

California Federal Court Stays Trial Pending Supreme Court Ruling on Reach of Section 13(b) of FTC Act

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On August 20, a Northern District of California court stayed the trial of an action the [FTC brought against Lending Club](#) in 2018 pending a Supreme Court ruling on the FTC's authority to seek monetary restitution under Section 13(b) of the FTC Act. The issue of whether the FTC has authority to seek monetary relief under Section 13(b) was placed squarely before the Supreme Court in two petitions for certiorari that were consolidated and accepted for review by the High Court in July. Those cases, *F.T.C. v. Credit Bureau Center* and *AMG Capital Management, LLC v. F.T.C.*, will be argued in October.

In its *LendingClub* complaint, the FTC had sought substantial monetary relief from LendingClub pursuant to its authority under Section 13(b), in the form of "rescission or reformation of contracts, restitution, the refund of monies paid, and the disgorgement of ill-gotten monies." The trial in *LendingClub* had been scheduled for October. In finding a stay of that trial warranted, the *LendingClub* court emphasized that the FTC's authority to seek monetary relief under Section 13(b) (or lack thereof) is "an issue of enormous consequence to this case." The court explained, "[g]oing forward with trial would needlessly burden LendingClub to put on a trial defense only to possibly have the entire enterprise mooted by the FTC's inability to seek any monetary relief under Section 13(b)."

The FTC had argued that the hardship of presenting a meritorious defense while the Supreme Court's 13(b) decision was pending did not merit a stay. The *LendingClub* court soundly rejected the FTC's argument, finding that the issue was not simply about hardship, but about "the viability of the remedy motivating the case." Given that the remedy itself has the potential to be extinguished in the coming months, the court concluded that holding a trial before the Supreme Court's decision issues "is fundamentally inequitable." The *LendingClub* court noted a Supreme Court ruling limiting the FTC's powers under Section 13(b) would "greatly simplif[y]" the case, "as no monetary relief will be at issue." The court predicted that "the elimination of monetary relief will likely facilitate a negotiated resolution."

