IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

OUTREACH FOR ANIMALS, INC. and DR. KAREN THOMAS, Plaintiffs, v. NOAH'S ARK ANIMAL REHABILITATION CENTER & SANCTUARY, INC., GLENN ROSS, DR. MICHELLE LAKLY, Defendants.	:	CIVIL ACTION NO. 1:23-cv-2557-AT

ORDER

In this case, Plaintiffs allege that Defendants have violated, and continue to violate, the Endangered Species Act in connection with their operation and management of Noah's Ark Animal Rehabilitation Center & Sanctuary, Inc. ("Noah's Ark"). Before the Court are Defendants' Motions to Dismiss [Docs. 28, 30, 31] and Defendant Lakly's Motion to Strike [Doc. 29]. At issue is whether Plaintiffs' claims are barred by the claim-splitting doctrine, whether the Court should abstain from reviewing this case in light of a related state court suit, and whether Plaintiffs have standing to sue the various Defendants. The Court held a hearing on Defendants' Motions on December 4, 2024. The Court's rulings are set forth below.

I. Background[1]

A. Allegations in this Lawsuit

Plaintiffs in this case are Outreach for Animals, Inc. ("OFA"), a nonprofit animal protection organization, and Dr. Karen Thomas, the former Attending Veterinarian at Noah's Ark. (Am. Compl., Doc. 27 ¶¶ 10-11). Defendant Noah's Ark is a Georgia nonprofit that operates an alleged "roadside menagerie" that houses at least 59 animals, including 31 endangered species. (*Id.* ¶ 2). Defendant Glen Ross is the Chairman of the Board of Directors of Noah's Ark. (*Id.* ¶ 40). Defendant Michelle Lakly was previously the President of Noah's Ark (*id.* ¶ 41); however, she left that role in February 2024 and is now retired. (Lakly Aff., Doc. 28-7 ¶¶ 2–3).

In the Amended Complaint, Plaintiffs allege that Defendants violated the Endangered Species Act by providing improper veterinary care and nutrition as well as unsafe and unsanitary conditions for certain endangered species, including tigers, spider monkeys, macaws, a grizzly bear, and more. (Am. Compl., Doc. 27 ¶ 3) (alleging, for example, that Defendants deprived endangered species of adequate veterinary care, forced animals to eat contaminated food, and did not provide safe and sanitary living conditions).

According to Plaintiffs, the violations of the Endangered Species Act are ongoing. For example, Plaintiffs allege that Defendants continue to harass the

[1] The Court derives the factual background from Plaintiffs' Amended Complaint, which the Court presumes true for purposes of resolving Defendants' Motions to Dismiss. *See Duke v. Cleland*, 5 F.3d, 1399, 1402 (11th Cir. 1993). The Court also considers the pleadings and orders issued in the related state court cases. *See Day v. Taylor*, 400 F.3d 1272, 1276 (11th Cir. 2005).

endangered species by consistently failing to maintain appropriate pens and housing for the animals and continually failing to provide the animals with appropriate diets. (*Id.* ¶¶ 94-95 (alleging that the "protected animals will continue to suffer, become infirm and die as a result of the continuing stress and disturbance"); *see also id.* ¶ 101 (alleging that Defendants continue to violate the ESA by depriving tigers of veterinary care and adequate nutrition, forcing tigers and bears to live in unsanitary conditions, forcing primates to live in unsecure enclosures, and more)).

As relief, Plaintiffs seek declaratory judgment and injunctive relief. (*Id.* ¶¶ 102, 105; *id.* at ECF 35-36). Specifically, Plaintiffs request that the Court: order Noah's Ark to relinquish possession of the endangered species to a reputable sanctuary; prohibit Defendants from owning or possessing any endangered species in the future; prohibit Defendants from continuing to violate the ESA; and appoint a special master or guardian ad litem to determine the most appropriate placement for the endangered species. (*Id.*).

B. The Two Prior Lawsuits Filed in State Court

This lawsuit is not the first time Noah's Ark has been sued in connection with the treatment of animals at its facility. In September 2022, Jama Hedgecoth, the original founder of Noah's Ark, attempted to bring a derivative lawsuit (hereafter, the "First Lawsuit") in Henry County Superior Court against Glenn Ross, Michelle Lakly, four other individuals, as well as Noah's Ark itself, as a "nominal

defendant."[2] (*See* First Lawsuit Complaint, Doc. 28-1). Ms. Hedgecoth asserted claims related to (1) breach of fiduciary duty to Noah's Ark and (2) violation of the Georgia nonprofit corporate code. (*Id.*). The Henry County Superior Court dismissed the First Lawsuit without prejudice on October 26, 2022 for lack of subject matter jurisdiction because Ms. Hedgecoth failed to comply with a 90-day mandatory pre-suit notice requirement that applies to derivative actions brought against nonprofit corporations, as required under O.C.G.A. § 14-3-742(a). (*See* Order Dismissing First Lawsuit, Doc. 28-2).

A second lawsuit (hereafter, the "Second Lawsuit") was then filed on December 2, 2022. (Second Lawsuit Complaint, Doc. 28-3). The Second Lawsuit was brought by Ms. Hedgecoth (Noah's Ark's founder), Karen Thomas (a former Noah's Ark veterinarian and a named Plaintiff in this case), and four other individuals who were previously involved with the operation of Noah's Ark. Like in the First Lawsuit, these plaintiffs attempted to bring the case derivatively on behalf of Noah's Ark. (*Id.*) The named Defendants included Michelle Lakly and Glenn Ross (both of whom are Defendants in this action) as well as the "nominal Defendant" Noah's Ark. (*Id.*). In the Second Lawsuit, the Plaintiffs asserted claims

[2] In a derivative lawsuit involving a nonprofit corporation, members may seek to address wrongs that harm the nonprofit corporation (rather than any individual). *Ga. Appreciation Prop., Inc. v. Enclave at Riverwalk Townhome Ass'n, Inc.*, 812 S.E.2d 157, 162 (Ga. Ct. App. 2018) ("The member is a mere nominal party. . ."). *See also Shorter College v. Baptist Convention of Georgia*, 279 Ga. 466, 474 (Ga. 2005) ("In nonprofit corporations, [unlike profit corporations], these [fiduciary] duties are owed not to the members, but to the nonprofit's mission.").

for (1) violations of the Georgia Animal Protection Act; (2) violations of Georgia's nonprofit corporation code; (3) fraud and financial malfeasance; and (4) nuisance. (*Id.*).

The Henry County Superior Court dismissed the case with prejudice. (Second Lawsuit Dismissal, Doc. 28-5). In so dismissing, the Henry County Superior Court found:

- that the plaintiffs "lacked standing" to bring the derivative action because none of the Plaintiffs were "directors" and Georgia law only allows someone who is a current "director" to bring a derivative lawsuit, *see* O.C.G.A. § 14-3-741;
- that the plaintiffs "lacked standing" to sue under the Georgia Animal Protection Act or the federal Animal Welfare Act because neither provides for a private right of action;
- that plaintiffs "lacked standing" to support their nuisance claim because they failed to allege special damages; and
- that the Court lacked subject matter jurisdiction because the Plaintiffs again did not wait 90 days after giving notice to sue, as required by O.C.G.A. § 14-3-742.

(Second Lawsuit Dismissal, Doc. 28-5). The plaintiffs in the Second Lawsuit filed a notice of appeal and have recently filed an appellant's brief.

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Now before the Court in the present lawsuit are Defendants' Motions to Dismiss the Amended Complaint. (Docs. 28, 30, 31). The Court held a hearing on Defendants' Motions on December 4, 2024. (Doc. 46).

II. Legal Standard

To survive a motion to dismiss for failure to state a claim, a complaint must include "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). In assessing such a motion, a court must accept the complaint's factual allegations, though not its legal conclusions, as true. *Id.*; *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Under Federal Rule of Civil Procedure 8(a)(2), a complaint must include "a short and plain statement of the claim showing that the pleader is entitled to relief."

III. Analysis

Defendants' Motions raise the following issues: (1) whether the claim-splitting doctrine applies to bar Plaintiffs claims; (2) whether the Court should abstain from reviewing and adjudicating this case; and (3) whether Plaintiffs have standing to sue the various Defendants.[3]

A. Whether the Claims in this Lawsuit are Barred by the Claim-Splitting Doctrine

Defendants first argue that Plaintiffs' claims are barred by the discretionary claim-splitting doctrine. "The claim-splitting doctrine: (1) requires a plaintiff to assert all of its causes of action arising from a common set of facts in one lawsuit,

[3] Defendants originally raised res judicata arguments in their motions to dismiss. However, Defendants later withdrew these arguments before oral argument, acknowledging that there was no final judgment on the merits in the earlier state court suits. (*See* Doc. 45).

and (2) applies where a second suit has been filed before the first suit has reached a final judgment." *Kennedy v. Floridian Hotel, Inc.*, 998 F.3d 1221, 1236 (11th Cir. 2021) (quotations omitted) (citing *Vanover v. NCO Fin. Servs., Inc.*, 857 F.3d 833, 840 n.3, 841 (11th Cir. 2017)).

The purpose of the doctrine is to "promote judicial economy and shield parties from vexatious and duplicative litigation while empowering the district court to manage its docket." *Id.* (quotations omitted); *see also Vanover*, 857 F.3d at 841 ("It is well settled that a plaintiff may not file duplicative complaints in order to expand their legal rights.") (citations omitted). "The claim-splitting doctrine thereby ensures that a plaintiff may not split up his demand and prosecute it by piecemeal, or present only a portion of the grounds upon which relief is sought, and leave the rest to be presented in a second suit, if the first fails." *Vanover*, 857 F.3d at 841 (citations omitted).

Claim-splitting has been analyzed as related to res judicata or claim preclusion. *Id.* Yet, while claim-splitting and res judicata both promote judicial economy and shield parties from vexatious and duplicative litigation, "claim splitting is more concerned with the district court's comprehensive management of its docket, whereas res judicata focuses on protecting the finality of judgments." *Id.* (quotations omitted). The Eleventh Circuit has adopted a two-part test for claim-splitting, which does not consider the finality of the judgment in the first suit but instead asks whether "the first suit, assuming it were final, would preclude the second suit." *Id.* at 843.

Under this two-part test for determining whether a party has improperly split its claims among lawsuits, a court evaluates: "(1) whether the case involves the same parties and their privies, and (2) whether separate cases arise from the same transaction or series of transactions." *Kennedy,* 998 F.3d at 1236 (quotations omitted).

As the claim splitting doctrine stems from the district court's case management powers and the principle that district courts "have discretion to control their dockets by dismissing duplicative cases," *Katz v. Gerardi*, 655 F.3d 1212, 1217 (10th Cir. 2011)[4], the question of whether to dismiss claims based on the claim-splitting doctrine is *within the Court's discretion*. *See Vanover*, 857 F.3d at 837-38 (applying abuse of discretion standard to district court's adjudication of claim-splitting argument).[5]

Here, Defendants argue that this claim-splitting doctrine bars Plaintiffs' suit because (1) the present lawsuit involves the same parties (or their privies) and (2) the same nucleus of operative facts as two prior lawsuits filed in Henry County Superior Court. The Court now considers whether this two-part test is met.

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[4] In *Vanover v. NCO Fin. Servs., Inc.*, 857 F.3d 833 (11th Cir. 2017) the Eleventh Circuit explicitly adopted the claim-splitting analysis and test articulated by the Tenth Circuit in *Katz.*

[5] This is because the claim-splitting doctrine is "concerned with the district court's comprehensive management of its docket" rather than on protecting the finality of judgments. *Id.* at 841. *See also Katz v. Gerardi*, 655 F.3d 1212, 1217-18 (10th Cir. 2011) (explaining that the abuse of discretion standard is used because the doctrine is rooted in the district court's case management powers).

1. Whether the Lawsuits Involve the Same Parties and Their Privies

As to the similarity of the parties, all three lawsuits named Noah's Ark, Michelle Lakly, and Glenn Ross as Defendants. On the Plaintiffs' side, Dr. Karen Thomas, a named Plaintiff here, was a plaintiff in the Second Lawsuit. However, Plaintiff OFA, a named Plaintiff here, was *not* a party in any prior lawsuit.

Accordingly, the Court must first determine if Plaintiff OFA is in privity with the plaintiffs in the prior suits such that OFA is barred from asserting Endangered Species Act claims in this lawsuit.

Under Georgia law, "[a] privy is generally defined as one who is represented at trial and who is *in law so connected* with a party to the judgment as to have such an identity of interest that the party to the judgment represented the same legal right." *Georgia Power Co. v. Brandreth Farms, LLC*, 875 S.E.2d 444, 450 (2022) (emphasis added, citations omitted), *reconsideration denied* (July 13, 2022), *cert. denied* (Apr. 4, 2023) (addressing privity in the context of res judicata).[6] The question of privity "depends upon the circumstances" and "[t]here is no definition of 'privity' which can be automatically applied to all cases involving the doctrines of res judicata and collateral estoppel." *Id.* For example, to meet the privity requirement, "it is not required that all the parties on the respective sides of the litigation in the two cases shall have been identical." S*ampson v. Georgia Dep't of*

[6] Most Georgia law addressing issues of privity arises in the context of res judicata (rather than claim-splitting). But as the claim-splitting doctrine "has been analyzed as an aspect of res judicata," *see Vanover*, 857 F.3d at 841, the Court appropriately considers privity case law arising in the res judicata context.

Juv. Just., 760 S.E.2d 203, 205 (Ga. Ct. App. 2014). Rather, it is sufficient if the party against whom the defense of res judicata or claim-splitting is invoked was a "real part[y] at interest" or in privity with such a real party in the earlier case. *Id.* At bottom, "[p]rivity may be established if the party to the first suit represented the interests of the party to the second suit." *Id.*

Here, there is no basis to find that the plaintiffs in the state court lawsuits "represented the interests" of OFA or that OFA was a "real party at interest" in the First or Second Lawsuits. *Id.* Defendants argue that OFA was in privity with the plaintiffs in the Second Lawsuit because OFA investigated Defendants' conduct, raised awareness of animal treatment issues at Noah's Ark, and was prepared to (but did not in fact) serve as a witness in the Second Lawsuit. These facts certainly show some connection and shared interest between OFA and the plaintiffs in the earlier cases — and show that OFA was an organizational resource to those plaintiffs. Yet, Defendants have provided no legal authority to support that this type of relationship meets the requirement for *legal privity*.

Legal privity can be found where the parties alleged to be in privity have a concrete *legal relationship* and share the same *legal rights*. *See Smith v. Nasserazad*, 544 S.E.2d 186, 188 (Ga. Ct. App. 2001). For example, privity may exist between two parties where the parties have a "mutual or successive relationship to the same right" — such as where one party has acquired a legal interest in the subject matter of the dispute from the other through, e.g., inheritance, succession, purchase, or assignment. *Id.* Parties may also have the

same legal rights, and thus be in privity, where one party is the "grantee, transferee, lienor, or lessee of a property" of the other. *Id.*

Legal privity can also exist where one party is a legal representative of another. For example, an insurance company may be in privity with its insured because, as a subrogee, an insurance company "stands in the shoes of its insured" and has "no greater right of recovery than" its insured. *Sanders v. Trinity Universal Ins. Co.*, 647 S.E.2d 388, 391-92 (Ga. Ct. App. 2007) (finding that insurer was in privity with its insured where insured sued defendant for auto accident in first lawsuit and insurer sought to recover additional damages resulting from same crash in second lawsuit).

But here, Defendants have not shown that OFA had a legal relationship or shared legal rights with the plaintiffs in the earlier lawsuits. Nor have Defendants argued that OFA was a legal representative of the plaintiffs in the earlier suits, or vice versa. All Defendants have shown is that OFA was a resource for the plaintiffs in the earlier lawsuits and that OFA was an observer of those suits. Defendants have provided no legal authority showing that this type of relationship is sufficient to establish legal privity, as to bar OFA from asserting claims in the present case.

The Court's analysis is bolstered by an important principle of legal privity: "the party against whom the doctrine is raised must have had a full and fair opportunity to litigate the issues in the first action." *QOS Networks Ltd. v. Warburg, Pincus & Co.*, 669 S.E.2d 536, 531 (Ga. Ct. App. 2008); *see also Sampson*, 760 S.E.2d at 205 ("[J]ust as a State may not, consistent with the

dictates of the Fourteenth Amendment . . . enforce a judgment against a party named in the proceedings without a hearing or an opportunity to be heard, so it cannot, without disregarding the requirement of due process, give a conclusive effect to a prior judgment against one who is neither a party nor in privity with a party therein").

In addition, where a court has determined that plaintiffs in an earlier action cannot represent *any legal* interest — because of a lack of standing, for example — a court cannot conclude that those first plaintiffs represented the legal interests of a new plaintiff in a later lawsuit. *Sampson*, 760 S.E.2d at 207-08. For example, in *Sampson*, the court in the first action found that the plaintiffs lacked standing to pursue violations of the Open Records Act. Because the first plaintiffs lacked standing, they "could not represent *any* interest in that proceeding." *Id*. (emphasis in original). Because they could not represent "*any* interest" in the proceeding, those plaintiffs could not have represented the legal interest of Sampson (the plaintiff in the second suit). *Id*. Therefore, the plaintiffs in the first suit and Sampson were not in privity. *Id*. Likewise here, the plaintiffs in the Second Lawsuit lacked standing to bring the claims at issue and therefore could not have adequately represented OFA's interest in that proceeding.

In short, Defendants have not shown that the plaintiffs in the earlier suit represented the legal interests of OFA and thus have not shown that OFA was in privity with those plaintiffs. As a result, the first requirement of the claim-splitting

test is not satisfied as to OFA, and the claim-splitting doctrine does not bar OFA's claims in the present lawsuit.

That said, while OFA was not a party or in privity with a party in the earlier lawsuits, Plaintiff Thomas was a named plaintiff in the Second Lawsuit. She therefore *may* be barred from bringing claims in this suit under the claim-splitting doctrine — that is, *if* the Second Lawsuit and this case involve the same nucleus of operative facts.

2. Whether the Second Lawsuit and This Lawsuit Involve the Same Nucleus of Operative Facts

In assessing whether separate cases arise from the same transaction or series of transactions under the second prong of the claim-splitting test, courts ask whether the two actions are based on the same nucleus of operative facts. *Kennedy,* 998 F.3d at 1236. In so assessing, the Eleventh Circuit applies the "transactional test" whereby a court considers whether the facts in the two cases are related in time, space, origin, or motivation; whether they form a convenient trial unit; and whether their treatment as a unit conforms to the parties' expectations or business understanding. *Id.* "Under the transaction test, a new action will be permitted only where it raises new and independent claims, not part of the previous transaction, based on the new facts." *Id.* (citations in original) (quotations omitted).

Consistent with the above principles, it is well-settled that, while claims based on facts *in existence* at the time the first lawsuit was filed may be barred as part of the same transaction, claims based on facts *not in existence* at the time the earlier lawsuit was filed are not barred. *In re Piper Aircraft Corp.*, 244 F.3d 1289,

1299 (11th Cir. 2001) (explaining that res judicata acts as a bar to all legal theories and claims arising out of the same nucleus of operative facts that were known *at the time the lawsuit was filed*).

Upon review, the Court finds that the Second Lawsuit and this lawsuit do not involve a sufficiently similar nucleus of operative facts as to bar Plaintiff Thomas from asserting her ESA claims.

The Second Lawsuit was brought as a derivative action. (*See* Second Lawsuit Compl., Doc. 28-3). Plaintiff Thomas and her co-plaintiffs raised a number of issues related to Defendants' corporate management of the nonprofit — including Defendants' alleged violations of the Georgia non-profit code, their failure to allow Plaintiffs to view the organization's corporate and financial records, their blocking entry and access to public Board meetings, their abuse of the corporate process, their improper removal of Board members, their violations of fiduciary duties, and more (*Id*. ¶¶ 64-79). In the Second Lawsuit, Plaintiffs also raised issues involving alleged fraud, financial malfeasance, and unlawful distributions to executives of Noah's Ark. (*Id*. ¶¶ 80-97). *None* of these facts are at issue in the present lawsuit. Further, Plaintiffs "motivation" in bringing the Second Lawsuit was in large part to address what they viewed as corporate malfeasance and even to retake power within the organization. *Kennedy,* 998 F.3d at 1236 (explaining that, in assessing whether the cases involve the same nucleus of facts, courts should consider whether the two cases are related in motivation). That is not the motivation for this case, which is instead the protection of endangered species.

It is true that Plaintiff Thomas and her co-plaintiffs raised issues related to Noah's Ark treatment of all animals (not just endangered species) generally in attempting to assert a violation of the Georgia Animal Protection Act. (*Id.* ¶¶ 50-62). The Court acknowledges that there is some overlap in the facts discussed in the plaintiffs' failed Georgia Animal Protection Act claim and those alleged in the present lawsuit. Even so, the allegations involving animal welfare in the Second Lawsuit only concern Defendants' actions and inactions *up through the filing of that suit on December 2, 2022*. (*Id.*) The Amended Complaint in this action includes allegations of Defendants' wrongful actions and inactions throughout 2023 and 2024. (*See* Am. Compl., Doc. 27 ¶ 92) (detailing problems in the treatment, care, and habitat for endangered species outlined in a September 2023 USDA Report, including inadequate enclosure for a grizzly bear, poor diet and veterinary care for the tigers and lion, and inadequate shelter for protected birds).

Plaintiffs also cite a more recent USDA Report from March 2024 that includes findings that Defendants did not adequately diagnose, treat, feed, and house endangered species. (*See* March 2024 USDA Report, Doc. 34-1 (explaining, among other things, that shelters for brown lemurs were not sanitary or adequate); *see also* March 2024 USDA Report II, Doc. 34-2 (explaining, among other things, that the macaw enclosure had dangerous protruding nails poking out of the wood)). Because Plaintiff Thomas' ESA claims in the present suit rest in part on facts not in existence at the time of the Second Lawsuit, it would be improper to bar her from asserting those ESA claims here. *See In re Piper Aircraft Corp.*, 244

F.3d at 1299 (in res judicata context, explaining that claims based on facts not in existence at the time the original action was filed should not be barred).

Moreover, the reality is that no issue related to Defendants' treatment of the animals was litigated on the merits in the prior action or was the subject of any discovery. In dismissing the Second Lawsuit, the Henry County Superior Court focused on the procedural barriers and deficiencies of the plaintiffs' claims (for example, failure to comply with pre-suit notice requirements and the lack of a private right of action).

The Court understands that Defendants believe that they are being subject to vexatious litigation. Nevertheless, the issues underlying Plaintiff Thomas' ESA claims were not addressed in any substantive way in the Second Lawsuit. At present, there is a genuine conflict between the parties involving the appropriate care and treatment of protected animals. Nothing that has been presented to the Court indicates that Plaintiff Thomas is pursuing this action to harass Defendants. Under the circumstances — where this case involves new facts, where the thrusts of the two cases are different and involve different claims, where no issues of animal welfare were actually litigated in the Second Lawsuit, and where a genuine conflict exists between the parties — it would be overly restrictive for the Court to bar Plaintiff Thomas from asserting her ESA claims here.

Accordingly, the Court, in its discretion, will not apply the claim-splitting doctrine to bar Plaintiff OFA or Plaintiff Thomas from asserting their ESA claims in this lawsuit.[7]

B. Whether the Court Should Abstain from Reviewing this Case

In the alternative to dismissal, Defendant Noah's Ark argues that the Court should abstain from hearing the case until any state court appeal is concluded. It relies on the *Colorado River* abstention doctrine.

In a recent decision, the Eleventh Circuit explained that, because district courts have a duty to adjudicate the cases before them, abstention is the rare exception, not the rule:

> Abstention is a determination that the district court "should abstain from exercising their jurisdiction." *Ambrosia Coal & Constr. Co. v. Morales*, 368 F.3d 1320, 1327 (11th Cir. 2004). "Abstention from the exercise of federal jurisdiction is the exception, not the rule." *Colo. River*, 424 U.S. at 813. District courts have a duty to adjudicate the controversies before them, and abstention "is an extraordinary and narrow exception." *Id.* (cleaned up). A pending state court case ordinarily does not bar a federal case concerning the same dispute, and the potential for conflicting adjudications, standing alone, is not enough to justify abstention. *Id.* at 816–17, 96 S.Ct. 1236. In limited and exceptional circumstances, certain principles of "wise judicial administration" do permit district courts to "dismiss a federal suit due to the presence of a concurrent state proceeding." *Id.* at 818, 96 S.Ct. 1236.

[7] The Second Lawsuit is currently on appeal before the Georgia Court of Appeals. As the claims, issues, and some of the parties involved in that case are different than in this case, a ruling from the Georgia Court of Appeals is unlikely to impact the litigation of this case.

Taveras v. Bank of Am., N.A., 89 F.4th 1279, 1285–86 (11th Cir. 2024). The *Colorado River* abstention, cited by Defendant Noah's Ark, allows a federal court to stay a case only "when federal and state proceedings involve substantially the same parties and substantially the same issues," though the parties need not be identical. *Taveras*, 89 F.4th at 1286. In determining whether to abstain, a court must first find that cases involve the same parties and issues. If the cases involve the same parties and issues, the court weighs six factors to decide whether to abstain:

> (1) whether one of the courts has assumed jurisdiction over property,
> (2) the inconvenience of the federal forum,
> (3) the potential for piecemeal litigation,
> (4) the order in which the fora obtained jurisdiction,
> (5) whether state or federal law will be applied, and
> (6) the adequacy of the state court to protect the parties' rights.

Id.

Here, there is no basis for the Court to abstain from adjudicating the present case. First, as discussed in Section III.A.1., the parties are not completely the same here. In addition, as discussed in Section III.A.2, the issues and claims raised in the Second Lawsuit are not the same as the claims raised here. The Second Lawsuit includes claims involving disputes about corporate leadership of the nonprofit, and nuisance claims. No claims in the Second Lawsuit were brought under the Endangered Species Act, as here.

Moreover, the six abstention factors are neutral or even weigh against abstention. Certainly, none of the factors weigh *in favor* of abstention. First, no

court has assumed jurisdiction over property. Second, the federal forum is not inconvenient. Third, there is no issue of piecemeal litigation because nothing was decided on the merits in the Second Lawsuit. Fourth, the Henry County Court found that it lacked subject matter jurisdiction over the nonprofit corporate claims and that the plaintiffs lacked standing to pursue the other claims. Fifth, federal law applies to the claims at issue here, weighing *against* abstention. And sixth, the state court cannot protect the Plaintiffs' rights under the ESA because no such claim was brought in the Second Lawsuit, also weighing *against* abstention.

At bottom, the claims and legal issues raised in the Second Lawsuit are completely separate from the ESA claims raised here. There is no basis for the Court to shirk its duty to adjudicate this case and instead apply the "extraordinary and narrow" exception of abstention. *Taveras,* 89 F.4th at 1285–86.

C. Standing

A plaintiff bears the burden of demonstrating that he has standing. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 430–31 (2021) (citing *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992) ("*Lujan II*")). Standing is determined at the time a plaintiff's complaint is filed. *Arcia v. Fla. Sec. of State*, 772 F.3d 1335, 1340 (11th Cir. 2014). A plaintiff must demonstrate standing for each claim that they press and for each form of relief that they seek (for example, injunctive relief and damages)." *Ramirez*, 594 U.S. at 431 (citing *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 733 (2008).

To demonstrate standing to pursue a particular form of relief, a plaintiff must show (1) that he suffered an injury in fact that is "concrete, particularized, and actual or imminent;" (2) that the injury was likely caused by the defendant; and (3) that the injury would likely be redressed by the judicial relief sought. *Id.* at 423 (citing *Lujan II*, 504 U.S. at 560–61).

Each Defendant challenges Plaintiffs' standing to sue. The Court addresses each Defendant's argument in turn.

1. Standing to Sue Defendant Lakly

To demonstrate standing to sue Defendant Lakly, Plaintiffs must allege that (1) they suffered an injury in fact, (2) caused by Defendant Lakly, (3) that would be redressable by the injunctive relief sought against Defendant Lakly. *Id.*

At the time Plaintiffs filed their original complaint in this case, *on June 7, 2023*, Defendant Lakly was the President of Noah's Ark and therefore had leadership authority within the organization. As President, Lakly had the authority and responsibility to comply (and ensure that Noah's Ark complied) with any potential injunction ordering that the endangered species be sent to a different sanctuary or to implement procedures to remedy the alleged mistreatment of endangered species at Noah's Ark. However, *on February 28, 2024*, Defendant Lakly left employment at Noah's Ark; she is now retired. (Lakly Aff., Doc. 28-7 ¶¶ 2–3).[8] She therefore no longer has authority to direct the policies of Noah's Ark or

[8] The Court can appropriately consider Ms. Lakly's affidavit. *See Day v. Taylor*, 400 F.3d 1272, 1276 (11th Cir. 2005) (explaining that courts may consider documents attached to

ensure compliance with Court orders as it relates to the management and operation of Noah's Ark. *On May 9, 2024*, Plaintiffs filed their Amended Complaint in this case. (Doc. 27).

In assessing whether Plaintiffs have standing to sue Defendant Lakly, the Court must first determine at what time standing should be assessed. As discussed above, it is well established that standing is determined at the time a plaintiff's complaint is filed. *Arcia*, 772 F.3d at 1340. "But also well-established is the 'general rule' that 'an amended complaint supersedes and replaces the original complaint . . .' *Calderwood v. United States*, 623 F. Supp.3d 1260, 1275 (N.D. Ala. 2022) (citing *Varnes v. Local 91, Glass Bottle Blowers Ass'n*, 674 F.2d 1365, 1370 n. 6 (11th Cir. 1982)). And where a plaintiff voluntarily amends its complaint, courts look to the amended complaint to determine jurisdiction. *Id*. (citing *Rockwell Int'l Corp. v. United States*, 549 U.S. 457, 473-74 (2007) (holding that a plaintiff "plead[ed] away jurisdiction" by abandoning original factual basis for jurisdiction)). For these reasons, another district court facing the same issue has determined that the appropriate date for purposes of determining standing is the date that the amended complaint was filed (rather than the date the original complaint was filed). *Id*. at 1276.

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motions to dismiss where the document is central to plaintiffs' claims and undisputed). At the December 4, 2024 hearing on this issue, Plaintiffs' counsel did not dispute the fact Ms. Lakly is now retired and no longer President of Noah's Ark.

The Court agrees with this logic and so considers whether Plaintiffs had standing to sue Defendant Lakly for injunctive relief as of May 9, 2024, the date the Amended Complaint was filed. *Id*.

Upon review, the Court finds that Plaintiffs do not have standing to sue Defendant Lakly for injunctive relief. As Defendant Lakly was no longer President of Noah's Ark on May 9, 2024, she had (and has) no ability or authority to comply with any potential injunction ordering different placement of the animals or ordering that new policies be implemented to ensure better treatment of the endangered species. Injunctive relief directed at Defendant Lakly therefore would not redress Plaintiffs' alleged injuries because Lakly has no authority to provide the relief sought.[9]

Even if the Court were to assess standing at the time the original complaint in this action was filed (June 27, 2023), claims against Defendant Lakly would be moot since she is no longer in a position to provide the requested relief. Accordingly, Plaintiffs lack standing to sue Defendant Lakly and the claims against her are **DISMISSED**.[10]

[9] Plaintiffs request only injunctive relief, not damages.

[10] As the claims against Defendant Lakly are dismissed for jurisdictional reasons, they are dismissed without prejudice. In addition, because Defendant Lakly is dismissed from this case, her Motion to Strike [Doc. 29] two paragraphs of the Amended Complaint is **DISMISSED AS MOOT**.

2. Standing to Sue Defendant Ross

As noted above, to establish standing to pursue injunctive relief, Plaintiff must show (1) a "concrete, particularized, and actual or imminent" injury; (2) caused by Defendant Ross; (3) that will likely be redressed by injunctive relief directed at Defendant Ross. *Ramirez*, 594 U.S. at 423.

As Plaintiffs seek prospective injunctive relief, they must demonstrate a "'real and immediate threat' of future injury." *Focus on the Fam. v. Pinellas Suncoast Transit Auth.*, 344 F.3d 1263, 1274-75 (11th Cir. 2003) (citing *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983)). Notably "[p]ast exposure to illegal conduct does not itself show a present case or controversy regarding injunctive relief . . . if unaccompanied by any continuing, present adverse effects." *Lyons*, 461 U.S. at 102 (internal quotation omitted). *See also Johnson v. Bd. of Regents*, 263 F.3d 1234, 1265 (11th Cir. 2001) ("[T]o have standing to obtain forward-looking relief, a plaintiff must show a sufficient likelihood that he will be affected by the allegedly unlawful conduct in the future."); *Wooden v. Bd. of Regents*, 247 F.3d 1262, 1284 (11th Cir. 2001) ("Because injunctions regulate future conduct, a party has standing to seek injunctive relief only if the party alleges, and ultimately proves, a real and immediate—as opposed to a merely conjectural or hypothetical—threat of future injury."). An "ongoing" injury is sufficient to support injunctive relief. *See Maisonet v. Commissioner, Ala. Dept. of Corrections*, 2022 WL 4283560, at *2 (Sept. 16, 2022) (citing *Lyons*, 461 U.S. at 105)).

In its prior Order addressing Plaintiffs' Motion to Amend, the Court held that the Plaintiffs had suffered sufficient injuries in fact to support standing. (*See* Order, Doc. 26 at 11-17) ("OFA has adequately established injury in fact under a diversion of resources theory and thus has, at this stage, sufficiently alleged facts to support Article III standing" and "Thomas has adequately alleged aesthetic and recreational injury in fact . . ."). The Court adopts that analysis here.

As to causation, the Amended Complaint alleges that Defendant Ross is the Chairman of the Board of Directors of Noah's Ark, that he has management responsibility at Noah's Ark, and that he prevented Dr. Thomas from providing proper care and treatment for the animals. (Amended Compl., Doc. 27 ¶¶ 1, 16, 40). Plaintiffs also allege in the Amended Complaint that management (i.e., Ross) has exhibited reckless, cavalier behavior towards the risk of the spread of avian influenza. (*Id.* ¶ 71). In addition, Plaintiffs allege a slew of continuing systemic problems in the management and operation of Noah's Ark: poor feeding practices and lack of nutrition (*id.* ¶ 35, 51, 56, 58, 92); inadequate enclosures and dirty, unsanitary conditions that are dangerous to the endangered species (*id.* ¶¶ 19, 35, 51, 60, 64, 65, 73, 77, 92); lack of adequate medical and veterinary care for the endangered species (*id.* ¶¶ 35, 51, 54, 92); and lack of adequate staffing, which negatively impacts the animals (*id.* ¶¶ 35, 51, 79-81). As Chairman of the Board of Directors of Noah's Ark, the Court can reasonably infer that Defendant Ross is the individual most able to address the systemic problems at Noah's Ark and has overall responsibility for the alleged ESA violations that are occurring.

As to redressability, Mr. Ross, as Chairman of the Board, has the authority to take action to ensure that Noah's Ark complies with any injunctive relief, for example, ordering that the endangered species be placed in other sanctuaries or in implementing new processes to address the systemic problems described above.

And contrary to Defendant Ross' argument, Plaintiffs have sufficiently alleged that their injuries are ongoing and that Defendants continue to violate the ESA through their actions and inactions. In the Amended Complaint, Plaintiffs allege a series of systemic failures that persist, as discussed above. These allegations are sufficient at this juncture to support possible injunctive relief. Defendants' argument that Plaintiffs fail to allege ongoing harm as required for injunctive relief is off base in light of the allegations, taken as true at this juncture. (*See, e.g.*, Am. Compl., Doc. 27 ¶¶ 35, 51, 101).

As in other cases brought against individuals under the ESA, Plaintiffs here have standing to sue the individual with the most authority and power to manage the activities at Noah's Ark. *See Animal L. Def. Fund v. Nat'l Found. for Rescued Animals*, 645 F. Supp.3d 629, 634-35 (E.D. Tex. 2022) (holding that plaintiff-organization had standing to sue individual defendants and stated a claim against individual defendants where it was alleged that individuals engaged in haphazard management of facility); *Kuehl v. Sellner*, 161 F.Supp. 678, 718 (N.D. Iowa 2016) (finding that plaintiffs had standing to sue individual defendants under the ESA in

connection with their management of facility), *aff'd* 887 F.3d 845 (8th Cir. 2018); *Hill v. Coggins*, 867 F.3d 499, 505-06 (4th Cir. 2017) (same).[11]

3. Standing to Sue Noah's Ark

Defendant Noah's Ark argues that Plaintiffs lack standing to sue it. The Court previously evaluated this argument in its Order (Doc. 26) addressing Plaintiffs' Motion to Amend. The Court found that Plaintiffs had suffered injuries in fact, caused by Noah's Ark, and redressable by an order granting injunctive relief against Noah's Ark. (*See* Order, Doc. 26 at 11-17). As discussed above, Plaintiffs' Amended Complaint sufficiently alleges that the harm is continuing. Accordingly, Plaintiffs have standing to sue Noah's Ark. The Court need not further revisit this ruling at this time.

IV. Conclusion

For the reasons above, Defendant Noah's Ark Motion to Dismiss or Motion to Stay [Doc. 31] is **DENIED**. Defendant Ross' Motion to Dismiss [Doc. 30] is **DENIED**. Defendant Lakly's Motion to Dismiss [Doc. 28] is **GRANTED** and her Motion to Strike [Doc. 29] is **DENIED AS MOOT**.

The remaining Defendants are **DIRECTED** to file their Answers within 14 days of this Order. The parties are **DIRECTED** to exchange initial disclosures and hold the Rule 26(f) early planning conference within 21 days of this Order. The

[11] The Court discussed these cases in greater detail in its prior Order (Doc. 26) on Plaintiffs' Motion to Amend when it rejected Defendants' arguments that Plaintiffs' proposed amended complaint was futile because it failed to state a claim against the Individual Defendants. (*Id.* at 19-21).

parties are **ORDERED** to submit the Joint Preliminary Report and Discovery Plan within 30 days of this Order. Discovery **SHALL** commence 30 days after the entry of this Order.

IT IS SO ORDERED this 28th day of January 2025,

Honorable Amy Totenberg
United States District Judge