

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION

Case Number: 1:24-cv-22142-GAYLES/GOODMAN

FANNY B. MILLSTEIN and  
MARTIN KLEINBART,

Plaintiffs,

v.

WELLS FARGO BANK, N.A.,

Defendant.

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**DEFENDANT WELLS FARGO BANK, N.A.’S  
NOTICE OF AUTHORITY ON CLASS MEMBER AGREEMENTS PURSUANT TO  
THE PARTIES’ DECEMBER 5, 2025 DISCOVERY HEARING**

Pursuant to the Parties’ December 5, 2025 Discovery Hearing and Judge Goodman’s Discovery Procedure Order (DE 38), Defendant Wells Fargo Bank, N.A. (“Wells Fargo”) submits this Notice of Authority in further support of its position that Wells Fargo need not produce agreements with all class members and can instead rely upon statistical class sampling:

- *Hallmark v. Cohen & Slamowitz*, 304 F.R.D. 165, 169 (W.D.N.Y. 2015) (holding that sampling 10% of the 6,800 relevant class member agreements gives reasonable assurance that the resultant production will be a fair representation of the class member agreements, which Defendants claimed supported their authorization defense).
- *Solo v. United Parcel Serv. Co.*, No. 14-12719, 2017 WL 85832, at \*3 (E.D. Mich. Jan. 10, 2017) (holding “[t]he appropriate balance between the Plaintiff’s need for the information and the burden of producing it may be struck through statistical sampling, without prejudice to production of the entire set of data at a later time.”).
- *Michelo v. Nat’l Collegiate Student Loan Trust 2007-2*, No. 18-CV-1781, 2020 U.S. Dist. LEXIS 140889, at \*7 (S.D.N.Y. Aug. 6, 2020) (holding “considering the needs of this case and the breadth and scope of the documents requested for each potential class member in the sample . . . a random sample of 5% of the proposed New York class would reasonably

accommodate plaintiffs' need for pre-certification discovery (as to that proposed class) without overburdening defendants.").

- *McPherson v. Canon Bus. Sols., Inc.*, No. 12-7761, 2014 WL 654573, at \*9 (D.N.J. Feb. 20, 2014) (approving use of a 10% random sample for purposes of class discovery to balance plaintiff's need against burden of production to defendants).
- *Lim v. Transforce, Inc.*, No. CV 19-004390, 2021 U.S. Dist. LEXIS 250120, at \*4-5 (C.D. Cal. Sep. 23, 2021) (ordering the production of responsive information for a random sample of 400 from the putative class, less than one-third of the class size).
- *Harris v. Best Buy Stores, L.P.*, No. 17-cv-446, 2017 WL 3948397, at \*3-4 (N.D. Cal. Sept. 8, 2017) (holding that sampling 500 employees from the 10,000 members in the putative class was appropriate as to some information, and as to other information, individualized, pre-certification discovery ran afoul of Rule 26's proportionality requirements).
- *Guzman v. Chipotle Mexican Grill, Inc.*, No. 17-cv-02606, 2018 WL 6092730, at \*3 (N.D. Cal. Nov. 21, 2018) (holding that sampling 2,000 individuals from the 43,000 members of the putative class was appropriate for class certification and de-certification purposes).
- *Smith v. Lowe's Home Ctrs., Inc.*, 236 F.R.D. 354, 357-58 (S.D. Ohio 2006) (limiting discovery of 1500-member class to statistically relevant sampling), *abrogated on other grounds by, Clark v. A&L Homecare and Training Ctr., LLC*, 68 F.4th 1003 (6th Cir. 2023).

Dated: November 25, 2025

Respectfully submitted,

**MCGUIREWOODS LLP**

*/s/ Emily Y. Rottmann*

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on November 25, 2025, a true copy of the foregoing was filed with the Court using the CM/ECF system, which will send notice to counsel of record.

/s/ Emily Y. Rottmann  
Attorney