

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION
www.flmb.uscourts.gov

In re:

ULRICH FELIX ANTON ENGLER;
PRIVATE COMMERCIAL OFFICE, INC.
PCO CLIENT MANAGEMENT, INC.

Case No. 9:08-bk-04360-ALP

Chapter 7

Debtors.

WELLS FARGO BANK, N.A.'S RESPONSE IN OPPOSITION TO
TRUSTEE'S MOTION TO COMPEL PRODUCTION OF
DOCUMENTS FROM WELLS FARGO BANK, N.A.

(Hearing Scheduled for Thursday, June 9, 2011 at 10:00 a.m.)

Defendant, Wells Fargo Bank, N.A. as successor-by-merger to Wachovia Bank, N.A., ("Wells Fargo"), by and through its undersigned counsel, files this Response in Opposition to Trustee's Motion to Compel Production of Documents from Wells Fargo Bank, N.A. (ECF No. 633), and states as follows:

I. FACTUAL AND PROCEDURAL HISTORY

1. The Trustee served Wells Fargo with a Subpoena for Rule 2004 Deposition Duces Tecum in or about February, 2011 with 36 categories of documents, including requests for all account "[a]ny and all account statements, checks, deposit slips, deposit items, debit and credit tickets, wire advices associated with any incoming or outgoing wire transfers, and other documentation demonstrating account activity for (1) Wachovia Bank Account Number [XXXX]5057 and (2) Wachovia Bank Account Number [XXXXX]7271.

2. Wells Fargo, in good faith, responded to the Trustee by providing over 1000 pages of documents, including bank statements for the entire duration of the accounts and deposit details for account number ending 7271.

3. On or about May 9, 2011, after Special Litigation Counsel for the Trustee (“Special Counsel”) sent Wells Fargo’s representative an e-mail indicating that it did not consider the production to be fully responsive to the Subpoena and the Trustee intended to file a motion to compel absent further production, undersigned counsel was contacted to be retained in this matter to facilitate the resolution of any discovery dispute with the Trustee.

4. Wells Fargo’s counsel spoke to Special Litigation Counsel on Monday, May, 9, 2011 and Friday, May 13, 2011 over the phone requesting additional time to review the matter and resolve any discovery disputes. However, only five (5) days after Wells Fargo’s counsel became involved in the case, Special Counsel advised Wells Fargo’s counsel that the Trustee intended to file a motion to compel and seek to have any objections by Wells Fargo deemed waived.

5. Accordingly, on Monday, May, 16, 2011, Wells Fargo’s counsel immediately prepared and served Trustee’s counsel with Wells Fargo Bank, N.A.’s Response to Trustee’s Rule 2004 Request for Documents Dated February 7, 2011 (the “Discovery Response”), despite not being afforded the time to investigate all existing documents which may be responsive to the Subpoena. A true and correct copy is attached hereto as **Exhibit 1**.

6. On May 17, 2011, the Trustee filed his Motion to Compel Production of Documents from Wells Fargo Bank, N.A. (ECF No. 633).

7. Thereafter, on May 19, 2011, Wells Fargo provided the Trustee with supplemental production, including the Deposit Agreements and Disclosures for Commercial Accounts and the Depository Authorization and Agreement Certificate for the account ending 5057 for the requested period.

8. As outlined in Wells Fargo's Discovery Response, several of the document requests seek nonpublic supervisory information, under the Bank Secrecy Act, which Wells Fargo is prohibited by law from disclosing (*See* Request Nos. 2 - 13, 25, 27, 33) and personal, confidential, financial information of bank employees (Request Nos. 23-24) and third parties (*See* Requests 9, 13, 15, 20, 25, 34) which Wells Fargo is prohibited from disclosing pursuant to Section 655.059, Florida Statutes and the Florida Constitution. The Trustee has also sought documents which are well beyond the scope permitted by Bankr.R.Civ.P. 2004(b), including all of Wachovia's "policies and procedures pertaining to wire transfers" (Request No. 21). Moreover, some of the Trustee's requests are vague, ambiguous, overly broad, and/or unduly burdensome such that Wells Fargo does not know what documents the Trustee seeks (Request No. 24 and 31) in response and obtaining such documents would create an overwhelming burden on Wells Fargo. (Request No. 20).

9. Accordingly, for the reasons set forth above and outlined in more detail below, Wells Fargo's objections to production of certain documents should be sustained.

MEMORANDUM OF LAW

A. Wells Fargo is Prohibited From Producing Bank Supervisory Documents (Request Nos. 2 - 13, 25, 27, 33)

While the Trustee has specifically not sought Suspicious Activity Reports ("SAR"), he has sought several categories of supervisory documents which Wells Fargo is prohibited from producing and which may acknowledge or disclose the existence of a SAR. Specifically, 31 C.F.R. § 103.18 specifically provides that any bank "subpoenaed or otherwise requested to disclose a SAR *or the information contained in a SAR*, except where such disclosure is requested by FinCEN or an appropriate law enforcement agency or bank supervisory agency,

shall decline to produce the SAR or to provide any information that would disclose that a SAR had been prepared or filed.” See 31 C.F.R. § 103.18 (emphasis supplied).

As explained in the case of *Regions Bank v. Allen*, 33 So. 2d 72, 75 (Fla. 5th DCA 2010),

Under the cases applying the statute and regulations, a court should protect against discovery into information that would reveal that a report of a suspicious transaction to a government agency has been prepared or filed or would reveal its contents. The cases have read this prohibition as extending to whether a SAR or other report of suspicious transaction to a governmental agency exists; whether such a report is being prepared or has been filed; and the contents of such a report or the information contained therein.

Id. at 75; *see also International Bank of Miami v. Shinitzky*, 849 So. 2d 1188, 1191-93 (4th DCA 2003)(The harm from disclosure of a SAR form was recognized to be so serious, and the law protecting such forms to be so clear, that the Fourth District Court of Appeal issued a rarely granted *writ of certiorari* to vacate a discovery order issued by a state trial court.)

While the cases recognize that “‘supporting documentation’ underlying a SAR that is generated or received in the ordinary course of a bank’s business is discoverable.” There are two categories of ‘supporting documentation’. *Id.* at 76. The first category of documents represent factual documents generated in the ordinary course of business and are subject to production. *Id.* at 77. These documents have been identified by courts as transactional and account documents such as wire transfers, statements, checks, deposit slips. *Id.* Wells Fargo has already produced a majority, if not all, of those documents to the Trustee, and to the extent any other documents exist, is willing to produce any remaining documents of this type.

The second category of documents representing draft SARs or other work product or privileged communications that relate to the SAR itself are not discoverable because they would disclose whether a SAR has been prepared or filed. *Id.* By example, “an internal memorandum prepared as part of the financial institution’s process for complying with federal reporting

requirements is generated for the specific purpose of fulfilling the institutions' reporting obligation" and is not discoverable. *Id.* The Allen court has specifically found that redaction is not adequate to protect the confidentiality of a SAR investigation or the fact of a SAR's preparation. *Id.* at 77.

Besides, SARs, the Bank Secrecy Act requires financial institutions to submit certain and/or maintain reports related to suspicious activities, including but not limited to the following: Currency Transaction Report ("CTR"), Report of International Transportation of Currency or Monetary Instruments ("CMIR"), Report of Foreign Bank and Financial Accounts ("FBAR"), Designation of Exempt Person, Form 8300, and Monetary Instrument Log (collectively referred to as, the "Bank Secrecy Reports"). The Trustee has also sought discovery of several types of Bank Secrecy Reports. *See* Request Nos. 2 - 13, 25, 27, 33. However, Bank Secrecy Reports, including CTRs may relate to a number of individuals and entities, none of which are parties in this litigation. The Bank Secrecy Act provides specific limits on who may have access to any such reports collected under its authority, generally restricted to certain government agencies, and the use to which any such reports may be put, generally restricted to criminal, tax, regulatory and counter terrorism. *See* 31 U.S.C. §§ 5311, *et seq.* In particular, information collected pursuant to the Bank Secrecy Act, including CTRs, is exempt from disclosure pursuant to the Freedom of Information Act. *See* 31 U.S.C. § 5319, *see also Berger v. I.R.S.*, 487 F. Supp. 2d 482, 496 (D.N.J. 2007), *aff'd*, 288 Fed. Appx. 829, 2008 WL 3286782 (3rd Cir. 2008), *cert. denied*, ___ S.Ct. ___, 2009 WL 1650205 (June 15, 2009).

By example, the plaintiffs in the *Berger* case had been the subject of a civil Trust Fund Recovery Penalty investigation and were seeking the IRS investigation files and other documents generated by the inquiry. *Id.* at 489. The IRS concluded that certain documents, including

CTRs, were exempt from disclosure and the plaintiffs filed an administrative appeal and thereafter sought “re-review.” *Id.* The *Berger* court, in accepting the IRS’s representations, without an *in camera* review of the subject documents, recognized that “Congress explicitly precluded disclosure of CTRs and similar reports under § 5319” and, therefore, such documents would be exempt from FOIA disclosure. *Id.* at 496. It should be noted that the plaintiffs in *Berger* were attempting to obtain CTRs that presumably were filed regarding their very own transactions. Here, the Trustee is similarly attempting to obtain CTRs regarding the Debtors’ banking transactions. Pursuant to *Berger* and 31 U.S.C. § 5319, this Court should sustain Wells Fargo’s objections to production of documents created pursuant to the Bank Secrecy Act, including CTRs.

Bank Secrecy Reports and SARs may be filed in tandem regarding the same transaction. By example, both the instructions for SARs and CTRs direct financial institutions to file both a CTR and a SAR form for all transactions over \$10,000 that are suspicious.¹ Accordingly, the Court should sustain the Wells Fargo’s objections with respect to Request Nos. 2 - 13, 25, 27, 33.

B. Documents Regarding Third Parties Are Required to Be Kept Confidential Pursuant to Fla. Stat. § 655.059.

Wells Fargo is not permitted to disclose certain requested information. The Trustee’s requests seek access to records regarding non-parties required to be kept confidential pursuant to Section 655.059, Florida Statutes and the Florida Constitution. *See* FLA. STAT. § 655.059; *see also Banc of America Investment Services, Inc. v. Barnett*, 997 So. 2d 1154, 1157 (3rd DCA 2008). The disclosure of Bank Secrecy Reports may involve the confidential banking

¹ “If a currency transaction exceeds \$10,000 and is suspicious, the institution must file both a CTR (reporting the currency transaction) and a suspicious activity report (reporting the suspicious or criminal aspects of the transaction).” *See* SAR form, p. 5, attached as Exhibit A.

information of individuals or entities not even identified in Trustee's Subpoena. As previously discussed, CTR can include information regarding multiple individuals and entities.

In addition, the Trustee has specifically sought financial documents for Neumeier (Requests 9, 13, 15, 20, 25, 34), a non-debtor in this proceeding. Wells Fargo is similarly not permitted to produce Neumeier's records as they are required to be kept confidential pursuant to Section 655.059, Florida Statutes and the Florida Constitution.

By example, in *Banc of America*, the Barnetts sought production of all statements for the account that originated the transfer at issue. *Banc of America*, 997 So. 2d at 1157. Banc of America objected based on Florida Statute § 655.059 and the court noted that any claim that the Barnetts might have "did not supersede the privacy rights of the deposit holders" who are not even parties to the action. *Id.* Furthermore, the Court found that the trial judge in the *Banc of America* case never determined whether the competing interests of the Barnetts demonstrated a need for this information that took precedence over the privacy rights of the non-party deposit holders. At the very least, the Trustee should be required to demonstrate a need for this information such that its need takes precedence over the privacy rights of these other non-party individual and entities. *Id.* at 1157. The Trustee should also be required to provide notice to Neumeier and provide Neumeier with a right to object.

C. The Requested Documents Are Outside the scope of Rule 2004 (Request No. 21)

While the scope of a Rule 2004 Examination is broad, it is not limitless. Federal Rule of Bankruptcy Procedure 2004 provides, in pertinent part, as follows regarding the scope of a Rule 2004 Examination:

Similarly, the instructions for CTR forms also direct the filing of both a CTR form and a SAR form for transactions in excess of \$10,000 that are also deemed to be suspicious. *See* CTR form, p. 3, attached as Exhibit B.

The examination of an entity under this rule or of the debtor under § 343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to discharge.

Fed.R.Bankr.P. 2004 (a). Rule 2004 "may not be used as a device to launch into wholesale investigation of a non-debtor's private business affairs." *See In re Countrywide Homes, Inc.*, 384 B.R. 373, 393-394 (Bankr. W.D. Pa. 2008).

By Request No. 21, the Trustee seeks "[a]ny and all Wachovia Bank policies and procedures pertaining to wire transfers." This request is very broad and intrusive as it seeks production of policies and procedures that Wells Fargo utilizes generally in conducting its business and are confidential and proprietary information of Wells Fargo. Moreover, these policies and procedures are not unique to the Debtor's accounts and therefore, do not relate to "the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to discharge" within the scope of Rule 2004. The Trustee has not established that this request is within the scope of his Rule 2004 powers or that he has good cause for the request for production. Accordingly, Wells Fargo's objection to Request No. 21. *See Countrywide Homes.*, 384 B.R. at 404; *In re Michalski*, 2011 WL 2084179 *1, *8 (Bankr. N.D. Ohio March 4, 2011).

D. Employee Information is Personal and Confidential (Request Nos. 23-24)

Request Nos. 23 and 24 request information regarding "commissions, fees, payments, or benefits" receive by employees of Wachovia Bank having responsibility for the accounts at issue. Non-public employees have a right to privacy in information contained in their personnel files. Wells Fargo's employees were not given notice of the Subpoena and an opportunity to object. Wells Fargo's employees have constitutional rights that will be substantially affected by the production of any documents or information relating to any compensation responsive to

Request Nos. 23 and/or 24. As a result, this Court must balance third-parties right to privacy against the Trustee's right to know their personal information. In this case, Wells Fargo's employees' right to privacy in their personal financial information far outweighs the Trustee's right to the information. Moreover, as discussed in Section C of this response, the information requested is far outside the scope of Rule 2004, irrelevant to the Trustee's investigation of the Debtor's financial condition and assets.

E. Certain Requests Are Vague, Ambiguous, Overly Broad, and Unduly Burdensome (Request No. 20 and 31)

Request No. 20 seeks "[a]ll e-mail communications pertaining to, concerning, relating to, and/or reflecting (1) Wachovia Bank Account Number XXXXX5057 and (2) Wachovia Bank Account Number XXXXXX7271, or their account holders, or Ulrich Felix Anton Engler, Private Commercial Office, Inc., PCO Client Management, Inc., and/or Neumeier²." This request is overly broad and puts an undue burdensome on Wells Fargo. In order for Wells Fargo to perform a comprehensive search of its electronic databases, based on search terms, to compile all documents which could possibly be responsive to the Trustee's Request No. 20, Wells Fargo would be required to engage a third party vendor to initially compile the documents and counsel would then need to review those documents for responsiveness and privilege prior to production to the Trustee. The engagement of a third party vendor and incurrence of attorney time related to this broad request would result in substantial fees and costs to Wells Fargo, a non-party to this bankruptcy proceeding or any adversary proceeding. Wells Fargo should not be forced to incur the costs associated with locating all of documents responsive to Request No. 20 when it is a

² Neumeier is not a Debtor in this proceeding and therefore, any records relating to Neumeier's finances and accounts are required to be kept confidential pursuant to Section 655.059, Florida Statutes and the Florida Constitution as discussed in more detail in Section B of this Response.

non-party to this bankruptcy proceeding. Moreover, the Trustee should be able to obtain any e-mails from the Debtors' computers and/or books and records. Accordingly, weighing the burden to non-party, Wells Fargo, this Court should find that this request imposes an "undue burden" on nonparty Wells Fargo and sustain Wells Fargo's objection to Request No. 20.

Additionally, Request No. 31 is vague and ambiguous. Wells Fargo does not understand what documents the Trustee seeks by the term "funds flow reports" and the Trustee has not clarified this request despite Wells Fargo's objection on the basis that the Request is vague and ambiguous. Accordingly, the Court should sustain Wells Fargo's objection to Request No. 31.

F. Wells Fargo's Objections Should not be Deemed Waived

The Trustee argues that Wells Fargo has waived any objections that it may have to the Subpoena by its failure to serve any written objections to the Subpoena for over two months. Wells Fargo's objections should not be waived since unusual circumstances and good cause exist for consideration of the objections. *See Moon v. SCP Pool Corp.*, 232 F.R.D. 633 (C.D. Cal. 2005)(Failure of nonparty to timely make objections to a subpoena duces tecum did no warrant waiver of objections in light of overbroad nature of the subpoena served by plaintiffs on non-party and subpoena imposed an undue burden); *American Electric Power Co. v. U.S.*, 191 F.R.D. 132 (S.D. Ohio 1999) (In absence of any showing of intentional failure or bad faith by the subpoenaed party, its status as a non-party, its overall cooperation with the government's discovery efforts, its extensive production of documents, and the ongoing communication between counsel for the subpoenaed party and the government concerning the subpoenaed party's objection, subpoenaed party did not waive its right to object.)

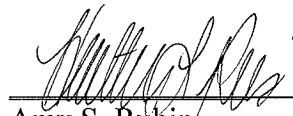
Courts have found unusual circumstances where: "(1) the subpoena is overbroad on its face and exceeds the bounds of fair discovery; (2) the subpoenaed witness is a non-party acting

in good faith; and (3) counsel for the witness and counsel for the subpoenaing party were in contact concerning the witness' compliance prior to the time the witness challenged the legal basis for the subpoena.” *Moon*, 232 F.R.D. at 136-137.

In this particular case, unusual circumstances are present. First, the subpoena is overbroad in that certain requests exceed the scope of Rule 2004, a majority of the requests seek documents which Wells Fargo is prohibited from producing under the Bank Secrecy Act, Section 655.059, Florida Statutes and the Florida Constitution, and certain requests are overly broad and put an undue burden on Wells Fargo as explained in more detail above. Further, Wells Fargo is a non-party to this bankruptcy proceeding and has acted in good faith by producing over 1000 pages of account records and other documents to the Trustee after receipt of the Subpoena. Finally, when it became apparent that there may be a discovery dispute between the Trustee and Wells Fargo, Wells Fargo retained counsel which has been making efforts to attempt to work through any dispute. Wells Fargo's counsel has made efforts to and has supplemented production since the filing of the Trustee's motion. Accordingly, a finding of waiver of all objections by Wells Fargo to the Subpoena in this matter would be unjustified.

WHEREFORE, Wells Fargo Bank, N.A., respectfully requests that the Court enter an Order sustaining Wells Fargo Bank, N.A.'s objections to the Trustee's subpoena, setting a date certain for Wells Fargo Bank, N.A. to produce any remaining non-confidential, non-privileged documents and granting such other and further relief as is just and proper.

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Attorneys for Wells Fargo Bank, N.A.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished electronically via the Court's CM/ECF system and by e-mail on the 8th day of June, 2011 to Jessica Elliott (jee@kttlawn.com) and David A. Samole (DAS@kttlawn.com).



Heather L. Ries

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
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In re:

Case No. 9:08-bk-04360-ALP

ULRICH FELIX ANTON ENGLER;
PRIVATE COMMERCIAL OFFICE, INC.
PCO CLIENT MANAGEMENT, INC.

Chapter 7

Debtors.

WELLS FARGO BANK, N.A.'S RESPONSE TO TRUSTEE'S
RULE 2004 REQUEST FOR DOCUMENTS DATED FEBRUARY 7, 2011

Wells Fargo Bank, N.A., as successor-by-merger to Wachovia Bank, N.A. ("Wells Fargo"), by and through undersigned counsel responds to the Trustee's Rule 2004 Request for Documents dated February 7, 2011 as follows:

GENERAL RESPONSES AND OBJECTIONS

1. Wells Fargo objects to the Request to the extent it seeks privileged information or documents (including, without limitation, information that was developed for or in anticipation of litigation or which constitutes or reflects attorney work-product or confidential attorney-client communications) or information that is otherwise not subject to discovery. Wells Fargo will not disclose such information or documents. Wells Fargo will provide a privilege log of responsive documents as contemplated by the Federal Rules of Bankruptcy Procedure.

2. Inadvertent production of any document shall not constitute a waiver of any privilege or any other ground for objecting to discovery with respect to such document or any other document, or with respect to the subject matter thereof or the information contained therein; nor shall such inadvertent production waive Wells Fargo's right to demand that such

documents be returned or to object to the use of the document or the information contained therein during this or any other proceeding.

3. Wells Fargo objects to the Request to the extent the Request purports to require the disclosure of documents which are not within Wells Fargo's possession, custody, or control. To the extent Wells Fargo does not object to a particular Request, Wells Fargo will produce only those documents in its possession, custody, or control.

4. Wells Fargo reserves the right, at any time, to revise, correct, modify, supplement or clarify any of the responses herein.

5. Wells Fargo adopts and incorporates by reference each of the foregoing General Responses and Objections to the extent applicable to any of its specific responses below to the Trustee's individual Requests.

DOCUMENTS REQUESTED

1. Any and all documents concerning, referring, relating to, reflecting, and/or evidencing the opening of (1) Wachovia Bank Account Number XXXXXX5057 and (2) Wachovia Bank Account Number XXXXXX7271, including but not limited to, any and all signature cards and powers of attorney.

RESPONSE:

Wells Fargo objects to this request to the extent it seeks documents protected by the attorney-client privilege and work-product doctrine. A privilege log will be provided for documents withheld on these bases. Wells Fargo also objects to this request to the extent it seeks production of nonpublic supervisory information, including documents Wells Fargo would be prohibited by law from disclosing or even acknowledging the existence thereof pursuant to 12 C.F.R. §21.11, 12 C.F.R. §208.62, 31 C.F.R. §103.18 and 31 U.S.C. §5318(g)(2).

Subject to and without waiving the objections set forth above, Wells Fargo states that it will produce non-privileged, non-confidential documents in Wells Fargo's possession, custody, or control, which are responsive to this request.

2. Each and every 314B Request concerning, referring, relating to, reflecting, and/or evidencing (1) Wachovia Bank Account Number XXXXXX5057 and (2) Wachovia Bank Account Number XXXXXX7271.

RESPONSE:

Wells Fargo objects to this request on the basis that it seeks production of nonpublic supervisory information, including documents Wells Fargo would be prohibited by law from disclosing or even acknowledging the existence thereof pursuant to 12 C.F.R. §21.11, 12 C.F.R. §208.62, 31 C.F.R. §103.18 and 31 U.S.C. §5318(g)(2). Wells Fargo further objects to this request to the extent that it invades the right of privacy of third parties and seeks personal and confidential financial information of third parties in violation of Wells Fargo's obligations to maintain the confidentiality of such documents, including, as set forth in Fla. Stat. §655.059 and the Florida Constitution.

3. Each and every Investigation Case Summary concerning, referring, relating to, reflecting and/or evidencing (1) Wachovia Bank Account Number XXXXXX5057 and (2) Wachovia Bank Account Number XXXXXX7271.

RESPONSE:

Wells Fargo objects to this request on the basis that it seeks documents protected by the attorney-client privilege and work-product doctrine. A privilege log will be provided for documents withheld on these bases. Wells Fargo also objects to this request to the extent it seeks production of nonpublic supervisory information, including documents Wells Fargo would be prohibited by law from disclosing or even acknowledging the existence thereof pursuant to 12 C.F.R. §21.11, 12 C.F.R. §208.62, 31 C.F.R. §103.18 and 31 U.S.C. §5318(g)(2). Wells Fargo further objects to

this request to the extent that it seeks personal and confidential financial information of third parties in violation of Wells Fargo's obligations to maintain the confidentiality of such documents, including, as set forth in Fla. Stat. §655.059 and the Florida Constitution.

4. Each and every Report of International Transportation of Currency or Monetary Instruments (FinCEN Form No. 105) concerning, referring, relating to, reflecting, and/or evidencing (1) Wachovia Bank Account Number XXXXXX5057 and (2) Wachovia Bank Account Number XXXXXX7271.

RESPONSE:

Wells Fargo objects to this request to the extent it seeks documents protected by the attorney-client privilege and work-product doctrine. A privilege log will be provided for documents withheld on these bases. Wells Fargo also objects to this request to the extent it seeks production of nonpublic supervisory information, including documents Wells Fargo would be prohibited by law from disclosing or even acknowledging the existence thereof pursuant to 12 C.F.R. §21.11, 12 C.F.R. §208.62, 31 C.F.R. §103.18 and 31 U.S.C. §5318(g)(2). Wells Fargo further objects to this request to the extent that it invades the right of privacy of third parties and seeks personal and confidential financial information of third parties in violation of Wells Fargo's obligations to maintain the confidentiality of such documents, including, as set forth in Fla. Stat. §655.059 and the Florida Constitution.

5. Each and every Report of Foreign Bank and Financial Accounts (Department of the Treasury Form No. 90-22.1) concerning, referring, relating to, reflecting, and/or evidencing (1) Wachovia Bank Account Number XXXXXX5057 and (2) Wachovia Bank Account Number XXXXXX7271.

RESPONSE:

Wells Fargo objects to this request to the extent it seeks production of nonpublic supervisory information, including documents Wells Fargo would be prohibited by law from disclosing or even acknowledging the existence thereof pursuant to 12 C.F.R. §21.11, 12 C.F.R. §208.62, 31 C.F.R. §103.18 and 31 U.S.C. §5318(g)(2). Wells Fargo further objects to this request to the extent that it invades the right of privacy of third parties and seeks personal and confidential financial information of third parties in violation of Wells Fargo's obligations to maintain the confidentiality of such documents, including, as set forth in Fla. Stat. §655.059 and the Florida Constitution.

6. Each and every Form 8300 concerning, referring, relating to, reflecting, and/or evidencing (1) Wachovia Bank Account Number XXXXXX5057 and (2) Wachovia Bank Account Number XXXXXX7271.

RESPONSE:

Wells Fargo objects to this request to the extent it seeks production of nonpublic supervisory information, including documents Wells Fargo would be prohibited by law from disclosing or even acknowledging the existence thereof pursuant to 12 C.F.R. §21.11, 12 C.F.R. §208.62, 31 C.F.R. §103.18 and 31 U.S.C. §5318(g)(2). Wells Fargo further objects to this request to the extent that it invades the right of privacy of third parties and seeks personal and confidential financial information of third parties in violation of Wells Fargo's obligations to maintain the confidentiality of such documents, including, as set forth in Fla. Stat. §655.059 and the Florida Constitution.

7. Each and every Monetary Instrument Log concerning, referring, relating to, reflecting, and/or evidencing (1) Wachovia Bank Account Number XXXXXX5057 and (2) Wachovia Bank Account Number XXXXXX7271.

RESPONSE:

Wells Fargo objects to this request to the extent it seeks production of nonpublic supervisory information, including documents Wells Fargo would be prohibited by law from disclosing or even acknowledging the existence thereof pursuant to 12 C.F.R. §21.11, 12 C.F.R. §208.62, 31 C.F.R. §103.18 and 31 U.S.C. §5318(g)(2). Wells Fargo further objects to this request to the extent that it invades the right of privacy of third parties and seeks personal and confidential financial information of third parties in violation of Wells Fargo's obligations to maintain the confidentiality of such documents, including, as set forth in Fla. Stat. §655.059 and the Florida Constitution.

8. Each and every transaction monitoring report concerning, referring, relating to, reflecting, and/or evidencing (1) Wachovia Bank Account Number XXXXXX5057 and (2) Wachovia Bank Account Number XXXXXX7271.

RESPONSE:

Wells Fargo objects to this request to the extent it seeks production of nonpublic supervisory information, including documents Wells Fargo would be prohibited by law from disclosing or even acknowledging the existence thereof pursuant to 12 C.F.R. §21.11, 12 C.F.R. §208.62, 31 C.F.R. §103.18 and 31 U.S.C. §5318(g)(2). Wells Fargo further objects to this request to the extent that it invades the right of privacy of third parties and seeks personal and confidential financial information of third parties in violation of Wells Fargo's obligations to maintain the

confidentiality of such documents, including, as set forth in Fla. Stat. §655.059 and the Florida Constitution.

9. Each and every document concerning, referring, relating to, reflecting and/or evidencing the Financial Institution's compliance with the USA Patriot Act and Bank Secrecy Act/Anti-Money Laundering rules/regulations with respect to Ulrich Felix Anton Engler, Private Commercial Office Inc., PCO Client Management, Inc., and Neumeier.

RESPONSE:

Wells Fargo objects to this request on the basis that it is overly broad and unduly burdensome. Wells Fargo objects to this request to the extent it seeks documents protected by the attorney-client privilege and work-product doctrine. A privilege log will be provided for documents withheld on these bases. Wells Fargo also objects to this request to the extent it seeks production of nonpublic supervisory information, including documents Wells Fargo would be prohibited by law from disclosing or even acknowledging the existence thereof pursuant to 12 C.F.R. §21.11, 12 C.F.R. §208.62, 31 C.F.R. §103.18 and 31 U.S.C. §5318(g)(2). Wells Fargo further objects to this request to the extent that it invades the right of privacy of third parties and seeks personal and confidential financial information of third parties in violation of Wells Fargo's obligations to maintain the confidentiality of such documents, including, as set forth in Fla. Stat. §655.059 and the Florida Constitution. Wells Fargo also objects to this request to the extent it seeks production of Wells Fargo's proprietary and confidential business records, which Wells Fargo should not be required to produce.

10. Any and all documents pertaining to any USA Patriot Act and/or Bank Secrecy Act/Anti-Money Laundering compliance, or deficiencies in compliance identified by Wachovia Bank during the Relevant Time Period.

RESPONSE:

Wells Fargo objects on the basis that this request is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery or admissible evidence in this case. Wells Fargo further objects to this request to the extent it seeks documents protected by the attorney-client privilege and work-product doctrine. A privilege log will be provided for documents withheld on these bases. Wells Fargo also objects to this request to the extent it seeks production of nonpublic supervisory information, including documents Wells Fargo would be prohibited by law from disclosing or even acknowledging the existence thereof pursuant to 12 C.F.R. §21.11, 12 C.F.R. §208.62, 31 C.F.R. §103.18 and 31 U.S.C. §5318(g)(2). Wells Fargo further objects to this request to the extent that it invades the right of privacy of third parties and seeks personal and confidential financial information of third parties in violation of Wells Fargo's obligations to maintain the confidentiality of such documents, including, as set forth in Fla. Stat. §655.059 and the Florida Constitution. Wells Fargo also objects to this request to the extent it seeks

production of Wells Fargo's proprietary and confidential business records, which Wells Fargo should not be required to produce.

11. Any and all IRS Form 4789 Currency Transaction Reports (herein "CTR") pertaining to, concerning, referring, relating to, reflecting, and/or evidencing (1) Wachovia Bank Account Number XXXXXX5057 and (2) Wachovia Bank Account Number XXXXXX7271.

RESPONSE:

Wells Fargo objects to this request to the extent it seeks production of nonpublic supervisory information, including documents Wells Fargo would be prohibited by law from disclosing or even acknowledging the existence thereof pursuant to 12 C.F.R. §21.11, 12 C.F.R. §208.62, 31 C.F.R. §103.18 and 31 U.S.C. §5318(g)(2). Wells Fargo further objects to this request to the extent that it invades the right of privacy of third parties and seeks personal and confidential financial information of third parties in violation of Wells Fargo's obligations to maintain the confidentiality of such documents, including, as set forth in Fla. Stat. §655.059 and the Florida Constitution.

12. Any and all US Customs Form 4790 Reports of International Transportation of Currency or Monetary Instruments (herein "CMIR") pertaining to, concerning, referring, relating to, reflecting, and/or evidencing (1) Wachovia Bank Account Number XXXXXX5057 and (2) Wachovia Bank Account Number XXXXXX7271.

RESPONSE:

Wells Fargo objects to this request to the extent it seeks production of nonpublic supervisory information, including documents Wells Fargo would be prohibited by law from disclosing or even acknowledging the existence thereof pursuant to 12 C.F.R. §21.11, 12 C.F.R. §208.62, 31 C.F.R. §103.18 and 31 U.S.C. §5318(g)(2). Wells Fargo further objects to this request to the extent it invades the right of privacy of third parties and seeks personal and confidential financial information of third parties in violation of Wells Fargo's obligations to maintain the confidentiality of such documents, including, as set forth in Fla. Stat. §655.059 and the Florida Constitution.

13. Any and all Designation of Exempt Person Form TDF 90-22.53 filed by Wachovia Bank pertaining to the Engler Entities, Engler and/or Neumeier.

RESPONSE:

Wells Fargo objects to this request to the extent it seeks production of nonpublic supervisory information, including documents Wells Fargo would be prohibited by law from disclosing or even acknowledging the existence thereof pursuant to 12 C.F.R. §21.11, 12 C.F.R. §208.62, 31 C.F.R. §103.18 and 31 U.S.C. §5318(g)(2). Wells Fargo further objects to this request to the

extent that it invades the right of privacy of third parties and seeks personal and confidential financial information of third parties in violation of Wells Fargo's obligations to maintain the confidentiality of such documents, including, as set forth in Fla. Stat. §655.059 and the Florida Constitution.

14. Any and all funds transfer records concerning, referring, relating to, reflecting, and/or evidencing (1) Wachovia Bank Account Number XXXXXX5057 and (2) Wachovia Bank Account Number XXXXXX7271.

RESPONSE:

Wells Fargo objects to this request on the basis that it is vague and ambiguous. Wells Fargo further objects to this request to the extent it seeks documents protected by the attorney-client privilege and work-product doctrine. A privilege log will be provided for documents withheld on these bases. Wells Fargo also objects to this request to the extent it seeks production of nonpublic supervisory information, including documents Wells Fargo would be prohibited by law from disclosing or even acknowledging the existence thereof pursuant to 12 C.F.R. §21.11, 12 C.F.R. §208.62, 31 C.F.R. §103.18 and 31 U.S.C. §5318(g)(2). Wells Fargo further objects to this request to the extent that it invades the right of privacy of third parties and seeks personal and confidential financial information of third parties in violation of Wells Fargo's obligations to maintain the confidentiality of such documents, including, as set forth in Fla. Stat. §655.059 and the Florida Constitution.

Subject to and without waiving the objections set forth above, Wells Fargo states that it will produce non-privileged, non-confidential documents in Wells Fargo's possession, custody, or control, which are responsive to this request.

15. Any and all requests by the Engler Entities, Engler and/or Neumeier to Wachovia Bank to be exempted from any reporting or record keeping requirements.

RESPONSE:

Wells Fargo objects to this request to the extent that it invades the right of privacy of third parties and seeks personal and confidential financial information of third parties in violation of Wells Fargo's obligations to maintain the confidentiality of such documents, including, as set forth in Fla. Stat. §655.059 and the Florida Constitution.

Subject to and without waiving the objections set forth above, Wells Fargo states that it will produce all requests to be exempted from any reporting or record keeping requirements by the Engler Entities and Engler in Wells Fargo's possession, custody, or control.

16. Any and all requests for information by Wachovia Bank to the Engler Entities, Engler and/or Neumeier concerning the sources of funds deposited into (1) Wachovia Bank

Account Number XXXXXX5057 and (2) Wachovia Bank Account Number XXXXXX7271, and any responses thereto.

RESPONSE:

Wells Fargo objects to this request to the extent that it invades the right of privacy of third parties and seeks personal and confidential financial information of third parties in violation of Wells Fargo's obligations to maintain the confidentiality of such documents, including, as set forth in Fla. Stat. §655.059 and the Florida Constitution.

Subject to and without waiving the objections set forth above, Wells Fargo states that it will produce all requests for information by Wells Fargo Bank to Engler Entities and Engler in Wells Fargo's possession, custody, or control.

17. Any and all written estimation of anticipated account activity and customer income source for (1) Wachovia Bank Account Number XXXXXX5057 and (2) Wachovia Bank Account Number XXXXXX7271.

RESPONSE:

Wells Fargo objects to this request on the basis that it is vague and ambiguous. Once Wells Fargo has a better understanding of exactly what the Trustee seeks from this production request, Wells Fargo may be able to produce documents in Wells Fargo's possession, custody, or control, which are responsive to this request.

18. Any and all documentation demonstrating Wachovia Bank's consideration of the source of funds used to open (1) Wachovia Bank Account Number XXXXXX5057 and (2) Wachovia Bank Account Number XXXXXX7271.

RESPONSE:

Wells Fargo objects to this request on the basis that it is vague and ambiguous. Wells Fargo objects to this request to the extent it seeks documents protected by the attorney-client privilege and work-product doctrine. A privilege log will be provided for documents withheld on these bases. Wells Fargo also objects to this request to the extent it seeks production of nonpublic supervisory information, including documents Wells Fargo would be prohibited by law from disclosing or even acknowledging the existence thereof pursuant to 12 C.F.R. §21.11, 12 C.F.R. §208.62, 31 C.F.R. §103.18 and 31 U.S.C. §5318(g)(2). Wells Fargo further objects to this request to the extent that it invades the right of privacy of third parties and seeks personal and confidential financial information of third parties in violation of Wells Fargo's obligations to maintain the confidentiality of such documents, including, as set forth in Fla. Stat. §655.059 and the Florida Constitution.

Subject to and without waiving the objections set forth above, Wells Fargo states that it will produce non-privileged, non-confidential, non-confidential documents in Wells Fargo's possession, custody, or control, which are responsive to this request.

19. Any and all bank account statements, checks, deposit slips, deposit items, debit and credit tickets, wire advices associated with any income or outgoing wire transfers, and other documentation demonstrating account activity for (1) Wachovia Bank Account Number XXXXXX5057 and (2) Wachovia Bank Account Number XXXXXX7271.

RESPONSE:

Wells Fargo objects to this request on the basis that it is overly broad and unduly burdensome. Wells Fargo has already previously produced a multitude of documents, including account statements. Producing all documents responsive to this request would result in an exorbitant production. Wells Fargo states that once it has a better understanding of the specific documents the Trustee would like to receive in response to this request, to the extent not already produced, it will produce those documents in Wells Fargo's possession, custody, or control.

20. All email communications pertaining to, concerning, referring, relating to, and/or reflecting (1) Wachovia Bank Account Number XXXXXX5057 and (2) Wachovia Bank Account Number XXXXXX7271, or their account holders, or Ulrich Felix Anton Engler, Private Commercial Office, Inc., PCO Client Management, Inc., and/or Neumeier.

RESPONSE:

Wells Fargo objects to this request on the basis that it is overly broad and unduly burdensome. Wells Fargo objects to this request to the extent it seeks documents protected by the attorney-client privilege and work-product doctrine. A privilege log will be provided for documents withheld on these bases. Wells Fargo further objects to this request to the extent that it invades the right of privacy of third parties and seeks personal and confidential financial information of third parties in violation of Wells Fargo's obligations to maintain the confidentiality of such documents, including, as set forth in Fla. Stat. §655.059 and the Florida Constitution.

21. Any and all Wachovia Bank policies and procedures pertaining to wire transfers.

RESPONSE:

Wells Fargo objects to this request on the basis that it is vague, ambiguous, overly broad and unduly burdensome. Wells Fargo further objects to this request because it seeks production of Wells Fargo's proprietary and confidential business records, which Wells Fargo should not be required to produce.

22. Any and all records concerning operations, maintenance, directives, authority, and terms and conditions of operation, referring, relating to, reflecting, and/or evidencing (1) Wachovia Bank Account Number XXXXXX5057 and (2) Wachovia Bank Account Number XXXXXX7271.

RESPONSE:

Wells Fargo objects to this request on the basis that it is vague, ambiguous, overly broad and unduly burdensome. Wells Fargo objects to this request to the extent it seeks production of Wells Fargo's proprietary and confidential business records, which Wells Fargo should not be required to produce.

Subject to and without waiving the objections set forth above, Wells Fargo states that it will produce a copy of the Deposit Agreements and Disclosures for Commercial Accounts for the applicable period.

23. Documents sufficient to show any commissions, fees, payments or benefits received with respect to (1) Wachovia Bank Account Number XXXXXX5057 and (2) Wachovia Bank Account Number XXXXXX7271.

RESPONSE:

Wells Fargo objects to this request on the basis that it is vague, ambiguous and seeks immaterial information not reasonably calculated to the discovery of admissible evidence. Wells Fargo further objects to this request to the extent it seeks production of Wells Fargo's proprietary and confidential business records, which Wells Fargo should not be required to produce. Wells Fargo also objects to this request to the extent that it seeks personal and confidential financial information of third parties in violation of Wells Fargo's obligations to maintain the confidentiality of such documents and information.

Subject to and without waiving the objections set forth above, Wells Fargo states that the account statements would show any commissions, fees, payments or benefits related to the referenced bank accounts. To the extent not already produced, Wells Fargo will provide copies of the account statements for the referenced accounts.

24. Documents sufficient to show any commissions, fees, payments or benefits received by any employees of Wachovia Bank having responsibility for (1) Wachovia Bank Account Number XXXXXX5057 and (2) Wachovia Bank Account Number XXXXXX7271.

RESPONSE:

Wells Fargo objects on the basis that the request is vague and ambiguous. Wells Fargo also objects to this request to the extent that it seeks personal and confidential financial information of third parties in violation of Wells Fargo's obligations to maintain the confidentiality of such documents and information. Wells Fargo further objects to this request to the extent it seeks production of Wells Fargo's proprietary and confidential business records, which Wells Fargo should not be required to produce.

25. All documents provided to any federal, state or local governmental agencies, including the Federal Bureau of Investigation, the Department of Justice, or the Securities Exchange Commission, in connection with any proceeding or investigation of the Engler Entities, Engler and/or Neumeier and/or (1) Wachovia Bank Account Number XXXXXX5057 and (2) Wachovia Bank Account Number XXXXXX7271.

RESPONSE:

Wells Fargo objects to this request to the extent it seeks production of nonpublic supervisory information, including documents Wells Fargo would be prohibited by law from disclosing or even acknowledging the existence thereof pursuant to 12 C.F.R. §21.11, 12 C.F.R. §208.62, 31 C.F.R. §103.18 and 31 U.S.C. §5318(g)(2). Wells Fargo further objects to this request to the extent that it invades the right of privacy of third parties and seeks personal and confidential financial information of third parties in violation of Wells Fargo's obligations to maintain the confidentiality of such documents, including, as set forth in Fla. Stat. §655.059 and the Florida Constitution.

26. All weekly balance fluctuation reports pertaining to (1) Wachovia Bank Account Number XXXXXX5057 and (2) Wachovia Bank Account Number XXXXXX7271.

RESPONSE:

Wells Fargo states that the account statements would show any balance fluctuations related to the referenced bank accounts. To the extent not already produced, Wells Fargo will produce documents in its possession custody and control which are responsive to this request.

27. All weekly "check kiting" reports pertaining to, referring, relating to, reflecting, and/or evidencing (1) Wachovia Bank Account Number XXXXXX5057 and (2) Wachovia Bank Account Number XXXXXX7271.

RESPONSE:

Wells Fargo objects to this request to the extent it seeks documents protected by the attorney-client privilege and work-product doctrine. A privilege log will be provided for documents withheld on these bases. Wells Fargo also objects to this request to the extent it seeks production of nonpublic supervisory information, including documents Wells Fargo would be prohibited by law from disclosing or even acknowledging the existence thereof pursuant to 12 C.F.R. §21.11, 12 C.F.R. §208.62, 31 C.F.R. §103.18 and 31 U.S.C. §5318(g)(2). Wells Fargo further objects to this request to the extent that it invades the right of privacy of third parties and seeks personal and confidential financial information of third parties in violation of Wells Fargo's obligations to maintain the confidentiality of such documents, including, as set forth in Fla. Stat. §655.059 and the Florida Constitution.

28. All insufficient funds reports, or overdraft reports, pertaining to, referring, relating to, reflecting, and/or evidencing (1) Wachovia Bank Account Number XXXXXX5057 and (2) Wachovia Bank Account Number XXXXXX7271.

RESPONSE:

None

29. All weekly or monthly overall wire activity detail reports, including but not limited to wire reviews, pertaining to, referring, relating to, reflecting, and/or evidencing (1) Wells Fargo Bank Account Number XXXXXX5057 and (2) Wachovia Bank Account Number XXXXXX7271.

RESPONSE:

None

30. All weekly ACH transaction activity reports pertaining to, referring, relating to, reflecting, and/or evidencing (1) Wachovia Bank Account Number XXXXXX5057 and (2) Wachovia Bank Account Number XXXXXX7271.

RESPONSE:

Wells Fargo states that it has already produced statements which would reflect ACH transactions on the accounts referenced. To the extent not already produced, Wells Fargo will produce additional account statements and other documents, if any, in its possession custody and control which are responsive to this request.

31. All funds flow reports, which should include the name of the customer, account number, date of transaction, dollar amount of payments (debits), dollar amount of receipts (credits), average balance of the account, and type of account, pertaining to, referring, relating to, reflecting, and/or evidencing (1) Wachovia Bank Account Number XXXXXX5057 and (2) Wachovia Bank Account Number XXXXXX7271.

RESPONSE:

Wells Fargo objects to this request on the basis that it is vague and ambiguous. The term "funds flow reports" is undefined and Wells Fargo is unable to respond to this request as written. Wells Fargo cannot articulate other objections, if any, until it understands what the Trustee is seeking to obtain in response to this request.

32. All documents, including memoranda or other writings, prepared by Wachovia Bank pertaining to, referring, relating to, reflecting, and/or evidencing (1) Wachovia Bank

Account Number XXXXXX5057 and (2) Wachovia Bank Account Number XXXXXX7271.

RESPONSE:

Wells Fargo objects to this request on the basis overly broad and unduly burdensome. Wells Fargo further objects to this request to the extent it seeks documents protected by the attorney-client privilege and work-product doctrine. A privilege log will be provided for documents withheld on these bases. Wells Fargo also objects to this request to the extent it seeks production of nonpublic supervisory information, including documents Wells Fargo would be prohibited by law from disclosing or even acknowledging the existence thereof pursuant to 12 C.F.R. §21.11, 12 C.F.R. §208.62, 31 C.F.R. §103.18 and 31 U.S.C. §5318(g)(2). Wells Fargo further objects to this request to the extent that it invades the right of privacy of third parties and seeks personal and confidential financial information of third parties in violation of Wells Fargo's obligations to maintain the confidentiality of such documents, including, as set forth in Fla. Stat. §655.059 and the Florida Constitution.

33. All documents pertaining to, referring, relating to, reflecting, and/or evidencing, any review, concerns or investigations of (1) Wachovia Bank Account Number XXXXXX5057 and (2) Wachovia Bank Account Number XXXXXX7271.

RESPONSE:

Wells Fargo further objects to this request to the extent it seeks documents protected by the attorney-client privilege and work-product doctrine. A privilege log will be provided for documents withheld on these bases. Wells Fargo also objects to this request to the extent it seeks production of nonpublic supervisory information, including documents Wells Fargo would be prohibited by law from disclosing or even acknowledging the existence thereof pursuant to 12 C.F.R. §21.11, 12 C.F.R. §208.62, 31 C.F.R. §103.18 and 31 U.S.C. §5318(g)(2). Wells Fargo further objects to this request to the extent that it invades the right of privacy of third parties and seeks personal and confidential financial information of third parties in violation of Wells Fargo's obligations to maintain the confidentiality of such documents, including, as set forth in Fla. Stat. §655.059 and the Florida Constitution.

34. Each and every statement, report or other document concerning, referring, relating to and/or evidencing loans or other extensions of credit to the Debtors, Ulrich Felix Anton Engler, Private Commercial Office, Inc., PCO Client Management, Inc., and/or Neumeier including but not limited to, promissory notes, security agreements, personal guarantees, periodic statements reflecting debits and credits related thereto, underwriting documentation, loan applications, verification of assets or income and/or tax returns.

RESPONSE:

Wells Fargo objects to this request on the basis that it is overly broad and unduly burdensome. Wells Fargo further objects to this request to the extent it seeks documents protected by the attorney-client privilege and work-product doctrine. A privilege log will be provided for

documents withheld on these bases. Wells Fargo also objects to this request to the extent it seeks production of nonpublic supervisory information, including documents Wells Fargo would be prohibited by law from disclosing or even acknowledging the existence thereof pursuant to 12 C.F.R. §21.11, 12 C.F.R. §208.62, 31 C.F.R. §103.18 and 31 U.S.C. §5318(g)(2). Wells Fargo further objects to this request to the extent that it invades the right of privacy of third parties and seeks personal and confidential financial information of third parties in violation of Wells Fargo's obligations to maintain the confidentiality of such documents, including, as set forth in Fla. Stat. §655.059 and the Florida Constitution.

Subject to and without waiving the objections set forth above, Wells Fargo states that it will produce copies of any loan documents (promissory notes, security agreements, personal guarantees, periodic statements reflecting debits and credits related thereto, loan applications, verification of assets or income and/or tax returns), in Wells Fargo's possession, custody, or control, for Ulrich Felix Anton Engler, Private Commercial Office, Inc., PCO Client Management, Inc.

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via electronic mail and regular U.S. Mail to **Brett E. Von Burke, Esq.**, (bvb@kttlaw.com) and Jessica Elliott (jec@kttlaw.com) this 16th day of May, 2011.

FOX ROTHSCHILD, LLP.


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