

# United States Senate

WASHINGTON, DC 20510

December 7, 2016

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

Dear Mr. Sloan:

Thank you for the response from James Strother, Wells Fargo's General Counsel, to our September 23, 2016 letter to former CEO John Stumpf. Since we first wrote to Mr. Stumpf, Wells Fargo has renewed its efforts to force customers into secret, individual arbitration for claims related to the fraudulent opening of customer accounts – an effort that raises serious questions about the credibility of the company's stated commitment to do everything possible to regain its customers' trust.

In our original letter, we asked whether Wells Fargo would end the use of mandatory arbitration clauses in your customer agreements, in order to fulfill your former CEO's promise, made under oath, that the company was "committed to doing everything possible to fix this issue, strengthen our culture, and take the necessary actions to restore our customers' trust."<sup>1</sup> While your response to this request covers almost two full pages, you managed to avoid answering the major question at issue and instead provided an extensive explanation of the steps that Wells Fargo has decided to take to address its wrongdoing to its own satisfaction. Your response ends with the following assertion: "Wells Fargo fully intends to address all consumers impacted by improper sales practices, regardless of when they occurred."

Although you failed to answer our question, we now know that your answer is actually a resounding no. In fact, Wells Fargo recently requested that a federal court block defrauded customers from holding Wells Fargo accountable in court. Instead, you are forcing customers suing the bank over its sham account practices to resolve their disputes in secret arbitration proceedings designed by the bank and hidden in the customer agreements for *real* accounts. We are shocked and appalled by this latest attempt to stack the deck against the victims of the bank's fraudulent scheme and your continued unwillingness to allow victims of this scheme to fully exercise their rights.

Your response to our initial letter can be summarized as: "Trust us, we'll make this right." But we cannot – and now have no reason to – trust you to unilaterally determine how to adequately remedy those customers harmed by Wells Fargo's widespread and egregious practice of fraudulently opening unauthorized accounts in customers' names. It is for this very reason that we have an independent judiciary: to objectively assess claims of harm like those suffered by millions of Wells Fargo's customers. Rather than allow the victims of your scheme their day in court, you continue to force them to seek redress in the secrecy of forced arbitration.

As we highlighted in our prior letter to Mr. Stumpf, Wells Fargo's fraudulent practices were allowed to persist for at least five years in part because of the forced arbitration clauses

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<sup>1</sup> Letter to John Stumpf from Senators Leahy, Brown, Durbin, Franken, Blumenthal, and Warren (Sept. 23, 2016) available at <https://www.leahy.senate.gov/press/leahy-brown-and-leading-democratic-senators-call-on-wells-fargo-to-end-use-of-forced-arbitration-on-consumers>.

found in its customer account agreements. When Wells Fargo's customers have tried to sue the bank over fraudulent accounts in the past, they discovered that the fine print in the contracts governing their existing, legitimate accounts prevented them from going to court over the sham accounts. And because any subsequent arbitration proceedings were kept secret, other customers who had also been harmed were left in the dark and unable to mitigate the effects of Wells Fargo's wrongdoing. In fact, every one of the customer agreements that you provided to us in response to our initial letter explicitly requires secrecy of arbitration proceedings.<sup>2</sup>

Customers who pursue their cases in arbitration do not have access to any of the traditional safeguards of our court system, including a meaningful opportunity to appeal, and face a privatized justice system that is inherently biased towards the corporation—allowing activity like the fraudulent opening of customer accounts to be covered up for years. Thus it is unsurprising, albeit disappointing, that Wells Fargo is a member of three industry groups—the American Bankers Association, the Consumer Bankers Association, and the Financial Services Roundtable—that oppose the ongoing effort by the Consumer Financial Protection Bureau to help consumers pursue class actions and bring additional transparency to the arbitration process.<sup>3</sup>

Wells Fargo's demand to deny defrauded customers their fundamental rights demonstrates your complete failure to understand the gravity of the company's actions and an utter unwillingness, despite promises to the contrary, to actually put your customers first. Forced arbitration denies Americans their constitutional right to seek justice in a court of law and shields companies from accountability – both from the courts and the public eye. We will not simply trust you to get this right as long as your actions continue to belie your words. We will not forget that your company has harmed millions of Americans. We will continue to watch closely and hold you accountable at every misstep. We strongly urge you to reconsider your use of forced arbitration.

Sincerely,



PATRICK LEAHY  
United States Senator



SHERROD BROWN  
United States Senator

<sup>2</sup> The arbitration secrecy clause in most of your contracts provides that “[n]o arbitrator or other party to an arbitration proceeding may disclose the existence, content, or results thereof, except for disclosures of information by a party required in the ordinary course of its business or by applicable law or regulation.” Consumer Credit Card Agreement & Disclosure Statement Core 12/11 at WF-LEAHY-0000210; Consumer Credit Card Customer Agreement & Disclosure Statement Core 09/14 at WF-LEAHY-0000229; Consumer Credit Card Customer Agreement & Disclosure Statement Core 08/10 at WF-LEAHY-0000242; Consumer Credit Card Customer Agreement & Disclosure Statement Core 08/15 at WF-LEAHY-0000259; Consumer Account Agreement Effective October 15, 2011 at WF-LEAHY-0000273; Consumer Account Agreement Effective September 24, 2010 at WF-LEAHY-0000359 (slight variation stating that “These parties must not disclose ... permitted by the laws governing your Account”); Consumer Account Agreement Effective April 1, 2013 at WF-LEAHY-0000441; Consumer Account Agreement Effective April 7, 2014 at WF-LEAHY-0000520; Consumer Account Agreement Effective October 29, 2014 at WF-LEAHY-0000588; Consumer Account Agreement Effective April 29, 2016 at WF-LEAHY-0000656 (slight variation stating that “No person participating in an arbitration can disclose the arbitration’s existence, content, subject, or results, except as required in a party’s ordinary course of business or by law.”); Consumer Account Agreement Effective July 15, 2015 at WF-LEAHY-0000708 (same).

<sup>3</sup> Public Comment Letter Submitted to Federal Register on CFPB’s Proposed Arbitration Rule (August 22, 2016) available at: <https://www.regulations.gov/document?D=CFPB-2016-0020-4294>

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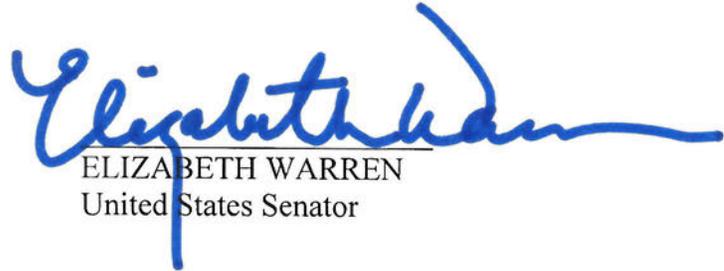
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