

# **Senators call on Wells Fargo to end use of forced arbitration to allow customers to seek justice in court**

September 23 2016 1:11 PM



WASHINGTON—U.S. Senator Dick Durbin (D-IL) today joined Senators Patrick Leahy (D-VT), Sherrod Brown (D-OH), and others to call on Wells Fargo to end the use of forced arbitration clauses that prevent customers whose names were used to open fraudulent accounts from seeking justice in court.

Arbitration clauses force consumers to waive their rights to bring a claim in court or to band together in a class action, before any dispute has arisen. These clauses also deny access to the courts even when consumers are seeking to enforce their rights under fundamental state and federal laws. Instead, consumers must seek justice individually, on a case-by-case basis in closed-door arbitration proceedings that are often stacked in favor of the corporate defendant.

In a letter to Wells Fargo CEO John Stumpf, the Senators call on the company to end its use of forced arbitration clauses which were used to deny customers access to the court system to challenge Wells Fargo's creation of sham accounts. In addition to Durbin, Leahy and Brown, the letter was signed by Senators Al Franken (D-MN), Richard Blumenthal (D-CT), and Elizabeth Warren (D-MA).

**“The ability to force customers into secret arbitration proceedings allowed Wells Fargo to continue its outrageous practices with impunity for far too long,” the senators wrote. “Wells Fargo customers have attempted to sue Wells Fargo in open court over the sham accounts, including a case filed more than three years ago. The suits were forced behind the closed doors of arbitration and it took years before the public learned the truth of the allegations. If either of the lawsuits had been able to proceed in court, countless Wells Fargo customers might have been saved from being charged their hard-earned dollars for unauthorized accounts.”**

They added: “One concrete step you can and should take to fix this issue and restore your customers’ trust is to immediately end Wells Fargo’s use of mandatory arbitration clauses in your customer agreements.”

A copy of the letter is [online](#) and below.

September 23, 2016

Mr. John Stumpf

Chief Executive Officer

Wells Fargo

420 Montgomery Street  
San Francisco, CA 94104

Dear Mr. Stumpf:

Federal authorities revealed this month that over the course of five years, Wells Fargo employees opened as many as two million sham accounts in the names of Wells Fargo customers and charged customers for those accounts without their permission. According to the Consumer Financial Protection Bureau's (CFPB) consent order addressing this egregious conduct, Wells Fargo collected millions in profits from charging its customers overdraft fees, monthly service fees, annual fees, finance and interest charges, and late fees on these sham accounts.

A major reason that these outrageous practices continued for at least five years is that Wells Fargo's customer account agreement includes a forced arbitration clause. These clauses eliminate consumers' ability to bring a claim in open court or to band together in a class action, before any dispute has arisen. Forced arbitration clauses deny access to the courts even when consumers are seeking to enforce their rights under fundamental state and federal laws. Instead, consumers must seek justice individually, on a case-by-case basis in closed-door arbitration proceedings that are often stacked in favor of the corporate defendant.

Even more troubling is the fact that arbitration proceedings are kept secret, so that other customers are deprived of the knowledge that their experiences might be part of a more widespread problem. This forced arbitration system helps hide fraudulent schemes such as the sham accounts at Wells Fargo from the justice system, from the news media, and from the public eye. This is unacceptable. It is particularly unacceptable that forced arbitration clauses in contracts for real customer accounts were used to deny customers access to the court system to challenge Wells Fargo's creation of sham accounts. We have serious concerns that your forced arbitration policies thrust consumers into a system with little transparency or oversight.

Fortunately for American consumers, the CFPB, through its enforcement authority, is seeking to hold the company accountable by requiring restitution for Wells Fargo customers and other civil penalties against the company. There can be little doubt, however, that the ability to force customers into secret arbitration proceedings allowed Wells Fargo to continue its outrageous practices with impunity for far too long. Wells Fargo customers have attempted to sue Wells Fargo in open court over the sham accounts, including a case filed more than three years ago. The suits were forced behind the closed doors of arbitration and it took years before the public learned the truth of the allegations. If either of the lawsuits had been able to proceed in court, countless Wells Fargo customers might have been saved from being charged their hard-earned dollars for unauthorized accounts.

In your testimony earlier this week before the Senate Banking Committee you said “I accept full responsibility for all unethical sales practices in our retail banking business, and I am fully committed to doing everything possible to fix this issue, strengthen our culture, and take the necessary actions to restore our customers’ trust.” One concrete step you can and should take to fix this issue and restore your customers’ trust is to immediately end Wells Fargo’s use of mandatory arbitration clauses in your customer agreements. Unfortunately, at the hearing, when asked, you were unwilling to pledge that Wells Fargo would not continue to force its customers into arbitration for disputes related to Wells Fargo’s opening of sham accounts.

Accordingly, we ask that you provide answers to the following questions so that we can better understand the situation at Wells Fargo and how we can prevent similar fraudulent practices in the future:

1. Please provide a copy of the current basic customer agreement and any other customer agreements that have been in place since 2011 for Wells Fargo customers that open credit cards or bank account
2. How many allegations concerning the unauthorized creation of accounts has Wells Fargo received through September 2016? When was the first? Of those allegations, how many did Wells Fargo force into arbitration?
3. When its customers sued Wells Fargo over these fraudulent accounts, who was responsible for the legal strategy in response? Specifically, who decided that your legal strategy would be to deny people access to the courts and force people to submit to mandatory arbitration on fraudulent accounts?
4. Does Wells Fargo, or its selected arbitrator, have policies that prevent customers from making information about their allegations or resolution public?
5. What percentage of these allegations were heard by the same arbitrator or arbitration provider?
6. Did Wells Fargo disclose to its investors allegations concerning the unauthorized creation of accounts? How and when did the company do so?
7. In light of your commitment to do everything possible to fix this issue and restore your customers’ trust, will you end Wells Fargo’s use of mandatory arbitration clauses in your customer agreements?

Thank you for your prompt attention to this very important issue, and we look forward to your response.