

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

CASE NO. 24-22142-CIV-GAYLES/SHAW-WILDER

**FANNY B. MILLSTEIN and
MARTIN KLEINBART,**

**Plaintiffs,
v.**

WELLS FARGO BANK, N.A.,

Defendant.

**PLAINTIFF'S DISCOVERY MEMORANDUM REGARDING PLAINTIFF'S REQUEST
FOR TRANSACTION-MONITORING ALERTS AND RULES, PARAMETERS, AND
ALGORITHMS GOVERNING ALERTS**

In addition to what it knew and did in its roles as Trustee and Securities Intermediary, Wells Fargo (“WF”) knew of and substantially assisted the Scheme as Depository Bank for the Scheme Operators. D.E. 3, ¶¶77-135,137-38,140-42,144-151,153-155,156-162. Indeed, Judges Goodman and Gayles concluded that, if WF knowingly violated its own anti-money laundering policies and acknowledged infractions of its compliance procedures, that could establish aider-and-abettor liability. D.E. 53 at 56-62; D.E. 91. WF admits it was required to maintain automated transaction-monitoring systems that generate alerts of suspicious banking activity, yet claims the countless, highly irregular transactions conducted through the Scheme Operators’ accounts generated less than twenty. That is not plausible if WF had industry-standard systems in place. WF must produce all alerts or, if it has none, produce the algorithms and rules it uses to explain why none exist.

During the pendency of the Scheme, WF was obligated to comply with the Bank Secrecy Act (“BSA”), including its anti-money laundering (“AML”) provisions. D.E. 3, ¶82. That required WF and its personnel to identify and evaluate any *indicia* of money laundering activity, or “red flags,” occurring through its customer’s accounts, such as repetitive or unusual fund transfer activity, transfers of funds among related accounts, large and rounded-dollar amount transactions, rapid in-and-out flows of funds, and repeated intercompany movements. D.E. 3, ¶82. If the transactions meet certain criteria, the bank must file a Suspicious Activity Report (“SAR”) with FinCEN, but it is prohibited from disclosing that it has filed a SAR “or any information that would reveal the existence of a SAR.” D.E. 93 at 25 (citing the CFR). This prohibition on disclosure is commonly referred to as the “SAR privilege.” *See* D.E. 93, *passim*.

To comply with its BSA/AML duties, WF maintains systems to monitor its customers’ accounts for improper activity, and devotes substantial resources to developing and implementing advanced surveillance technology. D.E. 3, ¶¶87-88,104,131-34. These systems operate through pre-established rules, parameters, thresholds, and algorithms that are applied to transactional data to detect suspicious activity. *See* Kenneth P. Agle Declaration, Ex.1, ¶¶7-8. Alert generation is a system-driven, mechanical outcome of applying monitoring rules to transactional activity. Ex.1, ¶7. The alerts are generated, recorded, reviewed, and retained pursuant to a bank’s monitoring and record-keeping practices, independent of any ultimate determination of whether a SAR is filed, and form part of the investigatory materials generated or received in the ordinary course of business. Ex.1, ¶8. To be sure, Judge Goodman already rejected WF’s attempt to resist discovery based on an overbroad interpretation of the SAR privilege and required production of financial

crimes investigatory materials, subject only to narrow redactions protecting SAR filing status and recommendations. D.E. 93 at 43 (recognizing “computer-generated account monitoring reports or alerts” are discoverable ordinary-course investigatory materials).

Despite Judge Goodman’s ruling and countless suspicious transactions occurring through the Scheme Operators’ accounts, D.E. 3, ¶¶156-162, WF produced only a spreadsheet listing sixteen alerts that it claims to “understand to be comprehensive,” along with a few additional documents relating to a “314(b)” request (named for a provision allowing institutions to share information for financial crimes investigations). M&C Emails, Ex.2, pp.3, 10 of PDF. According to WF, those are all the transaction-monitoring alerts in its possession for the approximately 58 accounts the Scheme Operators used to launder hundreds of millions of dollars for over ten years. Ex.2, p.1 of PDF. WF cannot explain why there are not more, but refuses to produce the rules, parameters, thresholds, and algorithms so that Plaintiff can determine why its systems seemingly failed to detect hundreds of BSA/AML “red flags” that should have generated a substantial number of alerts. Ex.2, p.1 of PDF. Plaintiff’s banking and financial risk management expert, a former bank regulator with the FDIC with more than thirty-four years as a banking consultant specializing in regulatory compliance, AML systems, and transactional monitoring, has reviewed the Scheme Operators’ account records and opines that they contain at least 500 alert-triggering events. Ex.1, ¶10. Therefore, WF’s assertion that there were only a handful of alerts is inconsistent with the operation of standard automated AML monitoring systems and warrants examination of WF’s systems and their algorithms. Ex.1, ¶11.

WF admits it must produce the alerts and related information ordered by Judge Goodman. It has not, yet refuses to produce the system rules, parameters, thresholds, and algorithms that explain their absence. Plaintiff is entitled to discover if alerts were generated; if they were destroyed or never preserved; or if Wells Fargo configured its rule parameters so narrowly that the transactions never triggered alerts. *In re Takata Airbag Products Liab. Litig.*, 2017 WL 8812734, at *5, (S.D. Fla. July 5, 2017) (Rule 26 permits discovery “to evaluate the ‘existence...custody...and location of...documents.’”). Therefore, if WF does not produce the alerts or a sworn declaration accounting for their absence, it must produce its system rules, parameters, thresholds, and algorithms so that Plaintiff can test her theory that they would exist but for WF’s conduct. *Lee v. Graco, Inc.*, 2024 WL 5266750, at *2 (S.D. Fla. Nov. 4, 2024) (“Plaintiff need not take [WF]’s word and should have access to the discovery necessary to test [her] theory.”).

Dated: January 2, 2026

Respectfully submitted,

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Counsel for Plaintiffs and the Class

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by CM/ECF on January 2, 2026, on all counsel or parties of record on the Service List below.

/s/ Peter M. Spett

Peter M. Spett, Esq.

Florida Bar No. 0088840

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CASE NO. 24-22142-CIV-GAYLES/SHAW-WILDER

**FANNY B. MILLSTEIN and
MARTIN KLEINBART,**

**Plaintiffs,
v.**

WELLS FARGO BANK, N.A.,

Defendant.

**DECLARATION OF KENNETH P. AGLE IN SUPPORT OF PLAINTIFF'S
REQUEST FOR TRANSACTION-MONITORING ALERTS AND
RULES, PARAMETERS, AND ALGORITHMS GOVERNING ALERTS**

I, Kenneth P. Agle, declare as follows:

1. I have been retained by Plaintiffs to provide expert analysis concerning banking industry practices relating to Bank Secrecy Act and Anti-Money Laundering (“BSA/AML”) transaction monitoring, including the generation, review, and retention of automated transaction-monitoring alerts.

2. I submit this declaration based on my personal knowledge and professional experience, including five years as a bank regulator with the Federal Deposit Insurance Corporation, during which I received my Bank Examiner Commission, and more than thirty-four years as a banking consultant specializing in regulatory compliance, AML systems, and transactional monitoring.

3. Over the past decade, I have conducted more than 200 AML system validations, including validations of automated transaction-monitoring platforms, rule-based alerting systems, and associated governance and retention practices at U.S. financial institutions.

4. In connection with this matter, I reviewed transactional data, account statements, and related materials produced by Wells Fargo Bank, N.A. concerning accounts held or controlled by entities associated with Seeman and Holtz during the period from approximately 2011 through 2021.

5. My analysis focuses on whether the volume, velocity, and pattern of transactional activity reflected in the produced materials would, under standard banking practices and automated AML monitoring systems, result in the generation of transaction-monitoring alerts.

6. Based on my review, the transactional activity reflected in Wells Fargo's own records includes large dollar transfers, repeated intercompany movements, rapid in-and-out flows of funds, rounded-dollar transactions, velocity patterns, and other activity that is routinely monitored by automated AML systems and commonly associated with alert generation.

7. Automated BSA/AML transaction-monitoring systems operate through pre-established rules, parameters, thresholds, and algorithms that are applied to transactional data in the ordinary course of a bank's business. These systems objectively apply defined criteria to transaction data and generate alerts when specified thresholds, patterns, or deviations are met. Alert generation is therefore a system-driven, mechanical outcome of applying monitoring rules to transactional activity, rather than a discretionary or subjective decision by individual personnel.

8. Transaction-monitoring alerts constitute computer-generated records reflecting the identification of potentially unusual transactional activity and serve as the means by which transactional information is elevated for internal review and evaluation. Alerts are generated, recorded, reviewed, and retained pursuant to a bank's monitoring and record-keeping practices, independent of any ultimate determination regarding whether a Suspicious Activity Report is filed. Accordingly, the existence or absence of alerts, and the rules and retention practices governing

their generation and preservation, reflect what transactional activity was identified internally as unusual during the relevant period and form part of the investigatory materials generated or received in the ordinary course of business.

9. In my experience, transactional activity of the nature and magnitude reflected in the Wells Fargo records I reviewed would ordinarily result in the generation of numerous automated transaction-monitoring alerts across multiple independent rule categories within standard AML surveillance platforms, including systems such as NICE Actimize and comparable platforms.

10. Based on the volume, repetition, velocity, and intercompany nature of the transactions reflected in Wells Fargo's produced records, it is my opinion that at least 500 alert-triggering events (and corresponding transaction-monitoring alerts) necessarily would have been generated under standard BSA/AML monitoring practices and rule-based surveillance systems during the relevant period.

11. Accordingly, an assertion that no transaction-monitoring alerts were generated for the accounts at issue over a multi-year period is inconsistent with the operation of standard automated AML monitoring systems and warrants examination of the alert records themselves, as well as the rules, parameters, and retention practices governing alert generation and preservation during that period.

I declare under penalty of perjury that the foregoing is true and correct.



Kenneth P. Agle

Executed this 31st day of December 2025 in Provo, UT.



Post-Meet and Confer Confirmation re Discovery Issues (Millstein v. Wells Fargo)

From Peter Spett <pspett@silverlaw.com>

Date Fri 12/12/2025 5:53 PM

To Shaw, Jarrod D. <jshaw@mcguirewoods.com>; Rottmann, Emily Y. <erottmann@mcguirewoods.com>; Hestin, Nellie E. <nhestin@mcguirewoods.com>; Kinghorn, Mark W. <mkinghorn@mcguirewoods.com>; McCamey, Zachary L. <zmccamey@mcguirewoods.com>; Hutchinson, William O. L. <whutchinson@mcguirewoods.com>; E. Paul" <pcuffe@mcguirewoods.com>; Lambert, Cathie M. <clambert@mcguirewoods.com>; Eric G." <eolshan@mcguirewoods.com>; flservice <flservice@mcguirewoods.com>

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Dear Counsel:

This email confirms the parties' respective positions following our meet-and-confer call earlier today.

Transaction Monitoring Alerts: Defendant confirmed its position that it has produced all transaction-monitoring alerts in its possession for the approximately 58 accounts at issue and that no additional alerts exist or will be produced. Defendant further confirmed that it will not conduct additional searches or provide further explanations or reconciliations concerning the absence of alerts. Plaintiff disagrees with Wells Fargo's position and maintains that this presents a discovery dispute appropriate for judicial resolution, particularly in light of Magistrate Judge Goodman's order entitling Plaintiff to attendant FCI investigative materials. The parties are at impasse on this issue.

NICE Actimize / Strand Rules and Parameters: Defendant confirmed that it refuses to produce the rules, parameters, or algorithms governing the NICE Actimize and Strand systems, including those applicable to the accounts at issue. Plaintiff maintains that these materials are relevant and discoverable, especially given Wells Fargo's position that no additional alerts exist. The parties agreed on the call that they are at impasse on this issue.

WF Prod 26 – BSA Redactions / Privilege Log: You represented that you will produce in the next few days a privilege log for the BSA-based redactions in WF Prod 26 and that such redactions are intended to be consistent with Magistrate Judge Goodman's order. Plaintiff reserves all rights to review the forthcoming log and to raise any objections or seek relief depending on the bases asserted for the redactions.

Plaintiff's 4th RFP (Requests Related to Policy Actions): Wells Fargo has agreed to produce responsive documents relating only to Policy Actions involving policies that were associated with Centurion at any time, and is searching for those documents. Wells Fargo maintains its relevance and overbreadth objections to Plaintiff's 4th RFP to the extent Plaintiff seeks documents relating to Policy Actions involving policies that were not associated with Centurion at any time. The parties are at impasse on Plaintiff's requests relating to Policy Actions

involving policies that were not associated with Centurion, and will raise this issue with the Court.

We informed you that the Court currently has times available for a discovery conference on January 16, 2026 between 1 and 5 pm, and you stated that you will get back to us shortly on confirming the time of your availability.

Please let us know if you believe any of the above inaccurately reflects the discussion.

Thanks,
Peter

Peter M. Spett, Esq.
Of Counsel



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Outlook

Privilege Log for WF Prod 26 and Meet and Confer regarding Defendant's Alerts and Rules

From Peter Spett <pspett@silverlaw.com>

Date Fri 11/21/2025 2:32 PM

To Shaw, Jarrod D. <JShaw@mcguirewoods.com>; vonborke@bucknermiles.com
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Jarrold,

We have reviewed the FCI files produced last week, including those containing additional alerts connected to Wells Fargo's 314(b) communications in November/December 2012 with First Life Insurance of Denver and the resulting FCI case investigation. Numerous portions of these 12 documents (designated as WF Prod 26) have been redacted on the basis of "Confidential: Bank Secrecy Act." Please provide a privilege log for these documents so that we may identify the specific bases for redactions and meet-and-confer regarding the assertions. Please also confirm whether WF Prod 26 represents the final "belt-and-suspenders" search for alerts.

While we disagree with your position that Wells Fargo's deficient production of alerts is not ripe for judicial review, we are willing to meet and confer again before seeking Court intervention.

To be clear, this dispute is not a matter of Plaintiff "desiring" more alerts. Wells Fargo's position—that no alerts were generated from the NICE Actimize and Strand systems for approximately 58 customer accounts over a decade—is not tenable. Our preliminary review of approximately 3,000 monthly statements for 37 of these accounts shows more than 200,000 transactions from 2011–2022. Under FFIEC/FinCEN requirements and customary minimum thresholds for transaction monitoring systems such as NICE Actimize, well over 500 transactions must have triggered alerts, even assuming the highest possible rule thresholds.

In short, Wells Fargo asserts that no transaction monitoring alerts exist where Plaintiff's analysis indicates that hundreds must have been generated. This discrepancy necessarily places at issue: 1. Wells Fargo's rules, parameters, and algorithms governing the detection of suspicious activity by NICE Actimize and Strand; and 2. Wells Fargo's policies and procedures for retaining alerts, as required by both the bank's internal policies and relevant regulatory authorities.

Your reliance on cases discussing alert-based allegations in the 12(b)(6) context is misplaced. Those decisions addressed pleading standards, not discovery obligations. Here, the Court has already held that the FAC "alleges more than atypical transactions and more than merely overlooking red flags" and "plausibly alleges that Wells Fargo had actual knowledge of the wrongdoing." (Dkt. 53 at 59).

Further, Magistrate Judge Goodman's March 25, 2025 Order (Dkt. 93) entitles Plaintiff to any and all attendant materials from FCI investigations of the Scheme Operators' accounts, subject only to redactions necessary to avoid revealing a SAR. Transaction monitoring alerts—and the rules that generate them—are attendant materials to those very investigations, no different in principle than the alerts and procedures for the Unusual Activity Reports and 314(b) communications that Wells Fargo has produced.

Accordingly, please provide the privilege log for WF Prod 26 and advise of your earliest availability for a meet and confer regarding both the redactions and the outstanding alert-production issues.

Regards,
Peter

Peter M. Spett, Esq.
Of Counsel



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Subject: RE: Meet and Confer Summary regarding Defendant's Alerts and Rules



Peter,

We disagree on the below so allow this to clarify Wells Fargo's positions.

First, with respect to the alerts, we were clear that Wells Fargo has produced the alerts. We further confirmed we would be checking as a belt and suspender one more time. You seem to be saying, without evidence or any basis other than your own desire for more, that Wells Fargo has failed "to produce the substantial number of alerts expected." That is not a basis for a motion to compel when Wells Fargo has indicated it produced the alerts. While Plaintiffs may desire more, if they don't exist, they don't exist. If you want to take that issue to the Court, we welcome that discussion.

Second, we can confirm that there were no account specific modifications for Seeman Holtz.

Lastly, Wells Fargo objects to producing the rules and algorithms (your third paragraph includes alerts which is addressed above) utilized by Wells Fargo. That information is not relevant nor is it appropriately requested. Your citation to Judge Goodman's order is irrelevant, and we are unclear how that collaterally estops any argument against production. The order addressed a totally different issue. Moreover, your citation to *Ackner* is off point because it relates to procedures which is a category of documents Wells Fargo has already produced. The same is true for the out of Circuit *Chase* case. Rather, on point cases within this circuit directly contradict your position. See, e.g., *Wiand v. Wells Fargo Bank, N.A., Inc.*, 677 F. App'x 573 (11th Cir. 2017) (noting that an argument that the bank's automated systems did not trigger sufficient alerts "suggests a duty to monitor account activity which was expressly rejected..."); *Isaiah v. JPMorgan Chase Bank*, 960 F.3d 1296 (11th Cir. 2020) ("Allegations that a bank failed to adhere to an appropriate standard of care or to follow relevant policies, procedures, or regulations are likewise insufficient to demonstrate actual knowledge for the purposes of an aiding and abetting claim.").

Simply put, Wells Fargo's algorithms and rules are not relevant to the issue of what Wells Fargo actually knew and should have known arguments are routinely rejected, including by Magistrate Goodman in connection with the Receiver's now dismissed litigation.

Therefore, while we are an impasse on the third issue, the first two lack any issues ripe for judicial intervention.

Jarrold

Jarrold D. Shaw

Partner

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From: Peter Spett <pspett@silverlaw.com>

Sent: Friday, November 7, 2025 12:07 PM

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Subject: Meet and Confer Summary regarding Defendant's Alerts and Rules

****EXTERNAL EMAIL; use caution with links and attachments****

Jarrod and Emily,

The following summarizes the portion of our Meet and Confer discussion regarding outstanding discovery issues in our Zoom call this past Wednesday, November 5th.

The parties discussed Defendant's production of transaction monitoring and other alerts generated over a ten-year period for those approximately 58 depository accounts held at Wells Fargo by the Scheme Operators and their related entities. You confirmed that the two systems that Wells Fargo utilized during that period for automated transaction monitoring were NICE Actimize and Strand, and that alerts generated during the ten-year period would be in Wells Fargo's current possession. You also stated your understanding that Defendant's production of alerts to date was comprehensive. However, you clarified that Defendant does not want to provide Plaintiff with an incomplete picture, so multiple different groups within Wells Fargo were rerunning its prior searches for alerts to confirm production of everything available. As we discussed, given the extensive time that has elapsed since Plaintiff's First Request for Production and our multiple discussions as to Defendant's failure to produce the substantial number of alerts expected for request nos. 221-223, 226, 243-254, 293-295, the parties are at impasse as to this issue.

Our conversation then shifted to Plaintiff's requests for the underlying rules and algorithms that generate these alerts, which Defendant is withholding and objecting to producing on grounds that these rules are irrelevant, that their production would be unduly burdensome, and that such rules are confidential and proprietary. We articulated several reasons why production of the rules themselves would be relevant or lead to the discovery of relevant documents and information as to the claims and defenses in the case (particularly with regard to the allegations of Defendant's actual knowledge and substantial assistance of the Ponzi scheme) especially given the fact that the relatively few alerts produced by Defendant do not appear to have been generated by NICE Actimize or Strand. It was also Plaintiff's view that these objections were already argued by Defendant and rejected by the Court in Magistrate Judge Goodman's decision and order dated March 25, 2025. You said you would review that decision and order, as well as confirm to us each of the particular objections that Defendant was relying upon to withhold NICE Actimize and Strand rules and algorithms for generation of alerts.

You further stated that you agreed that it would be relevant if there were any documents showing specific modifications, exceptions, or suppression of rules and algorithms for any of the approximately 58 customer depository accounts at issue in the case. You said you would check with your client, produce any responsive materials to the extent such exist, and if none exist, Defendant would confirm that there was no such modifications, exceptions, or suppression of rules and algorithms for those accounts.

The parties are at now impasse as to the obligation of Defendant to produce the alerts, rules and algorithms utilized by its NICE Actimize and Strand transaction monitoring systems, which

Plaintiffs consider to constitute responsive and material procedures of Defendant used for the identification of potentially suspicious activity in the approximately 58 depository accounts held at Wells Fargo by the Scheme Operators and their related entities. See Magistrate Judge Goodman's decision and order dated March 25, 2025 (collaterally estopping Defendant's position); see also *Ackner v. PNC Bank, N.A.*, No. 16-cv-81648, 2017 WL 1383950 at *2-3 (S.D. Fla. Apr. 12, 2017) (compelling production of procedures regarding a defendant bank's fraud detection processes); *In re JPMorgan Chase Bank, N.A.*, 799 F.3d 36, 44 (1st Cir. 2015) (same).

Please let us know if anything above is inaccurate or requires clarification.

Regards,
Peter

Peter M. Spett, Esq.
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Re: Seeman Holz - Search Term Conferral

From Peter Spett <pspett@silverlaw.com>

Date Fri 10/31/2025 8:26 AM

To emarlow@bucknermiles.com <emarlow@bucknermiles.com>; 'Rottmann, Emily Y.' <erottmann@mcguirewoods.com>; vonborke@bucknermiles.com <vonborke@bucknermiles.com>; Shaw, Jarrod D. <JShaw@mcguirewoods.com>

Cc david@bucknermiles.com <david@bucknermiles.com>; Seth Miles <seth@bucknermiles.com>; jds@sallahlaw.com <jds@sallahlaw.com>; Griset, Jill Crawley <JGriset@mcguirewoods.com>; jak@sallahlaw.com <jak@sallahlaw.com>; Scott Silver <ssilver@silverlaw.com>; Ryan Schwamm <rschwamm@silverlaw.com>; Hestin, Nellie E. <NHestin@mcguirewoods.com>; escobio@bucknermiles.com <escobio@bucknermiles.com>; Alex Llanos <aLlanos@silverlaw.com>; Haskell, Rick C. <RHaskell@mcguirewoods.com>; Jon Kobrinski <jkobrinski@bucknermiles.com>; Maha Adnan <madnan@bucknermiles.com>; Olshan, Eric G. <eolshan@mcguirewoods.com>; Cuffe, E. Paul <pcuffe@mcguirewoods.com>

Emily:

I look forward to addressing these issues with you and your team next week and therefore will not waste ink in rehashing our areas of disagreement. However, since you are "are working to confirm that no other alerts are available" before next week's conferral, I believe it would be helpful to point out that the sole document you cite in your email for the production of "comprehensive" alerts (WF_MILL_00467677) appears not to be generated by any automated alert system that counsel has represented to be employed by Wells Fargo (NICE Actimize or Strand), but rather a manually compiled spreadsheet summary of sixteen FCI events primarily generated by UARs. Thus, unless Defendant provides or directs us to documents containing alerts generated through its automated monitoring systems for potentially suspicious activity, and documents related to those alerts, we will treat your May 20, 2025 and October 8, 2025 representations as Defendant's final substantive response on the subject.

Regards,
Peter

Peter M. Spett, Esq.
Of Counsel



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REPRESENTING INVESTORS NATIONWIDE

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From: Elena Marlow <emarlow@bucknermiles.com>

Sent: Thursday, October 30, 2025 5:36 PM

To: 'Rottmann, Emily Y.' <erottmann@mcguirewoods.com>; vonborke@bucknermiles.com <vonborke@bucknermiles.com>; Shaw, Jarrod D. <JShaw@mcguirewoods.com>

Cc: david@bucknermiles.com <david@bucknermiles.com>; Seth Miles <seth@bucknermiles.com>; jds@sallahlaw.com <jds@sallahlaw.com>; Griset, Jill Crawley <JGriset@mcguirewoods.com>; jak@sallahlaw.com <jak@sallahlaw.com>; Scott Silver <ssilver@silverlaw.com>; Ryan Schwamm <rschwamm@silverlaw.com>; Peter Spett <pspett@silverlaw.com>; Hestin, Nellie E.

<NHestin@mcguirewoods.com>; escobio@bucknermiles.com <escobio@bucknermiles.com>; Alex Llanos <aLlanos@silverlaw.com>; Haskell, Rick C. <RHaskell@mcguirewoods.com>; Jon Kobrinski <jkobrinski@bucknermiles.com>; Maha Adnan <madnan@bucknermiles.com>; Olshan, Eric G. <eolshan@mcguirewoods.com>; Cuffe, E. Paul <pcuffe@mcguirewoods.com>

Subject: RE: Seeman Holz - Search Term Conferral



Emily,

We would also like to discuss Defendant's Responses and Objections to Plaintiff's Fourth Request for Production. We are available next week anytime on Wednesday, 10-11 am Thursday, 2-3 Thursday, after 5 pm Thursday, and Friday 1-4 pm.

Please let us know what works for you.

Thank you,

Elena Marlow
Buckner + Miles
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Miami | Florida | 33134
Main 305.964.8003 Ext. 208
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From: Rottmann, Emily Y. <erottmann@mcguirewoods.com>
Sent: Thursday, October 30, 2025 2:55 PM
To: Elena Marlow <emarlow@bucknermiles.com>; Brett E Von Borke <vonborke@bucknermiles.com>; Shaw, Jarrod D. <JShaw@mcguirewoods.com>
Cc: David M. Buckner <david@bucknermiles.com>; Seth Miles <seth@bucknermiles.com>; 'jds@sallahlaw.com' <jds@sallahlaw.com>; Grisnet, Jill Crawley <JGriset@mcguirewoods.com>; 'jak@sallahlaw.com' <jak@sallahlaw.com>; 'ssilver@silverlaw.com' <ssilver@silverlaw.com>; 'rschwamm@silverlaw.com' <rschwamm@silverlaw.com>; 'pspett@silverlaw.com' <pspett@silverlaw.com>; Hestin, Nellie E. <NHestin@mcguirewoods.com>; Amelie Escobio <escobio@bucknermiles.com>; 'Alex Llanos' <aLlanos@silverlaw.com>; Haskell, Rick C. <RHaskell@mcguirewoods.com>; Jon Kobrinski <jkobrinski@bucknermiles.com>; Maha Adnan <madnan@bucknermiles.com>; Olshan, Eric G. <eolshan@mcguirewoods.com>; Cuffe, E. Paul <pcuffe@mcguirewoods.com>
Subject: RE: Seeman Holz - Search Term Conferral

Elena and Peter:

We are in receipt of both of your meet and confer emails. Please let us know when you have some time next week to hop on a call to discuss both issues raised. If possible, we would like to do so in one phone call.

Elena, on your request related to the third requests for production, we are directly searching for responsive documents. If there are emails, we understand and expect that those would be with the custodians we have already searched and hit the search terms previously agreed to by the parties given the general terms. We would like to further discuss potential putative class wide searches when we talk.

Peter, we also wanted to briefly respond to your concerns raised with respect to alerts. We have produced the alerts we have located at WF_MILL_00467677, which we understand to be comprehensive. With that said, and in light of your concerns, we are working to confirm that no other alerts are available. Alerts are not being withheld on the basis that they are evaluative; however, I believe the referenced spreadsheet of alerts contains limited redactions (as noted in the excel) and consistent with Magistrate Goodman's order.

We continue to maintain that Plaintiff is not entitled to "programming methodology and effectiveness for the models." Plaintiff's claim requires a showing of actual knowledge and should have knowns are insufficient. *See, e.g., Wiand v. Wells Fargo Bank, N.A.*, 938 F. Supp. 2d 1238, 1244-45 (M.D. Fla. 2013) ("Plaintiffs alleging aiding-and-abetting liability for a bank's participation in a Ponzi scheme sometimes rely on 'red flags' or procedural infirmities that should have alerted the bank to potentially unscrupulous activity by its customer. These 'red flags,' however, are insufficient to establish a claim for aiding and abetting"); *see also FW Distrib., LLC v. J.P. Morgan Chase Bank, N.A.*, 2025 U.S. Dist. LEXIS 87073 (S.D. Fla. May 6, 2025) (alerts themselves arose to nothing more than "should have known," which is insufficient for actual knowledge); *see also Groom v. Bank of Am.*, 2012 U.S. Dist. LEXIS 2374 (M.D. Fla. Jan. 9, 2012) (substantial assistance was not shown by allegations the banks "failed to adhere to the customary and accepted standard of care and failed to monitor incoming deposits and wires and other monies entrusted to them" and that Pearlman's conduct "would normally have been deemed suspicious activities.""). Although Wells Fargo has produced alerts (and our agreement to confirm that no other alerts were withheld), your questions/contentions regarding the number of alerts and/or the effectiveness of any of Wells Fargo's models are irrelevant and speculative. Accordingly, Wells Fargo maintains its objections related to the programming methodology and effectiveness.

We look forward to discussing further.

Thank you,
Emily Rottmann

Emily Y. Rottmann
Partner

 Outlook

Fw: Meet and Confer on Defendant's Responses to Plaintiff's Requests for BSA/AML Alerts and Rules

From Peter Spett <pspett@silverlaw.com>

Date Tue 10/28/2025 6:02 PM

To Shaw, Jarrod D. <jshaw@mcguirewoods.com>; vonborke@bucknermiles.com <vonborke@bucknermiles.com>

Gentlemen:

My apologies — I inadvertently left you both off as cc's to the email I just sent below.

Peter M. Spett, Esq.
Of Counsel



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From: Peter Spett <pspett@silverlaw.com>

Sent: Tuesday, October 28, 2025 5:58 PM

To: 'Rottmann, Emily Y.' <erottmann@mcguirewoods.com>

Cc: david@bucknermiles.com <david@bucknermiles.com>; Seth Miles <seth@bucknermiles.com>; jds@sallahlaw.com <jds@sallahlaw.com>; Jill Crawley <JGriset@mcguirewoods.com>; jak@sallahlaw.com <jak@sallahlaw.com>; Scott Silver <ssilver@silverlaw.com>; Ryan Schwamm <rschwamm@silverlaw.com>; Peter Spett <pspett@silverlaw.com>; 'Hestin, Nellie E.' <nhestin@mcguirewoods.com>; escobio@bucknermiles.com <escobio@bucknermiles.com>; Rick C. <RHaskell@mcguirewoods.com>; Jon Kobrinski <jkobrinski@bucknermiles.com>; Maha Adnan <madnan@bucknermiles.com>; Eric G."

<eolshan@mcguirewoods.com>; E. Paul <pcuffe@mcguirewoods.com>

Subject: Meet and Confer on Defendant's Responses to Plaintiff's Requests for BSA/AML Alerts and Rules

Emily,

We intend to raise with the Court Defendant's failure to produce automated system account monitoring alerts and contest Defendant's objections to production of the rules underlying those systems, absent satisfactory clarity from you on the points below. Thus, as soon as possible, counsel needs to meet and confer about Defendant's failure to produce to date a single alert generated through any of its automated monitoring systems for potentially suspicious activity in any of the approximately 58 depository accounts associated with the PLCs, Centurion Companies, NSI, Scheme Operators, or SHPC (including, without limitation, NICE Actimize and Strand), and its objections to production of documents concerning each monitoring system's programming methodology and effectiveness for the models used to detect potentially suspicious activity in those 58 accounts.

Plaintiff's discovery requests for these materials are, without limitation, encompassed in Plaintiff's First Requests for Production Nos. 221-223, 226, 243-254, 293-295. Defendant responded with objections on various grounds to justify withholding materials responsive to these RFPs, including that these requests are "overly broad, unduly burdensome, and ambiguous" and to the extent "they contain the confidential, proprietary information of Wells Fargo." (Defendant's Objections and Supplemental Objections to Plaintiff's 1st RFP). Nonetheless, with the exception of rules for the generation of alerts, Defendant has agreed to produce all alert materials responsive to Plaintiff's requests. *Id.*

To date, you made the following representations on behalf of Defendant. On May 20, 2025, you emailed us that "Based on a search by ECNs and account numbers, we were not able to locate any alerts in either Actimize or Strand. We were able to locate some additional information consistent with the prior FCI files that we are processing for production after redaction of explicit references to SAR or no-SAR decisions. We continue to object to producing the algorithms/manuals for any of these systems, including as irrelevant and unduly burdensome." More recently, on October 8, 2025, you wrote: "To clarify, Wells Fargo is following Judge Goodman's ruling, that contemplates withholding SARs, to the extent any such document exists. Otherwise, we are producing and/or logging documents with redactions pursuant to Judge Goodman's ruling."

Based upon our experience and dealings with experts on this subject in bank liability cases, review of materials thus far produced by Wells Fargo, and publicly available information regarding alerts and their related rules (including the FFIEC BSA/AML Manual and NICE Actimize publications), we cannot reconcile your objections, subsequent representations, and lack of production of documents in the absence of further clarification from you. There should be thousands if not tens of thousands of alerts for the approximately 58 accounts, and, if there truly are none, Wells Fargo's algorithms/manuals concerning its automated monitoring systems' programming methodology and effectiveness are highly relevant and outweigh any potential burden for their production. We therefore need clarity from you as to the precise bases from which Defendant is asserting these representations and objections.

We do not want to get stuck on semantics here. Our requests for alerts and documents related to alerts comprise any notices, notifications, or equivalent alerting events generated by any BSA/AML automated monitoring systems in any of the 58 depository accounts associated with the PLCs, Centurion Companies, NSI, Scheme Operators, or SHPC, and all documentation reviewed and generated by all

Wells Fargo employees or agents who reviewed, closed out, or escalated those alerts. To be clear, this applies to any department, agent or other custodian of Wells Fargo monitoring any account associated with the PLCs, Centurion Companies, NSI, Scheme Operators, or SHPC – not just FCI. If Defendant contends these requests to be vague, ambiguous, irrelevant or overbroad, please let us know how.

There is no reason for us to believe that alerts generated by any BSA/AML automated monitoring systems in any of the 58 depository accounts associated with the PLCs, Centurion Companies, NSI, Scheme Operators, or SHPC, and documents related to such alerts, would not be in Wells Fargo's current custody, possession or control. If Defendant contends that such materials would not be in Wells Fargo's current custody, possession or control, please let us know why and direct us to Defendant's retention policies and procedures regarding such alerts and documents related to alerts.

We understand that any and all alerts and documents related to alerts must be produced whether or not they are "evaluative" in Defendant's parlance, per Magistrate Judge Goodman's Order dated March 25, 2025, which as you put it, limits Wells Fargo's withholding to "SARs, to the extent any such document exists." If Defendant is interpreting the March 25, 2025 Order compelling production differently, please let us know how.

We do not understand Wells Fargo to be contending that alerts and documents related to alerts are being withheld on the basis that such materials are confidential and proprietary, other than for standing by its objections concerning alert-related rules discussed below. If we are misunderstanding this, and Defendant is withholding any alert-related materials other than rules on this basis, please let us know how Defendant believes it is entitled to not produce these materials in light of the parties' agreed-upon protective order entered in this case.

Lastly, since Wells Fargo contends that its search has resulted in no responsive alerts being located after a thorough and diligent search, Plaintiff is absolutely entitled to each monitoring system's programming methodology and effectiveness for the models used to detect potentially suspicious activity in those 58 accounts. For instance, as stated in Wells Fargo's policy document "Suspicious Activity Report – Frequently Asked Questions" published January 29, 2021 (WF_MILL_00156861):

Automated account monitoring typically covers multiple types of transactions and uses established rules systemically programmed to identify unusual activity or patterns of activity. The process captures a wide range of account data and activities (for example geographic location, deposits, withdrawals, funds transfers, electronic transfer transactions, and ATM transactions) directly from the business or enterprise systems of record and uses rule-based or intelligent system programming. Rule-based systems can apply multiple or overlapping rules and filters as set criteria to identify specific or anomalous activity, or may have sub-sets of criteria that further define a category of accounts or transactions Intelligent systems are adaptive and filter transactions against historical activity or as a comparison to a control threshold or peer group The system reviews transactions against other transactions and the customer profile, and building out its database as more information is stored. Both systems require parameters and filters be adapted to the activity the business is trying to identify or control and be reviewed prior to implementation and on a periodic basis.

Thus, any purported failure of Wells Fargo's automated account monitoring systems to alert potential suspicious activity in the 58 Seeman Holtz associated accounts would be the result of the rules and algorithms implemented by Defendant. These rules therefore become directly relevant to Plaintiff's claims of actual knowledge and Defendant's defenses of lack of actual knowledge of fraud in the

accounts at issue. Under established legal standards used to assess the production of documents that lead to discovery of relevant evidence, Plaintiff is entitled to discover exactly why the rules set by Defendant's automated account monitoring systems failed to alert Wells Fargo of those potentially suspicious transactions.

Moreover, Defendant's contention that the rules for the generation of alerts are highly confidential and proprietary have no merit. First, the general rules and thresholds used by automated transaction monitoring are customary and publicly-known by those in the banking compliance sector. Second, the specific tailoring of rules and thresholds are particular to each customer monitored, so what applies to those Wells Fargo accounts used to operate the Ponzi-like activity alleged in this case have no significant relation to the rules used by Wells Fargo to monitor any of its other customers' accounts. Third, the parties' agreed-upon protective order entered in this case abrogates Defendant's objections based on the purported confidential and proprietary nature of the withheld materials, and nothing may be withheld on this basis. *See also* Magistrate Judge Goodman Order, dated Mar. 25, 2025, at 46 (holding that Defendant may only withhold "policies and procedures **limited to, and specifically designed for,** the preparation of SARs and an evaluation of whether a SAR should be prepared").

Please promptly respond to the questions herein and inform us of your earliest available opportunity this week to meet and confer on this matter.

Regards,
Peter

Peter M. Spett, Esq.
Of Counsel



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