SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MILL LANE MANAGEMENT, LLC. AND GARY SINDERBRAND, Plaintiffs, v. WELLS FARGO ADVISORS, LLC. AND STEVEN SINDERBRAND, Defendants.	Index No. 652025/2017 **AFFIRMATION OF ANGELA A. TURIANO**

ANGELA A. TURIANO, being duly admitted in the Courts of the State of New York, affirms under penalty of perjury as follows:

1. I am a principal of the law firm of Bressler, Amery & Ross, P.C. ("Bressler"), attorneys for Defendants Wells Fargo Clearing Services, LLC[1] ("Wells Fargo") and Steven Sinderbrand (collectively "Defendants") in this action and am fully familiar with the matters set forth herein. I make this affirmation in support of Wells Fargo's application pursuant to CPLR Articles 31 and 63 for an order: (i) enjoining Plaintiffs Mill Lane Management, LLC. and Gary Sinderbrand (collectively, "Gary") and their agents, representatives, affiliates, and all persons acting on their behalf or in concert with them, including lawyers Aaron Zeisler and his firm, Zeisler PLLC, and Andrew Miller (collectively referred to herein as "Plaintiffs"), from reviewing, using, copying and/or disseminating confidential customer information and privileged information ("Confidential Information") inadvertently produced to Gary in a related New Jersey action

[1] On November 11, 2016, First Clearing, LLC merged with and into Wells Fargo Advisors, LLC with Wells Fargo Advisors, LLC being the survivor. Simultaneously with the merger, Wells Fargo Advisors, LLC changed its name to Wells Fargo Clearing Services, LLC.

including but not limited to enjoining Plaintiffs from contacting any Wells Fargo customers identified within the Confidential Information; (ii) requiring Plaintiffs immediately to return all Confidential Information in their possession, (iii) requiring Plaintiffs to identify all persons to whom they have shown or disclosed Confidential Information and (iv) granting Wells Fargo such other and further relief as may be just and proper.[2]

2. On February 13, 2017, Wells Fargo was served with a subpoena by Mr. Miller, Gary's lawyer in a New Jersey action, Gary Sinderbrand vs. Steven Sinderbrand, Docket No.: ATL-L-2182-16 (the "NJ Action"). The subpoena sought various documents, including electronic communications between Steven Sinderbrand and Wells Fargo. See Exhibit A. Wells Fargo retained Bressler to assist with the subpoena response and any related discovery. I am the lawyer in charge of this matter.

3. Based upon my discussion with Mr. Miller, Wells Fargo agreed to conduct a search of four custodians' email boxes using designated search terms. Wells Fargo, like many large corporations, uses an outside e-discovery service to conduct e-mail searches. The vendor conducted the search and, upon completion, I personally conducted a review of the voluminous search results to exclude from production any e-mails containing confidential or privileged information. Specifically, using the vendor's e-discovery software, I reviewed what I thought was the complete search results and for documents that contained confidential or privileged information, I thought I marked them as confidential or privileged. I then coordinated with the vendor with both written instructions and by telephone and instructed the vendor to produce the e-mails in the database that I had marked, but that the vendor should withhold from the production anything that I tagged privileged-withhold and confidential and client-information

[2] This instant application in no way waives Defendants' right to move to compel arbitration in this matter.

withhold. What I did not realize, was that there were documents that I had not reviewed. Unbeknownst to me, the view I was using to conduct the review had a set limit of documents that it showed at one time. Thus, I thought I was reviewing a complete set, when in fact, I only reviewed the first thousand documents. I thus inadvertently provided documents that had not been reviewed by me for confidentiality and privilege. In addition, it was my understanding that the vendor was going to apply redactions for documents I flagged as needing redactions. Thus, I thought that responsive documents that contained confidential information would be redacted prior to production. The documents, however, were not redacted prior to production. I realize now that I misunderstood the role of the vendor. Finally, I now understand that I may have miscoded some documents during my review.

4. It was never my intent to produce confidential customer information. I did spot check the CD when it was provided by the vendor and saw documents I intended to produce, so I believed the production had been created correctly. We ultimately sent the documents in an **encrypted** CD to Gary's counsel, Mr. Miller. The password was sent under separate cover and the CD was stamped "Confidential." My letter enclosing the CD stated My letter enclosing the CD stated:

> Please also note that with regard to the current production – and as consistent with WFA's original objections - all responsive emails were produced (whether relevant or not to the subject matter of the court action) [1] ***with the exception of: privileged emails and non-relevant emails that contained customer and/or company confidential information***.

See Exhibit B (emphasis added). My intent was that non-relevant confidential documents be withheld and that the relevant e-mails and other documents that contained confidential information

[1] As a third-party to the NJ Action, Wells Fargo was not in a position to choose which emails counsel deemed relevant and thus, we produced all emails that were responsive to the search requested by counsel, excluding only those with confidential and/or privileged information.

be redacted and it was my understanding that the vendor had performed those redactions. In conducting my spot-check, I did not discover these errors.

5. On Thursday, July 20, 2017, I received a letter from Mr. Zeisler, copying Mr. Miller, stating that Gary had provided Mr. Zeisler with copies of the production in the NJ Action and that the documents contained Confidential Information. See Exhibit C. This was the first we knew of the mistake. I subsequently determined that, inadvertently, I had not reviewed certain emails containing, or with attachments containing, Confidential Information. That same day I sent emails and a letter demanding the return of the CD. See Exhibit D.

6. On Thursday, July 20, 2017, I also received a letter by email from Mr. Miller stating that he had received Mr. Zeisler's letter and that he had provided Gary a copy of the CD to review. Mr. Miller further stated that although he would not review documents that were "not relevant to the action," he would not return the CD because he did not believe my representation that the information contained therein "was inadvertently sent based upon [the] cover letter which accompanied the disc." See Exhibit E. Mr. Miller reiterated his refusal to return the CD in a follow up email, and continued to take this position notwithstanding a direct representation from me, as an officer of the Court, that the emails were inadvertently produced and a further statement that this situation "could have been dealt with simply and appropriately by providing a heads up to the issues and returning the CD – as is [his] professional obligation." See Exhibit F.

7. Rather than return the CD as Wells Fargo demanded on July 20 and thereby prevent the risk of disclosure of Confidential Information concerning Wells Fargo customers, one or more Plaintiffs published the Confidential Information to the New York Times. On Friday, July 21, 2017, the Times issued an article entitled "Wells Fargo Accidentally Releases Trove of Data on Wealthy Clients." Although the article contains a number of inaccuracies, it also states that the

Times "**was shown large portions of the data [i.e., the Confidential Information] and confirmed that it included what appeared to be clients' names, unredacted Taxpayer Identification Numbers, assets under management, portfolio performance, mortgage information and details on 529 education savings plans.**" See Exhibit G (emphasis added).

8. Plaintiffs disclosed Confidential Information concerning Wells Fargo's customers to the press and have refused to return the information for one purpose: to try to extort a settlement of their claims. As such, Plaintiffs have created a significant risk of harm to Wells Fargo customers, thus requiring us to seek this emergent relief.

9. In conjunction with refusing to return and publicizing the Confidential Information, Plaintiffs have twice directly contacted Wells Fargo leaders in an apparent attempt to profit from the discovery mistake. On Thursday, Plaintiff emailed one Wells Fargo leader that "[h]opefully, by the time you read this, your lawyers . . . will have also told you how [they] disclosed a massive amount of highly confidential material . . . . I am aware that you [and others] were willing to take me back despite the concerns of the Compliance Team. It is by virtue of your actions that I am reaching out to you directly to give you the opportunity to take any action you may deem appropriate. Let me know if you want to speak. Best, Gary." See Exhibit H. Despite the fact that I requested that counsel tell Gary not to communicate directly with Wells Fargo business personnel, on Sunday, Plaintiff tried again, emailing the Head of Wealth & Investment Management and stating, "[a]s you are now aware by virtue of the NYT article that was published yesterday, I received thousands of documents as a result of a subpoena that was issued to WFA in a case I have pending against my brother Steve, a current FA at 375 Park." Plaintiff said he had asked for a meeting "between the two of us," and added, "I strongly believe that if you and I meet asap, we can find a solution acceptable to both parties. Please contact me as soon as possible. All

the best, Gary Sinderbrand." See Id. The Court should not allow Plaintiffs to use the discovery mistake to extort our client. Plaintiff's publication to the Times and refusal to return the CD is an improper tactic to attempt to leverage their litigation position.

10. By letter dated July 21, 2017, Wells Fargo advised the Court of the foregoing facts and made a preliminary request for emergency relief. See Exhibit I.

11. Once Wells Fargo advised Messrs. Zeisler and Miller that it had inadvertently produced Confidential Information and requested the return of the CD, they were ethically bound to comply. Professional Rules of Conduct, DR 1-102(A)(5) prohibits conduct that is prejudicial to the administration of justice and ABCNY Comm. Prof'l. Jud. Ethics Opinion 2003-04 states that DR 1-102(A)(5) supports the conclusion that a lawyer receiving an inadvertent communication may not freely exploit it without undermining the administration of justice. The ethics committee has explicitly stated this sort of tactic is "ethically impermissible." This Court has the inherent authority to enjoin Plaintiffs as requested in this application. See, e.g., Galison v. Greenberg, 5 Misc.3d 1025(A) (Sup. Ct. NY County 2004) (courts may compel a party to return inadvertently produced privileged documents where, as here, the producing party took reasonable steps to prevent disclosure). See also N.J. Court Rule 4:10-2(e)(2) (If information is produced in discovery that is subject to a claim of privilege [], the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved.); RPC 4.4 (b) (A lawyer who receives a document and has reasonable cause to believe that the document was inadvertently sent shall not read the document or, if he or she has begun to do so, shall stop reading the document, promptly notify the sender, and return the document to the sender).

12. Messrs. Miller's and Zeisler's assertions in their respective letters of July 20 (and in additional communications with undersigned counsel) that our production of Confidential Information was not inadvertent is baseless. As stated above, the cover letter to the production made clear that we intended to exclude Confidential Information. See Exhibit B. Moreover, as soon as Wells Fargo was advised of the issue, it promptly advised counsel of the mistake and demanded the immediate return of the CD.

13. Plaintiffs' assertion that the inadvertent disclosure of Confidential Information somehow relates to their claims against Wells Fargo is specious. The issue here is based solely on one inadvertent mistake by our law firm. Our firm's mistake is entirely unrelated to Wells Fargo's systems and controls. Indeed, the only reason this discovery mistake is even an issue is because Plaintiff's counsel, who inadvertently received the Confidential Information pursuant to a subpoena, has refused to return it as he is required to do under the rules.

14. Under New York law, the party seeking a preliminary injunction must demonstrate a probability of success on the merits, danger of irreparable injury [3] in the absence of an injunction and a balance of equities in its favor. Second on Second Café v. Hing Sing Trading, 66 A.D.3d 255 (2009), citing CPLR 6301. Specifically, a mandatory injunction by which the movant would receive some form of the ultimate relief sought as a final judgment, is granted in "unusual" situations" or "extraordinary circumstances," where the granting of the relief is essential to maintain the status quo pending trial of the action. Id.; see also Guardian Life Ins. Co. v. Brill, 2011 NY Slip. Op. 31208 (Gische, J.) (mandatory injunction requiring former agents to return documents); Matos v. City of New York, 21 A.D.3d 936 (2005).

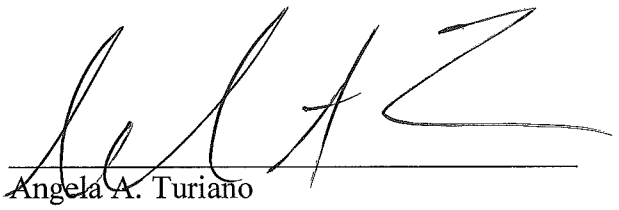
[3] Irreparable injury or harm is a continuing harm resulting in substantial prejudice caused by the acts sought to be restrained if permitted to continue, pendent lite, and if granted tailored to fit the circumstances so as to pressure the status quo to the extent possible. Second on Second Café v. Hing Sing Trading, 66 A.D.3d 255 (2009) (2009).

15. The facts of this case squarely fall within the extraordinary circumstances where mandatory injunctive relief is warranted. Each day that Plaintiffs maintain the Customer Information there is a danger posed, amounting to irreparable harm, to Wells Fargo's customers. There is no better evidence of that risk than the undisputed fact that Plaintiffs have already gone to great lengths to promulgate this information not just for their own narrow purposes, but to the entire world.

16. In addition, the Court has broad authority pursuant to Article 31 with respect to discovery abuses like those that Plaintiffs are committing.

17. Wells Fargo has provided notice to Plaintiffs regarding this application and no prior application for the instant relief has been made.

18. Based upon the foregoing, Wells Fargo respectfully requests that the Court issue an order: (i) enjoining Plaintiffs Mill Lane Management, LLC. and Gary Sinderbrand (collectively, "Gary") and their agents, representatives, affiliates, and all persons acting on their behalf or in concert with them, including lawyers Aaron Zeisler and his firm, Zeisler PLLC, and Andrew Miller (collectively referred to herein as "Plaintiffs"), from reviewing, using, copying and/or disseminating confidential customer information and privileged information ("Confidential Information") inadvertently produced to Gary in a related New Jersey action, including but not limited to enjoining Plaintiffs from contacting any Wells Fargo customers identified within the Confidential Information; (ii) requiring Plaintiffs immediately to return all Confidential Information in their possession, (iii) requiring Plaintiffs to identify all persons to whom they have shown or disclosed Confidential Information and (iv) granting Wells Fargo such other and further relief as may be just and proper.



Angela A. Turiano