

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE NO. 0:17-60907-CIV-MORENO

FEDERAL TRADE COMMISSION, *et al.*,

Plaintiffs,

v.

JEREMY LEE MARCUS, *et al.*,

Defendants.

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**AMENDED**

**RECEIVER'S MOTION FOR *IN CAMERA* REVIEW OF  
DOCUMENTS WITHHELD BASED ON THE SAR PRIVILEGE**

**This Amended Motion is filed to provide the Court with a “Revised” Privilege Log which PNC provided to the Receiver after the filing of the Receiver’s Motion for *In Camera* Review of Documents Withheld Based on the SAR Privilege [ECF No. 446].**

Jonathan E. Perlman, as Court-appointed Receiver (the “Receiver”) for the Receivership Entities, by and through undersigned counsel, files this Amended Motion for *In Camera* Review of Documents Withheld Based on the SAR Privilege (the “Motion”), and states:

1. PNC Bank, N.A. (“PNC”) recently produced documents to the Receiver in accordance with this Court’s Order Adopting in Part Magistrate Judge’s Report and Recommendation [ECF No. 427] and Order Granting the Confidentiality and Protective Order Between the Receiver and PNC Bank, N.A. Regarding Documents Produced Pursuant to D.E. 427 [ECF No. 441].

2. In its Order Adopting in Part Magistrate Judge’s Report and Recommendation, this Court stated:

The Receiver also seeks 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 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 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. Of course, PNC Bank may provide the Receiver with a privilege log to the extent the documents are privileged under the Bank Secrecy Act.

[ECF No. 427].

3. On November 27, 2019, PNC provided the Receiver with a privilege log identifying documents withheld based on the privilege governing Suspicious Activity Reports (the “SAR privilege”). Specifically, PNC’s privilege log indicates that PNC has withheld documents “containing information concerning a decision whether to file or not file a Suspicious Activity Report.”

4. The Receiver and PNC dispute the scope of the SAR privilege. *Compare* [ECF No. 400 at pp.13-15] *with* [ECF No. 403 at pp.7-8]. However, the Receiver and PNC cannot confer meaningfully about the extent to which the privilege applies to any information in the withheld documents without violating the privilege (assuming it applies). Therefore, the parties request that this Court conduct an *in camera* review of the withheld documents to determine whether the documents are indeed privileged.

5. Accordingly, on December 23, 2019, the Receiver filed a Motion for *In Camera* Review of Documents Withheld Based on the SAR Privilege [ECF No. 446], attaching PNC’s original privilege log as Exhibit A.

6. The next day, on December 24, 2019, PNC provided the Receiver with a “First Revised” privilege log, which adds several items which PNC has withheld based on the SAR privilege. A copy of PNC’s First Revised Privilege Log is attached to this Amended Motion as Exhibit “A.”

### CERTIFICATE OF CONFERENCE

7. The Receiver has conferred with counsel for PNC with respect to the relief sought in this motion. PNC agrees that the Court should conduct an *in camera* review of the documents to determine whether the information in the documents is protected or should be produced. However, PNC would like the opportunity to engage in *ex parte* communications with the Court in the course of its *in camera* inspection, to explain PNC's view of why the SAR privilege applies to the documents being submitted. The Receiver believes that the Court is familiar with the law and can review the documents without PNC's assistance, and opposes PNC being provided the opportunity to make *ex parte* argument to the Court.

WHEREFORE, the Receiver requests that the Court: (1) order PNC to provide the Court with the documents reflected in the First Revised privilege log; (2) conduct an *in camera* review of the documents to determine whether they contain information that is protected under the SAR privilege; (3) to the extent the Court determines that a document contains information that is not protected, order PNC to produce the document, or a version of the document redacted to the extent necessary to protect the privileged information within the document; and (4) grant such other and further relief the Court deems appropriate.

Respectfully submitted on December 24, 2019.

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 24, 2019, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record and entities identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: /s/ Michael Friedman

**SERVICE LIST**

**Served Via CM/ECF Notification**

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# **EXHIBIT A**

Revised First Confidential Privilege Log of Non-Party PNC Bank, N.A.

Entry No.	Beginning Bates No. (if any)	Doc Date	Author	Recipient	CCs	Privilege	Description of Document/Communication
1		6/8/2018				SAR	Mantas case file containing information concerning a decision whether to file or not file a Suspicious Activity Report
2		2/1/2014				SAR	Transaction monitoring alert containing information concerning a decision whether to file or not file a Suspicious Activity Report
3		2/15/2014				SAR	Transaction monitoring alert containing information concerning a decision whether to file or not file a Suspicious Activity Report
4		2/15/2014				SAR	Transaction monitoring alert containing information concerning a decision whether to file or not file a Suspicious Activity Report
5		4/1/2014				SAR	Mantas case file containing information concerning a decision whether to file or not file a Suspicious Activity Report
6		5/31/2014				SAR	Transaction monitoring alert containing information concerning a decision whether to file or not file a Suspicious Activity Report
7		8/12/2014				SAR	Mantas case file containing information concerning a decision whether to file or not file a Suspicious Activity Report
8		4/6/2016				SAR	Mantas case file containing information concerning a decision whether to file or not file a Suspicious Activity Report
9		1/15/2014				SAR	Mantas case file containing information concerning a decision whether to file or not file a Suspicious Activity Report
10		7/8/2014				SAR	Mantas case file containing information concerning a decision whether to file or not file a Suspicious Activity Report
11		7/24/2014	Loretta Traster			SAR	Mantas case file containing information concerning a decision whether to file or not file a Suspicious Activity Report
12		7/24/2014				SAR	Mantas case file containing information concerning a decision whether to file or not file a Suspicious Activity Report
13		9/8/2014				SAR	Mantas case file containing information concerning a decision whether to file or not file a Suspicious Activity Report
14		10/20/2014				SAR	Mantas case file containing information concerning a decision whether to file or not file a Suspicious Activity Report
15		12/31/2014				SAR	Mantas case file containing information concerning a decision whether to file or not file a Suspicious Activity Report
16		1/12/2015				SAR	Mantas case file containing information concerning a decision whether to file or not file a Suspicious Activity Report
17		1/29/2015				SAR	Mantas case file containing information concerning a decision whether to file or not file a Suspicious Activity Report
18		3/30/2015				SAR	Mantas case file containing information concerning a decision whether to file or not file a Suspicious Activity Report
19		4/13/2015				SAR	Mantas case file containing information concerning a decision whether to file or not file a Suspicious Activity Report



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Entry No.	Beginning Bates No. (if any)	Doc Date	Author	Recipient	CCs	Privilege	Description of Document/Communication
20		6/4/2015				SAR	Mantas case file containing information concerning a decision whether to file or not file a Suspicious Activity Report
21		7/20/2015				SAR	Mantas case file containing information concerning a decision whether to file or not file a Suspicious Activity Report
22		8/31/2015				SAR	Mantas case file containing information concerning a decision whether to file or not file a Suspicious Activity Report
23		9/10/2015				SAR	Mantas case file containing information concerning a decision whether to file or not file a Suspicious Activity Report
24		9/24/2015				SAR	Mantas case file containing information concerning a decision whether to file or not file a Suspicious Activity Report
25		9/28/2015				SAR	Mantas case file containing information concerning a decision whether to file or not file a Suspicious Activity Report
26		9/30/2015				SAR	Mantas case file containing information concerning a decision whether to file or not file a Suspicious Activity Report
27		12/14/2015				SAR	Mantas case file containing information concerning a decision whether to file or not file a Suspicious Activity Report
28		12/31/2015				SAR	Mantas case file containing information concerning a decision whether to file or not file a Suspicious Activity Report
29		2/19/2016				SAR	Mantas case file containing information concerning a decision whether to file or not file a Suspicious Activity Report
30		3/2/2016				SAR	Mantas case file containing information concerning a decision whether to file or not file a Suspicious Activity Report
31		4/6/2016				SAR	Mantas case file containing information concerning a decision whether to file or not file a Suspicious Activity Report
32		none	Loretta Traster			SAR	Mantas case file containing information concerning a decision whether to file or not file a Suspicious Activity Report
33		none	Sean Mceuen			SAR	Supporting documentation, for a transaction monitoring alert, containing information concerning a decision whether to file or not file a Suspicious Activity Report
34		10/14/2016				SAR	Mantas case file containing information concerning a decision whether to file or not file a Suspicious Activity Report
35		4/2/2014				SAR	Mantas case file containing information concerning a decision whether to file or not file a Suspicious Activity Report
36		4/2/2014				SAR	Mantas case file containing information concerning a decision whether to file or not file a Suspicious Activity Report
37		8/12/2014				SAR	Mantas case file containing information concerning a decision whether to file or not file a Suspicious Activity Report

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<b>Entry No.</b>	<b>Beginning Bates No. (if any)</b>	<b>Doc Date</b>	<b>Author</b>	<b>Recipient</b>	<b>CCs</b>	<b>Privilege</b>	<b>Description of Document/Communication</b>
38		5/12/2017				SAR	Mantas case file containing information concerning a decision whether to file or not file a Suspicious Activity Report
39		5/12/2017				SAR	Supporting documentation, for a Mantas case file, containing information concerning a decision whether to file or not file a Suspicious Activity Report
40		6/8/2018				SAR	Mantas case file containing information concerning a decision whether to file or not file a Suspicious Activity Report