

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.

**DEFENDANT WELLS FARGO’S UNOPPOSED MOTION FOR LEAVE TO FILE
AMENDED OBJECTIONS TO THE POST-DISCOVERY HEARING
ADMINISTRATIVE ORDER OF THE MAGISTRATE JUDGE**

Defendant Wells Fargo Bank, N.A. (“Wells Fargo”) moves for leave to file amended objections in place of its original objections to Magistrate Judge Goodman’s Post-Discovery Hearing Administrative Order ordering the production of its litigation holds relevant to the issues present in this lawsuit. In support of such motion, Wells Fargo shows as follows:

BACKGROUND

On January 28, 2025, Plaintiffs’ propounded requests for production on Wells Fargo, including Request No. 230, which requested “[d]ocuments sufficient to show Wells Fargo’s policy or practice related to the retention, destruction, disposal, and preservation of documents, including electronic data and records.” Wells Fargo objected to producing these documents, noting that the request was for impermissible discovery on discovery as well as overly broad and unduly burdensome because it sought policies and procedures over a fifteen-year period. Plaintiffs then moved to compel the production of documents responsive to Request 230 and noticed a discovery hearing for June 6, 2025. The parties submitted briefing prior to the hearing.

On June 6, 2025, the parties appeared before Magistrate Judge Goodman. At the hearing, Plaintiffs asserted that they believed Request No. 230 encompassed not only Wells Fargo's retention hold policies but also the litigation holds it issued regarding the issues present in this lawsuit. Hearing Tr. 10:10–13. The magistrate judge granted Plaintiffs' motion to compel the production of Wells Fargo's document retention policies and, despite expressly observing that Request No. 230 did not actually mention litigation holds, *id.* 11:22–25, noted that he was also ordering the production of Wells Fargo's litigation holds relevant to the issues present in this lawsuit. In doing so, he noted that “Defendant’s objections based on the attorney-client privilege and work product doctrine are overruled.” ECF No. 119 at 1.

On June 20, 2025, Wells Fargo filed partial objections to the magistrate judge's order, objecting specifically to the portion of the order compelling the production of its litigation holds. ECF No. 124. Wells Fargo explained that litigation holds are protected by the attorney-client privilege and work product doctrine and are shielded from discovery absent a finding of spoliation. Thus, because the magistrate judge expressly stated he was not ruling on spoliation, ECF No. 119. at 2 n.2, Wells Fargo argued that his order compelling the production of the litigation holds was clearly erroneous and contrary to law and should be set aside. Wells Fargo also argued that, because the plain language of Request No. 230 did not request the litigation holds and was the sole request at issue in the hearing that ordering their production was procedurally improper.

On June 24, 2025, Magistrate Judge Goodman issued a text order granting Wells Fargo's motion for extension of time through July 3, 2025, to produce certain of its document retention policies. ECF No. 126. In that order, Magistrate Judge Goodman also stated:

Concerning the same [119] post-hearing order underlying the unopposed motion for the requested enlargement, Wells Fargo may redact information protected by the attorney-client privilege and work product doctrine when producing the litigation holds required

to be produced. In other words, Wells Fargo shall produce documents reflecting when a litigation hold was imposed and the scope of the hold (i.e., which files and materials are encompassed by the hold). The Undersigned understands that Wells Fargo has filed [124] Objections to the portion of the [119] order concerning litigation holds, but it was always the Undersigned's intent to permit Wells Fargo to still protect attorney-client and work product portions of the litigation hold. For discovery purposes in this case, based on the allegations, facts and procedural history, it is the dates of the litigation holds and the definitions of what they cover which are discoverable under Federal Rule of Civil Procedure 26. An attorney's thought process about why the hold was implemented when it was or how Wells Fargo might defend a claim are not subject to production at this time, even if they happen to be included in a document advising of a litigation hold.

ECF No. 126.

While the magistrate judge's June 24 order ameliorates some of Wells Fargo's concerns regarding the production of its litigation holds, Wells Fargo still objects to the production of any portion of the litigation hold, which is protected by the attorney-client or work product privilege in its entirety. At the very least, Wells Fargo's counsel's impressions and advice regarding "the definitions of what [the litigation holds] cover," are protected by the attorney-client and work product privilege. Accordingly, because the magistrate judge's June 24 order still compels the production of that information, it is still clearly erroneous and contrary to law. *See, e.g., In re 3M Combat Arms Earplugs Prods. Liab. Litig.*, No. 19-md-2885, 2020 WL 1321522, at *8 (N.D. Fla. Mar. 20, 2020) ("Unlike normal business activities such as paying taxes, record keeping, and calculating accounts receivable, litigation hold notices are prepared because of the prospect of litigation. They are, therefore, textbook work product."); *Márquez-Marin v. Lynch*, No. 16-cv-1706, 2018 WL 1358214, at *12 (D.P.R. Mar. 15, 2018) ("The litigation hold notices are within the attorney-client and work product privileges."); *Karhu v. Vital Pharms, Inc.*, No. 13-cv-60768, 2014 WL 11532403 (S.D. Fla. Feb. 4, 2014) ("Request No. 3 asks Defendant to produce documents demonstrating that it placed a litigation hold, and in response thereto Defendant

asserted its privilege objections; that is all that is required.”); *Gibson v. Ford Motor Co.*, 510 F. Supp. 2d 1116, 1123 (N.D. Ga. 2007) (“Litigation holds are protected by the attorney work product doctrine because they “relate exclusively to [a particular] litigation,” are “created after [the] dispute arose,” and “exist[] for the sole purpose of assuring compliance with discovery that may be required.”).

Wells Fargo therefore respectfully requests that this Court grant it leave to file amended objections to the magistrate judge’s order. Wells Fargo should be allowed to amend its objections for clarity in light of the magistrate judge’s June 24 order. Without the opportunity to file amended objections in place of its original objections, Wells Fargo will lose the opportunity to challenge the magistrate judge’s June 24 clarification of his June 6 order, which narrows his earlier order but does not sufficiently cure its defects. Wells Fargo requests seven days from the grant of its motion for leave in which to file its the amended objections in place of its original objections.

MEMORANDUM OF LAW

Pursuant to Rule 72, Wells Fargo has fourteen (14) days to serve and file objections to an order. To facilitate the Court’s required review based on the objections Wells Fargo has already timely filed, Wells Fargo believes it is appropriate here for it to file amended objections. Specifically, since the filing of Wells Fargo’s objections, the magistrate judge issued an order effectively amending and/or clarifying his prior ruling. Because of this, this Court will be aided by additional clarification by Wells Fargo as well.

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(a)(2)

Pursuant to Local Rule 7.1(a)(2), the undersigned counsel certifies that counsel for Wells Fargo has conferred with counsel for Plaintiffs, who does not oppose the relief requested in the Motion.

WHEREFORE, for the foregoing reasons, Defendant Wells Fargo Bank, N.A. respectfully requests that this Court grant this Motion permit it leave to file an amended version in place of its Objections at ECF No. 124 and grant such other and further relief as this Court deems just and proper.

Dated: June 27, 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 June 27, 2025, a true copy of the foregoing was filed with the Court using the CM/ECF system, which will send notice to counsel of record.

/s/ Emily Y. Rottmann
Attorney

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**ORDER GRANTING UNOPPOSED MOTION FOR LEAVE TO FILE
AMENDED OBJECTIONS TO THE POST-DISCOVERY HEARING
ADMINISTRATIVE ORDER OF THE MAGISTRATE JUDGE**

THIS CAUSE having come before the Court on Defendant Wells Fargo Bank, N.A.'s Unopposed Motion for Leave to File Amended Objections to the Post-Discovery Hearing Administrative Order of the Magistrate Judge, it is

ORDERED AND ADJUDGED that:

The Motion is GRANTED. Defendant Wells Fargo Bank, N.A. shall have seven (7) days from the date of this signed order to file an amended version of its Objections [DE 124] .

DONE AND ORDERED in Chambers at Miami, Florida, this ___ day of _____, 2025.

The Honorable Jonathan Goodman
CHIEF UNITED STATES MAGISTRATE JUDGE

Copies furnished to: All Counsel of Record