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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHAHRIAR JABBARI, et al.,
Plaintiffs,
v.
WELLS FARGO & COMPANY, et al.,
Defendants.

Case No. 15-cv-02159-VC

**ORDER GRANTING
DEFENDANTS' MOTIONS TO
COMPEL ARBITRATION**

Re: Dkt. Nos. 58, 59

The defendants' motions to compel arbitration are granted.

Normally a court decides the threshold question of whether the parties to a contract agreed to arbitrate a particular dispute. *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 83 (2002); *AT&T Techs., Inc. v. Commc'ns Workers of Am.*, 475 U.S. 643, 649 (1986). But when the parties "clearly and unmistakably" assign that task to the arbitrator, a court must honor their choice. *AT&T Techs., Inc.*, 475 U.S. at 649.

When Jabbari and Heffelfinger opened bank accounts with Wells Fargo, they agreed to arbitration provisions. Among the disputes the plaintiffs and Wells Fargo agreed to have an arbitrator decide is the threshold question of arbitrability. Jabbari's provision delegates to an arbitrator "any disagreement about . . . whether a disagreement is a 'dispute' subject to binding arbitration." Motion to Compel-Jabbari, Ex. 1, at 4. And Heffelfinger's provision states that an arbitrator will decide "disagreements about the . . . application . . . of this arbitration agreement." Motion to Compel-Heffelfinger, Ex. 1, at 4. These provisions clearly assign arbitrability determinations to the arbitrator. Nor do the plaintiffs' agreements with Wells Fargo contain other language that would create doubt about whether the parties intended to delegate the arbitrability determination. The only language to which the plaintiffs point is in a venue provision, but nothing

United States District Court
Northern District of California

1 about the way that venue provision is worded suggests that anyone other than the arbitrator should
2 make the threshold decision about arbitrability. This is in contrast to *Mohamed v. Uber*
3 *Technologies, Inc.*, --- F.Supp.3d ----, 2015 WL 3749716 (N.D. Cal. June 9, 2015), where the
4 contract at issue contained "class waiver" language that seemed to contradict the delegation
5 provision, as well as a jurisdiction clause that was arguably in tension with the delegation
6 provision. *Id.* at *10.

7 The only possible argument the plaintiffs have for keeping this arbitrability decision out of
8 the hands of the arbitrator is that their disputes with Wells Fargo obviously fall outside the scope
9 of the arbitration provision. That is, some courts have held that when a defendant's argument that
10 a dispute falls within the scope of an arbitration provision is "wholly groundless," the court should
11 not compel arbitration to decide arbitrability in the first instance. See *Qualcomm Inc. v. Nokia*
12 *Corp.*, 466 F.3d 1366, 1371 (Fed. Cir. 2006); *Zenelaj v. Handybook Inc.*, 82 F.Supp.3d 968, 975
13 (N.D. Cal. 2015). But here, the arbitration provisions in the plaintiffs' customer agreements with
14 Wells Fargo are broad: Jabbari's covers "any unresolved disagreement between or among you and
15 the Bank . . . includ[ing] any dispute relating in any way to your Accounts and Services"
16 Motion to Compel-Jabbari, Ex. 1, at 4. Heffelfinger's similarly reaches "any unresolved
17 disagreement between you and the Bank . . . includ[ing] any disagreement relating in any way to
18 *services, accounts or matters*" Motion to Compel-Heffelfinger, Ex.1, at 4. And the
19 defendants plausibly assert that the plaintiffs' claims bear some relationship to their banking with
20 Wells Fargo: Jabbari and Heffelfinger allege that employees at Wells Fargo used information
21 connected to their legitimate accounts to open new, unauthorized accounts in their names. They
22 further allege that Wells Fargo extracted money from their legitimate accounts to pay fees
23 generated by the unauthorized accounts. The misuse of information and funds associated with
24 their accounts may "relate" to the legitimate accounts, so Wells Fargo's assertion of arbitrability is
25 not wholly groundless. Compare *Douglas v. Regions Bank*, 757 F.3d 460 (5th Cir. 2014) (no
26 plausible connection between prior arbitration agreement and current dispute).

27 There is one aspect of Heffelfinger's dispute with Wells Fargo that presents a close
28 question on whether the arbitrator should decide arbitrability in the first instance. Heffelfinger

United States District Court
Northern District of California

1 alleges that two Wells Fargo accounts were opened in her name in January 2012, weeks before she
2 opened legitimate accounts in March 2012. While disputes that precede the formation of an
3 arbitration agreement may sometimes fall within its scope, *Arriaga v. Cross Country Bank*, 163
4 F.Supp.2d 1189, 1192 (S.D. Cal. 2001), *overruled on other grounds by Ting v. AT&T*, 319 F.3d
5 1126 (9th Cir. 2003), Heffelfinger's claims involving the January 2012 accounts may have arisen
6 before she had any voluntary involvement with Wells Fargo. If so, it's difficult to imagine that
7 this aspect of the dispute would be subject to the arbitration provision. However, as counsel for
8 Wells Fargo explained at oral argument, it is at least plausible that Wells Fargo employees
9 generated the unauthorized accounts in January 2012 after Heffelfinger initiated a relationship
10 with, and provided information to, the Wells Fargo branch where her legitimate accounts were
11 opened. If established, these facts could conceivably justify a conclusion that the dispute about
12 these unauthorized accounts falls within the scope of the arbitration provision. In other words,
13 Wells Fargo's argument that this aspect of the dispute is arbitrable is not wholly groundless.

14 Accordingly, the motion to compel arbitration is granted, and the complaint is dismissed.

15 **IT IS SO ORDERED.**

16 Dated: September 23, 2015



VINCE CHHABRIA
United States District Judge

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