

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
MIAMI DIVISION  
CASE NO. 09-MD-02036-JLK

IN RE: CHECKING ACCOUNT  
OVERDRAFT LITIGATION,

MDL No. 2036

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**THIS DOCUMENT RELATES TO:**

*Lopez, et al. v. JP Morgan Chase Bank, N.A.*  
S.D. Fla. Case No. 1:09-CV-23127-JLK

*Garcia, et al. v. Wachovia Bank, N.A.*  
S.D. Fla. Case No. 1:08-CV-22463-JLK

*Spears-Haymond v. Wachovia Bank, N.A.*  
S.D. Fla. Case No. 1:09-CV-21680-JLK  
N.D. Cal. Case No. 3:08-CV-4610

*Dolores Gutierrez v. Wells Fargo Bank, N.A.*  
S.D. Fla. Case No. 1:09-CV-23685-JLK  
D. Or. Case No. 3:09-CV-01239-ST

*Martinez v. Wells Fargo Bank, N.A.*  
S.D. Fla. Case No. 1:09-CV-23834-JLK  
D.N.M. Case No. 6:09-CV-01072-GBW-ACT

*Zankich, et al. v. Wells Fargo Bank, N.A.*  
S.D. Fla. Case No. 1:09-CV-23186-JLK  
W.D. Wash. Case No. C-08-1476-RSM

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**ORDER DEFERRING RULING ON MOTIONS TO COMPEL ARBITRATION,  
GRANTING TIME TO CONDUCT  
LIMITED ARBITRATION-RELATED DISCOVERY**

**THIS CAUSE** comes before the Court upon Plaintiffs' Motions to Defer Ruling on Defendants' Motion to Dismiss or, in the Alternative, to Stay in Favor of Arbitration

Pending Completion of Limited Arbitration-Related Discovery (DE # 1504) and (DE # 1489) filed May 19, 2011 and May 17, 2011 respectively. The Court held oral argument on Wednesday, June 1.

Careful consideration of the briefs and thorough oral argument of the parties, impels the conclusion that discovery is necessary. Given the complexity of the legal and factual issues; the astronomical size of the potential class;<sup>1</sup> and the critical impact the decision on Defendants' Motions to Dismiss will have on the future course of this litigation; the Court finds a fully developed, complete record is essential. The interruption of ongoing merit discovery is justified under these circumstances. Limited discovery will be allowed in the following areas: (1) the availability of lawyers to litigate these low value claims individually due to the complex nature and potentially small recovery; (2) the number of overdraft-related complaints; (3) the number of and result of arbitrations; (4) waiver and futility of filing motions to compel. Ruling on the pending Motions to Compel Arbitration filed by Wells Fargo (DE # 1384) and JPMorgan Chase (DE # 1444) are reserved.

Accordingly, it is **ORDERED, ADJUDGED and DECREED** as follows:<sup>2</sup>

1. The Court sets 90 days in which to conduct limited discovery, by the parties to the above-named cases involving Defendants JP Morgan Chase Bank, N.A., Wachovia Bank, N.A., and Wells Fargo Bank, N.A.

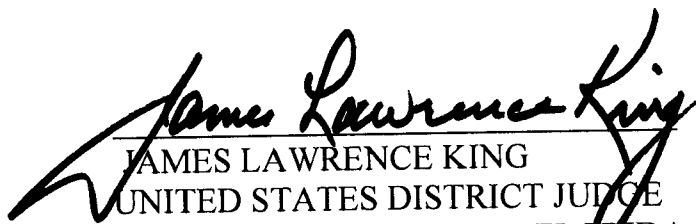
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<sup>1</sup> The recent settlement of only one of the 62 assigned MDL cases involves over one million class Plaintiffs (*Tornes, et al. v. Bank of America, N.A.*, S.D. Fla. Case No. 1:08-cv-23323-JLK; *Yourke, et al. v. Bank of America, N.A.*, S.D. Fla. Case No. 1:09-cv-21963-JLK, N.D. Cal. Case No. 3:09-2186).

<sup>2</sup> The Clerk is instructed to terminate the following motions: (DE # 1454), (DE # 1450), (DE # 1451), (DE # 1421), (DE # 1461) and (DE # 1383).

2. The previously entered stay of responses (DE # 1479) entered on May 13, 2011 to the pending Motions for Class Certification by Defendants JP Morgan Chase Bank, N.A., Wachovia Bank, N.A., and Wells Fargo Bank, N.A. in the above-named cases only, shall continue until further order of the court.
3. The Court's previously set scheduling order regarding those cases designated on tranches two, three and four cases are not affected by this Order.

**DONE and ORDERED** in chambers at the James Lawrence King Federal Courthouse in Miami, Florida, this 3rd of June, 2011.

  
JAMES LAWRENCE KING  
UNITED STATES DISTRICT JUDGE  
SOUTHERN DISTRICT OF FLORIDA

cc: All Counsel of Record