UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 1:24-cv-22142-GAYLES/SHAW-WILDER

FANNY B. MILLSTEIN and
MARTIN KLEINBART,

Plaintiffs,

v.

WELLS FARGO BANK, N.A.,

Defendant.
_____/

DEFENDANT'S OPPOSITION TO PLAINTIFF'S DISCOVERY MEMORANDUM AS TO ITS REQUEST FOR TRANSACTION-MONITORING ALERTS AND RULES, PARAMETERS, AND ALGORITHMS GOVERNING ALERTS

Plaintiff moves to compel (i) transaction-monitoring alerts; and (ii) the rules, parameters, and algorithms governing transaction-monitoring alerts. Wells Fargo addresses each in turn.

I. Transaction-Monitoring Alerts

Plaintiff argues "WF admits it must produce the alerts . . . ordered by Judge Goodman." D.E. 182 at 2. This is not disputed. Plaintiff then argues "[WF] has not" produced the alerts. *Id.* This is not true; as Wells Fargo has made clear to Plaintiff on numerous occasions, it has already produced all transaction-monitoring alerts in its possession for the accounts at issue. [redacted] In short, *Wells Fargo has established that it retained and produced all responsive alerts.* Despite Plaintiff's misguided insistence that "more alerts" should have been generated and therefore surely *must* exist, that is not the case. As there is nothing to compel on this issue, the Court should deny Plaintiff's request with respect to the alerts.

II. Rules, Parameters, and Algorithms

Plaintiff next requests that Wells Fargo be compelled to produce the rules, parameters, or algorithms that result in the generation of transaction-monitoring alerts. While the alerts themselves might be relevant, the underlying coding that generates those alerts is unequivocally not relevant.

Plaintiff seemingly intends to argue that Wells Fargo's transaction-monitoring systems were insufficient, in other words, that Wells Fargo inadequately monitored the schemers' accounts based on the settings of its transaction monitoring parameters.[1] Indeed, Plaintiff's motion hinges on the notion that Wells Fargo did not, in Plaintiff's view, "operat[e] . . . standard automated AML monitoring systems." D.E. 182 at 2. But this argument presumes that Wells Fargo *had an obligation to Plaintiff* to monitor the schemers' accounts and breached that obligation by inadequately monitoring. Otherwise, the efficacy of Wells Fargo's monitoring would have no

[1] Plaintiff's expert evidently already has sufficient information to provide an opinion on this issue as seen in the declaration made in support of Plaintiff's motion to compel (the "Agle Declaration"). The Agle Declaration offers the opinion that Wells Fargo should have generated more alerts on the accounts at issue. Plaintiff plainly does not need the algorithms to enable her expert to opine on the adequacy of Wells Fargo's account monitoring algorithms and models.

bearing on Plaintiff's claims, and Plaintiff would have no need or right to test how Wells Fargo set its monitoring. Therein lies the problem with Plaintiff's argument: Wells Fargo had no such obligation to Plaintiff to monitor, and Plaintiff's claims against Wells Fargo are not and cannot be premised on any such (non-existent) duty to monitor. As comprehensively reviewed by the Middle District of Florida in *Wiand v. Wells Fargo Bank, N.A.*, 86 F. Supp. 3d 1316 (M.D. Fla. 2015), and affirmed by the Eleventh Circuit in that case, 677 F. App'x 573 (11th Cir. 2017):

- Multiple Eleventh Circuit decisions confirm that a bank has no "duty to its customers to . . . investigate suspicious transactions made by customers," which includes no generalized duty to "monitor" account activity (*Wiand*, 86 F. Supp. 3d at 1321-23, and gathering cases);
- While "federal banking statutes such as the Bank Secrecy Act impose duties on banks, those duties extend to the United States," not a private plaintiff, and they do not create a "private right of action" (*id.* at 1322, rejecting the notion that any BSA monitoring duties can be leveraged by a private plaintiff); and
- Arguments that a bank's automated systems did not trigger sufficient alerts "suggests a duty to monitor account activity which was expressly rejected" (*id.* at 1330 n.12).

In fact, Judge Goodman has made *the same rulings in this case*, finding "a bank does not have a duty to monitor accounts or investigate transactions more generally." D.E. 53 at 68; *see also id.* at 46 n.16 (summarizing prior case law rejecting duty to investigate under the BSA because the duty is not owed to private bank consumers).[2] As a result, whether Wells Fargo's monitoring

[2] Plaintiff's motion begins with the statement that Judges Goodman and Gayles concluded, in ruling on the motion to dismiss in this case, 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. 182 at 1 (citing a 7-page stretch of the Court's order). Such a bold and far-reaching statement appears nowhere in the Court's order. Plaintiff appears to be attempting to refashion the portion of the motion to dismiss order regarding account opening processes alleged in Plaintiff's complaint (D.E. 53 at 58), into a ruling that the Court has never made. The Court never ruled that having a poorly configured algorithm in support of the bank's BSA program could create aiding and abetting liability. Rather, the Court has found the opposite, as cited here, that the bank's BSA obligations do not create a private duty for Plaintiff to exploit. Similarly, the Court has observed that "allegations that a bank . . . 'failed to adhere to an appropriate standard of care or to follow relevant policies, procedures, or regulations' are insufficient to show the actual knowledge necessary for Plaintiff's aiding and abetting claims." D.E. 53 at 45-46 (citations omitted).

was coded effectively—what Plaintiff seeks to test with the requested discovery—is not relevant to Plaintiff's claims.

Plaintiff's claims instead require Plaintiff to establish that Wells Fargo had *actual knowledge* of the scheme being perpetrated via the schemers' accounts. *See, e.g.,* D.E. 53 at 43-46 (explaining "actual knowledge" standard in aiding and abetting claims, which is not met by establishing the bank "should have known" about the scheme). This is, of course, why the alerts themselves could be relevant and why Wells Fargo agreed to search for and produce them. If transactional activity alerted—that is, was brought to the attention of Wells Fargo's employees—then Plaintiff will surely make arguments about what knowledge that established on the part of Wells Fargo. But the coding that generates those alerts—what Plaintiff seeks to compel here—reveals nothing about what Wells Fargo did or did not actually know about Seeman Holtz's accounts. *See Wiand*, 86 F. Supp. 3d at 1330 n.12 (granting summary judgment in favor of bank over evidence that "the Bank's systems did not trigger sufficient alerts" because the bank had no "duty to monitor"). Nor is there any law supporting the notion that actual knowledge could be imputed if a bank failed to implement a BSA program aligning to industry standards, as Plaintiff seems to suggest she will argue; rather, this Court has observed the contrary. *See* D.E. 53 at 45-46 (actual knowledge not established based on failure "to follow relevant . . . regulations"). Plaintiff apparently wants to argue that if Wells Fargo's BSA monitoring program had been designed in a *hypothetical* manner, it *might have* detected the fraud at issue. That theory, however, flies in the face of the well-settled law on the actual knowledge requirement.

Not only is the coding underlying Wells Fargo's BSA monitoring irrelevant, the burden associated with collecting the parameters and algorithms for that coding—if it is even possible at all—is extraordinarily high, rendering this discovery disproportionate. *See* Fed. R. Civ. P. 26(b)(1) (court should consider "whether the burden or expense of the proposed discovery outweighs its likely benefit"). [redacted] *See* Del Broccolo Decl. ¶¶ 6-8. Given the lack of relevance and highly burdensome nature of Plaintiff's request, the Court should deny it.

Respectfully submitted on January 9, 2026.

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Attorneys for Defendant Wells Fargo Bank, N.A.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 9, 2026 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

DEFENDANT'S OPPOSITION TO PLAINTIFF'S DISCOVERY MEMORANDUM AS TO ITS REQUEST FOR TRANSACTION-MONITORING ALERTS AND RULES, PARAMETERS, AND ALGORITHMS GOVERNING ALERTS

DECLARATION OF BRIAN G. FITZGERALD

(To be filed under seal pursuant to the Court's Order D.E. 181)

DEFENDANT'S OPPOSITION TO PLAINTIFF'S DISCOVERY MEMORANDUM AS TO ITS REQUEST FOR TRANSACTION-MONITORING ALERTS AND RULES, PARAMETERS, AND ALGORITHMS GOVERNING ALERTS

DECLARATION OF JOSEPH DEL BROCCOLO

(To be filed under seal pursuant to the Court's Order D.E. 181)