

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Fort Lauderdale Division

Case Number: 17-60907-CIV-MORENO

FEDERAL TRADE COMMISSION, et al.,

Plaintiffs,

vs.

JEREMY LEE MARCUS, et al.,

Defendants.

**ORDER ADOPTING IN PART MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION**

THE MATTER was referred to the Honorable Barry S. Seltzer, United States Magistrate Judge, for a Report and Recommendation on Receiver's Motion to Compel PNC Bank, N.A. to Comply with Subpoenas, for Sanctions, and for Related Relief, filed on **April 2, 2019**. The Magistrate Judge filed a Report and Recommendation (**D.E. 380**) on **June 11, 2019**. The Court has reviewed the entire file and record. The Court has made a *de novo* review of the issues that the objections to the Magistrate Judge's Report and Recommendation present, and conducted a hearing in open Court on October 10, 2019. Being otherwise fully advised in the premises, it is

ADJUDGED that United States Magistrate Judge Barry S. Seltzer's Report and Recommendation is **AFFIRMED** and **ADOPTED** in part. The Court agrees with the report in so far as it recommends the Court not allow duplicative discovery. The report found that due to the pendency of the Receiver's direct case against PNC Bank, *Perlman v. PNC Bank, N.A.*, No. 19-61390-SMITH, allowing discovery in this underlying case would result in duplicative discovery. The Magistrate Judge also found that the Receiver could more appropriately pursue

the discovery in his direct case against PNC Bank, where the relevance and proportionality of the discovery under Rule 26 would be more readily established. At oral argument on October 10, 2019, however, this Court learned from both sides that they are not taking discovery in the receiver's direct action, *Perlman v. PNC Bank, N.A.*, pending resolution of the motions to dismiss. The Court also learned from counsel for PNC Bank that the requested documents evincing communications between the bank and third-parties regarding the Defendants did not exist. To the extent those documents exist, the Court finds they are relevant to the goal of this case of recovering and preserving assets, as well as the underlying goal of this case, which is to recover for the fraud perpetrated by the Defendants. Given that perhaps these documents do not exist, and if they do, they are probably limited in number, the Court views a benefit in requiring the production in this case, rather than in the direct case, to facilitate the speedy recovery and prevent the further dissipation of assets. This is especially true, where, as here, the parties agree discovery is stayed in *Perlman v. PNC Bank*.

The Receiver also seeks the bank-generated investigation reports of the Defendants. The Bank's main objection against producing these documents is that they are privileged under the Bank Secrecy Act, 31 U.S.C. § 5318(g)(2). The privilege extends to Suspicious Activity Reports, but not to underlying documents. *Shapiro, P.A. v. Wells Fargo Bank, N.A.*, No. 18-60250-CIV-HUNT, 2018 WL 4208225, *1 (S.D. Fla. July 23, 2018). To the extent these reports and the underlying assets allow the Receiver to recover and prevent dissipation of assets, they are related to the goals of this litigation. The Court does not see the benefit of delaying this production to a later date when discovery starts in the direct action. Accordingly, the Court grants the motion to compel the production of these documents. Of course, PNC Bank may provide the Receiver with a privilege log to the extent the documents are privileged under the

Bank Secrecy Act.

Finally, the Receiver seeks to obtain PNC Bank's Anti-Money Laundering policies and other anti-fraud policies. The Court denies the motion to compel as to these documents consistent with the Magistrate Judge's Report and Recommendation. The Receiver has not established how this category of documents will enhance his ability to recover assets. The Court, therefore, will deny the motion in this case. The Court, however, recognizes that these policies will most likely be discoverable in the Receiver's direct action against PNC Bank.

Accordingly, it is

ADJUDGED that the Receiver's Motion to Compel is GRANTED in part as set forth in this Order. The Court directs PNC Bank to comply with this Order by no later than November 13, 2019.

DONE AND ORDERED in Chambers at Miami, Florida, this 11 of October 2019.



FEDERICCO A. MORENO
UNITED STATES DISTRICT JUDGE

Copies furnished to:

United States Magistrate Judge Barry S. Seltzer

Counsel of Record