

# You are a Victim of Forced Arbitration

*You Just Don't Know It Yet*

Forced arbitration agreements are everywhere: 55% of workers are bound by a forced arbitration “agreement”, whether they know it or not.<sup>1</sup> Research shows that 93% of banks use forced arbitration for checking accounts.<sup>2</sup> A new study found that 81% of America’s largest companies have used forced arbitration agreements in recent years.<sup>3</sup> Companies like Amazon, Groupon, Netflix, and Verizon all utilize forced arbitration.<sup>4</sup> If you’ve ever had a car loan or lease, a credit card, a checking account, insurance of any kind, an investment account, student loan, or even held a job, you’ve probably signed away your constitutional rights. With forced arbitration almost everywhere, it’s nearly impossible to escape its wrath – even in the following examples, which you must read to believe, forced arbitration strips away individual’s rights.

## You can be forced into arbitration even if...



### **You are racially discriminated against when trying to book an Airbnb:**

In 2016, Gregory Selden filed a class-action lawsuit on behalf of all Airbnb users who had suffered race discrimination by Airbnb hosts. Mr. Selden is an African-American male. He was unable to book a specific listing in Philadelphia, only to have the same booking request accepted after representing himself as a Caucasian male. However, Airbnb has a forced arbitration clause contained in its terms of service agreement which mandates claims against the company be heard in private arbitration. Mr. Selden was blocked from proceeding in his class action.<sup>5</sup>

### **Your bank creates fake accounts in your name and ruins your credit:**

Wells Fargo tried to force customers suing over fraudulent bank accounts into arbitration based on contract language associated with separate legitimate accounts they had previously opened.<sup>6</sup> Public reports state that approximately 3.5 million fraudulent accounts were opened by Wells Fargo from 2002-2015, more than double their original estimate. The bank used forced arbitration to cover up their fraud and harm to customers’ credit by forcing customers out of court, keeping the massive fraud out of the spotlight and allowing it to continue for years.



### **The forced arbitration clause is on the outer packaging of a product you never even purchased:**

Douglas Bohn and Stephen Dye, both Florida homeowners, were forced into arbitration over defective roof shingles, even though (1) the arbitration agreement was on the outer packaging of the shingles, and (2) the homeowners never even had a chance to read that packaging because the shingles were purchased by the roofers. Bohn and Dye had hired two separate roofing companies that both used shingles with a 30-year warranty from Tamko Building Products. After a few years both homeowners noticed that the shingles were crumbling and filed a class action on behalf of themselves and others who had purchased the defective shingles. The court ruled that the roofers were the homeowner’s agents (even though there was no suggestion the roofers told the homeowners about the forced arbitration clause, or were aware of it themselves), and had agreed to the terms on their behalf, and that putting a forced arbitration agreement on the outer packaging was sufficient.<sup>7</sup>

### **You are sexually assaulted by your Uber driver:**

Numerous women who claim they were sexually assaulted by Uber drivers attempted to file a class action lawsuit in order to hold Uber accountable; asserting that the company failed to properly screen its drivers. Uber’s terms and conditions for passengers include a forced arbitration clause which the company sought to enforce against the women. After much public outcry, Uber announced a policy change which led some people to believe the company had abandoned forcing its users into arbitration.<sup>8</sup> A statement by the women’s attorney, Jeanne M. Christensen, explains why this was not the case:



*“Uber duped the media and public when it claimed to allow Jane Does 1-9 access to court two weeks ago. At the same time that Uber was making its public “announcement” about not forcing these victims to arbitrate assault and battery claims, its lawyers were busy filing a motion to compel to arbitration for all of the other claims in the lawsuit. If successful, Uber achieves the result it wanted all along – to silence female victims’ voices on a collective basis. Such a result also allows Uber to keep secret the data about the countless other incidents of sexual assault by Uber drivers.”*



### **Your employer doesn't pay you for hours (and overtime) of work you did:**

Richard from New York and Levi from Ohio are among thousands of current and former Chipotle employees who were forced to work hours off the clock without pay. Chipotle is forcing them both—and thousands of other Chipotle employees who were part of a class action lawsuit seeking justice over wage theft—into arbitration on an individual basis.<sup>9</sup>

### **Your cable company charged you an illegal cancellation fee after you grew sick of their terrible service:**

Kathy from California and thousands of other DIRECTV customers are part of a class action lawsuit to hold the company responsible for illegally imposing early cancellation fees. DIRECTV has been trying to block the lawsuit since 2008 and force all these customers into arbitration individually.<sup>10</sup> DIRECTV continues to use these illegal practices.



### **You use the company's app to cancel your spa club membership after being sexually assaulted:**

Lilly from California was sexually assaulted by a Massage Envy therapist. After the assault, Lilly downloaded the Massage Envy app on her phone to cancel her membership. Hidden in the fine print of the app was a forced arbitration clause. Lilly filed a lawsuit, like hundreds of other women who were also assaulted. Now Massage Envy is using forced arbitration to prevent Lilly from holding them accountable, attempting to force her and the other women into arbitration to keep it secret.<sup>11</sup>



### **You download a coupon or "like" a company on social media:**

In 2014, General Mills instituted a forced arbitration agreement not only for any customers who bought their cereal, but also for anyone who downloaded a coupon or "liked" the company on social media.<sup>12</sup> Their new terms required consumers to bring any legal claims they may later have against General Mills before a private arbitrator (chosen by General Mills) instead of a public state or federal court. They also prohibited customers from ever participating in a class action against General Mills, even in cases involving intentional misconduct by General Mills or its employees. The New York Times reported on this, spurring widespread public outrage, leading to General Mills announcing it was removing the forced arbitration clause in its terms of service.

### **Your child dies after attending a "substance abuse program":**

Nicklaus Ellison, a 20-year-old Florida man, died after spending time in a court-ordered substance abuse program called Teen Challenge. The Christian-run program promoted anti-homosexuality and had "de-gayed" him, Ellison told his family a few months before his death. When his family sued Teen Challenge to try and find out what had gone wrong, they were forced into arbitration. Ellison had apparently signed a contract that forced all claims into an arbitration process that followed not federal or state law but the Bible.<sup>13</sup>

### **You are blind and are deceived by a salesperson:**

Gwendolyn Byrd, a blind woman from Mississippi, was pushed into buying nearly 10,000 worth of new windows through high-pressure sales tactics by a salesperson from Windows USA, including late-night visits, refusing to leave without a signed agreement, and misrepresentations of the agreement's terms. Ms. Byrd was told that her monthly electric bills would drop by "at least 50%," that her home would increase in value, and that she was guaranteed a full refund if "ever less than 100% satisfied." What she didn't know was that, not only were these false promises, the Wells Fargo credit card agreement that was used to finance the sale, one which she could not read, included a forced arbitration agreement. Ms. Byrd unwittingly gave up her rights. A federal judge dismissed her lawsuit and forced her into arbitration.<sup>14</sup>



### **You play Playstation or Xbox and hit the 'X' button on the controller:**

Both PlayStation and Xbox include forced arbitration clauses in their terms of use. So when you agree to the terms and conditions by pressing the 'X' button on the controller before playing a game, you are now subject to forced arbitration and are waiving any right to group or class representation - even within forced arbitration. Many individual games and apps, including Pokemon Go, also feature forced arbitration clauses, stripping players of a constitutional right.<sup>15</sup>

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- <sup>1</sup> Alexander J.S. Colvin, *The growing use of mandatory arbitration*, Economic Policy Institute, April 6, 2018, <https://www.epi.org/publication/the-growing-use-of-mandatory-arbitration-access-to-the-courts-is-now-barred-for-more-than-60-million-american-workers/>.
- <sup>2</sup> *Consumers Want the Right to Resolve Bank Disputes in Court*, Pew Charitable Trust, August 17, 2016, <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2016/08/consumers-want-the-right-to-resolve-bank-disputes-in-court>.
- <sup>3</sup> Imre Stephen Szalai, *The Prevalence of Consumer Arbitration Agreements by America's Top Companies*, UC Davis Law Review Online, Vol. 52, February 2019, <https://lawreview.law.ucdavis.edu/online/vol52/52-online-Szalai.pdf>.
- <sup>4</sup> Mandy Walker, *The Arbitration Clause Hidden in Many Consumer Contracts*, Consumer Reports September 29, 2015, <https://www.consumerreports.org/cro/shopping/the-arbitration-clause-hidden-in-many-consumer-contracts>.
- <sup>5</sup> Katie Benner, *Federal Judge Blocks Racial Discrimination Suit Against Airbnb*, New York Times, November 1, 2016, <https://www.nytimes.com/2016/11/02/technology/federal-judge-blocks-racial-discrimination-suit-against-airbnb.html>.
- <sup>6</sup> Eric Thayer, *Wells Fargo Asks Court to Force Customers to Arbitration in Fake Accounts Case*, New York Times, November 24, 2016, <https://www.nytimes.com/2016/11/24/business/wells-fargo-asks-court-to-force-customers-to-arbitration-in-fake-accounts-cases.html>.
- <sup>7</sup> *Dye v. Tamko Building Products, Inc.*, 2018 WL 5729085 (11th Cir. Nov. 2, 2018), <https://law.justia.com/cases/federal/appellate-courts/ca11/17-14052/17-14052-2018-11-02.html>.
- <sup>8</sup> Daisuke Wakabayashi, *Uber Eliminates Forced Arbitration for Sexual Misconduct Claims*, New York Times, May 15, 2018, <https://www.nytimes.com/2018/05/15/technology/uber-sex-misconduct.html>.
- <sup>9</sup> Sparky Abraham, *This burrito includes an arbitration clause*, Current Affairs, August 16, 2018, <https://www.currentaffairs.org/2018/08/this-burrito-includes-an-arbitration-clause/>.
- <sup>10</sup> *U.S. Supreme Court Forces DIRECTV Customers Out Of Court, Into Private Arbitration Over Illegal \$480 "Earl Cancellation Fees," says Consumer Watchdog*, December 14, 2015, <https://www.prnewswire.com/news-releases/us-supreme-court-forces-directv-customers-out-of-court-into-private-arbitration-over-illegal-480-early-cancellation-fees-says-consumer-watchdog-300192453.html>.
- <sup>11</sup> Brooks Jarosz, *Fears loom that sexual assault cases involving Massage Envy will remain private*, FOX KTVU, December 21, 2018, <http://www.ktvu.com/news/fears-loom-sexual-assault-cases-involving-massage-envy-will-remain-private>.
- <sup>12</sup> Stephanie Strom, *When 'Liking' a Brand Online Voids the Right to Sue*, New York Times, April 16, 2014, <https://www.nytimes.com/2014/04/17/business/when-liking-a-brand-online-voids-the-right-to-sue.html>.
- <sup>13</sup> Michael Corkery and Jessica Silver-Greenberg, *In Religious Arbitration, Scripture Is the Rule of Law*, New York Times, November 2, 2015, <https://www.nytimes.com/2015/11/03/business/dealbook/in-religious-arbitration-scripture-is-the-rule-of-law.html?ref=business&r=0>.
- <sup>14</sup> Jimmie Gates, *Legally blind woman's lawsuit against Wells Fargo and window companies sent to arbitration*, Clarion Ledger, April 4, 2018, <https://www.clarionledger.com/story/news/2018/04/04/legally-blind-womans-lawsuit-against-wells-fargo-and-window-companies-sent-arbitration/481376002/>; *Byrd v. Wells Fargo*, No. 3:17-cv-00522-TSL-RHW, United States District Court for the Southern District of Mississippi, June 2017, [http://www.classactionsreporter.com/sites/default/files/windows\\_usa\\_complaint.pdf](http://www.classactionsreporter.com/sites/default/files/windows_usa_complaint.pdf).
- <sup>15</sup> PLAYSTATION®4 SYSTEM SOFTWARE LICENSE AGREEMENT (Version 2.1), [https://doc.dl.playstation.net/doc/ps4-eula/ps4\\_eula\\_en.html](https://doc.dl.playstation.net/doc/ps4-eula/ps4_eula_en.html); Xbox Services Terms & Conditions, <https://support.xbox.com/en-US/my-account/warranty-and-service/xbox-support-terms-conditions>; *Pokemon Go players: Opt-out of Niantic's terrible forced arbitration clause now!*, <https://www.imore.com/pokemon-go-players-opt-out-niantics-terrible-forced-arbitration-clause-now>.