

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO. 1:24-cv-22142-GAYLES/SHAW-WILDER

FANNY B. MILLSTEIN and
MARTIN KLEINBART,

Plaintiffs,

v.

WELLS FARGO BANK, N.A.,

Defendant.

_____ /

**DEFENDANT'S REQUEST FOR A PROTECTIVE ORDER
REGARDING PLAINTIFF'S EFFORT TO IMPROPERLY SEEK
TESTIMONY RELATING TO AFFIRMATIVE DEFENSES**

Plaintiff is seeking a deposition on Wells Fargo’s affirmative defenses for both the named plaintiff and putative class members. Plaintiff’s efforts warrant a protective order to limit the scope of the deposition. First, Wells Fargo provided Plaintiff with a stipulation of the factual bases supporting Wells Fargo’s affirmative defenses, mooting Plaintiff’s need for a deposition regarding the affirmative defenses for Millstein. Wells Fargo prepared the draft stipulation at Plaintiff’s suggestion with substantial factual detail and identifying the portions of the discovery record it expects to rely on to support those defenses. *See* Ex. A, Draft Stip. Re Wells Fargo’s Affirmative Defenses. Second, Plaintiff is pushing a novel theory that she is entitled to testimony regarding affirmative defenses for each individual putative class member before the class has been certified and before Wells Fargo even knows who is in the class—effectively assuming the existence of a certified class before it happens. That is not the law. Wells Fargo is not even entitled to take discovery of absent class members and therefore cannot be expected to know the specifics of individual defenses for individual non-parties. Accordingly, Wells Fargo seeks a protective order that (1) it is not required to present a witness testify to Wells Fargo’s affirmative defenses as to Plaintiff Millstein with any more specificity than what is provided in the draft stipulation, and (2) Wells Fargo is not required to present a corporate witness to testify to specific facts regarding each defense that it believes may apply to each individual member of the putative class.

Wells Fargo negotiated a stipulation regarding affirmative defenses that includes everything Plaintiff needs for Millstein-related defenses. In lieu of providing a corporate witness to testify to Wells Fargo’s affirmative defenses, Wells Fargo drafted an extensive stipulation outlining the scope of the defenses and the documents Wells Fargo intends to rely on for named Plaintiff Fanny Millstein. Notwithstanding that Wells Fargo drafted the stipulation at Plaintiff’s suggestion, Plaintiff rejected it and has argued that she is entitled to far more. But courts do not require a corporate witness to testify exhaustively to all facts supporting affirmative defenses. *See e.g., Fuentes v. Classica Cruise Operator Ltd.*, 2020 WL 6270956, at *3 n.3 (S.D. Fla. Sep. 10, 2020) (citing *Smithkline Beecham Corp. v. Apotex Corp.*, 98 C 3952, 2000 WL 116082, at *9 (N.D. Ill. Jan. 24, 2000) (“[T]he recipient of a Rule 30(b)(6) request is not required to have its counsel muster all of its factual evidence to prepare a witness to be able to testify regarding a defense or claim.”)), *aff’d*, 32 F.4th 1311 (11th Cir. 2022); *Dacruz v. Bank of Am., N.A.*, 2010 WL 11496940, at *1 (N.D. Ga. July 28, 2010) (finding a 30(b)(6) notice seeking “[a]ll the corporate knowledge regarding the facts supporting [the defendant’s] affirmative defenses” to

be “overbroad”); *Darnell v. Georgia Power Co.*, 2005 WL 8244685, at *6-7 (N.D. Ga. Sep. 13, 2005) (finding requests to “prepare a witness to be able to testify on a given defense or counterclaim” as “overbroad, inefficient, and unreasonable”). What more Plaintiff wants is unclear. The thirteen-page draft stipulation satisfies Wells Fargo’s obligations and Plaintiff should not be allowed to seek more, like specific transcript references or page citations.

Plaintiff is not entitled to testimony about specific facts applicable to individual absent class members pre-certification. Plaintiff believes that Wells Fargo must proffer a witness to go defense-by-defense, putative class member-by-putative class member, and testify as to each defense that may apply to each individual person that may be in the putative class, citing specific facts and documents in support. But Wells Fargo is not obligated to provide individual facts for absent class members pre-certification, and to hold otherwise *would effectively assume the existence of a certified class*. See *Smith v. Bayer Corp.*, 564 U.S. 299, 313 (2011) (discussing “the novel and surely erroneous argument that a nonnamed class member is a party to the class-action litigation *before the class is certified*”) (emphasis in original) (internal citation omitted). Further, Wells Fargo does not possess all of the facts for absent class members as it is not entitled to take discovery of absent class members at this stage in the case. See *e.g.*, *Mata v. Expedia Group Inc.*, 2026 WL 267797, at *4 (S.D. Fla. Jan. 6, 2026) (“Requiring routine discovery of absent class members defeats the interest of the absent class members to remain passive.”) (internal quotations and citation omitted).

Plaintiff appears to be priming a summary judgment motion related to Wells Fargo’s defenses against the putative class. But neither Plaintiff nor Wells Fargo is permitted to move for summary judgment on the claims of an absent class member, who is not even a party to the case. See, *e.g.*, *Licari Fam. Chiropractic Inc. v. Eclinical Works, LLC*, 2019 WL 2491922, at *1 (M.D. Fla. Feb. 26, 2019) (prior to a class being certified, “only the named plaintiff would be bound by a judgment in favor of the defendant”) (citation omitted). Again, for the same reason that Wells Fargo cannot develop a complete factual record for absent class members, the parties cannot seek adjudication of those individuals’ claims and plaintiff is not entitled to discovery specific factual bases for defenses to those claims—because they are not yet parties (and may never be).

Conclusion. Wells Fargo respectfully seeks a protective order barring Plaintiff from seeking additional discovery on the factual bases for each defense for Plaintiff Millstein and as it applies to each individual class member prior to certification.

Dated: May 4, 2026

Respectfully submitted,

MCGUIREWOODS LLP

/s/ Emily Y. Rottmann

Emily Y. Rottmann
Florida Bar No. 93154
E. Paul Cuffe
Florida Bar No. 1018521
erottmann@mcguirewoods.com
pcuffe@mcguirewoods.com
clambert@mcguirewoods.com
flservice@mcguirewoods.com
50 N. Laura Street, Suite 3300
Jacksonville, Florida 32202
Tel: (904) 798-3200
Fax: (904) 798-3207

-and-

Jarrod D. Shaw (admitted *pro hac vice*)
jshaw@mcguirewoods.com
Nellie E. Hestin (admitted *pro hac vice*)
nhestin@mcguirewoods.com
Eric G. Olshan (admitted *pro hac vice*)
eolshan@mcguirewoods.com
Tower Two-Sixty
260 Forbes Avenue, Suite 1800
Pittsburgh, PA 15222
Tel: (412) 667-6000

-and-

Jill C. Griset (admitted *pro hac vice*)
jgriset@mcguirewoods.com
201 N. Tryon St., Suite 3000
Charlotte, NC 28202-2146
Tel: (704) 343-2000

Attorneys for Defendant Wells Fargo Bank, N.A.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 4, 2026, 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

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.: 1:24-CV-22142-DPG

FANNY B. MILLSTEIN and
MARTIN KLEINBART,

Plaintiffs,

v.

WELLS FARGO BANK, N.A.

Defendant.

STIPULATION REGARDING WELLS FARGO’S AFFIRMATIVE DEFENSES

The parties, Fanny B. Millstein, on behalf of herself and all others similarly situated (“Plaintiff”) and Wells Fargo Bank, N.A. (“Defendant”), by and through their respective counsel, hereby stipulate and agree as follows:

1. Plaintiff agrees to withdraw all references to negligence in the Amended Complaint, *see* Am. Compl. ¶ 73 [DE 03], or any claim of negligence on the part of Wells Fargo.
2. In exchange for Plaintiff withdrawing all references to negligence in the Amended Complaint, Wells Fargo agrees to withdraw its negligence-based affirmative, which includes its Second, Eighth, Ninth, Twelfth, and Sixteenth Affirmative Defenses in Wells Fargo’s Amended Answer. [DE 106]. Wells Fargo also agrees to identify the factual bases for its remaining affirmative defenses in place of a corporate designee deposition. At the time of executing this stipulation, fact discovery has not yet been completed. Accordingly, Wells Fargo identifies the factual bases for its affirmative defenses at the time of this stipulation, without prejudice to relying

on additional discovery that may be produced or testimony that may be elicited after this stipulation, including expert discovery.

3. For its third affirmative defense, **Failure to Mitigate Damages**, Wells Fargo relies upon the following factual bases:

- a. Plaintiff and the putative class (i) failed to appropriately investigate their investment(s) and potential investments prior to doing business with the Seeman Holtz entities;¹ and (ii) failed to adequately monitor their investment(s), especially since Plaintiff and the putative class knew or should have known that any investment, including the Notes and the PLCs' business model were and are subject to numerous potential risks and conflicts of interest.
- b. Plaintiff's interrogatory responses reveal that Plaintiff did not conduct any independent research about the investments and did not consult with a financial advisor to provide analysis relating to her investments.
- c. Plaintiff testified that Plaintiff did not do any independent research on the investments or the Seeman Holtz entities; Plaintiff did not read the note purchase agreement that Plaintiff signed or any of the documents given to her about her investment; and did not consult with an independent financial advisor outside of the Seeman Holtz entities.
- d. The Private Placement Memorandum given to Plaintiff, and similar documents given to the putative class, explains the high degree of risk with the investments.
- e. Accordingly, Wells Fargo will rely on the investment-related documents, the deposition of Tony Lombardo, testimony of other Seeman Holtz promoters, the Receiver's testimony, Plaintiff's document production, the Receiver's document production, the OFR production, and Plaintiff's testimony to factually support this affirmative defense.

¹ "Seeman Holtz entities" shall refer to all of the companies owned, operated, controlled, or otherwise directed by Seeman, Holtz, and Schwartz. For the avoidance of doubt, Seeman Holtz entities includes, but is not necessarily limited to, the entities identified in Footnotes 1 and 2 of the Complaint, which includes but is not limited to, the Para Longevity companies. The term Seeman Holtz entities shall also include the current and former officers, directors, employees, owners, agents, representatives, attorneys, or anyone else acting on behalf of the Seeman Holtz entities.

4. For its fourth affirmative defense, **Unclean Hands**, and fifth affirmative defense,

In Pari Delicto, Wells Fargo relies upon the following factual bases:

- a. Plaintiff and the putative class benefited from the scheme alleged in the Complaint, including by receiving benefits related to their respective investments over the course of their business relationship with NSI, including at rates higher than alternative investment options. Plaintiff and the putative class engaged in multiple investments with NSI over the course of their relationship. Further, Plaintiff and the putative class may have been aware of any STOLI policies, to the extent such policies exist, and knowingly invested in STOLI policies.
- b. According to Plaintiff's interrogatories, discovery responses, and testimony, Plaintiff benefited from her investments. Plaintiff's husband received his money and interest from his investment with NSI including a windfall of interest paid. Plaintiff also received interest payments from her investment and reinvested her note principal with NSI.
- c. The Private Placement Memorandum given to Plaintiff, and similar documents given to the putative class, explains that the investments include, but are not limited to, premium financing, life insurance, annuities, life settlements, and structured settlements.
- d. Accordingly, Wells Fargo will rely on the investment-related documents, the deposition of Tony Lombardo, testimony of other Seeman Holtz promoters, Plaintiff's document production, the Receiver's document production, the Receiver's testimony, the OFR production, and Plaintiff's testimony to factually support this affirmative defense.

5. For its sixth affirmative defense, **Laches**, Wells Fargo relies upon the following factual bases:

- a. Plaintiff unreasonably delayed asserting her claim against Wells Fargo. Specifically, the issue date for the Note for Fanny B. Millstein is January 13, 2017. *See* Am. Compl. ¶ 163. Importantly, the OFR action was initiated in 2021. *See id.*, ¶ 11. Plaintiff is the lead plaintiff in a related proceeding, *Millstein v. Holtz*, No. 21-cv-61179 (S.D. Fla. 2021), which was filed in 2021. Plaintiff, however, failed to initiate this lawsuit until 2024. This delay was and is detrimental to Wells Fargo because it has negatively impacted Wells Fargo's ability to defend this case due to the passage of time and the death of the schemers with actual responsibility for all of Plaintiff's damages. The delay further prejudices Wells Fargo because witnesses may have lost memories and potential documents

may no longer be retained by entities that have relevant information due to document retention policies or applicable law.

- b. Plaintiff testified that she delayed bringing the lawsuit even though Plaintiff went over a year without receiving her money. Plaintiff further testified that Plaintiff delayed telling her daughter, who is an attorney, that Plaintiff had not received her money from her investment with NSI for over a year.
- c. Other members of the putative class similarly delayed in asserting their claims against Wells Fargo despite failing to receive their money from the Seeman Holtz entities or otherwise learning that the Seeman Holtz entities were not performing in accordance with their investment-related documents.
- d. Accordingly, Wells Fargo will rely on the investment-related documents, the deposition of Tony Lombardo, testimony of other Seeman Holtz promoters, Plaintiff's document production, the Receiver's document production, the Receiver's testimony, the OFR production, and Plaintiff's testimony to factually support this affirmative defense.

6. For its seventh affirmative defense, **Estoppel**, Wells Fargo relies upon the following factual bases:

- a. Plaintiff and the putative class through their investment(s) with NSI authorized or represented to Wells Fargo that NSI could take action on their behalf and for their benefit (despite knowing their investment could be lost, or its value decreased). Upon information and belief, Plaintiff and the putative class benefitted from such investments. However, it was not until their investment was lost that they sought to recoup it from Wells Fargo. Due to Plaintiff's and the putative class's failures to timely alert Wells Fargo or monitor their own investments, they are estopped from maintaining their claims against Wells Fargo.
- b. According to Plaintiff's interrogatories, discovery responses, and testimony, Plaintiff benefitted from her investments. Plaintiff's husband received his money and interest from his investment with NSI. Plaintiff also received interest payments from her investment and reinvested her note principal with NSI.
- c. The Private Placement Memorandum given to Plaintiff, and similar documents given to the putative class, explains that NSI would take investment action on behalf of Plaintiff.

- d. Accordingly, Wells Fargo will rely on the investment-related documents, the deposition of Tony Lombardo, testimony of other Seeman Holtz promoters, the Receiver's production, the Receiver's testimony, Plaintiff's document production, the OFR production, and Plaintiff's testimony to factually support this affirmative defense.

7. For its tenth affirmative defense, **Speculative Damages**, Wells Fargo relies upon the following factual bases:

- a. Any damage or loss Plaintiff and the putative class incurred as a result of any act or conduct by Wells Fargo would be speculative at best and thus too uncertain for recovery because it is unclear that Plaintiff's and the putative class's investments would have made money or been successful even absent the purported scheme. *See* Am. Compl. ¶ 37 ("each of the Note offerings that described the purported investment opportunity, risk of loss, and other material matters."). Further, Plaintiff's and the putative class's alleged losses are speculative because it is unclear what would have happened to their investments even if Wells Fargo had ceased performing services for the Seeman Holtz entities at an earlier date.
- b. Plaintiff and the putative class's damages are also speculative because there are insufficient records about what investments Plaintiff and the putative class made and what returns they received.
- c. Plaintiff's interrogatory responses reveal that Plaintiff did not conduct any independent research about the investments and did not consult with a financial advisor to provide analysis relating to her investments.
- d. Plaintiff testified that she received documents explaining the risk level for the investments, although Plaintiff did not read them. Plaintiff also explained that she did not know that Wells Fargo had any connection with Seeman Holtz other than what her lawyers told her.
- e. The Private Placement Memorandum given to Plaintiff, and similar documents given to the putative class, explains the high degree of risk with the investments.
- f. Plaintiff also failed to provide a computation of damages in her initial disclosures or interrogatory responses, including the amended responses filed on February 10, 2026. Wells Fargo will rely on expert testimony related to this affirmative defense.
- g. Accordingly, Wells Fargo will rely on the investment-related documents, the deposition of Tony Lombardo, testimony of other

Seeman Holtz promoters, the Receiver's production, the Receiver's testimony, the Receiver's Reports, Plaintiff's document production, the OFR production, and Plaintiff's testimony to factually support this affirmative defense.

11. For its eleventh affirmative defense, **Good Faith Conduct/Conformance with Applicable Standards**, Wells Fargo relies upon the following factual bases:

- a. Wells Fargo opened, maintained, and monitored the Seeman Holtz accounts in a manner that was consistent with acceptable standards in the banking industry as well as its own policies and procedures.
- b. In its role as trustee of ILITs, Wells Fargo acted in accordance with the governing trust agreements and in a manner that was consistent with acceptable standards in the life settlement industry.
- c. In its role as securities intermediary, Wells Fargo acted in accordance with the governing securities account agreements and in a manner that was consistent with acceptable standards in the life settlement industry.
- d. Accordingly, Wells Fargo will rely on testimony from Wells Fargo's witnesses and corporate representatives, the Securities Account Control Agreement dated February 12, 2014, and entered into with the Centurion Insurance Services Group, the Securities Account Control and Custodian Agreement dated August 22, 2014, and entered into with DZ Bank AG and Centurion Funding SPV I LLC, the Securities Account Control and Custodian Agreement dated December 14, 2018, and entered into with Teleios LS Holdings V DE, LLC and Centurion Funding SPV II, LLC, the William G. Walters 2009 Life Insurance Trust agreement, the Albert Cohen Life Insurance Trust agreement, the Yakovakis 2010 Trust agreement, related trust resignation documentation, Wells Fargo's policies and procedures, and Wells Fargo's production to factually support this affirmative defense.

12. For its fifteenth affirmative defense, **Consent**, Wells Fargo relies upon the following factual bases:

- a. Plaintiff and the putative class consented to any alleged conduct in the Amended Complaint, including but not limited to their knowing investment in the PLCs through the sale of promissory notes in order to obtain an investment windfall. *See* Am. Compl. ¶ 37 ("each of the Note offerings that described the purported investment opportunity, risk of loss, and other material matters."). Further, Wells Fargo anticipates that

Plaintiff and the putative class may have been aware of any STOLI policies to the extent such policies exist.

- b. Plaintiff and the putative class also knew or should have known that the promissory notes from their investments did not provide that specific life insurance policies (or life insurance policies at all) were legally pledged to support the payment obligations on their notes. For example, the absence of evidence, including UCC filings, provides information relevant to this defense.
- c. Plaintiff's interrogatory responses reveal that Plaintiff did not conduct any independent research about the investments and did not consult with a financial advisor to provide analysis relating to her investments.
- d. Plaintiff testified that Plaintiff did not do any independent research on the investments or the Seeman Holtz entities; Plaintiff did not read the note purchase agreement that Plaintiff signed or any of the documents given to her about her investment; and did not consult with an independent financial advisor outside of the Seeman Holtz entities.
- e. The Private Placement Memorandum given to Plaintiff, and similar documents given to the putative class, explains the high degree of risk with the investments.
- f. Accordingly, Wells Fargo will rely on the investment-related documents, the deposition of Tony Lombardo, testimony of other Seeman Holtz promoters, the Receiver's production, the Receiver's testimony, Plaintiff's document production, the OFR production, and Plaintiff's testimony to factually support this affirmative defense.

13. For its seventeenth affirmative defense, **Ratification**, Wells Fargo relies upon the following factual bases:

- a. The Amended Complaint, and each purported cause of action alleged therein, is barred by the conduct, actions, and inactions of Plaintiff and the putative class under the doctrine of ratification. *See* Am. Compl. ¶ 37 ("each of the Note offerings that described the purported investment opportunity, risk of loss, and other material matters."). Upon information and belief, Plaintiff and the putative class invested in the PLCs through the sale of promissory notes knowing that the Notes and the PLCs' business model are subject to numerous potential risks and conflicts of interest. Further, Wells Fargo anticipates that Plaintiff and the putative class may have been aware of any STOLI policies to the extent such policies exist.

- b. Plaintiff and the putative class also knew or should have known that the promissory notes from their investments did not provide that specific life insurance policies (or life insurance policies at all) were legally pledged to support the payment obligations on their notes. For example, the absence of evidence, including UCC filings, provides information relevant to this defense.
- c. Plaintiff's interrogatory responses reveal that Plaintiff did not conduct any independent research about the investments and did not consult with a financial advisor to provide analysis relating to the Investments.
- d. Plaintiff testified that Plaintiff did not do any independent research on the investments or the Seeman Holtz entities; Plaintiff did not read the note purchase agreement that Plaintiff signed or any of the documents given to her about her investment; and did not consult with an independent financial advisor outside of the Seeman Holtz entities.
- e. The Private Placement Memorandum given to Plaintiff, and similar documents given to the putative class, explains the high degree of risk with the investments.
- f. Accordingly, Wells Fargo will rely on the investment-related documents, the deposition of Tony Lombardo, testimony of other Seeman Holtz promoters, the Receiver's production, the Receiver's testimony, Plaintiff's document production, the OFR production, and Plaintiff's testimony to factually support this affirmative defense.

14. For its eighteenth affirmative defense, **Recovery**, Wells Fargo relies upon the following factual bases:

- a. Plaintiff's and the putative class's claims are barred, in whole or in part, because they have received or may receive returns or recoveries on their losses and therefore have not suffered damages or their damages have been reduced. This is including but not limited to because upon information and belief, Plaintiff and the putative class invested in the PLCs through the sale of promissory notes knowing that the Notes and the PLCs' business model are subject to numerous potential risks and conflicts of interest. Upon information and belief, Plaintiff and the putative class also received the benefits of such investments through payments received from third parties, returns received on their investments, and or other tangible/intangible benefits.
- b. Plaintiff is the lead plaintiff in a related proceeding, *Millstein v. Holtz*, No. 21-cv-61179 (S.D. Fla. 2021), where the parties agreed to a settlement of \$650,000.

- c. According to Plaintiff's interrogatories, discovery responses, and testimony, Plaintiff benefited from her investments. Plaintiff's husband received his money and interest from his investment with NSI. Plaintiff also received interest payments from her investment and reinvested her note principal with NSI.
- d. In addition, Daniel J. Stermer, the Court-appointed Receiver, is collecting assets and recoveries to distribute to investors like Plaintiff and the putative class.
- e. Accordingly, Wells Fargo will rely on the investment-related documents, the deposition of Tony Lombardo, testimony of other Seeman Holtz promoters, Plaintiff's document production, Plaintiff's testimony, the Receiver's production, the Receiver's testimony, the OFR production, and the Receiver's Reports to factually support this affirmative defense.

15. For its nineteenth affirmative defense, **Set-Off**, Wells Fargo relies upon the following factual bases:

- a. Should Plaintiff and the putative class recover any damages from Wells Fargo, then Wells Fargo is entitled to contribution, set-off, and or indemnification, either in whole or in part, from all persons or entities whose negligence or fault proximately contributed to Plaintiff's damages. This is including but not limited to because upon information and belief, Plaintiff and the putative class invested in the PLCs through the sale of promissory notes knowing that the Notes and the PLCs' business model are subject to numerous potential risks and conflicts of interest. *See* Am. Compl. ¶ 37 ("each of the Note offerings that described the purported investment opportunity, risk of loss, and other material matters"). Additionally, upon information and belief, Plaintiff and the putative class also received the benefits of such investments through payments received from third parties, returns received on their investments, and or other tangible/intangible benefits.
- b. Plaintiff is the lead plaintiff in a related proceeding, *Millstein v. Holtz*, No. 21-cv-61179 (S.D. Fla. 2021), where the parties agreed to a settlement of \$650,000.
- c. According to Plaintiff's interrogatories, discovery responses, and testimony, Plaintiff benefited from her investments. Plaintiff's husband received his money and interest from his investment with NSI. Plaintiff also received interest payments from her investment and reinvested her note principal with NSI.

- d. In addition, Daniel J. Stermer, the Court-appointed Receiver, is collecting assets and recoveries to distribute to investors like Plaintiff and the putative class
- e. Accordingly, Wells Fargo will rely on the investment-related documents, the deposition of Tony Lombardo, testimony of other Seeman Holtz promoters, Plaintiff's document production, Plaintiff's testimony, the OFR production, and the Receiver's production, testimony, and Reports to factually support this affirmative defense.

16. For its twentieth affirmative defense, **Plaintiffs' Negligence**, Wells Fargo relies upon the following factual bases:

- a. Any alleged damages which may have been sustained by Plaintiff and the putative class as described in the Amended Complaint were due solely to, caused wholly by, and were the direct and proximate result of the negligence and carelessness of Plaintiff and the putative class including but not limited to Plaintiff's and the putative class's own negligent financial practices and their failures to exercise ordinary care related to same. Specifically, upon information and belief, Plaintiff and the putative class invested in the PLCs through the sale of promissory notes knowing that the Notes and the PLCs' business model are subject to numerous potential risks and conflicts of interest. *See* Am. Compl. ¶ 37 ("each of the Note offerings that described the purported investment opportunity, risk of loss, and other material matters"). Plaintiff and the putative class failed to conduct due diligence related to their investments, or monitor such investments once made.
- b. Plaintiff was further negligent by asserting a claim against Wells Fargo after an unreasonable delay. Specifically, the issue date for the Note for Fanny B. Millstein is January 13, 2017. *See* Am. Compl. ¶ 163. Importantly, the OFR action was initiated in 2021. *See id.*, ¶ 11. Plaintiff is the lead plaintiff in a related proceeding, *Millstein v. Holtz*, No. 21-cv-61179 (S.D. Fla. 2021), which was filed in 2021. Plaintiff, however, failed to initiate this lawsuit until 2024. This delay was and is detrimental to Wells Fargo because it has negatively impacted Wells Fargo's ability to defend this case due to the passage of time and the death of the schemers with actual responsibility for all of Plaintiff's damages. The delay further prejudices Wells Fargo because witnesses may have lost memories and potential documents may no longer be retained by entities that have relevant information due to document retention policies or applicable law.

- c. Plaintiff's interrogatory responses reveal that Plaintiff did not conduct any independent research about the investments and did not consult with a financial advisor to provide analysis relating to the Investments.
- d. Plaintiff testified that Plaintiff did not do any independent research on the investments or the Seeman Holtz entities; Plaintiff did not read the note purchase agreement that Plaintiff signed or any of the documents given to her about her investment; and did not consult with an independent financial advisor outside of the Seeman Holtz entities.
- e. The Private Placement Memorandum given to Plaintiff, and similar documents given to the putative class, explains the high degree of risk with the investments.
- f. Accordingly, Wells Fargo will rely on the investment-related documents, the deposition of Tony Lombardo, testimony of other Seeman Holtz promoters, Plaintiff's document production, Plaintiff's testimony, the OFR production, the Receiver's production, the Receiver's testimony, and the Receiver's Reports to factually support this affirmative defense.

17. For its twenty-first affirmative defense, **Statute of Limitations**, Wells Fargo relies upon the following factual bases:

- a. Plaintiff and the putative class's claims are or may be barred in whole or in part by the applicable statutes of limitations. The issue date for the Note for Fanny B. Millstein is January 13, 2017. Plaintiff offered testimony supporting the statute of limitations defense in her deposition.
- b. Plaintiff testified that Plaintiff delayed bringing the lawsuit even though Plaintiff went over a year without receiving her money. Plaintiff further testified that Plaintiff delayed telling her daughter, who is an attorney, that Plaintiff had not received her money from her investment with NSI for over a year.
- c. Plaintiff and the putative class members may have known or suspected that Seeman Holtz was engaged in fraudulent activity, and at a minimum that Seeman Holtz had failed to paid money due, earlier than four years from the date this lawsuit was initiated. This includes Seeman Holtz's failure to comply with the terms of the investments entered into by Plaintiff.
- d. Accordingly, Wells Fargo will rely on the investment-related documents, the deposition of Tony Lombardo, testimony of other Seeman Holtz promoters, Plaintiff's document production, Plaintiff's

testimony, the OFR production, the Receiver's testimony, the Receiver's production, and the Receiver's Reports to factually support this affirmative defense.

18. For its twenty-second affirmative defense, **No Benefit Directly Conferred**, Wells Fargo relies upon the following factual bases:

- a. Plaintiff and the putative class conferred no direct benefit on Wells Fargo to support a claim for unjust enrichment. Specifically, any benefit Wells Fargo received was in the form of fees on accounts (which were not paid in many instances), and those fees were paid by someone other than Plaintiff and the putative class. Moreover, any fees received by Wells Fargo were contracted in exchange for work performed by Wells Fargo.
- b. Wells Fargo will rely on documents reflecting fees earned by Wells Fargo, including account statements, account opening documents and agreements, fee schedules, and the testimony of Wells Fargo employees to factually support this affirmative defense.

19. For its twenty-third affirmative defense, **Waiver**, Wells Fargo relies upon the following factual bases:

- a. Plaintiff and the putative class have waived all claims against Wells Fargo through their own conduct and willing participation in the investments at-issue in the Complaint, including but not limited to Plaintiff's and the putative class's actual or constructive knowledge of the risk associated with the financial investments. *See* Am. Compl. ¶ 37 ("each of the Note offerings that described the purported investment opportunity, risk of loss, and other material matters"). Upon information and belief, Plaintiff and the putative class invested in the PLCs through the sale of promissory notes knowing that the Notes and the PLCs' business model are subject to numerous potential risks and conflicts of interest. Additionally, Plaintiff and the putative class failed to perform any due diligence regarding the investments, the Seeman Holtz entities, the PLCs, or any other involved parties prior to investing the PLCs. Plaintiff's and the putative class's knowing participation in this scheme, including but not limited through their opportunity and obligation to conduct pre-investment due diligence or monitor their investments once made operates as a waiver of their claims.
- b. Plaintiff and the putative class also knew or should have known that the promissory notes from their investments did not provide that specific life insurance policies (or life insurance policies at all) were legally

pledged to support the payment obligations on their notes. For example, the absence of evidence, including UCC filings, provides information relevant to this defense.

- c. Accordingly, Wells Fargo will rely on the investment-related documents, the deposition of Tony Lombardo, testimony of other Seeman Holtz promoters, Plaintiff's document production, Plaintiff's testimony, the OFR production, the Receiver's production, the Receiver's testimony, and the Receiver's Reports to factually support this affirmative defense.

20. For its twenty-fourth affirmative defense, **Existence of Contract**, Wells Fargo relies upon the following factual bases:

- a. Members of the putative class are or were Wells Fargo account holders, and agreed as part of their governing account agreements to be bound to arbitration in lieu of pursuing litigation in court against Wells Fargo.
- b. Accordingly, Wells Fargo will rely on all applicable signature pages and account agreements, including the provisions contained therein without limitation like the arbitration and jury waiver provisions in those agreements, and all documents acknowledging applicability of account agreements to factually support this affirmative defense.

Dated: xx

Respectfully submitted,

MCGUIREWOODS LLP

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

BUCKNER + MILES

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

Emily Y. Rottmann, Esq.
Florida Bar No. 93154
erottmann@mcguirewoods.com
clambert@mcguirewoods.com
flservice@mcguirewoods.com

Seth Miles, Esq.
Florida Bar No. 385530
seth@bucknermiles.com
David M. Buckner, Esq.
Florida Bar No. 60550
david@bucknermiles.com
Brett E. von Borke, Esq.

Jarrod D. Shaw (*admitted pro hac vice*)

Nellie E. Hestin (*admitted pro hac vice*)
Tower Two-Sixty
260 Forbes Avenue, Suite 1800
Pittsburgh, PA 15222
jshaw@mcguirewoods.com
nhestin@mcguirewoods.com

*Counsel for Defendant Wells Fargo Bank,
N.A.*

Florida Bar No. 0044802
vonborke@bucknermiles.com

SALLAH ASTARITA & COX, LLC
One Boca Place
2255 Glades Rd., Ste. 300E
Boca Raton, FL 33431
Tel.: (561) 989-9080
Fax: (561) 989-9020

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

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

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

Counsel for Plaintiffs and the Class

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed with the Clerk of the Court using the CM/ECF system which will send notice of the electronic filing on **DATE**, to all counsel of record listed below:

Seth Miles, Esq.
David M. Buckner, Esq.
Brett E. von Borke, Esq.
Buckner + Miles
2020 Salzedo Street, Ste. 302
Coral Gables, Florida 33134
seth@bucknermiles.com
david@bucknermiles.com
vonborke@bucknermiles.com

James D. Sallah, Esq.
Joshua A. Katz, Esq.
SALLAH ASTARITA & COX, LLC
One Boca Place
2255 Glades Rd., Ste. 300E
Boca Raton, FL 33431
jds@sallahlaw.com
jak@sallahlaw.com

Scott L. Silver, Esq.
Ryan A. Schwamm, Esq.
Peter M. Spett, Esq., Of Counsel
SILVER LAW GROUP
11780 W. Sample Road
Coral Springs, FL 33065
ssilver@silverlaw.com
rschwamm@silverlaw.com
pspett@silverlaw.com

Counsel for Plaintiffs and the Class

/s/ **draft**

Emily Y. Rottmann