

# Wells Fargo Says NM Cardholders Must Arbitrate Loss Claims

By **Emilie Ruscoe**

Law360 (May 8, 2023, 9:44 PM EDT) -- Wells Fargo is seeking to shed a proposed class action accusing it and a contractor of bungling their response to fraud reports by New Mexico residents who use state-issued debit cards for unemployment insurance, child support and foster care accounts, saying that these customers are bound by arbitration agreements.

In a Friday filing in Albuquerque federal court, Wells Fargo Bank NA and the contractor, Conduent State and Local Solutions Inc., told U.S. Magistrate Judge Laura Fashing that a recently amended version of the suit brought by consumers Anna Munoz and Michael Tilley is a "thinly veiled attempt to plead around" binding arbitration agreements and class action waivers that are parts of the terms of use the plaintiffs agreed to when they received debit cards issued by Wells Fargo and administered by Conduent.

Wells Fargo and Conduent point to the changes made in the latest amended complaint, claiming that Munoz and Tilley had taken out language alleging the bank and the contractor should face joint and several liability in connection with their claims.

Wells Fargo and Conduent claim that the tweaks to the complaint came after Munoz and Tilley agreed to submit their claims against Wells Fargo to arbitration. The defendants cast the amendments as an effort to separate claims against the bank and Conduent, telling the court that shouldn't be allowed since the complaint alleges "substantially interdependent and concerted misconduct."

Wells Fargo and Conduent also note that in similar cases involving the same contracts in the same district, plaintiffs represented by the same counsel as Munoz and Tilley had "stipulated to arbitration in several cases based upon exactly the same arbitration provision."

Munoz and Tilley launched their **claims** in March, naming as defendants Wells Fargo, Conduent State and Local Solutions Inc. and Conduent State & Local's parent company, Conduent Business Services LLC.

In the latest version of their suit, from April, the two plaintiffs claim they were rebuffed when they sought help after they sustained the unauthorized loss of thousands of dollars they'd held in limited purpose subaccounts linked to refillable prepaid debit cards issued by Wells Fargo and administered by Conduent.

According to Munoz and Tilley, no "good faith investigation" was ever made into their claims that their accounts had been drained by thieves, despite signs that allegedly fraudulent transactions they identified in their account records involved cryptocurrency exchanges in Lithuania and Estonia.

The debit cards Munoz and Tilley hold, called EPPICards, are used by the state of New Mexico to get unemployment insurance, child support and foster care maintenance funds to those who are owed them.

The allegations follow a recent rise in thefts targeting holders of Electronic Benefit Transfer, or EBT, cards, according to an October warning from the U.S. Department of Agriculture, which funds the Supplemental Nutrition Assistance Program.

In its warning, the USDA said the thefts appeared to result from card skimming schemes, in which

illegal devices secretly installed on point of sales terminals, ATMs or fuel pumps allow criminals to capture data and record personal identification numbers that are then used to make fake cards that can empty a victim's bank account.

On Monday, Nick Mattison, an attorney for Munoz and Tilley, told Law360 that Wells Fargo and Conduent's arbitration request is "part of a growing trend where unscrupulous businesses seek to avoid responsibility for their actions by hiding arbitration clauses in the fine print of their contracts."

"If the plaintiffs are forced into individual arbitration instead of a class action, defendants are unlikely to face any consequence for the theft of money from all of the other class members' accounts," Mattison said, adding that "it is particularly disturbing that these financial institutions accept the responsibility for distributing public benefits and then take the position that they cannot be held accountable in a court of law."

The plaintiffs plan to oppose the motion, he said.

Wells Fargo declined to comment and Conduent did not immediately respond to a request for comment.

Conduent Business Services LLC, Conduent State and Local Solutions Inc. and Wells Fargo Bank NA are represented by Alejandro Rettig y Martinez of Rodey Dickason Sloan Akin & Robb PA and Jenny N. Perkins of Ballard Spahr LLP.

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

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.

–Additional reporting by Katryna Perera. Editing by Jeremy Abrams.