

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NOS.: 1:24-cv-22142- GAYLES/GOODMAN

FANNY B. MILLSTEIN and
MARTIN KLEINBART,

Plaintiffs,

v.

WELLS FARGO BANK, N.A.,

Defendant.

_____ /

THE PARTIES' JOINT MOTION TO MODIFY SCHEDULING ORDER

Plaintiff, Fanny B. Millstein, on behalf of herself and all others similarly situated, and Defendant, Wells Fargo Bank, N.A., jointly move to modify the Court's Amended Scheduling Order [D.E. 73] to allow for a brief 120-day extension of the trial date and remaining pretrial deadlines. The parties have diligently advanced this case, but given the complexity of the discovery and volume of documents in this putative class action, the parties agree that the current schedule is no longer workable and a brief enlargement is necessary, and respectfully request the Court to so order.

BACKGROUND

This is a complex class action arising from an alleged Ponzi scheme allegedly spanning more than a decade. Since the outset of the case, the parties have cooperated to meaningfully advance the case. Before discovery began, the parties negotiated a comprehensive ESI Protocol and Confidentiality Order. Throughout discovery, the parties have conducted regular meet-and-confers and maintained ongoing electronic communication to minimize court involvement. Thus

far, Plaintiff has responded to Wells Fargo's interrogatories, requests for admissions, and document requests, and Plaintiff Millstein has been deposed.

Further, the parties have worked diligently to facilitate Wells Fargo's response to Plaintiff's document requests, which span dozens of custodians and multiple bank divisions, each using different systems and databases. Despite the complexity, the parties successfully negotiated ESI search samples, resulting in agreement on more than 40 custodians and utilizing more than 300 search terms. Wells Fargo has produced nearly 500,000 pages and is working to complete its email production, and limited additional documents from Computershare. Further, Wells Fargo's appeal of Judge Goodman's order compelling it to produce redacted versions of litigation holds relevant to this matter [D.E. 132] is now pending before this Court, and its outcome will potentially impact the scope of further discovery.

In addition to Wells Fargo's ongoing production, the parties have undertaken substantial third-party discovery. Plaintiffs have issued 55 third-party subpoenas, yielding millions of pages of documents. Wells Fargo has issued 8 third-party subpoenas. Most notably, the court-appointed receiver for the entities used in the underlying scheme – who also served as the plaintiff in a now-dismissed related action – has produced 850,177 documents totaling 4,642,099 pages. The majority were produced recently, including 676,417 documents (3,452,117 pages) in April 2025, followed by another 15,072 documents (335,717 pages) on July 7, 2025. Due to the volume, downloading and processing these productions remains a technically complex and involved task, and reviewing them will take both parties considerable time.

Plaintiff is scheduled to depose Wells Fargo's 30(b)(6) witness on August 20, 2025, regarding the bank's document-retention policies. Depending on the outcome of Wells Fargo's appeal of Judge Goodman's order compelling production of redacted litigation holds, that

deposition may need to be continued pending additional rulings from the Court or negotiated resolution among the parties. The parties have also begun discussing the number of fact witness depositions required. In the meantime, Plaintiff continues reviewing Wells Fargo's production to date, as well as the substantial third-party and receiver productions, in preparation for those fact-witness depositions, while she awaits further production from Wells Fargo. Likewise, Wells Fargo continues to review documents to prepare for fact-witness depositions.

MEMORANDUM OF LAW

District courts have "broad discretion over the management of pre-trial activities, including discovery and scheduling." *Johnson v. Bd. of Regents of Univ. of Georgia*, 263 F.3d 1234, 1269 (11th Cir. 2001). Accordingly, "[t]he determination as to whether or not parties should be held to pretrial orders is a matter for the discretion of district court judges." *Sadowski v. Bombardier Ltd.*, 539 F.2d 615, 621 (7th Cir. 1976) (citation omitted). A district court "clearly has the discretion to extend or modify deadlines within a case management and scheduling order to enlarge the discovery period." *Gadsby v. Am. Golf Corp. of California*, 2012 WL 2368568, at *1 (M.D. Fla. June 21, 2012). Modifications are permitted under Federal Rule of Civil Procedure 16(b)(4) upon a showing of "good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4).

Rule 16's "good cause" standard allows modification where "the schedule cannot 'be met despite the diligence of the party seeking the extension.'" *Sosa v. Airprint Sys., Inc.*, 133 F.3d 1417, 1418 (11th Cir. 1998) (quoting Fed. R. Civ. P. 16 advisory committee's note to 1983 amendment). This flexible approach is necessary because "the scheduling order is entered early in the litigation ... Otherwise, a fear that extensions will not be granted may encourage counsel to request the longest possible periods for completing pleading, joinder, and discovery." Fed. R. Civ. P. 16 advisory committee's note to 1983 amendment.

Here, despite the parties’ diligent efforts, the deadlines in the Court’s Amended Scheduling Order cannot be met due to the complexity of the issues and the volume of documents involved. The parties have worked cooperatively to streamline discovery and have made substantial progress. Still, as outlined above, significant work remains.

Plaintiff and Wells Fargo must review large volumes of documents before she can meaningfully depose fact witnesses. Some of those documents are still being produced by Wells Fargo and third-parties That work must be completed well in advance of expert disclosures to ensure the experts have the necessary foundation for their opinions, and before motions for class certification, *Daubert*, and dispositive motions can be briefed. The deadlines in the current schedule are not feasible, even with continued diligence. Therefore, good cause exists to modify the Amended Scheduling Order. *See Sosa*, 133 F.3d at 1418. Moreover, no party will be prejudiced by the requested extension.

The parties therefore request that this matter be reset for trial during the Court’s two-week trial calendar beginning on **11/10/2026, at 9:30 a.m.**, with a telephonic calendar call to be held at **9:30 a.m. on Wednesday, 10/28/2026**, and that the Court order the parties to adhere to the following schedule:

1.	Written lists containing the names and addresses of all fact witnesses intended to be called at trial by	02/12/2026
2.	Motion for class certification shall be filed by	05/22/2026
3.	Parties shall disclose experts, expert witness summaries, and reports as required by Fed. R. Civ. P. 26(a)(2) by	03/31/2026
4.	Exchange of rebuttal expert witness summaries and reports as required by Fed. R. Civ. P. 26(a)(2) by	04/14/2026
5.	Fact discovery shall be completed by	03/31/2026
6.	Expert discovery shall be completed by	05/14/2026

7.	Dispositive motions, including those regarding summary judgment and <i>Daubert</i> , shall be filed by	07/15/2026
8.	Mediation shall be completed by	07/22/2026
9.	All pretrial motions and memoranda of law, including motions <i>in limine</i> , shall be filed by	08/12/2026
10.	Joint pretrial stipulation, proposed joint jury instructions, proposed joint verdict form, and/or proposed findings of fact and conclusions of law shall be filed by	09/15/2026

CONCLUSION

WHEREFORE, based on the foregoing, the parties respectfully request that this Court grant this Joint Motion to Modify Scheduling Order and enter a Second Amended Scheduling Order as set forth above.

Dated: July 23, 2025.

Respectfully submitted,

BUCKNER + MILES
 2020 Salzedo Street, Ste. 302
 Coral Gables, Florida 33134
 Tel.: (305) 964-8003
 Fax: (786) 523-0585

/s/ Seth Miles
 Seth Miles, Esq.
 Fla. Bar No. 385530
seth@bucknermiles.com
 David M. Buckner, Esq.
 Fla. Bar No. 60550
 Email: david@bucknermiles.com
 Brett E. von Borke, Esq.
 Fla. Bar No. 0044802
 Email: vonborke@bucknermiles.com

SALLAH ASTARITA & COX, LLC
 One Boca Place
 2255 Glades Rd., Ste. 300E

McGUIREWOODS LLP
 50 N. Laura Street, Suite 3300
 Jacksonville, Florida 32202
 Tel.: (904) 798-3200
 Fax: (904) 798-3207

/s/ Emily Y. Rottmann
 Emily Y. Rottmann, Esq.
 Florida Bar No. 0093154
erottmann@mcguirewoods.com
clambert@mcguirewoods.com

Jarrold Shaw, Esq. (*admitted pro hac vice*)
 Mark W. Kinghorn, Esq. (*admitted pro hac vice*)
 Nellie Hestin, Esq. (*admitted pro hac vice*)
 McGuireWoods LLP
 Tower Two-Sixty
 260 Forbes Avenue, Suite 1800
 Pittsburgh, Pennsylvania 15222
 Tel. (412) 667-6000

Boca Raton, Florida 33431
Tel.: (561) 989-9080
Fax: (561) 989-9020

James D. Sallah, Esq.
Fla. Bar No. 0092584
Email: jds@sallahlaw.com
Joshua A Katz, Esq.
Fla. Bar No. 0848301
Email: jak@sallahlaw.com

SILVER LAW GROUP
11780 W. Sample Road
Coral Springs, Florida 33065
Tel.: (954) 755-4799
Fax: (954) 755-4684

Scott L. Silver, Esq.
Fla. Bar No. 095631
Email: ssilver@silverlaw.com
Ryan A. Schwamm, Esq.
Fla. Bar No. 1019116
Email: rschwamm@silverlaw.com
Peter M. Spett, Esq., Of Counsel
Fla. Bar No. 0088840
Email: pspett@silverlaw.com

Counsel for Plaintiffs and the Class

jshaw@mcguirewoods.com
mkinghorn@mcguirewoods.com
nhestin@mcguirewoods.com

William O. L. Hutchinson (*admitted pro hac vice*)
Zachary L. McCamey (*admitted pro hac vice*)
McGuire Woods, LLP
201 North Tryon Street, Suite 3000
Charlotte, North Carolina 28202
Tel.: (704) 343-2000
whutchinson@mcguirewoods.com
zmccamey@mcguirewoods.com

Attorneys for Defendant Wells Fargo Bank, N.A.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 23, 2025, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF.

/s/ Seth Miles

Seth Miles, Esq., FBN 385530

seth@bucknermiles.com

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**[PROPOSED] ORDER GRANTING THE PARTIES' JOINT MOTION
TO MODIFY SCHEDULING ORDER**

THIS CAUSE having come before the Court on the parties' Joint Motion to Modify Scheduling Order, D.E. [XX].

It is hereby,

ORDERED AND ADJUDGED that:

The Motion is **GRANTED**. The Court will enter a Second Amended Scheduling Order by separate order.

DONE AND ORDERED in Chambers at Miami, Florida, this ____ day of July, 2025.

Honorable Judge Darrin P. Gayles
UNITED STATES DISTRICT COURT JUDGE

Copies furnished to: All Counsel of Record

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[PROPOSED] SECOND AMENDED SCHEDULING ORDER

THIS CAUSE is set for trial during the Court's two-week trial calendar beginning on **11/10/2026** in **Courtroom 11-1** of the **Wilkie D. Ferguson, Jr. United States Courthouse** located at **400 North Miami Avenue, Miami, Florida 33128**, with a telephonic **Calendar Call** be held at **9:30 a.m. on Wednesday, 10/28/2026**.

The parties shall adhere to the following schedule:

1.	Written lists containing the names and addresses of all fact witnesses intended to be called at trial by	02/12/2026
2.	Motion for class certification shall be filed by	05/22/2026
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DONE AND ORDERED in Chambers at Miami, Florida, this ____ day of July, 2025.

Honorable Judge Darrin P. Gayles
UNITED STATES DISTRICT COURT JUDGE

Copies furnished to: All Counsel of Record