

<p>SONCERA FELDER</p> <p style="text-align: center;">v.</p> <p>BANK OF AMERICA, N.A., et al.</p>	<p>CIVIL ACTION</p> <p>NO. 15-5962</p>
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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MEMORANDUM RE: PROTECTIVE ORDER CONFIDENTIAL INFORMATION

In this action brought pursuant to the Fair Credit Reporting Act and the Fair and Accurate Credit Transactions Act, 15 U.S.C. § 1681 *et seq.*, the parties have been unable to agree on an appropriate protective order for treating confidential information as confidential and for purposes of this case only. As with most commercial litigation cases, the defendant has a legitimate reason for wanting to keep its truly confidential information restricted for use in this litigation.

Although Plaintiff initially opposed any protective order, citing Pansy v. Borough of Stroudsburg, 23 F.3d 772 (3d Cir. 1994), the Court, in an unrecorded telephone conversation with counsel, rejected the argument that Pansy precluded this Court from entering protective orders on confidential information in commercial litigation. The Third Circuit, pre- and post- Pansy, has recognized that the confidentiality of business agreements, trade secrets or commercial information are a legitimate private interest and the disclosure of this information can be used for the improper purpose of causing harm to the litigant’s competitive standing in the marketplace. See Publicker Industries, Inc. v. Cohen, 733 F.2d 1059, 1074 (3d Cir.1984) (recognizing that courts have traditionally protected sensitive financial information such as trade secrets from public disclosure); In re Cendant Corp., 260 F.3d 183, 194 (3d Cir. 2001) (emphasizing that public access to litigation documents should be denied when the use of such documents may become a “vehicle for improper purposes”). District Courts in the Third Circuit

have also repeatedly found serious harm in disclosing financial information which would injure party's standing in the competitive marketplace. See Zenith Radio Corp. v. Matsushita Elec. Indus. Co., 529 F.Supp. 866, 890 (E.D.Pa.1981) (“[I]t is clear that a court may issue a protective order restricting disclosure of discovery materials to protect a party from being put at a competitive disadvantage”); see also Hershey Co. v. Promotion in Motion, Inc., No. 07-1601, 2010 WL 1812593, at *3 (D. N.J. May 4, 2010).

In this case, Defendants have agreed to produce certain documents, subject to a protective order. Both Plaintiff and Defendant have submitted proposed orders. Plaintiff's is plain and simple, Defendant's is verbose, complex and extends for eleven (11) pages with all kinds of eventualities that may or may not arise. The Court believes that the Order described below, which is more in line with Plaintiff's request, is adequate for this case. The Court remains open for modifications or asserted violations, which can be presented by a simple motion. Possible modifications notwithstanding, the Court assumes that counsel will act in accordance with this Order, which is in plain language, easy to understand, and which may serve as a “template” in other cases. In addition, the Court will adopt Defendant's proposed form to be signed by witnesses or experts concerning “Certification Re: Confidential Discovery Materials”, annexed as “Exhibit A” to its proposed stipulated protective order, and which is attached to this Order.

AND NOW this 30th day of June, 2016, upon consideration of Plaintiff Soncera Felder's Motion to Compel Defendant Bank of America to Provide More Full and Complete Responses to Plaintiff's Discovery Requests (ECF 31) and Defendant Bank of America, N.A.'s Response in Opposition and Cross-Motion for Protective Order (ECF 33), it is hereby **ORDERED** that Plaintiff's Motion to Compel is **DENIED** and Defendant's Cross-Motion for Protective Order is **GRANTED**.

1. Defendant shall within fourteen (14) days produce internal Bank of America account notes and account statements and correspondence to and from Plaintiff and/or William Thornton relating to the Bank of America account at issue in Plaintiff's Amended Complaint, but may designate these documents as Confidential when producing them. If Defendant designates these documents as Confidential when producing them, Plaintiff shall maintain the documents in confidence such that access will be permitted only to the following persons:

- a. The Court and its staff (filed under seal or submitted without filing);
- b. Attorneys of record in this case and their affiliated attorneys, paralegals, clerical and secretarial staff employed by such attorneys;
- c. Court reporters in this case, who shall be notified of this Order;
- d. Any party who signs the attached Certification;
- e. Any non-party deposition or non-trial witness in this case who previously did not have access to the documents; provided, however, that each such witness given access to the documents shall be advised that such documents are being disclosed pursuant to, and are subject to, the terms of this Order and that they may not be disclosed other than pursuant to its terms, and who must sign the attached Certification;
- f. Outside experts or expert consultants consulted by Plaintiff; provided, however, that prior to the disclosure of the documents to any such expert or expert consultant, counsel for Plaintiff making the disclosure shall deliver a copy of this Order to such person, shall explain its terms to such person, and shall secure the signature of such person to the attached Certification;
- g. Any other person that Defendant agrees to in writing and who signs the attached Certification.

2. The documents covered by this Order shall be used by Plaintiff only for the

purposes of preparing for, conducting, participating in the conduct of, and/or prosecuting this case, and not for any business or other purpose whatsoever.

3. It is further **ORDERED** that upon a showing of good cause consistent with Third Circuit law, any party may seek relief from this Protective Order by filing a motion (under seal) for relief from this Protective Order with this Honorable Court.

4. It is further **ORDERED** that any pleadings filed that contains references or exhibits related to documents referred to as Confidential by this Protective Order must be filed under seal, and that the filing party not be required to seek further leave to file such pleadings under seal. The Clerk of this Honorable Court shall accept such pleadings without a separate motion being filed for leave to file the pleadings under seal.

5. This Order does not apply to use of Confidential documents at trial.

BY THE COURT:

/s/ Michael M. Baylson

MICHAEL M. BAYLSON
United States District Court Judge