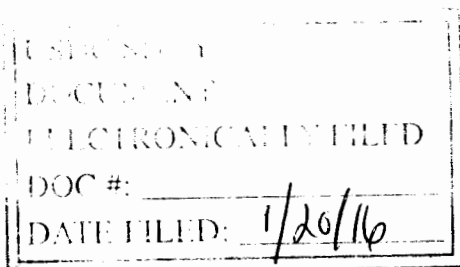


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January 20, 2016

By Facsimile

Honorable Victor Marrero,
 United States District Judge,
 Southern District of New York,
 Daniel Patrick Moynihan U.S. Courthouse,
 500 Pearl Street,
 New York, New York 10007.

Re: *Anwar v. Fairfield Greenwich Ltd.* – No. 09-cv-118 (VM)(FM) –
Barbachano v. Standard Chartered Bank International (Americas)
Ltd. et al., No. 11-CV-3553

Dear Judge Marrero:

We write on behalf of Standard Chartered Bank International (Americas) Ltd. and Standard Chartered PLC (together, “SCB”) concerning plaintiff Teresa Barbachano’s January 12, 2016, proposed Revised Third Amended Complaint. (Dkt. #1538.) On January 7, 2016, this Court denied Ms. Barbachano leave to file a proposed Third Amended Complaint because it contained claims the Court had previously dismissed. The Court permitted Ms. Barbachano “to submit a further amended complaint asserting the uniform negligence count, without reference to any previously dismissed claims.” (Order at 4, Dkt. #1534.) The proposed Revised Third Amended Complaint fails to conform with the Court’s direction.

Instead, Ms. Barbachano seeks to re-plead in part her previously dismissed portfolio suitability claim—namely, the portion of that claim based on allegations that SCB made investments on her behalf without her authorization. Specifically, in the proposed Revised Third Amended Complaint, Ms. Barbachano now asserts breach of fiduciary duty and gross negligence claims (Counts I and II) based on the allegation that SCB “often made investment decisions without obtaining Barbachano’s written authorization, including the purchase of Fairfield securities.” (Proposed Revised 3d Am. Compl. ¶¶ 40, 51.) This Court previously dismissed, and denied Ms. Barbachano leave to re-plead, portfolio suitability claims based on the same allegation. *Anwar v. Fairfield Greenwich Ltd.*, 891 F. Supp. 2d 548, 552 (S.D.N.Y. 2012); Am. Compl. ¶¶ 70, 94, Dkt. #990 (alleging SCB breached a fiduciary duty and was grossly negligent “by causing

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[Barbachano] to make investments unsuited to her investment objectives and risk tolerance, including . . . by often making investment decisions without obtaining Barbachano's written authorization, including the purchase of Fairfield securities"); Dkt. #1309 (Order denying leave to file Second Amended Complaint containing same allegation). The Court should require Ms. Barbachano to revise Paragraphs 38, 40, 49, 51 of her proposed Revised Third Amended Complaint to remove any reference to the previously dismissed "unauthorized investment" claims.

Alternatively, should the Court allow Ms. Barbachano to proceed with her proposed Revised Third Amended Complaint, the Court should defer remand of this action until SCB has been provided an opportunity to move against these new "unauthorized investment" claims, which fail as a matter of law because they rest on allegations that directly contradict Ms. Barbachano's other breach of fiduciary duty, negligence and gross negligence claims. Those claims all rest on the allegation that Ms. Barbachano "justifiably relied upon Defendants' investment advice, expertise, and skill" in following the Bank's recommendation that she invest in Sentry. (Proposed Revised 3d Am. Compl. ¶¶ 42, 53; *see also* ¶¶ 59(a) & (b).) Ms. Barbachano could not have "justifiably relied upon" SCB's recommendation if she did not authorize SCB to make those investments. Although a party may plead "inconsistent theories or statements of a claim, there is no authority for the proposition that . . . a party may assert as fact two assertions that directly contradict each other." *Nat'l Western Life Ins. Co. v. Merrill Lynch, Pierce, Fenner & Smith*, 175 F. Supp. 2d 489, 492 (S.D.N.Y. 2000) (Marrero, J.).

Indeed, this Court previously dismissed claims for breach of fiduciary duty and gross negligence brought by two other Standard Chartered Plaintiffs where plaintiffs had alleged both that SCB (1) invested in Sentry without plaintiffs' authorization and (2) failed to conduct adequate due diligence into and post-investment monitoring of Sentry. The Court reasoned then that it "defies logic to assume that [SCB] breached its fiduciary duty or was grossly negligent in recommending Fairfield Sentry without conducting due diligence" where plaintiffs alleged that the "investment was made without their prior authorization." *Anwar v. Fairfield Greenwich Ltd.*, 826 F. Supp. 2d 578, 591-92 (S.D.N.Y. 2011). The Court later denied those same plaintiffs leave to re-plead because they "continue[d] to allege that [the Bank] made an unauthorized investment on their behalf in Sentry, which . . . does not support an allegation for breach of fiduciary duty." *Anwar v. Fairfield Greenwich Ltd.*, 872 F. Supp. 2d 342, 344 (S.D.N.Y. 2012).¹

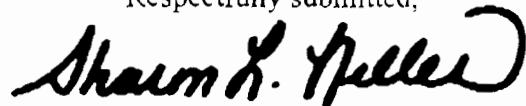
¹ Ms. Barbachano's "unauthorized investment" claims also fail for the independent reasons that (1) they are time-barred under Florida's four-year statute of limitations, as Ms. Barbachano brought this lawsuit in December 2010, more than four years after the

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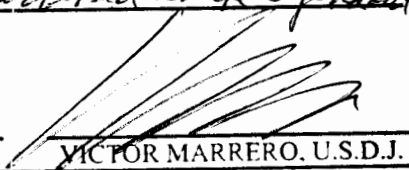
Accordingly, for the foregoing reasons, SCB respectfully requests that the Court require Ms. Barbachano to revise her breach of fiduciary duty and gross negligence claims (Counts I and II) to remove any reference to these previously dismissed and legally insufficient "unauthorized" investment suitability claims. Should the Court permit Ms. Barbachano to file her proposed Revised Third Amended Complaint, SCB requests that the Court defer remand of this action until SCB has the opportunity to move to dismiss these new claims under Rule 12 of the Federal Rules of Civil Procedure.

Respectfully submitted,



Sharon L. Nelles

cc: H. Eugene Lindsey, counsel for Ms. Barbachano

The Clerk of Court is directed to enter into the public record of this action the letter above submitted to the Court by <i>Standard Chartered Bank Defendants</i>	
SO ORDERED.	
<i>1-20-16</i> DATE	 VICTOR MARRERO, U.S.D.J.

alleged unauthorized investment occurred in June 2006, *see* Fla. Stat § 95.11; and (2) Ms. Barbachano acquiesced in the transaction by failing to challenge her June 2006 Sentry investment for more than four years after that investment was repeatedly disclosed to her in monthly account statements and other disclosures, *see Hayden, Stone Inc. v. Brown*, 218 So. 2d 230, 236-37 (Fla. Dist. Ct. App. 1969).