

**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 REPLY IN SUPPORT OF ITS REQUEST FOR A  
PROTECTIVE ORDER REGARDING PLAINTIFF'S EFFORT TO IMPROPERLY  
SEEK TESTIMONY RELATING TO AFFIRMATIVE DEFENSES**

**As to Plaintiff Millstein**, Wells Fargo has provided Plaintiff with the factual bases underlying its affirmative defenses in the form of a thirteen-page stipulation. Wells Fargo does not dispute that Plaintiff is entitled to facts supporting its defenses, but a corporate witness is not required to testify exhaustively to all facts supporting defenses. *See, e.g., Lebron v. Royal Caribbean Cruises, Ltd.*, 2018 WL 4258269, at \*3 (S.D. Fla. Sep. 6, 2018) (“A deponent must be prepared to answer questions concerning relevant facts reasonably known to the corporation, but need not be prepared to answer about any potentially relevant fact known by any employee of the corporation.”). Plaintiff has not explained what else she thinks she is entitled to.<sup>1</sup>

**As to the absent class members**, Plaintiff ignores that Wells Fargo has generally described the facts it would put forward and the document sources it would cite to support defenses as to absent class members. Far from trial by ambush, there are no documents or other discovery materials Wells Fargo could use that Plaintiff does not already have (all of which Wells Fargo has identified). What Wells Fargo has not created, and what Plaintiff has not established any entitlement to, is an exhaustive recitation of the specific facts supporting each defense conceivably applicable to every potential as-yet-unidentified member of the putative class. The parties are not entitled to discovery regarding individual absent class members pre-certification. *See, e.g., Mata v. Expedia Grp Inc.*, 2026 WL 267797, at \*2 (S.D. Fla. Jan. 6, 2026) (“[D]iscovery on putative class members is the exception rather than the rule.”). And, given that any summary judgment motions will only involve named Plaintiff Millstein, testimony regarding absent class members’ affirmative defenses is not relevant.

Plaintiff’s cited cases are either inapposite or involve the production of material not otherwise in the discovery record already. *Cf. Medina v. Enhanced Recovery Co., LLC*, 2017 WL 5196093, at \*8 (S.D. Fla. Nov. 9, 2017) (granting plaintiff’s request that defendant produce its consumer consent records if defendant intended to rely on that evidence). As Plaintiff states, Plaintiff has asked Wells Fargo for specific documents, such as account agreements, which Wells Fargo has produced. Wells Fargo is not, however, obligated to identify *within the existing discovery record* individual facts for absent class members pre-certification. To hold otherwise would effectively assume the existence of a certified class, which is not the law.

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<sup>1</sup> Plaintiff cites several cases that do not involve affirmative defenses and are inapposite here. *See New World Network Ltd. v. M/V Norwegian Sea*, 2007 WL 1068124, at \*5 (S.D. Fla. Apr. 6, 2007); *Berntheizel v. Safeco Ins. Co. of Illinois*, 2023 WL 11806293, at \*1 (S.D. Fla. Nov. 28, 2023); *Kaplan v. Nautilus Ins. Co.*, 2018 WL 6445886, at \*1 (S.D. Fla. Sep. 17, 2018).

Dated: May 12, 2026

Respectfully submitted,

**MCGUIREWOODS LLP**

/s/ Emily Y. Rottmann

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on May 12, 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