

STATE OF MAINE  
CUMBERLAND, ss.

BUSINESS & CONSUMER DOCKET  
DOCKET NO. BCD-CIV-2021-00026

DOMAH D. DAVIES, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 BANGOR FEDERAL CREDIT )  
 UNION, )  
 )  
 Defendant. )

**ORDER GRANTING DEFENDANT'S  
MOTION FOR PROTECTIVE ORDER**

In response to discovery requests propounded by Plaintiff Domah Davies (“Davies”), Defendant Bangor Federal Credit Union (“BFCU”) has filed a Motion for Protection Order to shield the financial records of its consumer accountholders from unauthorized disclosure.<sup>1</sup> The Gramm-Leach-Bliley Act (“GLBA”), promulgated under 12 C.F.R. Part 1016, provides in Section 1016.15(a)(2)(v) that consumer financial records may be disclosed to parties acting in a “fiduciary or representative capacity.” However, pursuant to Section 1016.17(a)-(b), the Act shall not be construed as superseding state laws that afford greater consumer protections than the Act. In Maine, 9-B M.R.S. § 162 provides greater consumer protections than the GLBA, and thus governs the analysis.

Davies argues class action attorneys and class representatives owe fiduciary duties to putative class members pre-certification, if for nothing else than the protection of said members’ substantive rights. *See* Nick Landsman-Roos, Note, *Front-End Fiduciaries: Precertification Duties and Class Conflict*, 65 STAN. L. REV. 817, 820 (2013) (“These questions concerning the contours of an attorney’s precertification fiduciary duty to class members when making strategic

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<sup>1</sup> The Court rules on the Motion without oral argument, as provided by M.R. Civ. P. 7(b)(7). The oral argument scheduled for October 18, 2021 is thus unnecessary and will be removed from the Court’s calendar.

decisions are not merely academic. They are recurring and yet often unaddressed in a variety of circumstances in class action litigation.”); *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 801 (3d Cir. 1995) (“Class attorneys, purporting to represent a class, also owe the entire class a fiduciary duty once the class complaint is filed.”); *but cf.* Restatement (Third) of the Law Governing Lawyers § 99 cmt. 1 (Am. Law Inst. 2000) (“[A]ccording to the majority of decisions, once the proceeding has been certified as a class action, the members of the class are considered clients of the lawyer for the class; prior to certification, only those class members with whom the lawyer maintains a personal client-lawyer relationship are clients.”).

However, the language of 9-B M.R.S. § 162 explicitly prohibits disclosure of *any* consumer financial information by a bank without either authorization from the consumer or the application of an enumerated exception. There is no exception for fiduciaries. *Id.* Maine law thus provides greater consumer protections than does the GLBA, which includes an exception for fiduciaries. Because the Maine statute makes no mention of fiduciaries or representatives, its intent would appear to be thwarted if an attorney could declare him or herself a fiduciary with implied authorization for the purposes of class certification and thereby skirt the clear language of the law. *See Lawson v. Key Bank of Southern Maine, Inc.*, 1985 Me. Super. LEXIS 358, \*2 (denying request for information because of § 161 et seq.'s protections, noting that “[t]he customers, whose financial records with the bank are being sought, are not parties to the pending action. . . . To order the release of a bank customer's financial records in litigation to which the customer is not a party would defeat the very purpose for which the legislation was enacted”). The customers whose records are sought may become parties to this class action in the near future but at present are not parties.

Because the federal regulation states that it will not supersede state laws which offer greater protections, 12 C.F.R. § 1016.17, and Maine's protections are greater than under the federal law, 9-B M.R.S. § 162 is controlling and BFCU's consumers' financial records are protected from unauthorized disclosure, with or without notice.

The Court, upon review of the briefs and in light of the prohibition on the disclosure of such records without authorization of the accountholder under 9-B M.R.S. § 161 et seq., does hereby GRANT Defendant's Motion for Protective Order pursuant to M.R. Civ. P. 26(c) as follows

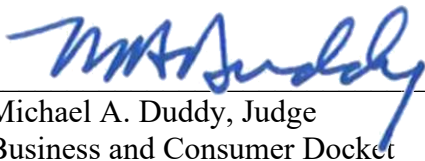
1. Defendant is not required to disclose account holder information to Plaintiff as requested, including but not limited to names, addresses, VIN #, loan and related financial records.

If the class is certified, or other circumstances in the litigation change, any party can bring the issue back for further review and orders.

SO ORDERED.

The Clerk is requested to enter this Order on the Docket, incorporating it by reference pursuant to M.R. Civ. P. 79(a).

Date: **10/05/2021**

  
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Michael A. Duddy, Judge  
Business and Consumer Docket

Entered on the docket: 10/05/2021