

**Alliance of Californians for Community Empowerment
Consumer Action
Consumer Federation of California
Consumers for Auto Reliability and Safety (CARS) Foundation
Courage Campaign
ForgoWells
Homeowners Against Deficient Dwellings
Housing and Economic Rights Advocates
Level Playing Field
Make the Road New York
Montana Organizing Project
National Association of Consumer Advocates
National Consumers League
National Consumer Law Center (on behalf of its low-income clients)
Public Citizen
Public Good
Public Justice
Progressive Congress Action Fund
Tennessee Citizen Action
TURN – The Utility Reform Network
Workplace Fairness**

February 24, 2017

Mr. Timothy Sloan, Chief Executive Officer
Wells Fargo
420 Montgomery Street
San Francisco, CA 94104

Dear Mr. Sloan:

On behalf of the above-listed organizations, we write to request that Wells Fargo immediately cease its use of forced arbitration “ripoff clauses” to deny customers and workers their constitutional right to obtain justice before a court of law.

After repeatedly engaging in illegal activities involving millions of its customers, the bank has an obvious interest in repairing its damaged reputation. The public would reasonably expect that Wells Fargo would be eager to take the obvious step of allowing its customers to obtain redress for those violations as easily and efficiently as possible. Instead, it appears that the bank remains entrenched in its view that forced arbitration is so important to the bank’s operations that even in the midst of scandal it refuses to restore to consumers and employees a basic constitutional right. This reasoning seems to us deeply miscalculated. It disserves your customers, it continues to harm your reputation, and it compels

us to continue to call on people across this nation who value their constitutional rights to close their accounts with Wells Fargo, and on institutions that respect those rights to divest from the bank.

The illegal activities in which Wells Fargo has engaged are not limited to the fraud scandal that captured headlines several months ago. Rather, the bank's violations of the law constitute a pattern of disregard for basic consumer protections. Among those activities are the following:

- Creating roughly 2 million bogus accounts through fraud, identity theft, and / or forgery, causing many victims to suffer significant losses and negative financial consequences, sticking them with nearly \$2.5 million in fraudulent fees, and often also harming their credit.
- Illegally repossessing at least 413 vehicles from members of the United States Armed Forces and their families, from 2006 through 2015, while those servicemembers were serving on active duty in defense of our nation – without obtaining a court order, in violation of the Servicemembers Civil Relief Act. This practice was particularly reprehensible, because servicemembers often are assigned to duty in war zones where their expertise is invaluable for our national security. Repossessions can result in a loss of security clearances, costing our nation desperately needed services by highly trained military personnel.
- Illegally foreclosing on homes purchased by 239 members of the United States Armed Forces and their families, while those servicemembers were serving on active duty – again without obtaining a court order, in violation of the Servicemembers Civil Relief Act. This practice is also particularly troubling given its negative impact on our national security, particularly when such practices cause a loss not only of homes, but of security clearances and future job prospects. Wells Fargo was compelled by the U.S. Department of Justice to pay over \$28.3 million in relief to the servicemembers and their co-borrowers.
- Engaging in unfair and deceptive practices to maximize the penalties and fees paid by customers to Wells Fargo, by manipulating the chronology of when debits and checks were assessed, costing customers in California alone approximately \$203 million in excessive penalties and fees. After a judge awarded refunds to victims of the bank's illegal practices, Wells Fargo continued to litigate and tried to force victims' claims into arbitration, taking their case all the way to the United States Supreme Court. The bank delayed justice for Wells Fargo customers for over ten years, until all avenues for litigation ended and their victims finally won, obtaining \$203 million in refunds.

There is a common thread in these cases, and it is a disregard for customers' rights when there is a potential impact on the bank's bottom line. Consumers have no reason to believe that Wells Fargo is doing anything differently, when the bank still persists in depriving its customers and workers of their basic constitutional rights. A change in culture does not mean doing the right thing only when it does not cost anything. It means doing the right thing, period. How can Wells Fargo claim to be doing the right thing when it continues to force customers it has wronged into giving up their constitutional rights – even in cases where the account in dispute was created through fraud, identity theft, and /or forgery?

As the *Des Moines Register* recently editorialized, after you met with the editors:

“When Wells Fargo’s news CEO, Timothy Sloan, met with The *Des Moines Register*’s Editorial Board a few weeks ago, he said the bank intends to do everything it can to win back the trust of its customers...

“Unfortunately, Sloan made clear in his discussion with the *Register* that one thing the bank won’t consider in its efforts to "make it right" is waiving the contractual requirement that forces customers to take any and all grievances to private arbitration rather than to court. In fact, Wells Fargo recently took the formal step of asking a federal court to disallow the claims of dozens of customers who are attempting to have their case heard by a judge in a court of law.

“The problem is that arbitration denies customers the legal protections normally afforded through court proceedings, such as the right to appeal. And because arbitration hearings and the evidence they produce are not open to the public, arbitration also helps to conceal widespread, corporate-level misconduct from other potential litigants, as well as from other customers and regulators.

...if Wells Fargo is sincere about atoning for its actions and doing the right thing for its customers, it will reverse course and voluntarily waive the arbitration requirement, allowing the people who were victimized by its practices to have their complaints heard in open court.”¹

And, as the *Sacramento Bee* editorialized:

“As if the rip-off of some 2 million customers weren’t enough for Wells Fargo & Co., it turns out that the bank is trying to deprive its victims of their days in court....Wells Fargo has been arguing in federal and state courts that the wronged customers should have to argue their cases, not in public, but in private arbitration.

“It’s a cynical ploy, and destructive to the public trust and the legal system. Forced private arbitration...often tilts contractual arrangements in favor of corporate interests and deprives the public of important consumer information and case law.

“Companies like it because it keeps bad publicity out of the public record, stymies potential class actions and improves the odds of favorable decisions; private paid judges know that companies often give repeat business to arbitrators who give favorable rulings. Consumers are at a disadvantage in what has come to amount to a shadow system of civil justice....

“In the Wells Fargo case, the push is particularly reprehensible...the bank claims that those [arbitration] waivers apply to the legitimate accounts, and to the fake ones, even though the signatures were forged in many cases. It’s a scam on top of a scam...”²

We are plainly not alone in our concern about Wells Fargo’s continuing practice of forcing its employees and customers to surrender their constitutional rights as a condition of employment or

1 Editorial: “Wells Fargo blocks the courthouse door,” Editorial, *Des Moines Register*, December 4, 2016. Posted at: <http://www.desmoinesregister.com/story/opinion/editorials/2016/12/04/editorial-wells-fargo-blocks-courthouse-door/94811490/>

2 Editorial: “Wells Fargo victims deserve day in court,” *Sacramento Bee*, December 9, 2016. Posted at: <http://www.sacbee.com/opinion/editorials/article119768343.html>

services. Forced arbitration is not a sign of respect for an employee or customer; it is the opposite. It also allows Wells Fargo to perpetuate a cover-up of its illegal practices.

As the current Chairman of the United States Senate Judiciary Committee, Senator Charles Grassley (R-Iowa), stated in presenting legislation in Congress to restore protections from forced arbitration for auto dealers, granting them a special exemption from the Federal Arbitration Act:

“When mandatory binding arbitration is forced upon a party, for example when it is placed in a boiler-plate agreement, it deprives the weaker party the opportunity to elect another forum. As a proponent of arbitration I believe it is critical to ensure that the selection of arbitration is voluntary and fair. The purpose of arbitration is to reduce costly, time-consuming litigation, not to force a party to an adhesion contract to waive access to judicial or administrative forums for the pursuit of rights under State law.

“This legislation will go a long way toward ensuring that parties will not be forced into binding arbitration and thereby lose important statutory rights. I am confident that given its many advantages arbitration will often be elected. But it is essential for public policy reasons and basic fairness that both parties to this type of contract have the freedom to make their own decisions based on the circumstances of the case.”³

Clearly the same principles apply to individual consumers and workers, who have vastly unequal bargaining power when entering into contracts with lending institutions as large as Wells Fargo.

We call on Wells Fargo to do the right thing, and to immediately cease using forced arbitration clauses in its consumer and employment contracts. A number of competing banks and credit unions already have decided to respect their customers and workers, and not to deny them their constitutional rights. Until Wells Fargo ends its practice of depriving its customers and workers of their constitutional rights as a condition of obtaining products, services, or employment, we will continue to call upon all Americans who value those rights to close their accounts with the bank, and all institutions to divest from Wells Fargo.

In order to reply to this letter, please contact: Rosemary Shahan, President of the Consumers for Auto Reliability and Safety (CARS) Foundation. We look forward to your prompt action to restore precious, fundamental constitutional rights to your customers and employees.

Sincerely,

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Consumer Action
Consumer Federation of California
Consumers for Auto Reliability and Safety (CARS) Foundation
Courage Campaign
ForgoWells
Homeowners Against Deficient Dwellings
Housing and Economic Rights Advocates
Level Playing Field

³ Statements on Introduced Bills and Joint Resolutions, United States Senate, June 29, 2001. Statement by Senator Grassley of Iowa.

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