



March 11, 2019

The Honorable Maxine Waters  
Chairwoman  
Committee on Financial Services  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Patrick McHenry  
Ranking Member  
Committee on Financial Services  
United States House of Representatives  
Washington, D.C. 20515

Re: For the March 12, 2019 hearing – *Holding Megabanks Accountable: An Examination of Wells Fargo’s Pattern of Consumer Abuses*

Dear Chairwoman Waters, Ranking Member McHenry, and Members of the Financial Services Committee:

The National Association of Consumer Advocates greatly appreciates your efforts to hold a hearing that examines Wells Fargo Bank’s conduct and its extensive history of mistreating consumers. NACA is a national nonprofit association engaged in promoting a fair and open marketplace that forcefully protects the rights of consumers, particularly those of modest means. Accountability in the financial marketplace is crucial, and we remain concerned over the big bank’s use of restrictive contract terms, known as forced arbitration clauses, that deny its customers of their right to go before a judge and jury when they are harmed by its misconduct.<sup>1</sup> It is time to end this practice.

Over the past several years, Wells Fargo has been mired in numerous scandals over its widespread mistreatment of its customers and internal mismanagement. The most notorious incident occurred over the course of the last several years when it was revealed that the bank’s enormous pressure on employees to meet sales quotas had resulted in over three million accounts being opened without consumers’ permission.

Among a slew of other serious consumer abuses, Wells Fargo has faced allegations of:

- Tacking on unnecessary auto insurance products to car loans without customers’ knowledge;
- Engaging in illegal student loan servicing practices;
- Unlawfully repossessing servicemembers’ cars;
- Wrongfully denying mortgage modifications.<sup>2</sup>

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<sup>1</sup> See, NAT’L ASSOC. CONSUMER ADV., ENABLING UNLAWFULNESS: ONE YEAR AFTER THE TIE-BREAKING VOTE THAT KILLED CFPB’S ARBITRATION RULE (2018),

[https://www.consumeradvocates.org/sites/default/files/EnablingUnlawfulness\\_ArbRule1Anniv.pdf](https://www.consumeradvocates.org/sites/default/files/EnablingUnlawfulness_ArbRule1Anniv.pdf).

<sup>2</sup> *Wells Fargo: Corporate Rap Sheet*, <https://www.corp-research.org/wells-fargo> (last updated Jan. 7, 2019).

This disturbing pattern of wrongdoing has been exacerbated in part by the big bank's use of terms in its take-it-or-leave-it customer contracts that block consumers' ability to hold it accountable in court when they are harmed. Forced arbitration clauses in corporate contracts like Wells Fargo's require that consumers bring their claims behind closed doors to an arbitration firm chosen and paid for by the corporation that harmed them. Oftentimes, the practice also prevents them from joining forces in joint or collective actions to take on big corporations together.

Because the arbitration process is rigged against consumers and because consumers often cannot afford to take on the corporate bad actor alone in arbitration, corporations have avoided compensating their victims. Big corporations, and especially a scandal-ridden megabank like Wells Fargo, should be prohibited from sweeping their wrongdoing under the rug like this.

The public pressure following the fake account scandal forced Wells Fargo to provide some remedies to the customers it harmed. But the bank has a long history of using forced arbitration to get consumer legal actions thrown out of the taxpayer-funded public courts and into shadowy, private arbitration.

For example, just last May 2018, a federal appeals court held that Wells Fargo could force customers with serious complaints against the bank's overdraft practices into individual arbitration.<sup>3</sup> The consumers in this and other cases alleged that Wells Fargo and other banks would pad their bottom-line by reordering customers' debit transactions to increase the chances of bank account overdrafts that would lead to costly fees charged to their customers. In many cases, the consumers sought to band together in class actions to seek remedies and to stop the bad overdraft practices, but the forced arbitration clauses shut down their access to justice.

If big corporations are allowed to continue to use forced arbitration as a get-out-of-jail free card, then we can expect more harm to many more consumers with minimal repercussions. To help hold Wells Fargo accountable, Congress must pass a law, such as the Forced Arbitration Injustice Repeal Act, that would ensure consumers are able to choose how to get their claims heard when they are harmed.

Thank you for considering our views.

Sincerely,

Christine Hines  
Legislative Director  
National Association of Consumer Advocates

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<sup>3</sup> *Gutierrez v. Wells Fargo Bank*, NA, 889 F.3d 1230 (11th Cir. May 10, 2018).