

DOCKET NO.: FST CV15 50148-08 S : SUPERIOR COURT
WILLIAM A. LOMAS : J.D. OF STAMFORD/NORWALK
VS. : AT STAMFORD
PARTNER WEALTH MANAGEMENT, LLC
ET AL. : APRIL 20, 2016

DEFENDANTS' MOTION TO SEAL

Pursuant to § 11-20A of the Connecticut Rules of Practice, defendants, Partner Wealth Management, LLC (“PWM”), Kevin G. Burns, James Pratt-Heaney and William Loftus (the “*Individual Defendants*” and, together with PWM, the “*Defendants*”) hereby move to seal and limit the disclosure of their reply brief in further support of the Defendants’ motion to strike dated January 29, 2016 (Doc. 137.00) and a certain document—PWM’s current LLC operating agreement—to be submitted as an exhibit to their reply (the “Proposed Sealed Documents”). Pursuant to §§7-4B and 7-4C of the Connecticut Rules of Practice, the Defendants will lodge with the Clerk of the Court and designate appropriately the Proposed Sealed Documents. A redacted, public version of the reply has been filed (Doc. 148.00). An unredacted version has been or will shortly be provided to Plaintiff’s counsel.

BERCHEM, MOSES
& DEVLIN, P.C.
COUNSELORS AT LAW
75 BROAD STREET
MILFORD, CONNECTICUT
06460
—
JURIS NUMBER
22801
—
(203) 783-1200

WHEREFORE, for the foregoing reasons, set forth more fully in the accompanying Memorandum of Law, the Defendant respectfully requests that this Court grant its motion to seal.

THE DEFENDANTS,
PARTNER WEALTH MANAGEMENT, LLC,
KEVIN G. BURNS, JAMES PRATT-HEANEY
AND WILLIAM LOFTUS

By: _____

Richard J. Buturla, Esq.
Richard C. Buturla, Esq.
BERCHEM, MOSES & DEVLIN, P.C.
75 Broad Street
Milford, CT 06460
Tel. (203) 783-1200
Juris. No. 22801

Gerard P. Fox, Esq.
GERARD FOX LAW, P.C.
12 East 49th Street, Suite 2605
New York, NY 10017
Tel. (646) 690-4980
Juris. No. 437645

BERCHEM, MOSES
& DEVLIN, P.C.
COUNSELORS AT LAW
75 BROAD STREET
MILFORD, CONNECTICUT
06460
—
JURIS NUMBER
22801
—
(203) 783-1200

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was e-mailed and mailed to all counsel of record on this 20th day of April, 2016.

Thomas J. Rechen, Esq.
McCarter & English, LLP
City Place I, 185 Asylum Street
Hartford, CT 06103
trechen@mccarter.com



Richard J. Buturla

**BERCHEM, MOSES
& DEVLIN, P.C.**
COUNSELORS AT LAW
75 BROAD STREET
MILFORD, CONNECTICUT
06460
—
JURIS NUMBER
22801
—
(203) 783-1200

DOCKET NO.: FST CV15 50148-08 S : SUPERIOR COURT
WILLIAM A. LOMAS : J.D. OF STAMFORD/NORWALK
VS. : AT STAMFORD
PARTNER WEALTH MANAGEMENT, LLC
ET AL. : APRIL 20, 2016

**DEFENDANTS' MEMORANDUM OF LAW
IN SUPPORT OF THEIR MOTION TO SEAL**

Defendants, Partner Wealth Management, LLC ("PWM"), Kevin G. Burns, James Pratt-Heaney and William Loftus (the "*Individual Defendants*" and, together with PWM, the "*Defendants*") hereby move the Court, pursuant to Practice Book § 11-20A, to seal their reply brief in further support of the Defendants' motion to strike dated January 29, 2016 (Doc. 137.00) and a certain document that will be submitted as an exhibit to their reply (the "Proposed Sealed Documents"). Defendants have filed a redacted, public version of the reply (Doc. 148.00).

The Proposed Sealed Documents include confidential and proprietary information that falls squarely within the stipulation entered into between the parties and has been designated as "Confidential". More specifically, for the exhibit to the reply—PWM's current LLC operating agreement—a confidentiality designation was made pursuant to the terms of the Confidentiality Stipulation in this matter dated November 9, 2015 (the "Stipulation") (attached Exhibit A). Portions of the reply cite to and describe parts of PWM's current LLC operating agreement. The Stipulation supports limiting the disclosure of the Proposed Sealed Documents and filing them

BERCHEM, MOSES
& DEVLIN, P.C.
COUNSELORS AT LAW
75 BROAD STREET
MILFORD, CONNECTICUT
06460
—
JURIS NUMBER
22801
—
(203) 783-1200

under seal. *See* Ex. A at 3, ¶ 7 (specifying agreement to limit Confidential information to certain parties only, including the Court).

I. LEGAL ARGUMENT

Practice Book § 11-20A sets forth the procedure for limiting the disclosure of documents in civil cases. It specifically provides that, upon written motion of any party, “the judicial authority may order that files, affidavits, documents or other materials on file or lodged with the court . . . be sealed . . . if the judicial authority concludes that such order is necessary to preserve an interest which is determined to override the public’s interest in viewing such materials.”

Practice Book § 11-20A(c).

Any presumption of public access to court documents may be outweighed by countervailing considerations. *See Rosado v. Bridgeport Roman Catholic Diocesan Corp.*, 292 Conn. 1, 35, *cert. denied sub nom. Bridgeport Roman Catholic Diocesan Corp. v. New York Times Co.*, 130 S.Ct. 500 (2009). The presumption in favor of disclosure is outweighed in instances which a specific injury is identified and unfair harm to the parties is established. *See, e.g., Redmond v. Promotico*, 2012 WL 5476997, *1-2 (Conn. Super., Oct. 16, 2012) (citing *Doe v. Lasaga*, Superior Court, Judicial District of New Haven, Docket No. CV 99 0430858 (March 1, 2004, Arnold, J.) (36 Conn. L. Rptr. 751); *Soroka v. Household Automotive Finance Corp.*, Superior Court, Judicial District of New Haven, Docket No. CV 04 4000300 (April 30, 2007, Silbert, J.) (43 Conn. L. Rptr. 481).

In this case, the need to withhold public disclosure of the designated confidential information clearly outweighs the public interest in such disclosure. Indeed, the instant matter is similar to that considered by this Court in *Pursuit Partners, LLC v. UBS AG*, 2012 WL 4801418, *1 (Conn. Super. Sept. 10, 2012). In that case, the Plaintiffs sought to seal information that had been treated as confidential by the parties pursuant to their agreement. The confidential information consisted of documents that contained business information and had been clearly labeled “confidential” in the course of discovery. The documents, however, were essential to a ruling on a related motion and were filed with the Court. *Id.*

This Court acknowledged the historical presumption of openness of its proceedings and also recognized that a mere agreement between the parties was insufficient to prevent the disclosure of confidential materials. *Id.* at 2. The request was found to be narrowly tailored and to provide adequate notice of the types of documents that the parties sought to be sealed. Ultimately, the materials designated as “Confidential” were sealed. This Court further reasoned that there was “an overriding interest to protect the confidential business information” and that the failure to do so could irreparably damage the proprietary information of the defendants and other non-involved parties. *Id.* at 3. As such, the interest in nondisclosure outweighed the public's interest in access to such information. *Id.*

Here, the Proposed Sealed Documents include some of the very same type of information that has been withheld from disclosure in similar situations. The confidential information

contained in the Proposed Sealed Documents includes *inter alia*, financial and sensitive business information of the parties contained in PWM's current LLC operating agreement. Public dissemination of otherwise confidential commercial and financial information in this matter serves no valid public purpose and would serve to harm the Defendants.

Furthermore, the parties are further engaging in discovery and have entered into the Stipulation to prohibit disclosure of confidential information. While the Stipulation alone may not be determinative of the protected status of the Proposed Sealed Exhibit, it illustrates that both parties have gone to great lengths to maintain the confidentiality of the very information that this Motion seeks to seal.

Defendants have file a redacted, public version of the reply and have or shortly will provide an unredacted version to Plaintiff's counsel.

BERCHEM, MOSES

& DEVLIN, P.C.

COUNSELORS AT LAW

75 BROAD STREET

MILFORD, CONNECTICUT

06460

JURIS NUMBER

22801

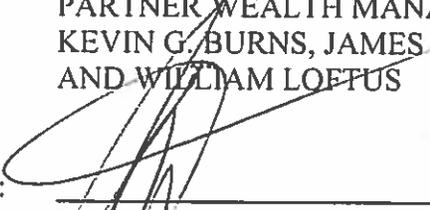
(203) 783-1200

{00882340 DOCX Ver. 1}

II. CONCLUSION

For all of the foregoing reasons, the Defendants respectfully request that the Court grant this motion to seal.

THE DEFENDANTS,
PARTNER WEALTH MANAGEMENT, LLC,
KEVIN G. BURNS, JAMES PRATT-HEANEY
AND WILLIAM LOFTUS

By: 

Richard J. Buturla, Esq.
Richard C. Buturla, Esq.
BERCHEM, MOSES & DEVLIN, P.C.
75 Broad Street
Milford, CT 06460
Tel. (203) 783-1200
Juris. No. 22801

Gerard P. Fox, Esq.
GERARD FOX LAW, P.C.
12 East 49th Street, Suite 2605
New York, NY 10017
Tel. (646) 690-4980
Juris. No. 437645

**BERCHEM, MOSES
& DEVLIN, P.C.**

COUNSELORS AT LAW
75 BROAD STREET
MILFORD, CONNECTICUT

06460

JURIS NUMBER

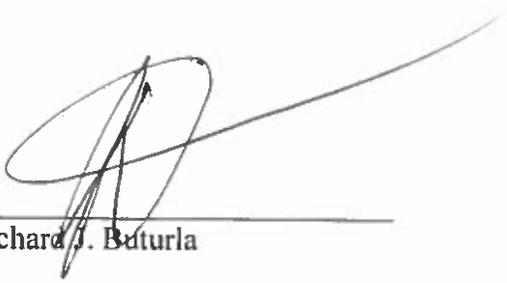
22801

(203) 783-1200

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was e-mailed and mailed to all counsel of record on this 20th day of April, 2016.

Thomas J. Rechen, Esq.
McCarter & English, LLP
City Place I, 185 Asylum Street
Hartford, CT 06103
trechen@mccarter.com



Richard J. Buturla

**BERCHEM, MOSES
& DEVLIN, P.C.**
COUNSELORS AT LAW
75 BROAD STREET
MILFORD, CONNECTICUT
06460
—
JURIS NUMBER
22801
—
(203) 783-1200

EXHIBIT A

Material”), shall be utilized by the party to which they are produced solely for the purposes of this Action as provided in this Stipulation and Order, and for no other purpose.

3. Any and all Confidential Material shall be used and disclosed solely for the purposes of proceedings in this Action (including motion practice, hearing preparation and any trial and/or appellate proceedings related to proceedings in this Action), and shall not be used or disclosed except as provided herein nor used for any business or other purpose.

4. The Producing Party may designate documents, written discovery responses (including, but not limited to, interrogatory answers and answers to requests to admit), deposition testimony or other materials produced by it as Confidential by marking or otherwise clearly designating such materials “Confidential.” In the case of multi-page documents or files, the “Confidential” designation must be stamped on every page of the document in order for the entire document or file to be treated as Confidential, provided that in the case of electronic files it shall be sufficient if the Producing Party indicates that the file is “Confidential” by so stating in the file name or, if produced on a compact disc, by indicating on the compact disc label that the contents are “Confidential.” The failure to designate a document or testimony as “Confidential” does not constitute a waiver of such claim, and a Producing Party may so designate a document or transcript within thirty (30) calendar days after it has been produced with the effect that such document or transcript is subject to the protections of this Stipulation and Order after the date it is so designated. For the avoidance of doubt, the use or disclosure of a document after it is produced but before it is designated as Confidential is not governed by, and shall not be deemed to be a breach of, this Stipulation and Order.

5. In the event counsel for the party receiving Confidential Material believes in good faith that such material should not be designated “Confidential,” said counsel shall advise the

Producing Party as soon as practicable under the circumstances of its objections to the designations and the reasons therefor. If the Producing Party declines to remove the Confidential designation from the objected to Confidential Material, such Confidential Material shall continue to be treated as Confidential pending a resolution of the parties' dispute by the Court, and it shall be the obligation of the party objecting to the designation to obtain a prompt hearing before the Court with respect to the propriety of the designation. The Producing Party shall bear the burden of demonstrating why the "Confidential" designation is proper.

6. If any party wishes at any deposition to use or inquire about documents, material, or information designated as "Confidential" the portion of the deposition transcript which relates to such documents, material, or information will be designated and treated as Confidential, and subject to the confidentiality provisions of this Stipulation and Order.

7. Documents or material (including portions of deposition transcripts) designated as "Confidential" or information derived therefrom may only be disclosed or made available by the party receiving such information to "Qualified Persons," who are defined to consist solely of:

- (a) the Court;
- (b) the parties to this Action, including members, officers, directors, and employees;
- (c) counsel of record to the parties to this Action and any associated lawyers, paralegals, clerical, and secretarial staff employed by such counsel;
- (d) court reporters or stenographers;
- (e) all witnesses who are deposed in this Action;
- (f) experts and/or advisors of any kind consulted by the parties or their counsel in connection with this Action, whether or not retained to testify at trial; provided that prior to the disclosure to such expert and/or advisor of any information or material designated as "Confidential," counsel for the party proposing to make such disclosure shall deliver a copy of this Stipulation and Order to the expert and/or advisor, shall explain its terms to the expert and/or advisor, and shall secure the signature of the expert

and/or advisor on a letter in the form attached hereto as Exhibit A. It shall be the obligation of such counsel to retain a copy of all letters executed pursuant to this paragraph and, if any expert is designated as a witness to testify at trial, or is called to testify at trial, to forward a copy of the letter executed by such person to all opposing counsel. It shall be the further obligation of counsel, upon learning of any breach or threatened breach of this Stipulation and Order by any expert and/or advisor, to take such action as is practicable under the circumstances to prevent such a breach including, if necessary, promptly notifying opposing counsel of such breach or threatened breach, and seeking injunctive relief to prevent the breach;

(g) any other person that the parties mutually agree to in writing.

8. Each non-lawyer given access to Confidential Material pursuant to the terms hereof shall be advised that the Confidential Material is being disclosed pursuant to and subject to the terms of this Stipulation and Order and may not be disclosed other than pursuant to the terms hereof.

9. Entering into, agreeing to, and/or complying with the terms of this Stipulation and Order shall not: (a) operate as an admission by any party that any particular documents, material, or information contain or reflect currently valuable proprietary or commercial information, or intellectual property of any type; or (b) prejudice in any way the right of a party at any time to seek a determination by the Court of whether any particular document, item of material, or piece of information should be subject to the terms of this Stipulation and Order.

10. Upon termination of this Action, including all appeals, the parties shall return to counsel for the Producing Party Confidential Material and all copies thereof (except that counsel for each party may maintain in its files one copy of each pleading or paper filed with the Court and may maintain with each deposition transcript any Confidential Material attached or appended thereto).

11. Any party in the possession of Confidential Material who receives a subpoena, demand, order or other process from any person (including natural persons, corporations,

partnerships, firms, courts, governmental agencies, departments or bodies, boards, associations or regulatory or self-regulatory agencies) requiring production or other disclosure of such Confidential Material shall (if not prohibited by applicable laws, rules or regulations) promptly give telephonic notice and written notice by overnight delivery and/or facsimile to counsel for the Producing Party, identifying the materials sought and enclosing a copy of the subpoena or other process so that the Producing Party may seek an appropriate protective order or other remedy to assure that the Confidential Material will be accorded confidential treatment. If after notice, the Producing Party does not obtain an appropriate protective order in a timely manner, or if disclosure is required by law to be made substantially contemporaneously with the receipt of the demand or other process such that prompt notice to the Producing Party is impracticable prior to such disclosure, compliance with such request by the party receiving the Confidential Material shall not constitute a breach of this Stipulation and Order. In order to provide the maximum possible time for a Producing Party to obtain a protective order or other remedy, in no event shall production or disclosure be made before the return date of the subpoena, demand, order or other process. For the avoidance of doubt (but subject to the terms of this paragraph), nothing herein shall prevent disclosure of Confidential Material if such disclosure is required or directed by a regulatory or self-regulatory body or agency, a governmental authority or court, or by an administrative or judicial order.

12. Inadvertent production of any document or other information during discovery in this Action shall be without prejudice to any claim that such material is privileged under the attorney-client or other privilege, or protected from discovery as work product, or that such document is irrelevant to any claims raised in this Action, and no person or party shall be held to have waived any rights by such inadvertent production. Upon written request by the

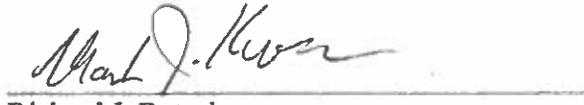
inadvertently producing person or party, the receiving party (a) shall return the original and all copies of such documents and (b) shall not use such information for any purpose until further Order of the Court.

PLAINTIFF


Thomas J. Rechen
McCarter & English, LLP
City Place I, 185 Asylum Street
Hartford, CT 06103
trechen@mccarter.com
Attorneys for Plaintiff

Dated: Nov. 11, 2015

DEFENDANTS


Richard J. Buturla
Mark J. Kovack, Esq.
Berchem, Moses & Devlin, P.C.
75 Broad Street
Milford, CT 06460
rbturla@bmdlaw.com
mkovack@bmdlaw.com
Attorneys for Defendants

Dated: Nov. 11, 2015

SO ORDERED this _____ day of _____, 2015.

EXHIBIT A

| | | |
|--------------------------------|---|----------------|
| DOCKET NO. FST-CV-155014808-S |) | SUPERIOR COURT |
| |) | |
| WILLIAM A. LOMAS |) | JUDICIAL |
| |) | DISTRICT OF |
| |) | STAMFORD/ |
| |) | NORWALK |
| Plaintiff, |) | |
| v. |) | |
| |) | AT STAMFORD |
| PARTNER WEALTH MANAGEMENT, LLC |) | |
| ET AL. |) | |
| |) | |
| Defendants. |) | |

ACKNOWLEDGMENT AND UNDERTAKING

I, _____, hereby state:

1. I have read a copy of the Stipulation and Order for the Protection and Exchange of Confidential Information entered in the above Action on _____, 2015, and I agree not to disclose any documents or information designated as "Confidential," as described in that Stipulation and Order, to any person other than those entitled thereto under the terms of that Stipulation and Order, and I further agree to make no use of such documents or information for any purpose other than preparation for or conduct of the above Action.

2. I further agree that all documents furnished to me containing information designated as "Confidential" and all documents, including notes, memoranda, and other working papers, that I prepare containing such information, will be returned upon the termination of the above Action to the party or parties from whom I have received such documents or information.

3. I further agree voluntarily to submit myself to the jurisdiction of the Connecticut courts for the resolution of any dispute which might arise in connection with my compliance with the terms of the Stipulation and Order.

Signature

Dated: _____, 20____

CERTIFICATION

This is to certify that on this 11th day of November, 2015, a copy of the foregoing was mailed and/or emailed to all counsel and/or pro se parties of record who agreed to accept electronic delivery of service, to wit:

Thomas J. Rechen, Esq.
McCarter & English, LLP
City Place I, 185 Asylum Street
Hartford, CT 06103
trechen@mccarter.com

David R. Lagasse, Esq.
Mintz Levin
666 Third Avenue
New York, NY 10017
DLagasse@mintz.com



Mark J. Kovack
Commissioner of the Superior Court