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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

KRISTA FREITAG, in her capacity  
as Court-appointed receiver for ANI  
DEVELOPMENT, LLC, AMERICAN  
NATIONAL INVESTMENTS, INC.,  
and their subsidiaries and affiliates,

Plaintiff,

v.

HORACIO VALEIRAS, as trustee of  
THE VALEIRAS FAMILY TRUST  
dated July 20, 2007

Defendant.

HORACIO VALEIRAS, as trustee of  
THE VALEIRAS FAMILY TRUST,  
dated July 20, 2007

Counterclaimant,

v.

KRISTA FREITAG, in her capacity  
as Court-appointed receiver for ANI  
DEVELOPMENT, LLC, AMERICAN  
NATIONAL INVESTMENTS, INC.,  
and their subsidiaries and affiliates,

Counter-Defendant.

Case No. 3:21-cv-1625-LAB-AHG

**ORDER GRANTING MOTION TO  
DISMISS OR STRIKE [Dkt. 9]**

1 Plaintiff/Counterclaim Defendant Krista Freitag (the “Receiver”), in her  
2 capacity as court-appointed receiver for ANI Development, LLC, American  
3 National Investments, Inc., and their subsidiaries and affiliates (the  
4 “Receivership Entities”), initiated a clawback action against  
5 Defendant/Counterclaimant Horacio Valerias (“Valeiras”), trustee of The  
6 Valeiras Family Trust (the “Trust”). (Dkt. 1). The complaint seeks to recover  
7 profits that the Trust allegedly received as a result of its financial involvement  
8 with Kim Funding and ANI Development. (*Id.*). The Trust responded with a  
9 counterclaim for declaratory relief seeking “a determination of the Trust’s rights  
10 and/or a determination of the Receiver’s rights and powers under the  
11 circumstances presented.” (See Dkt. 8 ¶ 53).

12 The Receiver moved to dismiss the counterclaim pursuant to Fed. R. Civ.  
13 P. 12(b)(6) and 12(f) on the ground that the counterclaim mirrors the clawback  
14 claim, the Trust’s factual denials, and its subsequent affirmative defenses.  
15 (Dkt. 9). Because resolving the Receiver’s claims would require the Court to  
16 address the same issues as raised by the counterclaim, the motion is  
17 **GRANTED** and the counterclaim is **DISMISSED**.

## 18 **BACKGROUND**

19 Gina Champion-Cain, along with her company ANI Development, raised  
20 \$390 million in investor funds under the false pretense of funding liquor license  
21 applicants. Champion-Cain instead redirected the money to American National  
22 Investments, Inc. and other entities she controlled, using the funds to pay prior  
23 investors and support her own extravagant lifestyle. In other words, it was a  
24 “classic Ponzi scheme.” (See Compl., Dkt. 1 ¶ 11). After the SEC filed this  
25 action against Champion-Cain and her businesses, the Court appointed Krista  
26 Freitag as the permanent receiver for the Receivership Entities in order to find  
27 and recover the misappropriated funds. (Dkt. 11).

28 As part of that process, Freitag filed several clawback actions against

1 investors that, although innocent of intentional wrongdoing, allegedly profited  
2 from Champion-Cain’s scheme. (See, e.g., Compl., Dkt. 1 ¶ 18). Valeiras’s  
3 Trust is one such alleged beneficiary. In 2016, the Trust invested in Kim  
4 Funding, a company which Champion-Cain had deputized to raise funds and  
5 find investors for her scheme. (*Id.* ¶ 10). This investment yielded \$486,041 in  
6 interest to the Trust, and the Receiver seeks to claw back that amount. (See  
7 *id.* ¶¶ 19-29).

8 The Trust responds that it was a net loser, though, in part because of  
9 Valeiras’s other investments in Champion-Cain’s scheme. Valeiras, as trustee  
10 for the Trust, was a limited partner in HAV Global Macro Fund, L.P. (“HAV”),  
11 which invested a total of \$6 million in Kim Funding. The Trust allegedly held an  
12 18% interest in these funds, and HAV ultimately suffered a “net loss” on this  
13 investment. (See Dkt. 8 ¶ 30; Dkt. 9 at 7 (conceding that HAV suffered a net  
14 loss from the scheme)). HAV recovered some of these losses through a  
15 settlement with Chicago Title Company, the escrow agent for the fictitious  
16 liquor license program. That settlement, which the Receiver consented to,  
17 provided that HAV was a net loser and so wouldn’t be subject to the Receiver’s  
18 clawback claims. (Dkt. 8 ¶ 46). The Trust contends that HAV’s losses must  
19 offset any of the Trust’s gains. (*Id.* ¶ 54). But the Receiver argues that HAV’s  
20 losses can’t be used to offset the Trust’s gains because HAV, in securing the  
21 settlement, took the position that the Trust’s gains and HAV’s losses *couldn’t*  
22 offset one another. (Dkt. 11).

23 The Trust filed an Answer with eleven affirmative defenses and a  
24 Counterclaim asking the Court to issue a series of declarations. (See Dkt. 8).  
25 Each proposed declaration pertains to alleged flaws in the Receiver’s claims,  
26 and most are mirror images of the Answer’s denials or affirmative defenses:

- 27 1) The Counterclaim seeks declarations that the Trust is a “net loser,”  
28 and thus a “victim” of the fraud, (Dkt. 8 at 18–19 ¶¶ 54(1), (4)), while

1 the Answer denies that the Trust “received . . . profits” through its  
2 involvement with the Receivership Entities, (see Dkt. 1 ¶ 19; Dkt. 8  
3 at 3, ¶ 19);

4 2) The Counterclaim seeks a declaration that the Trust’s gains and  
5 losses through Kim Funding are outside the scope of the Receivership  
6 Entities, (Dkt. 8 at 18 ¶ 54(2)), and the Answer denies the accuracy  
7 of the Receiver’s profit calculation, (see Dkt. 1 ¶ 20; Dkt. 1 Ex. B;  
8 Dkt. 8 at 3, ¶ 20);

9 3) The Counterclaim seeks a declaration that “the gains of Valeiras  
10 should be offset by the losses sustained by Valeiras,” (Dkt. 8 at 18  
11 ¶ 54(3)), and the Answer asserts an affirmative defense of offset, (*Id.*  
12 at 4);

13 4) The Counterclaim asks the Court to declare that “the Receiver must  
14 . . . take the burdens of [her] elections regarding [the Levin  
15 Settlement],” (*Id.* at 19 ¶ 54(5)), while the Answer asserts, as an  
16 affirmative defense, that “the Receiver must take the burdens along  
17 with the benefits of her actions,” (*Id.* at 8); and

18 5) The Counterclaim seeks a declaration that the claims in the  
19 Receiver’s Complaint aren’t ripe, and therefore the Court lacks  
20 jurisdiction over them. (*Id.* ¶ 54(6)).

21 *Id.* 18-19.

22 The Receiver asks the Court to dismiss or strike this counterclaim on the  
23 ground that it would be duplicative of the Receiver’s claim and the Trust’s  
24 affirmative defenses to it. (Dkt. 9).

#### 25 **APPLICABLE STANDARD**

26 The Court has jurisdiction over claims for declaratory relief under the  
27 Declaratory Judgment Act, 28 U.S.C. § 2201. That Act gives district courts the  
28 “authority to declare the rights and legal relations of interested parties, but not

1 a duty to do so.” *Stickrath v. Globalstar, Inc.*, No. C07-1941-TEH, 2008 WL  
2 2050990, at \*3 (N.D. Cal. May 13, 2008) (citing *Leadsinger, Inc. v. BMG Music*  
3 *Pub.*, 512 F.3d 522, 533 (9th Cir. 2008)). In determining whether to decline  
4 jurisdiction, the Court “must balance concerns of judicial administration,  
5 comity, and fairness to the litigants.” *American States Ins. Co. v. Kearns*, 15  
6 F.3d 142, 144 (9th Cir. 1994). A number of reasons may support declining  
7 jurisdiction, including the need to “avoid duplicative litigation.” *Principal Life*  
8 *Ins. Co. v. Robinson*, 394 F.3d 665, 672 (9th Cir. 2005).

9 The Court may use its discretion to dismiss counterclaims that are  
10 duplicative or the “mirror image” of claims in the complaint or in the affirmative  
11 defenses. *Stickrath*, 2008 WL 2050990, at \*3. A plaintiff moving to dismiss or  
12 strike a counterclaim on this basis must show “that there is a complete identity  
13 of factual and legal issues between the counterclaims and the affirmative  
14 defenses, and that the counterclaims serve no useful purpose.” *Id.* A claim for  
15 declaratory relief can avoid such a dismissal where it has a broader scope than  
16 does the claim alleged in the original action. *Lakeland Tours, LLC v. Bauman*  
17 *Lakeland Tours*, No. 13CV2230- CAB-JMA, 2014 WL 12570971, at \*3 (S.D.  
18 Cal., Aug. 19, 2014).

## 19 ANALYSIS

20 The Trust seeks six declarations as to the propriety of a clawback claim  
21 against it and the calculation of damages on such a claim. But because each  
22 declaration the Trust seeks amounts only to a declaration that the Trust would  
23 prevail against the Receiver’s claim, the Trust’s counterclaim is duplicative of  
24 the Receiver’s clawback claim, so the Court dismisses that counterclaim.

25 The first and fourth declarations that the Trust seeks are that it is a “victim  
26 of the Ponzi fraud” and therefore a “net loser” because it suffered a net loss  
27 through its involvement with the Receivership Entities. (Dkt. 8 at 18–19  
28 ¶¶ 54(1), (4); See Dkt. 10 (stating “the Valeiras Trust lost money and is not a

1 net winner... [Valeiras Trust is] a victim of the fraud perpetrated by Gina  
2 Champion-Cain and Chicago Title.”). This is merely the mirror image of the  
3 Receiver’s claim, which relies on proving that the Trust profited from the  
4 scheme, and the Trust’s Answer, which denies the relevant allegations. (See  
5 Compl., Dkt. 1 ¶ 19-20). In calling itself a “victim” and a “net loser,” the Trust  
6 simply alleges that the Receiver can’t prove this element of her claim. The  
7 Court will necessarily resolve the question of whether the Trust is a net winner  
8 or loser in resolving the Receiver’s claim, so the claim for a declaration as to  
9 the Trust’s “victim” status is redundant.

10       The Trust’s second and third declarations both relate to the calculation  
11 of the Trust’s net proceeds from their investment with Kim Funding, too. Those  
12 declarations—that the Trust’s gains and losses are outside the scope of the  
13 Receivership or, if they are within scope, they are offset by HAV’s losses—  
14 similarly amount to a denial of the Receiver’s claim that the Trust profited from  
15 the scheme. And the third declaration seeks to establish the same offset theory  
16 that forms the Trust’s fifth affirmative defense, that “the gains of [the Trust]  
17 should be offset by the losses sustained by Valeiras.” (Dkt. 8 at 4). The  
18 calculation of net gains or losses is the same one necessary to establish  
19 whether Trust was a net winner as necessary to support the Receiver’s claim,  
20 so litigating these proposed declarations wouldn’t answer any questions that  
21 won’t be addressed in litigating Freitag’s claim.

22       The fifth declaration the Trust seeks is that “by virtue of the Receiver’s  
23 election of obtaining benefits under the Settlement Agreement by the Levin  
24 plaintiffs with Chicago Title, the Receiver must also take the burdens of its  
25 elections regarding that settlement.” (Dkt. 8 ¶ 54(5)). This is duplicative of the  
26 Trust’s eighth affirmative defense, that “the Receiver must take the burdens  
27 along with the benefits of her actions.” (*Id.* at 5).

28       The Trust’s sixth and final declaration asks the court to determine that

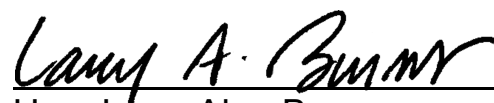
1 “the damages claimed or sought by the Receiver ... are currently the subject  
2 of pending claims by Peterson and his Trust and/or Kim Funding against  
3 Chicago Title, and thus the issues are therefore not ripe for adjudication until  
4 Peterson resolves his claims against Chicago Title and the Receiver resolves  
5 her claims against Peterson and his Trust and/or Kim Funding.”  
6 (Dkt. 8 ¶ 54(6)). Whether a claim isn’t ripe, and whether the Court lacks  
7 jurisdiction over the claim as a result, is an issue implicated by the claim itself.  
8 See *DBSI/TRI IV Ltd. P’ship v. United States*, 465 F.3d 1031, 1038 (9th Cir.  
9 2006) (ripeness is jurisdictional issue). While the Trust’s answer doesn’t raise  
10 ripeness as an affirmative defense, the issue is necessarily implicated by the  
11 claim it relates to. If Defendants wish to raise ripeness as an affirmative  
12 defense, they may do so at any time by amending their answer. See *id.*  
13 (ripeness “may be raised at any time, even for the first time on appeal”).

#### 14 **CONCLUSION**

15 The Trust doesn’t identify any issues in their counterclaim that wouldn’t  
16 be resolved through litigation of the Receiver’s clawback claim. (Dkt. 11 at 3  
17 n.2). And because the Court finds (and Freitag concedes) that the Complaint  
18 and Counterclaim raise identical issues, the Trust’s concern that dismissing its  
19 Counterclaim will limit discovery is unfounded: any discovery that would be  
20 available in connection with the Counterclaim will be available in connection  
21 with the Receiver’s claim, too. The Motion is **GRANTED**. The Trust’s  
22 counterclaim is **DISMISSED WITHOUT PREJUDICE**.

23 **IT IS SO ORDERED.**

24  
25 Dated: June 22, 2022

  
\_\_\_\_\_  
Hon. Larry Alan Burns  
United States District Judge