UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

BANCRÉDITO HOLDING CORPORATION, on its own behalf and derivatively for the benefit of and on behalf of Nominal Defendant BANCRÉDITO INTERNATIONAL BANK & TRUST CORPORATION,

Plaintiff,

vs.

DRIVEN ADMINISTRATIVE SERVICES LLC,

Defendant,

and

BANCRÉDITO INTERNATIONAL BANK & TRUST CORPORATION,

Nominal Defendant.

Case No. 3:24-cv-01039-CVR

OPPOSITION TO DEFENDANT'S MOTION TO STAY DISCOVERY

Plaintiff Bancrédito Holding Corporation ("Plaintiff" or "BHC") has actively tried to move this case forward, while Defendant Driven Administrative Services LLC ("Defendant" or "Driven") has purposely and unnecessarily thrown up roadblocks. Driven has unreasonably delayed the proceedings, allowing the unnecessary receivership of Bancrédito International Bank & Trust Corporation (the "Bank") to continue so it may reap the financial benefits by accruing more fees. A discovery stay at this early juncture would be wholly inappropriate because Defendant has no good cause to stop the litigation and associated discovery process. If the Court takes the disfavored approach of deciding to stay discovery, it would needlessly harm BHC without benefiting Defendant or supporting judicial economy. Defendant's Motion to Stay Discovery

("Motion," ECF No. 61) is simply another baseless delay tactic, and Plaintiff respectfully requests the Court deny it.

STATEMENT OF FACTS

Plaintiff brought this lawsuit to protect and preserve the Bank's value and reputation and its own equity position, which have been significantly damaged and jeopardized by Driven's breach of its fiduciary duties and professional negligence. As detailed in the Amended Complaint, despite its mandate, Driven has consistently acted against the Bank's best interests. Am. Compl., ECF No. 36 ¶¶ 54–150.

Before filing this lawsuit, Plaintiff repeatedly asked Driven to honor its right of access to the Bank's books and records.[1] For instance, on May 1, 2023, Plaintiff requested documents, including audited financial statements and monthly budgets. *Id.* ¶¶ 77–79. Despite its legal and fiduciary obligations, Driven refused Plaintiff's request and claimed that Plaintiff had no right to the information. *Id.* ¶ 80. Driven has rejected all similar attempts by Plaintiff to obtain the Bank's books and records and, to date, has failed to provide the requested documentation. *Id.* ¶ 84.

Given the lack of access to information that would likely prove mismanagement by Driven, Plaintiff filed this lawsuit—along with a Motion for Temporary Restraining Order and Preliminary Injunction—so its dispute would be adjudicated expediently and without delay. ECF Nos. 1–3.[2] But every day that this unnecessary receivership continues, Driven damages Plaintiff by purposely draining the Bank's funds and plundering the Bank's remaining assets.

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[1] As the sole shareholder, Plaintiff has a right to the Bank's books and records under both Puerto Rico law and the terms of the Receivership Order. Am. Compl., ECF No. 36 ¶¶ 72–89.

[2] The Court denied Plaintiff's request for a Temporary Restraining Order but scheduled a hearing for the Preliminary Injunction. ECF No. 7. After reaching an agreement with Defendant related to the Bank's art collection, Plaintiff withdrew its Preliminary Injunction motion, and the Court vacated the hearing. ECF Nos. 23–24.

Within the context of the litigation, Driven has delayed most of its responses, prejudicing Plaintiff. Driven made its first attempt to slow down this litigation one week after Plaintiff filed its Opposition to Driven's Motion to Dismiss ("Motion to Dismiss," ECF No. 38), by requesting and receiving a three-week extension to file a Reply in Support of its Motion to Dismiss ("Reply," ECF Nos. 41–43). Unable to meet its requested deadline, Defendant asked for a second extension and was granted an additional 10 days to file. ECF Nos. 44, 45. Thirty-two days after its original deadline, Driven finally filed its Reply. ECF Nos. 46, 47. The next day, Plaintiff filed a Motion to Disqualify Defendant's counsel, McConnell Valdés ("McV"). ECF No. 49. [3] Thirteen days later, and one day before the deadline, Defendant requested and was granted 30 more days to file an opposition. ECF Nos. 55, 56. Driven currently has until July 11, 2024—43 days after the Motion to Disqualify was filed—to oppose.[4]

Given the protracted delay, and with the intention of resolving the matter without wasting judicial resources, Plaintiff attempted to engage in good-faith negotiations with Defendant.[5] On

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[3] Driven's passing comment about Plaintiff's "incompatible conduct" in filing a Motion to Disqualify (Mot. at 2) but also seeking a Rule 26(f) conference is inappropriate and without a legal basis. Just because Plaintiff questions Driven's counsel, it does not mean Plaintiff must halt the litigation. *See e.g.*, *Kleiman v. Wright*, No. 18-cv-80176-BLOOM/Reinhart, 2023 WL 2663098, at *2 (S.D. Fla. Mar. 28, 2020) ("The mere filing of a motion to disqualify counsel does not automatically divest opposing counsel of the authority to represent his client. Were that so, defendants in any case could indefinitely delay proceedings by repeatedly filing such motions."); *see also Allstate Ins. Co. v. Belsky*, No. 2:15–cv–02265–MMD–CWH, 2017 WL 9434415, at *1 (D. Nev. June 22, 2017) (stating that there is no "*per se* rule that a pending motion for disqualification warrants a general stay of all proceedings"). Driven requested (and was granted) an extension until July 11, 2024 to respond to the Motion to Disqualify. Waiting until after McV is disqualified from this action would cause BHC to sustain further damages as a direct result of Driven's continued violations of its fiduciary duties and professional negligence. *See generally* Am. Complaint.

[4] Not only has Driven unnecessarily slowed down this lawsuit, but its actions show that its requests are disingenuous. Driven's Motion is incompatible with its plan to respond to the Motion to Disqualify, which its counsel could have also moved to stay. Driven is willing to use judicial resources and litigation tactics to its benefit, but not to let Plaintiff pursue its case.

[5] Before this settlement conference, Driven demanded that Plaintiff's counsel sign a confidentiality agreement stating that all communications "exchanged during or in advance of [the settlement negotiation meeting], and any follow-up settlement communications . . . shall be confidential." Ex. A, Settlement Conference Confidentiality Agreement. Without any advance correspondence, Driven apparently decided that it no longer needed to keep this agreement, attaching *some* of the back-and-forth related to settlement negotiations to its Motion, without an accompanying sealing request, redactions, or any indication to keep the information confidential. This activity, which is in keeping with Driven's general proclivity to flout the rules, tellingly omitted key correspondence back to Driven which clarified the record. *See* Ex. B, June 14, 2024 email from A. Lowell to A. Garcia. Plaintiff did not respond to Driven's request for

May 6, 2024, Plaintiff's counsel even met in person with Defendant's counsel in Washington, D.C. After the meeting, Plaintiff's counsel sent Defendant's counsel a term sheet outlining the concepts for a potential settlement agreement *and offering to stay the litigation*. *See* Ex. C, May 10, 2024 email from A. Lowell to A. Garcia. Defendant's counsel never responded to the term sheet and did not agree to stay the litigation.

About five weeks later, Plaintiff emailed Defendant to schedule the Fed. R. Civ. P. 26(f) ("Rule 26(f)") conference. ECF No. 61-1. Defendant responded to confirm that it was "not interested in pursuing a negotiated resolution," but declined Plaintiff's scheduling request. ECF No. 61-2. Notably, in this correspondence, Driven did not raise any concerns about the scope of discovery or suggest any limitations, nor did it request a discussion with Plaintiff about why staying discovery was necessary. It simply refused to engage. Defendant claims in its Motion "the Receiver requested that Plaintiff agree to a stay of discovery and the obligations under Fed. R. Civ. P. 26(f) pending adjudication of the Motion to Dismiss, to no avail." ECF No. 61 at 2. But this contention misstates the facts: Plaintiff attempted to engage in good-faith settlement negotiations with Defendant and even offered to pause this litigation but Defendant, as it has time and time again, intentionally delayed those negotiations, belatedly changing its tune about settlement in order to continue its receivership (mismanagement) of the Bank. On June 17, 2024, Plaintiff responded to Defendant's email again, reminding Defendant that it "previously proposed a stay to discuss settlement, to which you did not respond" and proposed dates for the Rule 26(f) conference, given that Driven stated that it had no interest in resolution. ECF No. 61-3. Defendant failed to respond.[6] Two days later, Defendant filed the Motion.

a stay of discovery in its June 17, 2024 email (ECF No. 61-3) because Plaintiff's June 14, 2024 email (Ex. B), which, again, Defendant conveniently omitted from its Motion, already addressed that topic.

[6] Despite Driven's certification in the Motion that it made a reasonable and good-faith effort to reach an agreement with Plaintiff about discovery, Driven's conduct clearly shows it did not. Mot. at 2 n.1.

STANDARD OF REVIEW

Motions to stay discovery are disfavored.[7] "[S]tays cannot be cavalierly dispensed: there must be good cause for their issuance; they must be reasonable in duration; and the court must ensure that competing equities are weighed and balanced." *Torres-Román v. Martínez-Ocasio*, No. 21-cv-01621(GMM), 2023 U.S. Dist. LEXIS 214735, at *12–13 (D.P.R. Dec. 1, 2023) (citing *Marquis v. F.D.I.C.*, 965 F.2d 1148, 1155 (1st Cir. 1992)). "A stay of proceedings should be granted only where the need for the stay clearly outweighs the harm to the plaintiffs." *Driver v. Helms*, 402 F. Supp. 683, 686 (D.R.I. 1975). "A stay is an intrusion into the ordinary process of administration and judicial review." *Torres v. Furiel Auto Corp.*, 2023 U.S. Dist. LEXIS 71999, at *1 (D.P.R. Apr. 24, 2023) (quoting *Nken v. Holder*, 556 U.S. 418, 427 (2009)). Stays are "not a matter of right" (*Nken*, 556 U.S. at 427), but an exercise of discretion. *Id.*

"[I]f there is a danger that the stay will damage the other party, ***the party that desires the stay*** 'must demonstrate ***a clear case of hardship***' in being required to move forward." *Bd. of Trs. v. ILA Loc. 1740, AFL-CIO*, No. 18-1598 (SCC), 2022 U.S. Dist. LEXIS 138854, at *4 (D.P.R. Aug. 3, 2022) (citing *Austin v. Unarco Indus.*, 705 F.2d 1, 5 (1st Cir. 1983)) (emphases added); *see also Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936) ("[T]he suppliant for a stay must make out a clear case of hardship or inequity in being required to go forward[.]"); *see also Torres-Román*, 2023 U.S. Dist. LEXIS 214735, at *12–13 (the moving party bears the burden to show good cause and reasonableness for a stay of discovery).

"Generally, in evaluating whether to issue a stay, a court will consider three factors: (1) potential prejudice to the non-moving party; (2) hardship and inequity to the moving party

[7] Driven's Motion does not even acknowledge the standard for granting a motion to stay. *See generally* Mot. at 3–4. Driven notes that federal courts have the power to stay proceedings, but then cites seven nonbinding, out-of-jurisdiction cases in support of its argument, without articulating any clear standard for the Court to consider whether a stay should be granted.

without a stay; and (3) judicial economy." *Furiel Auto*, 2023 U.S. Dist. LEXIS 71999, at *1; *see also Microfinancial, Inc. v. Premier Holidays Int'l, Inc.*, 385 F.3d 72, 78 (1st Cir. 2004) (denying motion to stay and noting that typical factors considered when ruling on a motion to stay include "the interests of the civil plaintiff . . . including the avoidance of any prejudice to the plaintiff should a delay transpire").

ARGUMENT

Driven has failed to meet its burden of demonstrating that a stay of discovery is warranted for at least three reasons, including (1) Plaintiff will suffer significant prejudice if a stay is granted, (2) Driven fails to allege that it will experience any hardship if discovery proceeds, and (3) judicial economy favors denying the Motion.

I. A stay will significantly prejudice Plaintiff.

Driven has not met its burden of demonstrating that a stay of discovery will not prejudice Plaintiff. *ADA Sols., Inc. v. Engineered Plastics, Inc.*, 826 F. Supp. 2d 348, 350 (D. Mass. 2011). In its Motion, Driven chose to ignore its burden to affirmatively argue that Plaintiff would not be prejudiced. *See* ECF No. 61 at 4 (offering only a conclusive statement that "Plaintiff will suffer no harm" from a delay of discovery). Nonetheless, having noted that the burden falls on Driven and not on Plaintiff, there is no doubt that Plaintiff will be prejudiced by a stay. The ongoing efforts of Driven to delay this litigation threaten Plaintiff's ability to gather evidence and prove its claim and continuing without resolution of the receivership harms Plaintiff.

A. A stay will only cause the issues at the core of this suit to fester and worsen.

Given the stay will continue the damage already caused by Driven, the prejudice factor weighs against granting it. *See, e.g.*, *Lopez-Erquicia v. Weyne-Roig*, No. 13-1915 (GAG); 2015 U.S. Dist. LEXIS 151198, at *11–12 (D.P.R. Nov. 6, 2015) (denying a stay because it would

prolong harmful conditions); *Gibbs v. Plain Green LLC*, 331 F. Supp. 3d 518, 528 (D. Va. 2018) ("A plaintiff's plausible allegations of ongoing harm can weigh against granting a stay because of the potential for prejudice"). Courts have recognized that a plaintiff who demonstrates efforts to diligently proceed with its claim is substantially prejudiced when those efforts are needlessly delayed. *See Costantino v. City of Atl. City*, No. 13–6667 (RBK/JS), 2015 WL 668161, at *3 (D.N.J. Feb. 17, 2015). Simply put, "[h]aving filed their complaint[,] plaintiffs have a right to move forward." *Udeen v. Subaru of Am., Inc.*, 378 F. Supp. 3d 330, 333 (D.N.J. 2019).

Plaintiff's efforts to diligently resolve its claims against Driven are well established. Prior to this litigation, Plaintiff was erroneously and unlawfully precluded from accessing the Bank's books and records on multiple occasions. *See* ECF No. 36-2, May 1, 2023 Ltr. from L. Zapata to Driven & McV; ECF No. 36-3, June 2, 2023 Ltr. from L. Zapata to Driven & McV. Plaintiff sought access to the Bank's books and records in hopes of gaining insight into Driven's performance as the Bank's receiver. Despite its legal and fiduciary obligations to Plaintiff—the sole shareholder of the Bank—Driven declined Plaintiff's multiple attempts to access the Bank's books and records, and hence the need for the present litigation. Am. Compl. ¶¶ 72–89.

Even now, Plaintiff still cannot access the Bank's books and records. The litigation started in October 2023, and Plaintiff brought its Amended Complaint in March 2024 because Driven's conduct as receiver was causing Plaintiff serious harm. *See generally* ECF No. 36. For these nearly nine months, Plaintiff has received no clear information regarding the Bank's financial situation.[8] Driven is instead continuing to ignore the Bank's lawful rights to information about the status of the Bank. The only information Plaintiff has received shows that Driven's assets were—and still are—depreciating due to Driven's mismanagement. *See id.* ¶¶ 140–144. Already, Driven

[8] The weekly flow-of-funds reports provided by Driven—which amount to nothing more than a spartan spreadsheet of numbers devoid of details—are not a replacement for books and records.

has caused Plaintiff to suffer an unnecessary $14.7 million loss by agreeing to FinCEN's Consent Order fine. *See id.* ¶¶ 105–111. Additionally, in May 2023, despite the fact that it had sufficient funds to pay a legal settlement, Driven unnecessarily conducted a fire sale of two pieces from the Bank's art collection ("May 2023 Artwork Sales")—in which Plaintiff has a clear property interest in—without informing Plaintiff and then concealed the funds from the sales. *See id.* ¶¶ 128–144. Harm to Plaintiff has not abated and is likely worsening. If the Motion is granted, Driven will only continue to mismanage the Bank's liquidation and continue breaching its legal and fiduciary obligations, forcing Plaintiff to endure additional financial hardship in addition to the needless litigation costs.

Moreover, Plaintiff is entitled to a full and fair opportunity to develop the facts. *See In re Lample*, Case No. 98-02737-ESL, Adv. Proc. No. 07-00092-ESL, at *5 (Bankr. D.P.R. May 23, 2008) (citing *Feldman v. Flood*, 176 F.R.D. 651, 652 (M.D. Fla. 1997)). Plaintiff's ability to prove its claims, and thus alleviate the ongoing harm caused by Driven, requires discovery. Stopping this process before it has even begun will only needlessly stymie Plaintiff's case. Meanwhile, Driven will simply stay its unlawful course—failing to carry out its receivership duties in a reasonable manner and continuing to cause harm. The lack of transparency that pervades this case, and Plaintiff's inability to stop the bleeding without legal intervention, clearly demonstrate how Plaintiff will be prejudiced if discovery is further delayed.

B. Staying discovery will also increase the risk that evidence will be lost.

Courts in this Circuit have recognized that when a stay puts evidence in jeopardy, plaintiffs are prejudiced. *Katz v. Liberty Power Corp., LLC*, No. 18-cv-10506-ADB, 2020 WL 3440886, at *4 (D. Mass. June 23, 2020). Plaintiff's claim is tethered to events that took place up to almost five years ago. *See* ECF No. 36 ¶¶ 13–15. The FinCEN investigation began in mid-November

2019. *See id.* ¶ 90. Driven's negotiations with FinCEN began, Plaintiff believes, in early December 2022. *See id.* ¶ 94. Memories fade. And in this case, fading memories only serve to prejudice Plaintiff's claim. Absent discovery, Plaintiff has no way of knowing what documents are even in Driven's possession and control, let alone fret over their destruction and preservation. But, as evidenced by the multiple books and records requests (*see supra* Section I.A), Plaintiff's gap in knowledge is not for lack of trying.

The lack of transparency in this case exacerbates Plaintiff's concerns about the destruction or misplacement of evidence in this case and further demonstrates the fact of harm to Plaintiff if discovery is stayed. *See, e.g.*, *S.E.C. v. K2 Unlimited, Inc.*, 15 F. Supp. 3d 158, 160 (D. Mass. 2014) (recognizing the risk of losing evidence through the death of witnesses or fading memories as grounds for denying a stay); *see also Res. Room Si, Inc. v. Borrero*, 2022 No. 5:22-CV-184-BO, 2022 WL 4125146, at *1 (E.D.N.C. Sept. 9, 2022) (recognizing that staying discovery is disfavored when the "passage of time may impede [plaintiff's] ability to acquire evidence"). Delay also poses a threat to witness recall. For instance, witnesses with knowledge pertinent to the FinCEN investigation, which involved extensive, complex information about the Bank's anti-money laundering compliance efforts over the course of multiple years, may struggle to recall the intricacies of the negotiations if Driven's latest attempt at delaying Plaintiff's suit is granted. The same is true for witnesses with knowledge of the May 2023 Artwork Sales. Altogether, if stayed, Plaintiff faces a serious risk that key evidence and testimony will be lost.

C. Driven has failed to satisfy its burden.

Driven baldly asserts that Plaintiff will not be prejudiced by a stay of discovery. *See* ECF No. 61 at 4. This conclusory assertion that no harm will befall Plaintiff if discovery is stayed hardly constitutes an argument, let alone satisfies Driven's burden of demonstrating that a stay is

warranted. *See Rivera-Gomez v. de Castro*, 843 F.2d 631, 635 (1st Cir. 1988) ("Judges are not expected to be mindreaders . . .a litigant has an obligation 'to spell out its arguments squarely and distinctly.'") (quoting *Paterson-Leitch Co. v. Mass. Mun. Wholesale Elec. Co.*, 840 F.2d 985, 990 (1st Cir. 1988)); *United States v. Tobar-Otero*, No. 21-1223 (RAM), 2022 WL 3101767, at *6 (D.P.R. Aug. 4, 2022) ("Conclusory allegations unaccompanied by any legal or factual support are deemed waived."); *Beaney v. Univ. of Me. Sys.*, No. 2:16-cv-00544-JDL, 2017 WL 782882, at *4 (D. Me. Feb. 28, 2017) ("Allegations that simply parrot the relevant legal standard are to be disregarded as conclusory legal allegations.") (citing *In re Ariad Pharms., Inc. Secs Litig.*, 842 F.3d 744, 756 (1st Cir. 2016)). Here, Driven provides absolutely no factual support for its contention that Plaintiff will suffer no prejudice, and instead, simply suggests that if a stay is granted towards the beginning stages of litigation, then the non-moving party is not prejudiced by the delay. *See* ECF No. 61 at 4. Since it has no evidentiary foundation, Driven's argument should be ignored in its entirety.

Even if the Court were to consider Driven's "argument," Driven's reasoning—that because of the early stage of litigation, Plaintiff will suffer no harm—must fail. Plaintiff has *already suffered* harm, and will only continue to suffer harm, if this litigation is further delayed. Thus, Driven's assertion that Plaintiff will suffer no harm because the case is in its infancy is simply not true. "[A]lthough [a] case is in its early stages, that alone does not compel a stay." *Chr. Hansen HMO GmbH v. Glycosyn LLC*, 662 F. Supp. 3d 50, 55 (D. Mass. 2023); *see also Sunbeam Prods., Inc. v. Hamilton Beach Brands, Inc.*, No. 3:09cv791, 2010 WL 1946262, at *3 (E.D. Va. May 10, 2010) ("[T]he lesser cost of granting a stay early in the litigation process does not equate to a factor favoring the stay.").

In *ADA Solutions*, another court in this circuit denied a stay of discovery even though the case was "in its infancy." 826 F. Supp. 2d at 352. Although there, some discovery had taken place, the court confirmed that the case was "in its early stages," which alone "[did] not compel a stay." *Id.* Likewise, in *Brite-Strike Technologies, Inc. v. E. Mishan & Sons, Inc.*, the court stated: "although defendant promptly filed its motion [to stay] and this case is in its early stages," the procedural context did not compel a stay. 235 F. Supp. 3d 323, 326 (D. Mass. 2017). In both cases, the request for a stay was denied. Similarly, here, the proceeding is in early stages. Any insinuations by Driven that Plaintiff is not harmed solely by virtue of the early stage of this proceeding are clearly misplaced. Driven has failed to demonstrate that Plaintiff will not be prejudiced by a stay of discovery, and therefore, Driven's request for a stay should be denied.

II. Driven fails to allege that it will experience any hardship without a stay.

If even a "fair possibility" exists that a stay "will work damage to someone else," the party seeking the stay must make out a clear case of hardship or inequity in proceeding. *Murray v. Wal-Mart Stores, Inc.*, No. 2:15-cv-00484-DBH, 2018 WL 4077997, at *1 (D.Me. Aug. 24, 2018) (quoting *Dellinger v. Mitchell*, 442 F.2d 782, 786 (D.C. Cir. 1971)); *see also ADA Solutions*, 826 F. Supp. 2d at 350. Having established that Plaintiff will suffer damage, Driven bears the burden of demonstrating a "clear case of hardship" in proceeding with discovery. *Bd. of Trs.*, 2022 U.S Dist. LEXIS 138854, at *4. Despite this requirement, Driven fails to provide facts or arguments about why it would suffer any hardship if it were required to participate in the Rule 26(f) conference[9] and discovery proceeded. *Bank of R.I. v. Progressive Cas. Ins. Co.*, 293 F.R.D. 105, 106 (D.R.I. 2013) (finding a stay of discovery was improper when the movant for the stay "failed

[9] If Driven had participated in the Rule 26(f) conference, its alleged concerns and any related issues about the terms and scope of discovery could have been addressed then. But, as detailed above, Driven refused to engage with Plaintiff and instead sought Court intervention. Such an approach certainly flies in the face of any argument for judicial economy.

to show any prejudice that would result in not staying discovery" of the claims at issue); *Frangos v. Bank of N.Y. Mellon for Certificateholders of CWABs, Inc.*, No. 16–cv–436–LM, 2017 WL 4466583, at *2 (D.N.H. Oct. 5, 2017) (holding that a stay of discovery was inappropriate when the moving party failed to argue that he would suffer either hardship or inequity in the absence of a stay, "his sole argument was judicial economy," and there was potential for a stay to cause prejudice to the non-moving parties because "each . . . assert[ed] an interest in the expeditious resolution of the action"); *see also Standard Fire Ins. Co. v. Andrade*, Nos. 09–10500–MLW, 09–10745–MLW, 2010 WL 1418011, at *2 (D. Mass. Apr. 6, 2010) (finding where a movant for a stay's only justification for staying discovery was a "belie[f] that the parties' judicial resources and economy would be served" by a stay, this justification alone was insufficient to support staying discovery). Further, Driven filed its Motion before Plaintiff has even served discovery, and accordingly has no knowledge of the scope of discovery Plaintiff plans to seek or any reason to suggest that it would somehow be burdensome.[10] There is simply no way Driven can meet its burden of demonstrating that it will experience hardship or inequity without a stay.

Even if Driven asserted that it would suffer harm, which, again, it did not,[11] the likelihood of Driven having to proceed with discovery at a later date is very high because there is limited support for its Motion to Dismiss. Where a party moves to stay discovery pending resolution of a

[10] If Driven claims that it would somehow be burdened by producing the Bank's books and records that, as detailed above, Plaintiff has requested multiple times, such a claim is meritless because Driven is already required, upon Plaintiff's request, to provide BHC the Bank's books and records under both Puerto Rico law and the terms of the Receivership Order. Am. Compl. ¶¶ 72–89. Those books and records should be ready for inspection, without any additional work.

[11] To the extent that Driven adds allegations in its reply regarding any supposed hardship it would suffer if discovery were allowed to proceed, such allegations would be improper and must be disregarded. Local Rule 7(c) clearly states that a reply must be "***strictly confined*** to responding to new matters raised in the . . . opposing memorandum" (emphasis added). A reply exceeds the scope of this rule if it presents new arguments and issues that cannot be reasonably construed as responses to matters raised in the opposing memorandum. *García Fernández v. Glob. Cap. Mkts., Inc.*, No. CIVIL 08-2309 (ADC), 2009 U.S. Dist. LEXIS 147221, at *8 (D.P.R. July 27, 2009). When an argument exceeds the scope of Local Rule 7(c), any new arguments and issues interjected into the reply must be disregarded, as they are considered to have been waived. *See BioChemics, Inc. v. AXIS Reinsurance Co.*, 924 F.3d 633, 644 n.8 (1st Cir. 2019).

dispositive motion, courts must "balance the harm produced by a delay in discovery against the possibility that the [dispositive] motion will be granted and entirely eliminate the need for such discovery." *In re Lample*, Case No. 98-02737-ESL at *5 (quoting *McCabe v. Foley*, 233 F.R.D. 683, 685 (M.D. Fla. 2006)); *Bocciolone v. Solowsky*, No. 08-20200-CIV, 2008 WL 2906719, at *1 (S.D. Fla. July 24, 2008) ("[C]ourts have consistently rejected any per se requirement to stay discovery pending resolution of a dispositive motion."). "The Moving Defendants must do more than merely argue 'in conclusory fashion' that their [allegedly] dispositive motion will succeed." *See id.* (citations omitted). It is, therefore, helpful to take a "preliminary peek" at the merits of the allegedly dispositive motion. *See id.*

Here, a preliminary review of the allegedly dispositive claims in Driven's Motion to Dismiss reveals that there is not an immediate and clear possibility it will be granted. Instead, Plaintiff has strong arguments that Driven's Motion to Dismiss should be denied in its entirety. ECF No. 41. First, Driven's lack of subject matter jurisdiction claim should be denied because this Court has subject matter jurisdiction through diversity of citizenship and the Bank was properly situated as a nominal defendant in the Complaint. *See* Am. Compl., ECF No. ¶ 5; Opp'n, ECF No. 41 at 8–11; *see also* Receivership Order, ECF No. 36-1 at 6–7 ("[T]he Receiver will be in a position similar to the one that the management and directors of [the Bank] held prior to the receivership."). Since the Bank is controlled by Driven, not the shareholder, it was properly situated as a nominal defendant. Driven's claim on this basis should be dismissed.

Second, Driven's claim that this dispute should proceed before Puerto Rico's Office of the Commissioner of Financial Institutions ("OCIF") should also fail. Def.'s Mot. to Dismiss Am. Compl., ECF No. 38 at 9–16; *see also* ECF No. 39-1, March 2023 Settlement Agreement between Plaintiff, the Bank, and OCIF ("Settlement Agreement"), § 11(c). The Settlement Agreement's

forum selection clause only allows OCIF to retain jurisdiction as allowed by law. *See* Settlement Agreement, § 11(c). OCIF may administer many statutes related to financial institutions in Puerto Rico, but not the statute at issue in this suit—the Puerto Rico General Corporations Law of 2009—which governs shareholder rights. *See id.*; *see also* P.R. Laws Ann. tit. 14, §§ 3563, 3564, 3567, 3650 (2009). Therefore, because OCIF is not allowed by law to have jurisdiction over the issues raised here, Driven's claim should be denied. In addition to Plaintiff's arguments that Driven's Motion to Dismiss should be denied in its entirety, Plaintiff has demonstrated a likelihood of success on the merits of its breach of fiduciary duty and professional negligence claims. *See generally* Am. Compl. ¶¶ 54–150.

III. Judicial economy favors denying the Motion.

Judicial economy favors proceeding to discovery when a stay would result in unnecessary delay. *See Stile v. Cumberland Cnty. Sheriff*, No. 2:14-cv-00406-JAW, 2016 U.S. Dist. LEXIS 13940, at *4 (D. Me. Feb. 2, 2016); *see generally Bank of R.I.*, 293 F.R.D. at 106 ("Not staying discovery avoids discovery disputes, eliminates duplicative discovery, and provides for judicial and litigant economy."). To begin with, the Court should not have to address this issue—if Driven had agreed to have a Rule 26(f) conference, then Plaintiff and Driven could have negotiated the discovery parameters. Absolutely no judicial economy is saved here. Driven has chosen to waste the Court's time with matters that should be covered between the parties.

Granting a stay of discovery now would result in nothing more than an unnecessary delay when Plaintiff has an "obvious interest in proceeding expeditiously." *Microfinancial*, 385 F.3d at 77, 79 (denying defendant's motion to stay because of, in part, the defendant's "foot-dragging," which "gave the court good reason for skepticism about the requested stay"). Like the defendant in *Microfinancial*, Driven has "procrastinated throughout" by filing successive motions for

extensions and the Motion. *Id.* For example, Driven requested a three-week extension to file a Reply in Support of Its Motion to Dismiss. *See* ECF No. 42. Despite the Court granting Driven's request (ECF No. 43), Driven moved for yet another extension three weeks later. *See* ECF No. 44.

Contrary to Driven's position, the "mere pendency" of Driven's Motion to Dismiss does not warrant a stay. *Estudio Hacedor, PSC v. Larrea*, Civil, No. 22-1233 (FAB), 2023 WL 3493633, at *1 (D.P.R. May 16, 2023). The Motion to Dismiss will not dispose of the totality of claims in this case, and there is a very high likelihood that Driven will have to engage in discovery at a later date. Thus, Driven's argument that the Motion promotes judicial economy because it will prevent the courts from having to oversee discovery is unpersuasive.

CONCLUSION

The record is clear. Plaintiff has diligently attempted to move this case forward, and Driven has, at every turn, tried to stop it. Driven's Motion is nothing more than another delay tactic in a long line of efforts to prevent this litigation from moving forward and to prevent Plaintiff from accessing evidence to substantiate its plausible claims. Driven should not be rewarded for its procedural maneuvering. The Motion would cause needless prejudice to Plaintiff, and it should be denied.

Dated: July 3, 2024

Respectfully submitted,

/s/Alberto G. Estrella

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Attorneys for Plaintiff Bancrédito Holding Corporation

Exhibit A

F.R. Evid. 408, P.R.R.E. 408 AGREEMENT

This Agreement is entered into between Bancrédito Holding Corporation ("BHC") and Driven Administrative Services, LLC ("Driven" and, together with BHC, the "Parties"), as Receiver for Bancrédito International Bank & Trust Corporation ("BIBTC"), in connection with intended settlement negotiation meetings (the "Meetings") between their respective counsel regarding the receivership of BIBTC (the "Receivership") overseen by the Puerto Rico Office of the Commissioner of Financial Institutions ("OCFI") and controversies between the Parties stemming from the Receivership.

Pursuant to Puerto Rico Rule of Evidence 408 and Federal Rule of Evidence 408, the Parties have agreed that all communications, presentations, discussions, representations, or otherwise (whether oral or in writing) exchanged during or in advance of the Meetings, and any follow-up settlement communications, presentations, discussions, representations, or otherwise (whether oral or in writing), shall be confidential, are made for the sole purpose of exploring the possibility of settlement of the Receivership and all matters relating thereto, including ongoing and future litigation between the Parties, and will not be used for any other purpose; will not prejudice any Party or its representatives; will not constitute a waiver of the Parties' respective legal positions.

This Agreement shall bind the agents, representatives, consultants, attorneys, successors and assigns of each Party (regardless of whether each agent, representative, consultant, attorney, successor, or assign is a signatory to this Agreement) and shall inure to the benefit of each such Party, its agents, employees, attorneys, servants, successors and assigns.

This Agreement shall be construed in accordance with the laws of the Commonwealth of Puerto Rico.

Each person signing below is authorized to execute this Agreement on behalf of the Party he or she represents.

This Agreement may be executed in counterparts, which together shall constitute a complete agreement. PDF format electronic copies of the Parties' signatures on this Agreement shall be deemed to be originals.

Each Party executing this Agreement will continue to be bound to its terms regardless of whether any other person or entity that does not execute this Agreement is consulted in connection with the Meetings.

Entering into this Agreement is a condition precedent to holding the Meetings.

The effective date of this Agreement shall be May 6th, 2024.

For Bancrédito Holding Corporation:	**For Driven Administrative Services LLC**
DocuSigned by: By: ____________ 538F13BBD56F442...	DocuSigned by: By: Arturo J. García-Solá E3F40E39528946D... Arturo J. García-Solá
By: ____________	DocuSigned by: By: Lizzie M. Portela B640693C8A8748C... Lizzie M. Portela

Exhibit B

From: Lowell, Abbe
Sent: Friday, June 14, 2024 8:31 PM
To: Arturo J. Garcia-Sola (ajg@mcvpr.com) <ajg@mcvpr.com>; Lizzie M. Portela Fernández <Lpf@mcvpr.com>
Cc: Alberto Estrella (agestrella@estrellallc.com) <agestrella@estrellallc.com>; Weber, Richard <RWeber@winston.com>; Ireland, Elizabeth <EIreland@winston.com>
Subject: Bancredito v. Driven

Arturo,

My colleagues passed on an email you wrote to them (as I was not copied). I know you always start every communication with how you are working on so many things, and so I will make this brief. You can try to do a revisionist recapitulation of what happened when we met, but that is a convenience rather than accurate. Just to set the record straight, I did not insist you come to D.C.; it seemed to suit your schedule and preference. Having come, the meeting ended when we had said what was needed because we ALL agreed on concepts and not specifics. Once we did that, there was nothing more to discuss. If we delayed getting you a term sheet, and I am not sure it was much delayed if it was, that was neither intentional, strategic nor disrespect. Like you, there are a lot of people in the mix and a very hands-on client. The term sheet we did send accurately stated the concepts we discussed and, while not coming to an agreement, captured the essence. It was a very good start and, of course, could be changed or improved and made more specific. For whatever the reason, it was really your side that decided not to follow up with the concept/term sheet either promptly or seemingly with any desire to move things along. I will conclude this with what you and I said before we met and when we met. Continued litigation is really a waste because, once feelings and emotions are put aside, the status of the receivership is such that it need not continue, and the parties can then go about getting back to their other business. Nevertheless, I accept your position that litigation is preferred and that will apparently continue for some time.

Abbe

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VCard | Email | winston.com

Exhibit C

From: Lowell, Abbe <ADLowell@winston.com>
Sent: Friday, May 10, 2024 2:12 PM
To: Arturo J. Garcia-Sola (ajg@mcvpr.com) <ajg@mcvpr.com>; Lizzie M. Portela Fernández <Lpf@mcvpr.com>
Cc: Alberto Estrella (agestrella@estrellallc.com) <agestrella@estrellallc.com>; Weber, Richard <RWeber@winston.com>
Subject: BHC - motions to stay proceedings

Arturo and Lizzie,

Per our meeting and my last correspondence, the first step is for us to maintain the status quo and not make things more complicated or heated by continued litigation while we work out a settlement plan. Here are motions that do that. As this is a needed step, please take a look and suggest or edit so this can be done. We are well on our way to a first draft of a term sheet incorporating our meeting and should have that on Monday.

Regards,

Abbe

Abbe David Lowell
Partner

Co-Chair, Government Investigations, Enforcement, and Compliance

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