NCLC National Consumer Law Center

Forced Arbitration: Harming California Consumers, Servicemembers, and Veterans

Forced arbitration clauses take away Californians' constitutional right to a day in court when companies break the law. Instead of a judge, a private arbitrator, often chosen and paid by the company, decides cases in a secretive proceeding with no appeal. Forced arbitration clauses often prevent people from joining together in class actions to fight widespread wrongdoing, giving lawbreakers a get-out-of-jail free card, as few people can afford to fight big companies by themselves.

Forced arbitration clauses harm California consumers of all stripes:

Servicemembers and veterans: Banks and lenders use forced arbitration clauses in loans issued to **California's roughly 184,540 active-duty servicemembers and reservists and to California's veterans.** Forced arbitration blocks servicemembers' access to the courts for violations of the Servicemembers Civil Relief Act and other misconduct, including illegal repossessions of active-duty servicemembers' vehicles. Wells Fargo also has arbitration clauses in many of the auto loan contracts that included illegal fees for unneeded auto insurance, including those of active duty servicemembers.

Bank account holders: Wells Fargo opened up to 3.5 million fake accounts – including **897,972 or more in California** – without customers' consent. Wells Fargo has tried since 2013 to use forced arbitration to block lawsuits, including a class action that would help those 897,972 or more Californians. Wells Fargo has also repeatedly tried to use forced arbitration to avoid justice for people in 49 states – **including California** – who were charged excess overdraft fees when their accounts were not overdrawn.

***Consumers with inaccurate credit reports:* Thousands of Californians** have filed complaints with the CFPB about problems with credit reporting agencies and errors in credit reports, which can increase the cost of a loan or result in a denial of credit. **Californians falsely matched with a terrorist watch list** will get $7,337 in relief from a class action against Transunion. But Transunion and other credit bureaus have tried to use forced arbitration to block class actions.

Payday loan borrowers: Over 98% of storefront payday lenders studied use forced arbitration clauses in their loan agreements. Annually, **Californians pay nearly $508 million** in fees associated with payday loans that put them in a cycle of debt. Payday lenders like ACE Cash Express have engaged in abusive lending and illegal debt collection practices.

Families subject to illegal and abusive debt collection practices: Debt collectors are a large part of **Californians' and servicemembers' complaints** to the CFPB, and Californians filed 68,615 complaints against debt collectors with the FTC in 2017. Out-of-state debt buyers often use illegal harassment and violate state law by adding illegal fees, but use forced arbitration clauses to block people from court to challenge those practices. Debt buyers also frequently sue the wrong person or seek the wrong amount but prevent people from suing back.

College students: **Californians** are among those harmed by predatory for-profit colleges, such as Corinthian Colleges, that for years have used forced arbitration clauses to block class actions over their fraudulent conduct. **California students also average $21,485** in public and private student loan debt and may be impacted by abuses by Navient (formerly Sallie Mae), the largest servicer of private student loans. Navient, which uses forced arbitration, allegedly failed to allocate payments properly and deceived borrowers about how to release co-signers. Californians may also fall prey to rampant abuses by sketchy student loan debt relief companies, which also use forced arbitration clauses to take away students' day in court.

Prepaid card users: More than a **quarter of Californians are unbanked or underbanked**, and many rural and low-income **Californians rely on prepaid cards** to manage their money. RushCard holders, **including 27,298 Californians, and servicemembers serving overseas,** were among those harmed when cards were frozen and people could not access their money for weeks. A class action will give class members up to $500 for losses and fees they suffered. The case could have been blocked by a forced arbitration clause, found in 92% of prepaid card contracts.

Forced arbitration harms Californians. Congress must restore Californians' day in court when big banks and bad actors violate the law.