

UNITED STATES DISTRICT COURT
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.

CONFIDENTIALITY ORDER

THIS CAUSE is before the Court on the Parties' Joint Motion for Entry of Stipulated Confidentiality Order. [ECF No. 94]. Upon review of the Motion, the record as a whole, having found good cause, and being otherwise fully advised, the Motion is **GRANTED**. In support of this Order, the Court finds that:

Plaintiffs Fanny Millstein and Martin Kleinbart ("Plaintiffs") and Defendant Wells Fargo Bank, N.A. ("Wells Fargo") (collectively "Parties") anticipate that documents, testimony, or information containing or reflecting confidential, proprietary, and/or personally or commercially sensitive information are likely to be disclosed or produced by Wells Fargo and/or certain other non-parties in the above styled case (the "Case"), and have stipulated to the below conditions for treating, obtaining, and using such information.

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the Parties shall abide by the following Confidentiality Order to govern the production and use of confidential information in this Case.

1. PURPOSE.

The Parties may use Protected Material, as defined below, that is disclosed or produced in connection with the Case only for prosecuting, defending, or attempting to settle the Case. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order.

Wells Fargo possesses certain records containing consumers' nonpublic personal information and confidential business information, requested in discovery in the above styled case, including bank account information held by Wells Fargo and other financial institutions for accounts receiving investors' funds and funds associated with the purchase, sale or funding of viaticated insurance policies by certain entities. Such records contain Plaintiffs' personal information as well as personal information of other consumers proposed by Plaintiffs' counsel as class members in this proceeding and previously certified as class members in *Millstein v. Marshall Seeman, et al.*, Case No. 21-CV-61179-RAR, which class was also represented by certain members of Plaintiffs' current legal team. Plaintiffs' counsel herein acknowledge their proposed and prior relationship with the class of investors as being "in a fiduciary or representative capacity on behalf investors" as provided in 15 U.S.C.A. § 6802(e)(3)(E).

2. DEFINITIONS.

a. “Discovery Material” means all items or information regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony, transcripts, or tangible things) that are produced or disclosed by the Parties in connection with discovery or any disclosures in the Case. Discovery Material does not include publicly available information.

b. “Parties” means Plaintiffs and Wells Fargo.

c. “Producing Party” means each of the parties who produces Discovery Material.

d. “Receiving Party” means each of the Parties, who receives Discovery Material.

e. “Protected Material” means any Discovery Material that is designated as “CONFIDENTIAL,” as provided for in this Order, as well as any information copied or extracted therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by the Parties or their counsel in Court or in any other setting that might reveal such information. Protected Material shall not include materials that have been disseminated to the public or are publicly available.

f. “Outside Counsel” means (i) outside counsel who serve as counsel for a Party, and (ii) attorneys associated with such counsel to whom it is reasonably necessary to disclose the information for purposes of litigation in the Case.

3. DURATION.

After the termination of each the Case, the confidentiality obligations imposed by this Order shall remain in effect until the parties agree otherwise in writing or a court order otherwise directs.

4. ACCESS TO AND USE OF PROTECTED MATERIAL.

a. **Basic Principles.** All Protected Material shall be used solely for prosecuting, defending, or attempting to settle the claims in the Case or any related appellate proceeding and not for any other purpose whatsoever, including without limitation any other litigation or any business or competitive purpose or function. Protected Material shall not be distributed, disclosed, or made available to anyone except as expressly provided in this Order.

b. **Personally Identifying Information.** The Parties may produce records in this Case that contain Personally Identifying Information of the Parties or non-parties, which may include name, mailing address, telephone numbers, email addresses or other personally identifiable information that can be used on its own or with other information to identify, contact or locate an individual ("PII"). The Parties agree that any PII contained in documents produced shall be treated as CONFIDENTIAL, pursuant to the terms of this Order. The Parties further agree that PII may be redacted where required by applicable state or federal law or regulations.

5. DESIGNATING PROTECTED MATERIAL.

a. The Parties may designate Discovery Material “CONFIDENTIAL,” provided that it meets the requirements for such designation as provided for herein. To the extent Discovery Material was previously designated by Wells Fargo as “CONFIDENTIAL,” it shall maintain such designation.

b. Written discovery, documents (which include “electronically stored information,” as that phrase is used in Federal Rule of Civil Procedure 34), and tangible things that meet the requirements for the confidentiality designations may be so designated by placing the appropriate designation on every document for which such designation is appropriate, prior to production.

c. The Parties and testifying persons or entities may designate all or portions of depositions and other testimony with the appropriate designation by indicating on the record at the time the testimony is given or by sending written notice of which portions of the transcript of the testimony is designated within thirty (30) days of receipt of the final transcript of the testimony. Any Party that wishes to disclose the transcript, or information contained therein before the time within which it may be appropriately designated as Protected Material has passed, may provide written notice of its intent to treat the transcript as non-confidential, after which time, any Party that wants to maintain any portion of the transcript as confidential must designate the confidential portions within fourteen (14) days, or else the transcript may be treated as non- confidential. Any

designated Discovery Material that is used in the taking of a deposition shall remain subject to the provisions of this Stipulation. In such cases the court reporter shall be informed of this Order.

6. DISCOVERY MATERIAL DESIGNATED AS “CONFIDENTIAL.”

a. The Parties, to the extent reasonably possible, must take care to limit any designation under this Stipulation to specific documents that qualify.

b. The Parties may designate Discovery Material as “CONFIDENTIAL” if it contains confidential non-public business information, personal financial information or other PII of an individual, or proprietary business information, and/or trade secrets of a Party.

c. Unless otherwise ordered by the Court, Discovery Material stamped CONFIDENTIAL may be disclosed only to the following:

1. The Court and its personnel, although any documents that are filed with the Court and reference or attach any information or document labeled “CONFIDENTIAL” must be filed pursuant to the Court’s sealing rules.

2. The Parties themselves, corporate officers, in-house counsel, and key employees of the Parties who have responsibility for directing or assisting litigation counsel in connection with the Case.

3. The Parties' Outside Counsel, their immediate paralegals and staff, and any copying, clerical, or other litigation support services working at the direction of such counsel, paralegals, and staff, unless otherwise agreed.

4. The Receiver, his staff, his experts, and his counsel in *Stermer et al v. Wells Fargo Bank, N.A.*, Case No. 24-cv-80722.

5. Any outside expert or consultant retained by the Parties or the Receiver to assist in the Case, provided that disclosure is only to the extent necessary to perform such work; and provided that such expert or consultant has agreed to be bound by the provisions of the Stipulation by signing a copy of Exhibit A.

6. Court reporters, stenographers and videographers retained to record testimony taken in this action.

7. Deposition and trial witnesses, and attorneys for witnesses, in the Case to whom disclosure is reasonably necessary provided: (1) the deposing Party requests that the witness sign the form attached as Exhibit A hereto; and (2) they will not be permitted to keep any Protected Material unless they sign a copy of Exhibit A, unless otherwise agreed by the Parties, or unless ordered by the court.

8. A vendor hired by a Party to collect documents, host data, maintain a database of electronic data or perform other work related to the collection, review or production of documents in the Case.

9. Any mediator who is assigned to hear the Case, and his or her staff, subject to their agreement to maintain confidentiality to the same degree as required by this Stipulation.

7. CHALLENGING DESIGNATIONS OF PROTECTED MATERIAL.

a. A Party shall not be obligated to challenge the propriety of any designation of Discovery Material made by a Party at the time the designation is made, and a failure to do so shall not preclude a subsequent challenge thereto.

b. Any challenge to a designation of Discovery Material under this Order shall written, shall be served on Counsel the Producing Party, shall particularly identify the documents or information that the Receiving Party contends should be differently designated by Bates number, and the grounds for the objection. Electronic mail shall constitute sufficient service. Thereafter, further protection of such material shall be resolved in accordance with the following procedures:

1. The Receiving Party shall have the burden of conferring either in person, in writing, or by telephone with the Producing Party in a good faith effort to resolve the dispute. The Producing Party shall have the burden of justifying the disputed designation.

2. Failing agreement, and within five (5) calendar days of the communication of no change to designations, the Parties' recourse is to request a hearing in accordance with the Court's Discovery Procedures Order [ECF No. 38] on whether the

Discovery Material in question is entitled to protection. The Producing Party shall have the burden of justifying the disputed designation.

3. Notwithstanding any challenge to a designation, the Discovery Material in question shall continue to be treated as designated under this Order until one of the following occurs: (a) the Party who designated the Discovery Material in question withdraws such designation in writing; or (b) the Court rules that the Discovery Material in question is not entitled to the designation.

8. SUBPOENAS OR COURT ORDERS.

If at any time a Party receives a subpoena from any court, arbitral, administrative, regulatory or legislative body, requesting Protected Materials, the subpoena recipient shall immediately give prompt written notice thereof to the producing Party and their counsel and shall provide the producing Party with an opportunity to move for a protective order regarding the production of Protected Materials. Nothing in this paragraph should be construed as permitting disclosure of Protected Material to any third party except as expressly provided in this Stipulation.

9. FILING PROTECTED MATERIAL.

As applied to documents, materials or other papers filed with the Court that have been designated "CONFIDENTIAL," the Parties shall file such documents (or any portion thereof) under seal in compliance with S.D. Fla. L.R. 5.4. Submissions filed with the Clerk's Office are presumptively open and accessible to the public. If the Court fails

to enter an order allowing a Party to file a particular pleading or document under seal, or if a Party believes that material that has been designated as “CONFIDENTIAL” cannot or should not be sealed, pursuant to the protocols and rules in this District, then the Party shall inform the Producing Party. The Parties will then meet and confer in a good faith effort to resolve the dispute.

Failing agreement, the Party objecting to the filing must request a hearing from the Court in accordance with the Court’s Discovery Procedures Order [ECF No. 38] on whether the Discovery Material in question must be submitted under seal. The Producing Party shall have the burden of justifying that the materials must be submitted under seal. If the Producing Party fails or is unable to obtain an order from the Court permitting the filing of the pleading or document at issue under seal before the deadline to make such filing, the Party wishing to make the filing will redact personal identifying information from the documents it is filing with the motion and will endeavor, in good faith, to work with the Producing Party to redact information in the documents attached to the motion that appear to qualify for sealing. The Receiving Party, however, may file the motion if the sealing motion has not been heard by the deadline required to file the motion in order to comply with the motions deadline. The use of Protected Material during the pre-trial hearing shall be determined by agreement of the Parties or by Order of the Court.

10. UNINTENTIONAL DISCLOSURE OF PRIVILEGED MATERIAL.

a. The production of documents (including both paper documents and electronically stored information) subject to protection by the attorney-client, the Bank Examination privilege, and/or protected by the work-product, joint defense or other similar doctrine, or by another legal privilege protecting information from discovery, shall not constitute a waiver of any privilege or other protection, provided that Producing Party, to the extent it originally produced the Discovery Material in question, notifies the Receiving Party, in writing, of the production after its discovery of the same.

b. If the Producing Party notifies the Receiving Party after discovery that privileged materials (hereinafter referred to as the "Identified Materials") have been produced, the Identified Materials and all copies of those materials shall be returned to the Producing Party or destroyed or deleted, on request of the Producing Party. If the Receiving Party has any notes or other work product reflecting the contents of the Identified Materials, the Receiving Party will not review or use those materials unless a court later designates the Identified Materials as not privileged or protected.

c. The Identified Materials shall be deleted from any systems used to house the documents, including document review databases, e-rooms and any other location that stores the documents. The Receiving Party may make no use of the Identified Materials during any aspect of the Case or any other matter, including in depositions or

at trial, unless the documents are later designated by a court as not privileged or protected.

d. The contents of the Identified Materials shall not be disclosed to anyone who was not already aware of the contents of them before the notice was made.

e. If a Receiving Party is in receipt of a document from the Producing Party which the Receiving Party has reason to believe is privileged, the Receiving Party shall in good faith take reasonable steps to promptly notify the Producing Party of the production of that document so that the Producing Party may make a determination of whether it wishes to have the documents returned or destroyed pursuant to this Order.

f. Either Party that returns the Identified Materials may request a hearing in accordance with the Court's Discovery Procedures Order [ECF No. 38] for an order compelling production of some or all of the material returned or destroyed, but the basis for such a request may not be the fact or circumstances of the production.

g. The Parties agree that this Stipulation is made pursuant to Rule 502(d) of the Federal Rules of Evidence and thus the disclosure of Identified Materials is not a waiver of the privilege in any other federal or state proceeding.

h. Paragraph 10 above and its subparts do not constitute a concession by any Party that any documents produced are subject to protection by the attorney-client privilege, the work product doctrine or any other potentially applicable privilege or doctrine. This agreement also is not intended to waive or limit in any way either Party's

right to contest any privilege claims that may be asserted by a Party with respect to any of the documents produced except to the extent stated in the agreement.

11. INADVERTENT FAILURE TO DESIGNATE PROPERLY.

a. The inadvertent failure by the Producing Party to designate Discovery Material with the correct confidentiality designation, shall not waive any such designation. If the Producing Party notifies a Receiving Party of an inadvertent failure to designate materials as "CONFIDENTIAL" the Producing Party shall reproduce the Protected Material with the correct confidentiality designation within ten (10) days upon its notification to the Receiving Party. Upon receiving the Protected Material with the correct confidentiality designation, the Receiving Party shall destroy all Discovery Material that was not designated properly.

b. A Receiving Party shall not be in breach of this Order for any use of such inadvertently-non-designated or inadvertently-misdesignated Discovery Material before the Receiving Party receives notice of the inadvertent failure to designate. Once a Receiving Party has received notice of the inadvertent failure to designate pursuant to this provision, the Receiving Party shall treat such Discovery Material at the appropriately designated confidentiality level pursuant to the terms of this Order.

12. INADVERTENT DISCLOSURE NOT AUTHORIZED BY ORDER.

a. In the event of a disclosure of any Protected Material the Producing Party pursuant to this Order, which is made to any person or persons not authorized to receive

such disclosure under this Order, the Party responsible for having made such disclosure, and the other Party with knowledge thereof, shall immediately notify counsel for the Producing Party whose Protected Material has been disclosed, and provide the Receiving Party's counsel all known relevant information concerning the nature and circumstances of the disclosure. The Party that is responsible for the disclosure shall also promptly take all reasonable measures to retrieve the improperly disclosed Protected Material and to ensure that no further or greater unauthorized disclosure and/or use thereof is made.

b. Unauthorized or inadvertent disclosure does not change the confidential status of Discovery Material or waive the right to hold the disclosed document or information as Protected.

13. FINAL DISPOSITION.

a. Not later than sixty (60) days after the final disposition of the Case, the Parties shall return all Discovery Material received from the other Party or destroy such Material. For purposes of this Order, "final disposition" occurs after an order, mandate, or dismissal finally terminating the Case, including all appeals.

b. All Parties that have received any such Discovery Material shall certify in writing that all such materials have been returned to the respective Producing Party or destroyed. Notwithstanding the provisions for return of Discovery Material, outside counsel may retain one set of pleadings, correspondence and attorney and consultant work product (but not document productions) for archival purposes.

14. MISCELLANEOUS.

a. **Shipment of Protected Material.** When any Receiving Party ships any Discovery Material to others designated in this Order as authorized to receive Discovery Material, the Receiving Party will encrypt any electronic data (if the Discovery Material is in that format) and supply the password in separate correspondence to the recipient. If the Discovery Material is in hard copy/paper form, the Receiving Party will ship the Discovery Material using secure packaging tape via Federal Express or UPS and retain a tracking number for the materials. If the Receiving party learns at any time that Discovery Material may have been retrieved or viewed by unauthorized parties during shipment, it will immediately notify the Producing Party and take all reasonable measures to retrieve the improperly disclosed Discovery Material.

b. Nothing in this Protective Order shall prevent or restrict a Producing Party's own disclosure or use of its own Discovery Material for any purpose, and nothing in this Order shall preclude any Producing Party from showing its Discovery Material to an individual who prepared the Discovery Material.

c. **Right to Further Relief.** Nothing in this Order abridges the right of any person to seek its modification by the Court in the future. By entering into this Order, the Parties do not waive the right to argue that certain material may require additional or different confidentiality protections than those set forth herein.

d. **Termination of Matter and Retention of Jurisdiction.** The Parties agree that the terms of this Order shall survive and remain in effect after the termination of the Case.

e. **Successors.** This Order shall be binding upon the Parties, their attorneys, and their successors, executors, personal representatives, administrators, heirs, legal representatives, assigns, subsidiaries, divisions, employees, agents, retained consultants and experts, and any persons or organizations over which they have direct control.

f. **Right to Assert Other Objections.** By entering into the stipulation this Order is based on, the Parties do not waive any right each otherwise would have to object to disclosing or producing any information or item. Similarly, the Parties do not waive any right to object on any ground or to use in evidence any of the material covered by this Order.

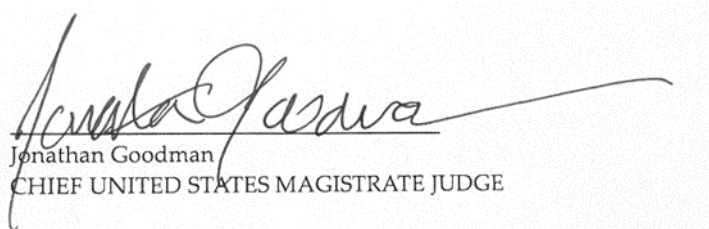
g. **Actions to Protect Confidential Information.** In the event that the Court determines that there is an actual or threatened breach of this Order by a Party, the Parties agree that the Producing Party would not have an adequate remedy at law and would be entitled to specific performance, and/or injunctive relief, to enforce the terms of this Order, in addition to any other remedy the Producing Party may be entitled at law or in equity.

h. **Burdens of Proof.** Notwithstanding anything to the contrary above, nothing in this Order shall be construed to change the legal standards applicable in

disputes regarding whether particular Discovery Material is confidential, which level of confidentiality is appropriate, whether disclosure should be restricted, and if so, what restrictions should apply.

i. **Modification by Court.** This Order is subject to further court orders based upon public policy or other considerations, and the Court may modify this Order in the interests of justice. The United States District Court for the Southern District of Florida is responsible for the interpretation and enforcement of this Order. All disputes concerning Protected Material, however designated, produced under the protection of this Order shall be resolved by the United States District Court for the Southern District of Florida in accordance with the Court's Discovery Procedures Order [ECF No. 38].

DONE AND ORDERED in Chambers, in Miami, Florida, on April 3, 2025.



Jonathan Goodman
CHIEF UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

The Honorable Darrin P. Gayles
All Counsel of Record

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Confidentiality Order that was agreed to by Plaintiffs Fanny Millstein and Martin Kleinbart and Wells Fargo Bank, N.A., in the case of *Millstein v. Wells Fargo Bank, N.A.*, Case No. 1:24-cv-22142- GAYLES/GOODMAN. I agree to comply with and to be bound by all the terms of this Confidentiality Order, and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Confidentiality Order to any person or entity except in strict compliance with the provisions of this Confidentiality Order.

I further agree to submit to the jurisdiction of the United States District Court for the Southern District of Florida for the purpose of enforcing the terms of this Confidentiality Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my agent for service of process in connection with this action or any proceedings related to enforcement of this Confidentiality Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____