Justice Denied

One Year Later: The Harms to Consumers from the Supreme Court's *Concepcion* Decision Are Plainly Evident

April 2012

PUBLICCITIZEN

www.citizen.org

NACA
National Association of Consumer Advocates

www.naca.net

Acknowledgments

This report was written by Christine Hines, Consumer and Civil Justice Counsel of Public Citizen, Congress Watch division; Negah Mouzoon, Researcher for Public Citizen's Congress Watch division; and Taylor Lincoln, Research Director for Congress Watch. Public Citizen Litigation Group Director Allison Zieve and Public Citizen Litigation Group Senior Attorney Scott Nelson made significant editorial contributions based on their expertise on the subject matter. The National Association of Consumer Advocates also contributed to this report by providing review and commentary, expertise, and case examples of the effects of *Concepcion* on consumers. Public Justice attorney Paul Bland provided invaluable advice on the report from start to finish.

About Public Citizen

Public Citizen is a national non-profit organization with more than 250,000 members and supporters. We represent consumer interests through lobbying, litigation, administrative advocacy, research, and public education on a broad range of issues including consumer rights in the marketplace, product safety, financial regulation, safe and affordable health care, campaign finance reform and government ethics, fair trade, climate change, and corporate and government accountability.

About the National Association of Consumer Advocates

The National Association of Consumer Advocates (NACA) is a non-profit association of consumer advocates and attorney members who represent hundreds of thousands of consumers victimized by fraudulent, abusive and predatory business practices. As an organization fully committed to promoting justice for consumers, NACA's members and their clients are actively engaged in promoting a fair and open marketplace that forcefully protects the rights of consumers, particularly those of modest means.

Public Citizen's Congress Watch
215 Pennsylvania Ave. S.E.
Washington, D.C. 20003
P: 202-546-4996
http://www.citizen.org

The National Association of Consumer Advocates
1730 Rhode Island Avenue NW, Ste. 710,
Washington, D.C. 20036
Phone: (202) 452-1989
http://www.naca.net

© 2012 Public Citizen and National Association of Consumer Advocates. All rights reserved.

Contents

Introduction 4

I. Case Studies Illustrate the Harm *Concepcion* Has Inflicted on Consumers. 8

A. Claims That Previously Succeeded Against a for-Profit Education Institution Are Now in Jeopardy. 8

B. Subscribers to T-Mobile Data 'Unlimited' Plan Were Unable to Pursue Class Action to Seek Redress for Company's Secret Policy of Limiting Use. 12

C. Service Members Were Denied a Chance to Pursue a Class Action Seeking Reimbursement for Prepaid Amounts on Leased Cars, as Required By Federal Law. 14

II. Class Actions Provide a Vital Means for Consumers to Seek Redress for Harms. 17

A. Class Actions Provide a Means to Combat Illegal Payday Lending Practices. 17

B. Class Actions Provide a Procedure to Combat Uniform Bad Practices. 21

C. Numerous Class Actions Have Confronted Discriminatory Auto Lending. 23

D. Veteran Used a Class Action to Make the U.S. Government Comply with Debt Collection Laws. 26

III. Judges Report That *Concepcion* Has Tied Their Hands. 28

Kilgore et al. v. KeyBank, National Association (2012) 28

Robinson v. Title Lenders, d/b/a Missouri Payday Loans (2012) 29

Bernal v. Burnett (2012). 29

Willis v. Debt Care, USA, Inc. et al. (2011) 30

Conclusion 31

Appendix 32

Introduction

One year ago, the U.S. Supreme Court struck a devastating blow against a critical tool for protecting consumers' rights. The Court ruled in *AT&T Mobility LLC v. Concepcion* that corporations can bar consumers from pursuing cases as a class, even where state laws protect their right to do so.[1]

Concepcion was the latest in a series of decisions in which the Supreme Court has expanded the reach of the 1925 Federal Arbitration Act (FAA) in ways that Congress almost certainly never intended. The Court first placed arbitration on a pedestal in 1984, when it ruled in *Southland Corp. et al. v. Keating* that states cannot prohibit businesses from requiring disputes to be settled in binding arbitration, rather than in court.[2] Since *Southland*, corporations have increasingly imposed mandatory arbitration clauses on employees and consumers as a condition of getting a job or doing business. The use of such clauses has become ubiquitous in many industries, as Public Citizen reported in 2009.[3]

In *Concepcion*, the Supreme Court extended the reach of the FAA even further. The decision upheld the business practice of blocking consumers from bringing class actions by forcing them to arbitrate disputes and, in the forced arbitration provisions of their consumer contracts, barring arbitration on a class basis.

The decision provided corporations with a tool to insulate themselves from facing meaningful accountability for cheating large numbers of consumers out of amounts too small to make pursuing individual cases economically feasible. Since the decision, corporations have frequently invoked *Concepcion* to argue that consumers' claims should not be pursued collectively but, rather, individually. Courts have usually accepted these arguments. Using Westlaw's KeyCite service, this report identifies 76 potential class action cases where judges cited *Concepcion* and held that class action bans within arbitration clauses were enforceable.[4] [See Appendix] These cases undoubtedly would have included the claims of thousands—if not hundreds of thousands—of consumers.

By itself, forced arbitration is inherently unfair because the corporation usually chooses the private arbitration company that will handle its disputes, creating a clear conflict of interest. Additionally, corporations can write the rules that govern arbitration proceedings involving them—such as rules concerning fees, discovery rights, or hearing venues—giving

[1] *AT&T Mobility LLC v. Concepcion*, 563 U.S. ___ (April 27, 2011). Public Citizen attorneys acted as lead counsel for the Concepcions before the Supreme Court.
[2] *Southland Corp. v. Keating*, 465 U.S. 1, 10 (1984). "In enacting section 2 of the [FAA], Congress declared a national policy favoring arbitration and withdrew the power of the states to require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration."
[3] ZACHARY GIMA ET AL., PUBLIC CITIZEN, UNFAIR AND EVERYWHERE, 2009, http://bit.ly/IMCsCq.
[4] Public citizen analysis of decisions citing *Concepcion* in Westlaw.

them the ability to tilt the playing field. Corporations have refused entreaties from consumer groups to offer arbitration as a choice, not a mandate. If the process were truly fair, corporations would trust the market to decide.

Even under the FAA, however, states have the power to deny enforcement of arbitration provisions that are invalid under ordinary contract laws that apply to arbitration and non-arbitration agreements alike. One such rule is the principle of unconscionability, under which contract terms that are overly one-sided and oppressive can be struck down by a court. At the time of the *Concepcion* ruling, for example, courts in at least 19 states had used the unconscionability doctrine or similar legal principles to hold that corporations could not use arbitration provisions to bar consumers and employees from bringing class actions.[5]

Concepcion obliterated such state law. Citing the "national policy favoring arbitration," the Court's majority interpreted class actions as hostile to the institution of arbitration because it deemed them incompatible with the supposed streamlined nature of arbitration proceedings. Justice Antonin Scalia acknowledged the dissent's claim that "class proceedings are necessary to prosecute small-dollar claims that might otherwise slip through the legal system." But, Scalia wrote, "[s]tates cannot require a procedure that is inconsistent with the FAA …"[6]

Such a broad interpretation of the FAA is sure to inflict a serious toll. Class actions often enable groups of consumers or employees who have been wronged in the same way by the same company to pursue cases that would not be economically justifiable as individual actions. In contrast, bringing individual cases on behalf of large numbers of plaintiffs claiming identical damages would often be inefficient—so much so that many cases would never be brought because the costs of pursuing a case on behalf of an individual would exceed the potential recovery.

This report describes the value of class actions in providing consumers an opportunity to receive redress for wrongdoing. In recent years, as this report documents, class actions have been used to hold corporations accountable for illegal payday lending schemes, unfair business practices, and discriminatory auto lending, among other harmful practices. In the future, as a result of *Concepcion*, businesses that engage in the same activities may escape accountability.

In his dissenting opinion in *Concepcion*, Justice Stephen Breyer, writing for four Justices, described the consequences of the Court's decision using the example of a case in which a

[5] Robert Barnes, *Supreme Court Says Arbitration Agreements Can Ban Class-Action Efforts*, WASHINGTON POST, April 27, 2011, http://wapo.st/IRGi2j.
[6] *AT&T Mobility LLC v. Concepcion*, 563 U.S. ___ (April 27, 2011).

company cheated 17 million people out of $30 each. "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," Justice Breyer wrote, quoting Judge Richard Posner of the U.S. Court of Appeals for the Seventh Circuit.[7] Thus, in the absence of a class action option, this company would succeed in retaining $510 million in ill-gotten gains.

Indeed, the dispute in *Concepcion* matched Posner and Breyer's example almost perfectly. The case was brought by plaintiffs who were offered a free mobile telephone in exchange for purchasing AT&T's service. AT&T then charged the Concepcions $30.22 in taxes, based on the telephone's retail value.[8] The Concepcions believed this charge violated AT&T's promise to provide a free telephone and filed a class action lawsuit on behalf of themselves and the thousands of other customers who had paid similar charges for "free" phones. AT&T moved to compel arbitration, relying on the class-action ban in its contracts with consumers. Based on previous decisions holding class action bans unconscionable as a matter of California law, the Concepcions defeated AT&T's attempt to compel arbitration in the lower courts, but the Supreme Court reversed in favor of AT&T.

The Court's majority concluded that having to defend a class action in arbitration instead of court would be an unacceptable imposition on a corporate defendant because of the risk of error in arbitration, even though such a circumstance would only occur when the corporation elected to require disputes to be settled in arbitration in the first place.[9]

Under this reasoning, the mere possibility that a business might be saddled with an unjust, high-stakes loss in its preferred forum warranted a rule that will block many consumers from pursuing their claims at all.

The predictable effects of the *Concepcion* decision are already occurring. Corporations have increased their use of contractual language banning class actions, and judges have frequently cited *Concepcion* in dismissing consumer class action cases that would have gone forward before *Concepcion*. Some judges have lamented that the decision has stymied cases that plainly should be brought as class actions or likely could be pursued only as class actions.

As a result, consumers who allege wrongdoing by businesses face an increasingly treacherous legal landscape. This report chronicles three cases that illustrate the effects of *Concepcion*:

---

[7] Justice Stephen Breyer, dissenting opinion, *AT&T Mobility LLC v. Concepcion* , 563 U.S. ____ , (April 27, 2011) quoting from *Carnegie* v. *Household Int'l Inc.*, 376 F. 3d 656, 661 (2004).
[8] *AT&T Mobility LLC v. Concepcion*, 563 U.S. ____ (April 27, 2011).
[9] *Id.*

- Thousands of students who attended culinary schools owned by a for-profit educational company allege that they were lured into taking on tens of thousands of dollars in loans to attend the schools based on the schools' misrepresentations about job placement. Cases predating *Concepcion* were allowed to proceed, and one group has received a $40 million settlement.[10] The company revised the arbitration clause in its contracts with students to ban class actions. Now as a result of *Concepcion*, lawyers who pursued the earlier cases caution that more recent victims may not be able to find representation and seek justice on an individual basis, according to lawyers who brought the earlier cases.

- A member of the Army reserves who was deployed overseas returned a leased vehicle before the expiration of his contract period, as permitted under the Servicemembers Civil Relief Act (SCRA). The service member asked for reimbursement of the pro-rated share of advance payments he had made on his lease, as provided under SCRA, but the financing company refused. The service member sought to pursue a class action lawsuit, but was prevented from doing so on the basis of an arbitration clause in his contract that banned class actions. The judge reviewing the case expressed sympathy for the service member but said that he was bound by *Concepcion* to dismiss the class action.

- A T-Mobile cellular telephone customer who had purchased an "unlimited" text and Internet service plan was informed by the company that his bandwidth would be greatly reduced because of the amount of data that he downloaded. Because the customer believed that his agreement placed no restrictions on his "unlimited" plan, he filed a class action lawsuit. T-Mobile sought to block the case because, it said, the customer's contract contained an arbitration clause that banned class actions. A judge enforced the arbitration clause, including the class action ban, on the basis of *Concepcion*. "We, sadly, have turned away tens if not hundreds of case inquiries from consumers of T-Mobile and AT&T due to the arbitration clause," said Jenelle Welling, the customer's attorney.[11]

[10] Shannon Rasberry, *Recruiting for Student Loans Leads to $40 Million* Settlement with Cooking School, STUDENT LOAN SCAMS & SCANDALS, (Sept. 12, 2011), http://bit.ly/HMNuYX.
[11] E-mail from Janelle Welling to Public Citizen researcher, Negah Mouzoon, April 13, 2012, (On file with author).

I. Case Studies Illustrate the Harm *Concepcion* Has Inflicted on Consumers.

A. Claims That Previously Succeeded Against a for-Profit Education Institution Are Now in Jeopardy.

Synopsis: Career Education Corp. (CEC), a company that owns a chain of for-profit culinary schools, has been sued numerous times by students alleging that it misrepresented the earnings potential of its graduates, thereby causing the students to take on debilitating loans. Two class action lawsuits against CEC's San Francisco subsidiary resulted in a joint settlement in which the company agreed to reimburse students up to $20,000 each.[12] Cases involving similar allegations in Southern California and in Oregon are pending. But since the Supreme Court's ruling in *AT&T Mobility v. Concepcion*, CEC has inserted language in its contracts requiring students both to resolve disputes in arbitration and to waive their right to seek redress as a class. An attorney whose case in Oregon is pending said he has opted not to pursue cases on behalf of students with similar claims in Washington state and Minnesota because CEC's class action ban would be too difficult to overcome in light of *Concepcion*. Students around the country have made allegations against CEC similar to those in the cases that have made their way to court, but their chance of pursuing cases has been jeopardized by *Concepcion*.

Details: Career Education Corp. (CEC), a company that runs for-profit educational institutions, has been the subject of several lawsuits alleging that its culinary schools have provided fraudulent information to students to entice them to enroll.

In general, the lawsuits have alleged that recruiters for CEC's culinary schools have misrepresented the schools' job placement rates, exaggerated the schools' prestige, and falsely suggested that the schools had selective qualifying processes.[13] Many enrollees needed to take out tens of thousands of dollars in loans to pay for their programs. The lawsuits alleged that admissions recruiters led students to believe that upon graduation from a CEC culinary school, they would likely become chefs and have no trouble paying off their student loans on the salaries they were likely to earn. In two lawsuits, students alleged that they were told that they could expect to earn $18 an hour, or about $40,000 a year, upon graduation.[14]

---

[12] Terence Chea, *Culinary School Grads Claim They Were Ripped Off*, ASSOCIATED PRESS (Sept. 14, 2011), http://huff.to/HD3iPa.

[13] Tom McNichol, *Learning the Hard Way: For-profit Colleges Pay Dearly for Their Students' Discontent*, CALIFORNIA LAWYER (October 2011), http://bit.ly/HMa6t8.

[14] Fourth Amended Complaint and Demand for Jury Trial at 8, Vasquez, et al. v. California School of Culinary Arts, Inc., et al., No. BC393129 (Cal. Super. Ct. April 12, 2011) and Plaintiff's Opposition to Defendants' Motion to Compel Arbitration at 1, Alison Amador, et al. v. California Culinary Academy Inc., No. CGC-07-467710, (Cal. Super. Ct. March 23, 2010).

According to the lawsuits, students attending the schools typically emerged with debts in excess of $40,000 and were not able to obtain jobs that paid enough to provide a reasonable chance of repaying their loans.[15]

In the years leading up to the *Concepcion* decision, former students of CEC's culinary school in San Francisco filed two cases against the company, which resulted in a single settlement that provided thousands of students with compensation of up to $20,000 each. Similar cases filed against CEC subsidiaries in Pasadena, Calif., and Portland, Ore., are pending.[16] Students at CEC's culinary schools in many other states—including Illinois, Florida, Georgia, Nevada, Massachusetts, Minnesota, Missouri, Texas, and Washington—have made claims similar to those of students in California and Oregon.[17] However, in recent years, CEC has greatly increased its imposition of class action bans in its contracts with students.[18] Students who are bound by contracts prohibiting class actions will have far more difficulty receiving redress.

Two Class Action Cases Against CEC in San Francisco Resulted in Favorable Settlements for Students.

Plaintiffs alleged that admissions interviews "were specifically and carefully designed to require each salesperson to mislead each prospective student into believing that the school was selective, that admissions were competitive, and that [subsidiary California Culinary Academy (CCA)] was a highly respected institution that the applicant would be lucky to attend."[19] But, according to one of the lawsuits, CCA did not even have an admissions committee. The only admissions requirement, in reality, was a high school diploma or equivalent and an ability to pay.[20] The sales staff "showed each prospective student flip charts that suggested CCA graduates would avoid low paying jobs and long hours."[21] According to plaintiffs, the school's catalog promised that it would provide career services support for graduates throughout their careers. But "career services did little more than direct graduates to websites with job listings they could find for themselves."[22] Plaintiffs alleged that CEC's recruiters "were under great pressure to fill classes," leading many to resort misleading recruiting methods. "If a CCA salesperson could not fill his or her quota,

[15] Fourth Amended Complaint and Demand for Jury Trial at 9, Vasquez, et al. v. California School of Culinary Arts, Inc., et al., No. BC393129 (Cal. Super. Ct. April 12, 2011).
[16] *See*, *e.g.*, Fourth Amended Complaint and Demand for Jury Trial at 8, Vasquez, et al. v. California School of Culinary Arts, Inc., et al., No. BC393129 (Cal. Super. Ct. April 12, 2011) and Fourth Amended Complaint at 12, Alison Amador, et al. v. California Culinary Academy, Inc., No. CGC-07-467710, (Cal. Super. Ct. March 23, 2010).
[17] Telephone interview with Ray E. Gallo, Managing Partner, Gallo & Associates LLP (April 13, 2012).
[18] *Id.*
[19] Fourth Amended Complaint at 12, Alison Amador, et al. v. California Culinary Academy Inc., No. CGC-07-467710 (Cal. Super. Ct. March 23, 2010).
[20] *Id.*, at 18.
[21] *Id.*, at 12.
[22] *Id.*, at 4.

he or she was terminated. And to meet CCA's endless need for students and their money, CCA and its salespeople committed the frauds alleged in this complaint," plaintiffs said. [23]

According to one of the lawsuits, an applicant to the San Francisco school was told that 97 percent of its culinary arts graduates were placed in jobs.[24] This representation was untrue, the plaintiffs charged, because it counted placements in unskilled entry-level jobs (the substantial majority of which paid $12 or less), which could have been obtained without the school's degree.[25] Under California's Private Postsecondary Education Reform Act of 1989, such unskilled placements "could not legally be counted … because they were not cases to which CCA training was represented to lead," plaintiffs charged.[26]

CEC sought to block the class action lawsuit on the basis that its contracts had an arbitration clause. But its contracts did not include class action ban.[27] In the Superior Court of California, the judge held the arbitration clause was procedurally and substantively unconscionable and therefore unenforceable because the contact had "several one-sided terms."[28] He allowed the case to proceed in court.

The two class action lawsuits against CEC's San Francisco culinary school subsidiary resulted in a joint settlement of $40 million.[29] The company agreed to reimburse 8,500 students who attended the culinary schools between 2003 and 2008 up to $20,000 each.[30]

Cases Against CEC Institutions in Portland, Ore., and Pasadena, Calif., Are Pending.

Pending cases against CEC in Pasadena, Calif., and in Portland, Ore., were filed prior to the Supreme Court's *Concepcion* decision and included allegations similar to those in the San Francisco cases.[31] Shortly after the Supreme Court's ruling in *Concepcion*, CEC filed motions seeking to force pending cases into arbitration.

In the Pasadena case, the Superior Court denied CEC's motion to compel arbitration because CEC had been litigating the case for the previous three years and thus, the court

[23] *Id.,* at 12.
[24] *Id.*
[25] *Id.*, at 3.
[26] *Id.*
[27] Telephone interview with David F. Sugerman, David F. Sugerman, Attorney, PC, (April 12, 2012).
[28] Tentative Ruling: Defendant's Motion to Compel Arbitration, Alison Amador, et al. v. California Culinary Academy, Inc., No. CGC-07-467710, (Cal. Super. Ct. Feb. 27, 2008).
[29] Shannon Rasberry, *Recruiting for Student Loans Leads to $40 Million Settlement with Cooking School*, STUDENT LOAN SCAMS & SCANDALS (Sept. 12, 2011), http://bit.ly/HMNuYX.
[30] Terence Chea, *Culinary School Grads Claim They Were Ripped Off*, ASSOCIATED PRESS (Sept. 14, 2011), http://huff.to/HD3iPa.
[31] *See* Plaintiff Nathan Surrett's Opposition to Defendants' Motion to Compel Arbitration and Dismiss Action, Surrett, et al. v. Western Culinary Institute, LTD. and Career Education Corporation, Inc., et al., No. 0803-03530 (Ore. Cir. Dec. 15, 2010) and Fourth Amended Complaint and Demand for Jury Trial, Vasquez, et al. v. California School of Culinary Arts Inc., et al., No. BC393129 (Cal. Super. Ct. April 12, 2011).

concluded, had waived its right to compel arbitration.[32] In the Oregon case, the court likewise denied CEC's motion to compel arbitration.[33]

The Pasadena lawsuit claimed that graduates of the CEC culinary school "had a less than 2 percent chance of ever becoming chefs."[34] The plaintiffs' complaint, filed on behalf of six former students, stated that "most will never be able to pay off this debt, even if they work all their lives. In effect, plaintiffs and class members have been put in a position of indentured servitude, as under current law, student loans are not dischargeable, in whole or in part, in bankruptcy."[35]

The lawsuit against CEC's subsidiary in Portland, Ore., alleged that admissions recruiters claimed that more than 90 percent of graduates ended up with a job upon graduation. However, CEC allegedly concealed earnings data in Oregon that showed the vast majority of these placements barely paid above minimum wage, according to the plaintiffs.[36] CEC's practice of counting jobs that did not require CEC training as "placements" violated Oregon law, plaintiffs alleged.[37] The lawsuit seeks refunds for the class members on the ground that students would not have enrolled in CEC's program if they knew the truth.[38]

More Recent Students May Be Blocked from the Civil Justice System.

The ruling in *Concepcion* poses a serious threat to the prospects of obtaining redress for other students treated similarly to those involved in the San Francisco, Pasadena, and Portland lawsuits. Until recently, CEC's contracts did not typically include language in its contracts requiring students to give up their rights to pursue legal remedies as a class. Now they do.[39]

The attorney representing plaintiffs in the Oregon class action recently said he would not bring cases on behalf of students with similar claims in Washington State and Minnesota because, in light of *Concepcion*, it would be too difficult to overcome the class action ban the company is now including in its contracts.[40]

[32] Telephone Interview with Ray E. Gallo, Managing Partner, Gallo & Associates, LLP (April 13, 2012).
[33] Telephone Interview with David F. Sugerman, David F. Sugerman, Attorney, PC (April 12, 2012).
[34] Fourth Amended Complaint and Demand for Jury Trial at 16, Vasquez, et al. v. California School of Culinary Arts, Inc., et al., No. BC393129 (Cal. Super. Ct. April 12, 2011).
[35] Fourth Amended Complaint and Demand for Jury Trial at 9, Vasquez, et al. v. California School of Culinary Arts, Inc., et al., No. BC393129 (Cal. Super. Ct. April 12, 2011).
[36] Re: Jennifer Adams v. Western Culinary Institute, et at. at 5, No. 0803-03530 (Ore. D.C. Nov. 25, 2009).
[37] Telephone Interview with David F. Sugerman, David F. Sugerman, Attorney, PC (April 12, 2012).
[38] Matt O'Donnell, *California Culinary Academy Class Action Settlement*, TOP CLASS ACTIONS (May 06, 2011), http://bit.ly/J5qxBM.
[39] Telephone interview with David F. Sugerman, David F. Sugerman, Attorney, PC, (April 12, 2012).
[40] *Id.*

Likewise, the plaintiffs' attorney in the Pasadena case said that he is aware of students with similar claims in Boston, Chicago, Dallas, Las Vegas, Miami, Minneapolis, St. Louis, Sacramento, and other cities. Given the hurdles presented by *Concepcion*, they may have difficulty finding lawyers to take their cases, he said.[41]

B. Subscribers to T-Mobile Data 'Unlimited' Plan Were Unable to Pursue Class Action to Seek Redress for Company's Secret Policy of Limiting Use.

Synopsis: Subscribers to T-Mobile's "unlimited" data plan were promised unlimited web access and text messaging. But T-Mobile had a secret policy of slowing down the service provided to high-volume users. T-Mobile also included forced arbitration clauses and a ban on class actions in its contracts. A customer, Trent Alvarez, attempted to pursue a class action lawsuit, arguing that the class action ban was unconscionable, but the judge ruled that *Concepcion* foreclosed an unconscionablity challenge to the class action ban. The customer also presented evidence that he had never seen, and therefore had not agreed to, the arbitration clause, and the judge ruled that he was entitled *to* a hearing in court to determine whether he was bound by the clause at all. Before the hearing could be held, T-Mobile settled with him. Others who were subject to the same treatment as Alvarez will likely receive no compensation.

Details: In 2009, Trent Alvarez visited a T-Mobile store in Palo Alto, Calif., to activate an "unlimited" cellular phone plan with two phone lines, in part to communicate with the doctors for his two-year old daughter, who was in need of dialysis, and a kidney and liver transplant.[42] Under a two-year contract, Alvarez's cell phone plan offered unlimited web access and text messaging.[43]

Less than a year into his contract, Alvarez received a text message from T-Mobile informing him that his data usage had exceeded a certain cap and that the speed of data sent to his phone would be reduced.[44] As it did with all of its unlimited data plan subscribers, T-Mobile had imposed a cap on Mr. Alvarez's data usage and had slowed down the speed of his service.[45] Alvarez said he had not been informed previously of limits placed on his "unlimited" data plan.[46]

[41] Telephone interview with Ray E. Gallo, Managing Partner, Gallo & Associates, LLP, (April 13, 2012).
[42] Declaration of Trent Alvarez in Support of Plaintiff's Opposition to Defendant's Motion to Compel Arbitration at 2, Alvarez v. T-Mobile, Inc., Civ. No. 02373-WBS-GGH (Calif. E. D. Aug. 29, 2011).
[43] *Id.*
[44] Declaration of Trent Alvarez in Support of Plaintiff's Opposition to Defendant's Motion to Compel Arbitration at 3, Alvarez v. T-Mobile, Inc., Civ. No. 02373-WBS-GGH (Calif. E. D. Aug. 29, 2011); Complaint at 20, Alvarez v. T-Mobile, Inc., Civ. No. 10-1895 (Calif. E. D. July 27, 2011).
[45] Complaint at 20, Alvarez v. T-Mobile, Inc., Civ. No. 10-1895 (Calif. E. D. July 27, 2011).
[46] *Id.*

Alvarez filed a putative class action complaint, claiming that T-Mobile violated numerous California laws, including the state's false advertising law, because "reasonable consumers are likely to be misled by T-Mobile's promise of 'unlimited' data."[47] His complaint, filed on behalf of all T-Mobile unlimited plan customers, stated that "If a consumer exceeds the undisclosed cap, T-Mobile cuts off access to 3G networks and forces consumers' phones to operate on slow data speeds."[48]

In 2011, in response to the complaint, T-Mobile moved to compel arbitration and asked the judge to suspend the case until the Supreme Court ruled in *AT&T Mobility v. Concepcion*.[49] The company stated that when Alvarez signed an electronic signature pad at the T-Mobile store to purchase the phone, he had signed a forced arbitration agreement with a class action ban.[50]

According to Alvarez's court filings, "nothing that he saw ever alerted him to the existence of an arbitration agreement or to the incorporation of T-Mobile's Terms and Conditions."[51]

The court acknowledged that there was a clear dispute as to whether the parties "formed an agreement to arbitrate."[52] Nonetheless, the court stayed Alvarez's case until a decision in *Concepcion*.[53]

After the *Concepcion* decision was issued, the court held, "in the wake of Concepcion, the decision has been interpreted to bar challenges to arbitration agreements on the grounds that they contain class action waivers ... To the extent that [Alvarez] relies on the argument that the prohibitions on public injunctive and declaratory relief and on punitive damages are unconscionable because they undermine pro-consumer policies, those arguments are not viable post-*Concepcion* because state laws advancing those policies are preempted by the FAA."[54]

The court therefore rejected Alvarez's argument that the class-action ban in the arbitration agreement was unenforceable. However, Alvarez's individual argument against being forced into arbitration retained some life. He had provided enough evidence that he had never agreed to an arbitration clause that the court deemed a hearing necessary on the question whether he was bound by the clause at all. Before the hearing on that question

[47] *Id.*, at *16.*
[48] *Id,*. at 1.
[49] *See* Defendant's Memorandum in Support of Motion to Compel Arbitration and Stay Claims, Alvarez v. T-Mobile, Inc., Civ. No. 2:10-02373-WBS-GGH (Calif. E. D. Oct. 1, 2010).
[50] Memorandum and Order Re: Motion to Compel Arbitration and Stay Claims at 2, Alvarez v. T-Mobile Inc., Civ. No. 2:10-02373-WBS-GGH (Calif. E. D. Dec. 21, 2011).
[51] *Id.*, at 18.
[52] *Id.*
[53] *Id.*, at 6.
[54] *Id.*, at 11, 14-15.

could be held, T-Mobile agreed to a confidential settlement.[55] The vast majority of customers with the same complaint about T-Mobile's purported unlimited data plan are unlikely to receive redress.

"We, sadly, have turned away tens if not hundreds of case inquiries from consumers of T-Mobile and AT&T due to the arbitration clause," said Jenelle Welling, Alvarez's attorney.[56]

Alvarez's case is similar to one involving Verizon Wireless. New York Attorney General Andrew Cuomo in 2007 investigated Verizon Wireless for "deceptive marketing of its internet usage plans" because it had marketed Internet data plans as "unlimited" but had imposed hidden restrictions and abruptly terminated service for more than 13,000 customers for what the company deemed excessive use.[57]

"When consumers are promised an 'unlimited' service' they do not expect the promise to be broken by hidden limitations," Cuomo said.[58]

Verizon Wireless settled the investigation by reimbursing $1 million to customers who had their accounts wrongly terminated and paying the state of New York and a $150,000 penalty. The decision of Verizon Wireless to settle in cases with facts very similar to those in the situation involving T-Mobile and Alvarez shows that T-Mobile's practice was likely illegal. Without class action litigation offering a meaningful alternative, consumers will increasingly have to rely on state attorneys general for any chance for redress for wrongdoing. It is unlikely that attorneys general will have the resources to effectually pursue such claims in most cases.

C. Service Members Were Denied a Chance to Pursue a Class Action Seeking Reimbursement for Prepaid Amounts on Leased Cars, as Required By Federal Law.

Synopsis: Mathew Wolf, a member of the Army reserves, terminated the lease of his vehicle when he was ordered to active duty and deployed overseas, as allowed by the Servicemembers Civil Relief Act (SCRA). The auto company, Nissan Motor Acceptance Corp., accepted the car but refused to reimburse the pro-rated amount that Wolf had paid toward future monthly payments when he signed the lease. The statute requires such reimbursement. Wolf brought a class action lawsuit on behalf of himself and other in the military who were deployed overseas while they had leases on Nissan vehicles. Nissan

[55] Telephone Interview with Jenelle Welling, Attorney, Bramson, Plutzik, Mahler & Birkhaeuser LLP, (April 13, 2012).
[56] E-mail from Janelle Welling to Public Citizen researcher, Negah Mouzoon, April 13, 2012 (on file with author).
[57] ATTORNEY GENERAL OF THE STATE OF NEW YORK INTERNET BUREAU, IN THE MATTER OF VERIZON WIRELESS, ASSURANCE OF DISCONTINUANCE (Oct. 22, 2007).
[58] Press Release, Attorney General of the State of New York Internet Bureau, Verizon Wireless Agrees to Settle Deceptive Marketing Investigation (Oct. 23, 2007).

moved to dismiss the case on the basis of its arbitration clause and class action ban. Wolf argued that the arbitration clause was unconscionable. A judge found Wolf's case sympathetic but concluded that the ruling in *Concepcion* left him no choice but to prohibit the class action from going forward.

Details: In November 2006, Mathew Wolf, a captain in the Judge Advocate General's Corps of the United States Army Reserves, signed an agreement to lease a Nissan Infiniti car for 39 months.[59] He paid $595 toward future monthly payments and also prepaid other charges that he could have paid on a monthly basis instead.[60]

About a year into the lease, Wolf was ordered to active duty and deployed overseas. Under a provision of the Servicemembers Civil Relief Act (SCRA), reservists and National Guard members are entitled to terminate automotive leases without penalty. Further, "lease amounts paid in advance for a period after the effective date of the termination of the lease shall be refunded to the lessee by the lessor," the law says.[61] In 2007, Wolf invoked his right under SCRA to return the car and terminate the lease.[62] Nissan Motor Acceptance Corp. ("Nissan") accepted the car but refused to refund to Wolf the money he had paid in advance.[63]

In 2010, Wolf filed a class action lawsuit on behalf of himself and other service members who were similarly affected by Nissan's refusal to reimburse service members for prepaid fees on leases of automobiles they returned prematurely.[64]

The contract for Wolf's lease contained a forced arbitration clause and a class action ban: "If a dispute is arbitrated, you will give up your right to participate as a class representative or a class member on any class claim you may have against us including any right to class arbitration or any consolidation of individual Arbitrations."[65]

Nissan responded to the class action lawsuit by moving to compel individual arbitration.

In response, Wolf cited a New Jersey Supreme Court ruling (*Muhammad v. County Bank of Rehoboth Beach*) that concluded that a "class action waiver becomes 'problematic when the waiver is found in a consumer contract of adhesion in a setting in which disputes between

[59] Opinion at 2, Wolf v. Nissan Motor Acceptance Corporation, No. 10 Civ. 3338 (D.N.J. June 22, 2011), http://bit.ly/I3xSCk.
[60] *Id.*
[61] Servicemembers Civil Relief Act, § 305, 50 U.S.C. App. § 535.
[62] Opinion at 2, Wolf v. Nissan Motor Acceptance Corporation, No. 10 Civ. 3338 (D.N.J. June 22, 2011), http://bit.ly/I3xSCk.
[63] *Id.*, at 3.
[64] *Id.*
[65] *Id.*, at 8.

the contracting parties predictably involve small amounts of damages.'"[66] Wolf argued that the Nissan arbitration clause was unconscionable and thus unenforceable.

The court noted that "Wolf's argument and authority are persuasive,"[67] but concluded that *Concepcion* required it uphold the arbitration clause, including the ban on class actions.

"Based on the United States Supreme Court's holding and reasoning in [*Concepcion*], the court cannot find that any public interest articulated in this case, either in connection with the SCRA or New Jersey law, overrides the clear, unambiguous, and binding class action waiver included in the parties' arbitration agreement," the judge wrote. "New Jersey precedent notwithstanding, the court is bound by the controlling authority of the United States Supreme Court."[68]

Wolf's attorney, Thomas Booth, estimated that, had the case been permitted to proceed as class action, the class may have included more than 1,000 service members whom Nissan had treated similarly to Wolf.[69]

Wolf may pursue arbitration to seek a refund for himself for the prorated prepaid amount at stake in his case, which is about $250. But the other affected service members, most of whom are likely unaware of the mandatory refund provision they are entitled to under SCRA, will not receive compensation. Booth claims that withholding prorated refunds is an industry-wide practice, resulting in millions of dollars of denied refunds. He is also pursuing another class action complaint against Ford Motor Co. Ford has also moved to dismiss the case and compel arbitration on the basis of *Concepcion*.[70]

Booth also represents service members suing BMW for the same practice. BMW did not include a class action ban in its contract, and the case is moving forward as a class action.[71]

[66] *Id.*, at 16.
[67] *Id.*
[68] *Id.*, at 17.
[69] Telephone Interview with Thomas T. Booth, Jr., Esquire, Attorney, Law Offices of Thomas T. Booth, Jr., L.L.C., (April 16, 2012).
[70] *Id.*
[71] *Id.*

II. Class Actions Provide a Vital Means for Consumers to Seek Redress for Harms.

Class actions are a critical device for redress in situations in which a company's practices harm thousands of consumers, particularly when the harm amounts to a small-dollar loss for each consumer. This is because most individuals would not seek to recover a small loss on their own, and few could find a lawyer willing to litigate such a case on behalf of one consumer. Therefore, unless plaintiffs are able to pursue collective action, the company can escape accountability and leave consumers without redress. This section provides case studies of several types of examples in which class actions have permitted consumers to obtain remedies for systemic harms.

A. Class Actions Provide a Means to Combat Illegal Payday Lending Practices.

Abusive payday lending practices provide a good example of the value of class actions for litigating small losses. Payday loans are short-term, extremely high-interest unsecured loans, also called cash advances. Payday borrowers, who are typically seeking emergency loans, promise to repay the advance out of their next paycheck or regular income payment.[72] Finance charges for a $100 loan typically range from $15 to $30. Charges for a two-week loan can result in annualized interest rates of 400 percent or more.[73]

At the end of the short loan period, many borrowers find it difficult to pay back the loan amount and the lender's fee. To avoid defaulting, borrowers often pay fees to "roll over" loans or opt to take out new loans to pay off older ones. The Center for Responsible Lending (CRL) estimates that "this churning of existing borrowers' loans every two weeks accounts for three-fourths of all payday lending," setting up borrowers for failure and lenders for more business.[74] CRL further estimates that "91 percent of all payday loans are made to repeat borrowers trapped in a cycle of debt with five or more payday loans per year."[75]

Some payday lenders have come under scrutiny for abusive or illegal practices. For example, some have made unauthorized debits from consumers' checking accounts or used aggressive methods to collect debts, such as "posing as federal authorities, threatening borrowers with criminal prosecution, trying to garnish wages improperly, and harassing

[72] Federal Deposit Insurance Corp., An Update on Emerging Issues in Banking, Payday Lending, January 2003, http://1.usa.gov/J9BTXX.
[73] Consumer Federation of America, Payday Loan Consumer Information, http://bit.ly/I9ZKpA .
[74] LESLIE PARRISH AND URIAH KING, CENTER FOR RESPONSIBLE LENDING, PHANTOM DEMAND: SHORT-TERM DUE DATE GENERATES NEED FOR REPEAT PAYDAY LOANS, ACCOUNTING FOR 76% OF TOTAL VOLUME, Executive Summary (July 9, 2009), http://bit.ly/K2OU1H.
[75] Brief Amicus Curiae for The Center for Responsible Lending in Support Of Plaintiffs-Appellants' Brief, John R. Kucan, Jr. and Terry Coates (on Behalf of Themselves and all Other Persons Similarly Situated) v. Advance America et al., No. COA06-447 (North Carolina Court of Appeals June 9, 2006).

the borrower as well as their families, friends, and co-workers."[76] Potential compensation for consumers seeking to hold a payday lender accountable for these abuses generally would be too small for individuals to pursue on their own. Class action lawsuits offer a means to address the wrongdoing more efficiently by combining the claims of hundreds or thousands of consumers into one case.

In 2011, hundreds of thousands of North Carolina consumers benefited from three class action settlements against payday lenders. The lawsuits, which began in 2004, alleged that payday loan businesses Advance America,[77] Check 'N Go,[78] and Check Into Cash[79] charged illegal fees and interest rates to borrowers—and also operated in violation of a North Carolina law that bans payday lending.

Consumers in the case against Advance America had borrowed $500 or less for terms of 10 to 30 days. According to the allegations in the complaints, the finance charges for the loans amounted to more than 400 percent annual percentage rate (APR).[80]

In 2001, Advance America operated 126 stores in the state under the names of "Advance America," "Cash Advance Centers," and "National Cash Advance" and brought in $31 million in annual revenue, the complaint alleged.[81] After North Carolina banned the loans in 2001, the complaint alleged that Advance America sought to evade the ban by entering into arrangements, known as "rent-a-charter," to become an "agent" of banks chartered in other states.[82]

Other payday lenders, such as Check 'N Go and Check Into Cash, pursued a similar course. Class action complaints alleged that these businesses violated North Carolina's prohibition on payday lending and issued loans carrying finance charges and interest rates totaling more than 400 percent APR, in excess of North Carolina's permitted limits. The consumers also alleged that the companies engaged in unfair trade practices by requiring customers to provide personal checks as security deposits despite being aware that the customers lacked the funds to honor the checks, and that the loans were structured in a way that

[76] Prepared Remarks by Richard Cordray, Director of the Consumer Financial Protection Bureau Payday Loan Field Hearing, Birmingham, Ala. (Jan. 19, 2012), http://tinyurl.com/7mu3hwb.
[77] Complaint, *Kucan v. Advance America*, *Cash Advance Centers of North Carolina, Inc.*; *Advance America, Cash Advance Centers, Inc.; and William M. Webster, IV* (New Hanover Cty, North Carolina, Sup. Ct. Div., 04-CVS-2860), filed July 27, 2004, http://bit.ly/IqxbD.
[78] Complaint, *McQuillan v. Check 'N Go of North Carolina, Inc., CNG Financial Corp., Jared A. David and A. David Davis* (New Hanover Cty, North Carolina, Sup. Ct. Div. , 04-CVS-2858), filed July 27, 2004, http://bit.ly/JQiszv.
[79] *Hager v. Check Into Cash of North Carolina, Inc., Check Into Cash, Inc., Jones Mgmt. Serv., W. Allan Jones and Stephen M. Scoggins* (New Hanover Cty, North Carolina, Sup. Ct. Div. , 04-CVS-2859), filed July 27, 2004, http://bit.ly/I7SQxA .
[80] Kucan Complaint, at 18.
[81] *Id.*, at 10.
[82] *Id.*, at 13.

made it "difficult for consumers to pay in full at the end of the loan period without needing to borrow again before the next payday."[83]

To receive the loans, consumers signed "customer agreements" that required them to enter into arbitration to resolve disputes with the companies. The contracts also forbade participation in class actions. Although the contracts allowed claims to be heard in a "small claims tribunal," they stipulated that appeals would have to be heard in arbitration.[84]

A trial court in North Carolina struck down the class action bans in the payday lending contracts, finding that arbitration would shield the bad business practices while leaving the consumers without recourse.[85] The court offered several justifications for its rulings:

> (1) Because the amount of recovery per consumer was relatively small, individual arbitration of small claims would prevent consumers from obtaining adequate legal counsel to pursue their claims.[86]
>
> (2) Every payday lender doing business in North Carolina required individual arbitration.[87]
>
> (3) There had been no arbitrations filed against any of the three lenders (Advance America, Check Into Cash, and Check 'N Go), showing that the arbitration clauses and class action bans unjustly freed the companies from liability.[88]
>
> (4) Consumers could not obtain short-term loans without signing contracts with arbitration clauses, depriving them of meaningful choice.[89]
>
> (5) The contracts were one-sided and non-negotiable.[90]

The court's decision gave thousands of affected consumers a chance to seek compensation through the civil justice system. The three cases, on behalf of consumers who had entered into one or more payday loan transactions at the payday lending offices, were settled between September 2010 and December 2010.[91]

---

[83] *Id.*, at 27.
[84] *Kucan v. Advance America*, Order denying defendant's motion to compel arbitration and stay proceedings, at 6 (June 26, 2009).
[85] *Kucan v. Advance America* Order; *Hager v. Check Into Cash*, Order (June 26, 2009); *McQuillan v Check 'N Go*, Order denying motion to compel arbitration (July 9, 2009).
[86] Advance America Order*, at 10.* Check Into Cash Order, at 10.
[87] See, Advance America Order, at 7.
[88] *Id.*, at 7, 10*;* Check Into Cash Order*,* at 11.
[89] Advance America Order, at 11; Check Into Cash Order, at 8 ; Check 'N Go, Order, at 8.
[90] See, Check Into Cash Order, at 8*.*
[91] Check Into Cash Settlement Agreement, at 19-20.

The Advance America class action had 135,136 participants.[92] The court approved the settlement of $18.8 million in October 2010.[93] The class received $12 million, a minimum of $10 per person. The remainder was largely directed to the payment of attorney's fees and expenses and class administration costs.[94]

Payday lender Check 'N Go settled its case involving 118,906 class members[95] for $14 million.[96] After deduction for expenses, attorney fees and costs of administration, $8.8 million was available for the class members.[97] To the extent that class members could not be located, the funds designated for the missing class members were distributed to those class members who could be located. Each class member received payments ranging from $10 to hundreds of dollars.[98]

The class action against Check Into Cash involved 109,000 class members and settled for $12 million.[99] After deduction for expenses, attorney fees and costs of administration, $7.5 million was available for distribution to class members.[100] The settlement amounts in each case are being divided among class members in proportion to the fees paid by each class member, ranging from $10 to hundreds of dollars to all class members who paid any payday fees.[101]

The payday lenders previously had been forced by North Carolina to stop making illegal loans in the state.[102] The class actions reimbursed hundreds of thousands of consumers who had paid illegal fees and interest. The payday lenders also agreed not to make any claims or reports to credit agencies regarding payday loans they administered.[103] This illustrates the potential for class action litigation to serve the public by halting unfair practices as well as providing compensation to consumers harmed by wrongdoing.

[92] Kucan v. Advance America, Status Report and Motion for approval of additional class member location efforts (Dec. 2, 2011), at 2.
[93] Id. Advance America Order Preliminarily Approving Class Settlement.
[94] Advance America Order Preliminarily Approving Class Settlement, at 14.
[95] McQuillan v. Check 'N Go, Status Report and Motion for approval of additional class member location efforts, dated Dec. 2, 2011, at 2.
[96] Check 'N Go Settlement, at 7.
[97] Check 'N Go Class Notice, dated January 27, 2011, at 1.
[98] Check 'N Go Settlement Agreement, at 13.
[99] Check Into Cash Settlement Agreement, (December 2010), at 8.
[100] Check Into Cash Notice of Settlement to class members.
[101] Check Into Cash Settlement Agreement (December 2010).
[102] Payday Lending On The Way Out In NC, March 1, 2006, http://bit.ly/IfwYBr.
[103] Check 'No Go Settlement Agreement, at 9-10.

B. Class Actions Provide a Procedure to Combat Uniform Bad Practices.

> "Unfair, deceptive, or abusive acts and practices can cause significant financial injury to consumers, erode consumer confidence, and undermine the financial marketplace."[104]
>
> —Consumer Financial Protection Bureau

The 2003 class action *Curry v. Fairbanks Capital Corp.*[105] is another example of how aggregating claims into a single case can be an appropriate and efficient way to address harms to consumers. *Curry* was a consolidation of more than 30 cases filed by consumers from a dozen states whose residential mortgages were serviced by Fairbanks Capital Holding Corp., a Utah-based mortgage residential loan servicing company now known as Select Portfolio Servicing Inc. The class action, on behalf of approximately 600,000 consumers, alleged that Fairbanks engaged in "a pattern and practice of uniform nationwide unfair, unlawful and deceptive business practices in its servicing of residential mortgage loans," and that its misconduct resulted in consumers substantially overpaying fees and charges, which exacerbated delinquencies and caused unnecessary or illegal foreclosures.[106]

According to the homeowners' complaint, Fairbanks collected improperly assessed fees, interest, costs and charges not authorized by the loan documents; mishandled borrowers' mortgage payments and escrow accounts by failing to timely credit borrowers' payments or provide clear information; treated borrowers who had made timely and sufficient loan payments as if they were in default; forced borrowers to remit payments through a fee system in which the company would benefit; attempted to file defective foreclosure actions without proper notice; and engaged in unlawful collection practices by harassing borrowers and attempting to collect amounts not legally owed by the borrowers.[107]

The class action alleged that Fairbanks' business practices violated the unfair and deceptive acts and practices laws of numerous states, as well as state common laws.[108] Fairbanks'

---

[104] Consumer Financial Protection Bureau (CFPB), Consumer Laws and Regulations: Unfair, Deceptive, or Abusive Acts or Practices (UDAAP), http://tinyurl.com/6rb95bl.
[105] Curry v. Fairbanks, Case, No. 03-10895-DPW, Settlement Agreement and Release (2003), http://www.ftc.gov/bcp/cases/fairbanks/classact_agrmt.pdf; U.S. v. Fairbanks Capital Corp.; Curry v. Fairbanks Capital Corp., 2004 WL 3322609, (D. Mass. 2004), Final Order Certifying Settlement Class and Approving Settlement. *See, also*, *Curry v. Fairbanks*, Complaint, 1414 PLI/Corp 97.
[106] Curry v. Fairbanks Settlement Agreement and Release, 1414 PLI/Corp 97. The class action included consumers from California, Pennsylvania, Illinois, Maryland, North Carolina, Alabama, Florida, Louisiana, Michigan, Ohio, Nevada, Massachusetts.
[107] Curry Complaint, 1414 PLI/Corp 97.
[108] *Id.*

alleged acts also violated the federal Real Estate Settlement Procedures Act, the Fair Debt Collection Practices Act, and the Truth in Lending Act.[109]

The class action was settled in 2003 simultaneously with an agreement with the Federal Trade Commission and the Department of Housing and Urban Development. The settlements resulted in a transformation of Fairbanks' mortgage servicing procedures and practices:

> (1) Fairbanks agreed to a $40 million "consumer redress fund," which was negotiated with the FTC as well as the consumer class.[110] Class members would be notified and would return a form to make a claim.[111] The amount received by a class member would be either proportionate to the total amount of fees and charges that Fairbanks charged or assessed against the class member, or proportionate to the economic harm or statutory damages suffered.[112]
>
> (2) Outside the scope of the redress fund, Fairbanks agreed to a "reverse or reimburse" program, in which it would cancel improperly or unnecessarily assessed charges, as well as refund paid charges, fees, penalties and interest, including money recovered following a completed foreclosure.[113]
>
> (3) Fairbanks agreed to implement a comprehensive set of changes, including data integrity checkpoints and edits; "hello and goodbye letters" to borrowers alerting them of the transfer of service to and from Fairbanks; proper notice and validation of debt letters; file scrubbing for hazard insurance policy information to confirm the status of the borrower's previous insurance coverage; quality assurance teams to review communications with borrowers; implementation of software to assist in forecasting customer service staffing; redesign of monthly mortgage statements to make them easier to read and understand; audits to review planned credit bureau reporting; changes to collections practices and foreclosure referral; and a consumer ombudsman to address borrowers' issues.[114]
>
> (4) Fairbanks also agreed to implement a default resolution program with a set of procedures for addressing borrowers whose payments are delinquent.[115]

[109] Curry Complaint, 1414 PLI/Corp 97.
[110] Curry Settlement and Release, at 4.
[111] *Id.*, at 17.
[112] *Id.*, at 26.
[113] *Id.*, at 27.
[114] Curry Settlement and Release, Appendix, at 2.
[115] *Id.*, Appendix 1.

The attorneys' fees in the class action were capped at $8.25 million plus litigation costs, and the named plaintiffs each received an incentive award no greater than $3,500.[116]

Combined with the public enforcement, the consolidated private class action was indispensable for getting the consumers a remedy for the harm they suffered.

C. Numerous Class Actions Have Confronted Discriminatory Auto Lending.

"(I)njunctive relief is an important part of resolving a class action – *often the most important part*, as injunctive relief often changes the way a company does business."[117]

— Charles S. Mishkind and V. Scott Kneese

Consumer class actions provide a critical tool for obtaining non-monetary protections for consumers, particularly injunctive relief. A court can order a business to cease widespread bad practices or enforce settlements in case in which the business agrees to do so. Injunctive relief can also benefit consumers who are not participants in a class action, because a change in business practices would affect future customers of the business.[118] On the other hand, it is unrealistic and, often impossible, for a consumer forced into private individual arbitration to succeed in persuading a corporation to change its harmful practices without the benefit of traditional litigation proceedings, such as discovery, motion practice, and a public record of the proceedings, to uncover the extent and nature of the wrongdoing.

The impact of injunctive remedies is illustrated by class action lawsuits alleging discriminatory lending practices. In the late 1990s, car buyers uncovered disturbing business practices in auto lending. Automobile financing procedures appeared to treat African-American and Latino car buyers differently from their white counterparts. Consumers alleging they were victims of discrimination brought a series of class action lawsuits on behalf of other African-American and Latino car buyers who had obtained financing from auto lenders, particularly those owned by auto manufacturers (including General Motors Acceptance Corp. (GMAC), Daimler Chrysler Financial, Toyota Motor Credit Corp., Nissan Motors Acceptance Corp. (NMAC), and American Honda Finance Corp.[119]).

---

[116] *Id.*, at 22, 23.

[117] Charles S. Mishkind and V. Scott Kneese, *The Big Risks: Class Action And Pattern And Practice Cases*, Practising Law Institute, Litigation and Administrative Practice Course Handbook Series, 637 PLI/Lit 339, 398 (October 2001).

[118] Richard L. Marcus, *They Can't Do That, Can They? Tort Reform Via Rule 23*, 80 CORNELL L. REV. 858, 883 (1995).

[119] Smith v. Daimler Chrysler, Baltimore v. Toyota Motor Credit Corp., Jones v. Ford Motor Credit Co., Cason v. Nissan Motors Acceptance Corp., Willis v. American Honda Finance Corp. Documents available online at the

The lawsuits alleged that, in the auto financing programs, lenders would purchase contracts that dealers entered into with car buyers. The lenders would then require minimum APRs for the loans, depending on the car buyers' credit history. Dealers would then add a markup charge on top of the approved interest rates on the loans.[120] Loan contracts with rates higher than the approved rates as a result of the markup charges were more profitable for both the dealer and the lender because the companies would split the difference between the higher APR and the markup charge.[121] Generally, consumers were unaware of the markup. The lenders prohibited the dealers from sharing information about the approved rates or whether the APRs on the loans included markups.[122]

The complaints alleged that the markups were subjective, unrelated to credit risk, and ultimately caused the average finance charges on the loans of African-American and Latino customers to be higher than those paid by similarly situated customers. For example, according to the findings in a 2004 report in the class action against Toyota Motor Credit Corp., 43.3 percent of African-American borrowers were charged a markup, compared to 22.2 percent of white borrowers. African-American borrowers on average paid more than two times the amount in markups compared to white car buyers, and African-American borrowers were charged on average $1,108 compared to only $698 for white borrowers.[123] The complaints alleged that the practice violated the federal Equal Credit Opportunity Act, which prohibits discrimination in any aspect of a credit transaction. [124]

Between 2004 and 2005, classes of customers and their auto lenders negotiated finalized numerous settlement agreements, which required the lenders to institute significant changes in their business practices. The cases did not include monetary damages. The auto lenders agreed not to purchase loans with interest rate markups of more than a certain percentage (markup caps); to establish pre-approved loan programs; to initiate and fund consumer education initiatives; and to provide written APR disclosures in their loan contracts.[125]

For example, in its settlement, NMAC agreed to (a) a 3 percent cap on the markup charges that dealers may add onto loan interest rates for new car buyers, and a 2 percent cap for used car buyers (NMAC); (b) a credit pre-approval program with "no markup" rates for

website of the National Consumer Law Center, http://bit.ly/IDiCv9. Also, *See, generally*, National Consumer Law Center, Auto Finance Discrimination, http://bit.ly/I5H6zP

[120] Settlement Agreement, Coleman v. GMAC, M.D. Tenn., Feb 2004.

[121] The National Consumer Law Center, Coleman v. GMAC, Frequently Asked Questions.

[122] National Consumer Law Center. Coleman v. GMAC, Frequently Asked Questions.

[123] Report On The Racial Impact Of AHFC's Finance Charge Markup Policy In The Matter Of Terry Willis, Et Al. v. American Honda Finance Corporation (AHFC), June 30, 2004, Prepared By Mark A. Cohen, Ph.D., at 1 (2004).

[124] *See, generally*, Settlement Agreements of Coleman v. GMAC, Cason v. NMAC, Willis v. AHFC, I.

[125] *See, generally*, Settlement Agreements.

pre-approved black and Latino car buyers; (c) grants to fund consumer education about the auto financing process; and (d) written disclosures on financing contract forms that inform customers that the APRs on their loans may be negotiable with the dealer.[126]

The GMAC settlement was similar. It added written disclosures to all financing forms informing consumers that the APR may be negotiable and that the dealer may transfer the contract to the lender or other party. GMAC agreed to a markup cap for the dealer of 2 to 2.5 percentage points above the credit-approved rate, depending on the length of the loan. The company said it would contribute $1.6 million toward consumer education initiatives on credit financing, including grants to the National Council of La Raza, the Rainbow/PUSH Coalition, and the National Legal Aid and Defender Association. Finally, GMAC agreed to launch a marketing initiative involving 1.25 million pre-approved offers of credit to black and Latino consumers (including at least 250,000 offers per year over the following five years).[127]

Along with settlement terms similar to those in the NMAC and GMAC settlements, American Honda Finance Corp. agreed to lower the interest rates of class members' existing loans by 1 percent on up to $1 billion of its current loans.[128]

These cases had other important benefits to consumers as well. After they were resolved, states passed laws to regulate dealer rate markups and require disclosures on retail installment sale contracts.[129] Banks and finance companies agreed to increase their education of consumers on auto financing options. Although the cases did not set judicial precedent because they were settled, they forced auto lenders to end certain discriminatory practices that are banned by federal civil rights laws.

[126] *See,* NMAC Settlement Agreement.
[127] *See*, GMAC Settlement Agreement.
[128] *Willis v. American Honda Finance Corp*., Settlement Agreement, at 24.
[129] Kenneth J. Rojc, Sara B. Robertson, *Survey--Consumer Financial Services Law Dealer Rate Participation Class Action Settlements: Impact On Automotive Financing*, Business Lawyer, 61 Bus. Law. 819, February 2006.

D. Veteran Used a Class Action to Make the U.S. Government Comply with Debt Collection Laws.

In November 1993, a disabled U.S. Army veteran, Julian Briggs, held and used a credit card issued by the Army and Air Force Exchange Service (the Exchange Service).[130] The Exchange Service, an agency within the Department of Defense, issues credit cards to military personnel to buy uniforms and other items from post-exchange stores on U.S. military bases. Briggs incurred unpaid charges on his Exchange Service credit card of $1,857.[131]

When a debt owed to the U.S. government is past due, the government is authorized to withhold tax refunds or other public benefits to pay down the debt. Federal agencies refer past-due debts to the Department of the Treasury, which administers a centralized debt collection program through which public benefits are offset against debt.[132] Until June 2008, the relevant statute barred offsets for debts outstanding for more than 10 years.[133]

In 1997, the Exchange Service referred Briggs' outstanding credit card debt to the Treasury Department. In 2003, Treasury started to deduct funds from government payments that were due to him to pay his old debt.[134] Treasury continued to withhold money from Briggs' benefits checks from 2003 to 2007.[135]

Contending that all but the first of Treasury's withholdings of benefits were illegal, Briggs filed a class action in a California federal court on behalf of himself and thousands of other soldiers and veterans alleging that the government illegally withheld tax refunds and other benefits to satisfy debts delinquent for more than 10 years on Exchange Service credit cards issued to soldiers and veterans.[136] Briggs sought monetary damages and a change in the government's practices.

The court certified the class and held that the government had unlawfully offset approximately $7.4 million from the class members.[137] The parties then settled, with the government agreeing to repay the $7.4 million, plus the costs of administration and reasonable attorney's fees.[138] The government also agreed not to restart efforts to collect

[130] Briggs v. United States of America, No. C07-05760, (N.D. Cal., settled April 30, 2010), http://bit.ly/HGdsmP.
[131] Order Granting Final Approval of Settlement, Attorney's Fees and Costs and Payment to Class Representative. Briggs v. U.S., April 30, 2010, at 2.
[132] Order Granting Class Certification. *Briggs v. U.S.*, January 16, 2009.
[133] Order granting certification, at 2.
[134] *Id.*
[135] *Id.*
[136] Order granting class certification, at 4.
[137] Order granting final approval, at 5.
[138] Order granting final approval, at 5, 6.

the old debts against the class members.[139] In addition, the settlement did not require class members to file claims to receive their settlement checks.[140] The parties sought to locate and send a settlement check to each class member.

According to a 2010 *Wall Street Journal* report on the class action, the federal government, "one of the nation's largest creditors," had recently increased its efforts to recover more than $75 billion of debts and taxes owed by individuals.[141] The *Briggs* class action provided a critical remedy for people who lacked the resources to challenge and defeat an illegal practice of an entity with vastly more resources.

[139] Briggs v. U.S., Settlement Agreement and Release, at 7.
[140] *Id.*, at 4.
[141] Ellen E. Schultz, *U.S. to Repay Veterans in Debt Case*, *Wall Street Journal* (Jan. 29, 2010), http://on.wsj.com/HQoU9K.

III. Judges Report That *Concepcion* Has Tied Their Hands.

In many cases, judges following *Concepcion* have forced consumers with claims suited to collective class actions to pursue individual arbitration instead. While doing so, several of the judges have expressed concern that *Concepcion* hampers state consumer protection laws and will harm the public interest.

***Kilgore et al. v. KeyBank, National Association* (2012)**

Former students of Silver State Helicopters LLC, a national aviation school, brought a class action in state court against KeyBank, alleging violations of California's Unfair Competition Law (UCL). The complaint alleged that after the school went out of business and filed for bankruptcy, students who had not completed their programs were left with $50,000 to $60,000 in student loans from KeyBank but no marketable skills and no diplomas, certificates or other accreditation. The students sought an injunction to prevent the bank from enforcing their loan agreements or reporting their non-payment to credit reporting agencies.[142]

According to the students, KeyBank knew that "the private student loan industry—and particularly aviation schools—was a slowly unfolding disaster," yet continued to loan tuition money to students and disburse the loan proceeds to the school.[143]

KeyBank loan contracts contained an arbitration clause and class action ban. The arbitration clause included a 60-day opt-out provision. It also said that the disputes would be resolved in Cuyahoga County, Ohio, where KeyBank is headquartered.

KeyBank moved to force the case into individual arbitration. The district court judge denied KeyBank's motion to compel arbitration based on a California rule that prohibited the arbitration of claims seeking public injunctive relief. KeyBank appealed to the Ninth Circuit Court of Appeals, which, citing *Concepcion*, reversed the district court decision and held that the California public injunction exception was preempted by the Federal Arbitration Act.[144]

"We are not blind to the concerns engendered by our holding today. It may be that enforcing arbitration agreements even when the plaintiff is requesting public injunctive relief will reduce the effectiveness of state laws like the UCL," the court of appeals said in its decision. "It may be that FAA preemption in this case will run contrary to a state's decision that arbitration is not as conducive to broad injunctive relief claims as the judicial forum. And it may be that state legislatures will find their purposes frustrated. These concerns,

[142] *Kilgore et al. v. KeyBank, National Association*, 2012 WL 718344 (9th Cir. 2012).
[143] *Kilgore*, at 3.
[144] *Kilgore*, at 10.

however, cannot justify departing from the appropriate preemption analysis as set forth by the Supreme Court in *Concepcion*."[145]

***Robinson v. Title Lenders, d/b/a Missouri Payday Loans* (2012)**

In this case, a borrower sought to bring a class action against a Missouri payday lender alleging that its practices violated the Missouri Merchandising Practices Act and other laws. The loan contracts contained arbitration clauses and class action bans. A trial court found the arbitration clause unconscionable but was overruled by an appeals court.[146]

In the appeals court's recount, "[t]he trial court found that Title Lenders' arbitration agreement is unconscionable and unenforceable because its class waiver deprives borrowers of a meaningful remedy."[147] A "lack of class availability would leave a borrower and similarly situated consumers without a practical remedy for their relatively small claims," effectively "afford[ing] [Title Lenders] immunity" from suit."[148]

Nonetheless, the appellate court observed, "post-*Concepcion*, courts may not apply state public policy concerns to invalidate an arbitration agreement even if the public policy at issue aims to prevent undesirable results to consumers."[149] Although the appellate court reversed the trial court's decision that the class action ban makes the clause unenforceable, it remanded the case directing the trial court to decide whether the arbitration clause is "unconscionable" for other reasons.[150]

***Bernal v. Burnett* (2012).**

Plaintiffs Krystle Bernal and Amanda Krol were enrolled in the fashion merchandising and criminal justice programs, respectively, at Westwood College and/or Westwood College Online in Colorado.[151] The students brought a class action alleging that Westwood, its parent company, and related colleges misrepresented key facts about their operations, including the total cost of the education, job prospects, expected salaries after graduation, accreditation status, and transferability of the schools' credits.[152] They also alleged that the schools used deceptive sales tactics to entice students into enrolling. They claimed that the colleges' alleged actions violated Colorado's consumer protection statute.

The enrollment documents contained an arbitration clause and ban on class actions. In response to the colleges' efforts to compel them into individual arbitration, the students

[145] *Kilgore*, at 10.
[146] *Robinson v. Title Lenders, d/b/a Missouri Payday Loans*, 2012 WL 724669 (Mo. 2012).
[147] *Robinson*, at 1.
[148] *Robinson*, at 3, appellate court quoting the trial court order.
[149] *Robinson*, at 8.
[150] *Robinson*, at 9.
[151] *Bernal v. Burnett*, 793 F.Supp.2d 1280, 1282 (2011).
[152] *Bernal,* at 1283.

claimed that the arbitration contracts were "unconscionable" and should not be enforced against them. For example, the students showed: (1) that they were required to complete the enrollment documents including signing the arbitration provision before they could speak with financial aid counselors,[153] (2) that the nature of the claims—fraud—takes significant work to develop, and no attorney will be able to take these cases on an individual basis, [154] and (3) that the confidential nature of arbitration would force the key witnesses to testify over 800 times.[155]

Although the Colorado district court held that the students must go to individual arbitration to settle the dispute with the schools, it recognized *Concepcion*'s impact on the students and consumers. According to the district court, the students' "argument ha(d) considerable validity and the court would likely have found that the Arbitration Agreements at issue here unconscionable … if it were issuing this decision pre-*Concepcion*."[156]

The court said it was "sympathetic" to the students' argument, adding: "There is no doubt that *Concepcion* was a serious blow to consumer class actions and likely foreclosed the possibility of any recovery for many wronged individuals."[157]

***Willis v. Debt Care, USA, Inc. et al*. (2011)**

Tina and Gary Willis, of Oregon, brought a class action case in 2011 against three companies that operate businesses providing "debt negotiation" services, alleging that each defendant had committed numerous violations of Oregon's Debt Management Services Providers law, the federal Credit Repair Organizations Act, and Oregon's Unlawful Trade Practices Act. The service contract required binding individual arbitration and banned class actions. Based on *AT&T Mobility v. Concepcion*, the court sent the consumers' claims to individual arbitration:

> As shown by the Willises, the vast majority of numerous, small-value claims against Nationwide and Debt Care for statutory violations will go unprosecuted unless they may be brought as a class due to the high costs associated with pursuing individual claims … This court is sympathetic to the Willises' argument. Regrettably, *AT&T* forecloses many consumer class actions which may provide the only recovery for wronged individuals. However, this court is bound by *AT&T* ..."[158]

[153] *Bernal v. Burnett*, 793 F.Supp.2d 1280, 1287 (2011).
[154] *Bernal*, at 1287-1288.
[155] *Bernal*, at 1287-1288.
[156] *Bernal,* at 1287.
[157] *Bernal*, at 1288.
[158] *Willis*, at 7-8.

Conclusion

The Supreme Court's holding in *AT&T Mobility v. Concepcion* has had far-reaching consequences for millions of consumers who are forced to sign away their rights to get a loan, a credit card, a cell phone, and other everyday consumer products and services. Under *Concepcion*, companies can insert in forced arbitration clauses provisions that block consumers from banding together to pursue their claims in collective or class actions.

Forced arbitration is bad enough on its own terms, as it offers a consumer wronged by corporate misconduct no avenue for relief except a private, secretive tribunal chosen by the company. For millions of consumers in countless instances of corporate wrongdoing, class action bans sweep away even that weak chance for justice. Many consumer claims aren't feasible as individual actions, and therefore class action bans stop them from proceeding at all. In addition to leaving consumers without remedies for harms done to them, class action bans shield law-breaking companies from accountability. For the companies, this is precisely the point.

Potential solutions rest with Congress and certain federal agencies. Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Consumer Financial Protection Bureau can eliminate forced arbitration in consumer financial services contracts, and the Securities and Exchange Commission can do the same in investor contracts with broker-dealers and investment advisers. The Arbitration Fairness Act (AFA), now pending in Congress, would eliminate forced arbitration in consumer and non-union employment contracts.

Until regulatory agencies and Congress enact these fixes, millions of consumers will remain without a vital tool to protect their rights and hold wrongdoers accountable.

Appendix

Cases in Which Courts Have Cited *Concepcion* and Held Class Action Bans in Arbitration Clauses Enforceable

	Case Name	Date	Court	Citation
1	Adams v. AT & T Mobility, LLC	September 20, 2011	W.D. Wash.	816 F. Supp. 2d 1077
2	Alfeche v. Cash America International, Inc.	August 12, 2011	E.D. Pa.	2011 WL 3565078
3	Alvarez v. T-Mobile, Inc.	December 21, 2011	E.D. Cal.	2011 WL 6702424
4	Aneke v. American Express Travel Related Services, Inc., et al.	January 31, 2012	D.D.C.	2012 WL 266878
5	Antkowiak v. Taxmasters	December 22, 2011	3rd Cir. (Pa.)	455 Fed. Appx. 156
6	Bailey v. Household Fin. Corp. of California	October 28, 2011	S.D. Cal.	2011 WL 5118723
7	Beard v. Santander Consumer USA, Inc.	April 16, 2012	E.D. Cal.	2012 WL 1292576
8	Bellows v. Midland Credit Management, Inc.	May 4, 2011	S.D. Cal.	2011 WL 1691323
9	Bernal, et al. v. Bernett, et al.	June 6, 2011	D. Colo.	793 F. Supp. 2d 1280
10	Black, et al. v. JP Morgan Chase & Co, et al.	August 25, 2011	W.D. Pa.	2011 WL 3940236
11	Blau v. AT&T Mobility	January 3, 2012	N.D. Cal.	2012 WL 10546
12	Boyer et al. v. AT&T Mobility Services, LLC	July 25, 2011	S.D. Cal.	2011 WL 3047666
13	Brokers' Services Marketing Group, et al. v. Cellco Partnership	March 28, 2012	D. N.J.	2012 WL 1048423
14	Brown v. Trueblue, Inc.	April 16, 2012	D.C. Pa.	2012 WL 1268644
15	Captain Bounce v. Business Financial Services, Inc.	March 19, 2012	S.D. Cal.	2012 WL 928412
16	Carney v. Verizon Wireless Telecom, Inc.	August 9, 2011	S.D. Cal.	2011 WL 3475368
17	Chassen et al. v. Fidelity National Financial, Inc.	January 10, 2012	D. N.J.	2012 WL 71744
18	Chavez v. Bank of America	October 7, 2011	N.D. Cal.	2011 WL 4712204
19	Clerk v. Cash America Net of Nevada, LLC	August 25, 2011	E.D. Pa.	2011 WL 3740579
20	Clerk v. Cash Central of Utah, LLC	August 25, 2011	E.D. Pa.	2011 WL 3739549
21	Coiro et al. v. Wachovia Bank	February 27, 2012	D. N.J	2012 WL 628514
22	Coneff v. AT&T Corp.	March 16, 2012	9th Cir.(Wash.)	2012 WL 887598
23	Cottonwood Financial, LTD., v. Darcie Estes	January 31, 2012	Wis. App.	339 Wis.2d 472
24	Cruz v. Cingular Wireless LLC	August 11, 2011	11th Cir.(Fla.)	648 F.3d 1205
25	Dauod v. Ameriprise Financial Services	October 12, 2011	C.D. Cal.	2011 WL 6961586
26	Day v. Persels & Associates, LLC	May 9, 2011	M.D. Fla.	2011 WL 1770300
27	Estrella et al. v. Freedom Financial Network, LLC, et al.	July 5, 2011	N.D. Cal.	2011 WL 2633643
28	Giles v. GE Money Bank	September 27, 2011	D. Nev.	2011 WL 4501099
29	Gordon v. Branch Banking and Trust	January 31, 2012	11th Cir.(Fla.)	453 Fed.Appx. 949
30	Grabowski v. C.H. Robinson Co.	September 19, 2011	S.D. Cal.	817 F. Supp. 2d 1159
31	Hancock v. Am. Tel. & Tel. Co., Inc.	August 11, 2011	W.D. Okla.	2011 WL 3626785
32	Hendricks v. AT&T Mobility, LLC	October 26, 2011	N.D. Cal.	2011 WL 5104421
33	Hopkins et al. v. World Acceptance Corporation, et al.	June 29, 2011	N.D. Ga.	798 F.Supp.2d 1339
34	In re Apple and AT&T iPad Unlimited Data Plan Litigation	July 19, 2011	N.D. Cal.	2011 WL 2886407
35	In re Apple iPhone 3G AND 3GS "MMS" Marketing And Sales Practices Litigation.	March 29, 2012	E.D. La.	2012 WL 1069169

	Case Name	Date	Court	Citation
36	In re California Title Insurance Antitrust Litigation	June 27, 2011	N.D. Cal.	2011 WL 2566449
37	In re Checking Account Overdraft Litigation	March 5, 2012	11th Cir.	672 F.3d 1224
38	In re Gateway LX6810 Computer Products Litigation	July 21, 2011	C.D. Cal.	2011 WL 3099862
39	Jasso v. Money Mart Exp., Inc.	April 13, 2012	N.D. Cal.	2012 WL 1309171
40	Jones v. DirecTV, Inc.	November 22, 2011	11th Cir.(Ga.)	448 Fed.Appx. 29
41	Kaltwasser v. AT&T Mobility, LLC	November 8, 2011	N.D. Cal.	2011 WL 5417085
42	Khan v. Orkin Exterminating Co., Inc.	October 13, 2011	N.D. Cal.	2011 WL 4853365
43	Khanna v. American Express Company	December 14, 2011	S.D. N.Y.	2011 WL 6382603
44	Kilgore, et al. v. Keybank, National Association, et al.	March 16, 2012	9th Cir.(Cal.)	673 F.3d 947
45	King v. Advance America	August 31, 2011	E.D. Pa.	2011 WL 3861898
46	Laster et al. v. T-Mobile USA, Inc.	January 17, 2012	9th Cir. (Cal.)	2012 WL 122356
47	LaVoice v. UBS Financial Services, Inc.	January 13, 2012	S.D. N.Y.	2012 WL 124590
48	Lewis v. UBS Financial Services Inc.	September 30, 2011	N.D. Cal.	818 F. Supp. 2d 1161
49	Litman v. Cellco Partnership	August 24, 2011	3rd Cir. (N.J.)	655 F.3d 225
50	Meyer v. T-Mobile USA Inc.	September 23, 2011	N. D. Cal.	2011 WL 4434810
51	Morse v. ServiceMaster Global Holdings Inc.	July 27, 2011	N.D. Cal.	2011 WL 3203919
52	Murphy v. DIRECTV	August 2, 2011	C.D. Cal.	2011 WL 3319574
53	Nakano v. ServiceMaster Global Holding Inc.	July 27, 2011	N.D. Cal.	2011 WL 3206592
54	Nelson v. AT&T Mobility LLC	August 18, 2011	N.D. Cal.	2011 WL 3651153
55	Opalinski v. Robert Half Int'l, Inc.	October 6, 2011	D. N.J.	2011 WL 4729009
56	Quevedo v. Macy's, Inc.	October 31, 2011	C.D. Cal.	2011 WL6961598
57	Quilloin et al. v. Tenet Healthsystem Philadelphia, Inc.	March 14, 2012	3rd Cir. (Pa.)	673 F.3d 221
58	Reeners v. Verizon Communications, Inc., et al.	July 14, 2011	M.D. Tenn.	2011 WL 2791262
59	Rosendahl, et al. v. Bridgepoint Education, Inc.	February 28, 2012	S.D. Cal.	2012 WL 667049
60	Sakalowski v. Metron Services, Inc.	September 8, 2011	E.D. Mo.	2011 WL 4007982
61	Sanders v. Forex Capital Markets, LLC	November 29, 2011	S.D. N.Y.	2011 WL 5980202
62	Sanders v. Swift Transportation Company of Arizona, LLC.	January 17, 2012	N.D. Cal.	2012 WL 523527
63	Sherman et al. v. AT&T	March 26, 2012	N.D. Ill.	2012 WL 1021823
64	Smith v. AmeriCredit Financial Services	December 13, 2011	9th Cir. (Cal.)	2011 WL 6170545
65	Swift v. Zynga Game Network, Inc.	August 4, 2011	N.D. Cal.	805 F. Supp.2d 904
66	Tory v. First Premier Bank	September 26, 2011	N.D. Ill.	2011 WL 4478437
67	TractenBerg v. Citigroup Inc.	December 22, 2011	E.D. Pa.	2011 WL 6747429
68	Valentine, et al. v. Wideopen West Finance, LLC	March 26, 2012	N.D. Ill.	2012 WL 1021809
69	Valle v. Lowe's HIW, Inc.	August 22, 2011	N.D. Cal.	2011 WL 3667441
70	Vernon et al. v. Qwest Communications International, Inc.	March 8, 2012	D. Colo.	2012 WL 768125
71	Villegas v. US Bancorp, et al.	June 20, 2011	N.D. Cal.	2011 WL 2679610
72	Wallace, et al. v. The Ganley Auto Group, et al.	June 16, 2011	Ohio. App. 8 Dist.	2011 WL 2434093

	Case Name	Date	Court	Citation
73	Willis v. Debt Care, USA, Inc.	October 24, 2011	D. Ore.	2011 WL 7121456
74	Willis v. Nationwide Debt Settlement Group	March 30, 2012	D. Or.	2012 WL 1093618
75	Wolf v. Motor Acceptance Corp	March 29, 2012	D. N.J.	2012 WL 1079340
76	Zarandi, et al. v. Alliance Data Systems Corp, et al.	May 9, 2011	C.D. Cal.	2011 WL 1827228