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 FSB)

14 **UNITED STATES DISTRICT COURT**
 15 **NORTHERN DISTRICT OF CALIFORNIA**

16 FREDERICK J. CASISSA,
 17 Plaintiff,
 18 v.
 19 FIRST REPUBLIC BANK, a division of
 MERRILL LYNCH BANK AND TRUST,
 20 FSB, DOE 1 through DOE 20,
 21 Defendants.

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 23 ELIZABETH RIGGINS,
 Plaintiff,
 24 v.
 25 FIRST REPUBLIC BANK, a division of
 MERRILL LYNCH BANK AND TRUST,
 26 FSB, DOE 1 through DOE 20,
 27 Defendants.
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CASE NO. C 09 04129 CW EDL
 CASE NO. C 09 04130 CW EDL
 (Consolidated Cases)

**JOINT STATEMENT REGARDING
 PLAINTIFF'S MOTION TO COMPEL
 PRODUCTION OF DOCUMENTS
 AND ORDER**
 Date: Thursday, March 13, 2011
 Time: 10:00 a.m.
 Courtroom: E, 15th Floor
 Hon. Elizabeth D. Laporte

Removal filed: September 4, 2009
 Trial: August 21, 2012

1 Pursuant to the Court's instruction, the parties, by and through their counsel of record,
2 submit the following Joint Statement regarding Plaintiff's Motion to Compel Production of
3 Documents:

4 On March 16, 2012, the parties' counsel met and conferred over pending issues from
5 Plaintiffs' motion.

6 **Request for Production No. 10:**

7 Defendant stipulates that the Plaintiffs were not terminated because of their handling of
8 matters involving Ronald Baron and Sandell Assets.

9 After a reasonable and diligent search, Defendant has not located any responsive files,
10 folders and subfolders that are stored, recorded or otherwise preserved under either Plaintiff's
11 name and contain the heading "2007 investigations." See Declaration of Manuel Medina
12 ("Medina Dec."), Exhibit A, ¶¶ 3, 4; Declaration of Andrew J. Sommer ("Sommer Dec."),
13 Exhibit B, ¶ 2. In addition, most potentially responsive documents referring to the underlying
14 subject matter are protected from disclosure because they relate to Suspicious Activity Reports
15 See 31 U.S.C. § 5318(g) and the related regulations at 12 C.F.R. § 21.11(k) and 31 C.F.R. §
16 1020.320(d). This prohibition extends broadly to any draft of a SAR, the process of preparing
17 the SAR, and any information that would reveal the existence of a SAR. 31 CFR Part 103. See
18 *Cotton v. Privatebank & Trust Co.*, F.Supp.3d 809, 815 (N.D. Ill. 2002)("[d]ocuments
19 representing drafts of SARS or other work product or privileged communications that relate to
20 the SAR itself...are not to be produced because they would disclose whether a SAR has been
21 prepared or filed"); see also *Union Bank v. Superior Court*, 130 Cal.App.4th 378, 398 (2005).

22 In connection with its voluminous ESI review, Defendant reviewed documents saved
23 under Plaintiffs' names relating to Ronald Baron and Sandell Assets applying the designated
24 search terms. Defendant is also completing production of the remaining documents from
25 Plaintiffs' home directories using key word searches for "Salander," and anticipates producing
26 such non-privileged documents subject to the protective order by March 26, 2012. Sommer
27 Dec., ¶ 4; Medina Dec., ¶¶ 4, 5.

28 **Request for Production Nos. 12 and 13:**

1 After a reasonable and diligent search, Defendant has not located any responsive files,
2 folders and subfolders that are stored, recorded or otherwise preserved under either Plaintiff's
3 name and contain the heading "FinCen 314b ~ 2007" or "FinCen 314b ~ 2008." See Medina
4 Dec., ¶¶ 4, 5; Sommer Dec., ¶ 3. However, the blanket request for all 314(b) requests and
5 responses for this period is improper. 314(b) requests and responses between authorized
6 financial institutions regarding potential suspicious are protected against disclosure. See 31
7 U.S.C. § 5318(g) and 31 C.F.R. § 1010.540(b)(4)(ii)([e]ach financial institution or association of
8 financial institutions that engages in the sharing of information pursuant to this section shall
9 maintain adequate procedures to protect the security and confidentiality of such information).

10 The 314(b) matters saved under Plaintiffs' names in their home directories under
11 different descriptions concern communications between financial institutions about potential
12 suspicious activity. See Medina Dec., ¶¶ 4, 5; Sommer Dec., ¶ 3.

13 **Request for Production Nos. 16, 23 and 30:**

14 ~~Per the Court's tentative ruling,~~ Defendant will produce subject to the protective order
15 including federal grand jury and Department of Justice Subpoenas
16 subpoenas responsive to Request No. 16 for the period March 20, 2007 to March 19, 2008, with
17 appropriate redactions. Defendant anticipates producing these subpoenas by April 15, 2012.

18 **Request for Production No. 22:**

19 Defendant will provide for *in camera* review the Declaration of Jennifer Marre, which
20 supports the basis for Defendant's assertion of attorney work product protection as to the
21 PricewaterhouseCoopers analytic report. The Court has reviewed the declaration of Jennifer Marre and
concludes that it supports Defendant's work product assertion
over the PWC analytic report.

22 **Request for Production No. 28:**

23 Defendant provides the attached Declaration of Manuel Medina regarding the First
24 Republic Bank Division's standard practices regarding the preservation of employees' hard
25 drives, and the restoration of Plaintiffs' data for use in this litigation.

26 **Request for Production No. 29:**

27 Per Plaintiffs' request, Defendant has identified the entries from its privilege log which
28 concern withheld or redacted documents responsive to this request.

Resolution of Pending Discovery Dispute

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Plaintiffs agree that the parties met and conferred and that the above matters were discussed. Plaintiffs also agree that this resolves the pending discovery dispute without prejudice to Plaintiffs' renewing their requests for documents if new information is discovered.

DATED: March 20, 2012

EPSTEIN BECKER & GREEN, P.C.

By: /s/ Andrew J. Sommer
Andrew J. Sommer

Attorneys for Defendant
BANK OF AMERICA, N.A. (as successor in interest to Merrill Lynch Bank and Trust, FSB)

DATED: March 20, 2012

LAW OFFICES OF STEPHEN M. MURPHY

By: /s/ Stephen M. Murphy
Stephen M. Murphy

Attorney for Plaintiffs,
FREDERICK J. CASISSA and
ELIZABETH RIGGINS

IT IS SO ORDERED:
Dated: March 30, 2012



MAGISTRATE JUDGE ELIZABETH D LAPORTE