released Parties, arising in any respect out of the events leading to these proceedings. Accordingly, the Settlement is conditioned on the Court's approval and entry of this

[3] Claims were also brought against HSBC for (1) aiding, abetting, or participation in fraudulent transfers; (2) aiding, abetting, or participation in a fraudulent scheme; (3) aiding, abetting, or participation in conversion; and (4) civil conspiracy. Those claims were either dismissed by the Court or abandoned by Plaintiffs over the course of the litigation.

Final Bar Order enjoining Interested Parties and other Persons holding any potential claim against HSBC relating to these proceedings from asserting or prosecuting claims against HSBC or any of the HSBC Released Parties.

On March 8, 2023, Plaintiffs filed the Motion. (ECF No. 3243). The Court thereafter entered a Scheduling Order on March 14, 2023 (ECF No. 3257), which, *inter alia*, authorized the Receiver to provide notice of the Settlement, established a briefing schedule on the Motion, and set the Motion for a hearing. On August 8, 2023, the Court held the scheduled hearing. For the reasons set forth herein, the Court finds that the terms of the Settlement Agreement are adequate, fair, reasonable, and equitable, and that the Settlement should be and is hereby **APPROVED**. The Court further finds that entry of this Final Bar Order is appropriate and necessary.

II. ORDER

It is hereby **ORDERED, ADJUDGED, AND DECREED** as follows:

1. The Court has "broad powers and wide discretion to determine the appropriate relief in [this] equity receivership," including the authority to enter the Final Bar Order. *SEC v. Kaleta*, 530 F. App'x 360, 362 (5th Cir. 2013) (internal quotations omitted); *see also Zacarias v. Stanford Int'l Bank, Ltd.,* 945 F.3d 883, 897 (5th Cir. 2019) (receivership court authority includes entering "bar orders foreclosing suit against third-party defendants with whom the receiver is also engaged in litigation"). Moreover, the Court has jurisdiction over the subject matter of this action, and the Receiver and the Committee are proper parties to seek entry of this Final Bar Order.

2. The Court finds that the methodology, form, content, and dissemination of the Notice: (i) were implemented in accordance with the requirements of the Scheduling Order; (ii) constituted the best practicable notice; (iii) were reasonably calculated, under the circumstances, to apprise all Interested Parties of the Settlement, the releases and dismissal therein, and the injunctions provided for in this Final Bar Order; (iv) were reasonably calculated, under the

circumstances, to apprise all Interested Parties of the right to object to the Settlement and this Final Bar Order, and to appear at the final approval Hearing; (v) were reasonable and constituted due, adequate, and sufficient notice; (vi) met all applicable requirements of law, including, without limitation, the Federal Rules of Civil Procedure, the United States Constitution (including Due Process), and the Rules of the Court; and (vii) provided to all Persons a full and fair opportunity to be heard on these matters.

3. The Court finds that the Settlement, including, without limitation, the Settlement Amount, was reached following an extensive investigation of the facts and resulted from vigorous, good faith, arm's-length negotiations involving experienced and competent counsel. The Court further finds that (i) significant issues exist as to the merits and value of the claims asserted against HSBC by Plaintiffs and by others whose potential claims are foreclosed by this Final Bar Order; (ii) such claims contain complex and novel issues of law and fact that would require a substantial amount of time and expense to litigate, with uncertainty regarding whether such claims would be successful; (iii) a significant risk exists that future litigation costs would dissipate Receivership Assets and that Plaintiffs and Claimants may not ultimately prevail on their claims; (iv) Plaintiffs and other Claimants will receive partial satisfaction of their claims from the Settlement Amount being paid pursuant to the Settlement; and (v) HSBC would not have agreed to the terms of the Settlement in the absence of this Final Bar Order and assurance of "total peace" with respect to all claims that have been, or could be, asserted by any Persons arising from any aspect of HSBC's relationship with the Stanford Entities. *See SEC v. Kaleta*, No. 4:09-3674, 2012 WL 401069, at *4 (S.D. Tex. Feb. 7, 2012), *aff'd*, 530 F. App'x 360 (5th Cir. 2013) (approving these factors for consideration in evaluating whether a settlement and bar order are sufficient, fair, and necessary). The injunction against such claims as set forth herein is therefore a necessary and appropriate order

ancillary to the relief obtained for victims of the Stanford Ponzi scheme pursuant to the Settlement. *See Kaleta*, 530 F. App'x at 362 (affirming a bar order and injunction against investor claims as "ancillary relief" to a settlement in an SEC receivership proceeding). After careful consideration of the record and applicable law, the Court concludes that the Settlement is the best option for maximizing the net amount recoverable from HSBC for the Receivership Estate, Plaintiffs, and the Claimants.

4. Pursuant to the Settlement Agreement and upon motion by the Receiver, this Court will approve a Distribution Plan that will fairly and reasonably distribute the net proceeds of the Settlement to Stanford Investors who have Claims approved by the Receiver. The Court finds that the Receiver's claims process and the Distribution Plan contemplated in the Settlement Agreement have been designed to ensure that all Stanford Investors have received an opportunity to pursue their Claims through the Receiver's claims process previously approved by the Court (ECF No. 1584).

5. The Court further finds that the Parties and their counsel have at all times complied with the requirements of Rule 11 of the Federal Rules of Civil Procedure.

6. Accordingly, the Court finds that the Settlement is, in all respects, fair, reasonable, and adequate, and in the best interests of all Persons claiming an interest in, having authority over, or asserting a claim against HSBC, the Stanford Entities, or the Receivership Estate, including but not limited to Plaintiffs and the Interested Parties. The Court also finds that this Final Bar Order is a necessary component to achieve the Settlement. The Settlement, the terms of which are set forth in the Settlement Agreement, is hereby fully and finally approved. The Parties are directed to implement and consummate the Settlement in accordance with the terms and provisions of the Settlement Agreement and this Final Bar Order.

7. Pursuant to the provisions of paragraph 41 of the Settlement Agreement, as of the Settlement Effective Date, HSBC and the HSBC Released Parties shall be completely released, acquitted, and forever discharged from any action, cause of action, suit, liability, claim, right of action, right of levy or attachment, or demand whatsoever, whether or not currently asserted, known, suspected, existing, or discoverable, and whether based on federal law, state law, foreign law, common law, or otherwise, and whether based on contract, tort, statute, law, equity or otherwise, that Plaintiffs, including without limitation the Receiver on behalf of the Receivership Estate (including the Stanford Entities); the Committee; the Claimants; and the Persons, entities and interests represented by those parties ever had, now has, or hereafter can, shall, or may have, directly, representatively, derivatively, or in any other capacity, for, upon, arising from, relating to, or by reason of any matter, cause, or thing whatsoever, that, in full or in part, concerns, relates to, arises out of, or is in any manner connected with (i) the Stanford Entities; (ii) any certificate of deposit, depository account, or investment of any type with any one or more of the Stanford Entities; (iii) HSBC's or any of the HSBC Released Parties' relationships with any one or more of the Stanford Entities and/or any of their personnel or any Person acting by, through, or in concert with any Stanford Entity; (iv) HSBC's or any of the other HSBC Released Parties' provision of services to or for the benefit of or on behalf of any one or more of the Stanford Entities; or (v) any matter that was asserted in, could have been asserted in, or relates in any respect to the subject matter of this action, the *Rotstain* Litigation, the *Smith* Litigation, the Joint Liquidators' Claim, or any other proceeding concerning any of the Stanford Entities pending or commenced in any Forum. For the avoidance of doubt, this release specifically includes without limitation all claims for direct and consequential damages to SIBL, any other Stanford Entity, or any Stanford Investor arising from or relating to the opening or operation of, or any transactions occurring in SIBL

accounts 58293136, 58180160, 59198105, or 67760538, including without limitation the ECB payment. Also for the avoidance of doubt, this release also includes without limitation Unknown Claims.

8. Pursuant to the provisions of paragraph 42 of the Settlement Agreement, as of the Settlement Effective Date, Plaintiffs Released Parties shall be completely released, acquitted, and forever discharged from all Settled Claims by HSBC.

9. Notwithstanding anything to the contrary in this Final Bar Order, the foregoing releases do not release the Parties' rights and obligations under the Settlement or the Settlement Agreement or bar the Parties from enforcing or effectuating the terms of the Settlement or the Settlement Agreement. Further, the foregoing releases do not bar or release any claims, including but not limited to the Settled Claims, that HSBC may have against any HSBC Released Party, including but not limited to HSBC'S insurers, reinsurers, employees, and agents.

10. The Court hereby permanently bars, restrains, and enjoins Plaintiffs, the Claimants, the Interested Parties, and all other Persons or entities anywhere in the world, whether acting in concert with the foregoing or claiming by, through, or under the foregoing, or otherwise, all and individually, from directly, indirectly, or through a third party, instituting, reinstituting, intervening in, initiating, commencing, maintaining, continuing, filing, encouraging, soliciting, supporting, participating in, collaborating in, or otherwise prosecuting, against HSBC or any of the HSBC Released Parties, the *Rotstain* Litigation, the *Smith* Litigation, the Joint Liquidators' Claim, or any action, lawsuit, cause of action, claim, investigation, demand, levy, complaint, or proceeding of any nature in any Forum, including, without limitation, any court of first instance or any appellate court, whether individually, derivatively, on behalf of a class, as a member of a class, or in any other capacity whatsoever, that in any way relates to, is based upon, arises from, or is connected

with the Stanford Entities; this case; the subject matter of this case; the *Rotstain* Litigation; the *Smith* Litigation; the Joint Liquidators' Claim; or any Settled Claim. The foregoing specifically includes any claim, however denominated and whether brought in the *Rotstain* Litigation, the *Smith* Litigation, the Joint Liquidators' Claim or any other Forum, seeking contribution, indemnity, damages, or other remedy where the alleged injury to such Person, entity, or Interested Party, or the claim asserted by such Person, entity, or Interested Party, is based upon such Person's, entity's, or Interested Party's liability to any Plaintiff, Claimant, or Interested Party arising out of, relating to, or based in whole or in part upon money owed, demanded, requested, offered, paid, agreed to be paid, or required to be paid to any Plaintiff, Claimant, Interested Party, or other Person or entity, whether pursuant to a demand, judgment, claim, agreement, settlement or otherwise. Notwithstanding the foregoing, there shall be no bar of any claims, including but not limited to the Settled Claims, that HSBC may have against any HSBC Released Party, including but not limited to HSBC's insurers, reinsurers, employees, and agents. Further, the Parties retain the right to sue for alleged breaches of the Settlement Agreement.

11. The releases and the covenants not to sue set forth in the Settlement Agreement, and the releases, bars, injunctions, and restraints set forth in this Final Bar Order, do not limit in any way the evidence that Plaintiffs may offer against the remaining defendants in the *Rotstain* Litigation or the *Smith* Litigation.

12. Nothing in this Final Bar Order shall impair, affect, or be construed to impair or affect in any way whatsoever, any right of any Person, entity, or Interested Party to (i) claim a credit or offset, however determined or quantified, if and to the extent provided by any applicable statute, code, or rule of law, against any judgment amount, based upon the Settlement or payment of the Settlement Amount; (ii) designate a "responsible third party" or "settling person" under

Chapter 33 of the Texas Civil Practice and Remedies Code; or (iii) take discovery under applicable rules in litigation; provided for the avoidance of doubt that nothing in this paragraph shall be interpreted to permit or authorize any action or claim seeking to impose any liability of any kind (including but not limited to liability for contribution, indemnification or otherwise) upon HSBC or any other HSBC Released Party.

13. HSBC and the HSBC Released Parties have no responsibility, obligation, or liability whatsoever with respect to the content of the Notice; the notice process; the Distribution Plan; the implementation of the Distribution Plan; the administration of the Settlement; the management, investment, distribution, allocation, or other administration or oversight of the Settlement Amount, any other funds paid or received in connection with the Settlement, or any portion thereof; the payment or withholding of Taxes; the determination, administration, calculation, review, or challenge of claims to the Settlement Amount, any portion of the Settlement Amount, or any other funds paid or received in connection with the Settlement or the Settlement Agreement; or any losses, attorneys' fees, expenses, vendor payments, expert payments, or other costs incurred in connection with any of the foregoing matters. No appeal, challenge, decision, or other matter concerning any subject set forth in this paragraph shall operate to terminate or cancel the Settlement, the Settlement Agreement, or this Final Bar Order.

14. Nothing in this Final Bar Order or the Settlement Agreement and no aspect of the Settlement or negotiation or mediation thereof is or shall be construed to be an admission or concession of any violation of any statute or law; of any fault, liability, or wrongdoing; or of any infirmity in the claims or defenses of the Parties with regard to any of the complaints, claims, allegations, or defenses in the *Rotstain* Litigation, the *Smith* Litigation, the Joint Liquidators' Claim or any other proceeding.

15. The Committee and the *Rotstain* Investor Plaintiffs are hereby ordered to file the agreed motion to dismiss and motion for final judgment in the *Rotstain* Litigation as specified in paragraph 24 of the Settlement Agreement by the deadline set forth in that paragraph. The Receiver and the Committee are hereby ordered to file the agreed motion to enforce the Bar Order and to dismiss all claims against HSBC in the *Smith* Litigation as specified in paragraph 25 of the Settlement Agreement by the deadline set forth in that paragraph. HSBC is hereby ordered to deliver or cause to be delivered the Settlement Amount ($40 million) pursuant to the terms and subject to the conditions in paragraph 26 of the Settlement Agreement. Further, the Parties are ordered to act in conformity with all other provisions of the Settlement Agreement.

16. Without in any way affecting the finality of this Final Bar Order, the Court retains continuing and exclusive jurisdiction over the Parties for purposes of, among other things, the administration, interpretation, consummation, and enforcement of the Settlement, the Settlement Agreement, the Scheduling Order, and this Final Bar Order, including, without limitation, the injunctions, bar orders, and releases herein, and to enter orders concerning implementation of the Settlement, the Settlement Agreement, the Distribution Plan, and any payment of Attorneys' Fees and expenses to Plaintiffs' counsel.

17. The Court expressly finds and determines, pursuant to Federal Rule of Civil Procedure 54(b), that there is no just reason for any delay in the entry of this Final Bar Order, which is both final and appealable, and immediate entry by the Clerk of the Court is expressly directed.

18. This Final Bar Order shall be served by counsel for Plaintiffs, via email, first class mail or international delivery service, on any person or entity that filed an objection to approval of the Settlement, the Settlement Agreement, or this Final Bar Order.

Signed on August 8, 2023.

David C. Godbey
Chief United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. STANFORD INTERNATIONAL BANK, LTD, *et al.*, Defendants.	:	Case No. 3:09-cv-00298

FINAL BAR ORDER

Before the Court is the Expedited Request for Entry of Scheduling Order and Motion to Approve Proposed Settlement with TD Bank, to Approve the Proposed Notice of Settlement with TD Bank, and to Enter the Bar Order (ECF No. 3246, the "Motion") filed by Ralph S. Janvey, in his capacity as the Court-appointed Receiver for the Stanford Receivership Estate (the "Receiver"), and the Court-appointed Official Stanford Investors Committee (the "Committee"), the latter being a plaintiff in *Rotstain, et al. v. Trustmark National Bank, et al.*, Civil Action No. 4:22-cv-00800 (S.D. Tex.) (the "*Rotstain* Litigation").[1] The Motion concerns a proposed settlement (the "Settlement") between and among, on the one hand, the Receiver, the Committee, and the *Rotstain* Investor Plaintiffs, and on the other hand, The Toronto-Dominion Bank ("TD Bank"). The

[1] Terms used in this Final Bar Order that are defined in the settlement agreement that is attached as Exhibit 1 of the Appendix to the Motion (ECF No. 3247) (the "Settlement Agreement"), unless expressly otherwise defined herein, have the same meaning as in the Settlement Agreement (which is deemed incorporated herein by reference).

Receiver, the Committee, and the *Rotstain* Investor Plaintiffs are collectively referred to as "Plaintiffs." Plaintiffs, on the one hand, and TD Bank, on the other hand, are referred to individually as a "Party" and together as the "Parties." John J. Little signed the Settlement Agreement as chair of the Committee. Mr. Little, the Court-appointed Examiner (the "Examiner"), also signed the Settlement Agreement in his capacity as Examiner solely to evidence his support and approval of the Settlement and to confirm his obligation to post the Notice on his website; but Mr. Little as Examiner is not otherwise individually a party to the Settlement Agreement, this litigation, or the *Rotstain* Litigation.

Following notice and a hearing, and having considered the filings and heard the arguments of counsel, the Motion is hereby GRANTED.

I. INTRODUCTION

This litigation and the *Rotstain* Litigation arise from a series of events leading to the collapse of Stanford International Bank, Ltd. ("SIBL") and other companies owned or controlled by Robert Allen Stanford (with SIBL, the "Stanford Entities").[2] On February 16, 2009, this Court appointed Ralph S. Janvey to be the Receiver for the Receivership Estate. (ECF No. 10.) After years of investigation, Plaintiffs believe that they have identified claims against a number of third parties, including TD Bank, which Plaintiffs allege enabled the Stanford Ponzi scheme. In the *Rotstain* Litigation, some or all of Plaintiffs assert claims against TD Bank and other defendants for (i) aiding, abetting, or participation in violations of the Texas Securities Act; and (ii) knowing

[2] All references in this Order to the *Rotstain* Litigation and the action titled *Smith, et al. v. Independent Bank, et al.*, CA No. 4-20-CV-00675 (S.D. Tex.) (the "*Smith* Litigation") shall also apply to any actions severed from those cases.

participation in breach of fiduciary duty.[3] TD Bank denies that it is liable under those claims and asserts numerous defenses to each of those claims.

The Parties have engaged in extensive, good-faith, arm's-length negotiations, including by participating in a mediation on January 2 and 3, 2023, in Dallas, Texas and additional mediation discussions. In these negotiations, potential victims of the Stanford Ponzi scheme were well-represented. The Committee—which the Court appointed to "represent[] in this case and related matters" the "customers of SIBL who, as of February 16, 2009, had funds on deposit at SIBL and/or were holding certificates of deposit issued by SIBL (the 'Stanford Investors')" (ECF No. 1149)—the Receiver, and the Examiner—who the Court appointed to advocate on behalf of "investors in any financial products, accounts, vehicles or ventures sponsored, promoted or sold by any Defendant in this action" (ECF No. 322)—all participated in these extensive, arm's-length negotiations. On February 24, the Parties reached an agreement-in-principle resulting in the Settlement. The Parties continued negotiating in order to document the exact terms of the Settlement in the written Settlement Agreement.

Under the terms of the Settlement Agreement, TD Bank will pay one billion two hundred five million U.S. dollars ($1,205,000,000.00) (the "Settlement Amount") to the Receivership Estate, which (less Attorneys' Fees and expenses) will be distributed to Stanford Investors. In return, TD Bank is to obtain total peace with respect to all claims that have been, or could have been, asserted against TD Bank or any other of the TD Bank Released Parties, arising in any respect out of the events leading to these proceedings. Accordingly, the Settlement is conditioned

[3] Claims were also brought against TD Bank for (1) aiding, abetting, or participation in fraudulent transfers; (2) aiding, abetting, or participation in a fraudulent scheme; (3) aiding, abetting, or participation in conversion; (4) civil conspiracy; and (5) avoidance and recovery of fraudulent transfers under the Texas Uniform Fraudulent Transfer Act. Those claims were either dismissed by the Court or abandoned by Plaintiffs over the course of the litigation.

on the Court's approval and entry of this Final Bar Order enjoining Interested Parties and other Persons holding any potential claim against TD Bank relating to these proceedings from asserting or prosecuting claims against TD Bank or any of the TD Bank Released Parties.

On March 8, 2023, Plaintiffs filed the Motion. (ECF No. 3246). The Court thereafter entered a Scheduling Order on March 14, 2023 (ECF No. 3258), which, *inter alia*, authorized the Receiver to provide notice of the Settlement, established a briefing schedule on the Motion, and set the Motion for a hearing. On August 8, 2023, the Court held the scheduled hearing. For the reasons set forth herein, the Court finds that the terms of the Settlement Agreement are adequate, fair, reasonable, and equitable, and that the Settlement should be and is hereby **APPROVED**. The Court further finds that entry of this Final Bar Order is appropriate and necessary.

II. ORDER

It is hereby **ORDERED, ADJUDGED, AND DECREED** as follows:

1. The Court has "broad powers and wide discretion to determine the appropriate relief in [this] equity receivership," including the authority to enter the Final Bar Order. *SEC v. Kaleta*, 530 F. App'x 360, 362 (5th Cir. 2013) (internal quotations omitted); *see also Zacarias v. Stanford Int'l Bank, Ltd.,* 945 F.3d 883, 897 (5th Cir. 2019) (receivership court authority includes entering "bar orders foreclosing suit against third-party defendants with whom the receiver is also engaged in litigation"). Moreover, the Court has jurisdiction over the subject matter of this action, and the Receiver and the Committee are proper parties to seek entry of this Final Bar Order.

2. The Court finds that the methodology, form, content, and dissemination of the Notice: (i) were implemented in accordance with the requirements of the Scheduling Order; (ii) constituted the best practicable notice; (iii) were reasonably calculated, under the circumstances, to apprise all Interested Parties of the Settlement, the releases and dismissal therein, and the injunctions provided for in this Final Bar Order; (iv) were reasonably calculated, under the

circumstances, to apprise all Interested Parties of the right to object to the Settlement and this Final Bar Order, and to appear at the final approval Hearing; (v) were reasonable and constituted due, adequate, and sufficient notice; (vi) met all applicable requirements of law, including, without limitation, the Federal Rules of Civil Procedure, the United States Constitution (including Due Process), and the Rules of the Court; and (vii) provided to all Persons a full and fair opportunity to be heard on these matters.

3. The Court finds that the Settlement, including, without limitation, the Settlement Amount, was reached following an extensive investigation of the facts and resulted from vigorous, good faith, arm's-length negotiations involving experienced and competent counsel. The Court further finds that (i) significant issues exist as to the merits and value of the claims asserted against TD Bank by Plaintiffs and by others whose potential claims are foreclosed by this Final Bar Order; (ii) such claims contain complex and novel issues of law and fact that would require a substantial amount of time and expense to litigate, with uncertainty regarding whether such claims would be successful; (iii) a significant risk exists that future litigation costs would dissipate Receivership Assets and that Plaintiffs and Claimants may not ultimately prevail on their claims; (iv) Plaintiffs and other Claimants will receive partial satisfaction of their claims from the Settlement Amount being paid pursuant to the Settlement; and (v) TD Bank would not have agreed to the terms of the Settlement in the absence of this Final Bar Order and assurance of "total peace" with respect to all claims that have been, or could be, asserted by any Persons arising from any aspect of TD Bank's relationship with the Stanford Entities. *See SEC v. Kaleta*, No. 4:09-3674, 2012 WL 401069, at *4 (S.D. Tex. Feb. 7, 2012), *aff'd*, 530 F. App'x 360 (5th Cir. 2013) (approving these factors for consideration in evaluating whether a settlement and bar order are sufficient, fair, and necessary). The injunction against such claims as set forth herein is therefore a necessary and appropriate order

ancillary to the relief obtained for victims of the Stanford Ponzi scheme pursuant to the Settlement. *See Kaleta*, 530 F. App'x at 362 (affirming a bar order and injunction against investor claims as "ancillary relief" to a settlement in an SEC receivership proceeding). After careful consideration of the record and applicable law, the Court concludes that the Settlement is the best option for maximizing the net amount recoverable from TD Bank for the Receivership Estate, Plaintiffs, and the Claimants.

4. Pursuant to the Settlement Agreement and upon motion by the Receiver, this Court will approve a Distribution Plan that will fairly and reasonably distribute the net proceeds of the Settlement to Stanford Investors who have Claims approved by the Receiver. The Court finds that the Receiver's claims process and the Distribution Plan contemplated in the Settlement Agreement have been designed to ensure that all Stanford Investors have received an opportunity to pursue their Claims through the Receiver's claims process previously approved by the Court (ECF No. 1584).

5. The Court further finds that the Parties and their counsel have at all times complied with the requirements of Rule 11 of the Federal Rules of Civil Procedure.

6. Accordingly, the Court finds that the Settlement is, in all respects, fair, reasonable, and adequate, and in the best interests of all Persons claiming an interest in, having authority over, or asserting a claim against TD Bank, the Stanford Entities, or the Receivership Estate, including but not limited to Plaintiffs and the Interested Parties. The Court also finds that this Final Bar Order is a necessary component to achieve the Settlement. The Settlement, the terms of which are set forth in the Settlement Agreement, is hereby fully and finally approved. The Parties are directed to implement and consummate the Settlement in accordance with the terms and provisions of the Settlement Agreement and this Final Bar Order.

7. Pursuant to the provisions of paragraph 41 of the Settlement Agreement, as of the Settlement Effective Date, TD Bank and the TD Bank Released Parties shall be completely released, acquitted, and forever discharged from any action, cause of action, suit, liability, claim, right of action, right of levy or attachment, or demand whatsoever, whether or not currently asserted, known, suspected, existing, or discoverable, and whether based on federal law, state law, foreign law, common law, or otherwise, and whether based on contract, tort, statute, law, equity or otherwise, that Plaintiffs, including without limitation the Receiver on behalf of the Receivership Estate (including the Stanford Entities); the Committee; the Claimants; and the Persons, entities and interests represented by those parties ever had, now has, or hereafter can, shall, or may have, directly, representatively, derivatively, or in any other capacity, for, upon, arising from, relating to, or by reason of any matter, cause, or thing whatsoever, that, in full or in part, concerns, relates to, arises out of, or is in any manner connected with (i) the Stanford Entities; (ii) any certificate of deposit, depository account, or investment of any type with any one or more of the Stanford Entities; (iii) TD Bank's or any of the TD Bank Released Parties' relationships with any one or more of the Stanford Entities and/or any of their personnel or any Person acting by, through, or in concert with any Stanford Entity; (iv) TD Bank's or any of the other TD Bank Released Parties' provision of services to or for the benefit of or on behalf of any one or more of the Stanford Entities; or (v) any matter that was asserted in, could have been asserted in, or relates in any respect to the subject matter of this action, the *Rotstain* Litigation, the *Smith* Litigation, or any other proceeding concerning any of the Stanford Entities pending or commenced in any Forum.

8. Pursuant to the provisions of paragraph 42 of the Settlement Agreement, as of the Settlement Effective Date, Plaintiffs Released Parties shall be completely released, acquitted, and forever discharged from all Settled Claims by TD Bank.

9. Notwithstanding anything to the contrary in this Final Bar Order, the foregoing releases do not release the Parties' rights and obligations under the Settlement or the Settlement Agreement or bar the Parties from enforcing or effectuating the terms of the Settlement or the Settlement Agreement. Further, the foregoing releases do not bar or release any claims, including but not limited to the Settled Claims, that TD Bank may have against any TD Bank Released Party, including but not limited to TD Bank's insurers, reinsurers, employees, and agents.

10. The Court hereby permanently bars, restrains, and enjoins Plaintiffs, the Claimants, the Interested Parties, and all other Persons or entities anywhere in the world, whether acting in concert with the foregoing or claiming by, through, or under the foregoing, or otherwise, all and individually, from directly, indirectly, or through a third party, instituting, reinstituting, intervening in, initiating, commencing, maintaining, continuing, filing, encouraging, soliciting, supporting, participating in, collaborating in, or otherwise prosecuting, against TD Bank or any of the TD Bank Released Parties, the *Rotstain* Litigation, the *Smith* Litigation, or any action, lawsuit, cause of action, claim, investigation, demand, levy, complaint, or proceeding of any nature in any Forum, including, without limitation, any court of first instance or any appellate court, whether individually, derivatively, on behalf of a class, as a member of a class, or in any other capacity whatsoever, that in any way relates to, is based upon, arises from, or is connected with the Stanford Entities; this case; the subject matter of this case; the *Rotstain* Litigation; the *Smith* Litigation; or any Settled Claim. The foregoing specifically includes any claim, however denominated and whether brought in the *Rotstain* Litigation, the *Smith* Litigation, or any other Forum, seeking

contribution, indemnity, damages, or other remedy where the alleged injury to such Person, entity, or Interested Party, or the claim asserted by such Person, entity, or Interested Party, is based upon such Person's, entity's, or Interested Party's liability to any Plaintiff, Claimant, or Interested Party arising out of, relating to, or based in whole or in part upon money owed, demanded, requested, offered, paid, agreed to be paid, or required to be paid to any Plaintiff, Claimant, Interested Party, or other Person or entity, whether pursuant to a demand, judgment, claim, agreement, settlement or otherwise. Notwithstanding the foregoing, there shall be no bar of any claims, including but not limited to the Settled Claims, that TD Bank may have against any TD Bank Released Party, including but not limited to TD Bank's insurers, reinsurers, employees, and agents. Further, the Parties retain the right to sue for alleged breaches of the Settlement Agreement.

11. Nothing in this Final Bar Order shall impair, affect, or be construed to impair or affect in any way whatsoever, any right of any Person, entity, or Interested Party to (i) claim a credit or offset, however determined or quantified, if and to the extent provided by any applicable statute, code, or rule of law, against any judgment amount, based upon the Settlement or payment of the Settlement Amount; (ii) designate a "responsible third party" or "settling person" under Chapter 33 of the Texas Civil Practice and Remedies Code; or (iii) take discovery under applicable rules in litigation; provided for the avoidance of doubt that nothing in this paragraph shall be interpreted to permit or authorize any action or claim seeking to impose any liability of any kind (including but not limited to liability for contribution, indemnification or otherwise) upon TD Bank or any other TD Bank Released Party.

12. TD Bank and the TD Bank Released Parties have no responsibility, obligation, or liability whatsoever with respect to the content of the Notice; the notice process; the Distribution Plan; the implementation of the Distribution Plan; the administration of the Settlement; the

management, investment, distribution, allocation, or other administration or oversight of the Settlement Amount, any other funds paid or received in connection with the Settlement, or any portion thereof; the payment or withholding of Taxes; the determination, administration, calculation, review, or challenge of claims to the Settlement Amount, any portion of the Settlement Amount, or any other funds paid or received in connection with the Settlement or the Settlement Agreement; or any losses, attorneys' fees, expenses, vendor payments, expert payments, or other costs incurred in connection with any of the foregoing matters. No appeal, challenge, decision, or other matter concerning any subject set forth in this paragraph shall operate to terminate or cancel the Settlement, the Settlement Agreement, or this Final Bar Order.

13. Nothing in this Final Bar Order or the Settlement Agreement and no aspect of the Settlement or negotiation or mediation thereof is or shall be construed to be an admission or concession of any violation of any statute or law; of any fault, liability, or wrongdoing; or of any infirmity in the claims or defenses of the Parties with regard to any of the complaints, claims, allegations, or defenses in the *Rotstain* Litigation, the *Smith* Litigation, or any other proceeding.

14. The Committee and the *Rotstain* Investor Plaintiffs are hereby ordered to file the agreed motion to dismiss and motion for final judgment in the *Rotstain* Litigation as specified in paragraph 24 of the Settlement Agreement by the deadline set forth in that paragraph. The Receiver and the Committee are hereby ordered to file the agreed motion to enforce the Bar Order and to dismiss all claims against TD Bank in the *Smith* Litigation as specified in paragraph 25 of the Settlement Agreement by the deadline set forth in that paragraph. TD Bank is hereby ordered to deliver or cause to be delivered the Settlement Amount (one billion two hundred five million U.S. dollars) pursuant to the terms and subject to the conditions in paragraph 26 of the Settlement

Agreement. Further, the Parties are ordered to act in conformity with all other provisions of the Settlement Agreement.

15. Without in any way affecting the finality of this Final Bar Order, the Court retains continuing and exclusive jurisdiction over the Parties for purposes of, among other things, the administration, interpretation, consummation, and enforcement of the Settlement, the Settlement Agreement, the Scheduling Order, and this Final Bar Order, including, without limitation, the injunctions, bar orders, and releases herein, and to enter orders concerning implementation of the Settlement, the Settlement Agreement, the Distribution Plan, and any payment of Attorneys' Fees and expenses to Plaintiffs' counsel.

16. The Court expressly finds and determines, pursuant to Federal Rule of Civil Procedure 54(b), that there is no just reason for any delay in the entry of this Final Bar Order, which is both final and appealable, and immediate entry by the Clerk of the Court is expressly directed.

17. This Final Bar Order shall be served by counsel for Plaintiffs, via email, first class mail or international delivery service, on any person or entity that filed an objection to approval of the Settlement, the Settlement Agreement, or this Final Bar Order.

Signed on August 8, 2023.

David C. Godbey
Chief United States District Judge

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED
July 25, 2023

Lyle W. Cayce
Clerk

No. 23-10530

SECURITIES AND EXCHANGE COMMISSION, *Et al.*,

Plaintiffs,

versus

ROBERT ALLEN STANFORD,

Defendant—Appellant,

versus

TRUSTMARK NATIONAL BANK,

Movant—Appellee,

OFFICIAL STANFORD INVESTORS COMMITTEE; RALPH S. JANVEY, *in his capacity as Court-appointed Receiver for* STANFORD INTERNATIONAL BANK, LTD., *Et al.*,

Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:09-CV-298

UNPUBLISHED ORDER

Before DUNCAN, OLDHAM, and WILSON, *Circuit Judges*.

PER CURIAM:

IT IS ORDERED that Appellee's opposed motion to dismiss appeal as frivolous is GRANTED.

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
July 28, 2023
Lyle W. Cayce
Clerk

No. 23-10689

SECURITY AND EXCHANGE COMMISSION, *Et al.*,

Plaintiffs,

versus

ROBERT ALLEN STANFORD,

Defendant—Appellant,

versus

RALPH S. JANVEY, *in his capacity as the Court-appointed Receiver for the Stanford Receivership Estate*; OFFICIAL STANFORD INVESTORS COMMITTEE; SOCIETE GENERALE PRIVATE BANKING (SUISSE) S.A.; BLAISE FRIEDLI,

Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:09-CV-298

UNPUBLISHED ORDER

Before JONES, HIGGINSON, and HO, *Circuit Judges*.

PER CURIAM:

IT IS ORDERED that Appellee Ralph S. Janvey's opposed motion to dismiss the appeal is GRANTED.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

Securities and Exchange Commission,
Plaintiff

vs. Case No. 3:09-cv-00298-N

Stanford International Bank, LTD, et al,
Defendants

Related Appeals
SEC, et al v. Stanford, 23-10530
SEC, et al v. Stanford, 23-10689
MDL Case No. 3:09-md-2099

NOTICE OF APPEAL
PURSUANT TO F.R.A.P. 4(A)

WITH

APPELLANT'S CERTIFICATE OF GOOD FAITH AND NON-FRIVOLOUS INTENT
TO TRAVEL WITH AND BE CONSIDERED AS PART OF THE RECORD ON APPEAL

TO: HON. DAVID C. GODBEY, CHIEF U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF TEXAS, DALLAS DIVISION

Robert Allen Stanford, Appellant *Pro Se*, hereby gives 'Notice of Appeal' of the Final Judgment and Bar Order entered on August 8, 2023, in the Toronto Dominion, HSBC, and Independent Bank portion of the five-part Settlement Agreements reached in ***Rotstain, et al. v. Trustmark National Bank, et al.*** (***Rotstain Litigation***), Case No. 4:22-cv-00800, S.D.Tex.) (Docs. 3330, 3331, 3332).

Additionally, and to preemptively address the Appellee's (third) Motion To Dismiss under Fifth Circuit Rule 42.2, which the Appellee has indicated he intends to also file in this appeal, the Appellant herein includes, with this 'Notice of Appeal', this 'Appellant's Certificate of Good Faith and Non-Frivolous Intent To Travel With And Be Considered As Part Of The Record On Appeal', and asks the Clerk to forward it, along with the 'Notice of Appeal', to the Fifth Circuit Court of Appeals.

CONSOLIDATION OF APPEALS UNDER F.R.A.P. 3(b)(2)

Because this 'Notice of Appeal' concerns the (third) in a five-part series of appeals in this global Settlement Agreement, each with an in-common and dispositive issue raised by the Appellant in the Written Objection(s) he filed in the District Court, involving the District Court's subject-matter jurisdiction, and because the Judicial Panel on Multi-District Litigation (JPMDL) has previously consolidated these (and other) separately-filed cases against these 'Bank Defendants' under the caption 'Stanford Entities Securities Litigation', the Appellant respectfully suggests that, in the interests of judicial economy, the Fifth Circuit may want to consolidate this and all other future appeals in this matter, under F.R.A.P. 3(b)(2).

STATEMENT OF THE ISSUE TO BE REVIEWED AND REASON THIS CERTIFICATE IS WARRANTED

"We start, as always, with jurisdiction. Article III subject-matter jurisdiction is always first". ***United States v. Shkambi***, 2021 U.S. App. LEXIS 10053 (5th Cir. 2021)

The issue in this appeal concerns a clear and indefensible violation of the territorial boundaries of a federal jurisdictional statute, 28 U.S.C. 124(a)(1), and a District Court's Article III jurisdiction; the willful disregard for, and knowing failure to administer, the Receivership proceedings in this case in accordance with this federal jurisdictional statute, and all other governing law under the Federal Rules of Civil Procedure; a judicial defiance of well-established law that is well-recorded, and flouted the territorial boundaries of that District Court's congressionally-established and limited, Article III jurisdiction, as merely suggestive.

This is an exceptionally important jurisdictional issue, in an internationally important case; a case involving the sudden loss of billions of investment and life-savings dollars to thousands of individuals around the world; a case where this 'end-all' and repeatedly presented jurisdictional question has been side-stepped and unanswered since the day of those financial losses, for more than fourteen years, rejected and dismissed as "frivolous and without merit"... by both the SEC, District Court and Receiver-Appellee...all the while refusing to cite to an actual District Court judgment after a review on the merits to confirm it. This is because, contrary to the Receiver-Appellee's assertions that the District Court has "repeatedly

rejected" this jurisdictional issue, and purposefully diversionary rhetoric as shown here, no such judgment exists.

"Mr. Stanford files only frivolous motions that do nothing but waste the Court's time and the precious resources of the Receivership", the Receiver-Appellee has claimed throughout these appellate proceedings in his 'Motions To Dismiss' under FCR 42.2, successfully managing to convince the Fifth Circuit to dismiss his prior appeals with this jurisdictional issue, as "frivolous and without merit"... immediately after his payment of the $505.00 filing fee and prior to any actual briefing.

As a result of this type of diversionary rhetoric, fourteen years later, this exceptionally important jurisdictional question - that Mr. Stanford, and these thousands of individual investors deserve to have addressed on the merits and answered, could so easily be dispensed with by the SEC, District Court and Receiver-Appellee, by citing to a directly responsive judgment; confirming, once and for all, that, as asserted by the Appellee, this is just another of his "frivolous and without merit" filings. But instead, after more than fourteen years of unnecessarily costly and protracted litigation, this question, that has clearly been placed "fairly in doubt" by this Appellant, and just as clearly is anything but "frivolous", remains judgment-free and unanswered.

If allowed to proceed on appeal, and no matter the diversionary rhetoric, Mr. Stanford will prove the genuine nature of this jurisdictional question, a issue of material fact that deserves to be addressed and answered...because, as in all cases and controversies brought in the U.S. District Courts, and no matter any other arguments or affirmative defenses..."[f]ederal courts are of limited jurisdiction and

possess only that power authorized by Constitution and statute." ***Arbaugh v. Y& H Corp.,*** 546 U.S. 500 (2006) The U.S. Supreme Court has repeatedly admonished the lower Federal Courts about the importance and continuous need for judicial monitoring of the "[j]udicial administration of a jurisdictional statute". ***Hertz Corp. v. Friend,*** 559 U.S. 77, 80 (2010). Of equal importance, the Supreme Court has also repeatedly reminded about the Court's "[r]ule favoring clear boundaries in the interpretation of a jurisdictional statute"; and because "[s]ubject-matter jurisdiction can never be forfeited or waived, it should be considered whenever placed fairly in doubt"., quoting ***Ashcroft v. Iqbal***, 556 U.S. 662 (2009)

To confirm beyond all doubt the existence and genuine nature of this issue, the Appellant will present documentary evidence taken from the record that when considered using basic common sense, will indisputably place the District Court's Article III subject-matter jurisdiction **"fairly in doubt"**; and in so doing, will establish beyond any reasonable doubt, the fact that for the past fourteen years the actions of the District Court here, relative to the Receivership proceedings, represent judicial actions taken in the complete absence of all jurisdiction - which also triggered the exception to absolute judicial immunity; a 'manifest abuse of authority' and miscarriage of justice similar, in certain relative respects, to the jurisdictional issue in ***The Mitchell Law Firm, LP v. Bessie Jeanne Worthy Revocable Trust,*** 8 F.4th 417 (5th Cir. 2021), where this Court found... (The "subject-matter of the action was so plainly beyond the court's jurisdiction, that its entertaining the action was a manifest abuse of authority.")

CERTIFICATE OF GOOD FAITH AND NON-FRIVOLOUS INTENT

This Certificate of Good Faith and Non-Frivolous Intent is warranted in this appellate proceeding because the Appellee, Ralph S. Janvey, has previously moved in the Fifth Circuit for the dismissal of a related appeal, under Fifth Circuit Rule 42.2, on grounds that the Appellant raises only a 'frivolous and non-meritorious' jurisdictional issue that, according to the Appellee, has been rejected by the District Court numerous times; a claim to which he does not, and cannot, cite to any 'judgment on the merits' from the District Court... because there has never been such a judgment, and therefore none exists in the record. (See, 'Appellee's Motion To Dismiss Appeal' (Doc. 11), filed on June 12, 2023)

And further, the Appellee(s) move to dismiss the prior appeal as 'frivolous' on interlocutory motion, marginalizes, inter alia, the applicable statutory purpose, constitutional protections and limitations, and Local Rules governing receiverships, and is simply intended to act as a 'red herring' to divert away from his financially-motivated and corruptly-reasoned deception.

That is, with the hundreds of millions of dollars in attorney fees to be paid out in these proceedings, money that is now in suspension and at risk of loss in these proceedings, the Appellee has attempted to mislead the Fifth Circuit to believe that **(1)** no jurisdictional laws have been violated, and **(2)** that the Appellant (Mr. Stanford) is gaming the system, and **(3)** that he is merely dissatisfied with the District Court's rulings, and **(4)** is once again only seeking retribution in another frivolous and vexatious proceeding, and **(5)** that the Appellant has a long history of such exercises in harassment, and should be estopped by this Court once and for all.

In his interlocutory motion, and with practiced legerdemain, the Appellee attempts to convince the Court that his and the other attorneys' only goal in this settlement proceeding is to protect the interests of the "Stanford victims". And that it is patently absurd for Mr. Stanford to suggest that actions taken by the Receiver and/or his so-called "Team of Professionals" in that legal pursuit could ever have dispossessed the District Court of its original (exclusive) subject-matter jurisdiction - and its Article III-derived power to preside over and render decisions in this case and controversy.

Again, this alternate-universe-version of the facts is not supported by any entry in the official record and would not survive the Fifth Circuit's thoughtful and impartial scrutiny in a full appellate briefing and merits review.

In sum and substance, these "***Rotstain Litigation***' appeal proceedings concern a constitutionally and statutorily prohibited act that stripped the District Court of its Article III authority to preside over and render judgments in the **"Main Action"** case, and all other Stanford-related cases; that is, all ancillary proceedings in equity arising from the enforcement action filed by the Securities and Exchange Commission on February 16, 2009, against Robert Allen Stanford, and the global group of financial services companies he owned and bearing his name.

ARGUMENT

The Appellee's move to dismiss the related appeal as "frivolous" prior to any actual briefing, asks the Court to accept his version of the facts as actual, irrefutable and dispositive, which they clearly are not, and forecloses the Appellant's ability, and legal right, to challenge a clear and present jurisdictional violation that for the past

fourteen years, and to this day, has underpinned the SEC's civil enforcement action like quicksand. And by relation, every ancillary action that has flowed from it; a decisively fatal jurisdictional defect that the Appellant has never waived or forfeited, and never could.

If permitted to proceed on appeal, the Appellant will show, with clear and convincing evidentiary proof, the indisputable fact that on February 17, 2009 and immediately following his appointment by a federal court in the Northern District of Texas, Dallas Division, the Receiver-Appellee promptly departed the confines of the Northern District of Texas, Dallas Division, and established his **'principle place of business'** for the entirety of all Stanford Receivership Estate operations and administrative activities, to a series of locations in the Southern District of Texas, Houston Division - and more specifically, to first the headquarters and offices of the Stanford Financial Group at 5050 and 5051 Westheimer, and then to other locations in the Houston area - locations from where, a full fourteen years later he continues to conduct all Stanford Receivership Estate operations and administrative activities; a decisive action taken in knowing defiance of the congressionally-established territorial boundaries of the Northern District of Texas, as set forth in 28 U.S.C. 124(a), as well as in knowing defiance of the explicit mandates of his Order Appointing Receiver, the Local Rules of the District Court, and all other jurisdictional and receivership-governing law. And to be clear, the Receiver's multiple District Court filings of notices that he intended to sell Stanford-owned assets in those other federal districts, pursuant to 28 U.S.C. 754, does not in any way change these facts, or provide him with any 'administrative' authority beyond this congressionally limited 'asset-sale' mandate.

This ***'ultra vires'*** 'relocation' action, therefore (which serves as confirmation of the SEC's 'improper forum manipulation'), taken in the complete absence of all jurisdiction, served to divest the District Court in the Northern District of Texas of its original (exclusive) subject-matter jurisdiction, and in equal measure and, inter alia, stripped both the District Court and its court-appointed Equity Receiver (Ralph S. Janvey) of their absolute judicial immunity. See, ***Davis v. Bayless***, 70 F.3d 367, 373 (5th Cir. 1995) ("Court appointed Receivers act as arms of the Court and are entitled to share the appointing judge's absolute immunity, provided that the challenged actions are [not acts of willful malfeasance or gross negligence] taken in good faith, and fully within the scope of the authority granted to the Receiver.")

The jurisdictional facts presented here very clearly are acts of willful malfeasance and constitutional violations; 'ultra vires' actions that just as clearly were not authorized by the 'Order(s) Appointing Receiver' (Docs 10, 157 and 1130), and thus could never be construed as taken in good faith; actions that therefore serve to nullify all absolute judicial immunity.

And overarching all, at least for the specific grounds and limited focus of this appeal, this prohibited, extra-jurisdictional action served to legally poison each and every main and ancillary action taken by the District Court in this case; to include, but not limited to, the 'Settlement Agreement' and 'Final Judgment and Bar Order' at issue here.

See first, ***SEC v. Safety Financial Services, Inc***. 674 F.3d 368,373 (5th Cir. 1982)("A district court abuses its discretion where it declines to consider challenges to its subject-matter jurisdiction, or where its rulings are clearly

erroneous and there is legal error"); ***Hotze v. Burwell***, 784 F. 3d 984 (5th Cir. 2015) ("No matter how important the issue, federal courts are of limited jurisdiction and possess only that power authorized by the U.S. Constitution and statute"); ***Arbaugh v. Y & H Corp.,*** 546 U.S. 500 (2006) ("When a federal court concludes that it lacks subject-matter jurisdiction in a civil case, the court must dismiss the complaint in its entirety")
Then see, ***Ballard v. Wall***, 413 F.3d 510, 515 (5th Cir. 2015) ("Judicial immunity not available where actions, though judicial in nature, are taken in the complete absence of all jurisdiction"), citing ***Stump v. Sparkman***, 435 U.S. 349 355-56 (1978) and ***Mireles v. Waco***, 502 U.S. 9, 11, (1991)

Simply put, no matter the dense and enduring fog of "**frivolous and vexatious**" labeling and alternate universe-based facts from the Appellee, the jurisdictional issue at the heart of these appeal proceedings is real and easily verified, dispositive, and beyond all possible affirmative defenses and diversionary rhetoric, and absolute judicial immunity protections.

And further, contrary to what the Appellee told this Court in the interlocutory motion, nowhere in the cited 'Notice of Appeal' (Doc. 1) did the Appellant, Robert Allen Stanford, mention, refer to, or ever even allude to, his parallel criminal conviction - a judgment that is not a part of the 'Final Judgment and Bar Order' at issue here; it is a separate (criminal) matter that is currently being appealed in the Fifth Circuit Court, and having nothing at all to do with this (civil) appeal.

And moreover, while the District Court has indeed..."rejected"...this poisonous and fatal jurisdictional challenge on prior occasions - by merely "overruling an objection", or in the form of disregarding silence - contrary to the Receiver-

Appellee's assertion, such judicial acts do not constitute **'final judgments on the merits'** ...triggering either *res judicata*, or collateral estoppel.

At bottom, no matter how many different ways and times the Appellee may assert his false and diversionary rhetoric, his alternate universe-based facts, the actual and verifiable facts, and statutory-territorial limitations controlling this case, will never yield a different reality; never serve as one territorial boundary that encompasses both the Northern District of Texas and the Southern District of Texas. Simply put, no matter what **'affirmative-defense'** arguments the Receiver-Appellee may submit, such arguments could never serve as acceptable substitutes for a real and citable judgment on the merits, one that shows the Receiver's ***'ultra vires'*** actions as lawful.

Moreover, steadfast in his diversionary rhetoric and alternate universe-based facts, and ***'ultra vires'***-defending defiance, a full fourteen years later, through every of the Appellant's well-articulated and fact-supported challenges, and beyond the appointing (host district) District Court's congressionally-established and expressly limited powers of judicial action, and its territorial jurisdiction to judicially supervise/oversee all Stanford operations, and ongoing administrative activities, the Receiver-Appellee **CONTINUES** to maintain his **'principle place of business'** for the entirety of all administrative activities and operations of the Stanford Receivership Estate, in Houston, there in the Southern District of Texas...and now **CONTINUES** his enduring deception in the Fifth Circuit Court of Appeals with the same **"don't believe your eyes, believe what I tell you"** rhetoric that for more than a decade, has been sufficient in each of the many District Court proceedings, and provided a false appearance of righteousness, and lawfulness.

While This Case Is Certainly *'sui generis'* In A Great Many Ways And Respects It Is Not Entirely A Case Of First Impression

In ***'The Mitchell Law Firm, LP v. Bessie Jeanne Worthy Revocable Trust',*** 8 F.4th 417 (5th Cir. 2021), the Fifth Circuit Court was presented with a similar case involving another Texas law firm's intentional misrepresentation of the jurisdictional facts simply to secure a sizeable money judgment, a 'paradigmatic void judgment' where the District Court lacked subject-matter jurisdiction. Ultimately, the Court held that..."It would be quite something if a party could invoke federal jurisdiction under false pretenses, then invoke the limits of federal jurisdiction just to keep tens of thousands of dollars of ill-gotten gains". After which, and in its remedial opinion, it held that..."It is axiomatic that power is inherent in every Court to undo what it had no authority to do originally." citing, ***N.W. Fuel Co. v. Brock,*** 139 S.Ct. 216, 219 (1981)

The indisputable jurisdictional facts cited here by the Appellant, at this pre-briefing stage, are similar enough to those in ***'The Mitchell Law Firm'*** case to at least place 'fairly in doubt' the District Court's subject-matter jurisdiction in this case; similar enough to warrant a full appellate briefing and merits review. See, ***Feds For Med. Freedom v. Biden,*** 30 F. 4th 503 (5th Cir. 2022) ("Subject-matter jurisdiction is the Court's statutory or constitutional power to adjudicate the case. ***Steel Co. v. Citizens For A Better Environment,*** 523 U.S. 83, 89 (1998). That requirement cannot be forfeited or waived and should be considered whenever "fairly in doubt". ***Ashcroft v. Iqbal,*** 556 U.S. 662, 671 (2009)") (emphasis added)

The Judicially Noticeable And Verifiable Facts Under Fed. R. Evid. 201, Found In The Official Record, Settle The Jurisdictional Issue Here With Indisputably Decisive Force

Neither the Receiver-Appellee, the SEC, the District Court, or any of the many parties in this putative class action have ever attempted to directly address and make a countervailing argument to refute these **'improper forum manipulation'**, and **'extra-territorial' facts**...and they never could. Because no matter what 'other-worldly' facts they may submit in that process, they will never surface and submit, citable, **"judgment-on-the-merits"** support, from the official record.

It should also be noted here that, although Mr. Stanford has repeatedly challenged the SEC's allegations of a massive fraud, and its **'improper forum manipulation'** by filing their enforcement action in the Northern District of Texas, Dallas Division, instead of in the Southern District of Texas, Houston Division, where the Stanford Financial Group of companies were known to be headquartered (and in particular, the SEC-regulated Stanford Group Company)...and where literally the day after his appointment as Receiver, Ralph S. Janvey immediately established his 'principle place of business'...**NO LAW FIRM** involved in this case has ever sought to challenge this forum decision; **EVEN AFTER** the presiding Honorable David C. Godbey, there in the Northern District Court, made clear in the ancillary case, ***Janvey v. Alguire***, Civil Action 3:09-cv-0724-N (N.D Tex. 2009)("Although the Stanford entities were located nationally and internationally, the court finds that the entire network operated as a single entity headquartered in Houston, Texas."); and **EVEN AFTER** in ***Thornton v. Syny Logistics, Inc***. 2020 U.S. Dist LEXIS 96058 (N.D.Tex. 2020), this same presiding judge himself noted the controlling

'improper venue/forum manipulation' precedent in ***Daimler AG. v. Bauman***, 571 U.S.117 (2013), where it was held... ("For an individual, the paradigm forum for the exercise of general jurisdiction is the individual's domicile; for a corporation it is an equivalent place, one in which the corporation is fairly regarded as **'at home'**; place of incorporation and principle place of business are thus paradigm bases for general jurisdiction. Those affiliations have the virtue of being unique--that is, each indicates only one place--as well as easily ascertainable.").

NOTE: At no time did Mr. Stanford ever reside in, or own any property in, anywhere in the Northern District of Texas; and his **'nationally and internationally'** located Stanford Financial Group of financial services companies were both incorporated in, and headquartered in, and thus regarded as **'at home'** in, Houston, Texas...in the Sothern District of Texas.

Moreover ...

EVEN AFTER Mr. Stanford timely-filed his pro se 'First Responsive Answer' (Doc. 249), followed by a timely-filed *pro se* 'Motion To Dismiss under Fed. R. Civ. P. 12(b)(3), Or In The Alternative Motion To Transfer Venue under 28 U.S.C. 1404(a)' (Doc. 3173), wherein he cited to the complementary venue holdings in ***Atlantic Marine Construction Co., Inc. v. U.S. District Court***, 571 U.S. 49 (2013), and ***Daimler AG v. Bauman***, 571 U.S.117 (2013), and this same presiding judge, David C. Godbey, **DENIED** the motion, by finding Mr. Stanford had procedurally **"waived and forfeited"** this improper venue/forum argument by not first raising it in a manner consistent with the procedures in Fed. R. Civ. P. 12(h)...where one of the cited procedures is in a ..."**First Responsive Answer**" (Doc. 3227), still there

was only deafening 'silence' from associated counsel. With an untold number of law firms and literally hundreds of highly experienced attorneys involved in some phase of the Stanford litigation, mostly defending against the numerous "clawback" actions filed by the Receiver-Appellee, Ralph S. Janvey, and his counsel, it has, paradoxically, come as no surprise to Mr. Stanford that none of these highly experienced attorneys has ever made a parallel challenge to the SEC's indisputably clear 'improper forum manipulation'.
He knows that, with their typically financially-motivated reasoning, they had simply adhered to the maxim...'what you say can and will be used against you'; that is, in this case, against their ('bank clients') balance sheets.

In sum...

Mr. Stanford would submit that this 'silence' of others, relative to the obviously **'improper forum manipulation'** in this case, this total disregard for all statutory requirements and precedential decisions of the Supreme Court, and Fifth Circuit, is the collective result of nothing other than financially-motivated reasoning; explained by the utterly obscene amount of attorney fees that for the past fourteen years have been generated by, and paid out in the course of, the Stanford litigation; that is, literally billions of dollars that, had any one of these attorneys pointed out the legally obvious that, inter alia, the SEC should have filed this enforcement action in Southern District of Texas, and not in the Northern District of Texas...would not be in their bank accounts.

Frivolous And Vexatious Litigant

And finally, it should also be noted here that in his (2018) 20-page motion asking the District Court to declare Mr. Stanford a vexatious litigant who repeatedly files only frivolous and meritless motions, the Receiver-Appellee used these dismissive, descriptive terms no less than 30 times. This motion (Doc. 2676), which was nothing other than a thinly-veiled attempt to silence Mr. Stanford and keep his poisonous jurisdictional facts out of the disinfecting sunlight, was expected to effectively bury the merits of his motions, their indisputable truths, in the darkness of dirt, *sub rosa*; expected that, with these labels, Mr. Stanford would get the message that, from behind the stigmatizing label "**Ponzi scheme**", any lawless act of the Receiver would be viewed as an acceptable means to an end, justified on behalf of the "Stanford victims".

This Honorable Court is now asked to choose between validating the allegations in the Receiver-Appellee's 20-page motion, or shoveling off the fourteen years of dirt that has effectively kept this extra-territorial jurisdictional violation hidden, far away from a meaningful **'judgment on the merits'** review.

Put bluntly, this Honorable Court is asked to unearth the clear and indisputable truth; to find whether the Receiver-Appellee's **'frivolous, vexatious and meritless'** assertions are valid and grounds for dismissal of these appeal proceedings- or whether the Appellant's **'unlawful relocation'** claim is real and factually accurate; that as the Appellant has attempted to show in motion after motion over the past fourteen years...the SEC, the District Court and Court-appointed Receiver have actually been perpetuating and successfully concealing a shockingly real and indefensible jurisdictional fraud; a fraud they all know, if ever exposed to the

disinfecting sunlight, will give rise to a barrage of lawsuits under 28 U.S.C. 959, and 42 U.S.C. 1983 on grounds of knowingly 'willful malfeasance' (959), and knowing violations of Constitutional protections (1983), along with years of **"boomerang litigation"** stemming from the Receiver's fourteen years of lawsuits under the 'Bankruptcy Code', the 'Texas Long Arm Statute', and the 'Texas Uniform Fraudulent Transfer Act' (TUFTA); litigation that will involve more billions of dollars in compensatory and punitive damages, demanding that the SEC, the District Court, and the Court-appointed Receiver..."undo [and compensate for] what they had no authority to do originally."

CONCLUSION

Because the foundational jurisdictional facts presented here have been presented to the District Court numerous times over the past fourteen years in motion after motion, in seriatim, and been conspicuously sidestepped each and every time, the Appellant respectfully asks the Fifth Circuit to consider the actual and indisputably dispositive ***'ultra vires'*** facts contained here and in the 'Appellant's Principal Brief', prepared for the related appellate proceeding (23-10530) which he attaches here as an APPENDIX.

Or in the alternative, he asks that the Court issue an order to the Receiver-Appellee requiring him to provide it with more than his usual..."**don't believe your eyes, believe what I tell you**"...rhetoric; that is, citable and verifiable proof in the form of a District Court judgment after a meaningful review on the merits, that the District Court has previously addressed this ***'ultra vires'*** jurisdictional issue, and found it lawful.

Date: August 10, 2023

Respectfully submitted,

Robert Allen Stanford

Robert Allen Stanford
Appellant, *Pro Se*
Reg. # 35017-183
FCC Coleman USP II
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CERTIFICATE OF SERVICE

I, Robert Allen Stanford, Appellant *Pro Se*, hereby certify that on this 10th day of August 2023, I placed an exact copy of this 'Certificate of Good Faith and Non-Frivolous Intent' in the U.S. Mail addressed to the United States Securities and Exchange Commission, and to counsel for each of the parties in this putative class.

CERTIFICATE OF SERVICE

I. Robert Allen Stanford, Appellant, *Pro Se*, hereby certify under penalty of perjury, 28 U.S.C. 1476, that on this 10th day of August 2023, I served a copy of this 'Notice of Appeal with Appellant's Certificate of Good Faith and Non-Frivolous Intent To Travel With And Be Considered As Part Of The Record On Appeal', to the following parties, via e-mail:

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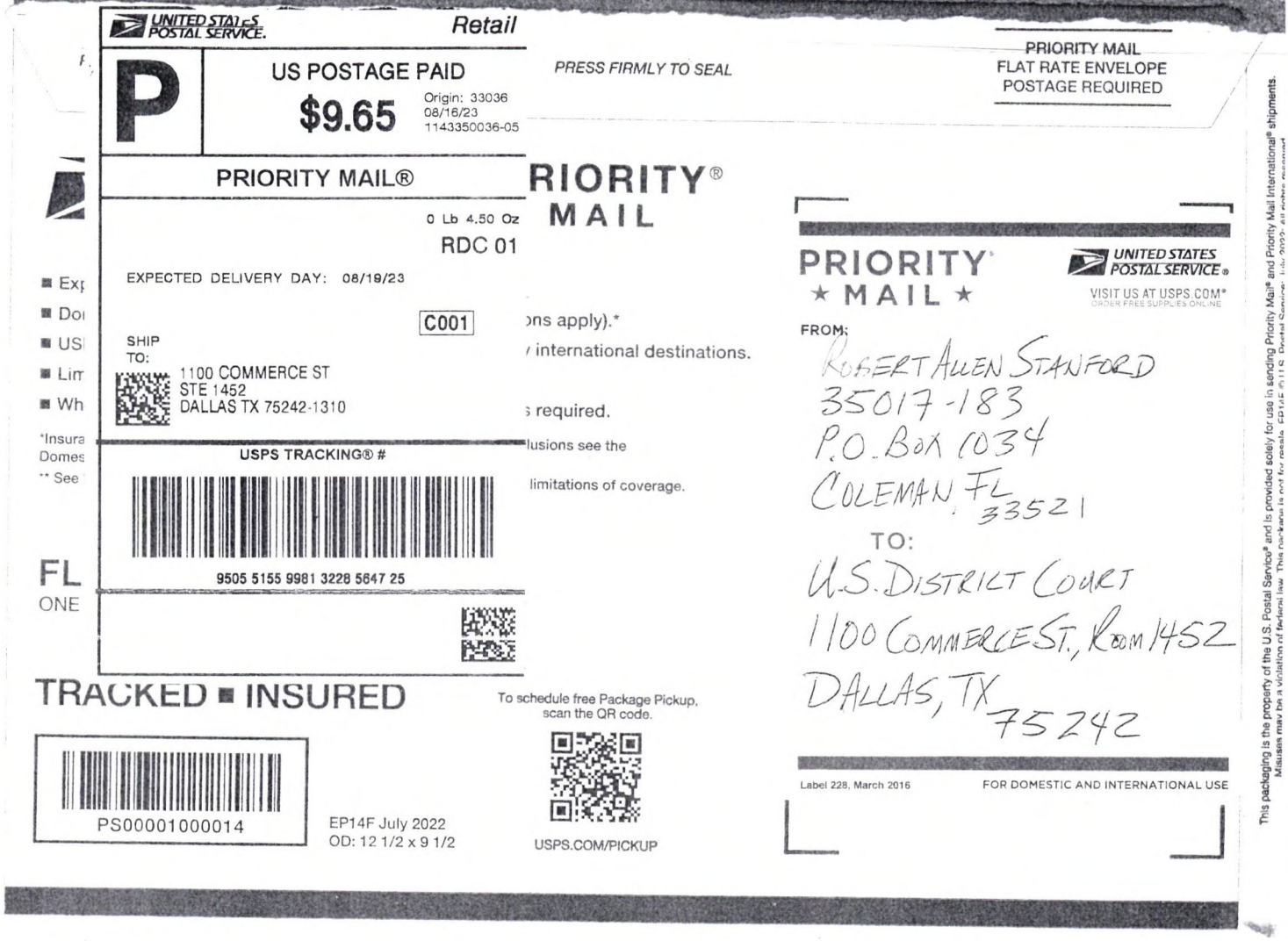

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United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
September 18, 2023
Lyle W. Cayce
Clerk

No. 23-10891

SECURITY AND EXCHANGE COMMISSION, *Et al.*,

Plaintiffs,

R. ALLEN STANFORD,

Defendant—Appellant,

versus

RALPH S. JANVEY; OFFICIAL STANFORD INVESTORS COMMITTEE; HSBC BANK, P.L.C.; TORONTO-DOMINION BANK; INDEPENDENT BANK GROUP, INCORPORATED,

Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:09-CV-298

UNPUBLISHED ORDER

Before STEWART, GRAVES, and OLDHAM, *Circuit Judges*.

PER CURIAM:

IT IS ORDERED that the opposed motion filed by Appellee Ralph S. Janvey to dismiss the appeal is GRANTED.

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE COMISSION, Plaintiff, v. STANFORD INTERNATIONAL BANK, LTD., *et al.*, Defendants.	§ § § § § § § § § § §	Civil Action No. 3:09-CV-0298-N

ORDER

This Order addresses Ralph S. Janvey (the "Receiver"), John J. Little (the "Examiner"), the Securities and Exchange Commission ("SEC"), and the Official Stanford Investors Committee's ("OSIC") (collectively, the "Movants") motion for modification of Order declaring Allen Stanford a vexatious litigant and entering a pre-filing injunction against him [2732].[1] Via their motion, the Movants request that the Court expand its previous injunction by (1) enjoining Stanford from filing documents in any Stanford-related civil case,[2] including notices of appeal, without seeking and obtaining leave of Court and (2) directing the Clerk of Court not to accept for filing any new document, other than a motion for leave of Court, unless Stanford has obtained leave of Court for such

[1] Unless otherwise noted, all docket citations are to *SEC v. Stanford International Bank, Ltd.*, Civ. Action No. 3:09-CV-0298-N (N.D. Tex. filed Feb. 17, 2009).
[2] "Stanford-related civil case" includes all cases in or related to *In re Stanford Entities Secs. Litig.*, No. 3:09-MD-2099-N (N.D. Tex.) (the "Stanford MDL"), including *SEC v. Stanford International Bank, Ltd.*, No. 3:09-CV-0298-N (N.D. Tex.).

filing. For the reasons set forth below, the Court grants the motion but limits its granting to enjoining Stanford from filing documents in Stanford-related civil cases in federal district court, other than notices of appeal, without first seeking and obtaining leave of Court.

As a general matter, federal courts possess the "inherent power to impose sanctions against vexatious litigants." *Newby v. Enron Corp.*, 302 F.3d 295, 301 (5th Cir. 2002); *see also Chambers v. NASCO, Inc.*, 501 U.S. 32, 33 (1991) ("Federal courts have the inherent power to manage their own proceedings and to control the conduct of those who appear before them."). The All Writs Act, 28 U.S.C. § 1651, provides further authority to federal courts to enter pre-filing orders, including pre-filing injunctions, against vexatious litigants. *See Matter of Carroll,* 850 F.3d 811, 815 (5th Cir. 2017) (citing *Newby*, 302 F.3d at 302); *Baum v. Blue Moon Ventures, LLC*, 513 F.3d 181, 187 (5th Cir. 2008) ("A district court has jurisdiction to impose a pre-filing injunction to deter vexatious, abusive, and harassing litigation"). Where vexatious conduct hinders a court's fulfillment of its constitutional duties, federal courts have routinely enjoined individuals from filing without prior approval. *Whitehead v. Paramount Pictures Corp.*, 2009 WL 1491402, at *3 (E.D. Va. May 26, 2009) (collecting cases).

A district court's "[m]odification of an injunction is appropriate when the legal or factual circumstances justifying the injunction have changed." *ICEE Distribs., Inc. v. J&J Snack Foods Corp.*, 445 F.3d 841, 850 (5th Cir. 2006). In particular, modification of an injunction is proper when necessary to achieve the original purposes of the injunction. *See Sierra Club, Lone Star Chapter v. Cedar Point Oil Co., Inc.*, 73 F.3d 546, 579 (5th Cir.

1996). When considering whether to modify an existing pre-filing injunction to deter vexatious filings, a court must weigh all of the relevant circumstances, including the following four factors: (1) the party's history of litigation, in particular whether she has filed vexatious, harassing, or duplicative lawsuits; (2) whether the party had a good faith basis for pursuing the litigation, or simply intended to harass; (3) the extent of the burden on the courts and other parties resulting from the party's filings; and (4) the adequacy of alternative sanctions. *Baum*, 513 F.3d at 189 (citing *Cromer v. Kraft Foods N. Am., Inc.*, 390 F.3d 812, 818 (4th Cir. 2004)). The Court previously declared Stanford a vexatious litigant and found that a balance of factors favored enjoining Stanford from filing any new lawsuit against the Movants without obtaining leave of Court to prevent Stanford from unduly burdening the Court and Movants. Order (May 10, 2018) [2732]. The previous injunction has not deterred Stanford from making continued frivolous filings in this Court raising arguments the Court has rejected numerous times. Thus, modification is appropriate to prevent a continued barrage of frivolous filings.

The *Baum* factors weigh in favor of expanding the existing pre-filing injunction against Stanford. First, since the issuance of the pre-filing injunction, Stanford has filed numerous motions and objections, all of which have been denied, as they have made meritless arguments or reasserted arguments that have been repeatedly decided against Stanford. *See e.g.*, Order (June 8, 2023) [3303], Order (June 5, 2023) [3300], Order (February 15, 2023) [3227], Order (May 10, 2018) [2732]. Second, given that nearly all of Stanford's filings raise issues that have been clearly settled, and many concern settlement proceedings that do not impact Stanford's interests, his filings lack a good faith

basis. *See e.g.,* Order (June 8, 2023) [3303], Order (June 5, 2023) [3300], Order (April 25, 2023) [3275]. Instead, the filings are clearly intended to harass and delay the Receivership and settlement proceedings. Third, Stanford's vexatious filings pose an undue burden on the Court and the Movants. Stanford's meritless motions strain the resources of the Receivership and the judiciary and prevent the Court and Movants from efficiently maximizing recovery for the investors in Stanford's Ponzi scheme. Fourth, alternative sanctions are inadequate to deter Stanford's conduct, demonstrated by the frequent frivolous filings even after the previous pre-filing injunction came into effect. Absent modification Stanford would be free to continue filing vexatious and harassing motions and objections in Stanford-related civil cases.

The Court declines to extend the injunction to enjoin Stanford from filing notices of appeal. The *Baum* Court held that a district court appropriately enjoined a vexatious litigant from making filings in any federal district court, but had abused its discretion in extending a pre-filing injunction to filings in the Fifth Circuit, approvingly citing Tenth Circuit precedent that "a district court's pre-filing injunction may not extend to filings in any federal appellate court" because "those courts . . . are capable of taking appropriate action on their own." *Baum*, 513 F.3d at 191–92 (quoting *Sieverding v. Colo. Bar Ass'n*, 469 F.3d 1340, 1344 (10th Cir. 2006). Further, the Court noted pre-filing injunctions "must be tailored to protect the courts and innocent parties, while preserving the legitimate rights of litigants." *Id.* at 187 (quoting *Farguson v. MBank Houston, N.A.*, 808 F.2d 358, 360 (5th Cir. 1986)). As such, this Court will not enjoin Stanford from filing notices of appeal. Accordingly, the Court expands the pre-filing injunction to additionally enjoin Stanford

from filing any documents in Stanford-related civil cases in federal district court, other than notices of appeal, without first seeking and obtaining leave of Court. The Court further directs the Clerk of the Court not to accept for filing any such document that Stanford files unless Stanford has obtained leave of Court for such a filing.

Signed October 30, 2023.

David C. Godbey
Chief United States District Judge

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SECURITIES AND EXCHANGE COMMISSION, *Plaintiff*, v. STANFORD INTERNATIONAL BANK, LTD, *et al.*, *Defendants*.	§ § § § § § § § § § §	Case No. 3:09-cv-00298-N

TRUSTMARK'S RESPONSE IN OPPOSITION TO RECEIVER'S MOTION TO ENFORCE SETTLEMENT AGREEMENT

I. INTRODUCTION

As this Court's Bar Order acknowledged, Trustmark's reason for entering into the Settlement Agreement was to "obtain total peace." Bar Order [Doc. No. 3278 at 4]. Now, contrary to the terms of the Settlement Agreement, the Receiver has demanded that Trustmark make its settlement payment while Allen Stanford's appeal, which asserts that "the [Trustmark] judgment and bar order . . . is void and without the force and effect of law,"[1] remains pending. Nothing could be further from total peace than forcing Trustmark to make a settlement payment while judicial approval of that settlement remains unresolved. For the reasons set forth below, this Court should decline the Receiver's invitation to rewrite the Settlement Agreement to place Trustmark in the untenable position of having to make its $100 million settlement payment while there remains the possibility that the settlement's approval may be overturned.

[1] Notice of Appeal [Doc. No. 3284, at 3].

II. FACTUAL BACKGROUND

Befitting its magnitude, Trustmark's settlement of this case was carefully documented in the Settlement Agreement. Unsurprisingly, under the Settlement Agreement, Trustmark is required to make the settlement payment only when its involvement in the Stanford litigation is over, *i.e.*, when this Court's approval of the Settlement is no longer legally assailable, and Trustmark has been dismissed with prejudice from all Stanford-related litigation. Specifically, per Paragraph 27 of the Settlement Agreement, Trustmark is required to make the $100 million settlement payment 30 days after the last of three events to occur: (i) the Settlement Effective Date, (ii) the dismissal of the *Rotstain* case becoming Final, and (iii) the dismissal of the *Smith* case becoming Final. *See* Settlement Agreement ¶27 [Doc. No. 3219, at 20, ¶27]. The Settlement Effective Date occurs when this Court's bar orders in the SEC Action ("Bar Order") and the *Jackson* action become Final. *See* Settlement Agreement ¶19 [Doc. No. 3219, at 17, ¶19].

The Settlement Agreement defines "Final" as that time when the bar orders or dismissals are:

> unmodified after the conclusion of, or expiration of any right of any Person to pursue, any and all possible forms and levels of appeal, reconsideration, or review, judicial or otherwise, including by a court or Forum of last resort, wherever located, whether automatic or discretionary, whether by appeal or otherwise.

Settlement Agreement ¶7 [Doc. No. 3219, at 14, ¶7]. That is, "Final" occurs when the bar order and dismissals are unmodified at the conclusion of all appeals or, if no appeal is taken, when any Person's right to pursue an appeal expires. This finality was essential to Trustmark's entry into the Settlement, as reflected in the Settlement Agreement:

> The Parties represent and acknowledge that the following were necessary to the Committee's, the Receiver's, and Trustmark's agreement to enter into this Settlement, are each an essential term of the Settlement and this Agreement, and that the Settlement would not have been reached in the absence of these terms: . . . (e) all such approvals, dismissals, and orders becoming Final pursuant to Paragraphs 7, 19, 25, and 26 of this Agreement.

Settlement Agreement ¶36 [Doc. No. 3219, at 23-24, ¶36].

As this Court (and all the parties) are painfully aware, Allen Stanford, from prison, objected to the Trustmark Settlement. As the Receiver notes in its Motion, this Court appropriately denied that objection, and Stanford appealed.[2] Regardless of the merits of that appeal, the relief Stanford seeks is not ambiguous: an adjudication that "the [Trustmark] judgment and bar order . . . is void and without the effect and force of law." Notice of Appeal [Doc. No. 3284 at 3].

At the Receiver's urging, the Fifth Circuit quickly dismissed Stanford's appeal. Stanford's Request for Rehearing was procedurally defective, and the time provided by the Fifth Circuit for Stanford to correct it came and went, without such correction. *See* 07/31/2023 Clerk's Letter to Robert Allen Stanford [Stanford Appeal, Doc. No. 42-2]. However, Stanford filed a Motion to Stay Mandate Pending Petition for Certiorari, which is pending. *See* Appellant's Motion to Stay Mandate Pending Petition for Certiorari [Stanford Appeal, Doc. No. 44-1]. In any event (and assuming Stanford's procedurally defective Request for Rehearing did not extend his appellate deadline), the 90-day period for Stanford to file a petition for writ of certiorari began to run on July 25, 2023, when the Fifth Circuit dismissed his appeal. U.S. S.Ct. Rule 13. Absent the filing of such a petition, the Settlement Effective Date will occur on October 23, 2023.

[2] As the Court is also aware, Stanford applied to proceed *in forma pauperis*, and this Court appropriately denied that request. Someone, however, paid Stanford's appellate filing fees. Counsel for the Receiver, on a phone call on July 26, 2023, with the undersigned counsel, queried (seemingly in jest) whether Trustmark had done so. Trustmark did not, and the Receiver's counsel was told that on that phone call. Nevertheless, the Receiver's counsel was quoted at length discussing the Motion to Enforce in a *Texas Law Book* article published on August 14, 2023, entitled "Who is Paying Allen Stanford's $500 Appellate Filing Fees?" Again, for the record, Trustmark did not and is not, and any insinuation to the press to the contrary is inappropriate.

III. ARGUMENT

A. The Consequences of the Receiver's Requested Relief Are Potentially Calamitous

Before addressing the Receiver's sole argument, it's worth noting the potential consequences of the Receiver's requested relief. If this Court orders Trustmark to make its settlement payment before Allen Stanford's appeal is fully resolved, and that appeal is then somehow—however unlikely—successful in its stated attempt to render "the [Trustmark] judgment and bar order . . . void and without force and effect of law," Notice of Appeal [Doc. No. 3284 at 3], Trustmark will have parted with $100 million for absolutely no reason. Without a settlement. Without releases. Without a bar order. What happens then? Trustmark will have paid $100 million not for the "total peace" it bargained for, but no peace at all.

B. The Receiver Has Consistently Construed the Settlement to Require Resolution of Stanford's Appeals before Payment, Both to the Fifth Circuit and to Its Own Constituents

Prior to its Motion, the Receiver sensibly and unambiguously construed the Settlement Agreement to avoid this potential calamity. For example, on June 12, 2023, the Receiver represented to the Fifth Circuit in its Motion to Dismiss Mr. Stanford's appeal that "[a]s long as Mr. Stanford's frivolous appeal remains pending, the district court's approval orders cannot become final, and the settlements cannot be funded. Mr. Stanford's appeal thus perversely blocks the payment of the $100 million settlement . . . ." [Stanford Appeal, Doc. No. 11 at 4]. The Receiver repeated this argument in its letter to the Fifth Circuit on July 6, 2023: "As long as Mr. Stanford's appeals remain pending, the district court's approval orders cannot become final, and the settlements cannot be funded." [Stanford Appeal, Doc. No. 32 at 1]. Indeed, as a result of taking this position with the Fifth Circuit and successfully having that Court dismiss Mr. Stanford's

appeal, the Receiver is judicially estopped from now taking the directly contrary position on the meaning of the Settlement Agreement before this Court.[3]

The Receiver has also made a similar representation to its constituents. On the Receivership website, in a post titled "Receivership Court Approves Trustmark and SG Suisse Settlements; However, Appeals by R. Allen Stanford and the Antiguan Joint Liquidators Delay $257 Million in Payments to Investors," the Receiver states that Mr. Stanford and the Antiguan Joint Liquidators have filed appeals and that:

> **Neither settlement approval can become final, and therefore no settlement payment will be made to the Receiver, until the appeals are resolved.** If the appeals had not been filed, the funds from these two settlements ($257 million) would have been available for distribution to investors later this year. The Receiver cannot yet estimate when the appeals will be resolved and thus is unable to provide an estimated time for distribution to investors.

www.stanfordfinancialreceivership.com/ (last visited August 20, 2023) (emphasis in original). Likewise, the Examiner, who is also a party to the Settlement Agreement, has acknowledged Mr. Stanford's appeal and represented on its website that Trustmark's settlement approval cannot "become final, and therefore no settlement payment will be made to the Receiver, until the appeals are resolved." https://www.lpf-law.com/examiner-stanford-financial-group/ (last visited August 20, 2023).

Perhaps the Receiver's most telling admission, though, occurred on the initial conference call in which the Receiver asked Trustmark to consider voluntarily making the settlement payment before Stanford's appeal is final, based on the notion that Stanford's appeal was so unlikely to be successful. On that July 26, 2023 call, the Receiver's counsel noted that if they had anticipated

[3] *In re Superior Crewboats, Inc.*, 374 F.3d 330, 335 (5th Cir. 2004) (concluding that a party is judicially estopped when the following three elements are met: (1) "its position is clearly inconsistent with the previous one; (2) the court must have accepted the previous position; and (3) the non-disclosure must not have been inadvertent").

that Stanford was going to file an appeal, they would have drafted around it, but that Stanford did not object to any of the prior settlements.[4]

These statements by the Receiver reflect its real-world reading of the Settlement Agreement and demonstrate that its instant Motion is opportunistic and contrived.

C. This Court Should Reject the Receiver's Textual Argument

1. The Receiver Rewrites the Settlement Agreement to Make Its Textual Argument

The Receiver's only substantive argument is that because, it contends, Stanford never had a *right* to appeal, Stanford's actual appeal pending before the Fifth Circuit (and potentially the U.S. Supreme Court) should be disregarded for purposes of determining whether the Settlement Approval is Final. In support of its argument, the Receiver misstates the Settlement Agreement's definition of "Final" as the "conclusion . . . or expiration of any *right* of any Person to pursue[] any and all possible forms and levels of appeal, reconsideration, or review[.]" Motion at 8 (emphasis and ellipsis in original). After rewriting this language with a strategically placed ellipsis and bracket, the Receiver suggests that "Final" occurs at the conclusion or expiration of a right to appeal. *See* Motion at 8. Because in the Receiver's view Stanford never had a right to appeal, Stanford's appeal may be disregarded for the purposes of determining finality.

This argument flatly misrepresents the Settlement Agreement. The Receiver's citation to the Settlement Agreement's definition of Final just isn't what the contract says. The Settlement Agreement defines "Final" as that time when the Final Bar Order is:

> unmodified after the conclusion of, or expiration of any right of any Person to pursue, any and all possible forms and levels of appeal, reconsideration, or review, judicial or otherwise, including by a court or Forum of last resort, wherever located, whether automatic or discretionary, whether by appeal or otherwise.

[4] Conference call between Kevin Sadler and Scott Powers (counsel for the Receiver) and Scott Humphries (counsel for Trustmark), July 26, 2023, 2:30 p.m.

Settlement Agreement ¶7 [Doc. No. 3219, at 14, ¶7]. Thus, whether the Bar Order is Final does not depend on the "conclusion or expiration of a right to appeal," as the Receiver suggests. Instead, "Final" occurs at the "conclusion of . . . any and all possible forms and levels of appeal," or, if no appeal is filed, at the "expiration of any right of any Person to pursue . . . any and all possible forms and levels of appeal."

This is the only reading of the contract that makes sense. The very reason the parties tied the definition of "Final" to the conclusion of "any and all *possible* forms and levels of appeal"—however remote the chance for success—was to leave no doubt that the case was at an end. It makes no sense to make a settlement payment while an appeal of the settlement approval is pending. To do so invites the calamitous results noted above—the $100 million global-resolution payment twisting in the wind. Likewise, if no appeal is currently pending, it makes no sense to make a settlement payment before the expiration of anyone's right to appeal, or further appeal, for the same reasons. Because Stanford's appeal is pending, and because his time to pursue a further appeal has not expired, this Court's Bar Order is not yet Final.

Paragraph 59 of the Settlement Agreement also supports this reading of the Agreement, and indeed, suggests the Receiver may have breached the Agreement by bringing this Motion:

> In the event a third party or any Person other than a Party at any time challenges any term of this Agreement or the Settlement, including the Bar Order and the Judgment and Bar Order, the Parties agree **to cooperate** with each other, including using reasonable efforts to make documents or personnel available as needed, to defend any such challenge. Further, the Parties **shall reasonably cooperate to defend and enforce** each of the orders required under Paragraph 19 of this Agreement.

Settlement Agreement ¶59 [Doc. No. 3219, at 14, ¶59]. Thus, the Settlement Agreement specifically provides that the parties will cooperate to defend challenges such as Stanford's. It

hardly seems cooperative for the Receiver to declare that it doesn't think much of Stanford's appeals and therefore demand Trustmark should make the settlement payment before it's required.

2. The Receiver's "Right" Argument Proves Too Much

Even assuming that in construing the Settlement Agreement the Receiver is allowed to ellipsis out the parts it doesn't like, its argument still proves too much. The Receiver's argument, in sum, does away with the *raison d'etre* of appellate courts.

Provided a litigant complies with the appropriate rules, he or she may appeal an adverse ruling. Despite the fact that Stanford's objection was dismissed as frivolous, he may (and did) appeal that ruling to see if the Fifth Circuit agreed with this Court's ruling. The Fifth Circuit did not simply refuse the appeal; instead, it considered the parties' arguments and granted the Receiver's motion to dismiss the appeal as frivolous. [*See* Stanford Appeal, Doc. No. 40]. Likewise, assuming he does so in the prescribed time limits, Stanford may (as is his stated intention) ask the U.S. Supreme Court if it agrees with this Court and the Fifth Circuit that his appeal is frivolous. While it is highly unlikely Stanford will prevail, the U.S. Supreme Court will decide whether or not it agrees with him. In any event, the remedy for a frivolous appeal is set forth in Federal Rule of Appellate Procedure 38, by which an appellate court may tax costs against the appellant. There is no procedure, cited by the Receiver or otherwise, for a trial court to deny a litigant an opportunity to ask a higher court if it agrees with the lower's court's finding that his appeal is frivolous.

The same logic applies to the Receiver's arguments regarding standing. Even if, for the sake of argument, this Court's denial of Stanford's objection might be construed as a finding that Stanford had no standing to object to the Settlement, Stanford appealed that ruling. And although the Fifth Circuit appropriately dismissed Stanford's appeal as frivolous, Stanford might seek to overturn that ruling, whether it is construed as a standing-related ruling or not, by petition for writ

of certiorari to the U.S. Supreme Court. The Receiver cites zero authority for the proposition that a party may not challenge the ruling by a lower court in a higher court, simply because of the nature of the ruling. None exists. Indeed, the host of Fifth Circuit cases cited by the Receiver dismissing frivolous appeals and appeals by those without standing proves the very point: as frustrating as it is, a litigant may, within the rules, appeal an adverse ruling.

By requesting a finding that Stanford "lacks standing" and "has no right to appeal the Bar Order," Motion at 8, the Receiver effectively asks this Court to determine whether the Fifth Circuit and U.S. Supreme Court may exercise jurisdiction over Stanford's appeal to review this Court's decision. That argument stands the law on its head—it is the appellate court that reviews a lower court's jurisdiction, not the other way around. *See, e.g., Bender v. Williamsport Area School Dist.*, 475 U.S. 534, 541 (1986) ("[E]very federal appellate court has a special obligation to 'satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review.'") (quoting *Mitchell v. Maurer*, 293 U.S. 237, 244 (1934)).[5] In short, Stanford's appeal—frivolous though it may be—must run its course before the Bar Order becomes final.[6]

[5] This holds true even when federal courts *lack* jurisdiction. As the U.S. Supreme Court has noted: "[When the lower federal court] lack[s] jurisdiction, we have jurisdiction on appeal, not of the merits but merely for the purpose of correcting the error of the lower court in entertaining the suit." *Bender*, 475 U.S. at 541 (quoting *U.S. v. Corrick*, 298 U.S. 435, 440 (1936) (alteration in original)).

[6] That Stanford's appeal is delaying the settlement is not a unique problem. Courts routinely acknowledge that frivolous appeals or appeals that are unlikely to succeed may delay settlement payments. *See In re Equifax, Inc.*, 2020 U.S. Dist. LEXIS 241136, at *148-49, 150 (N.D. Ga. May 11, 2020) (acknowledging that appeals by "serial class action objectors" may cause a "delay" that will "act against the settlement class's interests" in light of the terms of the settlement agreement which state that "no money can be paid out or relief provided under the settlement until final resolution of any appeals."); *In re Cardinal Health, Inc. Sec. Litig.*, 550 F. Supp. 2d 751, 754 (S.D. Ohio 2008) (noting that frivolous appeals by serial class action objectors "obstruct[] payment to lead counsel or the class in the hope that plaintiff will pay them to go away"); *Muransky v. Godiva Chocolatier, Inc.*, 2016 U.S. Dist. LEXIS 175906, at *11 *S.D. Fla. Dec. 19, 2016) (stating that "[e]xecution of the settlement is on hold" pending an appeal despite plaintiffs' argument that the appeal was meritless in light of the fact "that the parties negotiated a settlement agreement that does not become final until all appeals are resolved").

This Court has already acknowledged that it is the appellate courts'—not this Court's—obligation to deal with Stanford's appeals. When counsel for the Receiver raised Stanford's appeal during the August 8, 2023, hearing regarding the approval of the TD, HSBC and Independent Bank settlements, this Court was clear:

> I believe that I have the ability to prevent him from filing things in this Court without my prior permission. I don't at all know that I have the ability to restrain him from filing things in the Court of Appeals or Supreme Court. Now, they can take care of themselves. They don't -- to my knowledge, they don't need or want my help with that. But I think that's going to be up to them to do something to stop his filings there. But if you want me to give -- or consider some relief about continued vexatious filings in the district court I would be happy to consider that.

August 8, 2023, Tr. 14:2-12. As if on cue, on that very day the Clerk of the Fifth Circuit filed a letter reminding Mr. Stanford that his request for rehearing remained insufficient under the applicable rules. [Stanford Appeal, Doc. No. 44-2 at 1].

To be clear, Trustmark in no way seeks to legitimize or support Stanford's appeal. Trustmark did routine deposit banking business with certain Stanford entities prior to February 2009 when, to Trustmark and the rest of the outside world, Stanford appeared to be a legitimate and successful businessman. The world, and Trustmark, have since discovered otherwise, and now Stanford is a convicted felon appropriately serving time in prison. Nevertheless, the Receiver's request for this Court to find that Stanford has no "right" to an appeal while he is actually prosecuting an appeal of this Court's settlement approval turns our legal system upside down.

D. The Receiver is Unwilling to Take the Same Risk It Demands of Trustmark to Speed Up Settlement Payment

Finally, and tellingly, while the Receiver has demanded by its Motion that Trustmark take the risk that Stanford's appeal is somehow successful, the Receiver has steadfastly declined to take that same risk to speed up Trustmark's settlement payment. As the Receiver noted in its Motion,

the Settlement Payment is conditioned not just on the Bar Order becoming Final, but on the dismissal of the underlying litigation in the Southern District of Texas (the *Rotstain* and *Smith* actions), and those dismissals becoming Final. Motion at n. 2. The Settlement Agreement provides that those dismissals take place only after the Bar Order becomes Final. Settlement Agreement ¶¶25-26 [Doc. No. 3219, at 19-20, ¶¶25-26]. Before the Receiver filed its Motion, Trustmark offered to agree to jointly seek those dismissals now, so that the time periods for those dismissals to become Final could run concurrently with the pending Stanford appeal, rather than after them. Doing so would speed up the Settlement Payment by at least 30 days, and more likely longer. The Receiver did not accept Trustmark's proposal. Presumably, the Receiver does not want to dismiss with prejudice its lawsuits while the Settlement Agreement approval remains in doubt, which is the exact same reason it makes no sense for Trustmark to pay $100 million until that doubt is resolved.

For the foregoing reasons, Trustmark requests that this Court deny the Receiver's Motion to Enforce.

Dated: August 21, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

On August 21, 2023, I electronically submitted the foregoing document with the clerk of the court of the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

I further certify that on August 21, 2023, I served a true and correct copy of the foregoing document via United States Postal Certified Mail, Return Receipt Requested to the persons noticed below who are non-CM/ECF participants:

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