

Fair Arbitration NOW

End Forced Arbitration - www.FairArbitrationNow.org

Mr. Chris Poole
President and CEO
JAMS
1920 Main Street, Suite 300
Irvine, CA 92614

September 14, 2009

Dear Mr. Poole,

As a result of Minnesota Attorney General Lori Swanson's investigation and lawsuit against the National Arbitration Forum (NAF), NAF entered into a settlement whereby it agreed to exit the consumer arbitration industry. Attorney General Swanson also sent a letter to the American Arbitration Association (AAA) requesting that they do the same. In response, AAA agreed to temporarily cease hearing consumer debt collection cases. We agree wholeheartedly with Attorney General Swanson that pre-dispute mandatory arbitration is fundamentally unfair. Accordingly, we ask that you immediately stop taking all consumer, employment and franchise arbitrations that arise out of pre-dispute mandatory arbitration provisions.

Individual parties do not get a fair shake in arbitrations against corporate parties. Pre-dispute mandatory arbitration "agreements" are forced on consumers, employees, and franchisees. Individuals are presented with take-it-or-leave-it contracts that contain mandatory arbitration clauses, with no meaningful alternative. Corporations hold all the bargaining power and individuals are forced to give up their rights in order to purchase a basic product or service, take a job, or open a business. Often these provisions are buried in lengthy contracts or even sent out separately in disclosure notices or envelope stuffers. Many people do not even realize they are subject to mandatory arbitration.

Mandatory, pre-dispute arbitrations between a corporation and an individual will never be fair. Corporations insert these clauses into their form contracts with consumers, making them repeat players within a system that they designed. Conversely, most individual consumers have little or no knowledge of the mandatory arbitration system until it is too late to do anything about it. Thus, corporations have an unfair advantage based on their superior knowledge of the arbitration system. In addition, Attorney General Swanson's lawsuit illustrated how arbitrators have powerful incentives to favor the dominant party in arbitration. In the case of NAF, many arbitrators who issued awards against client companies would no longer receive new cases. Arbitrators also have a financial incentive to please their corporate clients to ensure that they will receive the repeat business that comes from being written into consumer contracts.

In the interest of consumer protection, the undersigned organizations request that you encourage voluntary, post-dispute arbitration by ceasing all consumer, employment, and franchise arbitrations arising out of pre-dispute mandatory arbitration provisions. JAMS was once the only alternative dispute resolution (ADR) provider who cared

enough about consumers not to enforce class-action bans in arbitration contracts, a policy which recognized the fact that class action proceedings are generally the only way a group of consumers can join their smaller claims together to hold a large corporation accountable for ripping off their customers. Unfortunately, you subsequently revoked this policy after Citibank and other creditors removed you as a potential arbitrator from their arbitration provisions. This change in policy made it significantly more difficult for consumers to vindicate their rights through ADR.

We now ask you once again show yourself to be a leader in the field of consumer protection among ADR providers and to stop accepting all consumer, employment, and franchise arbitrations arising out of pre-dispute mandatory arbitration provisions. If you stop accepting cases arising out of forced arbitration, individuals will truly be able to voluntarily choose whether arbitration is the best forum for their case.

Please join us, Attorney General Swanson, NAF and AAA in sending a powerful message to the ADR industry and to Congress that forced arbitration is unfair and requires immediate reform.

Sincerely,

Americans for Fairness in Lending (AFFIL)
American Association for Justice
Center for Responsible Lending
Consumer Action
Consumer Federation of America
Consumers Union
Home Owners for Better Building
Homeowners Against Deficient Dwellings
National Association of Consumer Advocates (NACA)
National Consumer Law Center (on behalf of its low income clients)
National Employment Lawyers Association
National Partnership for Women & Families
NCCNHR: The National Consumer Voice for Quality Long-Term Care
Public Citizen
Take Back Your Rights PAC
U.S. PIRG
Workplace Fairness

On behalf of the Fair Arbitration Now Coalition (www.fairarbitrationnow.org).

The organizations of the Fair Arbitration Now coalition represent millions of individual members interested in protecting the rights of all Americans - particularly the rights of consumers, employees, homeowners, and the elderly, as well as preserving our hard-won civil rights. We support ending the predatory practice of forced arbitration in consumer and non-bargaining employment contracts.