

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

Case Number: 1:24-cv-22142-GAYLES/GOODMAN

FANNY B. MILLSTEIN and  
MARTIN KLEINBART,

Plaintiffs,

v.

WELLS FARGO BANK, N.A.,

Defendant.

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**DEFENDANT’S NOTICE OF COMPLIANCE  
WITH COURT ORDER (DE 83) REQUIRING  
CLARIFICATION CONCERNING ITS UNDER-SEAL FILING**

Defendant Wells Fargo Bank, N.A. (“Wells Fargo”), by and through its undersigned counsel, hereby provides the following notice and declaration concerning its under-seal filing in compliance with this Court’s Order dated February 27, 2025 (D.E. 83).

The Court has requested that Wells Fargo provide additional clarification related to its filings under seal that Wells Fargo contends are prohibited from disclosure pursuant to the Bank Secrecy Act’s (“BSA”) prohibition of disclosure. The Court posited the following five questions:

**I. Unusual Activity Reports**

**First**, the Court requested that Wells Fargo confirm (or reject) the following assumptions:

- (i) “UAR” means Unusual Activity Report;
- (ii) UARs are sometimes (but not always) converted into a suspicious activity report (“SAR”), which is then filed with federal banking regulators;

- (iii) A UAR is an internal document which Wells Fargo uses to evaluate banking transactions in the ordinary course of business, regardless of whether a SAR is filed (and thus does not always lead to the creation of a SAR).

Assumptions (i) and (iii) are correct. As explained in the Declaration of Michael Tompkins, attached as **Exhibit A**, a UAR is an employee referral. Ex. A., ¶ 7. If a Wells Fargo employee detects activity they believe is unusual and potentially within the scope of Wells Fargo's SAR obligations, they are required to prepare and submit a UAR. *Id.* at ¶ 8; *see also Bowsby v. Wells Fargo Bank, N.A.*, Memo. of Points and Authorities in Supp. of Def. Wells Fargo's Mot. For Summ. Judg., No. 3:18-cv-02740-W-L, 2019 WL 13133444, ECF No. 21-1, pg. 8 (S.D. Cal., Dec. 27, 2019). Once submitted, the UAR is forwarded to the Wells Fargo Financial Crimes Investigation ("FCI") unit for investigation as part of Wells Fargo's BSA compliance program. *Id.* at ¶¶ 5, 7-8. Once received by the FCI investigator, the UAR is used the starting point for the investigator's evaluation as to whether a SAR filing is or is not required. *Id.* at ¶ 8. The existence of a UAR does not always lead to the creation of a SAR. *Id.* However, it is indicative of potentially unusual activity. *Id.* at ¶¶ 7-8. Such documents are utilized by Wells Fargo in a variety of circumstances regardless of whether or not a SAR is ultimately filed, and may be submitted by any employee. *Id.*

As to Assumption (ii), the Court is correct with a minor point of clarification. UARs are one of several tools that may be inputted into Wells Fargo's confidential system to determine whether or not to open a "Case" to determine whether or not to file a SAR. *See id.* at ¶¶ 7-12. Thus, while a UAR may be used as an *input* to such system (and ultimately serve as a basis for opening a Case), it is not converted into a SAR, *per se.* *See id.* at ¶¶ 9-12 (explaining how SAR/No SAR narratives are prepared following the investigation's conclusion).

## II. “SAR Address” Field

**Second**, the Court requested clarification related to the term “SAR Address,” and whether the inclusion of this term (i) meant that a SAR was filed and (2) whether the addresses listed in the column always get included into a SAR.

The SAR Address field is included in the Case Subjects tab of the “Transactions” workbook. *Id.* at ¶ 13. This field is not an indicator that the case subject is or was the subject of a SAR. Instead, this field lists the address of the case subject(s) that the FCI investigator is investigating to determine whether or not to file a SAR, regardless of whether they were included in a previous SAR or not. *Id.* Thus, because this field (and the addresses) do not indicate anything other than the location of the case subjects and/or accounts the investigator is reviewing, they are not included on an ultimate SAR. *Id.* However, this field is reviewed by the investigator and thus part of the investigator’s evaluative analysis to determine whether or not to file a SAR, is contained in this format only in FCI investigative documents and similarly protected. *Lan Li v. Walsh*, No. CV 16-81871, 2020 WL 5887443, at \*2-3 (S.D. Fla. Oct. 5, 2020) (explaining that certain categories of documents, including transaction monitoring alerts, evaluative processes and algorithms, transaction monitoring cases, and evaluative reports were prohibited from disclosure).

Moreover, the “Transactions” document that includes this term is **only created in during the course of the FCI’s investigation as to whether or not to file a SAR**, is never generated in Wells Fargo’s ordinary course of business, and is prohibited from disclosure. Ex. A at ¶ 13; *Lesti v. Wells Fargo Bank, N.A.*, No: 11-cv-695, 2014 WL 12828854, at \*1 (M.D. Fla. Mar. 4, 2014) (acknowledging SAR privilege applies to documents generated for the specific purposes of fulfilling an institution’s reporting obligations); *Wiand v. Wells Fargo Bank, N.A.*, 981 F. Supp.

2d 1214, 1217-18 (M.D. Fla. Oct. 25, 2013) (finding that internal reports and other documents of evaluative nature were prohibited from disclosure because they were generated in furtherance of the bank's federal reporting requirements); *Fed. Trade Comm'n v. Marcus*, No. 17-CV-60907, 2020 WL 1482250, at \*3 (S.D. Fla. Mar. 27, 2020) (denying motion to compel unredacted or redacted "alerts" and "cases," including their respective investigations, and differentiating those categories of internal bank documents related to the financial institution's federal reporting processes from factual transactional documents created in the ordinary course of business). Because this field is evaluative, redaction would be insufficient as the document must be completely withheld. *Marcus*, 2020 WL 1482250, at \*3.

### III. "SAR Flag" Field

**Third**, the Court asked what "Y" or "N" text box under the title "SAR Flag" meant, including if (i) it always meant that a SAR was filed; (ii) whether alternatively it could mean that an account or transaction was noted for further review and analysis for ***a possible SAR (or if it meant something else entirely)***; and (iii) regardless of what the terms means, can those pages be produced without violating what Wells Fargo considers to be the scope of the SAR privilege by redacting such column.

The "SAR Flag" field is not related to Suspicious Activity Reports. Ex. A at ¶ 14. The field represents "System Approval Required" when a transaction is above the teller's threshold and needs to seek an approval. *Id.* Such field, much like "SAR Address" is located within the TellerView tab of the "Transactions" worksheet, and in similar fashion is referenced by the investigator as part of their evaluation as to whether or not to file a SAR. *Id.* Thus, these pages must be withheld in their entirety, as they are an integral part of the investigator's evaluative process, which is prohibited from disclosure (regardless of whether or not the field is redacted)

for the same reasons as the “SAR Address” field analyzed *supra*. *Id.* at ¶¶ 13, 14; *Lan Li*, 2020 WL 5887443, at \*2-3; *Lesti*, 2014 WL 12828854, at \*1; *Wiand*, 981 F. Supp. 2d at 1217-18; *Marcus*, 2020 WL 1482250, at \*3.

#### IV. Hold References

**Fourth**, the Court inquired (i) whether a reference to a “hold” necessarily meant that a SAR was filed, and, (ii) if the answer is “no,” then whether Wells Fargo takes the position that this “hold” designation converts the page into a non-producible item under the Bank’s view of the SAR privilege.

As an initial matter, Wells Fargo’s FCI investigators do not place holds on accounts. Ex. A, ¶ 15. Thus, a bare reference to a “hold” does not indicate whether or not a SAR was filed, and instead refers to the status of the applicable deposit accounts. *Id.* at ¶¶ 15-16. The “hold” status, if referenced in the TellerView tab within the Transactions document, is not generated by a FCI investigator. *Id.* at ¶ 16. However, as stated above, the FCI Investigator utilizes the information contained within the TellerView tab in order to evaluate the status of the relevant account(s) that are the subject of the investigation to determine whether or not to file a SAR. *Id.* at ¶¶ 13, 14, 16. Thus, while Wells Fargo recognizes that a reference to a “hold” standing alone would not be protected by the BSA’s disclosure prohibition, such data is utilized in the context of an investigator evaluating information to determine whether or not to file a SAR. *Id.* Because these references are inherently part of Wells Fargo’s evaluative processes, they must be completely withheld. *Lan Li*, 2020 WL 5887443, at \*2-3; *Lesti*, 2014 WL 12828854, at \*1; *Wiand*, 981 F. Supp. 2d at 1217-18; *Marcus*, 2020 WL 1482250, at \*3. In similar fashion to the “SAR Address” and “SAR Flag” fields, redaction of these columns and/or references would be insufficient. *Marcus*, 2020 WL 1482250, at \*3.

V. “Suspicious Activity” References

**Fifth**, the Court sought additional information related to: (i) the inclusion of the term “suspicious activity” in a text summary and whether it necessarily means and/or reveals that a SAR was filed; (ii) whether the term couldn’t simply mean nothing more than that a bank employee deemed a circumstance unusual (and even suspicious) and worthy of further evaluation; (iii) if it means only that, whether the entire page would be encompassed by the SAR privilege and (iv) whether the analysis of a potentially suspicious transaction be part of Wells Fargo’s standard practices, without the automatic, later preparation and submission of a SAR.

As stated in Wells Fargo’s filings and reiterated here, the sole purpose of Wells Fargo’s FCI team is to conduct investigations for BSA compliance purposes (i.e., to determine whether or not to file a SAR). Ex. A, ¶ 5. The details of such investigations, including how investigators identify potentially suspicious activity and how they evaluate that activity to evaluation as to whether to file a SAR are highly confidential. *Id.* at ¶ 6. When an investigation concludes, the investigator drafts a case narrative explaining their evaluation of the case. *Id.* at ¶ 9. That narrative is saved in FCI’s system of record and was exported into a document under the file name “Comments” that was provided to the Court in Microsoft Excel format. *Id.* at ¶¶ 9-10.

Typically, a narrative will identify what led to an investigation being opened, discuss the information reviewed, evaluate that information, and explain the investigator’s recommendation as to whether to file a SAR (which is ultimately reviewed by the investigator’s supervisor). *Id.* at ¶ 11. In instances when a SAR is filed, the narrative is leveraged to prepare a narrative within the SAR itself. *Id.* at ¶ 12. In a similar evaluative utilization, if a SAR is not filed, the information documented in the Comments file is retained to record the investigator’s evaluation of the information and the evaluation as to why a SAR was not filed. *Id.*

Because the Comments documents and narratives include this information and SAR recommendation, the narratives each necessarily include a reference to the investigator's evaluation of the activity at issue and the investigator's ultimate conclusion as to whether or not the reviewed activity was "suspicious." *Id.* at ¶¶ 11-12. Stated differently, the use of the term "suspicious" or "not suspicious" within the context of the FCI files necessarily reveals, respectively, whether a SAR was or was not filed. Although the term "suspicious" may be utilized by other areas of the bank outside of the FCI group to have its ordinary dictionary meaning, when it is used in an FCI investigation, it is a term of art and is indicative as to whether a SAR is filed. *Id.*

Thus, the investigator's use of the term "suspicious" (and its surrounding context) explicitly reveals whether a SAR was filed—meaning such documents are not only evaluative and prohibited from disclosure under the case law interpreting the BSA, but also that such documents must be withheld as explicitly revealing whether or not a SAR was filed. *Id.*; *see, e.g.*, 31 U.S.C. § 5318(g)(2)(A)(i) (“[N]either the financial institution . . . or other reporting person, may notify any person involved in the transaction that the transaction has been reported or otherwise reveal any information that would reveal that the transaction has been reported[.]”); *see also* Confidentiality of Suspicious Activity Reports, 75 Fed. Reg. at 75593; 75595 (FinCEN also recognizing that financial institutions “should afford confidentiality to any document stating that a SAR has not been filed”); 12 C.F.R. § 21.11(k)(1)(i) (“No national bank, . . . shall disclose a SAR or any information that would reveal the existence of a SAR.”); 31 C.F.R. § 1020.320(e)(1)(i) (same); *see also* *Lan Li*, 2020 WL 5887443, at \*2-3; *Lesti*, 2014 WL 12828854, at \*1; *Wiand*, 981 F. Supp. 2d at 1217-18; *Marcus*, 2020 WL 1482250, at \*3. Wells Fargo cannot produce such documents to Plaintiffs, the entirety of the document is prohibited

from disclosure in each instance, and redaction is insufficient because the underlying context would necessarily reveal whether or not a SAR was filed in each instance. *See Marcus*, 2020 WL 1482250, at \*3.

Dated: March 10, 2025

Respectfully submitted,

**MCGUIREWOODS LLP**

*/s/ Emily Y. Rottmann*

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*Attorneys for Defendant Wells Fargo Bank, N.A.*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on March 10, 2025, a true copy of the foregoing was filed with the Clerk of Court using the CM/ECF system, which will send notice of the electronic filing to all counsel of record.

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**DEFENDANT'S NOTICE OF COMPLIANCE WITH COURT ORDER (DE 83)  
REQUIRING CLARIFICATION CONCERNING ITS UNDER-SEAL FILING**

**EXHIBIT A**

**DECLARATION OF MICHAEL TOMPKINS IN SUPPORT OF WELLS  
FARGO BANK, N.A.'S NOTICE OF COMPLIANCE WITH COURT ORDER (D.E. 83)**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

Case Number: 1:24-cv-22142-GAYLES/GOODMAN

FANNY B. MILLSTEIN and  
MARTIN KLEINBART,

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WELLS FARGO BANK, N.A.,

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**DECLARATION OF MICHAEL TOMPKINS IN SUPPORT OF WELLS FARGO  
BANK, N.A.'S NOTICE OF COMPLIANCE WITH COURT ORDER (D.E. 83)**

I, Michael Tompkins declare as follows:

1. I am a Financial Crimes Senior Manager for Wells Fargo Bank, N.A. (“Wells Fargo”).
2. I am over the age of twenty-one (21) years and competent to testify to the matters contained herein.
3. I make this declaration based on personal knowledge that I have obtained through my employment with Wells Fargo and upon review of records that were subject to the Court’s order directing Wells Fargo to submit such records for review in camera. D.E. 68.
4. I make this declaration in support of Wells Fargo’s Notice of Compliance with Court Order Requiring Clarification Concerning Its Under-Seal Filing, that it was instructed to provide to this Court pursuant to this Court’s Order dated February 27, 2025. D.E. 83.

**The Bank Secrecy Act and Wells Fargo’s Anti-Money Laundering Programs**

5. Wells Fargo’s Financial Crimes Investigations (“FCI”) unit has investigators who investigate suspicious activity in connection with Wells Fargo’s legal duty under the Bank Secrecy Act (“BSA”) to create and file Suspicious Activity Reports (“SAR(s)”) under appropriate circumstances.

6. The details of Wells Fargo’s FCI investigations, including how its investigators identify potentially suspicious activity and how they evaluate that activity to evaluation as to whether to file a SAR are highly confidential, and disclosure of those details could enable bad actors to evade such controls.

7. In broad strokes, Wells Fargo has several methods for identifying potentially suspicious activity and then investigating that activity. One of those methods is through employee referrals called Unusual Activity Reports (“UARs”).

**Unusual Activity Reports (“UARs”)**

8. Any Wells Fargo employee who detects activity that they believe to be unusual and potentially within the scope of Wells Fargo’s SAR obligations is required to prepare and submit a UAR. Once submitted, a UAR is forwarded to Wells Fargo’s FCI team for investigation as a part of Wells Fargo’s BSA compliance program. An FCI investigator utilizes the UAR as the starting point for their evaluation as to whether a SAR filing is or is not required. The existence of a UAR does not always lead to the creation of a SAR.

**Suspicious Activity Narratives**

9. When Wells Fargo’s FCI investigators conclude a case investigation, they draft a narrative explaining their evaluation of the case. That narrative is saved in FCI’s system of record and can be exported into a document under the file name “Comments.”

10. It is my understanding that certain of these Comments documents and their narratives were provided to counsel for Wells Fargo (and the Court) in Microsoft Excel format. Typically, a narrative will identify what led to an investigation being opened, discuss the information reviewed, evaluate that information, and explain the investigator's recommendation as to whether to file a SAR (which is ultimately reviewed by the investigator's supervisor). The issue(s) raised in the Comments are reflected in any SAR that is filed, although the language may not be precisely the same.

11. Because the Comments documents and narratives include this information and SAR recommendation, the narratives each necessarily include a reference to the investigator's evaluation of the activity at issue and the investigator's ultimate conclusion as to whether or not the reviewed activity was "suspicious." Thus, the investigator's use of the term "suspicious" (and its surrounding context) explicitly reveals whether a SAR was filed. Stated differently, the use of the term "suspicious" or "not suspicious" within the context of the FCI files necessarily reveals, respectively, whether a SAR was or was not filed. Although the term "suspicious" may be utilized by other areas of the bank outside of the FCI group to have its ordinary dictionary meaning, when it is used in an FCI investigation, it is a term of art and is indicative as to whether a SAR is filed.

12. In instances when a SAR is filed, the investigator's narrative in the Comments file is leveraged to prepare a narrative within the SAR itself. If a SAR is not filed, the information documented in the Comments file is retained to record the investigator's evaluation of the information and the evaluation as to whether a SAR filing was required.

**SAR Address**

13. The FCI Excel files may also include specific columns titled "SAR Address." The SAR Address field in the Case Subjects tab of the "Transactions" workbook lists the address of

the case subject(s), regardless of whether they were included in a previous SAR or not. This field is not an indicator that the case subject is/was the subject of a SAR. However, the “Transactions” document is only created during the course of the FCI’s investigation as to whether or not to file a SAR and is never generated in Wells Fargo’s ordinary course of business.

**SAR Flag**

14. The “SAR Flag” field in the TellerView tab (within the “Transactions” document) is not related to Suspicious Activity Reports. TellerView is the banking software used by tellers conducting transactions. The field represents “System Approval Required” when a transaction is above the teller’s threshold and needs to seek an approval. This field is not an indicator that the case subject is/was the subject of a SAR. However, as referenced above, this information is compiled into the “Transactions” document solely to assist the investigator in determining whether or not to file a SAR.

**Holds**

15. FCI investigators do not place holds on accounts. Thus, a bare reference to a “hold” does not indicate whether or not a SAR was filed. A hold means the account cannot be utilized by an account holder.

16. As mentioned above, TellerView is the banking software used by tellers. Thus, to the extent “hold” is referenced in the Transactions document(s), such references are related to the status of the applicable deposit accounts and are not made by a FCI Investigator. However, the entirety of the “Transactions” document, including the “TellerView” tab is utilized by FCI investigators to evaluate relevant activity once an investigation has been opened.

I declare under the penalty of perjury that the foregoing is true and correct, signed this 10th day of March, 2025 in Ashburn, VA.

/s/ Michael Tompkins  
Michael Tompkins