

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

CASE NO. 1:24-cv-22142-GAYLES/GOODMAN

FANNY B. MILLSTEIN and  
MARTIN KLEINBART,

Plaintiffs,

v.

WELLS FARGO BANK, N.A.,

Defendant.

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**ORDER REQUIRING CLARIFICATION FROM DEFENDANT WELLS FARGO  
BANK CONCERNING ITS UNDER-SEAL FILING**

Five Socratic-type questions are: (1) What do you mean by that?; (2) How do you know?; (3) Can you give me an example?; (4) What are the consequences of that?; and (5) What is the counterargument?

The Court has, through a courtesy copy of a flash drive submitted by Defendant Wells Fargo (“Wells Fargo” or “the Bank”), conducted an *in camera* review of the documents the Bank submitted under seal in connection with its Suspicious Activity Report (“SAR”) Privilege claim.

But, at the risk of sounding like a wannabe Socrates, I have some questions.

First, the term “UAR” appears on some of the pages. Wells Fargo has not previously explained, in either its memoranda or in comments at a lengthy hearing, this

term. Nevertheless, the Undersigned *assumes* that the term means “Unusual Activity Report.” I also assume that Wells Fargo sometimes, though not always, converts a UAR into a SAR, which is then filed with federal banking regulators. And I also assume that a UAR is an internal document which Wells Fargo uses to evaluate banking transactions in the ordinary course of its business, *regardless* of whether a SAR is later filed.

In other words, I assume that a UAR is different than a SAR and does not always lead to the creation of a SAR. *See Trott v. Deutsche Bank, AG*, No. 20 Civ. 10299, 2024 WL 1994342 (S.D.N.Y. May 6, 2024) (where the court analyzed withheld Suspicious Activity Information Forms (“SAIFs”), which are different than SARs).

So, Wells Fargo shall **by March 4, 2025**, file a notice explaining whether my assumptions are correct, and, if they are not, why and how they are incorrect.

Second, the term “SAR Address” appears at the top of some columns on some of the pages in the under-seal submission. Does this mean that a SAR was, in fact, filed? And did all of the addresses listed under the column somehow always get included into a SAR? Wells Fargo’s notice should answer these questions, as well.

Third, the documents I am reviewing sometimes indicate whether a “SAR Flag” was generated, with a “Y” or “N” in the text boxes under the title. What does this mean? Does it always mean that a SAR was in fact filed with bank regulators? Does it mean that an account or transaction was noted for further review and analysis for *possible* use in a SAR (which might *not* actually get created and filed with regulators)? Or does it mean

something else? And, regardless of what the term means, can that particular page be produced without violating what Wells Fargo considers to be the scope of the SAR Privilege by merely redacting the entire column? The Bank's notice should also address these additional questions.

Fourth, does reference to a "hold" necessarily mean that a SAR was filed, and, if the answer is "no," then does Wells Fargo take the position that this "hold" designation converts the page into a non-producible item under the Bank's view of the SAR privilege? The notice must answer these questions.

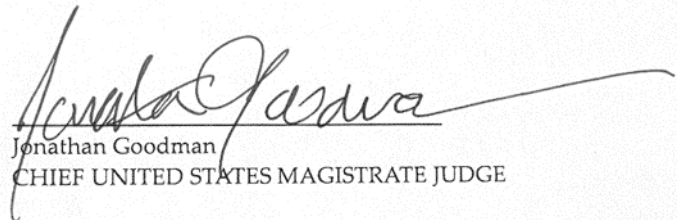
Fifth, does the mere mention of the term "suspicious activity" in a text summary necessarily mean that a SAR was filed? Couldn't the term simply mean nothing more than that a bank employee deemed a circumstance unusual (and even suspicious) and worthy of further evaluation? And if it means only that, why would it cause the page to be encompassed by the SAR privilege? Wouldn't an analysis of a potentially suspicious transaction be part of Wells Fargo's standard practices, without the automatic, later preparation and submission of a SAR? Does the term "suspicious activity" necessarily reveal whether Wells Fargo filed (or did not file) a SAR? Wells Fargo's notice should discuss these concerns, as well.

Given the nature of the questions posed here, the Undersigned anticipates that Wells Fargo may want to also cite case law authority, and I encourage it to do that.

Moreover, the answers to the fact-based questions must be in the form of an affidavit or declaration, signed by an appropriate Wells Fargo banker.

If Plaintiffs wish to file a response to the notice required by Wells Fargo here, then they must do so **by March 10, 2025**. Plaintiffs are likewise encouraged to cite legal authority. No reply is permitted absent further Court order.

**DONE AND ORDERED** in Chambers, in Miami, Florida, on February 27, 2025.



Jonathan Goodman  
CHIEF UNITED STATES MAGISTRATE JUDGE

**Copies furnished to:**

The Honorable Darrin P. Gayles  
All Counsel of Record