ALLIANCE FOR JUSTICE

PRESIDENT
NAN ARON

CHAIR
KEN GROSSINGER

August 22, 2016

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

RE: CFPB-2016-0020, RIN 3170-AA51 – Proposed Rule on Class Action Waivers in Pre-Dispute Arbitration Agreements

Dear Director Cordray:

Alliance for Justice (AFJ) writes in strong support of proposed regulation CFPB-2016-0020, RIN 3170-AA51. By banning class action waivers in the forced arbitration clauses of consumer financial agreements, the proposed rule would restore consumers' right to band together and hold companies accountable for widespread wrongdoing. The rule would be a significant step toward addressing the broader use of forced arbitration clauses, which routinely shield large corporations from liability and prevent employees, consumers, and small businesses from accessing justice. Further, AFJ urges the Consumer Financial Protection Bureau to issue a future rule banning all pre-dispute arbitration clauses to fully ensure consumer protection and corporate accountability.

AFJ is a national association of more than 100 organizations committed to ensuring access to justice for all Americans. Among AFJ's member organizations are groups specifically dedicated to the protection of consumers, employees, children, women, and people of color.[1] Through our work and the work of our member organizations, we have grown increasingly concerned about the ubiquitous use of pre-dispute forced arbitration clauses in contracts between powerful corporations and individuals or small businesses. AFJ has conducted extensive research that documents the harmful effects of forced arbitration on consumer choice, corporate accountability, and the continued vitality of our legal system.[2] And in 2014, AFJ produced a

[1] AFJ member organizations include AARP, Compassion & Choices, Consumer Action, Consumers Union, National Consumer Voice for Quality Long-Term Care, National Association of Consumer Advocates, and National Senior Citizens Law Center.

[2] *See, e.g.*, ALLIANCE FOR JUSTICE, ARBITRATION ACTIVISM: HOW THE CORPORATE COURT HELPS BUSINESS EVADE OUR CIVIL JUSTICE SYSTEM (2013), http://www.afj.org/wp-content/uploads/2013/12/Arbitration-Activism-Report-12162013.pdf [hereinafter AFJ, ARBITRATION ACTIVISM REPORT]; Nan Aron, *CFPB Study Proves Forced Arbitration Harms Consumers; Agency Should Prohibit the Practice Wherever It Can*, HUFFINGTON POST (Mar. 20, 2015, 1:28 PM), http://www.huffingtonpost.com/nan-aron/cfpb-study-proves-forced_b_6911050.html.

documentary, *Lost in the Fine Print*,[3] highlighting how forced arbitration harms consumers, employees, and small businesses.

Forced arbitration, imposed on consumers through the fine print of take-it-or-leave-it contracts, effectively replaces the court system with a dispute resolution process rigged in favor of corporate defendants. The injustice is compounded when arbitration clauses include a ban on class actions: not only are consumers forced unwittingly into arbitration for any and all claims, but they must also go it alone even when they allege widespread misconduct that can only be feasibly addressed through a class action. The harm of this practice is extensive. In a comprehensive empirical study, the CFPB found that tens of millions of Americans use consumer financial products that come with arbitration clauses and class action waivers.[4] By obtaining a credit card, taking out a student or auto loan, using a credit monitoring system, having a bank account, or simply cashing a check, consumers sign away the right to have their day in court.[5]

Given the inherent unfairness of forcing arbitration upon unknowing consumers before a dispute even arises, we would urge the CFPB to go further than the proposed rule and ban pre-dispute arbitration clauses entirely, even for individual claims. In the meantime, we ardently support the proposal as a significant step toward protecting consumers. Restoring class actions will ensure that victims of large-scale predatory conduct will not be denied justice by the fine print in ordinary consumer contracts.

The Injustice of Forced Arbitration

The use of private arbitration to settle legal disputes is not always problematic. When corporate coequals voluntarily negotiate an arbitration clause at arm's length, or when parties to a dispute agree to arbitrate *after* the dispute arises, then private arbitration can be a fair and effective alternative to litigating in court. But that's not how *forced* arbitration works. With forced arbitration, powerful corporations slip binding arbitration clauses into the fine print of take-it-or-leave-it contracts and require consumers to forfeit their right to a day in court *before a dispute even arises*. When a consumer later attempts to sue, companies invoke the arbitration clause to reroute claims from state or federal court into a private dispute resolution system crafted by and designed to serve corporate interests. This practice prevents individuals from recovering what they're owed when they are harmed by corporations, gives corporations a license to commit widespread misconduct to drive up profits, and undermines our justice system and the democratic rule of law.

[3] LOST IN THE FINE PRINT (Alliance for Justice 2014), www.lostingthefineprint.org.
[4] *See generally*, CONSUMER FINANCIAL PROTECTION BUREAU, ARBITRATION STUDY: REPORT TO CONGRESS, PURSUANT TO DODD FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT § 1028(a) (2015), http://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf [hereinafter CFPB, ARBITRATION STUDY].
[5] *Id*.

There is nothing voluntary about forced arbitration clauses. The vast majority of consumers have no idea whether they are subject to an arbitration clause and even fewer understand that forced arbitration means giving up the right to sue in court. Fewer than seven percent of consumers surveyed by the CFPB who were covered by arbitration clauses understood that these clauses restricted their ability to sue in court.[6] And more than half of consumers covered by arbitration clauses wrongly believe that they can join a class action.[7] But even those consumers who do understand the implications of arbitration clauses and class action waivers are easily coerced into signing away their rights because providers of financial products and services have far superior bargaining power.[8]

When Americans sign contracts with forced arbitration clauses, they are cheated out of the right to a jury trial guaranteed by the 7th Amendment and are instead forced into a for-profit justice system that lacks the hallmarks of due process.[9] Arbitration proceedings favor corporate defendants: generally, the arbitrator is chosen by the very company that allegedly harmed the plaintiff, and arbitrators who want to be hired again have a financial incentive to rule in favor of business.[10] The rules of evidence and procedure that apply in court are absent from arbitration, and arbitration decisions are final with no opportunity for meaningful appellate review.[11] According to the Seventh Circuit, for example, an arbitrator's decision will be affirmed even if it is "incorrect or even wacky."[12]

Arbitration proceedings are also confidential, which prevents victims of corporate wrongdoing from discovering if others have been similarly harmed, sought redress, or succeeded in their claims.[13] This secrecy also allows corporate wrongdoers to prevent negative publicity, keep their wrongdoing hidden from public scrutiny, and settle individual claims while persisting in unlawful conduct that continues to harm other consumers.

Forced arbitration clauses also commonly include a ban on class actions, an important tool for eliminating claims based on widespread, systemic misconduct. Often, it is not one but thousands or millions of consumers that are harmed by financial fraud. In these cases, each individual consumer may suffer only a small amount of damages, but the company sees massive benefits through the aggregation of ill-gotten gains. Class action bans shield corporate wrongdoers from liability for this sort of misconduct because no consumer with relatively small personal damages will bear the costs of pursuing an individual claim. As Seventh Circuit Judge

[6] *Id*. at Section 3.1.
[7] *Id*.
[8] *See* AFJ, ARBITRATION ACTIVISM REPORT, *supra* note 2, at 15.
[9] *See* PUBLIC CITIZEN, THE ARBITRATION TRAP: HOW CREDIT CARD COMPANIES ENSNARE CONSUMERS 10 (2007), http://www.citizen.org/documents/ArbitrationTrap.pdf.
[10] *Id*. at 2.
[11] *Id*. at 8–9.
[12] Wise v. Wachovia Sec., LLC, 450 F.3d 265, 269 (7th Cir. 2006).
[13] AFJ, ARBITRATION ACTIVISM REPORT, *supra* note 2, at 5.

Richard Posner put it, "the *realistic* alternative to a class action is not 17 million individual suits, but zero individual suits, as only a lunatic or a fanatic sues for $30."[14]

When claims are entirely extinguished through class action bans, or individual claims are forced into secret proceedings, corporate wrongdoing goes unexposed and undeterred. Court proceedings are generally open to the public and plaintiffs have the power of discovery to obtain important evidence from corporate defendants. Because of such transparency, litigation often reveals systemic, sometimes intentional corporate misconduct that, if left shrouded by the cloak of arbitration, would continue to endanger the public welfare. For example, a set of lawsuits starting in 2009 revealed that over a dozen banks were using an accounting device that unfairly increased the number of times they could charge overdraft fees. The banks settled the cases for more than $1 billion.[15] That litigation would be impossible today because at least seven of the banks have since added pre-dispute arbitration clauses to their contracts that shield them from class action suits.[16] Outside of the consumer finance context, class action lawsuits have exposed top executives at General Motors who knew a popular sedan was not up to safety standards,[17] and cigarette companies that fraudulently marketed, advertised, and promoted tobacco products.[18]

Finally, forced arbitration undermines democracy by allowing corporations to violate democratically-enacted statutes with near impunity. Many of our most cherished rights—civil rights, safe workplaces, consumer protections—rest in statutes that depend on private lawsuits for effective enforcement. When corporate wrongdoers are able to block access to the courts, extinguish lawsuits, and avoid liability, they effectively have the power to nullify such democratically-enacted laws.

AFJ highlighted one example of this problem in its 2014 short film, *Lost In the Fine Print*. In 2010, Air Force reservist Nicole Mitchell was a successful meteorologist at the Weather Channel, but was fired after being called to serve her annual military duty. (This problem is not unique to Ms. Mitchell; thousands of National Guard and reserve members believe they have been passed over for a job or fired because they are on call to serve their country.[19]) Ms. Mitchell

[14] Carnegie v. Household Int'l Inc., 376 F.3d 656, 661 (7th Cir. 2004).
[15] Jessica Silver-Greenberg & Robert Gebeloff, *Arbitration Everywhere, Stacking the Deck of Justice*, N.Y. TIMES, Oct. 31, 2015, http://www.nytimes.com/2015/11/01/business/dealbook/arbitration-everywhere-stacking-the-deck-of-justice.html?_r=0.
[16] *Id*.
[17] Rebecca R. Ruiz & Danielle Ivory, *Documents Show General Motors Kept Silent on Fatal Crashes*, N.Y. TIMES, Jul. 15, 2014, http://www.nytimes.com/2014/07/16/business/documents-show-general-motors-kept-silent-on-fatal-crashes.html?_r=0.
[18] *Master Settlement Agreement*, PUBLIC HEALTH LAW CENTER, http://publichealthlawcenter.org/topics/tobacco-control/tobacco-control-litigation/master-settlement-agreement (last visited July 27, 2016).
[19] *See USERRA Facts & Figures*, U.S. DEP'T OF LABOR, https://www.dol.gov/vets/programs/userra/ (last visited Aug. 2, 2016); Steve Vogel, *Returning Military Members Allege Job Discrimination—By Federal Government*, WASHINGTON POST, Feb. 19, 2012, https://www.washingtonpost.com/world/national-security/returning-military-members-allege-job-discrimination--by-federal-government/2012/01/31/gIQAXvYvNR_story.html.

tried to challenge her firing in court under the Uniformed Services Employment and Reemployment Rights Act (USERRA), which protects the employment rights of military service men and women who must leave their jobs when called to serve.[20] But because Ms. Mitchell had signed an employment agreement that included an arbitration clause, her claims were kicked out of court. She was forced into arbitration in which an arbitrator, whom Ms. Mitchell never met, decided the case without even holding a hearing. The details of the arbitrator's ruling are confidential and the ruling cannot be appealed.[21] Thus, Ms. Mitchell's employer's arbitration clause not only blocked her access to the courts, it also prevented USERRA from providing her the relief that Congress had intended.

How the Supreme Court Enabled the Use of Forced Arbitration

Forced arbitration and class action bans have not always been the reality for American consumers. A coalition[22] of credit card companies and retailers led by Wall Street and a sympathetic Supreme Court turned arbitration from a profit-maximizing strategy into a federal policy.[23] The coalition's targeted strategy was based on promoting a distorted interpretation of the 1925 Federal Arbitration Act (FAA) as an act that intended to insulate corporations from liability.

As originally enacted, the FAA recognized arbitration as a legitimate alternative method for dispute resolution between equally sophisticated businesses.[24] And for more than a half-century, that was how the FAA was understood.

Then in 1983, the Supreme Court declared that the Federal Arbitration Act reflected a "federal policy favoring arbitration."[25] In the following years, the Court used this language to assert that the FAA preempted most state laws regulating and limiting arbitration.[26] Soon, the Court gave the green light for corporations to use arbitration in routine employment[27] and consumer[28] contract disputes, and in claims asserting statutory rights,[29] including civil rights.

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[20] *USERRA Facts & Figures*, supra note 19.
[21] *Lost in the Fine Print: Overview of Cases*, ALLIANCE FOR JUSTICE, http://www.afj.org/wp-content/uploads/2014/09/Overview-of-Cases.pdf (last visited Aug. 1, 2016).
[22] Silver-Greenberg & Gebeloff, *supra* note 15.
[23] Lina Khan, *Thrown Out of Court: How Corporations Became People You Can't Sue*, WASHINGTON MONTHLY, June/July/August 2014, http://washingtonmonthly.com/magazine/junejulyaug-2014/thrown-out-of-court.
[24] *Id.*
[25] Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24 (1983).
[26] *See, e.g.*, Southland Corp. v. Keating, 465 U.S. 1 (1984); Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614 (1985). *See also* Judith Resnik, *Diffusing Disputes: The Public in the Private of Arbitration, the Private in Courts, and the Erasure of Rights*, 124 YALE L.J. 2804, 2808 (2015).
[27] Circuit City Stores, Inc., v. Adams, 532 U.S. 105 (2001).
[28] Allied-Bruce Terminix Cos., Inc., v Dobson, 513 U.S. 265 (1995).
[29] *Mitsubishi Motors Corp*., 473 U.S. at 637.

But the most significant blow came in the form of two recent Supreme Court cases, both decided by a 5-4 margin. In one case, a group of plaintiffs representing millions of Americans cheated out of about $30 each by AT&T brought a class action suit against the corporation, but were forced into arbitration.[30] Despite a state law on the books that protected consumers from unjust contract provisions, the Supreme Court held that the FAA superseded that law.[31] This effectively removed one of the last remaining hurdles to corporations' ability to compel individual arbitration, contravening state laws notwithstanding. Two years later, the Court held that arbitration clauses that ban class actions were enforceable even when they leave victims of corporate fraud and abuses without any possible recourse.[32] Our film, *Lost In The Fine Print*,[33] highlighted the story of the plaintiff from that case, restaurant owner Alan Carlson, whose contract with American Express required arbitration. Carlson could have recovered up to $38,549 for the credit card company's violations of the Sherman Anti-Trust Act, but bringing his claim through individual arbitration would have cost him up to one million dollars.[34] So American Express got away with breaking the law, Carlson and millions more like him walked away with nothing, and all the Supreme Court had to say was "[t]oo darn bad."[35]

The Supreme Court has warped the FAA to allow corporations to insulate themselves from liability for wrongdoing through forced arbitration clauses and class action bans. The CFPB has the opportunity to right this wrong for the tens of millions of American consumers who purchase financial products and services.

Dodd-Frank and the CFPB's Mandate

The CFPB has a clear congressional mandate to protect American consumers from the use of forced arbitration in agreements for consumer financial products. Section 1028(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act requires the CFPB to study "the use of agreements providing for arbitration of any future dispute . . . in connection with the offering or providing of consumer financial products and services,"[36] and Section 1028(b) authorizes the CFPB to impose conditions or limitations on the use of pre-dispute arbitration clauses if, based on its study, the CFPB finds it is both in the public interest and for the protection of consumers.[37]

The CFPB spent three years studying forced arbitration, analyzing over 850 consumer financial agreements, over 1,800 consumer financial arbitrations, almost 3,500 individual consumer financial cases in court, 40,000 small claims filings, over 400 consumer financial class

[30] AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 336–37 (2011).
[31] *Id*. at 352.
[32] Am. Express Co. v. Italian Colors Rest., 133 S.Ct. 2304 (2013).
[33] LOST IN THE FINE PRINT, *supra* note 3.
[34] *American Express Co*., 133 S.Ct. at 2308.
[35] *Id.* at 2313. (Kagan, J. dissenting).
[36] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub.L. No. 111-203, Title X, § 1028(a), 124 Stat. 1376, 2003–04 (2010).
[37] *Id*. § 1028(b), 124 Stat. at 2004.

settlements in court, and more than 1,100 state and federal public enforcement actions, in addition to hearing from a diverse array of stakeholders and interests.[38] The result, a 728-page report released in March 2015, is the most comprehensive empirical study of forced arbitration ever completed.

The key findings of the study are clear:

- Virtually no one pursues small claims in individual arbitration. Consumers are not using individual arbitration to vindicate small claims because of the prohibitively high cost of going it alone. The study found that each year an average of only 25 consumers filed a claim in arbitration worth less than $1,000.[39] This is a tiny fraction of the total 616 arbitration claims filed every year, where the overall average amount of consumer claims was $27,000.[40] This data reflects the fact that individual arbitration only makes sense when individual claims are large enough to offset arbitration costs. For small claims, individual arbitration isn't worth it; this is why class actions are essential to pool small claims and spread out the costs of litigation.[41]

- Class actions provide substantial relief to consumers. The study found that class actions resulted in $1.1 billion paid to 34 million consumers over a five-year period, not including the value of companies reforming unlawful behavior.[42] The CFPB also conducted a side-by-side comparison of banks engaged in the same unlawful practice—manipulating the order in which transactions were posted to checking accounts in order to maximize costly overdraft fees. It found that banks that could not enforce or did not have class action bans were forced to refund hundreds of millions of dollars and reform their conduct, but banks with enforceable class bans in their arbitration clauses paid nothing.[43]

- Arbitration favors industry repeat-players and disfavors consumers. The study affirmed that arbitration disproportionately favors industry. In 2010 and 2011, there were 341 arbitrations in which consumers had affirmative claims. Consumers obtained relief in

[38] CONSUMER FINANCIAL PROTECTION BUREAU, SMALL BUSINESS ADVISORY REVIEW PANEL FOR POTENTIAL RULEMAKING ON ARBITRATION AGREEMENTS 7–8 (2015), http://files.consumerfinance.gov/f/201510_cfpb_small-business-review-panel-packet-explaining-the-proposal-under-consideration.pdf [hereinafter CFPB, SMALL BUSINESS ADVISORY].
[39] CFPB, ARBITRATION STUDY, *supra* note 4, at Section 5.2.1.
[40] *Id.* at Section 1.4.3.
[41] CFPB, SMALL BUSINESS ADVISORY, *supra* note 38, at 15. In addition to the data from the CFPB, studies by scholars who have examined arbitration also show how little it has been used. An analysis of claims brought against AT&T Mobility (the company whose ban on class actions was upheld by the Supreme Court in 2011) makes the point. *See* Resnik, *supra* note 26, at 2901–09. In each of five years from 2009 to 2014, AT&T Mobility had from 85 to 120 million customers. *Id.* at 2804. During that entire time, only 134 individuals—fewer than 30 a year—tried to use arbitration to bring claims against that company. *Id.*
[42] CFPB, ARBITRATION STUDY, *supra* note 4, at Section 8.1.
[43] *Id.* at Section 8.3.8.

only 32 disputes, a total of 9% of the time.[44] In contrast, when companies made claims or counterclaims in arbitration, they obtained relief in 227 of 244 disputes, or 93% of the time.[45] The CFPB data from 2010 and 2011 show that corporate repeat players dominate arbitration filings; they file over 80% of arbitrations.[46]

The CFPB's Proposed Rule

The CFPB's proposed rule would eliminate class action bans in forced arbitration clauses and require public reporting of individual arbitrations. The rule follows from the report's findings and is both in the public interest and for the protection of consumers.[47]

AFJ strongly supports the elimination of class action bans from forced arbitration clauses. Class action bans give sophisticated players an incentive to cheat; they prevent consumers from bringing claims of fraud or other abusive practices because these claims are almost always too small for an individual consumer to afford to bring alone.[48] The elimination of these bans will make it possible for consumers to join together and fight corporate wrongdoing, which will likely also have a deterrent effect on fraudulent and abusive behavior by businesses.

AFJ also supports requiring companies to report and make public certain information about individual arbitrations. Publicly available data will greatly benefit individual consumers and the general public. Consumers will be able to share with one another information about corporate wrongdoing and arbitration awards and outcomes. This will allow consumers to make better informed decisions when navigating the arbitration process. Additionally, making the data public may deter corporate wrongdoing, which has flourished under an opaque arbitration regime.[49] Publicly available data will also help inform future lawmaking efforts to ensure the impartiality and justice of alternative dispute resolution mechanisms.[50]

Industry Arguments Against the Proposed Rule are Unfounded

The industry arguments against the rule are unsupported by the facts and findings of the CFPB study and are not in the best interest of American consumers:

- Forced arbitration does not lower consumer costs. While industry has argued that companies pass on the financial savings from arbitration to consumers, the data proves otherwise. At the outset, the CFPB study found that there was little empirical evidence to support the notion that the use of pre-dispute arbitration clauses actually generates cost

[44] *Id*. at Section 1.4.3.
[45] *Id*. at Section 5.2.2.
[46] *Id*. at Section 5.6.12.
[47] *See generally* CFPB, ARBITRATION STUDY, *supra* note 4.
[48] CFPB, SMALL BUSINESS ADVISORY, *supra* note 38, at 15.
[49] *Id*. at 19–20.
[50] *Id*.

savings for companies.[51] And even if savings were generated, the study found no support for the theory that companies passed those savings along to consumers.[52] Credit card issuers without forced arbitration agreements raised prices no more than issuers with arbitration clauses over a three and a half year period.[53] Rather than passing savings on to consumers, companies are pocketing whatever money they might save through the use of arbitration clauses while at the same time denying consumers a meaningful venue to pursue a claim.

- Class action litigation is valuable to consumers even if average individual payout is small. Industry has argued that class actions do not benefit consumers because average individual payout is often less than the payout in individual arbitration, but this argument misses the point. First, hardly any consumers use individual arbitration, so even if average recovery is higher, it's based on an extremely small sample. This is because the class device is useful for claims with relatively small individual damages, while only individuals with large damages have incentive to pursue individual arbitration. Second, the relevant metric is the amount consumers receive per dollar of damages claimed: the CFPB found that when consumers won in arbitration, they only won an average of 12 cents for every dollar claimed.[54] Additionally, the aggregate amount paid out to consumers from individual arbitrations pales in comparison to aggregate payout from class actions.[55]

- Private litigation is necessary to enforce laws. While industry argues that government enforcement of laws renders private litigation unnecessary, this is unsubstantiated by the data. The CFPB study found that private litigation precedes government enforcement actions against bad actors between 62% and 71% of the time.[56] However, the majority of offenses for which private class actions are brought are never pursued by the government: the CFPB did not find any related public enforcement action in 68% of private class actions.[57] Thus, private litigation serves a vital role in enforcing consumer protection laws and may sometimes be the only viable mechanism for patrolling bad business practices.

Further Rulemaking Still Needed

While AFJ supports the implementation of the proposed rule as "in the public interest and for the protection of consumers," we urge the CFPB to go further and ban forced arbitration clauses entirely in consumer financial agreements. Under the proposed rule, individuals without

[51] CFPB, ARBITRATION STUDY, *supra* note 4, at Section 10 Introduction.
[52] *Id.* at Section 10.3.
[53] *Id.* at Section 10.1.
[54] *Id.* at Section 5.2.2.
[55] *See id.* at Section 1.4.3; *id.* at Section 8.3.3.
[56] *Id*. at Section 1.4.8.
[57] *Id.* at Section 9.1.

class claims will continue to be harmed by the myriad ways in which forced arbitration is rigged against consumers.

Bernardita Duran is a victim of forced arbitration who would not be helped by the proposed rule alone. Ms. Duran is a New York resident living on a Social Security income who was scammed by an Arizona debt relief company.[58] When she tried to sue, the debt relief company invoked an arbitration clause in its consumer agreement that required all disputes to be resolved by an arbitrator in Arizona. Ms. Duran agreed to arbitrate but protested doing so in Arizona because traveling there would cost more than her entire monthly income. Traveling to arbitrate meant missing a rent payment and possibly losing her apartment. But a court found that even the question of where to arbitrate fell to the arbitrator in Arizona. Ms. Duran was forced to travel to Arizona to argue that she should not have to arbitrate in Arizona.

Stephanie Banks, a bookkeeper for the Salvation Army in Oregon making $15 an hour, is another victim of forced arbitration whom the proposed rule alone would not help.[59] In 2013, Ms. Banks took out a $300 payday loan to help pay rent. Two years later, after undergoing chemotherapy for lung cancer and declaring bankruptcy, Ms. Banks received a letter from the payday lender claiming that she now owed $40,000. The payday lender gave no explanation for how a $300 loan became a $40,000 debt in less than two years, and under the forced arbitration clause contained in the original loan agreement, Ms. Banks was barred from going to court to challenge the lender's claim. Instead, Ms. Banks' only choice was to fight the mysterious debt by paying $200 to pursue the claim in front of an arbitrator chosen by the payday lender. And because of the secret nature of arbitration and the lack of formal discovery proceedings, there was little chance that Ms. Banks would ever get to the bottom of how her debt ballooned over a hundredfold.

In order to fully address the harms caused by forced arbitration to individuals, classes, and the public at large, the CFPB should strongly consider proposing regulations that ban all pre-dispute arbitration clauses in consumer financial contracts.

Conclusion

Forced arbitration clauses have pervasive adverse effects on consumers, undermine fundamental statutory rights, eliminate claims entirely through class action bans, force claims into inherently biased proceedings, and allow corporate wrongdoers to evade accountability for widespread harm.

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[58] *See The Federal Arbitration Act and Access to Justice: Will Recent Supreme Court Decisions Undermine the Rights of Consumers, Workers, and Small Businesses?, Hearing Before the S. Comm. on the Judiciary*, 113th Cong. 295–301 (2013) (statements of Bernardita Duran and Johnson M. Tyler, Attorney, South Brooklyn Legal Services).

[59] *See Bankrupt Cancer Survivor Gets Shock: $300 Loan Balloons into $40,000 Debt in 2 Years*, THE OREGONIAN/OREGONLIVE (May 7, 2016, 6:39 A.M.), http://www.oregonlive.com/portland/index.ssf/2016/05/300_loan_balloons_into_40000_d.html.

AFJ writes in strong support of CFPB-2016-0020, RIN 3170-AA51 because banning class action waivers from arbitration clauses is a significant step toward ensuring that all consumers can access justice when they are victims of corporate wrongdoing. AFJ urges the CFPB to finalize the proposed rule. However, to fully ensure our justice system protects consumers and holds corporations liable for misconduct, the CFPB must issue a future rule banning all pre-dispute arbitration clauses; both the right to join a class and the right to individual litigation in court are essential to accessing justice.

Sincerely,

Nan Aron
President, Alliance for Justice