

Wells Fargo Won't Refund Stolen Gov't Payments, Suit Alleges

By **Katryna Perera**

Law360 (March 9, 2023, 9:59 PM EST) -- Wells Fargo was hit with a proposed class action in New Mexico federal court alleging it refused to refund stolen funds from debit cards that were preloaded by the state for unemployment insurance and child support, in violation of the Electronic Fund Transfer Act.

Plaintiffs Ana Munoz and Michael Tilley filed a **complaint** Wednesday against Wells Fargo NA, Conduent State & Local Solutions Inc. and Conduent Business Services LLC. Conduent provides business process solutions for governments and other companies. According to the complaint, Conduent and Wells Fargo contracted with the state of New Mexico to create the EPPICard program.

The EPPICard program provides prepaid Visa debit cards to residents, which are linked to limited purpose subaccounts maintained by the defendants, the complaint states. The accounts typically contain funds owed to residents by the state for unemployment insurance, child support and foster care maintenance, according to the complaint.

Munoz and Tilley both received EPPICards from the state, and their accounts contained thousands of dollars. However, both plaintiffs claim bad actors gained access to their accounts and stole a significant amount of funds through fraudulent, unauthorized transactions.

Munoz says that by early 2022, she had accrued more than \$5,000 in child support in her account. However, when she received her January 2022 EPPICard statement, she was "shocked" to discover that more than \$5,500 had been withdrawn from her account through unauthorized transactions, leaving her with only \$34 in the account.

"Ms. Munoz had no knowledge of and did not consent to any of the transfers. Ms. Munoz never provided her EPPICard, code, or any other means of access to the EPPICard account to any other person," the complaint states. "The transactions were obviously fraudulent, many of them apparently involving a Lithuanian cryptocurrency exchange."

Tilley had a similar experience, learning that roughly \$13,300 had been stolen from his account, according to the complaint.

Both plaintiffs say that after discovering the fraud, they contacted Wells Fargo and Conduent and disputed the charges. However, they allege that the defendants did not conduct "good-faith" investigations into their claims and refused to refund the stolen money.

"Despite their obligation under the Electronic Fund Transfer Act to promptly credit the accounts, defendants refused to credit the amounts of the stolen funds and associated fees for the transactions charged to the accounts by the defendants," the complaint states. "Defendants were aware of the unauthorized electronic fund transfers, both through consumer complaints and through their own internal controls. Yet defendants continued to hold consumers liable for unauthorized electronic fund transfers in flagrant disregard of federal law."

Munoz and Tilley say Wells Fargo and Conduent violated the Electronic Fund Transfer Act since it bars financial institutions from holding customers or account holders liable for the unauthorized use of their accounts. The complaint also brings claims under the New Mexico Unfair Practices Act.

The complaint states that Munoz and Tilley are bringing their suit on behalf of two classes. The first includes anyone who has or previously had a New Mexico EPPICard and notified the defendants of disputed charges but were denied a refund within a year of the complaint's filing. The second class includes the same individuals but increases the time frame to four years of the commencement of the current action.

They seek damages, declaratory relief, attorney fees and a jury trial.

In a statement to Law360 on Thursday, Evan Rothfarb, counsel for Munoz and Tilley, said: "We are seeing a marked increase in fraudulent transactions on prepaid debit cards, depriving these consumers of critically needed funds, including unemployment and even child support. As set forth in the complaint, we brought this action to vindicate their rights and the rights of all holders of the EPPICard."

Conduent and Wells Fargo declined to comment Thursday.

Munoz and Tilley are represented by Nicholas H. Mattison of Feferman Warren & Mattison and by Daniel A. Schlanger and Evan S. Rothfarb of Schlanger Law Group LLP.

Counsel information for the defendants was not immediately available.

The case is Munoz et al. v. Wells Fargo Bank NA et al., case number 1:23-cv-00202, in the U.S. District Court for the District of New Mexico.

--Editing by Andrew Cohen.