

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

In re:

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

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

Chapter 7

Debtors.

CONFIDENTIALITY ORDER

Upon the stipulated submission of Robert E. Tardif, Jr., as Chapter 7 Trustee (the “Trustee”), and Wells Fargo Bank, N.A., as successor-by-merger to Wachovia Bank, N.A. (“Wells Fargo”), and for good cause shown, including the parties’ assertion that discovery in this matter may include confidential material including materials of a proprietary and commercially sensitive nature, which should be protected from disclosure, under the authority of Fed. R. Bankr. P. 7026(c), for the purpose of protecting confidential and sensitive information and facilitating discovery, **IT IS HEREBY ORDERED** as follows:

1. This Protective Order applies to all information, documents, electronically stored information, and things (as Fed. R. Bankr. P. 7034(a)(1) defines those terms; hereinafter, “documents and information” or “information”) produced or disclosed in connection with the proceedings in and related to the above-captioned bankruptcy proceeding, including deposition testimony, testimony taken at a trial or hearing or other proceeding, declarations, affidavits, interrogatory answers, responses to written discovery, documents, and other materials or requests subject to discovery under Fed. R. Bankr. P. 2004 and 7026 through 7037 or otherwise produced, presented, served, submitted, or filed in this matter.

2. No provision in this Protective Order shall be construed as requiring the production or disclosure of any documents or information.

3. A party's compliance with the terms of this Order shall not operate as an admission that any document or information is or is not: (a) confidential; (b) privileged; or (c) admissible in evidence at trial or hearing or other proceeding.

4. Each producing or disclosing party or non-party (hereafter "Source") may designate as "CONFIDENTIAL" any documents or information, or portions of any documents, produced or disclosed by the Source in this case.

5. The designation "CONFIDENTIAL" may be applied to documents and information that the Source reasonably believes are non-public and of a proprietary, commercially sensitive nature. A non-designating recipient must use and disclose information designated as "CONFIDENTIAL" only in accordance with this Protective Order until such designation is modified as provided hereunder or as ordered by the Court. Summaries, copies, abstracts, or other references to documents or information designated as "CONFIDENTIAL" shall likewise be used and designated as "CONFIDENTIAL" whenever they are derived in whole or in part from or refer to material designated as "CONFIDENTIAL." All documents and information designated as "CONFIDENTIAL" or otherwise subject to treatment as "CONFIDENTIAL" hereunder may be hereinafter referred to as "Confidential Information."

6. On paper documents, tangible things (other than media for storage of electronically stored information), or any written responses to discovery or other papers (such as motions, briefs, pleadings, etc.), a designation of Confidential Information under this Protective Order shall be made by stamping or labeling each page of the document containing Confidential Information as "CONFIDENTIAL" prior to its production, disclosure, service, or filing.

7. For documents produced, disclosed, or served as PDF or TIFF (or the like) images stored on a compact disc or similar device, a designation of CONFIDENTIAL under this Protective Order shall be made by including a conspicuous legend or header/footer to each individual page or image as appropriate.

8. Any and all Confidential Information obtained in the above-referenced case shall be used by all receiving persons solely for the presentation, prosecution, or defense of the claims, positions, and contentions in this case and all related or future proceedings between the Trustee and Wells Fargo, N.A. relating to Wells Fargo N.A.'s relationship with the Debtors and shall not use the information for any other purpose whatsoever.

9. Except as permitted by this Protective Order: Access to and disclosure of Confidential Information shall be limited by the receiving party to: (i) employees or former employees of the debtor who agree to be bound by the terms of this Order; (ii) the attorneys, paralegals, and secretarial and clerical employees (including personnel of retained photocopying, graphics, or litigation-support firms) of counsel representing any party in this case that has agreed to be bound by the terms hereof; (iii) court reporters or videographers and their staff retained to transcribe or record deposition or other testimony in connection with this case; (iv) the Court and any person employed by the Court whose duties require access to such information or materials; (v) any person specifically identified and authorized in writing by the Source; (vi) consulting or testifying experts and their staff retained by a party in connection with this action who agree to be bound by the terms hereof as provided below; and (vii) any person who is shown on the face of the Confidential Information material to have authored or received the Confidential Information material sought to be disclosed to that person; and (viii) any person deposed or who otherwise testifies under oath in this action or any future proceedings between the Trustee and Wells Fargo

N.A., regarding Wells Fargo N.A.'s relationship with the Debtors and the Deponent's counsel who agree to be bound by the terms of this Order; (ix) on a need-to-know basis, a party (if an individual), or a party's officers, directors, or employees who are actively involved in the prosecution or defense of any claim, position, or contention at issue in this case or any related proceeding.

10. To the extent any party's expert witness needs to review Confidential Information in connection with his or her work for this case, said expert may keep the Confidential Information only for as long as reasonably necessary for his or her work in this case, and then must immediately return the Confidential Information to counsel for that party.

11. Whenever Confidential Information is to be discussed or disclosed in a deposition, the Source may require the exclusion from the room of any person who would not be entitled to receive the Confidential Information under this Protective Order. A Source may designate portions of depositions as CONFIDENTIAL if that designation is made when the deposition is taken or within a reasonable time after first receiving a copy of the transcript of such testimony, providing written notice to all receiving parties and the court reporter of the pages and lines of the transcript that contain Confidential Information. Such designation shall be specific as to the portions to be protected. The court reporter shall make appropriate notations of confidentiality on the transcript in accordance with the designations supplied and additionally note on the cover of the transcript that it contains confidential information subject to a Protective Order.

12. Inadvertent disclosure of Confidential Information does not waive the confidentiality and protection otherwise attached to the information. Upon a Source's discovery that information it produced was not correctly designated, or was not designated at all and the Source believes that it should have been, that Source shall promptly provide notice in writing to the other parties that the information was inappropriately designated or not designated. The Source shall then have ten

business days in which to re-designate and re-produce the information. In the interim, the information shall not be used in a manner inconsistent with the notice. The obligation to treat such material pursuant to the corrected designation shall be prospective only.

13. All documents, discovery, testimony, or information designated as CONFIDENTIAL under the terms of this Protective Order that are filed with the Court, and any pleadings, motions, affidavits, briefs, memorandum, transcripts, testimony, or other papers filed with the Court containing or disclosing any such information, shall be filed under seal in the manner set forth for filing sealed pleadings under the Local Rules and CM/ECF procedures, and will be kept under seal until further Order of the Court.

14. Any party intending to use Confidential Information at any hearing or trial shall provide no less than five (5) business days written notice to the Source of such intended use and shall not use during this notification period or while any request to seal Confidential Information is being considered by the Court.

15. The subsequent inadvertent disclosure of any document, testimony, or pleading filed under seal shall not operate as a waiver of confidentiality. A party that inadvertently neglects to file documents under seal may cure that error by having the Clerk of Court mark the documents as filed under seal and remove them from public access on the CM/ECF system or, failing that, withdrawing the public filing and re-filing documents under seal within five business days of discovering or being notified of the error, without facing sanctions.

16. Except as permitted by this Protective Order or other Order of the Court, no person who receives documents or information designated as CONFIDENTIAL may disclose such documents or information to any other person who is not otherwise permitted by this Protective Order to receive or have access to Confidential Information, unless and until such designation is

removed by the Source originally making the designation or the Court enters an order permitting or ordering disclosure.

17. Any and all persons to whom the Confidential Information is disclosed shall first be given a copy of this Protective Order, and the person shall read the Protective Order and agree in writing to be bound by its terms prior to the disclosure to them of any of the Confidential Information or the contents of same. Counsel for all receiving parties shall be responsible for obtaining, prior to disclosure and as a condition thereof, the written agreement to be bound by the terms of this Protective Order of any person to whom any Confidential Information is disclosed (other than those persons identified in paragraph 9). Such written agreement shall be in the form annexed hereto as Attachment A.

18. Except when filed with the Court in accordance with Paragraph ¹³~~15~~, Confidential Information belonging to any other person received hereunder shall be stored at the offices of the receiving party's counsel and will be copied only by the receiving party's counsel or counsel's direct staff or copying service retained for such purposes by counsel, except that the individuals permitted to receive Confidential Information under Paragraph 9 may receive and store such Confidential Information in their offices if such individuals take appropriate steps to prevent the disclosure of Confidential Information to persons not authorized by this Protective Order to receive it.

19. Nothing in this Order shall prohibit counsel for a party from disclosing Confidential Information to any person who was an author, addressee, or carbon or blind copy recipient of such document. Regardless of any designation under this Protective Order, if a document or testimony makes reference to the actual or alleged conduct or statements of a person who is a potential witness, counsel may discuss such conduct or statements with such witness without revealing any

portion of the document or testimony other than that which specifically refers to such conduct or statement, and such discussion shall not constitute disclosure in violation of this Protective Order.

20. The following procedures shall govern any challenges to confidentiality designations:

A. A party shall not be obligated to challenge the propriety of a CONFIDENTIAL designation at the time made.

B. If any party reasonably believes that a document or information should not be designated as CONFIDENTIAL the objecting party shall consult with the designating party to attempt to resolve their differences.

C. If the parties are unable to reach an accord as to the proper designation of the material, the designating party may move the Court for an order confirming confidentiality designation within 10 days of the time the designation is challenged. Until the Court rules, the confidentiality designation made by the Source shall remain in effect until the Court rules on a timely filed motion. If the designating party fails to so move or the Court refuses to allow confidentiality, then the confidentiality status shall terminate.

21. Nothing in this Protective Order shall prevent a party from using or disclosing its own information in the course of this proceeding, as it deems appropriate, without impairing the confidentiality obligations imposed upon all other parties and persons subject to this Protective Order. Once a party has disclosed its confidential information publicly, that information will no longer be deemed confidential.

22. The designation of documents, discovery, information, or testimony as CONFIDENTIAL shall not in any way constitute a waiver of any objection to otherwise improper

discovery in this case, whether such discovery is oral or written, nor will such a designation constitute a waiver of any objection to the admissibility of such information.

23. Should any person who receives Confidential Information subject to this Protective Order receive any informal request or civil process seeking such information, prior to responding thereto, such person shall promptly serve written notice of the receipt of such request on counsel for all parties hereto in order to allow such parties to move an appropriate court, authority, or tribunal for a ruling regarding the necessity of compliance therewith. Absent a ruling from the appropriate court, authority, or tribunal on any such motion, the person or party receiving the request shall not disclose Confidential Information in response thereto and shall thereafter do so only insofar as the court, authority, or tribunal may direct.

24. Non-parties who are requested to produce confidential or proprietary information, or whose information is otherwise requested in this case, may avail themselves of the provisions of this Protective Order the same as any party, provided that such non-parties submit to the jurisdiction of the Court for purposes of enforcing this Protective Order. They will thereafter be governed by the terms of this Order as a Source.

25. Any party or non-party may apply to the Court for additional protection with respect to Confidential Information beyond that provided for herein. Entry of this Protective Order is without prejudice to the right of the parties to apply for future modifications of this Protective Order.

26. The provisions of this Protective Order, as proposed, shall be binding upon the parties and counsel immediately upon stipulation hereto by their respective counsel, as though signed and entered by this Court.

27. This Protective Order shall continue and be binding throughout and after the conclusion of the above-referenced proceeding, including any appeals. Within ten (10) days of final termination of this case and all related proceedings, the parties must destroy or return to each Source all documents or other materials containing Confidential Information produced by that Source and, upon request of that Source, shall so certify within ten (10) days of termination of this case and all related proceedings. This requirement applies whether or not such Confidential Information contains attorney-work product. However, any such attorney-work product may be redacted from Confidential Information before it is returned to the Source. Within ten (10) days after the conclusion of the above-referenced lawsuit, any notes or other writings that reflect the Confidential Material, including all copies thereof, must be permanently destroyed.

28. This Protective Order shall survive conclusion of the above-referenced proceeding, and the Court shall retain jurisdiction to resolve any dispute concerning the use of information disclosed hereunder.

29. The Source shall have the right to enforce this Protective Order by obtaining injunctive relief without the necessity of posting any bond or other security and without waiving or limiting any other rights or remedies the Source may have with respect to any breach or violation of this Protective Order.

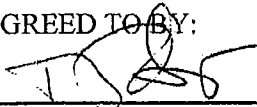
DONE AND ORDERED in Chambers in Tampa, Florida, on July 21, 2011.



Honorable Michael G. Williamson
United States Bankruptcy Court

Copies furnished to all counsel of record
on the attached Service List

AGREED TO BY:



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Dated: June 27, 2011

ATTACHMENT A

ACKNOWLEDGMENT OF CONFIDENTIALITY DESIGNATIONS AND
AGREEMENT TO BE BOUND BY TERMS OF COURT ORDER

I, _____, hereby acknowledge that I may receive confidential information in connection with the following case: *In re Ulrich Felix Anton Engler, et al.*, Case Nos. 9:08-bk-04360-MGW, pending in the United States Bankruptcy Court for the Middle District of Florida.

I hereby certify my understanding that if I receive designated confidential information, it is being provided to me pursuant to the terms and restrictions of the Protective Order entered on _____, 2011, in this case. I further certify that I have been given a copy of and have read the terms of that Protective Order, that I agree to be bound by its terms, and that I submit to the jurisdiction of the Court for purposes of enforcing that Protective Order. I understand that I am subject to sanctions, including contempt, for violating the terms of that Protective Order.

Signature _____

Printed Name _____

Date _____

SERVICE LIST

**IN RE ULRICH FELIX ANTON ENGLER
CASE NO. 08-bk-04360-MGW**

9:08-bk-04360-MGW Notice will be electronically mailed to:

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