

**The consumer and employment contracts in the selected cases below contain forced arbitration clauses and class action bans. The courts cited to the Supreme Court decisions *AT&T Mobility v. Concepcion* (2011) and/or *American Express v. Italian Colors Restaurant et al* (2013), and held that the class action bans in the arbitration clauses were enforceable. Because of the fine print, these cases could not go forward in court.**

***Am. Exp. Co. v. Italian Colors Rest., 133 S. Ct. 2304, 186 L. Ed. 2d 417 (2013)***

In re A2P SMS Antitrust Litig., 12 CV 2656 AJN, 2013 WL 5202824 (S.D.N.Y. Sept. 16, 2013)

Common short code (CSC) lessees sought to represent themselves and others in a class action against five of the six largest wireless service providers, cellular telecommunications and wireless services trade association (CTIA), alleging refusal to deal with any CSC lessees seeking to transmit application-to-person (A2P) short message service (SMS) through ten-digit numbers, conspiracy to force would-be CSC lessees to fix lease CSCs through coconspirator at artificially fixed, maintained, inflated or stabilized prices, to force lessees to connect to carrier defendants through aggregator defendants and pay unnecessary connectivity fees and inflated per-message fees, and to charge program review fees to CSC lessees at unnecessary and inflated prices, and conspiracy to monopolize market for transmission of A2P SMS, in violation of the Sherman Act.

Lloyd v. J.P. Morgan Chase & Co., 11 CIV. 9305 LTS, 2013 WL 4828588 (S.D.N.Y. Sept. 9, 2013)(some, not all plaintiffs)

Employees in New York and New Jersey sought to represent themselves and others in a class action alleging that the employer misclassified as “exempt” former Financial Advisors and Financial Advisor Associates and thus denied employees’ overtime compensation to which they were entitled, in violation of the Fair Labor Standards Act, the New York Labor Law, and the New Jersey Wage and Hour Law.

Feeney v. Dell Inc., 466 Mass. 1001 (Aug. 1, 2013)

Consumers in Massachusetts sought to represent themselves and others in a class action alleging that computer manufacturer had a systematic practice of charging and collecting from them and other Massachusetts residents monies falsely characterized as a lawful sales tax on the purchase of optional service contracts for computers constituting “unfair or deceptive acts or practices” in violation of Massachusetts’ consumer protection act.

Shetiwy v. Midland Credit Mgmt., 12 CIV. 7068 SAS, 2013 WL 3530524 (S.D.N.Y. July 12, 2013)

Consumers in New York sought to represent themselves and others in a class action alleging that banks, credit card companies, and debt collectors obtained thousands of judgments against debtors through false affidavits, misleading evidence, and other improper litigation tactics, in violation of the Racketeer Influenced and Corrupt Organizations Act (RICO), Fifth and Fourteenth Amendments, Fair Debt Collection Practices Act (FDCPA), and New York law.

***AT&T Mobility LLC v. Concepcion, 131 S. Ct. 1740, 179 L.Ed.2d 742 (2011)***

York v. Dodgeland of Columbia, Inc., 2011-199006, 2013 WL 4734569 (S.C. Ct. App. Sept. 4, 2013)

Consumers in South Carolina filed a complaint “for the benefit of all others,” and alleged that auto dealers conducted misleading business practices that culminated in the charging of illegal administration fees, which artificially raised the agreed purchase prices and, thereby, impermissibly increased the dealers’ profits.

Velazquez v. Sears, Roebuck & Co., 13CV680-WQH-DHB, 2013 WL 4525581 (S.D. Cal. Aug. 26, 2013)

Employee in California sought to represent herself and others in a class action alleging that the employer failed to pay minimum wages; failed to provide accurate statements and maintain required records; failed to pay all wages due to discharged or quitting employees; and unlawful business practices.

Shorts v. AT&T Mobility, 11-1649, 2013 WL 2995944 (W. Va. June 17, 2013)

Consumer from West Virginia sought to represent herself and others in a class action, which was a counterclaim to a debt collection lawsuit, alleging that the early termination fee and attempts to collect it required the payment of excessive and illegal fees, and violated multiple provisions of the West Virginia Consumer Credit and Protection Act.

In re Online Travel Co., 3:12-CV-3515-B, 2013 WL 2948086 (N.D. Tex. June 14, 2013)

Consumers sought to represent themselves and others in a class action alleging that online travel companies engaged in price fixing and conspired to set hotel room resale prices and that online travel websites agreed not to resell hotel rooms below this fixed price, which allowed online travel websites to deceive customers by

advertising the “best” or “lowest” prices, when in fact all companies were offering the same price, and which violated the Sherman Act.

*Machado v. System4 LLC*, 465 Mass. 508, 989 N.E.2d 464 (June 12, 2013)

Employees from Massachusetts sought to represent themselves and others in a class action alleging that franchisor and subfranchisors misclassified employees as franchisees/independent contractors, from whom defendants collected franchise fees, in violation of the Massachusetts Wage Act.

*McKenzie Check Advance of Florida, LLC v. Betts*, SC11-514, 2013 WL 1457843 (Fla. Apr. 11, 2013)

Borrower from Florida sought to represent herself and others in a class action alleging that payday lender was loaning money at usurious and exorbitant rates in violation of the Florida lending practices statute, Florida Consumer Finance Act, Florida Deceptive and Unfair Trade Practices Act (FDUTPA), and the Florida Civil Remedies for Criminal Practices Act (FCRCPA).

*Muriithi v. Shuttle Exp., Inc.*, 11-1445, 2013 WL 1287859 (4th Cir. Apr. 1, 2013)

Employee from Maryland sought to represent himself and others in a class action alleging that the employer improperly classified him as an “independent contractor” rather than an “employee”, entitling him to overtime pay and compensation at minimum wage, and violations of the Fair Labor Standards Act as well as various Maryland state laws.

*Vasquez v. Greene Motors, Inc.*, A134829, 2013 WL 1232343 (Cal. Ct. App. Mar. 27, 2013)

Consumer in California sought to represent himself against auto dealer and auto financing company alleging that auto dealer backdated a second retail installment sales contract (Contract) to the original date of sale, causing the financial terms of the Contract to be inaccurate, and violations of the Rees–Levering Automobile Sales Finance, the Consumers Legal Remedies Act, and the unfair competition law.

*Riensch v. Cingular Wireless LLC*, 2013 WL 951012 (W.D. Wash. Mar. 12, 2013)

Consumers sought to represent themselves and others in separate class actions alleging that wireless phone company breached its service contracts and was unjustly enriched by collecting the Washington State business and occupation tax as a surcharge from customers in violation the Washington Consumer Protection Act.

Vernon v. Qwest Communications Int'l, Inc., No. 09-CV-01840-RBJ-CBS, 2013 WL 752155 (D. Colo. Feb. 27, 2013)

Consumers in Washington sought to represent themselves and others in a class action against their internet service provider challenging the imposition of a \$200 early termination fee for canceling their Internet service before the end of the contract, regardless of their reasons for canceling service, time remaining on their alleged commitment, and lack of their signed agreement to such terms.

Ryan v. JPMorgan Chase & Co., 12 CV 4844 VB, 2013 WL 646388 (S.D.N.Y. Feb. 21, 2013)

Employee in New York sought to represent herself and others in a class action alleging that their employer failed to pay her and others similarly situated for overtime wages in violation of the Fair Labor Standards Act.

Miguel v. JPMorgan Chase Bank, N.A., CV 12-3308 PSG PLAX, 2013 WL 452418 (C.D. Cal. Feb. 5, 2013)

Employee from California sought to represent himself and others in a class action against alleging that the employer failed to timely pay wages owed under California Labor Code; failed to maintain and provide accurate itemized wage statements under California Labor Code; failed to reimburse necessary business expenses under California Labor Code; penalties under the Private Attorneys General Act; and violations of California's Unfair Competition Law.

Torres v. United Healthcare Servs., Inc., 12 CV 923 DRH ARL, 2013 WL 387922 (E.D.N.Y. Feb. 1, 2013)

Employees from New York sought to represent themselves and others in an action against alleging employer deprived its sales representative employees of earned overtime compensation in violation of the Fair Labor Standards Act and the New York Labor Law.

Outland v. Macy's Dep't Stores, Inc., A133589, 2013 WL 164419 (Cal. Ct. App. Jan. 16, 2013) (Listed as Unpublished/noncitable)

Employee from California sought to represent herself and others in a class action against her employer challenging the classification of her position with Macy's as exempt from the applicable wage orders in violation of the Fair Labor Standards Act.

Flores v. W. Covina Auto Group, 212 Cal. App. 4th 895, 151 Cal. Rptr. 3d 481 (Jan. 11, 2013)

Consumers in California sought to represent themselves and others in a class action against auto dealers alleging that manufacturer refused to buy back a vehicle, which was described as “certified” at the time of sale, after it experienced numerous problems and Toyota was unable to repair it or conform it to the express and implied warranties and violations of the Consumer Legal Remedies Act (CLRA), the Automobile Sales Finance Act, and California's Unfair Competition Law (UCL). Consumers also brought individual claims including fraudulent misrepresentation, negligent misrepresentation, and violations of the Song–Beverly Consumer Warranty Act, CLRA, and UCL.

Owen v. Bristol Care, Inc., 702 F.3d 1050 (8th Cir. 2013) (Filed: Jan. 7, 2013)

Employee from Missouri sought to represent herself and others in a class action alleging that employer deliberately misclassified administrators like herself as “exempt” employees for the purposes of state and federal overtime laws in violation of the Fair Labor Standards Act.

Botorff v. Amerco, 2:12-CV-01286-MCE, 2012 WL 6628952 (E.D. Cal. Dec. 19, 2012)

Consumer from California sought to represent herself and others in a class action against equipment rental company and its parent company alleging that rental company persuaded its competitors to raise their rental rates by threatening to lower its rates to a sub-competitive level in violation of California's Unfair Competition Law.

Davis v. Sprint Nextel Corp., 12-01023-CV-W-DW, 2012 WL 5904327 (W.D. Mo. Nov. 26, 2012)

Consumer from Missouri sought to represent herself and others in a class action against cell phone provider alleging that Sprint charged her and others with late fees when such late fees were not warranted, resulting in a breach of contract, breach of covenant of good faith and fair dealing, unjust enrichment and money had and received, fraud, fraudulent concealment, and violation of the Missouri Merchandising Practices Act.

Clemens v. GE Money Bank, 11-CV-00210, 2012 WL 5868659 (E.D. Wis. Nov. 20, 2012)

Consumers from Wisconsin sought to represent themselves and others in a class action alleging that a bank breached both the credit card agreements and the agreements governing the debt cancellation program, unjust enrichment, and intentional misrepresentation.

Steele v. American Mortg. Management Services, 2012 WL 5349511 (E.D.Cal. Oct. 26, 2012)

Employees from California sought to represent themselves and others in a class action alleging employer's failure to pay overtime as required, failure to pay full wages when due, failure to adhere to California record-keeping provisions, unfair business practices under California law, claims under the California Private Attorneys General Act, retaliation and whistleblowing violations under both California and federal law, violations of the Fair Labor Standards Act, and claims for equitable and injunctive relief.

Safadi v. Citibank, N.A., 2012 WL 4717875 (N.D.Cal., Oct. 02, 2012)

Consumer from California sought to represent himself and others in a class action alleging that their bank reported 30,000 airline miles valued at \$750 to the IRS, that the bank never informed him or other new customers similarly situated, that it would report the 30,000 miles to the IRS, how it would value the miles, and if the miles would expire or change value which constitutes fraudulent concealment, breach of contract, unjust enrichment, and violations of 2 U.S.C. § 7434, of California and other various states' consumer protection statutes.

Phillips v. Sprint PCS, 147 Cal.Rptr.3d 274 (Cal.App. 1 Dist. Sep. 26, 2012)

Consumer from California sought to represent himself and others in a class action against phone services provider alleging misrepresentation of cellular telephone rates in violation of the California Unfair Competition Law.

Kairy v. Supershuttle Intern., Inc., 2012 WL 4343220 (N.D.Cal. Sep. 20, 2012)

Employees from California sought to represent themselves and others in a class action against their employer alleging that they have not been paid minimum wages and overtime compensation in violation of the Fair Labor Standards Act and California state law.

Baldwin v. Regions Financial Corp. --- So.3d ----+ , [98 So.3d 1210] Fla.App. 3 Dist., Sep. 19, 2012)

Borrower from Florida sought to represent himself and others in a class action alleging that car loan lender sent correspondence to him and other debtors in envelopes that contained "Consumer Collections" printed on the outside, and that these envelopes were calculated to embarrass them in violation of the Florida Consumer Collection Practices Act.

Orman v. Citigroup, Inc., 2012 WL 4039850 (S.D.N.Y., Sep. 12, 2012)

Consumers from New York sought to represent themselves and others in a class action alleging that their bank failed to sufficiently secure its computer systems against intrusion, and that consumers' financial information was revealed to computer hackers when the bank suffered a security breach as a result of their careless security procedures, resulting in a breach of the implied warranty of merchantability and fitness for particular purpose; common law negligence; breach of state consumer protection statutes; fraudulent concealment; and unjust enrichment.

Fensterstock v. Education Finance Partners, 2012 WL 3930647 (S.D.N.Y., Aug. 30, 2012)

Consumer from New York sought to represent himself and others in a class action alleging that student loan lender and financing company improperly applied an undisclosed fee to his student loan and the loans of others.

Villano v. TD Bank, 2012 WL 3776360 (D.N.J. Aug. 29, 2012)

Consumer from New Jersey sought to represent himself and others in a class action against a bank, a franchise seller, and its parent corporation alleging that the bank approved a loan to consumer based upon a three year projection provided by the franchisor. Consumer further alleges that the franchisor then instructed the bank not to disclose the projection to consumer, as the franchise offer to consumer expressly stated that franchisor does not make any such representations and that the bank nevertheless knowingly participated in the scheme constituting, as to all defendants, common law fraud and civil conspiracy; and as to the bank, a violation of the New Jersey Consumer Fraud Act and the New York Deceptive Acts and Practices Act.

Schnuerle v. Insight Communications Co., L.P., 376 S.W.3d 561 (Ky., Aug. 23, 2012)

Consumers from Kentucky sought to represent themselves and others in a class action alleging that internet service provider failed to provide continuous internet service causing it to breach its contract with consumers, unjust enrichment, and violations of the Kentucky Consumer Protection Act.

Pendergast v. Sprint Nextel Corp., 691 F.3d 1224, (11th Cir.(Fla.) Aug. 20, 2012)

Consumer from Florida sought to represent himself and others in a class action against phone provider alleging the service provider charged improper roaming

fees for calls placed within the service provider's coverage areas and violation of the Florida Deceptive and Unfair Trade Practices Act.

Crewe v. Rich Dad Educ., LLC, 2012 WL 3240185 (S.D.N.Y., Aug. 03, 2012)

Consumers from Florida sought to represent themselves and others in a class action alleging that learning and education providers engaged in a scheme to defraud unwitting customers, via a “three-tiered sales pitch” in which customers are duped, via common misrepresentations, to enroll in a series of fictitious financial training programs with escalating costs, and bring claims for breach of contract, breach of the implied covenant of good faith and fair dealing, unjust enrichment, negligent misrepresentation, fraud, and violation of the Florida Deceptive and Unfair Trade Practices Act.

Luchini v. Carmax, Inc., 2012 WL 2995483 (E.D.Cal., Jul. 23, 2012)

Employee from California sought to represent himself and others in a class action against employer alleging failure to pay overtime and record hours worked, waiting time penalties, failure to provide accurate wage and hour statements, failure to provide meal and rest periods, unfair competition, breach of fiduciary duties, and violations of the Fair Labor Standards Act, California Wage Order No. 4–2001, and the Employee Retirement Income Security Act.

Knutson v. Sirius XM Radio Inc., 2012 WL 1965337 (S.D.Cal., May 31, 2012)

Consumer from California sought to represent himself and others in a class action alleging that satellite radio company placed several unsolicited telephone calls via an Automatic Telephone Dialing System to consumer’s phone and the phones of others in violation of the Telephone Consumer Protection Act.

De Oliveira v. Citicorp North America, Inc., 2012 WL 1831230 (M.D.Fla., May 18, 2012)

Employee from Florida sought to represent herself and others in a class action against alleging that employer misclassified employee’s position and the positions of others as exempt from applicable wage orders and violations of the Fair Labor Standards Act.

Coleman v. Jenny Craig, Inc., 2012 WL 3140299 (S.D.Cal., May 15, 2012)

Employees from California sought to represent themselves and others in a class action against employer alleging violations of the Fair Labor Standards Act and California state wage and hour laws.

In re Apple iPhone 3G Products Liability Litigation, 859 F.Supp.2d 1084 (N.D.Cal., May 09, 2012)

Consumers in California sought to represent themselves and others in a class action against alleging that cell phone company and service provider misrepresented the capabilities of the phone on the 3G data network and violations of California Unfair Competition Law, California Consumer Legal Remedies Act, and the Magnuson–Moss Warranty Act.

Simpson v. Pulte Home Corp., 2012 WL 1604840 (N.D.Cal., May 07, 2012)

Consumers from California sought to represent themselves and others in a class action against Pulte Home Corporation and Pulte Mortgage, LLC alleging intentional misrepresentation, concealment and negligent misrepresentation, and violation of California's Unfair Competition Law.

Morvant v. P.F. Chang's China Bistro, Inc., 2012 WL 1604851 (N.D.Cal., May 07, 2012) (partial)

Employees in California sought to represent themselves and others in a class action alleging that employer failed to provide meal and rest breaks, refused to pay for missed meal and rest breaks, failed to pay all overtime compensation due, and failed to provide accurate wage statements in violation of California Labor Code and other California laws.

Karp v. CIGNA Healthcare, Inc., 2012 WL 1358652 (D.Mass., Apr. 18, 2012)

Employee from Massachusetts sought to represent herself and others in a class action against employer alleging systematic gender discrimination in the workplace in violation of Title VII and Massachusetts General Laws.

In its 2012 report, *Justice Denied, One Year Later: The Harms to Consumers from the Supreme Court's Concepcion Decision Are Plainly Evident*, April 2012, Public Citizen identified 76 cases where the court enforced a class action ban and forced arbitration clause. They are available here: <http://www.citizen.org/documents/concepcion-anniversary-justice-denied-report.pdf>.