

Court to Hear Wells Fargo's Bid to Block 49-State Overdraft Fee Class Action

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Effort to force arbitration would be banned by new CFPB rule Congress might veto

WASHINGTON- On Thursday, a federal appeals court will hear arguments in Wells Fargo's ongoing quest to stop consumers in 49 states from banding together in a class action to challenge overdraft fee practices that a California court already concluded were "unfair and fraudulent."

"Wells Fargo has not only been embroiled in scandal after scandal; the bank continues to try to block people from their right to band together to have their day in court to seek justice," **said David Seligman, contributing author at the National Consumer Law Center.** "Wells Fargo is the poster child for why Congress should not take away people's constitutional right to access the courts when big banks commit abuses that harm millions of people."

The case before the Eleventh Circuit Court of Appeals, *Gutierrez v. Wells Fargo*, challenges Wells Fargo's manipulation of the order of bank account debits to enable the bank to charge more overdraft fees by adding fees on purchases made before an account became overdrawn. In a separate case, Wells Fargo paid \$203 million to a class of California consumers after the court concluded, after a trial, that Wells Fargo deceived customers and sought to maximize the number of overdrafts. The present case is for consumers in the other 49 states. Other banks have engaged in similar conduct, but Wells Fargo is the only large bank that has not settled the charges.

The hearing Thursday is Wells Fargo's appeal of a ruling that the bank could not block the class action and force the named plaintiffs to arbitrate their cases individually before a private arbitrator, who would have no authority to order relief for the millions of other people harmed. Wells Fargo claims that forced arbitration clauses in the fine print of bank account contracts deprived customers of their right to go to court. The district court has twice concluded that Wells Fargo waived the ability to force arbitration by litigating in court for years and only belatedly moving to compel arbitration.

"Just as with the 3.5 million fake accounts Wells Fargo created, millions of people have been harmed by Wells Fargo's fraudulent and deceptive efforts to increase overdraft fees. Forced arbitration clauses that require people to arbitrate one by one are a get-out-of-jail-free card for bad actors," **Seligman added.** Only 215 people in the entire country have filed arbitrations against Wells Fargo since 2009 for any reason, despite a litany of wrongdoing by the bank including the fake account scandal, fraudulent overdraft fees, charges for unwanted and unneeded auto insurance, hidden fees for military veterans who refinanced their mortgages,, and violations of the Servicemembers Civil Relief Act.

A new rule by the Consumer Financial Protection Bureau would prohibit bank account and other financial contracts from having forced arbitration clauses with class action bans. But the U.S. House of Representatives voted to block the rule in July and the U.S. Senate may vote in September.