Private Power, Public Harm

The Coercive Dynamics of Mass Arbitration

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Contents

Chapter 01

Chapter 02

Chapter 03

Chapter 04

Chapter 05

Chapter 06

Chapter 07

Executive Summary

Chapter

01

In 2011, the Supreme Court held that individual arbitration agreements with class action waivers are enforceable, acknowledging the advantages of arbitration as a dispute resolution mechanism. The Court has repeatedly held that state laws seeking to chip away at arbitration were preempted under the Federal Arbitration Act. In the wake of those rulings, many businesses and individuals (including employees and customers) have agreed to resolve disputes that might arise between them through individual binding arbitration.

The Persistence of the Mass Arbitration Shakedown and Why It Matters

As courts have become increasingly overburdened, alternative dispute resolution, including individual arbitration, has become increasingly important.

Arbitration not only reduces strains on the court system, but it advances the interests of consumers, employees, and businesses to address disputes in a streamlined, less burdensome, and effective manner.

Even with this alternative process in place to offer some relief to the judicial system, courts have continued to be saddled with flooded dockets, judicial vacancies, and considerable delays.

The consumer arbitration process functioned well for many years. Empirical evidence confirms that arbitration is more efficient and produces more favorable results for consumers and employees than lawsuits in court.

Plaintiffs' lawyers, however, have been frustrated that arbitration does not afford them the massive attorneys' fees they might otherwise be able to obtain through the class action device. In response, plaintiffs' lawyers tried a new tactic—"mass arbitration."

The linchpin of this scheme is the leverage of aggregate arbitration administrative fees. Plaintiffs' counsel threaten thousands, tens of thousands, and even hundreds of thousands of arbitration filings—often frivolous and brought on purported behalf of facially unqualified and/or uninformed claimants—absent an immediate payment with massive attorneys' fees. Such settlements are confidential and escape judicial scrutiny.

Because arbitration is private, many of the tactics deployed by mass arbitration plaintiffs' firms go unnoticed. But the sparse public filings in litigation stemming from mass arbitrations shed some light on questionable practices by plaintiffs' firms. Such filings reveal instances in which plaintiffs' firms have pursued claims apparently without client authorization, including claims on behalf of minors, fictitious people, individuals with no relationships with the target companies (and no arbitration agreements), and even dead people. They further reveal that some consumers and employees have no understanding of the proceedings that have been threatened or filed on their behalf. Some thought they were joining a single, collective action,

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while others believed they simply signed up to receive instant compensation as part of a class action settlement that does not exist. Others have suggested they just clicked on an ad to obtain "free money." Social media pages are flooded with clickbait ads promising compensation. Publicly available retainer agreements reflect that some plaintiffs' firms seek waivers of their clients' right to approve or reject settlement offers, and that in some instances, plaintiffs' counsel can take up to 70% of a claimant's recovery.

As many defense practitioners can attest, the volume of mass arbitrations has increased dramatically in recent years and shows no signs of abating. New firms have entered the fray, including upstarts with the backing of third-party litigation funders and established firms that traditionally specialized in other areas such as securities class actions and data breach litigation. Lead generators, marketing firms, and other third-party vendors have assisted in some instances in exchange for a cut of the returns. Entire conferences have been organized that are dedicated to the pursuit of mass arbitration practice, even encouraging law students to attend and consider exploring this business model after graduation.

Some businesses have responded by updating their arbitration agreements to include provisions designed to ensure fairness to all parties while mitigating the risk of mass arbitration abuses. Some businesses have also gone on offense by refusing to pay arbitration fees, waiving

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arbitration, seeking declaratory relief against claimants, or asserting claims directly against plaintiffs' lawyers. Meanwhile, arbitration providers, including JAMS, Federal Arbitration, Inc., National Arbitration and Mediation, and the American Arbitration Association, have begun to reform their rules and fee structures to address mass arbitration. These are all positive developments. And yet, as this paper explains, much work remains to be done. Appropriate legislative, regulatory, and judicial attention to these issues, which often remain hidden from view, is critical.

Chapter 1 of this paper recaps the rise of mass arbitration, what mass arbitration is, the harms it presents, and recent developments in the mass arbitration space. Chapter 2 delves into the drivers of mass arbitration campaigns, with a focus on plaintiffs' lawyers' solicitation techniques. Chapter 3 provides an overview of the many concerning practices and ethical issues implicated by the current mass arbitration model. Chapter 4 details recent court cases addressing mass arbitration-related issues. Chapter 5 details the role of arbitration providers, recent measures they have adopted to address mass arbitration, and the pressing need for further action.

Chapter 6 addresses the possible roles of judges, legislators, regulators, and bar associations in addressing mass arbitration-related issues. Finally, Chapter 7 discusses the importance of reform—that is, why the public should care about the mass arbitration phenomenon and addressing the issues it presents.[1]

Looking Back to the 2023 *Mass Arbitration Shakedown: Coercing Unjustified Settlements* Report

This report builds on many themes addressed in the U.S. Chamber Institute for Legal Reform's (ILR) earlier paper, *Mass Arbitration Shakedown: Coercing Unjustified Settlements*, published in February 2023.[2] That paper documented the advent and rise of mass arbitration, examined the problems attendant to the mass arbitration model—including ethics concerns—and proposed solutions. It highlighted key decisions such as *AT&T Mobility LLC v. Concepcion*, in which the Supreme Court held that state court rules invalidating arbitration

agreements with class action waivers are preempted by the Federal Arbitration Act.[3]

In response to *Concepcion* and its progeny, plaintiffs' lawyers began to develop and deploy mass arbitration strategies. The mass arbitration playbook is simple. Claimants' counsel submit or threaten to submit thousands or even tens or hundreds of thousands of identical claims to trigger an assessment for the business to pay millions of dollars in arbitration fees. The goal is to use the threat of such fees to force companies to settle the claims *en masse*, regardless of the underlying merits or legitimacy of the claimants involved. These massive, private settlement demands may include excessive attorneys' fee demands that would never survive court scrutiny.

The prior paper concluded that these practices raise significant ethical concerns, as it would be difficult, if not impossible, for plaintiffs' firms to adequately vet all potential claims and communicate with each of their many clients, as is required by professional conduct rules. It also noted that the then-recent arbitration provider rule changes and judicial rulings failed to address these critical issues. Finally, the prior report outlined potential solutions, such as adopting the multidistrict litigation (MDL) approach and bellwether trials, to promote fair results and discourage the misuse of arbitration in a way that benefits only plaintiffs' firms.

Increased Importance of Arbitration (and Informal Dispute Resolution) Given Constraints on Our Court System

Safeguarding the right to private arbitration—and preventing attempts to subvert the aims of individual arbitration through abusive mass arbitration practices—is even more critical considering the growing strain on our judicial system.

Over the past 20 years, the number of civil cases in federal courts pending for more than three years rose 346% from 18,280 on March 31, 2004, to 81,617 on March 31, 2024.[4] The COVID-19 pandemic only exacerbated the problem. In many states, the pandemic created backlogs that were projected to take upwards of three to five years to clear.[5] For example, in 2021, Florida surpassed one million backlogged cases.[6] Three years later (and less than a year ago), the Florida Supreme Court certified a need for 50 additional judgeships based on existing workload.[7]

Federal courts are likewise facing congested dockets and strained resources. In 2020, the U.S. District Courts for the Eastern District of California and the District of Arizona declared judicial emergencies to respond to their worsening backlogs and suspended statutory time limits to hear cases.[8] Other districts similarly face sustained backlogs, including in Georgia, New Jersey, and Texas.[9] In a letter to Congress seeking supplemental funding and emergency reforms to address the pandemic, the Judicial Conference of the United States predicted that the effects of the pandemic on case backlogs would be lasting: "When the courts reconstitute after the COVID-19 pandemic, the strain will be even greater since there will be a backlog of cases that could not be adjudicated during the pandemic."[10]

The Judiciary's statement proved prophetic. Recent proposed legislation seeking the creation of additional judgeships has described this judicial congestion as acute and ongoing. The JUDGES Act of 2025 (H.R. 1702) seeks to create 66 new federal district court judgeships to address the backlogged court dockets.[11] The Act details the scope of the crisis, noting that "[b]y the end of fiscal year 2022, filings in the district courts of the United States had increased by 30 percent since the last comprehensive judgeship legislation."[12] "As of March 31, 2023, there were 686,797 pending cases in the district courts of the United States, with an average of 491 weighted case filings per judgeship over a 12-month period.[13] Although the total number of pending cases has declined, the backlog remains. As of June 30, 2025, there were 513,303 cases pending, with an average of 511 weighted case filings per judgeship over a 12-month period.[14] A significant fraction of the pending cases in the federal courts are in the MDL process. As

of July 1, 2025, there were 189,943 actions pending across 161 MDL dockets.[15]

The result: delays in case resolution, increased expenses for parties required to devote additional time to litigating cases, and, in many instances, settlements compelled by delay alone.[16] To be sure, multidistrict litigation, including bellwether processes, may streamline proceedings, conserve judicial and party resources, and lead to global resolutions to inventories of mass claims.[17] But even these mechanisms have faults that can make them unfair and inefficient.[18]

Class actions place a unique strain on courts. The "typical class action" is characterized by "procedural complexity and slow pace."[19] Class actions involve "byzantine procedures that impose significant transaction costs."[20] As a result, class actions "are inefficient" and typically involve "protracted litigation over collateral issues, such as discovery and class certification."[21]

In contrast, private arbitration offers an efficient alternative to class actions that reduces strain on the courts.[22] As the House Committee on the Judiciary concluded decades ago: "The advantages of arbitration are many: it is usually cheaper and faster than litigation; it can have simpler procedural and evidentiary rules; it normally minimizes hostility . . .; [and] it is often more flexible in regard to scheduling of times and places of hearings and discovery devices."[23]

As the Supreme Court explained, in arbitration "parties forgo the procedural rigor and appellate review of the courts in order to realize the benefits of private dispute resolution: lower costs, greater efficiency and speed, and the ability to choose expert adjudicators to resolve specialized

Between the years 2014–2021, median arbitration awards across the AAA and JAMS were more than three times the dollar amount in litigation for consumer claimants and double the dollar amount in litigation for employee claimants. In arbitrations before the AAA, consumers who prevail are awarded between 42% and 73% of the amount claimed on average.

disputes."[24] Unlike litigation, which hews to rigid procedural rules, arbitration allows parties to shape their own resolution process—selecting the arbitrator, defining procedural elements like briefing schedules and hearing formats, and opting for streamlined discovery protocols and flexible evidentiary rules.[25]

Critics of arbitration urge that individual arbitration is not worth the effort for consumers and employees. Yet the monetary relief claimants obtain in arbitration is typically substantially higher than that obtained through litigation. Between the years 2014-2021, median arbitration awards across the AAA and JAMS were more than three times the dollar amount in litigation for consumer-claimants and double the dollar amount in litigation for employee claimants.[26] In arbitrations before the AAA, consumers who prevail are awarded between 42% and 73% of the amount claimed on average.[27]

In view of its relative procedural simplicity, arbitration dispenses with the "expense, uncertainties, loss of control, adverse publicity, and animosities that frequently accompany litigation," and class action litigation in particular.[28]

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Preserving the efficiency, efficacy, and fairness of arbitration is thus a crucial means of safeguarding access to justice for claimants who might otherwise flounder in an overburdened court system where the path to resolution will necessarily be protracted and expensive. Mass arbitration abuses, however, threaten both the nature and the availability of arbitration. As discussed further below, many companies have abandoned arbitration programs because of coercive mass arbitration tactics. Others are likely to follow absent meaningful reform. And even for those companies that continue to arbitrate, mass arbitration eliminates the efficiency benefits that arbitration traditionally provided without sensible and streamlined procedures agreed to by the parties that serve the interests of all parties and the courts—everyone that is, except for the plaintiffs' bar.

Current Mass Arbitration Model

Through mass arbitration, plaintiffs' lawyers have transformed arbitration from an efficient and cost-effective dispute resolution mechanism into a tool for extracting large settlements from companies without regard to the actual merits of the claims or the legitimacy of the claimants.

The method by which plaintiffs' lawyers approach this "coercive gambit" is not always the same. There are at least three common strategies employed: (i) the "traditional" approach; (ii) the "successive waves" approach; and (iii) the "death by a thousand cuts" approach.

"Traditional" Mass Arbitration

The most widely recognized mass arbitration tactic is the "traditional" mass arbitration: plaintiffs' lawyers threaten or file hundreds or thousands of arbitration demands at once to exert immediate and oppressive pressure on the business, which is generally invoiced for the lion's share of the arbitration administrative fees (if not all of them). These lawyers often skip over the mandatory contractual informal dispute resolution provisions that allow businesses and their consumers to resolve disputes without the need for formal proceedings (and in doing so, these lawyers cause these consumers—to the extent they have arbitration agreements with the company—to breach their contracts). The mass notice or filing creates, by design, an urgent

dilemma for the target business. The business may, as in traditional arbitration, pay the initial fees to defend itself on the merits. In a traditional mass arbitration, though, this may equate to tens or hundreds of millions of dollars in non-refundable administrative fees notwithstanding the lack of merit of the underlying claims (although, as discussed more fully in Chapter 5, rule changes by some of the most prominent arbitration providers have curtailed some initial filing fee pressure). Alternatively, the business may relent and pay a settlement amount tied not to the merits of the claims, but to the fees the business would otherwise be invoiced by the arbitration providers. This dilemma forms the classic "coercive gambit" that is the hallmark of mass arbitration.

The traditional mass arbitration model is typically employed by large, well-funded mass arbitration law firms. It is "extremely capital intensive" because "the claimant-plaintiffs' firms that initiate mass arbitrations 'typically must advance the fees owed by its clients,'"[29] even if those are later reimbursed by the business. Those are much smaller than the businesses' share of the fees (that is why the coercive gambit can work), but they are still significant. For smaller firms, the price to play has historically been the attorneys' "life savings."[30] However, the prevalence of available capital through third-party litigation funding is becoming more common and may make this model more attainable for smaller firms, as discussed in greater detail in Chapter 2.[31]

"Successive Waves" Mass Arbitration

Another common mass arbitration tactic is the "successive waves" approach: plaintiffs' lawyers escalate pressure on the business by noticing or filing an initial "wave" of arbitrations and then threatening or filing successive waves like clockwork with attendant non-refundable fees—absent an undue private settlement of all claims filed and unfiled. This approach functions similarly to the traditional mass arbitration tactic by forcing the business to front large non-refundable administrative fees for the first wave of arbitrations or enter into a settlement. But plaintiffs' firms save additional claims for subsequent waves to reduce their initial filing fee burden for another day. Many plaintiffs' firms have relied on this approach.

"Death By a Thousand Cuts" Mass Arbitration

A less prominent but equally problematic mass arbitration tactic is the "death by a thousand cuts" or "drip-drip-drip" approach: plaintiffs' lawyers commence an arbitration campaign by threatening or filing just a handful of demands, seek settlements of those claims, and then proceed to sequentially file tens or hundreds more identical arbitration demands over time. If the business settles the initial claims, the plaintiffs' firm will use those settlements as an expected template for further quick settlements without having to arbitrate claims. This tactic does not require the marketing and collection of a large "inventory" of claimants up front, and for that reason has historically been employed by smaller and less well-funded firms or those that are hoping the smaller numbers will prompt less of a will by targeted companies to fight back.

There is not always a plaintiffs' law firm behind a "death by a thousand cuts" mass arbitration campaign.

Technology-centered mass arbitration coordination companies, such as the now-defunct FairShake, operated by nonlawyers, use software to enable consumers to quickly and cheaply draft notices of claims, transmit notices to the target business, prepare and submit arbitration demands, and negotiate a settlement.[32]

As one commentator observed, FairShake "facilitated tens of thousands of claims, overwhelming companies" with boilerplate demands for arbitration.[33] This service is not free: these companies secure a cut of any resolution obtained.

"Another common mass arbitration tactic is the 'successive waves' approach: plaintiffs' lawyers escalate pressure on the business by noticing or filing an initial 'wave' of arbitrations and then threatening or filing successive waves like clockwork . . ."

Nonlawyer-assisted mass arbitrations will likely only grow in significance as new technology-centered startups are emboldened by the boom in generative AI.[34]

Together, these models illustrate the evolving and multifaceted strategies employed by claimants' counsel in mass arbitration, each leveraging unique forms of pressure and capitalizing on procedural vulnerabilities to extract settlements of claims regardless of their lack of merit. And a characteristic of each of these models is claimant lists filled with facially deficient and fraudulent claims that the most basic (and requisite) vetting would uncover, as discussed in Chapter 2.

How Mass Arbitration Harms Consumers, Employees, Businesses, ADR Providers, and the Legal Process More Broadly

The result of the mass arbitration "coercive gambit" is the extraordinary enrichment of claimants' attorneys and the invisible stakeholders who fund or assist them (discussed more fully in Chapter 2).

Claimants' counsel typically demand 40% of any recovery in mass arbitration retainer agreements with their clients—

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though some demand as much as 70%—which are presented as part of a 1–3 minute sign-up process (discussed more fully in Chapter 2).

Consumers and Employees

Faced with a mass arbitration—and absent an arbitration agreement with provisions to protect the integrity of the alternative dispute resolution (ADR) process and to defuse the serious and oppressive impact of mass arbitration threats—a business has several unenviable choices: abandon their arbitration program altogether, acquiesce and pay a settlement untethered to the merits of the claims asserted, or pay exorbitant nonrefundable fees to even have an opportunity to defend the claims on the merits. Consumers and employees lose in every scenario. The situation often looks a lot like a cyber ransomware attack.

If a business abandons its arbitration program, consumers and employees lose access to arbitration altogether. As discussed in the 2023 paper, arbitration provides more efficient and less burdensome resolution at lower costs and with lower barriers to entry than litigation in court, with higher success rates and substantially greater recoveries on average for claimants.[35] Numerous businesses have already removed arbitration agreements from their consumer and employee agreements,[36] and many others are evaluating whether to do the same.

If a business opts to defend or settle mass arbitration claims, the expense is inevitably passed on to consumers in the form of higher prices for goods and services.[37]

Consumers and employees are also all too commonly victims of misleading solicitations that induce them to sign up for mass arbitration campaigns without information sufficient for them to evaluate whether they have a claim—or even the nature of the proceedings they are agreeing to pursue or on what terms.[38] These issues are further explored in Chapter 2.

Moreover, claimants' counsel routinely cause claimants to breach their agreements with businesses. For example, claimants' counsel will assert claims without complying with conditions precedent to arbitration such as pre-filing notice requirements and obligations to engage in good faith discussions before commencing arbitration.

One study of 106 arbitration agreements used by "large consumer-facing companies in a variety of industries" found that more than 80% "now require individuals to engage in 'pre-arbitration' dispute resolution before they can initiate an arbitration."[39] These terms typically require claimants to provide notices of disputes and attempt to informally resolve them before filing demands for arbitration.[40] Contractual pre-filing notice requirements are similar to notice requirements under the Uniform Commercial Code governing sales contracts[41] and mandated by many state consumer protection statutes.[42] By causing claimants to breach these provisions, claimants' counsel expose them to claims for breach of contract. They also force both consumers and businesses to arbitrate disputes that could have been resolved informally and more efficiently before the arbitrations commenced.

Businesses

The harm to businesses stemming from abusive mass arbitration practices is self-evident: they may be coerced—and often are, in fact, coerced—into settlements based entirely on the fees imposed in arbitration rather than the merits of the claims. Businesses must also shoulder the burden of analyzing claims and identifying the hundreds or thousands of claimants who could not possibly have a claim even under their counsel's theory of liability.[43] These include, for example, claims brought and pursued purportedly on behalf of fictitious people, deceased claimants, minors, claimants in active bankruptcy, and claimants who are not even employees or customers of the business or otherwise have no agreement to arbitrate.[44] Some claimants' counsel have anecdotally acknowledged the rampant fraud that exists among their claimant pools, and complained about the costs associated with conducting actual diligence. The easier path for them is to try to shift their diligence obligations onto the business. Even when confronted with widespread claimant-pool defects, claimants' counsel deflect, refusing to perform even the most cursory diligence to ensure that claimants have a basis to assert a claim. In one remarkable case, a claimants' lawyer, when presented with the serious fact that numerous of his purported clients were deceased, glibly asserted that his clients had "died waiting for justice," while demanding that the business identify the deceased claimants and conduct his diligence for him.

In addition, businesses suffer reputational harm from misleading solicitations. These issues are further explored in Chapter 2.

ADR Providers

Mass arbitration also negatively impacts the arbitration providers. Arbitration providers and ordinary arbitration processes are well-suited to resolve claims. But when plaintiffs' lawyers seek to exploit arbitration processes by filing thousands of individualized claims *en masse*—often simultaneously—but resist any efforts for those cases to be streamlined, those tactics can overwhelm providers and thereby cause administrative burdens and delays.[45] Arbitration providers, like the courts, have limited resources and personnel. "[W]hen cases raise procedurally complex questions, as mass arbitration matters do, arbitration providers will inevitably get backlogged just as courts and administrative agencies face backlogs."[46] For example, in a mass arbitration brought against Postmates, just assigning arbitrators to 50 individual cases alone took over three months.[47] Consequently, mass arbitration lawyers' tactics can have a crippling effect on ADR systems that were "never built to support" these practices.[48] This is no different than the constraints placed on the courts and the pressing need to address efficient and fair processes.

"Some businesses are abandoning arbitration either altogether or under certain circumstances. Mass arbitration is therefore undermining the 'national policy favoring arbitration' embodied in the FAA."

The inability to meaningfully address mass arbitration tactics creates the potential for significant reputational harm to arbitration providers and the integrity of the arbitration process itself.[49]

This problem is compounded by the high-stakes, "bet-the-company" nature of mass arbitration, which places

arbitration providers under immense pressure to efficiently resolve claims. For example, practitioners have reported attending initial conferences where American Arbitration Association (AAA) case managers have recited the itemized arbitration fees facing the business and asked the parties whether, based on that exposure alone, they wished to explore mediation and settlement.[50] Such an approach "tacitly legitimizes the notion that fees should be the driver for settlement irrespective of the validity of any claimants or claims," rather than the merits (or lack thereof) of the claims.[51]

The rise of mass arbitration has even triggered lawsuits against arbitration providers, forcing them to devote substantial time and resources to defending both themselves and the arbitration process. For example, in 2022, Uber filed suit against the AAA for invoicing excessive arbitration fees for work not performed in connection with a mass arbitration involving 31,000 demands.[52]

While the court ultimately determined that the AAA had "sole discretion" regarding its fees,[53] this example highlights a growing distrust and skepticism of arbitration providers who have acquiesced to mass arbitration tactics. Along similar lines, Sega recently sued JAMS alleging that JAMS issued a $39 million invoice for nearly 20,000 individual filings, despite lacking the infrastructure and arbitrator availability to resolve those claims.[54] The complaint alleged that "JAMS is . . . charging millions of dollars in fees, all non-refundable, when it knows it cannot provide such services on that scale."[55] Sega also filed suit against the claimants' law firm in the same mass arbitration, alleging it "intentionally induced JAMS to breach its contract with Sega by filing 19,541 demands for arbitration with JAMS" when it "knew that JAMS would be unable to administer the 19,541 arbitration demands."[56] As these examples illustrate, mass arbitration has placed arbitration providers under heightened scrutiny and even forced them to defend their administrative procedures.

The Legal Process

A key benefit of arbitration is that it removes claims from an overburdened court system and places them in private dispute resolution fora paid for primarily by businesses, rather than taxpayers. Consumers often prefer the proportionate and streamlined arbitration process to litigation. But, as discussed above, Some businesses are abandoning arbitration either altogether or under certain circumstances. Mass arbitration is therefore undermining the "national policy favoring arbitration" embodied in the FAA.[57]

Abusive mass arbitration tactics also undermine the streamlined, efficient, and cost-effective dispute resolution mechanism intended by individual arbitration programs (and they implicate the ethical rules that govern the practice of law). All of this funnels cases back into the already-overcrowded court system. Courts are also facing a proliferation of additional litigation stemming from mass arbitration abuses, as detailed in Chapter 4.

Developments Since the 2023 *Mass Arbitration Shakedown* Report

Unfortunately, despite some progress, the mass arbitration environment has exploded since *Mass Arbitration Shakedown* was published in February 2023, with more firms entering this space.[58] There remains limited accountability for improper practices and only modest reform of the arbitral rules since publication of the 2023 *Mass Arbitration Shakedown* paper. Businesses have updated their arbitration agreements to include provisions designed to address mass arbitration campaigns, and courts have upheld those provisions. But the issues raised in that paper continue to proliferate and, as this report will explore, new challenges and abuses have emerged. The lessons of the 2023 paper, and of this report more than two years later, have utility only to the extent that businesses, courts, regulators, arbitration providers, and other stakeholders take concrete steps to meaningfully address the abuse of the arbitration process, which has benefitted consumers, employees, and businesses alike.

The Drivers of Mass Arbitration: Coercive Fees, Questionable Solicitation Practices, Silent Investors, and Specialized Technology Services

Chapter

02

The backbone of a mass arbitration campaign is the threat that plaintiffs' lawyers will exert cost pressure on a target business, often by exploiting an arbitration provider's fee structure. To accumulate claimants for purposes of leverage in this coercive gambit, plaintiffs' lawyers typically engage in widespread solicitations, often using social media and other platforms that facilitate "click-bait" type advertisements.

The rise of mass arbitration has also attracted the interest of third-party litigation funders, lead generators, and technology service providers eager for cuts of the returns.

These third parties often operate in complete secrecy,[59] making it impossible for companies, policymakers, and advocates for legal reform to identify the factors that are driving abusive mass arbitration tactics. Such invisible stakeholders distort incentives in mass arbitration, and their involvement implicates a host of ethical and other concerns.

The Coercive Leverage of Accumulated Arbitration Fees

The main driver of mass arbitration is often not the merits of the claims, but the costs and burdens imposed on the business. Each arbitration demand can cost thousands of dollars in fees to administer.

While arbitration is designed to be an alternative form of dispute resolution that is cost effective, when claimants' counsel file thousands or tens of thousands of individual claims simultaneously, the cumulative cost of these fees, many of them non-refundable, can rapidly soar into the millions.

These fees can dwarf any potential damages recovery that may be awarded on the merits, even if claimants' counsel could establish liability.

The nature of this "coercive gambit" is discussed at length elsewhere, but breaking down an example illustrates the point. The chart below[60] aggregates fees that would result from a hypothetical claimant pool of 10,000 claimants, using AAA's current mass arbitration fee schedule (see Figure 1).

Figure 1: Estimated Arbitration Fees (10,000 Claimants)	Subtotals		
	Individual	**Business**	**Combined Total**
Initiation fee	$3,125	$8,125	$11,250
Process arbitrator compensation (est. $1,000/hour for 25 hours)	—	$25,000	$25,000
Per case fee	$771,875	$1,366,875	$2,138,750
Arbitrator appointment fee	$750,000	$6,000,000	$6,750,000
Final fee	—	$6,000,000	$6,000,000
Arbitrator compensation ($300/hour with est. 8/hours per case)	—	$24,000,000	$24,000,000
Estimated total	**$1,525,000**	**$37,400,000**	**$38,925,000**

A company faced with a scenario like the above may have to pay $37,400,000 in administrative fees to have the claims proceed in arbitrations. Claimants' counsel would need to come up with, at most, $1.525 million. To the extent those costs are difficult for smaller claimants' firms to pay, third-party litigation funders may offset those costs—and other expenses—in exchange for a cut of the returns. The tactical advantage that claimants' counsel have in pressing for settlement in such a scenario is obvious.

Questionable Solicitation Practices Used to Amass Mass Arbitration Claimants

One might expect the origins of a typical consumer arbitration claim to be as follows: an aggrieved consumer contacts a law firm; an attorney speaks directly with that potential client; the attorney vets the client and assesses the claim, including whether the client presents facts that would appear to establish the elements of the claim the client wishes to bring and whether the client is a party to an arbitration agreement; and then the attorney, believing the claim to be meritorious, files the claim with the informed consent of the client. As this chapter will show, this "typical" model of a consumer arbitration claim could not be further from reality in the lawyer-driven model that is mass arbitration.

"The rise of mass arbitration has also attracted the interest of third-party litigation funders, lead generators, and technology service providers eager for cuts of the returns."

Publicly available documents reveal that in many instances claimants in mass arbitration have no knowledge they are represented or that they are listed as an individual claimant suing a business.

They have typically not reviewed or authorized any notices or filings. Nor are they made privy to any settlement offers. Many of them have no relationship with the target company and are not actually parties to an arbitration agreement in the first place. These claimants are just names—sometimes fictitious, as will be discussed—on a list, numbers on a spreadsheet to advance the lawyers' own goals.

In this deeply troubling business model, claimants' counsel proceed by targeting a business with a perceived vulnerable (consumer-friendly) arbitration agreement, manufacturing a claim and provocative ad with intricate graphic design and dark patterns intended to induce lots of "clicks," and, in some cases, securing litigation funding from a third party. The next step in claimants' counsel's playbook is to accrue a critical mass of claimants—who might or might not be real and living people—as quickly as possible. Claimants' counsel deploy a variety of tactics to induce hundreds, thousands, or even tens or hundreds of thousands of consumers or employees to sign up. These "clickbait" tactics include publishing deceptive and misleading but enticing advertisements on social media platforms, retaining third-party lead generation companies that are run by non-attorneys and employ questionable practices, and misusing confidential settlement lists from class actions in court. These tactics do not actually identify individuals who have suffered some actual injury and have legitimate claims. That would be impossible to do through the sign-up forms that claimants' counsel tout take just "1–2 minutes" to complete.[61]

"Publicly available documents reveal that in many instances claimants in mass arbitration have no knowledge they are represented or that they are listed as an individual claimant suing a business."

The real results are claimant lists and arbitration demands replete with fake people, dead people, people outside of the United States, organized claims fraud involving identities scraped from the dark web, minors, and individuals who never purchased the product or service or otherwise engaged in or faced the practice at issue or are not even parties to arbitration agreements. Many

"claimants" in mass arbitrations are serial claimants who publicly report that they are gaining their livelihood from participating in class and mass arbitration settlements where one needs "no proof."

Public posts on assorted fora and, in certain matters, deposition testimony of mass arbitration claimants, unequivocally demonstrate that these advertising and solicitation tactics cause massive consumer confusion and deceive consumers by promising "free money."

These solicitations suggest that consumers who engage with them are merely checking whether they are eligible to receive compensation. The extent to which consumers have raised serious issues about this model through their own public posts reflects the severity of these issues. And, indeed, claimants' counsel have acknowledged the rampant fraud issue at conferences like MassArbCon. But conducting diligence is, of course, claimants' counsel's responsibility under the ethical rules. When a law firm takes on clients, it must be able to fulfill its duties to those clients under the ethical rules. A fundamental predicate to that duty is a responsibility to ensure the client exists and is aware they are entering into an attorney-client relationship for the purpose of threatening or filing their individual claim in arbitration.

The consumer protection concerns that pervade modern mass arbitration solicitation practices, and the attendant ethical issues inherent in these practices, are serious and warrant close attention.

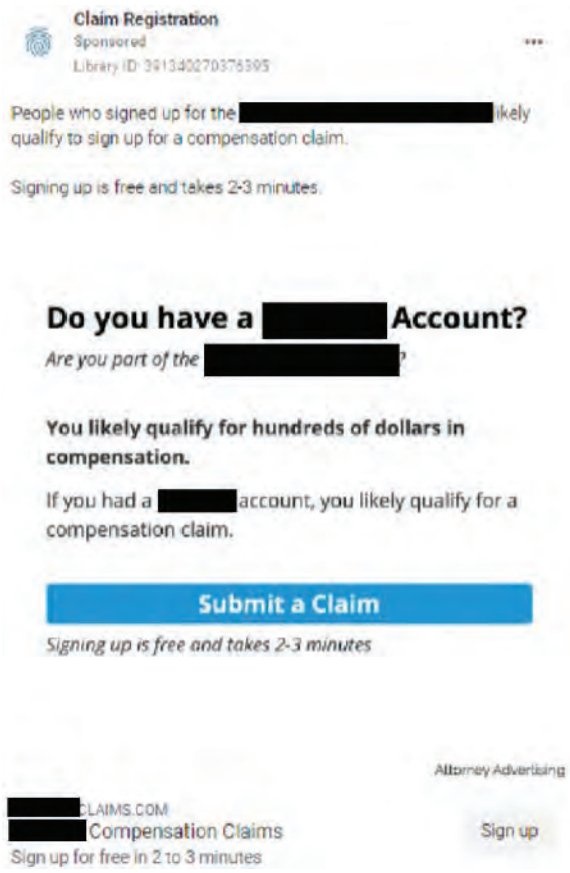
"Public posts on assorted fora and, in certain matters, deposition testimony of mass arbitration claimants, unequivocally demonstrate that these advertising and solicitation tactics cause massive consumer confusion and deceive consumers by promising 'free money.'"

Mass arbitration advertisements rarely mention arbitration.

To the contrary, . . . they may imply that the consumer is joining a collective action, including advertisements with statements suggesting that they are signing up to "take action" and "join others" in a single proceeding.

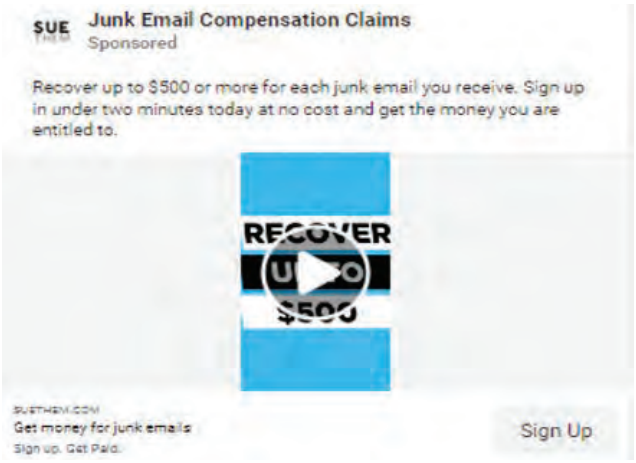
Claimant Acquisition

Proliferation of Social Media Solicitations
A primary tool by mass arbitration claimants' counsel to harvest claimants is through advertising campaigns on social media. These advertisements use provocative language and the promise of compensation to garner attention. They suggest that by quickly filling out a form, prospective claimants will instantly learn if they are "entitled to compensation" that is already available. They encourage consumers to "sign up" quickly (in "less than a minute," "under two minutes" or "2-3 minutes") to "get paid" for an unspecified "claim," with little to no description of the claims to be pursued, the criteria to qualify for purported relief, or the method of resolving the claim (i.e., through individualized arbitration). One need only click on a single alluring graphic to wind up with a Facebook or Instagram feed filled with solicitations from different law firms, linking to webpage names that hide the associated firms, claims aggregators, and lead generators. The extent of this activity is overwhelming, with new campaigns launched every day.



Meta Ad Library, Claim Registration, March 2024[62]

Advertising Using Generic Pages
Adding to the confusion, claimants' counsel pursuing mass arbitration run their paid advertisements under vague or generic titles—such as "Junk Email Compensation Claims" and even "Class Action Attorneys"—without disclosing the identity of the law firm (or firms) handling the claims. These advertisements contain limited information about the claims themselves but emphasize the money that consumers are purportedly "entitled to."



Meta Ad Library, Junk Email Compensation Claims, March 2024

"The consumer protection concerns that pervade modern mass arbitration solicitation practices, and the attendant ethical issues inherent in these practices, are serious and warrant close attention."

Advertising Suggesting Mass Arbitrations Are Class Actions

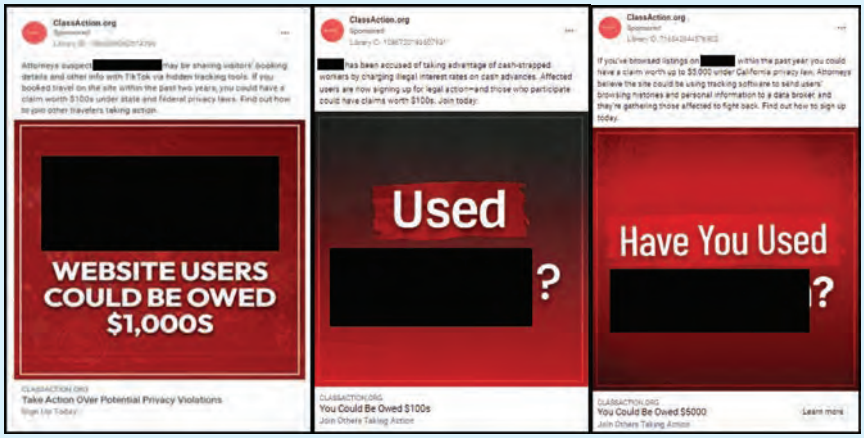
Mass arbitration advertisements rarely mention arbitration. To the contrary, and as reflected in the below examples, they may imply that the consumer is joining a collective action, including advertisements with statements suggesting that they are signing up to "take action" and "join others" in a single proceeding.

Others imply that a settlement or judgment fund already exists and the consumer needs only to "claim" the money for which they "qualify."

Ads posted by "ClassAction.org" urge consumers to "join others taking action" and note that "affected users are now signing up for legal action—and those who participate could have claims worth $100s." One advertisement raised that unnamed "attorneys" are "gathering those affected to fight back" and encourages consumers to "sign up today."

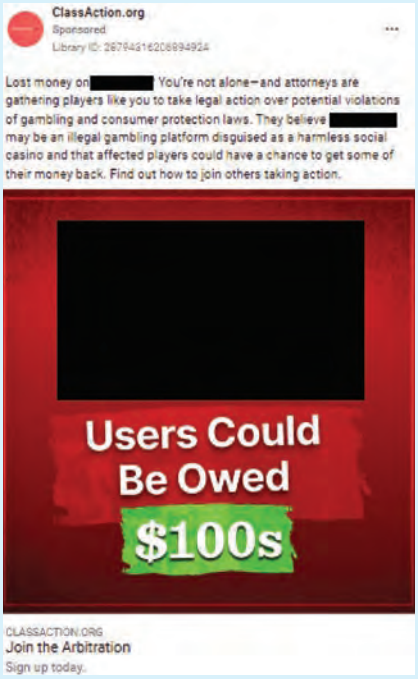
An advertisement posted by "Class Action Attorneys" invites consumers to check if they "qualify for . . . compensation" and to "Apply Now to see if you're eligible today."

Notwithstanding their content suggesting otherwise, all of the above advertisements are soliciting claimants for mass arbitrations.



Meta Ad Library, ClassAction.org (Aug. 2025)

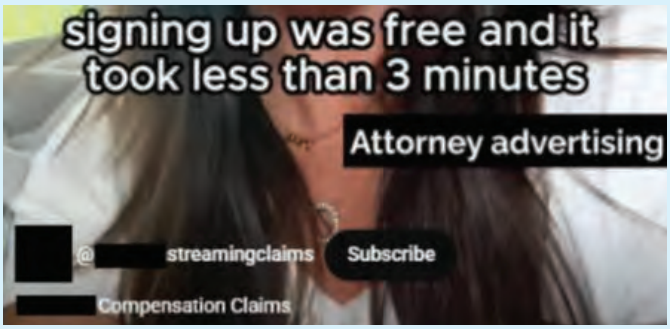
Meta Ad Library, Class Action Attorneys
May 2025



Meta Ad Library, ClassAction.org
August 2025

Meta Ad Library, ClassAction.org
April 2025

And in the rare cases where the ads make clear the matter involves arbitration, they suggest there is a single "arbitration" where a consumer can click to merely "join." These ads suggest that a claimant may passively participate—not that counsel will threaten or file an individualized action on behalf of the claimant who is the lone consumer across the "v." from the target business.



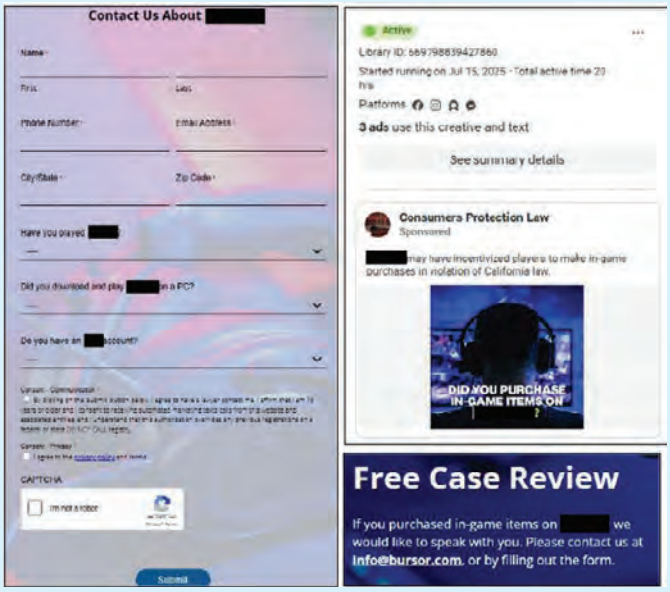
YouTube, May 2024

Clickbait Video Advertising

Claimants' counsel also use YouTube to solicit claimants. As indicated in the below example, some claimants' counsel hire content creators to create short videos (~20 seconds long) emphasizing that consumers could "qualify for compensation ranging from hundreds to thousands of dollars" and encouraging consumers to sign up as claimants, emphasizing that "it took less than three minutes."[63]

Assembly-Line Claims Forms

Drawn in by the promise of potential immediate compensation, consumers who attempt to "sign up" are redirected from social media advertisements to threadbare forms, where they are encouraged to complete a few questions in mere minutes (if that). An example claim form is reproduced here.



Meta Ad Library, Consumers Protection Law, July 2025

As the example illustrates, claim forms may contain just a handful of basic questions. Claim forms typically provide consumers or employees only dropdown options to respond, offering no opportunity for potential claimants to provide individualized information or ask questions about their potential claim. Claim forms typically provide consumers or employees only dropdown options to respond, offering no opportunity for potential claimants to provide individualized information or ask questions about their potential claim. In this example, the claim form asks just three questions of consumers (with only yes/no dropdown response options): whether they have played the targeted business' game, whether they have downloaded and played the game on a PC, and whether they have an account with the targeted business. Notably, though the advertisement and case description suggest that only consumers who "purchased in-game items" would be eligible to bring a claim for alleged "violation[s] of California law," the claim form never asks whether the consumer made an

"Because many mass arbitration solicitations are opaque—likely deliberately so—consumers who conduct further investigation, realize this is not the equivalent of filling out a settlement payment claim form, and express a desire to withdraw themselves are often left without recourse."

"Claim forms typically provide consumers or employees only dropdown options to respond, offering no opportunity for potential claimants to provide individualized information or ask questions about their potential claim."

in-game purchase. Thus, the information requested on the claim form is insufficient to determine if the consumer is qualified to bring a claim, even under claimants' counsel's theory of liability.

Once the consumer fills out a claim form, they are then redirected to an electronic copy of a law firm's engagement letter. This automated online interaction may be the totality of the firm's investigation of each individual prior to threatening and advancing claims against businesses. These engagement letters contain provisions that would never withstand any level of scrutiny under baseline rules of professional conduct.[64]

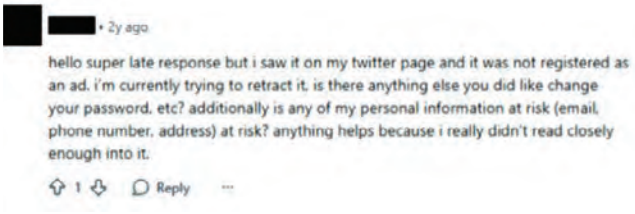
For example, in one publicly-available retention agreement, counsel said they would take 70% of what the claimant would recover.[65] In another example, the agreement provided that if the claimant withdrew their claim for any reason, they would owe their lawyer fees and costs.

Challenges to Withdrawing Claims

Because many mass arbitration solicitations are opaque—likely deliberately so—consumers who conduct further investigation, realize this is not the equivalent of filling out a settlement payment claim form, and express a desire to withdraw themselves are often left without recourse.

Consumers may lack even basic contact information for their supposed legal representatives. There have been instances where consumers described being unable to withdraw claims made in their names, or being unable to even contact the lawyers making those claims.

One consumer who was pressured to quickly sign up for a mass arbitration later expressed regret and a desire to "retract" their involvement, noting that they were misled by undisclosed advertisements and "didn't read closely enough" into the proceedings.



Reddit user, August 16, 2023

Lead Generation

Claimants' counsel also turn to third parties to bolster, or even fully generate, their claimant pools. In recent years, several marketing companies began advertising mass arbitration-specific lead generation services, claiming they can supply counsel with ready-made claimant lists and prepackaged campaigns. It is unclear how these claimants are initially solicited and/or vetted (if they are at all) or whether they are aware their claims are being sold.

One company that purports to offer full-service mass arbitration claimant procurement, Pallas Enterprise, touts its expertise in social media advertisements and search engine optimization. Their website encourages claimants' counsel to use their services to "[grow] your audience with accretive leads and baits for customers on Facebook."[66] As illustrated below, Pallas has also advertised "hands-off" recruitment opportunities for claimants' counsel

". . . [I]n one publicly-available retention agreement, counsel said they would take 70% of what the claimant would recover. In another example, the agreement provided that if the claimant withdrew their claim for any reason, they would owe their lawyer fees and costs."

through the sale of pre-packaged "mass arb portfolios," offering to "acquire, manage, and" most strikingly "help settle a portfolio for you."

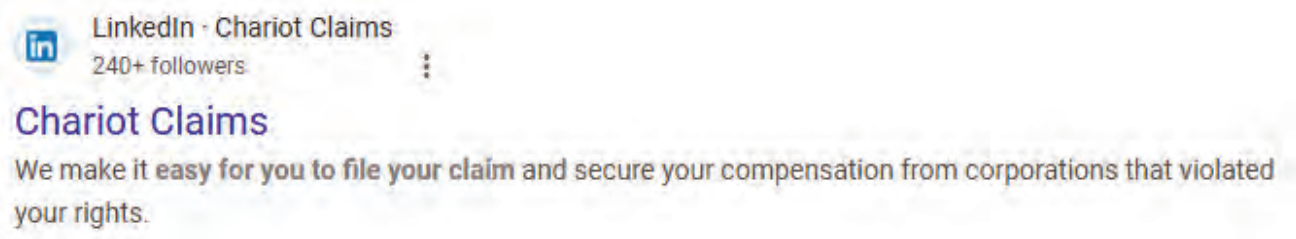
Another digital marketing firm, Reda Marketing, outlined its claimant acquisition services in a video titled "How A Consumer Protection Law Firm Generated Over 200 Signed Cases in 1 Week." Reda highlighted a solicitation and advertising package that the company offers to mass arbitration claimants' counsel, emphasizing that "there is no involvement from the law firm at any point."[67] The video walks through their claimant sign-up platform, where consumers are prompted to answer just four short "yes" or "no" screener questions before entering their contact information and signing a virtual retainer agreement with the partner law firms. The demonstration reveals that it would take a consumer less than five minutes to sign up as a mass arbitration claimant, with "no involvement" from that claimant's supposed lawyer.

Some legal marketing companies have outsourced claimant acquisition efforts even further, relying on artificial intelligence (AI) to "identify and capture" claimant leads.

For instance, Scout Legal Marketing purports to be "changing the game for mass arbitration and class action law firms" having "developed a model designed for the legal realities of mass arbitration and class action intake[] [b]y combining high-tech AI methods with digital lead generation, funnel automation, and data-driven insights."[68]

Chariot Claims describes itself as a legal tech startup using "sophisticated automation" to "connect individuals to mass action legal cases" and "provide[s] tens of thousands of high-quality plaintiffs" for partner law firms.[69] The company partners with firms that regularly pursue mass arbitration. As indicated below, Chariot claims that they "make it easy" for consumers to "file your claim and secure your compensation from corporations that violated your rights," suggesting that consumers would be merely signing up to receive a class action settlement.[70]

Facebook, Pallas Enterprise, June 2020



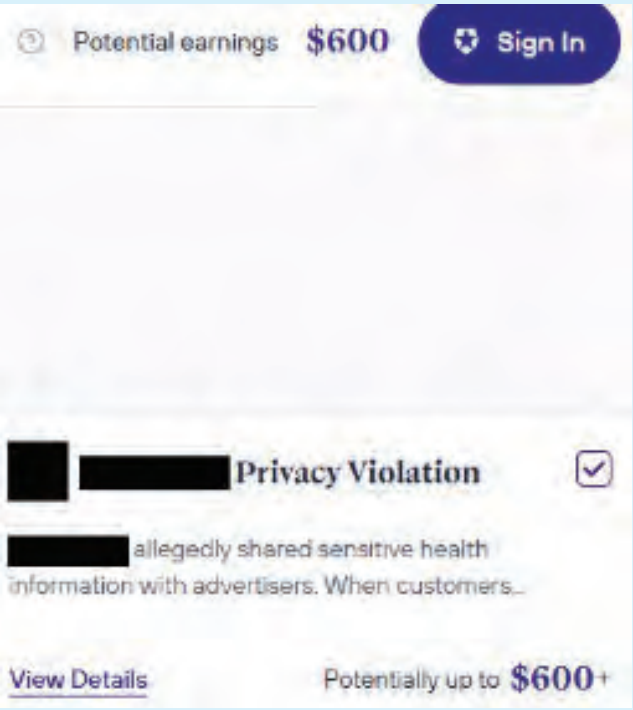
As shown below, only after a consumer has selected a claim (and the company outlines the consumer's "potential earnings") does the company reveal that "[t]he cases advertised have not yet reached a settlement, and a settlement or a specific settlement amount is not guaranteed."

Chariot Claims is a website that helps you file claims for cases and settlements. Chariot Claims is not affiliated with cases or settlements advertised. The cases advertised have not yet reached a settlement, and a settlement or a specific settlement amount is not guaranteed.

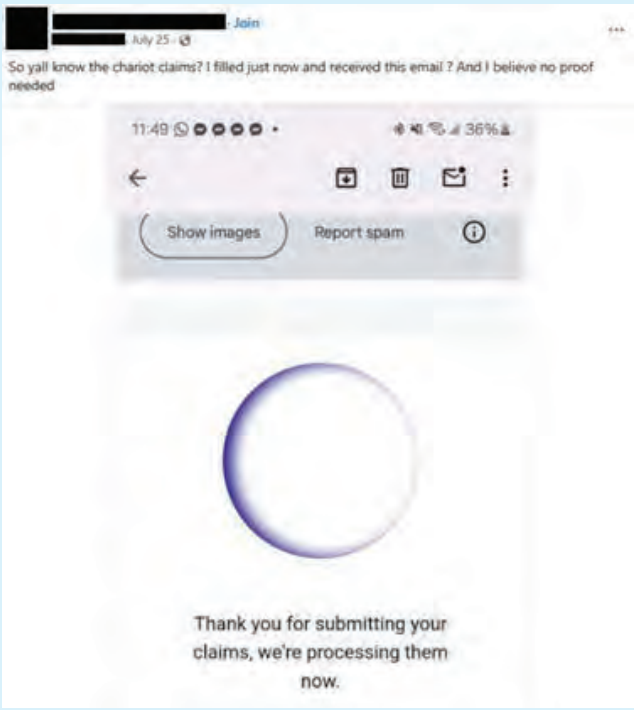
Notably, consumers have stated on social media that they can file claims through Chariot with "no proof needed."

Investigation Sites

Websites such as ClassAction.org and TopClassActions.com serve as a central landing page for dozens of class action and mass arbitration campaigns at any given time. Although these sites traditionally focused on publicizing class action "investigations" and settlements (as expressly suggested to consumers by their names and other page content), they also promote mass arbitrations, largely without acknowledging the difference between the two types of proceedings or confusing them on posts (e.g., as "class



Chariot Claims, September 2025

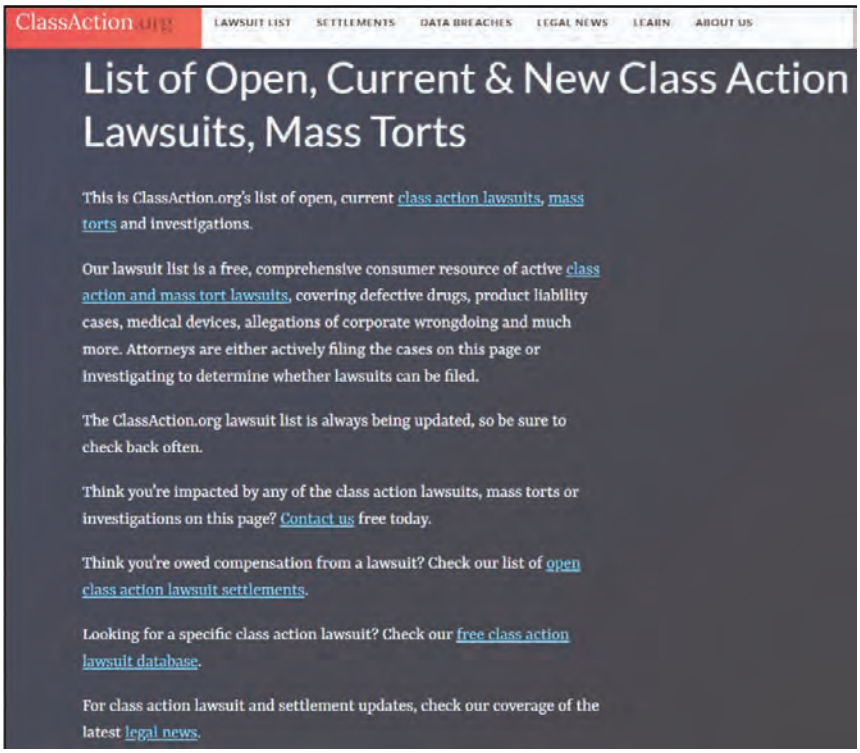


Facebook user, July 25, 2025

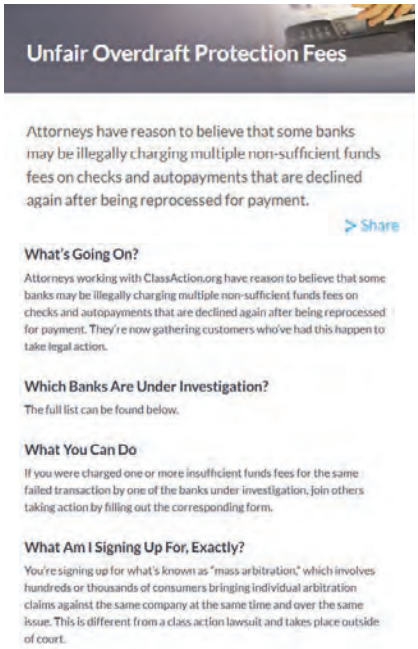
action arbitration"). This lack of clarity may well be intentional—consumers are more familiar with class actions, and are thus more likely to sign up to participate in a class action than a mass arbitration where they would be bringing their own individual claims.

ClassAction.org is operated by Season 4, a company run not by lawyers, but by "a group of online professionals (designers, programmers and writers)" with purportedly "years of experience in the legal industry."[71] The company claims to be "focused on educating the public on the too-often misunderstood world of class actions and mass torts." Instead, they seem to collect funds from firms (directly or indirectly through funders at times) to solicit claimants for mass arbitrations. Mass arbitration campaigns hosted on the ClassAction.org website invite confusion. Consumers navigating ClassAction.org can select a webpage titled "Lawsuit List." As shown below, the webpage description alone includes 20 references to the words "class action" or "lawsuit." Mass arbitration is never mentioned.

Yet when consumers scroll through the "lawsuits" available, mass arbitration campaigns are interspersed among the dozens of class action campaigns. For example, a consumer expressing interest in a matter involving "Unfair Overdraft Protection Fees" would presume they were signing up to register to be an absent class member in a class action given the website title (ClassActions.org), the webpage title (Lawsuit List) and the numerous references to class actions within the webpage. But, as shown below, only after a consumer clicks the link and reaches the fourth question in the FAQ fine print could they possibly learn that they would actually be signing up to bring an individual arbitration proceeding.



List of Open, Current & New Class Action Lawsuits, Mass Torts, ClassAction.org



Unfair Overdraft Protection Fees, ClassAction.org, April 2024

"Some legal marketing companies have outsourced claimant acquisition efforts even further, relying on artificial intelligence (AI) to 'identify and capture' claimant leads."

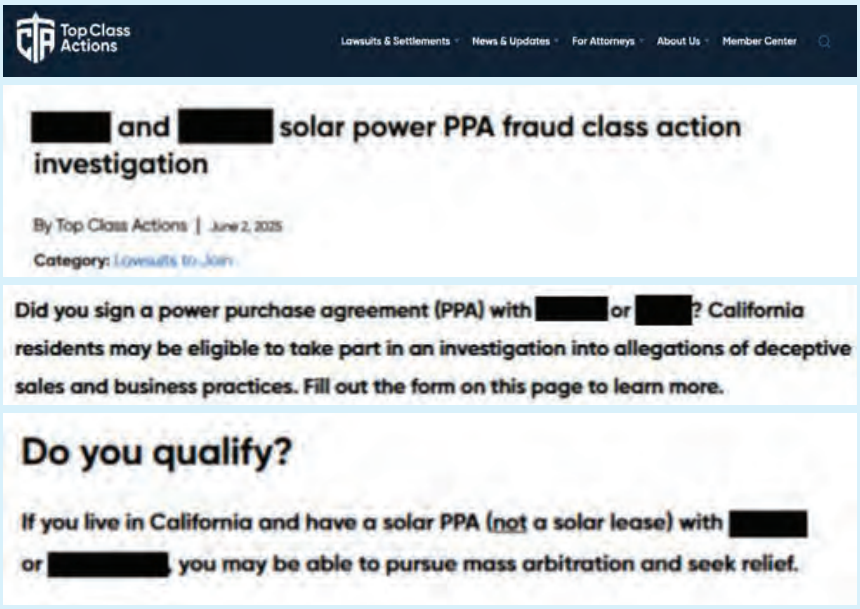
Likewise, TopClassActions.com offers a bank of "lawsuits and settlements" for consumers to browse (as illustrated below) but fails to alert consumers that many of the "lawsuits" are actually mislabeled mass arbitration solicitations.

For instance, the TopClassActions.com "Lawsuits & Settlements" page includes several "lawsuits to join," including a "class action investigation" into a company facing "allegations of deceptive sales and business practices."

But once consumers are redirected to that "class action investigation" page, hidden in the description is the fact that consumers would actually be signing up as a client in a mass arbitration, not a class action.

Consumers browsing TopClassActions and ClassAction.org may fail to appreciate these nuances.

Consumers are encouraged to sign up quickly, reasonably assuming that websites with "class action" in their very title would be advertising just that. Compounding this issue, many solicitations create false urgency and suggest that consumers might lose their opportunity to receive compensation if they do not act immediately.



TopClassActions.com, June 2025

In the example on the next page, consumers are warned that "time is running out" for them to "join the . . . arbitration" or lose out on the "Owed $$$."

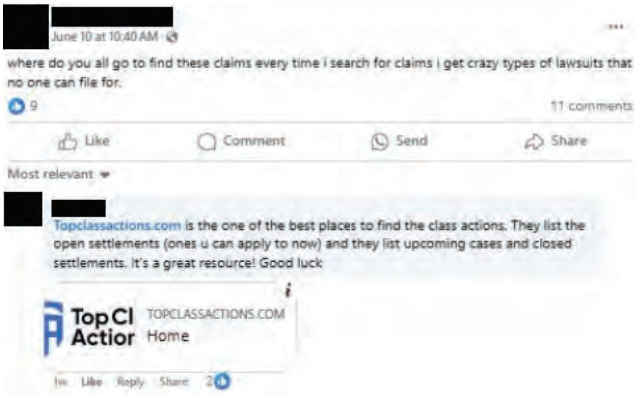
Discourse online furthers consumers' understandable confusion about what they are signing up for after reviewing claims on TopClassActions.com and ClassAction.org. As shown on the following page, one consumer described TopClassActions.com as "one of the best places to find . . . class actions." Another described ClassAction.org as "a very easy to read website for many class action lawsuits," raising that "Class Action lawsuits force [companies] to give back" money to "citizens willing to fill in often blind claim forms" to receive "free money."

Even where a solicitation mentions arbitration, the messaging commonly suggests that consumers would be joining a collective action. For instance, a recent ClassAction.org post invites consumers to "join others" in a single "Arbitration." Another encourages consumers to join a single "Privacy Arbitration" and "join other travelers taking action."

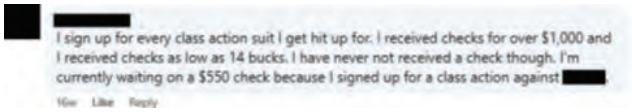
Consumers commenting on these advertisements believe that they are signing up to participate in a class action.

"Consumers are encouraged to sign up quickly, reasonably assuming that websites with 'class action' in their very title would be advertising just that. Compounding this issue, many solicitations create false urgency and suggest that consumers might lose their opportunity to receive compensation if they do not act immediately."

Meta Ad Library, ClassAction.org, June 2025



Facebook user, June 10, 2025



Facebook user, February 20, 2025

Facebook user, February 13, 2025

Facebook user, September 16, 2025

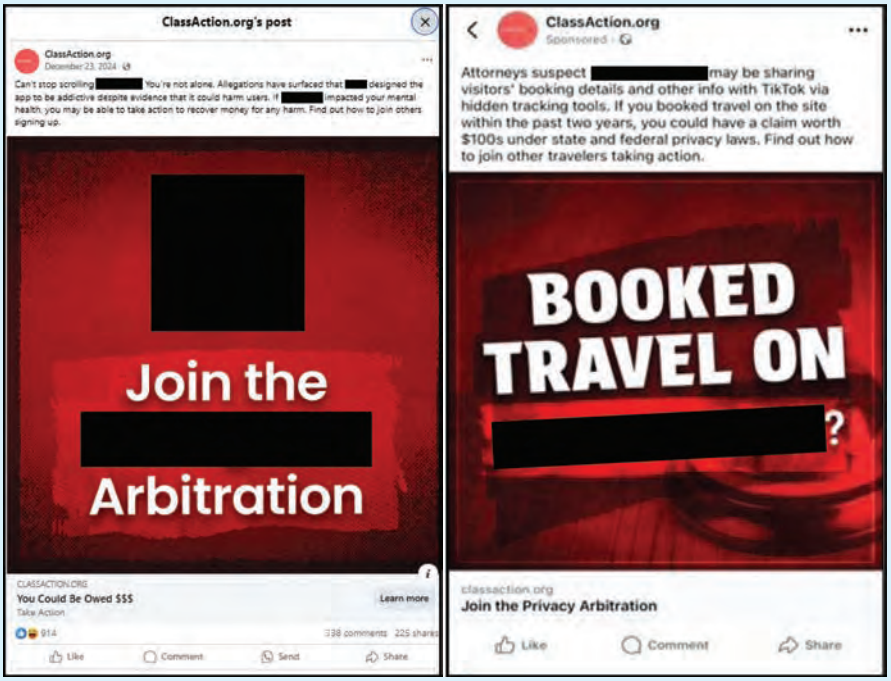
Direct Solicitations

Some firms attempt to generate large volumes of claimants by recycling their repository of mass arbitration claimants from prior mass arbitration campaigns.

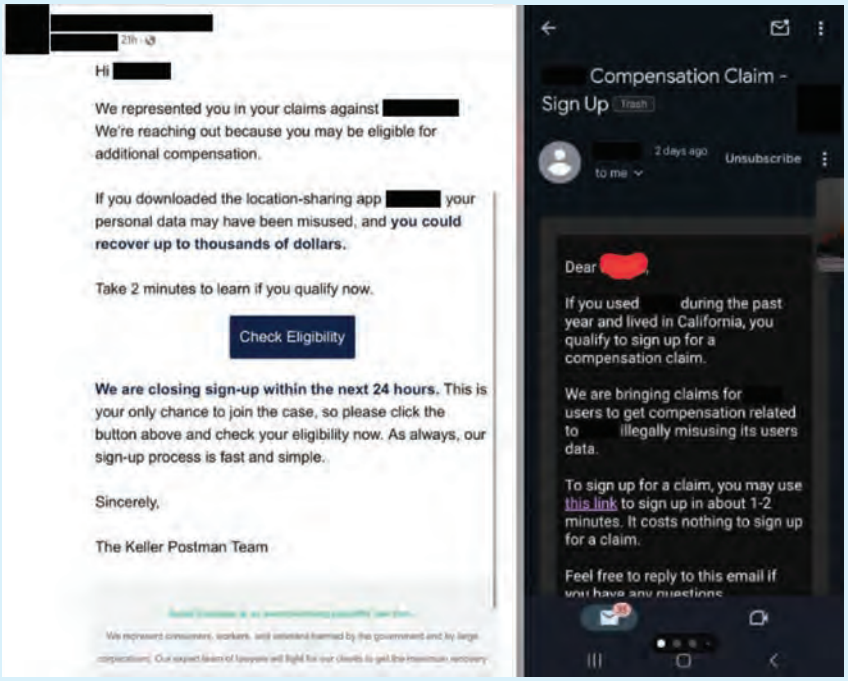
Claimants' counsel contact their former "clients" directly and invite them to sign up for a completely unrelated claim against a different company in a different industry.

As shown below, in one such direct solicitation that was shared publicly on social media, claimants' counsel stated that a consumer "may be eligible for additional compensation" through a "fast and simple" sign-up form. To pressure the consumer into signing up quickly, it claims to "clos[e]" sign up within the next "24 hours." Claimants' counsel have no apparent basis to even suspect that former clients who pursued claims against one company were "harmed" by an entirely different business. Claimants' counsel nevertheless reach out to these individuals attempting to persuade them to take action against the new target company by offering "thousands of dollars" in potential recovery for "1-2 minutes" of claimants' time.

Claimants' counsel's practice of recycling claimants results in claimant pools replete with consumers who do not actually qualify to bring a claim. For instance, in *Allen v. Motorola Mobility, LLC*, Motorola noted that the same counsel were simultaneously representing hundreds of the same claimants bringing identical claims against Motorola and Samsung—two



Meta Ad Library, ClassAction.org, December 2024 and August 2025



Facebook user, June 26, 2025; Reddit user, February 27, 2024

"'. . . [T]he barebones nature of these solicitations is no accident—[the claimants' firm] solicits its clients this way so that it can maximize the number of claims it brings, while maintaining plausible deniability that it was aware its clients' claims are fraudulent.'"

cellphone manufacturers.[72] Motorola questioned whether claimants were qualified to bring both claims, raising that it was "improbable given each Plaintiff would had to have purchased and/or used both a Motorola and a Samsung device during the same time period."[73] Instead, it is much more likely counsel in the Motorola mass arbitration simply induced sign-ups from a recycled Samsung client list.

Even worse, as discussed in *Mass Arbitration Shakedown*, claimants' counsel appear to be using contact information collected from confidential class settlement lists to directly solicit mass arbitration claimants.[74]

Settlement class lists are typically prepared only for the purpose of administering the settlements at issue. Under ethical rules, settlement class members might not be considered "clients" of the law firm, such that they can be directly solicited for a mass arbitration.

This conduct also raises serious consumer privacy concerns. Consumers who sign up to participate in a class action settlement have not authorized law firms to contact them directly in connection with completely unrelated matters. Moreover, these consumers are uniquely vulnerable to being deceived into believing they are signing up for another class action settlement as opposed to an individual arbitration proceeding.

Unqualified Claimants and Lack of Vetting

In their zeal to aggregate large numbers of claimants to maximize leverage over businesses, mass arbitration firms sometimes appear to treat client vetting obligations as secondary. As a result, the typical mass arbitration claimant pool includes legions of claimants who are not qualified to bring a claim under the theory du jour.

An example illustrates the point. Media company Tubi, Inc., recently filed a complaint against a claimants' law firm for tortious interference arising from the firm's solicitation and mass arbitration practices. Tubi alleged that the firm filed nearly 24,000 cookie-cutter claims, and—without any concern for the merits—demanded that the business pay almost $48 million in non-refundable arbitration fees to coerce a settlement. Tubi further alleged that the claimants' firm "does not adequately screen their claims, including whether the information provided on the [claimant intake] questionnaire is truthful and forms the basis of a valid claim."[75] Tubi took direct aim at the claimants' firm's solicitation tactics, alleging that the firm accrued claimants using a marketing campaign "structured to avoid obtaining basic information that would weed out fraudulent claims." According to Tubi, "the barebones nature of these solicitations is no accident—[the claimants' firm] solicits its clients this way so that it can maximize the number of claims it brings, while maintaining plausible deniability that it was aware its clients' claims are fraudulent."[76]

"Even worse, as discussed in *Mass Arbitration Shakedown*, claimants' counsel appear to be using contact information collected from confidential class settlement lists to directly solicit mass arbitration claimants."

"In briefing before an AAA process arbitrator, Wells Fargo argued that 'hundreds' of demands filed by claimants' counsel 'have been filed on behalf of individuals that have no legitimate or lawful claims against Wells Fargo,' including claimants who 'have no account with Wells Fargo.'"

As such, Tubi argued that the mass arbitration claimant pool on whose behalf the claimants' firm purported to bring claims contained many obviously-invalid claims. Among other things, "more than approximately 30% do not appear to be Tubi account holders. Thousands of other claims suffer from additional fatal flaws, such as never having used Tubi to stream content (and therefore never receiving advertising—targeted or not), never having received an ad on Tubi, and not having viewed Tubi content inside the statutes of limitations for the claims they bring."[77]

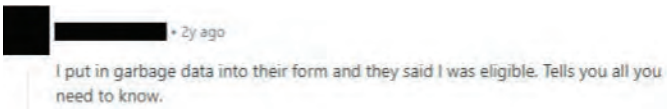
Several other businesses have likewise alleged in court filings that firms have initiated mass arbitrations on behalf of non-customer claimants who cannot legitimately bring claims against the company. For example:

- In *SCPS, LLC v. Kind Law*, SCPS alleged that an investigation of company databases revealed that 186 of the 966 claimants who filed arbitration demands were not registered users of the websites in question and that SCPS had "never entered into any agreement with [those 186] [p]laintiffs to arbitrate any claims."[78]

- In *Epson America, Inc. v. Adams*, Epson alleged claimants' counsel had initiated arbitration on behalf of 13,000 people who were not Epson customers.[79]

Other companies have raised similar concerns in arbitration proceedings.

Facebook users, June 26, 2025



Reddit user, July 13, 2023

In briefing before an AAA process arbitrator, Wells Fargo argued that "hundreds" of demands filed by claimants' counsel "have been filed on behalf of individuals that have no legitimate or lawful claims against Wells Fargo,"[80] including claimants who "have no account with Wells Fargo." The process arbitrator accordingly ordered claimants to submit amended demands with information showing they were qualified to bring claims (including account numbers).[81] The U.S. District Court for the Southern District of California and the U.S. Court of Appeals for the Ninth Circuit rejected claimants' counsel's subsequent attempts to challenge this order. The Ninth Circuit recognized that Wells Fargo "simply sought information establishing that each [c]laimant had a legitimate dispute with them."[82] A subsequent filing stated that claimants' counsel conceded that they "could not provide the basic information required by the Process Arbitrator for 89% of claimants, and that 41.5% of claimants never had and could never have had the claim they asserted . . . in their demands."[83]

"Claimants' counsel contact their former 'clients' directly and invite them to sign up for a completely unrelated claim against a different company in a different industry."

Providing basic information about each claimant who is in a claimant pool through which counsel have threatened or filed arbitration demands should be a straightforward task. But counsel typically refuse to comply because it would devastate their mass arbitration business model. By accepting consumers without proof of eligibility, claimants' counsel reward consumers who repeatedly sign up as claimants, regardless of whether they actually have any basis to assert a claim even under claimants' counsel's theory of liability.

For instance, after one consumer posted on social media that they had been told they would receive money from a settlement and another commented that they would receive payment despite having "no proof," a third consumer asked whether it was "too late to file" because they "need 10 K."

Facebook user, March 21, 2025

In another mass arbitration, an individual remarked that they were accepted as a client even though they admittedly provided "garbage data" in their sign-up form.

When confronted with threshold claimant deficiencies, claimants' counsel rarely take corrective action. Rather than verify whether their clients have legitimate claims, claimants' counsel instead attempt to foist their due diligence obligations onto the very businesses they target, arguing that businesses should identify and disclose inadequate claimants. This approach turns attorney ethical obligations on their head. Courts have repeatedly held that claimants' counsel must thoroughly investigate each claim they bring, regardless of how many clients they purport to represent at any given time.[84] Representing thousands of clients at once does not dilute counsel's ethical obligations to each individual client.[85]

Businesses have repeatedly raised that mass arbitration claimant pools include fraudulent claims, including fictitious claims that appear to be generated by bots. A recent article addressed this issue in the class action settlement context, raising that there has been "a massive influx in fraudulent claims" as "new software tools have enabled the use of clever fakes to circumvent claims administrators' fraud-detection methods."[86] The authors predicted that "the full effects of this spike in fraudulent class settlement claims are likely to ripple throughout the legal system for years to come," specifically raising mass arbitration as an

"In another mass arbitration, an individual remarked that they were accepted as a client even though they admittedly provided 'garbage data' in their sign-up form."

"area[] in the law where fraudulent claiming is emerging." The authors noted that "unlike the class-settlement context, where there is an independent claims administrator trying to stamp out fraudulent claims, reports from defendants suggest that some claimants' counsel are not vetting their claimants before threatening to or actually filing arbitrations."[87]

Claimants' counsel frequently admit that their claimant pools include fictitious claimants. Nonetheless, they also frequently refuse to conduct even the minimal due diligence necessary to identify and remove those claimants of their own accord, asking instead for businesses to provide a list of claimants at issue that they can then "investigate."

Some businesses have turned to third parties offering fraud prevention services to gather information on claimants' counsel's deficient claimant pools, including by identifying illegitimate claims likely filed by bots. For instance, ClaimScore advertises services designed to identify fictitious claims.[88]

Posts from consumers on social media confirm that claimants' counsel pursue claims on behalf of clients even after counsel are expressly made aware that those specific clients have no proof to support their claims. One claimant raised that they informed their counsel that the claimant did not receive "a letter or anything" from the target company—as required to establish a claim under claimants' counsel's own theory of liability. Claimants' counsel purportedly "replied back saying no worries they were still working with [the claimant's] case."

Courts have criticized claimants' counsel for their failure to vet plaintiffs in the class action context.[89] In *Lineberry v. AddShoppers, Inc.*, the court denied plaintiffs' motion for class certification because there were "specific problems with the named plaintiffs' claims" stemming from claimants' counsel's "failure to properly vet named plaintiffs."[90] The court took aim at claimants' counsel's passive approach to remedying obvious issues with the named plaintiffs. As the court explained: "when these sorts of problems become apparent, plaintiffs' lawyers seem to stick their heads in the sand rather than addressing them proactively," which is a "serious problem[] that the class action plaintiffs' bar desperately needs to rectify."[91]

Similar vetting issues are also pervasive in multidistrict litigation in federal court. "Plaintiffs' firms aggressively advertise and solicit clients and stockpile inventories of potential claimants—both to increase their settlement leverage and to jockey for lucrative positions as leadership counsel."[92] The result: "all too often" plaintiffs' firms file "dubious cases in the MDL mass tort context that would never be filed as standalone suits."[93] And claimants' counsel "often successfully resist producing . . . basic verifying information in each of the hundreds or thousands of cases they have filed.[94]

Some steps have been taken to address these issues in court, however. Earlier this year, the federal Advisory Committee on Civil Rules adopted Rule 16.1 of the Federal Rules of Civil Procedure, which will take effect on December 1, 2025.[95] The rule provides that, in advance of an Initial Management Conference in an MDL proceeding, the parties must prepare a report to the court that addresses the parties' "initial views" on "how and when the parties will exchange information about the factual bases for their claims and defenses."[96] The report must also cover "likely pretrial motions" and "the principal factual and legal issues likely to be presented."[97] Defendants can leverage this rule to insist that plaintiffs' firms "make early disclosures of basic verifying information about each of their cases" to "weed out baseless claims."[98] Arbitration providers should evaluate implementing similar disclosure obligations—coupled with rules permitting sanctions on counsel for filing claims that are frivolous or brought for an improper purpose. The mass arbitration space should receive similar scrutiny.

Evidence of Deception and Consumer Confusion

Of course, businesses are not the only ones harmed by claimants' counsel's solicitation practices.

As noted, claimants' counsel's potentially deceptive advertisements and solicitations lead consumers to believe they are simply signing up to receive "free money" through a class action lawsuit or settlement, when in fact they are signing up for a mass arbitration.

"Claimants' counsel frequently admit that their claimant pools include fictitious claimants. Nonetheless, they also frequently refuse to conduct even the minimal due diligence necessary to identify and remove those claimants of their own accord, asking instead for businesses to provide a list of claimants at issue that they can then 'investigate.'"

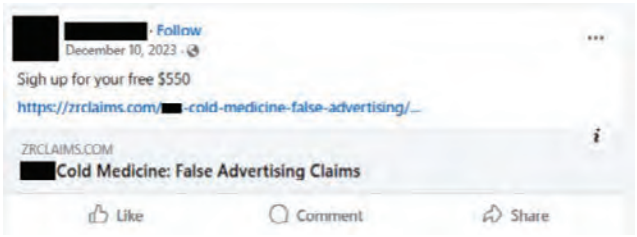
For example, one consumer encouraged others to "sigh [sic] up for your free $550," providing a link to a mass arbitration campaign.

Another consumer shared a link to a case portal, mistakenly asserting that consumers can "claim free money" by signing up for "[a]ny class action suit." The consumer does not acknowledge (and likely does not understand) that the case portal contains several mass arbitration campaigns where consumers would be signing up to bring individual claims.

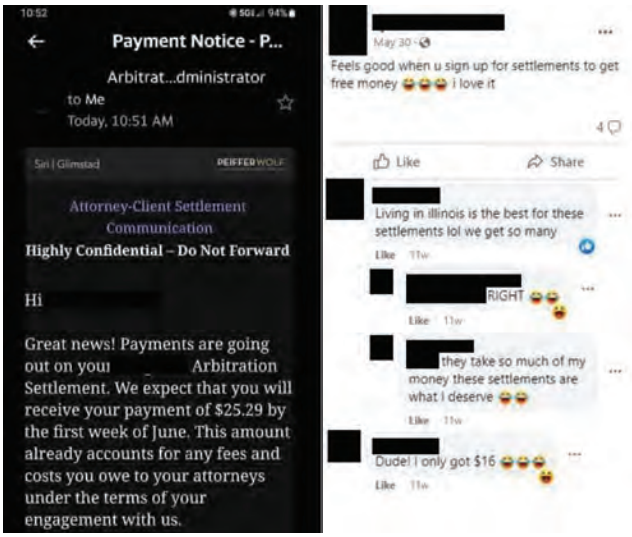
Reddit user, January 11, 2024

Though some consumers appear to be happy to receive "free money" through mass arbitration settlements, social media posts discussing settlements reveal that some claimants' counsel did not appear to keep their clients appraised of the matters before they resolved. In one example, a consumer posted a "Mass Arb Settlement" payment to social media, raising that "Idk where its from but I'll take it." In another, the consumer posted that they "Just got this [payment] from [the company] forgot I even filled one out with them."

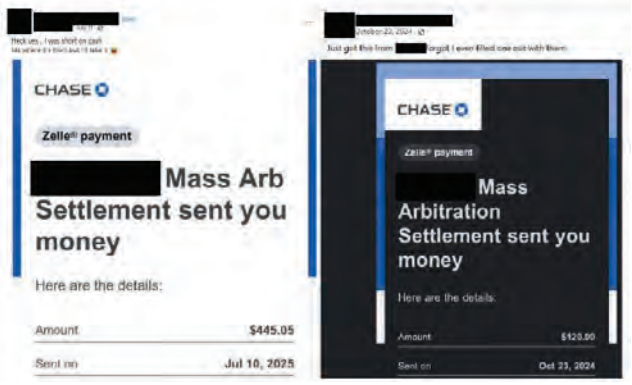
But when the "free money" does not materialize and other consumers realize that claimants' counsel might be taking unauthorized actions on their behalf, they express confusion, concern, and a desire to be removed from the proceedings of which they were never aware. By way of example, in *L'Occitane, Inc. v. Zimmerman Reed LLP*, L'Occitane sued a mass arbitration claimants' law firm and over 3,000 of its purported clients seeking declaratory and injunctive relief preventing the firm from "manufacturing arbitration claims *en masse*."[99] The filings revealed that many claimants were unaware of the mass arbitration proceedings.



Facebook user, December 10, 2023



Facebook user, May 30, 2023



Facebook user, July 11, 2025; Facebook user, October 23, 2024

When L'Occitane contacted individual claimants to request waivers of service, a number of those claimants responded that the firm did not represent them at all.[100]

One claimant responded "I am not a client of [the firm]. I never made a claim with them. All I did was click on an ad I saw on Instagram. . . . I actually unsubscribed from them shortly after I realized they were probably a scam and I didn't want to get any predatory emails from them."[101] Another responded that his father, who was named as a claimant, was deceased.[102]

In short, a recurring theme is consumers left completely in the dark with respect to mass arbitration proceedings. For instance, one claimant resorted to social media to ask if "someone" could "help [him] understand the process" after he "submitted information for two separate arbitration cases" but the firms seemingly made no effort to alleviate the claimant's confusion beyond "confirmation emails."

As illustrated on the following page, many claimants have also taken to social media to share frustration that when they reach out to their attorneys for further information, they are unable to get into contact with them. These posts reveal that claimants may not receive any communications from their attorneys

". . . [O]ne consumer posted that for seven months, they 'have emailed [the attorneys] every few months and gotten no reply back as well as called and nothing,' asking other consumers 'what should I do next being emailing them and calling hasn't worked.'"

beyond the automatic emails that claimants' counsel send to their clients *en masse*, even after the claimant repeatedly seeks assistance.

For instance, one consumer posted that for seven months, they "have emailed [the attorneys] every few months and gotten no reply back as well as called and nothing," asking other consumers "what should I do next being emailing them and calling hasn't worked."

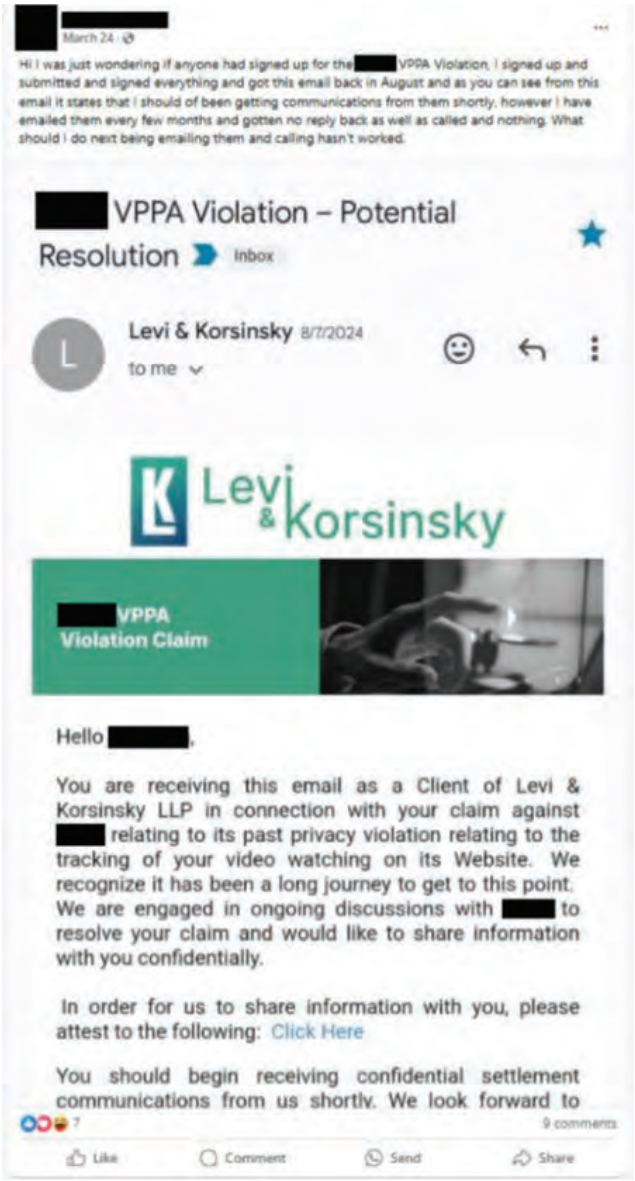
Another consumer responded sharing a similar experience, noting that they emailed the law firm "for months" with no response.

Claimants' counsel pursuing mass arbitration have also employed automated texts as a means of contacting consumers. But the one-sided nature of these communications has invoked frustration and confusion among consumers questioning their legitimacy.

Consumers also complain about mass arbitration claimants' counsel "spamming" them with automated emails after they abandoned unfinished claim forms. Indeed, some consumers have even pursued legal action against firms that regularly pursue mass arbitration, raising claims related to their client solicitation practices.[103]

Some consumers have even accused mass arbitration claimants' attorneys of running scams because of the volume of advertisements to which they are exposed.

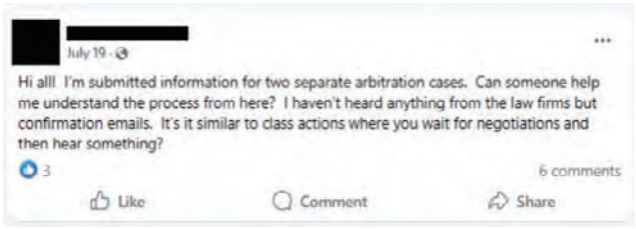
"When L'Occitane contacted individual claimants to request waivers of service, a number of those claimants responded that the firm did not represent them at all."



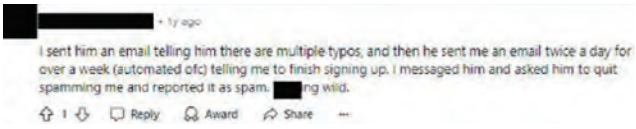
Facebook user, March 24, 2025

Facebook user, March 24, 2025

Reddit user, May 13, 2023

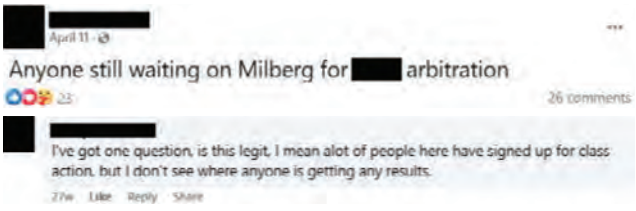


Facebook user, July 19, 2025

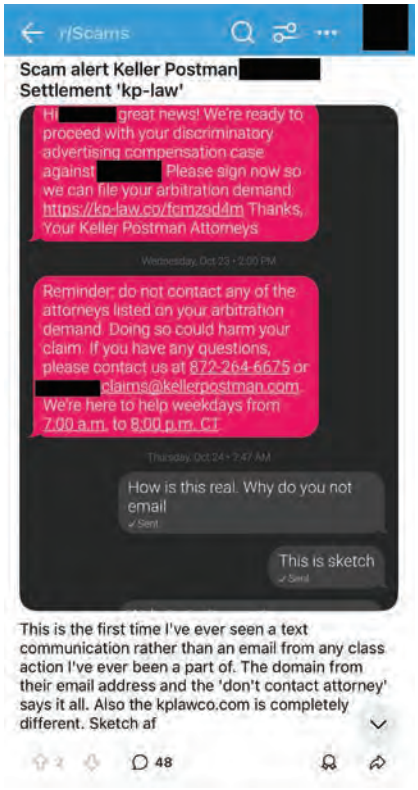


Reddit user, July 19, 2023

Facebook users, February 14, 2025



Facebook users, April 11, 2025



Reddit user, October 24, 2024

Reddit user, July 18, 2023

Facebook user, April 24, 2025

For instance, on a page regarding advertisements by a mass arbitration firm, one Reddit user asked, "did a scam just make its way into the ad slots on [R]eddit"?

On the other end of the spectrum, many consumers express concerns about being scammed after going extended periods without hearing anything about their cases. For example, after one consumer didn't hear from their attorneys for months, they began questioning whether the "lawsuit" was "legit or an online scam." Another consumer posted that they too were "still waiting" and raised that it "[m]ight be a fake lawsuit." After one consumer posted to social media asking whether "anyone" was "still waiting" to hear back from their counsel in connection with a mass arbitration, another asked "is this legit." The commenter made this post purportedly because "a lot of people here have signed up for class action, but I don't see where anyone is getting any results."

Another post raised that their lawyer appeared to be "collecting info but not doing anything. Yet another consumer shared her suspicions that a mass arbitration settlement "is a scam" and another shared that she "enrolled on law suit thing a long time ago" but "can't get any info about it anymore."

The Damning Fact of the "Dual Represented" Claimant

Further complicating matters, businesses facing mass arbitration threats report that they have identified claimants who are represented by two (or even more) different and unrelated firms on the same claims.

As discussed *supra* in this section, claimants who sign up for mass arbitrations may be unaware at the intake stage, or indeed at any point, which law firm (or set of firms) will be representing them. They may not know that they are represented at all. Advertisements are frequently posted by third parties on generic claims pages that do not share any attorney

"Yet another consumer shared her suspicions that a mass arbitration settlement 'is a scam' and another shared that she 'enrolled on law suit thing a long time ago' but 'can't get any info about it anymore.'"

contact information. The first time a claimant encounters the name of the law firm representing them may be when they are asked to sign the firm's retention agreement (and some claimants may not read these retention agreements at all, given that they are encouraged to sign up in just "2–3 minutes").

It is thus unsurprising that consumers sometimes sign up as claimants with multiple law firms on the same claims. They may be attempting to game the system (to collect more "free money"); they may do so inadvertently, having simply forgotten that they already signed up as a claimant (an issue that is exacerbated by the fact that many firms do not meaningfully engage with claimants once they sign up); or they may not have even recognized that two solicitations involved the same claim given the sometimes vague descriptions of the actual allegations.

Even where claimants are aware that they are represented by multiple firms and express a desire to withdraw one set of claims, that request is not always honored.

As with other claimant deficiencies, claimants' counsel often take a passive approach in correcting these issues. Rather than communicate directly with their clients and affirm their authorization, claimants' counsel improperly suggest that businesses must shoulder the burden of identifying claimants who are represented by other law firms.

Third-Party Litigation Funders

Another, invisible, stakeholder in some mass arbitration campaigns is the third-party litigation funder. Litigation funding is a business model in which non-parties invest in litigation by financing plaintiffs or their counsel in exchange for an interest in proceeds from the claims.

Litigation funding has become a prominent feature of the civil justice and arbitration systems in the United States and abroad because of the potential for massive returns.

Although "funders often claim they are passive investors,"[104] it is an old adage that "[h]e who pays the piper calls the tune."[105] In the words of one federal judge in the context of litigation

. . . [B]usinesses facing mass arbitration threats report that they have identified claimants who are represented by two (or even more) different and unrelated firms on the same claims.

funding, "[i]f you control the purse strings, you exercise control."[106] Despite the potentially outsized influence litigation funders have in mass arbitrations, "[t]he existence and details of litigation-funding arrangements are often confidential and therefore unobtainable."[107] Indeed, it is generally "not possible to determine whether a particular mass arbitration was funded" at all, let alone to know the details of the funding relationship.[108] Nevertheless, the limited instances of third-party funding that have come to light indicate that, while not all litigation funders provide financing for mass arbitrations, such funding is prevalent in the mass arbitration context. Reform is needed to ensure transparency, limit the influence of funders, and reduce—if not eliminate—misaligned incentives that have the potential to drive abuse.

Litigation Funding in Mass Arbitration: Ethical Concerns

Litigation funders largely operate in a shroud of secrecy (although some litigation funders do not oppose disclosure).[109] But recent public examples have debunked the notion that funders are always passive investors. In fact, they reveal that some litigation funding business models enable funders to exert immense—and even improper—control over a litigation (or arbitration).[110] This element of control raises numerous legal and ethical issues because "funders have no historical duty to represent their clients zealously and guard their confidences."[111] They instead "are only in the business of making money for their investors."[112]

". . . [T]he few publicly-available examples indicate that litigation funding might create ethical dilemmas that can result in counsel turning against the very clients to whom they owe a duty of loyalty."

Pressure from a financier can lead claimants' counsel to take unnecessary risks in an attempt to maximize returns[113] or reject reasonable settlement offers that fall below the financier's expectations of return.[114]

As a result, in some circumstances, litigation funding may serve to benefit the funders at the expense of the very plaintiffs whose claims they are nominally supporting.[115]

Financing arrangements that give litigation funders the ability to dictate settlements or other aspects of a representation might cause attorneys to violate ethical obligations to their clients.[116] They may also be against public policy. As one court explained, "'it is difficult to conceive of any stipulation more against public policy' than a contract term requiring the litigation financier's permission to settle the underlying litigation."[117] One legal scholar put it bluntly: a "funding agreement that allows a funder to take control of settlement" would be "seen as against public policy in every state."[118]

Absent transparency, it is impossible to determine the full extent of the ethical and legal issues implicated by litigation funding.

But the few publicly-available examples indicate that litigation funding might create ethical dilemmas that can result in counsel turning against the very clients to whom they owe a duty of loyalty.[119]

Litigation Funding in Mass Arbitration: Facilitating a Coercive Gambit for a Cut of the Returns

Mass arbitrations have increasingly become mechanisms for plaintiffs' attorneys to "shake down" corporate defendants. The rise of litigation funding has only compounded these problems by fronting fees for plaintiffs' attorneys to gather high volumes of claimants that serve as cannon fodder in these shakedown schemes.

A recent example illustrates how some counsel view mass arbitration and the role that

"Pressure from a financier can lead claimants' counsel to take unnecessary risks in an attempt to maximize returns or reject reasonable settlement offers that fall below the financier's expectations of return."

"Claimants' counsel are increasingly using technology to automate key aspects of mass arbitration, from advertising for potential clients to managing client intake to even preparing and filing actual claims."

litigation funding can play. In litigation between one lawyer and his former employer, the lawyer produced a slide deck outlining his mass arbitration strategy, which was ultimately presented to a funder.[120] The deck set forth an apparent intention to "weaponize[]" an arbitration agreement between a business and its customers "by aggregating thousands of claims through targeted advertising campaigns."[121] The deck explained: "Aggregating claims makes [the] entrance fee to just defend prohibitively expensive and the vast majority of such fees are non-refundable."[122] The strategy was to "offer a settlement slightly less" than the non-refundable fees to commence arbitrations to "induce a quick resolution."[123]

The presentation described the "acquisition cost" to collect claimants, estimating a "spend of $3.75 million to recruit 75,000 clients at $50 an acquisition."[124] It further explained how claimants' counsel would identify "ripe targets" for a mass arbitration shakedown.[125]

Claimants' counsel would search for companies that "have a valuation of ~$10 billion – high enough so they aren't judgment proof and can settle for hundreds of millions of dollars, but low enough that $200 million+ in arbitration fees creates an existential crisis forcing a quick settlement."[126]

The deck further noted that "a likely IPO or potential acquisition" may "make carrying litigation risk unpalatable" and thus make a target business even more "ripe" to target.[127] To minimize costs to the claimants' attorneys, and hence to the funder, the deck proposed monitoring court dockets to flag and "copycat existing legal theories."[128] Assuming a quick settlement, the presentation estimated "1874% ROI on $6.5 million investment."[129] Notably, nowhere mentioned in the presentation is any analysis of the merits of claims or the benefit to consumer claimants.

Third-Party Technology Platforms and Lead Generators

Third-party technology platforms and lead generators play a crucial, underappreciated role in mass arbitration.

Claimants' counsel are increasingly using technology to automate key aspects of mass arbitration, from advertising for potential clients to managing client intake to even preparing and filing actual claims.[130]

Launching a successful mass arbitration campaign typically requires a "substantial technology apparatus" that costs millions of dollars in initial investments and ongoing maintenance costs.[131] While some larger firms have been able to develop their own proprietary software for these purposes, an entire industry of independent developers has also entered the market to support counsel in their efforts to amass and process tens or hundreds of thousands of claimants for mass arbitrations.[132]

This technology undeniably streamlines the process of generating claims. But the rise of technology-driven mass arbitration business models has sparked significant debate about the ethical implications of automating tasks that were once in the exclusive domain of legal counsel.

For example, the firm "Leverage Law" was created to serve as a platform by which plaintiffs' firms could initiate "Mass Actions and Arbitration Swarms."[133] One of its principals has spoken about and written on the profitability of "arbitration swarms" and their tactical usefulness to claimants' counsel.[134] He explained that "technology-enabled mass actions, mass arbitrations, and

"Some consumers have even accused mass arbitration claimants' attorneys of running scams because of the volume of advertisements to which they are exposed."

'arbitration swarms' . . . can obtain excellent outcomes that would have been effectively unavailable to them in a class action context—as long as there are a lot of them."[135] Notably, one of Leverage's mass arbitration tag lines is "Who Needs Class Cert?"

The breadth of mass solicitation enabled by mass arbitration lead generators also exacerbates another common problem in the industry: lack of adequate vetting of clients and claims. Mass arbitration claimants' firms have faced widespread criticism for schemes in which they file a deluge of claims without properly investigating claimants or their allegations.[136] As detailed in Chapter 2, this lack of basic due diligence has led to high volumes of frivolous claims against businesses. To some degree, this is a natural byproduct of claimants' counsel's use of third-party claimant recruitment platforms to gin up thousands of claimants—volumes that counsel has no ability to adequately vet. But mass solicitation and tools available through mass arbitration technology platforms exacerbate this pre-existing issue by providing law firms with even more claims to process and vet (or fail to vet), with even less control over the process. Of course, under the applicable ethical rules, attorneys cannot simply abdicate the responsibility of vetting clients.[137]

In summary, mass arbitration technology may offer benefits to those attorneys seeking to collect high volumes of claims with minimal effort. But this convenience comes at a cost: it has the potential to violate rules (i) against the unauthorized practice of law, (ii) governing attorney advertising and solicitation, (iii) protecting the client's role in the settlement process, and (iv) against the filing of frivolous claims (among others). [138]

. . . [M]ass arbitration technology may offer benefits to those attorneys seeking to collect high volumes of claims with minimal effort. But this convenience comes at a cost: it has the potential to violate rules (i) against the unauthorized practice of law, (ii) governing attorney advertising and solicitation, (iii) protecting the client's role in the settlement process, and (iv) against the filing of frivolous claims (among others).

Abusive Practices in Mass Arbitration: Meritless Claims and Potential Ethical Rule Violations

Chapter

03

Claimants' counsel frequently predicate mass arbitration campaigns on novel—and in some cases squarely rejected and frivolous—theories of liability based on a business's use of everyday technology that claimants' own lawyers employ. The emphasis in mass arbitration efforts is often on factors beyond the legal merits of the claim, and thus the appropriateness of the theory of liability employed may be less central to the claimants' counsel's decision making.

When The Merits Do Not Matter: Types of Claims on Which Mass Arbitrations Are Predicated

Current issues underlying consumer mass arbitration include privacy, data security/breach, pricing and promotions, product labeling, marketing practices, purported "dark patterns," online gambling, fees and surcharges, customer communications by email and text messages, and the list goes on.

By way of example, claimants' counsel seek to weaponize privacy-related statutes enacted long before the modern internet era and stretch these statutes in ways beyond their intended scope.[139] While the courts continue to grapple with these novel theories from both a legal and technical perspective, some claimants' counsel ignore rulings foreclosing claims or calling into question the viability of their theory of liability. For them, the legal merits are not central in this context. If it turns out that, after businesses have devoted considerable resources outlining why claimants' counsel's theory is demonstrably false (e.g., the company never used the challenged technology), some mass arbitration firms will merely pivot or start over with an entirely new theory. The claim is just the vehicle to tee up the arbitration fee pressure. As discussed in Chapter 2, the mass arbitration strategy has little to do with the underlying claims; it hinges on extracting favorable settlements from companies through the threat of cost alone.

Exploiting Privacy Statutes: the Video Privacy Protection Act

To take a recent example, mass arbitration claimants' counsel have tried to revive and assert claims under the federal Video Privacy Protection Act (VPPA), 18 U.S.C. § 2710, based on a business's use of commonplace technology on their websites. Congress enacted the VPPA in 1988 in response to a newspaper's publication of 146 videotapes that then-Judge Robert H. Bork rented from a local "brick and mortar" video store around the time of his nomination to the U.S. Supreme Court.[140] Those unique circumstances resulted in the design of the VPPA, whose narrow applicability distinguishes it from more expansive privacy laws.[141] Under the VPPA, a plaintiff must plead and prove a defendant/respondent: (i) is a "video tape service provider," (ii) disclosed "personally identifiable information concerning any consumer" to "any person," (iii) made this disclosure "knowingly," and (iv) did so in a manner that is not covered by one of the

"Current issues underlying consumer mass arbitration include privacy, data security/breach, pricing and promotions, product labeling, marketing practices, purported 'dark patterns,' online gambling, fees and surcharges, customer communications by email and text messages, and the list goes on."

exceptions expressly listed in the law. *See* VPPA, 18 U.S.C. § 2710(b)(1).

For the first two decades of the VPPA's existence, the volume of lawsuits was very low. Then there was a small surge in filings in the mid-2000s and into the 2010s. Nearly all of these lawsuits concerned customer data that was kept, used, and shared by video-rental services (e.g., Blockbuster and Redbox) and video-streaming services (e.g., Hulu and Netflix).[142]

Most of these lawsuits, however, were resolved in defendants' favor, and the VPPA was infrequently cited through the early 2020s. But filings surged again beginning in 2021. Claimants' counsel argued that common modern technology tools used by businesses today like the Meta Pixel somehow implicate the VPPA. Websites integrate such technology[143] from third-party providers for purposes of, among other things, performance monitoring, analytics, marketing, and advertising. Various claimants' counsel themselves use these technologies on their own websites as well.[144] Yet claimants' counsel have claimed that when websites integrate these technologies on webpages containing pre-recorded video content, there is somehow disclosure of a user's pre-recorded video viewing information to third-party providers in violation of the VPPA.

Though the Second Circuit recently "shut the door" on these types of claims[145] and courts have warned plaintiffs' firms that the claims were not viable, mass arbitration counsel remain undeterred in their pursuit of mass arbitration under the same theory of liability. For example, one plaintiffs' firm initiated mass arbitration against a streaming service company, purportedly on behalf of thousands of claimants, alleging VPPA violations based on the company's use of the Meta Pixel. After that mass arbitration was unsuccessful, the firm filed a putative class action making the same claims (ignoring the Second Circuit's earlier rulings dismissing identical claims).[146] At a subsequent conference, the court noted that "[c]ounsel for plaintiff is aware" that the Second Circuit "effectively shut the door for [p]ixel-based VPPA claims" and reminded counsel of their "obligations under Rule 11."[147] Following that admonition, the plaintiffs' firm withdrew the complaint.[148]

Exploiting Privacy Statutes: the California Invasion of Privacy Act

The California Invasion of Privacy Act (CIPA), Cal. Penal Code §§ 631 et seq., has also been exploited in mass arbitration campaigns.[149] In 1967, California enacted CIPA to prevent illicit wiretapping of landlines to record or eavesdrop on private telephone conversations. Its primary purpose was to require all parties to consent to the recording of certain communications.[150] It is a criminal statute. Over the years, the California legislature made modest amendments, and the statute was rarely cited, much less invoked as a basis for civil claims. But over the past few years, claimants' counsel have begun using it to assert mass arbitration claims.

Claimants' counsel generally focus on the wiretapping provision of CIPA § 631(a). That provision prohibits willfully reading or attempting to read or learn the "contents" of a message without the consent of the parties to the communication "while [such message] is in transit or passing over any wire, line, or cable, or is being sent from, or received at any place within" California.[151] But many courts have already held that data most commonly collected by website operators (e.g., mouse clicks, keystrokes, search terms, scrolling, and pages viewed) do not constitute "contents."[152]

Mass arbitration lawyers have also focused on CIPA § 638.51, claiming that the collection and use of electronic device identification numbers—even IP addresses that are critical to the basic operation of the internet—are the legal equivalent of using a pen register or trap and trace device without a court order.[153]

There are numerous reasons why that provision has no applicability to the type of internet browsing activity that is now the basis for alleged violations under this provision.[154]

Exploiting Privacy Statutes: Other Laws and Theories

Mass arbitration activity has also focused, directly or indirectly, on the California Consumer Protection Act (CCPA),[155] California

Comprehensive Computer Data Access and Fraud Act (CDAFA), Illinois Biometric Information Privacy Act (BIPA), Arizona Telephone, Utility, and Communication Service Records Act, Washington Consumer Electronic Mail Act (CEMA), and common law invasion of privacy claims. These claims are usually premised on third-party vendor or service provider activity in the context of internet, telephone, or mobile platforms. Claimants' counsel allege these claims even though in many cases they themselves use the same internet technologies like cookies, pixels, and scripts—and collect the same types of data from users—on their own law firm websites. The code underlying claimants' counsel's own websites, advertising, and emails, for example, reflects the use of the very tools they premise their claims on.

Other Common Mass Arbitration Claims

Claimants' lawyers have pursued or threatened mass arbitration based on a range of other theories, including pricing claims, fee-related claims, spam email claims, and statutory claims for discrimination.[156]

Claimants' lawyers raise these types of claims because they facially apply to large swathes of a business' customers, and because according to the claimants' lawyers, they do not require individualized proof (which would be cost-prohibitive for the claimants' lawyers to gather). Businesses have pushed back on that notion and should continue to do so.[157] But for mass arbitration claimants' lawyers, whether individualized proof is required to prevail is, frequently, beside the point. Often, the goal is not to prevail on those claims, but to use the threatened arbitration proceedings as settlement leverage.

Ethical Concerns With the Mass Arbitration Model

The mass arbitration model also raises a number of ethical concerns. In mass arbitration, counsel purport to represent

Mass arbitration lawyers have also focused on CIPA § 638.51, claiming that the collection and use of electronic device identification numbers—even IP addresses that are critical to the basic operation of the internet—are the legal equivalent of using a pen register or trap and trace device without a court order."

each individual claimant. Courts consistently recognize that counsel have the same ethical obligations and responsibilities to each client, regardless of how many clients they purport to represent, and have admonished counsel who do not (or cannot) adequately communicate with all of their clients.[158]

Potential claimants who express an interest in a particular advertisement or solicitation are presented with a short questionnaire designed to determine whether they meet certain minimal criteria. As discussed in Chapter 2, numerous examples reveal those questionnaires to be misleading at best, and show that they collect only a limited amount of information—insufficient to fully vet those potential claimants for a particular claim. Claimants are also asked to sign an engagement letter in short order, which in some cases will contain a clause requiring the claimant to terminate the attorney-client relationship with any other claimants' counsel.[159] These engagement letters often purport to waive the client's right to review and assess settlement offers.[160] In some cases, claimants' counsel perform no further diligence to determine whether potential claimants actually have valid claims under the theory of liability and are not already represented.

In one recent case, numerous purported claimants had "no knowledge whatsoever of the underlying dispute, and consistently claim[ed] to have never spoken" with the attorneys who filed arbitration demands.[161]

The problems with the mass arbitration model persist even after potential claimants are signed up. Ongoing communication with clients, to the extent it exists, is intended to maximize efficiency and minimize costs. This means that communications are sometimes managed through impersonal means such as mass emails or videos rather than personalized advice or direct contact. The end result is a model that prioritizes efficiency and scale over informed consent.

Because of the various potential ethical concerns that appear to be associated with the mass arbitration model, state bar authorities should consider a more active role to protect both businesses and consumers from conduct that may run afoul of rules governing professional conduct.

Vetting of Claimants

Claimant analysis performed by businesses routinely reveals that claimants' counsel have failed to diligently investigate potential claimants. For instance, in *Tubi*, discussed in more detail in Chapter 2 and Chapter 4, the business alleged that the claimants' counsel filed thousands of claims *en masse* without vetting them, and did so as part of an intentional strategy.[162] This may implicate professional rules that prohibit attorneys from submitting frivolous claims. ABA Model Rule 3.1 prohibits attorneys from bringing a claim "unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law."[163] This requires claimants' counsel to investigate the basis for each claim, not solely the theory underlying the mass arbitration as a whole. Electing to pursue claims in a mass arbitration model, which may include thousands of individual claimants, does not diminish an attorney's responsibility to vet each one.[164] After all, counsel purport to represent each claimant individually in a mass arbitration, submitting a separate demand for arbitration on behalf of each claimant. Increased investigations from state bar authorities into how claimants are vetted would ensure that claimants' counsel pursuing mass arbitration are held to the same standards of professional responsibility as counsel in litigation in court. Further, increased attorney responsibility at the earliest stage of potential mass arbitrations may prevent additional ethical issues from arising as the mass arbitrations proceed.

"In one recent case, numerous purported claimants had 'no knowledge whatsoever of the underlying dispute, and consistently claim[ed] to have never spoken' with the attorneys who filed arbitration demands."

"There is a widespread assumption among mass arbitration claimants' counsel that the company being targeted will conduct due diligence on the claimants—an obligation that the firms should have fulfilled before initiating any claims."

Fraud and Misrepresentations in Arbitration Pleadings

The failure to properly vet claimants also implicates ABA Model Rule 8.4(c), which prohibits lawyers from "engag[ing] in conduct involving dishonesty, fraud, deceit or misrepresentations."[165] When claimants are not properly vetted, claimants' counsel inevitably submit demands that likely do not satisfy Rule 8.4(c). Some states that have adopted the Model Rules differ as to whether an attorney must act with an intent to deceive to violate the rules of conduct;[166] however, even if intent were required to violate the rules of conduct, the increased frequency of mass arbitration and repeat claimant counsel raises questions as to the underlying intentions of filing deficient or improper demands.

Deceptive or Misleading Solicitations

Clickbait online and social media advertising has become increasingly prolific, and indeed essential to the mass arbitration business model. As detailed in Chapter 2, there is a substantial risk that such advertising will contain misleading statements or omissions that result in consumer confusion and violate ethical rules against false or misleading statements.[167] Indeed, as noted above, plaintiffs' lawyers routinely advertise mass arbitration matters as if they were class actions, on ClassAction.org. ABA Model Rule 7.1 prohibits any attorney from "mak[ing] a false or misleading communication about the lawyer or the lawyer's services."[168] This rule is implicated where the accuracy of advertised mass arbitration is open to question or where it presents misleadingly one-sided statements, which may affect a decision as to whether to bring a claim. Increased vigilance regarding online advertising will promote compliance with ethical rules and reduce consumer confusion.

Failure to Investigate Claimant Deficiencies and Pursuit of Frivolous Claims

There is a widespread assumption among mass arbitration claimants' counsel that the company being targeted will conduct due diligence on the claimants—an obligation that the firms should have fulfilled before initiating any claims.

Yet claimant lists may be riddled with defective claimants. Putting aside that claimants' counsel should have identified these issues in the first instance, once counsel becomes aware of such deficiencies, they have a responsibility under the rules of professional conduct to correct a false statement of material fact or law previously made to the tribunal.[169] The failure to investigate and correct deficiencies raised, especially when coupled with the lack of initial vetting, may also implicate ABA Model Rule 3.1, which provides that "[a] lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous."[170]

Conflicts of Interest, Client Communications, and Failure to Communicate Settlement Offers

Representing thousands, or tens of thousands, of individual claimants, thus creating thousands of attorney-client relationships each with separate ethical obligations, inherently creates a potential ethical minefield. The sheer volume of attorney-client relationships may raise unique issues as to conflicts of interest and regular communication with clients. An attorney representing thousands of claimants on an individual basis may face several conflicting client decisions and motivations at various junctures. Counsel's failure to satisfy professional obligations regarding conflicts of interest and communications with clients may also violate the Model Rules.[171] And although conflicts may under some circumstances be waived with the client's informed consent, the sheer number of clients—with each of whom counsel has a separate attorney-client relationship and attendant ethical obligations—may make it nearly impossible for claimants'

counsel to obtain that consent. These potential conflicts of interest may be particularly acute when evaluating settlements between individual claimants, whose precise claims, interests, and motivations may not align.[172]

While aggregate settlements may streamline the mass arbitration model for claimants' attorneys, settlement decisions ultimately must sit with the individual client. The Model Rules also provide that clients must be informed about any settlement offers.[173] Additionally, any settlement decisions should require attorneys to communicate regularly with thousands of claimants—not at all practical given the speed at which the proceedings and negotiations take place. Even the plaintiffs' bar appears to understand that will often be impossible because engagement letters sometimes purport to require clients to waive their right to decide whether to settle.[174]

Breaches of Confidentiality and Lack of Communication Between Claimants and Their Lawyers

In cases where a settlement is reached, the business may insist on protections and guarantees to ensure that a settlement remains confidential. This is important because publicity around a settlement can cause other mass arbitration firms to pursue their own copycat advertisements and solicitations or create the misleading perception that a company is offering "free money" to other potential claimants.

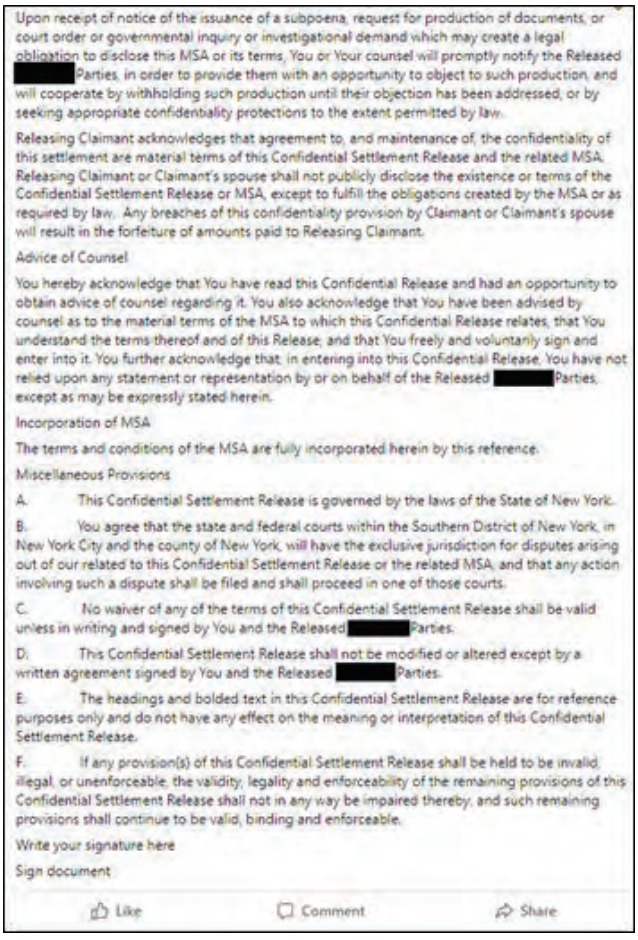
Unfortunately, confidentiality obligations are not always honored. Some consumers involved in mass arbitration campaigns have shared details about their participation in the process and the specific terms of confidential settlements on social media—sometimes knowingly, other times inadvertently.

"Claimants' lawyers have pursued or threatened mass arbitration based on a range of other theories, including pricing claims, fee-related claims, spam email claims, and statutory claims for discrimination."

Below is just one example of an instance in which a claimant posted on social media the terms of a confidential settlement.

These public posts underscore a significant challenge inherent in the mass arbitration model: claimants' counsel routinely do not—and, indeed, cannot—communicate effectively with large volumes of purported clients.

As a result, these claimants might not even understand that they have confidentiality obligations after a settlement. Claimants' counsel should be closely monitoring these activities to ensure that any such actions are immediately addressed.



Upon receipt of notice of the issuance of a subpoena, request for production of documents, or court order or governmental inquiry or investigational demand which may create a legal obligation to disclose this MSA or its terms, You or Your counsel will promptly notify the Released [redacted] Parties, in order to provide them with an opportunity to object to such production, and will cooperate by withholding such production until their objection has been addressed, or by seeking appropriate confidentiality protections to the extent permitted by law.

Releasing Claimant acknowledges that agreement to, and maintenance of, the confidentiality of this settlement are material terms of this Confidential Settlement Release and the related MSA. Releasing Claimant or Claimant's spouse shall not publicly disclose the existence or terms of the Confidential Settlement Release or MSA, except to fulfill the obligations created by the MSA or as required by law. Any breaches of this confidentiality provision by Claimant or Claimant's spouse will result in the forfeiture of amounts paid to Releasing Claimant.

Advice of Counsel

You hereby acknowledge that You have read this Confidential Release and had an opportunity to obtain advice of counsel regarding it. You also acknowledge that You have been advised by counsel as to the material terms of the MSA to which this Confidential Release relates, that You understand the terms thereof and of this Release, and that You freely and voluntarily sign and enter into it. You further acknowledge that, in entering into this Confidential Release, You have not relied upon any statement or representation by or on behalf of the Released [redacted] Parties, except as may be expressly stated herein.

Incorporation of MSA

The terms and conditions of the MSA are fully incorporated herein by this reference.

Miscellaneous Provisions

A. This Confidential Settlement Release is governed by the laws of the State of New York.

B. You agree that the state and federal courts within the Southern District of New York, in New York City and the county of New York, will have the exclusive jurisdiction for disputes arising out of our related to this Confidential Settlement Release or the related MSA, and that any action involving such a dispute shall be filed and shall proceed in one of those courts.

C. No waiver of any of the terms of this Confidential Settlement Release shall be valid unless in writing and signed by You and the Released [redacted] Parties.

D. This Confidential Settlement Release shall not be modified or altered except by a written agreement signed by You and the Released [redacted] Parties.

E. The headings and bolded text in this Confidential Settlement Release are for reference purposes only and do not have any effect on the meaning or interpretation of this Confidential Settlement Release.

F. If any provision(s) of this Confidential Settlement Release shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions of this Confidential Settlement Release shall not in any way be impaired thereby, and such remaining provisions shall continue to be valid, binding and enforceable.

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Unauthorized Practice of Law

Because the mass arbitration model emphasizes the volume of claimants, claimants' counsel engage in nationwide solicitation, rather than focusing on where they are barred to practice. This can potentially lead to counsel offering or rendering legal services, including filing demands or engaging in settlement discussions, in states in which they are not licensed to practice (and have not been admitted *pro hac vice* on a temporary basis).[175] This practice could also be compounded by counsel targeting specific statutes and venues they view as favorable to their mass arbitration claims, regardless of whether they are admitted to practice in that jurisdiction.

". . . [C]laimants' counsel routinely do not—and, indeed, cannot—communicate effectively with large volumes of purported clients."

Because of the various potential ethical concerns that appear to be associated with the mass arbitration model, state bar authorities should consider a more active role to protect both businesses and consumers from conduct that may run afoul of rules governing professional conduct.

Mass Arbitration and the Courts: Emerging Options for Businesses to Consider

Chapter

04

The first courts to address disputes arising from mass arbitration campaigns were largely unsympathetic to businesses' position that claimants' counsel were engaging in widespread weaponization of arbitration agreements to extort businesses.

Most remarkably, in 2020, a federal judge ordered DoorDash to arbitrate with more than 5,000 couriers, commenting that DoorDash's contention that claimants' counsel were abusing a consumer-friendly arbitration agreement amounted to "hypocrisy."[176]

The judge remarked that after "forc[ing] arbitration clauses upon workers," "DoorDash, faced with having to actually honor its side of the bargain, now blanches at the cost of the filing fees it agreed to pay in the arbitration clause."[177] These decisions reflected a thinly-veiled hostility to individual arbitration and a feeling that, in the words of one judge, mass arbitration defendants had been "hoisted by their own petard" when faced with a mass arbitration campaign.[178]

But the tide might be shifting. More recently, some businesses have won important decisions in both federal and state courts.

Courts have recently enforced updated arbitration agreements that include provisions specifically designed to thwart mass arbitration abuses.

In some cases, businesses have also successfully resisted claimants' efforts to compel arbitration and the payment of arbitration-related fees where, for example, claimants' counsel failed to show the existence of a binding agreement to arbitrate for each claimant or the arbitration forum's rules permitted businesses to decline to pay fees up-front. Building on this progress, several businesses have brought their own lawsuits to address misconduct by plaintiffs' firms pursuing mass arbitration efforts.

These cases form a body of precedent that can guide businesses in addressing mass arbitration issues. Following these examples, businesses can consider updating their arbitration agreements to include mass arbitration provisions, refusing to pay fees in certain circumstances where plaintiffs' lawyers file improper arbitration claims, and even filing affirmative claims to fight back against the plaintiffs' lawyers driving abusive mass arbitration efforts.

Courts have not taken a uniform approach to these issues. Courts may hinge their analysis on narrow, fact-specific factors which will not apply universally. The case law continues to develop and new trends continue to emerge. But on balance, businesses now have a growing foothold of legal precedent on which to rely when fighting back against mass arbitration abuses.

Contracting: Preserving the Hallmarks of Consumer/ Employee-Friendly Arbitration While Curtailing Abusive Practices in Arbitration Clauses

For decades, American businesses have refined their arbitration agreements to include consumer- and employee-friendly terms. Many arbitration agreements provide for companies to pay most or all of the fees associated with an arbitration with limited exceptions (e.g., unless the amount sought is exorbitant or the claim is determined to be frivolous). Even without these provisions, the default rules of major arbitration providers like AAA and JAMS require businesses to pay the overwhelming majority of costs—generally, all but a modest claimant filing fee. Other companies include pro-consumer/ employee terms that provide relief beyond what would be available in court, such as attorney fee awards for successful claimants or minimum recovery amounts in certain circumstances.

Mass arbitration plaintiffs' lawyers have weaponized these consumer-friendly arbitration clauses. Instead of using consumer-friendly provisions to help their clients navigate disputes with companies without the cost and complexity of court, as originally designed, claimants' counsel exploit these provisions and use them as leverage to obtain lawyer-driven settlements unrelated to the merits of the claims asserted.

In the wake of the mass arbitration avalanche, some businesses have abandoned their arbitration programs altogether.[179] Many businesses, however, have updated their agreements to close the loopholes that mass arbitration claimants' lawyers sought to exploit. In particular, businesses have begun including provisions in updated agreements that (i) incorporate newly developed mass arbitration protocols, including those offered by arbitration providers, and (ii) provide additional protections, including, for example, the staging or batching of cases and corresponding fees. These provisions aim to prevent plaintiffs' lawyers from weaponizing arbitration provider fee schedules to coerce an immediate windfall settlement. They also aim to prevent plaintiffs' lawyers from using unaware claimants as pawns in lawyer-driven mass arbitration campaigns, by ensuring claimants are actually aware of and participate in any arbitrations and any pre-arbitration informal dispute resolution processes.

These updated agreements typically call for one of two different protocols[180] when similar and coordinated claims are filed *en masse*:

First, under a "staging" procedure, only a select set of claims may proceed to arbitration at a time, while other cases are stayed and any statutes of limitations are tolled. Staging is intended to provide guidance as to the settlement value of the other cases and thereby help facilitate global resolutions of mass arbitrations in a manner that accounts for the merits of the claims alleged.[181]

Second, under a "batching" procedure, coordinated claims will all proceed simultaneously, but will be grouped in batches that are overseen by single arbitrators and subject to one set of fees. Batching thus allows all claims to proceed to a resolution at roughly the same speed as they would if they were not coordinated.

As the prior *Mass Arbitration Shakedown* paper discussed, Judge Chen in *MacClelland v. Cellco Partnership*, 609 F. Supp. 3d 1024 (N.D. Cal. 2022), held an agreement containing certain mass arbitration provisions to be unconscionable and unenforceable under California law. There, the agreement provided for staging of 10 claims at a time without tolling, meaning that claimants' claims could become time-barred while they waited for their case to be arbitrated. Plaintiffs' lawyers continue to rely on *MacClelland* in addition to the 2024 decisions in *Pandolfi v. AviaGames, Inc.* (also Judge Chen; affirmed in 2025) and *Heckman v. Live Nation Entertainment, Inc.*, where California federal courts held that certain mass arbitration protocols (some created by businesses' agreements and others by arbitration providers) were unconscionable and unenforceable.

"Courts have recently enforced updated arbitration agreements that include provisions specifically designed to thwart mass arbitration abuses."

In *Pandolfi* (as in *MacClelland*), the district court held that AviaGames's arbitration agreement (which required that where 25 or more claims are brought together in a mass arbitration, those arbitrations must be batched in groups of 20, with all other claims stayed while each group of 20 proceeds) had a "built-in asymmetry" and was unconscionable and unenforceable.[182] *Pandolfi* (again like *MacClelland*) seemed to ignore the fact that no arbitration provider can actually process a huge number of claims immediately and that batching provisions help to promote settlement. In a short, unpublished, and non-precedential decision, the Ninth Circuit affirmed the lower court's decision.[183]

In *Heckman*, both a district court and the Ninth Circuit took issue with an atypical set of mass arbitration rules implemented by the arbitration provider, New Era,

which were incorporated into Live Nation's arbitration agreement.[184] Under New Era's rules, a unique set of procedures would apply any time five or more cases shared common issues of law or fact. Those issues would be decided in three confidential cases where only three claimants participated. The decisions in those three cases would then, according to the Ninth Circuit's understanding of the process, become common binding precedent on all common issues in the mass arbitration, even though other claimants did not participate in those three proceedings and may not have even known they were occurring, and even if other claimants filed their claims later. In this way, the process as understood resembled a representative class action proceeding, though without the procedural protections of class litigation in the courts. New Era's rules also did not provide claimants with a right to discovery, limited complaints to 10 pages, provided a right to appeal awards of injunctive relief (which would typically be awarded against the business, not the claimants) but not denials of injunctive relief, and gave New Era the right to override any claimant's decision to disqualify an arbitrator.

The Ninth Circuit found that system unconscionable under California law. Further, the Ninth Circuit commented that the unique mass arbitration system at issue in *Heckman* was "not arbitration as envisioned by the FAA" and may be "unworthy even of the name of arbitration," because that system did not contemplate a bilateral process that could serve as an "efficient alternative to bilateral judicial proceedings."[185] The Ninth Circuit determined that Live Nation's arbitration agreement incorporating New Era's rules did not warrant deferential treatment under the FAA and instead was subject to the "*Discover Bank*" rule, which holds that class action waivers in contracts of adhesion are unconscionable under California law.

"Most remarkably, in 2020, a federal judge ordered DoorDash to arbitrate with more than 5,000 couriers, commenting that DoorDash's contention that claimants' counsel were abusing a consumer-friendly arbitration agreement amounted to 'hypocrisy.'"

Following the Ninth Circuit's decision, New Era updated its rules and procedures,[186] and Live Nation updated its arbitration agreement to call for arbitrations with JAMS, not New Era.[187]

Plaintiffs' lawyers view these decisions, and *Heckman* in particular, as key victories. Plaintiffs' lawyers have even tried to argue (unsuccessfully so far) that, under *Heckman*, contractual mass arbitration provisions are unenforceable.[188]

Importantly, in *Jones v. Starz Entertainment, LLC*, 129 F.4th 1176 (9th Cir. 2025), the Ninth Circuit clarified that there is a distinction between consolidated arbitrations, where claimants' arbitrations may be grouped together for resolution via staging or batching procedures, and representative arbitrations, where claimants may be bound by a proceeding they do not participate in—like the unique binding precedent rules in *Heckman*. As the *Starz* court explained, consolidated arbitrations do not give rise to the same procedural concerns as representative arbitrations and are enforceable.

Further, contrary to arguments that *Heckman* and its progeny hold that all mass arbitration provisions are unenforceable, those holdings are quite narrow and fact-specific. *Heckman* turned on New Era's unique and now superseded rules, as the *Heckman* plaintiffs themselves acknowledge.[189] Other courts have held the reasoning in *Heckman* inapplicable to different mass arbitration provisions, such as those in the *Discovery Communications* and *Coinbase* cases discussed below. In those cases and others, businesses have successfully defended agreements with mass arbitration provisions in court, particularly where agreements give claimants the option to opt out of arbitration, allow numerous claims to proceed at once, or account for the preservation of claims by tolling those that are not part of an initial staging process.

Cases Upholding Staging Provisions

Brooks v. WarnerMedia Direct, LLC

In *Brooks v. WarnerMedia Direct, LLC*, No. 23 Civ. 11030 (KPF), 2024 WL 3330305 (S.D.N.Y. July 8, 2024) ("*Brooks I*"), claimants represented by a claimants' firm moved to compel arbitration with a business before the AAA. The business cross-moved to compel arbitration before National Arbitration and Mediation (NAM), arguing that the claimants were bound by an updated agreement that designated NAM as the arbitration provider and which included mass arbitration provisions providing for three rounds of staged arbitrations (50 in the first round, 100 in the second round, and 200 in the third round), followed by the option for claimants to opt out of arbitration and proceed individually in court. The claimants challenged the enforceability of those provisions, arguing that they were substantively unconscionable. The court disagreed, remarking that "[t]he arbitration procedure set forth in the NAM Agreement is a far cry from that of *MacClelland*."[190] The court reasoned that, among other things, "many more arbitrations would occur in a much quicker timeframe than pursuant to the operative procedure in *MacClelland*" and unlike in *MacClelland*, "the NAM Agreement tolls the applicable statute of limitations."[191] In a subsequent decision, the court ordered claimants who were bound by the NAM Agreement to arbitrate before NAM.[192]

Pilon v. Discovery Communications, LLC

In *Pilon v. Discovery Communications, LLC*, 769 F. Supp. 3d 273 (S.D.N.Y. 2025), another set of claimants represented by the same claimants' firm involved in *Brooks* moved to compel arbitration before JAMS and Discovery cross-moved to compel arbitration before NAM under an updated agreement similar to WarnerMedia's agreement in *Brooks*. There too, the claimants' firm challenged the enforceability of the mass arbitration provisions in the agreement, and there too, the court rejected those arguments. The court held that the provisions did not appear to "unreasonably favor Discovery, for even if they do require consumers to send Discovery affidavits or to proceed in batches, that does not abridge consumers' substantive rights in any way or require them to do more than what is required in ordinary (or multidistrict) litigation."[193] The court distinguished the staging provisions from those at issue in *MacClelland* because they called for limitations periods and filing fee deadlines to be tolled, and included a right for claimants to opt out of arbitration. And the court distinguished the provisions from the protocol at issue in *Heckman* because they did not include a similar binding, representative "bellwether" procedure.

Ruiz v. CarMax Auto Superstores, Inc.

In the employment context, a federal court in California endorsed CarMax's arbitration agreement, rejecting plaintiffs' argument that staging provisions allowing 10 claims to proceed per stage in perpetuity was unconscionable.[194]

The court held that, unlike the agreement in *MacClelland* (which the court described as an "inapposite" case), CarMax's mass arbitration protocol "constitutes a 'system to adjudicate a group of cases with the purpose of facilitating global or widespread resolution via [ADR],' not one that 'formally bar[s] the timely adjudication of cases that do not settle.'"[195] As in *Brooks*, the *CarMax* court also noted that CarMax's agreement contained a tolling provision.[196+]

Caimano v. H&R Block

In a putative consumer class action filed against H&R Block, a Pennsylvania federal court enforced H&R Block's arbitration clause that provided for perpetual staging—that is, which called for claims to proceed in stages ad infinitum—with 10 claims in the first two stages and 50 claims per stage thereafter.[197] The court found that the agreement was enforceable and not unconscionable because "[p]laintiffs had reasonable notice" of the mass arbitration provision "concerning the statute of limitations and the tolling of claims, and as [d]efendants note, 'no consumer [is] at risk of losing [any] claims' as a result of this provision."[198]

Cases Upholding Batching Provisions

Silva v. WhaleCo, Inc.

Plaintiffs pursuing a putative class action against Temu in a federal court in California argued that Temu's mass arbitration provisions—which provided that where a mass arbitration is filed, the "AAA shall . . . administer the arbitration demands in batches of 100 Arbitration Notices per batch . . . concurrently"—were unconscionable.[199,200] The plaintiffs argued that the batching provision would "delay resolution of claims and subsequently have a chilling effect on potential plaintiffs."[201] The court disagreed, distinguishing *MacClelland* and *Pandolfi* from *Silva* and holding that because "Temu's arbitration clause provides for the concurrent batching of like claims," it "eliminat[es] any concern that litigants' claims will be stalled until prior batches of claims are resolved."[202]

Kohler v. WhaleCo, Inc.

In another putative class action against Temu, another federal court in California also held that Temu's mass arbitration provisions were enforceable.[203] The court differentiated Temu's agreement from the agreement at issue in *Heckman*, noting that Temu's agreement provided individuals with the ability to opt out of the agreement's class action waiver and mass arbitration provisions. The court further held Temu's agreement distinguishable from the agreements at issue in *MacClelland* and *Heckman* because of its "requirement that batches be arbitrated concurrently,"[204] which alleviates any concern that adjudication of a litigant's claims would be delayed until prior batches of claims are arbitrated.

Burkhardt v. Extra Space Management, Inc.

In a putative class action against Extra Space Management, a federal court in California granted a motion to compel an employment claim to arbitration, holding that the company's arbitration agreement and mass arbitration provisions were enforceable.[205] The mass arbitration provisions called for 10 arbitrations to proceed in the first stage, followed by a mandatory global mediation, after which arbitrations would proceed in batches of 100 that were each to be treated as singular cases with one appointed arbitrator per batch. The agreement further provided that parties may opt out of the mass arbitration provisions and "proceed directly to arbitration" after their arbitration was designated as part of a mass arbitration.[206] The court held that the agreement was not procedurally or substantively unconscionable, explaining that the back-end right to opt out of the mass arbitration provisions distinguished the mass arbitration provisions from those in *MacClelland*.[207]

"In the employment context, a federal court in California endorsed CarMax's arbitration agreement, rejecting plaintiffs' argument that staging provisions allowing 10 claims to proceed per stage in perpetuity was unconscionable."

Cordero v. Coinbase, Inc.

In a putative class action case brought against Coinbase, a federal court in California granted Coinbase's motion to compel arbitration and rejected plaintiffs' challenge to Coinbase's arbitration agreement, holding that Coinbase's provision that called for the AAA to administer demands in batches of 100 was not unconscionable.[208] In so holding, the court distinguished *Cordero* from *Heckman*, noting that Coinbase's agreement did "not involve bellwether trials, impose strict file or page limits for discovery or briefs, or restrict appeals only to those brought by one side."[209]

Carolus v. Coinbase Global, Inc.

After the decision in *Cordero*, the same federal court in California granted another motion to compel arbitration filed by Coinbase, again rejecting a challenge to Coinbase's arbitration agreement.[210] The plaintiff attempted to distinguish *Cordero* because the court there did not address the impact of the AAA's Mass Arbitration Supplementary Rules incorporated into Coinbase's agreement on the enforceability of the agreement. The plaintiff

claimed those rules, which allowed the AAA to appoint a Process Arbitrator with the power to make administrative determinations affecting later-filed cases, made the arbitration procedure look "similar to those in *Heckman*" and subject to the *Discover Bank* rule.[211] The court disagreed. The court noted that the "Process Arbitrator can only make decisions on non-merit-based issues," and so claimants were "not bound by substantive rulings" in other proceedings "without notice or the opportunity to contest their applicability."[212] The court held that the Supplementary Rules "create consolidated but still bilateral procedures" that are enforceable.[213]

Atkins v. Amplitude, Inc.

In a putative class action brought against Amplitude, a federal court in California granted Amplitude's motion to compel arbitration under plaintiff's arbitration agreements with a third party, DoorDash.[214] In so doing, the court rejected plaintiffs' argument that batching provisions in DoorDash's arbitration agreement rendered it unconscionable. The court distinguished the case from *Heckman*. As the court explained, "[i]n *Heckman*, the batching provision was found unconscionable because it used 'bellwether cases' to bind parties who had not had any prior opportunity to be heard."[215] The DoorDash batch arbitration provision, on the other hand, "does no such thing."[216] Rather, the DoorDash provision merely "facilitates the efficient coordination of cases so that they may be heard together."[217]

On balance, these recent decisions show that numerous courts have endorsed businesses' use of staging and batching provisions designed to fairly and efficiently adjudicate mass arbitrations.

Among other trends, it appears that courts are more likely to enforce mass arbitration provisions that (i) do not unreasonably delay the adjudication of any claims, (ii) do not include the binding precedent rules the Ninth Circuit criticized in *Heckman*, (iii) toll applicable statutes of limitations for claimants whose cases are paused as part of a staging or bellwether procedure, (iv) do not include one-sided procedural restrictions, such as page limits on briefs claimants are permitted to submit, and which (v) give claimants the right to opt out of mass arbitration protocols, or arbitration altogether. Businesses that incorporate mass arbitration provisions that include these features will have a body of case law to draw upon if they are forced to defend their mass arbitration provisions in court.[218]

Davis v. Experian Information Solutions, Inc.

In a putative class action brought against Experian, a federal court in California granted Experian's motion to compel arbitration and rejected plaintiffs' argument that the batching provision in Experian's amended arbitration agreement was unenforceable under *Heckman*.[219] Quoting the Ninth Circuit's decision in *Jones v. Starz Entertainment*, the court reasoned that the "'consolidation

"Businesses updating their provisions are well served to closely track the legal landscape in this space and tailor their mass arbitration provisions to the extent new trends emerge."

here implicates none of [*Heckman's*] concerns' since 'no claimant is at the mercy of another claimant's representation of her.'"[220] The court also held that the *Discover Bank* rule was inapplicable because Experian's mass arbitration provision serves "primarily to consolidate proceedings under a single set of fees and does not eliminate the bilateral nature of arbitration proceedings."[221]

Still, although the body of case law assessing the unconscionability of mass arbitration provisions has grown significantly in recent years, it remains relatively sparse.

Businesses updating their provisions are well served to closely track the legal landscape in this space and tailor their mass arbitration provisions to the extent new trends emerge.

Resisting Efforts to Compel Arbitration and the Payment of Fees

In some cases where claimants' lawyers attempt to initiate a mass arbitration against a

business, the business does not acquiesce and instead declines to pay arbitration-related fees. Claimants' lawyers then ask a court to compel arbitration as to some or all of the claims. In many of these cases, claimants' lawyers will also request an order that the business pay fees or that the court impose other sanctions. To that end, claimants' counsel representing California claimants regularly invoke California Civil Practice Code §§ 1281.97-1281.99,[222] a statute that calls for sanctions on businesses that fail to pay arbitration fees in certain circumstances. The claimants' lawyers in *DoorDash* successfully moved to compel arbitration under this statute where the business initially declined to arbitrate.[223]

But that was five years ago. Since then, several businesses have secured decisions rejecting claimants' efforts to compel arbitration following the businesses' nonpayment of arbitration-related fees, including on the ground that fee questions are expressly delegated to the arbitrators rather than the court. The successes of those businesses demonstrate another path for businesses to consider in combatting improper mass arbitration filings made against them.

Wallrich v. Samsung Electronics America, Inc.

In 2022, Samsung was facing parallel mass arbitration campaigns brought by two sets of claimants' firms.[224] Both sets of claimants' lawyers advised Samsung that they purportedly represented thousands of claimants who intended to assert privacy claims against Samsung.

When Samsung did not acquiesce to the plaintiffs' settlement demand, the firms filed more than 50,000 arbitration demands with the AAA that caused the AAA to issue sizeable fee invoices to Samsung.

Samsung determined not to pay those fees. Pursuant to its rules, the AAA then gave both sets of claimants the opportunity to advance Samsung's fees, which both sets of claimants declined to do. As a result, the AAA terminated the arbitration proceedings, again in accordance with its rules, and permitted the parties to proceed in court.

Like the DoorDash claimants before them, the Samsung claimants then turned to the courts, filing parallel cases asking a federal court in Chicago to compel Samsung to arbitrate. And, also like the DoorDash claimants before them, the Samsung claimants initially saw some success. The district court judge presiding over the cases granted the motions to compel and ordered Samsung to pay AAA initiation fees, reiterating the observation that "Samsung was hoist[ed] with its own petard."[225]

That changed on appeal. On July 1, 2024, in *Wallrich*, the Seventh Circuit reversed the district court's order requiring Samsung to arbitrate with one set of claimants. First, the court found that the claimants had not shown they actually had arbitration agreements with Samsung. The sum total of the evidence claimants' counsel submitted with their motion to compel was copies of arbitration demands and a spreadsheet of claimant names and addresses. The court held that this "evidence" was not sufficient to show that each individual claimant was ever actually a Samsung customer, and thus, did not show that each claimant was actually subject to an arbitration agreement. The court noted that evidence such as receipts, order numbers, or declarations from the claimants may have constituted sufficient proof, but the claimants had submitted none.[226] Second, the Seventh Circuit found that even if the claimants had shown they had arbitration agreements with Samsung, it was improper for the district court to have compelled arbitration and the payment of arbitration fees because (i) the agreements delegated threshold fee-related questions to the arbitrator and (ii) the AAA had decided the fee dispute by terminating proceedings after giving the claimants the opportunity to advance Samsung's fees.[227] That was a discretionary decision courts lacked authority to "flout."[228] The court observed: "The consumers may view this

"When Samsung did not acquiesce to the plaintiffs' settlement demand, the firms filed more than 50,000 arbitration demands with the AAA that caused the AAA to issue sizeable fee invoices to Samsung."

result as unjust, but we are here because they invoked their alleged agreement with Samsung; they cannot now complain of that agreement's terms."[229]

Weeks later, the Seventh Circuit issued a follow-on decision in *Hoeg*, citing *Wallrich*, and summarily reversed the district court order that granted the other set of claimants' motion to compel. The court noted that the claimants were not without recourse, as they could still refile their arbitration demands with the AAA or attempt to bring their substantive claims in court.[230]

Bernal v. Kohl's Corp.

In September 2024, two months after the Seventh Circuit's decision in *Wallrich* was issued, a federal court in Wisconsin relied heavily on *Wallrich* in denying a motion to compel brought in connection with a mass arbitration campaign against Kohl's Corporation.[231]

A claimants' firm had amassed more than 50,000 putative claimants threatening claims against Kohl's. The firm filed arbitration demands with the AAA that would have triggered tens of millions of dollars in upfront fees.

But the AAA advised the parties that Kohl's had not registered its arbitration agreement with the AAA and was declining to do so (Kohl's had updated its arbitration agreement to designate another arbitration provider.) As a result of Kohl's non-registration, the AAA declined to administer claimants' arbitrations and invited the parties to submit their dispute to court. The claimants' firm then moved to compel arbitration on behalf of a select set of claimants.[232]

The court denied the claimants' firm's motion, stating that "*Wallrich* controls." The AAA's decision to close the Kohl's arbitrations was because of Kohl's nonpayment of a registration fee rather than nonpayment of arbitration-specific initiation fees. The court nonetheless found that the AAA's decision was—like the AAA's decision in *Wallrich*—one that courts did not have authority to overturn. The *Kohl's* ruling thus built on *Wallrich*, applying that case's rationale in a slightly different factual setting.[233]

Allen v. Motorola Mobility, LLC

In October 2024, an Illinois state court issued a decision relying on *Wallrich* in another mass arbitration brought by one of the same claimants' firms involved in *Wallrich*.[234] There, the firm filed more than 4,000 arbitration demands with JAMS against Motorola, Motorola elected not to pay its portion of related fees, and JAMS closed the actions. A motion to compel arbitration followed. Applying *Wallrich*, the court held that the claimants' arbitration "was had" when JAMS closed their cases because of nonpayment, and as a result, the court dismissed the motion to compel arbitration.

Frazier v. X. Corp.

In September 2025, the Second Circuit dealt another blow to claimants seeking a court order compelling a business to pay arbitration fees.[235] After Elon Musk acquired Twitter (now X Corp.), thousands of former Twitter employees filed arbitrations asserting employment-related claims against X before JAMS. The employees claimed that under their agreements and JAMS' rules, X was required to pay all fees other than certain case-initiation fees. X took the position that the employees' arbitration agreements required the parties to split the fees. JAMS ordered X to pay all of the fees. X objected and refused to pay the fees beyond the half that X owed under the applicable agreements. In response, seven claimants brought a petition to compel arbitration in New York federal court. The district court granted the petition and ordered X to pay the fees. The Second Circuit reversed.

Echoing the reasoning in *Wallrich*, the Second Circuit explained that courts have limited authority to intervene in arbitrations under the FAA and are not empowered to resolve procedural issues internal to an arbitration, such as fee disputes.

"A claimants' firm had amassed more than 50,000 putative claimants threatening claims against Kohl's. The firm filed arbitration demands with the AAA that would have triggered tens of millions of dollars in upfront fees."

This principle applies to decisions by merits arbitrators and arbitration bodies alike. To be sure, a court can compel arbitration in the face of a "refusal to arbitrate." But the Second Circuit held that a party's decision not to abide by a procedural determination, such as an order to pay fees, is not a "refusal to arbitrate." Instead, such a decision is "simply an intra-arbitration delinquency that arbitral bodies, like JAMS here, are empowered to manage." Accordingly, the Second Circuit reversed the district court with instructions for the district court to deny the petition.[236]

These cases establish a body of federal and state court precedent that businesses can rely on when (i) claimants' lawyers demand a mass arbitration pursuant to an agreement that delegates fee issues to the arbitrator, (ii) the arbitrator terminates proceedings because of the nonpayment of fees, and (iii) the claimants' lawyers thereafter move to compel arbitration.

California Civil Practice Code §§ 1281.97-1281.99 and Defenses

One way plaintiffs' attorneys attempt to subvert mass arbitration provisions is by weaponizing California Civil Practice Code §§ 1281.97-1281.99, a California statute that provides for sanctions where a business does not pay arbitration fees invoiced by an arbitration provider.

Plaintiffs' lawyers bringing mass arbitrations on behalf of California claimants regularly invoke that statute.

But the case law is not uniform. While several federal courts have found at least parts of the statute to be preempted, the California Supreme Court has reached the opposite conclusion, albeit in limited fashion.[237] In *Hohenshelt v. Superior Court of Los Angeles County*, five justices of the California Supreme Court held (with two justices dissenting) that a provision of the statute was not preempted if and only if (i) it is assumed that California law applies to the arbitration agreement at issue—an issue that the *Hohenshelt* defendants waived—and (ii) the statute was interpreted to call only for the waiver of businesses' rights to compel arbitration when they did not timely pay arbitration fees due to willfulness, fraud, or gross negligence.[238]

That limited preemption holding is precedential only in California state court and not in federal court. Numerous federal courts have held that provisions of the statute are preempted. Thus, there currently is a split regarding the enforceability of §§ 1281.97-1281.99, which ultimately may be resolved by the United States Supreme Court. In the interim, this split may cause litigants to place more emphasis on their choice of forum for litigating mass arbitration disputes (to the extent they can control it).

The potential applicability of §§ 1281.97-1281.99 has historically caused mass arbitration

"Echoing the reasoning in *Wallrich*, the Second Circuit explained that courts have limited authority to intervene in arbitrations under the FAA and are not empowered to resolve procedural issues internal to an arbitration, such as fee disputes."

claimants' lawyers to prefer California claimants and California as a venue to bring claims. Importantly, in June 2024, Rhode Island enacted a law mirroring California's §§ 1281.97-1281.99.[239]

Actions Against Mass Arbitration Firms

Building on the progress in actions defending against mass arbitration campaigns in court, several businesses have recently brought suits against plaintiffs' lawyers that have threatened them with mass arbitration. Several such cases are currently pending. The cases expose the abuse inherent in mass arbitration and may help to precipitate legislative or other reform. They also are a tool that businesses may consider to defend against mass arbitration coercion.

Tubi, Inc. v. Keller Postman LLC

In its 2024 case, Tubi filed a complaint in federal court alleging

that a claimants' firm tortiously interfered with Tubi's consumer arbitration agreements by causing Tubi customers to file arbitration demands without satisfying the pre-filing requirements set forth in their agreements.[240] The Tubi filing led to a protracted and procedurally complex battle with the claimants' firm.

Prior to Tubi's filing of that complaint, the claimants' firm had filed almost 24,000 demands with JAMS alleging that through "unspecified" advertising practices on Tubi's streaming platform, Tubi violated a California law that requires businesses to provide accessible content on their websites.

The claimants' firm demanded that JAMS issue an invoice to Tubi for almost $48 million upfront in non-refundable fees to allow Tubi to defend itself in arbitration.

Once again, claimants' counsel ignored the obligation to negotiate in good faith prior to arbitration, causing the customers to breach the very contract under which they sought to arbitrate.

Tubi's complaint alleged at length that the claimants' firm and their typical co-counsel use abusive solicitation practices to enroll claimants and may well have used the exact same targeted advertising Tubi used and that the claimants' firm claimed was illegal in the underlying arbitration. The complaint also alleged that the claimants' firm violated several legal ethics rules in the course of its mass arbitration campaign against Tubi. Further, the complaint explains that Tubi's analysis of the claimant pool revealed that approximately 30% of the claimants have never been registered users of Tubi, and 11% that were registered users never streamed any videos on Tubi's streaming platform. According to Tubi, that was no accident, but rather the result of the claimants' firm's deliberate strategy to avoid due diligence, so as to maximize the number of claims while retaining plausible deniability as to their frivolous nature.[241]

"One way plaintiffs' attorneys attempt to subvert mass arbitration provisions is by weaponizing California Civil Practice Code §§ 1281.97-1281.99, a California statute that provides for sanctions where a business does not pay arbitration fees invoiced by an arbitration provider."

The claimants' firm moved to dismiss Tubi's case. Thereafter, Tubi hired a private investigator that interviewed 19 individuals who were former claimants in the claimants' firm's campaign against Tubi. Among other things, the interviews revealed that (i) most denied ever being represented by the claimants' firm; (ii) most were unaware of the very basic nature of their claims against Tubi; and (iii) some were unaware of any claims being filed in their names.[242] In response, the claimants' firm filed a motion to disqualify Tubi's counsel alleging that Tubi's counsel violated ethical rules by directing this investigation,[243] and filed a separate action in California state court against Tubi's counsel, alleging Tubi's counsel's practices constituted an unfair business practice.[244]

Separately, in an action in Illinois state court, a separate plaintiffs' firm and Tubi sought approval for a nationwide class settlement that included a release of claims similar to those alleged in the claimants' firm's mass arbitration campaign.[245] The claimants' firm submitted approximately 7,600 requests for exclusion from the settlement and filed objections to the settlement on behalf of certain claimants that were in arbitration against Tubi.

In December 2024, the parties ultimately reached a stipulation in Tubi's action against the claimants' firm relating to the JAMS arbitrations and the separate disputes proceeding in other courts.[246] Among other things, the parties agreed that: (i) the parties would participate in 10 consolidated arbitrations before JAMS; (ii) the claimants' firm would recommend to their clients that they withdraw the objections to class settlement in the Illinois case; (iii) the claimants' firm would withdraw its motion to disqualify Tubi's counsel in the action and voluntarily dismiss the California state action against Tubi's counsel; and (iv) Tubi's action against the claimants' firm would be stayed pending the arbitration. The parties currently appear to be proceeding in arbitration before JAMS on the terms to which Tubi agreed.

"The claimants' firm demanded that JAMS issue an invoice to Tubi for almost $48 million upfront in non-refundable fees to allow Tubi to defend itself in arbitration."

Those terms are substantially less onerous than the terms the claimants' firm initially sought.

WarnerMedia Direct, LLC, et al v. Zimmerman Reed LLP

In 2024, two subsidiaries of Warner Bros. Discovery filed a petition in New York state court to disqualify a law firm from representing claimants in threatened arbitrations against WarnerMedia and Discovery.[247] The petition alleged that firm personnel—including its managing partner—signed up as clients with other firms that were mounting mass arbitration campaigns against WarnerMedia and Discovery under false pretenses. The petition alleged that, in doing so, these personnel obtained confidential information that provided an unfair advantage to the firm. Indeed, the firm had copied the demand form employed by another claimants' firm for use in the firm's own parallel and identical mass arbitration.

WarnerMedia and Discovery alleged that the firm's actions violated numerous ethical rules relating to misconduct and false statements to opposing parties warranting that the firm be disqualified.

The firm moved to dismiss the petition. The court scheduled an oral argument for the petition to take place in December 2024, but before argument was held, the parties filed a stipulation of discontinuance with prejudice that noted that the claims in the petition had been resolved.[248]

Actions Against Mass Arbitration Firms and Claimants

L'Occitane, Inc. v. Zimmerman Reed LLP

In 2024, L'Occitane filed a complaint in California federal court against a claimants' firm and 3,000 individuals purportedly represented by the firm, on whose behalf the firm had filed or threatened to file demands for arbitration against L'Occitane alleging violations of California privacy laws.[249] The complaint sought, among other things, a declaration that (i) L'Occitane had not formed arbitration agreements with the individuals, and (ii) to the extent those individuals did have an agreement to arbitrate, they breached the informal dispute resolution provisions of the arbitration agreement. In response, the firm, on behalf of the individual defendants, filed a motion to compel arbitration and a motion to dismiss the complaint.

Notably, L'Occitane separately served the 3,000 individuals. After service, L'Occitane stated in a filing that "numerous" individuals "began responding" to L'Occitane almost immediately, stating "that [the claimants' firm] does not represent them at all."[250] For example, one individual (quoted earlier in this report) responded that "I am not a client of [the firm]. I never made a claim with them. All I did was click on an ad I saw on Instagram, which made a predatory claim. . . . I actually unsubscribed from them shortly after I realized they were probably a scam and I didn't want to get any more predatory emails from them."[251] Another individual stated that his father, who was listed on the arbitration demand, "is now dead."[252]

Ultimately, the court denied the individuals' motion to compel arbitration, holding that (i) the arbitration agreement did not apply to users that merely visited the L'Occitane website and (ii) in any event, the evidence did not show that the individuals actually visited the website.[253] The court also dismissed L'Occitane's claims holding that its denial of the motion to compel arbitration rendered the company's claim for declaratory relief moot.

"WarnerMedia and Discovery alleged that the firm's actions violated numerous ethical rules relating to misconduct and false statements to opposing parties warranting that the firm be disqualified."

SCPS, LLC et al v. Kind Law et al.

In 2024, SCPS, LLC and SSPS, LLC, operators of free-to-play gaming websites, filed a complaint in federal court against two claimants' firms, as well as 966 individual claimants on whose behalf those firms filed demands for arbitration with the AAA alleging that SCPS and SSPS violated certain gambling laws.[254] SCPS and SSPS sought a declaration that some claimants were not customers of and had no arbitration agreement with the businesses. SCPS and SSPS further sought a declaration that, for individuals that were customers, the operative arbitration agreement required arbitration before ADR Chambers in Canada. Plaintiffs also sought an injunction to enjoin the AAA proceedings.

The complaint noted that in response to the arbitration demands, SCPS and SSPS suspended the accounts of some of the claimants.

Thereafter, certain claimants contacted SCPS and SSPS to report that they were unaware of a demand being filed on their behalf, denied that they had been in contact with the claimants' firms, or denied that they authorized the filing of the demand.[255]

Ultimately, the court dismissed the complaint without prejudice on personal jurisdiction grounds without reaching the merits.[256] Plaintiffs did not file an amended complaint.

". . . [C]ertain claimants contacted SCPS and SSPS to report that they were unaware of a demand being filed on their behalf, denied that they had been in contact with the claimants' firms, or denied that they authorized the filing of the demand."

Sega of America, Inc. v. Consovoy McCarthy PLLC

In 2025, Sega filed a complaint in federal court in Virginia against a law firm that had launched a mass arbitration campaign and filed more than 19,000 demands against Sega with JAMS.[257] The complaint, as amended, alleged that the firm (i) tortiously interfered with Sega's contracts with the claimants, which prohibited consolidated proceedings, by inducing claimants to file a consolidated arbitration petition; (ii) tortiously interfered with Sega's contract with JAMS by filing more demands than JAMS could administer and causing JAMS to issue invoices for services it could not render; and (iii) used misleading online solicitations to attract claimants, thereby violating state and federal false advertising laws.

The firm moved to dismiss the amended complaint, arguing that the firm was shielded from tort liability because they were lawyers acting on their clients' behalf, and that the amended complaint otherwise failed to state any actionable claims.[258]

On July 31, 2025, the court denied the firm's motion to dismiss in its entirety.[259] The firm is appealing that decision to the Fourth Circuit.

After filing its notice of appeal, the firm moved to stay all proceedings pending a decision on the firm's appeal. The Virginia federal court denied that motion, which the firm is also appealing.[260] Proceedings in the trial court are ongoing while the firm's appeals are pending.

These cases have not yet led to notable judgments against plaintiffs' firms in businesses' favor.[261] But they have further exposed the abusive practices rampant in mass arbitration campaigns that businesses may leverage in subsequent arbitration and litigation proceedings where similar improper conduct arises. These cases may also provide unseen benefits to the businesses in the context of a given mass arbitration by serving a deterrent effect.[262]

These cases have not yet led to notable judgments against plaintiffs' firms in businesses' favor. But they have further exposed the abusive practices rampant in mass arbitration campaigns that businesses may leverage in subsequent arbitration and litigation proceedings where similar improper conduct arises. These cases may also provide unseen benefits to the businesses in the context of a given mass arbitration by serving a deterrent effect.

The Role of Arbitration Providers in Addressing Mass Arbitration Issues

Chapter

05

Before commencing a mass arbitration campaign, claimants' counsel typically identify a "target" business. Many look for businesses with arbitration agreements they can exploit. They might look to see if the arbitration agreement contains mass arbitration protocols and which providers have been designated as administrators.[263]

Accordingly, choosing an arbitration provider—and, where possible, designating the appropriate arbitration rules—is of critical importance for mass arbitration plaintiffs' lawyers. Arbitration providers are aware of this dynamic.

Nevertheless, while the largest arbitration providers have made some steps in the past several years to try to address mass arbitration abuse, there remain significant gaps that claimants' counsel continue to seek to exploit.[264]

The AAA

Established in 1926, the AAA is the largest and most prominent arbitration administrator in the United States. It is the preferred arbitration institution for many businesses. A recently filed antitrust lawsuit alleges that the AAA controls 94% of the market share of private consumer arbitrations.[265] For 2024, the AAA reported that 82 new consumer mass arbitrations (involving 247,327 claimants) and 10 new employment mass arbitrations (involving 33,022 claimants) were filed. Of course, those figures do not reflect the reality that many mass arbitration threats may be resolved prior to filing any arbitration demands.

The AAA administers consumer arbitrations pursuant to its Consumer Rules. The Consumer Rules apply to all consumer arbitrations, including those that are part of a mass arbitration (as modified by the Mass Arbitration Supplementary Rules where applicable). Parties may also agree to modify the rules applicable to arbitrations in their arbitration agreement so long as any modifications are consistent with the AAA's Consumer Due Process Protocol.

The AAA Mass Arbitration Rules

In 2021, the AAA promulgated rules governing mass arbitration denominated as Supplementary Rules for Multiple Case Filings.[267] The Supplementary Rules apply where "twenty-five or more similar Demands for Arbitration (Demand(s)) [are] filed against or on behalf of the same party or related parties . . . where representation of the parties is consistent or coordinated across the cases."[268] These Supplementary Rules are "intended to provide parties and their representatives with an efficient and economical path toward the resolution of multiple individual disputes."[269] They require that a separate demand for arbitration be submitted for each claimant and "[e]ach Demand must include complete contact information for all parties and representatives."[270]

The 2021 Supplementary Rules also created the "Process Arbitrator" role. The rules permit the AAA—upon the request of a party, but at the AAA's "sole discretion"—to appoint a single individual Process Arbitrator "to hear and determine the administrative issue(s) for all of the cases included in the Multiple Case Filing."[271] Under those rules, the Process Arbitrator had authority to address the following "administrative issues": (i) "AAA filing requirements,"

"Nevertheless, while the largest arbitration providers have made some steps in the past several years to try to address mass arbitration abuse, there remain significant gaps that claimants' counsel continue to seek to exploit."

(ii) "allocation of payment advances on administrative fees, arbitrator compensation, and/or expenses," (iii) "determining the applicable AAA rules that will govern the individual dispute," (iv) "any other issue the parties wish to submit by agreement," and (v) "any other administrative issues arising out of the nature of the Multiple Case Filings."[272]

The AAA has since introduced several updated iterations of the Supplementary Rules (now renamed the "Mass Arbitration Supplementary Rules").[273] The most recent update came in 2024, when the AAA amended both the Supplementary Rules and the consumer arbitration fee schedule.[274] As with prior versions of the Supplementary Rules, the AAA applies the latest iteration of the Supplementary Rules when 25 or more consumer or employment demands (or 100 or more non-consumer or non-employment demands) are filed against the same party and "where representation of all parties is consistent or coordinated across the cases."[275] Importantly, the rules expressly state that they "apply whenever 25 . . . or more similar [consumer] Demands for Arbitration are filed, whether or not such cases are filed simultaneously."[276] The AAA has the authority to interpret and apply these Supplementary Rules "[i]n its sole discretion" and its determination to do so "shall be final, unless a party seeks review of that determination by a Process Arbitrator."[277]

The key changes with the promulgation of the 2024 Supplementary Rules include:[278]

- A requirement that each mass arbitration submission "include an affirmation" from the claimants' counsel "that the information provided for each individual case is true and correct to the best of the representative's knowledge."[279] The AAA explained the new attestation requirements were designed to "help ensure accurate filings and pleadings, minimizing delays and unnecessary complexities."[280] This requirement also applies to "Answers, Counterclaims, and any amended claims."[281]

But in practice, claimants' counsel generally submit boilerplate affirmations that merely track the language of the requirement. As a result, this requirement has not appeared to curb the claimant vetting issues that are commonplace in mass arbitrations (discussed in Chapter 2).

- The AAA and other arbitration forums should expand the scope of affirmation requirements to address these issues. They should also impose disclosure obligations on claimants at the outset of a mass arbitration, such as those that are soon to be imposed in MDL proceedings in court under Rule 16.1, to permit businesses to test these affirmations at an early stage.[282]

- A new Consumer Mass Arbitration and Mediation Fee Schedule that significantly reduced the upfront fees due before a party could request the appointment of a Process Arbitrator.[283] Businesses no longer have to pay a filing fee per claimant before they may request a Process Arbitrator. Instead, under the updated fee schedule—the Consumer Mass Arbitration and Mediation Fee Schedule, Costs of Arbitration and Mediation (Amended and Effective January 15, 2024)—both sides need only pay a single "Initiation Fee" (a flat fee of $3,125 total for the claimants collectively and a flat fee of $8,125 for the business) before they may request the appointment of a Process Arbitrator. Additional per-claimant fees are due only if and when a case proceeds past the "Process Arbitrator" phase. This amendment thus prevents claimants' counsel from exerting immediate filing fee leverage at the outset of a mass arbitration. But it does not remove this leverage entirely: the business still must pay filing fees once merits arbitrators are assigned.

"But in practice, claimants' counsel generally submit boilerplate affirmations that merely track the language of the requirement. As a result, this requirement has not appeared to curb the claimant vetting issues that are commonplace in mass arbitrations."

The 2024 amendments also expanded the role of the Process Arbitrator. While the province of the Process Arbitrator remains limited to administrative issues, the AAA increased the scope of

administrative matters the Process Arbitrator may address to "tackle[] potential hurdles early, allowing parties to focus on substantive issues."[284] Under the 2024 Supplementary Rules, in addition to the administrative issues that the Process Arbitrator had the authority to resolve under the prior rules, the Process Arbitrator can also address:[285]

- "Whether the parties have met the AAA-ICDR's filing requirements or the filing requirements in the parties' contract" and "[d]isputes over any applicable conditions precedent";[286]
- "Disputes regarding payment of administrative fees, arbitrator compensation, and expenses";[287]
- Other administrative and procedural issues, such as "[w]hich Demands for Arbitration should be included as part of the mass arbitration filing" and "[w]hether subsequently filed cases are part of the same mass arbitration," "[t]he selection process for Merits Arbitrators," whether the cases "shall proceed by documents only or hold hearings," and "[t]he locale of the Merits hearings";[288]
- "Whether the cases should be closed and the parties proceed in small claims court";[289] and
- "Whether any previously issued rulings by the Process Arbitrator are binding on the subsequent cases."[290]

"The amended 2024 rules provided that '[r]ulings by the Process Arbitrator will be final and binding upon the parties and Merits Arbitrator appointed to each individual case, except where a Merits Arbitrator determines that the Process Arbitrator abused their discretion.'"

The updated rules also created a process for challenging the Process Arbitrator's rulings. Under the prior Supplementary Rules, the Process Arbitrator's decision was "final and binding upon the parties and Merits Arbitrator(s) where the Merits Arbitrator(s) is appointed after the appointment of the Process Arbitrator."[291]

The amended 2024 rules provided that "[r]ulings by the Process Arbitrator will be final and binding upon the parties and Merits Arbitrator appointed to each individual case, except where a Merits Arbitrator determines that the Process Arbitrator abused their discretion."[292]

It remains unclear how this rule will work in practice: it creates the possibility of a single Process Arbitrator ruling affecting the administration of all the individual claimants' cases in a mass arbitration being challenged before dozens (if not hundreds) of separate merits arbitrators thereafter appointed to those cases.[293]

Should the mass arbitration proceed past the Process Arbitrator stage, then the 2024 AAA Consumer Mass Arbitration Fee Schedule provides that the following additional fees apply: (i) a per-case fee for each individual case (the business's per-case fee is between $100-$325 but only for any cases that proceed past the Process Arbitrator stage); (ii) an Arbitrator Appointment Fee (the business's fee here is $450 per arbitrator for direct appointments and $600 per arbitrator for appointment by the strike-and-rank method); (iii) Arbitrator Compensation (paid by the business with arbitrators now billed at $300 per hour); and (iv) a Final Fee (also paid by the business, at $600 per case). Under the revised fee schedule, the claimants (or their counsel) must share the burden of some of these additional fees: the claimant must pay a per-case fee of between $75-$100 per case, and an Arbitrator Appointment Fee of $50-$75 for each arbitrator appointed.[294] The per-claim fees, while assessed later, are still overwhelmingly paid by the business.

Recent Amendments to the AAA Consumer Rules

In January 2025, the AAA published draft amendments to the Consumer Rules and invited public comment. In response, various trade institutions—such as the U.S. Chamber, the American Financial Services Association (AFSA), the Alliance for Automative Innovation (AAI), the Restaurant Law Center, and the National Retail Federation—provided detailed comments

and suggestions.[295] The AAA released amended Consumer Rules, effective with respect to arbitrations commencing after May 1, 2025, that adhered closely to the original draft amendments.

Some changes reflected in the updated Consumer Rules are positive developments with respect to mass arbitration. For example:

- The amended rules increase the length of the automatic stay from 30 to 90 days where "a party seeks judicial intervention with respect to a pending arbitration."[296] The AAA may extend that time "on its own initiative or at the request of a party for good cause shown."[297] This provision is particularly important where a party commences arbitration improperly—perhaps pursuant to an inapplicable arbitration agreement or when there is no agreement at all—and the respondent must seek court relief.[298]

- The amended rules provide that "[w]hen filing a Demand, answer, or counterclaim, the parties are encouraged to provide sufficient detail to make the dispute clear to the arbitrator." This makes it more likely that a claim's merit (or lack of merit) will be exposed early in the proceedings.

- A new rule provides that an arbitrator may impose sanctions "against a party that has failed to comply with its obligations under these Rules or with an order of the arbitrator."[300] In addition, where an attorney seeks to withdraw after an arbitrator has been appointed, the arbitrator is empowered to resolve any disputes regarding whether that attorney may withdraw.[301] The ability to issue sanctions provides arbitrators with increased authority to address misconduct, and claimants' counsel can no longer withdraw in mass arbitrations without challenge. Such withdrawals are commonplace in mass arbitrations where, for example, the respondent establishes that some claimants are unaware of the arbitration, are dead, have no arbitration agreement with the business, or cannot be contacted.

- The amended rules provide that "[u]nless otherwise required by applicable law, court order, or the parties' agreement, the AAA and the arbitrator shall keep confidential all matters relating to the arbitration or the award."[302] Furthermore, at the parties' agreement or the request of a party, "the arbitrator may make orders concerning the confidentiality of the arbitration proceedings and may take measures for protecting trade secrets and confidential information."[303] This brings the AAA into line with JAMS and NAM, both of which generally provide for confidentiality of the arbitration process.

In other respects, however, the amended rules reduce protections from frivolous claims available to businesses, delegate issues to merits arbitrators that under governing law must be resolved in the courts, and might increase information exchange burdens that can be weaponized in mass arbitrations. For example:

- For claims under $25,000, a party is no longer guaranteed the right to a hearing unless its adversary agrees or the arbitrator determines that a hearing is necessary.[304] Moreover, there is now a presumption that hearings will be virtual unless the parties agree otherwise or the arbitrator (upon the request of a party) determines otherwise.[305] The right to a hearing enshrined in the prior rules ensured that a business had the ability to cross-examine claimants and served as a deterrent—albeit an imperfect one—to frivolous claims brought on behalf of purported claimants who are, for example, deceased, fictitious, minors, or otherwise ineligible for relief.

"The right to a hearing enshrined in the prior rules ensured that a business had the ability to cross-examine claimants and served as a deterrent—albeit an imperfect one—to frivolous claims brought on behalf of purported claimants who are, for example, deceased, fictitious, minors, or otherwise ineligible for relief."

"The amended rules provide that '[w]hen filing a Demand, answer, or counterclaim, the parties are encouraged to provide sufficient detail to make the dispute clear to the arbitrator.' This makes it more likely that a claim's merit (or lack of merit) will be exposed early in the proceedings."

- Under new Consumer Rule R-5(d), if the respondent asserts that claimants' counsel have invoked the incorrect arbitration agreement, "the AAA will make an initial administrative determination regarding the controlling arbitration provision subject to a final determination by the arbitrator."[306] This rule contradicts the Supreme Court's unanimous decision in *Coinbase, Inc. v. Suski*, 602 U.S. 143 (2024), which holds that a court—and not an arbitrator—must resolve disputes as to which conflicting agreement controls.[307] The U.S. Chamber and other interested groups proposed a different rule that would provide that if the respondent alleged that a different arbitration agreement controlled, then the matter would be administered in accordance with the later-in-time agreement subject to a final determination by a court unless the parties had agreed in the later-in-time agreement to delegate the issue to an arbitrator (and then only if the two agreements both select the same administrator).[308]

- The updated rules potentially expand the exchange of information that may be permitted. The prior rules provided for a limited "exchange of information" in consumer arbitrations at the arbitrator's discretion, "keeping in mind that arbitration must remain a fast and economical process."[309] Under the prior rules, the arbitrator "*may* direct *specific* documents and other information to be shared" between the parties.[310] Aside from this limited exchange of information—and the requirement that the parties identify the witnesses whose testimony they plan to elicit at the hearing—no other exchange of information was permitted "unless an arbitrator determine[d] further information exchange [was] needed to provide for a fundamentally fair process."[311] Under the updated rules, arbitrators may, on their own initiative or at a party's request, "require the parties, in response to reasonable document requests, to make available to the other party documents in the responding party's possession or custody not otherwise readily available to the party seeking the documents and reasonably believed by the party seeking the documents to exist and to be relevant and material to the outcome of disputed issues."[312] The arbitrator may also determine "reasonable search parameters" for electronically-stored information.[313] These provisions have the potential to undermine the primary benefits of arbitration, as compared to litigation: its relative efficiency and low costs.

- The AAA has erected further hurdles for a party seeking to file a dispositive motion. The rules had provided that "[t]he arbitrator may allow the filing of a dispositive motion if the arbitrator determines that the moving party has shown substantial cause that the motion is likely to succeed and dispose of or narrow the issues in the case."[314] The revised rules retain these requirements, but add that the arbitrator "shall consider the time and cost associated with the briefing of a dispositive motion" when deciding whether to grant leave to file such a motion.[315] This amendment might make it more difficult for a party to obtain leave to file such a motion. This is an unhelpful development as dispositive motions can result in early resolution of frivolous claims or otherwise help narrow the issues in dispute.[316]

- Because the AAA has only recently implemented the updated Consumer Rules, it remains to be seen how they will be applied in practice. But some of the rules discussed above may be subject to misuse in the mass arbitration context.

JAMS

JAMS was founded in 1979. JAMS describes itself as "the world's largest private alternative dispute resolution (ADR) provider."[317] JAMS administers "over 21,000 cases annually, ranging from two-party personal injury mediations to complex, multi-party, multimillion-dollar arbitrations in the United States and other jurisdictions worldwide."[318]

Like the AAA, JAMS has a set of mandatory due process standards that must be met in order for JAMS to administer a consumer arbitration.

However, JAMS does not have a set of rules specifically for consumer arbitration. Consumer arbitrations are generally subject to another set of JAMS's arbitration rules, such as the Streamlined Arbitration Rules & Procedures[319] or the Comprehensive Arbitration Rules & Procedures.[320] Both the Streamlined Rules and Comprehensive Rules provide that JAMS and the arbitrators must maintain the confidential nature of the arbitration process.[321]

The Streamlined Rules apply to any JAMS arbitration where no disputed claim or counterclaim exceeds $250,000 or the parties otherwise agree to apply the rules.[322] Exchange of information is left to the arbitrator's discretion.[323] The Streamlined Rules do not contain a rule allowing for parties to move for summary disposition.

The Comprehensive Rules apply when a "disputed claim or counterclaim . . . exceeds $250,000" or the "Parties agree to use these Rules."[324] They provide for broad discovery including depositions, as well as third-party discovery (if approved by the arbitrator).[325] The Comprehensive Rules, unlike the Streamlined Rules, permit motions for summary disposition.

JAMS Mass Arbitration Rules

Until recently, JAMS had not adopted any specific mass arbitration procedures. In an article published in March 2023, JAMS's CEO and President Kimberly Taylor acknowledged concerns that businesses had raised regarding mass arbitration abuses. She noted the high fees for which a business may be invoiced at the outset of a mass arbitration. She observed that "[r]espondents may also question whether every individual claim is legitimate before it posts filing fees for the matter, but in some jurisdictions face penalties if they don't pay the arbitration filing fees within a specified time period."[326] While acknowledging "the complexities of the situation," Taylor wrote that "[o]ur role as the administrator of the parties' arbitration proceedings prohibits us from modifying or changing the arbitration agreement absent express agreement of the parties" and "[i]f the parties' agreement prohibits class actions and consolidations, we must treat each case individually."[327]

Recognizing the issues presented by mass arbitration campaigns, however, on May 1, 2024, JAMS released its "Mass Arbitration Procedures and Guidelines" and accompanying "Mass Arbitration Procedures Fee Schedule." JAMS stated that its new Procedures and Fee Schedule were intended to "facilitate the fair, expeditious and efficient resolution of Mass Arbitrations."[328]

JAMS further acknowledged some of the concerns posed by the current mass arbitration environment, stating that "[t]he filing of dozens, hundreds or even thousands of individual claims may create administrative burden and onerous fees, as well as delay and potential unfairness to all Parties, all of which may impair the integrity of the Arbitration process."[329]

A "Mass Arbitration" is defined in the new Procedures as "75 or more similar Demands for Arbitration, or such other amount as is specified in the Parties' agreement(s), filed against the same Party or related Parties by

"JAMS further acknowledged some of the concerns posed by the current mass arbitration environment, stating that '[t]he filing of dozens, hundreds or even thousands of individual claims may create administrative burden and onerous fees, as well as delay and potential unfairness to all Parties, all of which may impair the integrity of the Arbitration process.'"

"JAMS, pursuant to its Comprehensive Rule 6(e) and upon Starz's request, appointed a panel of administrators that decided to consolidate the 7,300 arbitrations into a single arbitration to be heard by a single arbitrator. This had the effect of reducing the initial fees owed by the defendant business to just $1,750."

individual Claimants represented by either the same law firm or law firms acting in coordination."[330]

The JAMS Mass Arbitration Procedures include new filing requirements for mass arbitrations. For example, "[a] Demand for Arbitration Form and applicable arbitration agreement must be submitted for each Claimant."[331] Further, claimants' counsel must provide a sworn declaration with each demand for arbitration affirming that the facts in the demand are true and correct to the best of their knowledge.[332]

The JAMS Mass Arbitration Procedures also provide for a Process Administrator. JAMS may designate a Process Administrator "to hear and determine preliminary and administrative matters in a Mass Arbitration."[333] Issues that the Process Administrator may address include:

- Whether the filing requirements and conditions precedent have been met, which demands for arbitrations should be included as part of the mass arbitration, which JAMS rules apply, and the location of the merits hearings.[334]

- "[W]hether threshold jurisdictional and arbitrability disputes are arbitrable, subject to final determination by the Arbitrator(s) or a court,"[335] as well as "[w]hether to batch, consolidate or otherwise group the Demands or claims in the Mass Arbitration, whether for purposes of discovery, arbitrator appointments, merits hearings or otherwise."[336]

- "Any other non-merits issues affecting case administration the Process Administrator deems appropriate to determine so that the Mass Arbitration may proceed in a fair and efficient manner."[337]

The Process Administrator's determinations are binding on subsequently appointed merits arbitrators, unless those determinations are deemed provisional by the Mass Arbitration Procedures (such as determinations on jurisdiction or arbitrability) or by the Process Administrator.[338]

Together with the release of the Mass Arbitration Procedures, JAMS for the first time issued a fee schedule specific to mass arbitration. Not unlike the AAA Consumer Mass Arbitration Fee Schedule, the JAMS Mass Arbitration Procedures Fee Schedule imposes a flat filing fee of $7,500—up to $2,500 to be paid by the consumers collectively and the remainder paid by the business—for filings that meet the definition of a "Mass Arbitration."[339] Fees are minimal through the Process Administrator phase, with the only additional fees through that phase being the Process Administrator fees.[340] But substantial case management and other fees nonetheless come due after the Process Administrator phase is complete, so the JAMS mass arbitration rules do not eliminate—but only delay—the potential coercive effect of a mass arbitration.

There is also a fundamental difference between the AAA's Mass Arbitration Supplementary Rules and the JAMS Mass Arbitration Procedures: even where an arbitration falls within the definition of a "Mass Arbitration" under the JAMS Mass Arbitration Procedures, JAMS will not uniformly administer cases under these procedures or uniformly apply its Mass Arbitration Fee Schedule. Instead, the parties must have agreed to their application "in a pre- or post-dispute written agreement" to have them automatically applied.[341] The AAA's Supplementary Rules, in contrast, automatically apply to mass arbitrations administered by the AAA.

JAMS Application of Rules in Mass Arbitration

JAMS has demonstrated flexibility in applying its rules to address certain mass arbitration abuses. For example, in a recent mass arbitration, a claimants' firm filed 7,300 demands for arbitration with JAMS against Starz Entertainment,

LLC, alleging violations of the VPPA and Cal. Civ. Code § 1799.3. The claimants' firm sought to obtain fee leverage based on fees of more than $12 million for the 7,300 claims at the outset of the mass arbitration.

JAMS, pursuant to its Comprehensive Rule 6(e) and upon Starz's request, appointed a panel of administrators that decided to consolidate the 7,300 arbitrations into a single arbitration to be heard by a single arbitrator.[342] This had the effect of reducing the initial fees owed by the defendant business to just $1,750.

The claimants' firm opposed this consolidation and filed what it fashioned as a "petition to compel arbitration" in the U.S. District Court for the Central District of California seeking an order mandating that JAMS administer the arbitrations individually. The district court denied the petition and the U.S. Court of Appeals for the Ninth Circuit affirmed that denial.[343]

"Unlike the AAA and JAMS mass arbitration rules, the NAM Mass Filing Supplemental Rules do not require the claimants' counsel to submit any kind of affirmation or declaration attesting that the information for each claimant is 'true and correct' to the best of their knowledge."

NAM

NAM was founded in 1992. It has gained increased prominence in recent years and is widely regarded as one of the top three arbitration providers.[344] NAM states that it has worked "with more than 10,000 commercial entities, including over 50 percent of Fortune 100 companies." [345]

NAM Consumer and Employment Arbitration Rules

NAM applies Minimum Standards of Procedural Fairness for Consumer and Employment/ Workplace Arbitrations to consumer and employment arbitrations.[346] As with JAMS, NAM does not have a specific set of consumer rules. Rather, most NAM arbitrations, including consumer disputes, are arbitrated under NAM's "Comprehensive Dispute Resolution Rules and Procedures," updated as of October 1, 2024.[347]

The NAM Comprehensive Rules provide significant discretion to the arbitrator in determining the appropriate amount of information exchange. The arbitrator may order "document production, interrogatory, deposition" or other discovery devices.[348] But when deciding what information exchange to permit (if any), the arbitrator is to consider the nature of the claims, "the expedited nature of the Arbitration process," and "relevancy."[349] Under the NAM Comprehensive Rules, "the cost of discovery must be commensurate with the amount of the claim and the request must not be unduly burdensome and expensive on the parties."[350] The Comprehensive Rules permit the arbitrator to allow a party to file a dispositive motion at the arbitrator's discretion.[351] NAM provides for strict confidentiality over the arbitration process, including any materials submitted, and the hearing. This confidentiality applies to all participants, including the parties, and is not limited to NAM and the arbitrators.[352]

NAM Mass Arbitration Rules

NAM has promulgated a set of procedures applicable to mass arbitrations: the Mass Filing Supplemental Dispute Resolution Rules and Procedures, updated as of October 1, 2024.[353] NAM recognizes mass arbitration as an "industry challenge" and implemented these rules "after receiving feedback from both the claimants and defense bars in these types of matters."[354] The NAM Mass Filing Supplemental Rules apply when "twenty-five (25) or more similar Demands for Arbitration ('Demand(s)') [are filed] against the same party or related parties and representation for the parties is consistent or coordinated across all cases," and the demands "need not be filed simultaneously."[355]

Under the NAM Mass Filing Supplemental Rules, a "separate Demand must be filed for each case" in the mass arbitration.[356]

Unlike the AAA and JAMS mass arbitration rules, the NAM Mass Filing Supplemental Rules do not require the claimants' counsel to submit any kind of affirmation or declaration attesting that the

information for each claimant is "true and correct" to the best of their knowledge.

A Procedural Arbitrator may be appointed to address certain issues.[357] However, as compared to both the AAA Process Arbitrator and JAMS Process Administrator, the NAM Procedural Arbitrator's authority appears more limited. The Procedural Arbitrator may address only: "(1) whether or not a particular Demand(s) is/are part of a Mass Filing . . . and the applicable rules, procedures or requirements based on that determination"; and "(2) if a Demand(s) is/are categorized as part of a Mass Filing, whether or not the particular Demand(s) was/were filed in accordance with the terms and conditions of the underlying contractual arbitration provision."[358]

NAM's Consumer Fee Schedule contains a Mass Filing Fee section.[359] Under that fee schedule,[360] the respondent business must pay "Initial Admin Fees" of $275-$300 per claim. Those fees "are incurred and due when a claim is filed."[361] NAM will allow the parties to defer payment of admin/filing fees "for amounts due in excess of $1,000,000 per party," with such unpaid fees becoming due and payable "no later than at the commencement of panel creation or upon settlement/cancellation/withdrawal of the claim, whichever comes first."[362] Although these fees are lower than the AAA's, they still allow for a "coercive gambit" by which claimants' counsel leverage fees to induce a settlement.

Where a Procedural Arbitrator has been appointed, the Initial Admin Fees are due and payable only upon the Procedural Arbitrator's "final determination" that the claims were "properly filed."[363] For any "withdrawn/settled/cancelled" claims, the respondent must pay "50% of the Initial Admin fees for such claims."[364] There is an administrative fee of $2,100 in connection with the request for the appointment of a Procedural Arbitrator, and Procedural Arbitrators are paid at $900 per hour.[365]

In addition to the AAA, JAMS, and NAM, several other arbitration providers, including Federal Arbitration, Inc., the International Institute for Conflict Prevention and Resolution, and New Era, have implemented rules and procedures relating to mass arbitrations. These providers account for a smaller share of the market.

Need for Additional Action by Arbitration Providers

The largest arbitration providers have taken some steps to implement procedures, protocols, and fee schedules to curb mass arbitration abuse. These measures have yielded some positive results, but more needs to be done.

To take just one example, in a mass arbitration recently asserted against a financial institution, a AAA Process Arbitrator ordered claimants to provide basic details—such as bank account numbers—to establish they each met the requirements necessary to bring claims under the demands' theory of liability.[366] Ultimately, claimants' counsel could not provide that information for the vast majority of the claimants, and further submissions revealed that almost half of the claimants were never qualified to bring the claims they asserted.[367]

The significant reduction in upfront fees that a respondent must pay before the Process Arbitrator (or equivalent) stage is an incremental step toward addressing the core of the mass arbitration coercive gambit: the filing of claims solely to run up early fee pressure and force a settlement untethered to the merits of the claims.

Opportunities for claimants' counsel to misuse existing rules and fee schedules to coerce settlements remain, however. For that reason, further reform is necessary. Additional changes to mass arbitration procedures that would enhance fairness include the following:

Filing Requirements That Mandate Claimant Certifications

Each claimant should be required to provide identifying information (such as their customer or account number) so that the business may identify the claimant in its records and confirm the existence of an arbitration agreement with him or her. Each claimant should also be required to sign their demand for arbitration (either by hand or electronically). Further, each claimant should be required

to certify that (i) they entered into the arbitration agreement with the respondent and (ii) they are aware of the arbitration and authorized counsel to file the demand for arbitration on their behalf (and, if relevant, they consent to the respondent's disclosure of their confidential customer information).[368] These requirements would address a prevalent issue in mass arbitration: filings purportedly on behalf of fictitious claimants, dead claimants, doubly- or multiply-represented claimants, claimants who do not have an arbitration agreement with the respondent, and claimants who did not authorize the proceedings, among others.

Early Disclosure Requirements

As discussed in Chapter 2, the federal Advisory Committee on Civil Rules recently adopted Rule 16.1, applicable to MDLs, that requires plaintiffs to report to the court how and when they will exchange information about the factual basis for their claims, among other things.[369] Defendants can use these disclosure requirements to expose claimant vetting issues—and, where warranted, seek sanctions under Rule 11 of the Federal Rules of Civil Procedure—at the early stages of an MDL.[370] Arbitration providers have not implemented similar rules to-date. As in MDLs, such rules could be a step in the right direction to addressing vetting issues in mass arbitrations.

Certification of Compliance With Pre-Arbitration Procedures

To the extent that the arbitration agreement in question contains mandatory pre-arbitration negotiation provisions, each claimant should be required to certify their compliance with such provisions.[371] Claimants' counsel routinely disregard these mandates, which are designed to identify and resolve legitimate disputes and facilitate settlements without need for arbitration.

Enforcement of Attorney Attestation Requirements

The AAA stated that it introduced "attestation requirements" to "ensure filing integrity" in the face of "the increasing number of mass arbitration cases since 2018, primarily driven by arbitration clauses in consumer-business and employee-employer contracts."[372] JAMS has a similar attorney attestation requirement. In practice, however, claimants' counsel submit attorney affirmations that merely repeat the boilerplate language of the relevant AAA rule (that the information presented is "true and correct to the best of [counsel's] knowledge"). They do not appear to have engaged in any additional review of claimant eligibility.

As a result, mass arbitration claims continue to be submitted purportedly on behalf of large numbers of individuals (real and fictitious) who have no basis to assert a claim.[373]

Disclosure of Litigation Funding

Claimants' counsel should be required to disclose any third-party litigation funding. The AAA has begun to take steps in this direction. The AAA's current International Arbitration Rules provide that the arbitral tribunal—upon a party's application or its own initiative—"may require the parties to disclose . . . [w]hether any non-party (such as a third-party funder or an insurer) has undertaken to pay or to contribute to the cost of a party's participation in the arbitration" and the "identity" of any non-party that "has an economic interest in the outcome of the arbitration."[374] These disclosures should be required in all arbitrations. Given the pivotal role that litigation funders can play in the process, and the potential for conflicts of interest with respect to appointed arbitrators, the parties deserve to know whether and how such groups are involved.[375]

"The significant reduction in upfront fees that a respondent must pay before the Process Arbitrator (or equivalent) stage is an incremental step toward addressing the core of the mass arbitration coercive gambit: the filing of claims solely to run up early fee pressure and force a settlement untethered to the merits of the claims."

Disclosure of Other Persons or Entities With a Stake in a Mass Arbitration

Arbitration providers should mandate at the outset of any mass arbitration that counsel disclose any other entities (in addition to third-party litigation funders) who have the ability to influence a mass arbitration. That disclosure should include third-party technology platforms and lead generators used for accruing, vetting, and communicating with claimants.

Enforcement of Mass Arbitration Provisions Contained in the Applicable Arbitration Agreements

Arbitration providers should enforce as written mass arbitration procedures contained in the parties' agreement, such as batching provisions or staging provisions. These provisions promote efficiency by ensuring the claims are adjudicated in an orderly fashion, limiting the fees imposed on defendants and attendant settlement pressure, and providing the parties information that may inform global settlement. Yet arbitration providers routinely refuse to enforce such provisions in circumstances where claimants' counsel challenge them (irrespective of the grounds for the challenge).

Sanctions Against Counsel

Arbitration providers should expressly permit arbitrators to sanction a party's counsel for filings that are frivolous or brought for an improper purpose. This is particularly important in mass arbitrations given that those are lawyer-driven, with little-to-no involvement from claimants, and where, as a result of lack of vetting, scores of claimants have no conceivable right to recovery. These claimant defects result in violations of arbitration forum rules and practices and implicate claimants' counsel's ethical obligations. The AAA-ICDR Standards of Conduct for Parties and Representatives provide that the AAA may decline to administer further cases brought by a party's counsel where counsel does not adhere to those standards.[376] The AAA and other arbitration providers should go further to empower arbitrators to issue sanctions against counsel.[377]

Further Revisions to Mass Arbitration Fee Schedules

The AAA has shifted from per-case fees to a single initiation fee before a Process Arbitrator can be appointed at the outset of a mass arbitration. The JAMS mass arbitration procedures likewise provide that the business pays only a flat filing fee and additional Process Administrator fees through the Process Administrator stage, although substantial fees become due after the Process Administrator phase is complete. The NAM mass arbitration rules also defer Initial Admin Fees until after the Procedural Arbitrator determines that claims were properly filed. And, even if a Procedural Arbitrator is not appointed, NAM allows the parties to defer fees in excess of $1 million per party until the commencement of arbitration. These are important steps, but further modifications are needed. While a party facing millions of dollars in fees may defer them, that is a partial solution at best, as those fees still come due before merits adjudication. For example, the AAA's mass arbitration fee schedule still charges per-case fees. Those fees are simply invoiced after the Process Arbitrator phase. NAM's mass arbitration fee schedule includes an "Initial Admin Fee" of between $275-$300 payable by the business "per claim." A solution is for all per-case fees and deposits to be removed and replaced with fees based on the number of arbitrations that actually proceed—and the number of arbitrators appointed—at a time.[378] Moreover, the NAM rules provide that for any claims "withdrawn/settled/cancelled" at any stage "prior to the final determination of the Procedural Arbitrator," 50% of such fees "shall be due and payable."[379] A business can be invoiced significant fees even in circumstances where claimants' counsel have filed and then withdrawn transparently meritless claims or where the parties have otherwise reached a resolution.

The Role of Judges, Legislators, Regulators, and State Bar Associations in Addressing Mass Arbitration Issues

Chapter

06

As Chapter 5 discussed, prominent arbitral institutions such as the AAA, JAMS, and NAM have adopted procedures applicable to mass arbitrations in an effort to curb some of the abuses in mass arbitrations. These procedures are a step in the right direction. But many of the pervasive, serious issues persist.

These organizations are on the front lines: they administer the many mass arbitrations that are never made public. They do not see, however, the hundreds of thousands of claims threatened in mass arbitrations that never get filed because the companies enter into coercive, extortionate settlements under the threat of massive arbitration fees. All of these threats are untethered to the merits of any claims and consumers may never learn about them.

The courts, state and federal legislatures, regulators, state bar associations, and companies, among other stakeholders, have the power to address the challenges and injustices presented by mass arbitration.

In this chapter, we propose steps these stakeholders can take to help curb mass arbitration abuses, including:

- Courts can exercise their inherent authority to investigate and address frivolous mass arbitration claims and claims pursued for an improper purpose where indicia of abuse surface in litigation.
- Lawmakers can consider legislation to (i) mandate disclosure of third-party litigation funding and place guardrails on funding arrangements and (ii) create remedies for or otherwise protect businesses (and, in turn, their employees, customers, and investors) from the threat of coercive mass arbitration tactics.
- Regulators can intervene to police, among other things, the misleading advertising and solicitations that fuel mass arbitration schemes.
- State bar associations can enforce rules governing attorney conduct, investigating complaints related to potentially unethical practices, and taking disciplinary action in response to improper mass arbitration practices.
- Businesses can implement arbitration agreements with staging, batching, or other provisions applicable to mass filings that preserve the goals of private ADR while minimizing avenues for misuse.

“The courts, state and federal legislatures, regulators, state bar associations, and companies, among other stakeholders, have the power to address the challenges and injustices presented by mass arbitration.”

There is an acute need for accountability for practices that undermine the integrity of the arbitration process and the legal profession, practices to which lawyers on both sides should ascribe. What many defense practitioners see in this space would be astonishing to most judges and regulators.

Judicial Scrutiny

Arbitration programs are intended to ensure that disputes are resolved efficiently in a private forum and on an individual basis without resort to court proceedings. Companies with arbitration programs are committed to arbitrating legitimate disputes with their legitimate customers should the disputes not get resolved informally. The vast majority of legitimate disputes are, in fact, able to be addressed by businesses without the need for any formal proceedings. Claimants’ attorneys routinely skip those processes altogether.

"The tactics that drive mass arbitration have resulted in a rise in litigation in court addressing whether and how claimants and businesses must proceed under arbitration agreements that were either (i) never designed for mass filings or (ii) specifically tailored to streamline mass filings and thereby reduce or eliminate the fee pressure that is the hallmark of the mass arbitration shakedown."

The tactics that drive mass arbitration have resulted in a rise in litigation in court addressing whether and how claimants and businesses must proceed under arbitration agreements that were either (i) never designed for mass filings or (ii) specifically tailored to streamline mass filings and thereby reduce or eliminate the fee pressure that is the hallmark of the mass arbitration shakedown.

These court proceedings present an opportunity for businesses to expose—and for judges to address—attempts to misuse arbitration agreements to the detriment of consumers, businesses, and arbitration providers. Courts have the power to serve as gatekeepers that protect the integrity of the legal process. Numerous courts have answered this call to investigate, shed light on, and stamp out improper tactics by some firms in the context of mass litigation. Courts have appropriately done so even where the scope of their review expanded beyond the specific parties and the four corners of the issues presented to the court.

But courts cannot address mass arbitration abuses of which they are not aware. The authors encourage judges at the federal and state level to invite discussions about mass arbitration at bench-bar conferences and elsewhere. The mass arbitration model often relies on the absence of any judicial involvement. In cases that do surface in the courts, issues that might be raised in litigation include:

- The possibility that plaintiffs' attorneys are misleading consumers through social media "clickbait" solicitations and advertising.

- Evidence of fraudulent claims filed as a result of deficient claimant vetting, including claims on behalf of claimants who are dead, fictitious, minors, in active bankruptcy, and/or non-customers/employees or others who do not have arbitration agreements with the respondent business.

- Indicia that claimants have otherwise not authorized or provided informed consent to their counsel to file and prosecute arbitrations on their behalf.

- Evidence that customers are unknowingly entering into retention agreements with law firms through click-through ads and sign-up forms that take just "2-3 minutes" to complete that purport to, among other things, waive the claimant's right to evaluate settlement offers and guarantee counsel excessive fees.

- Instances in which claimants' counsel cause customers or employees to breach their agreements with businesses by, for example, failing to comply with conditions precedent to arbitration (e.g., informal dispute resolution processes) or obligations to discuss their dispute with the business in good faith prior to asserting a claim.

- Arbitration demands drafted to evade application of the jurisdiction of small claims courts (which could otherwise be selected as the forum under arbitration provider rules and many contracts).

While arbitration is a creature of contract and subject to only limited judicial oversight, courts are regularly drawn into arbitration-related disputes. It is important that they are aware of mass arbitration abuses and, where appropriate, take steps to rectify them. As discussed in Chapter 4, courts have begun to do so.

For example, in *Wallrich*, the U.S. Court of Appeals for the Seventh Circuit denied the plaintiff-appellees' motion to compel arbitration and to pay arbitration fees in a mass arbitration. The court held that claimants' counsel

failed to provide evidence of an arbitration agreement between any of the almost-50,000 claimants and Samsung. The court observed that "a spreadsheet of only names and addresses . . . fails to show that any of those named were Samsung customers" and reminded plaintiffs' counsel that, as the moving party, it was their burden to show that their clients had a valid arbitration agreement with Samsung.

Other courts have likewise rejected attempts to compel arbitration in the mass arbitration context where claimants' counsel could not establish, as a baseline, an agreement to arbitrate between each claimant and the business.[380] And courts have also taken on claimants' counsel's failures to vet their clients in the broader mass action landscape, as discussed in Chapter 2.

Courts presented with these issues have a unique opportunity to ask questions about the mass arbitration model and to require the provision of information that would bring to the surface what is intentionally designed to remain hidden. These include secret litigation funding arrangements and the investment returns "promised" to funders based on the perceived certainty that companies will quickly capitulate; claimants' counsel's persistence with claims that are demonstrably false or otherwise frivolous because "the merits don't matter"; pursuit of claims on behalf of claimants who lack knowledge and have not provided informed consent; lack of vetting of claimants; failure of claimants' counsel to provide settlement offers to claimants; retention agreements that allow for the recovery of fees that would never be approved by a court; massive settlement demands made based not on potential liability but on pure arbitration administrative fees; and weaponization of the arbitration providers and their rules and fee schedules.

Mass arbitration frequently evades judicial and regulatory scrutiny. When judges take note, ask questions, and probe this area, tactics that courts have admonished and sanctioned in litigation will surface.

Legislative Reform

Litigation Funding

As discussed in Chapter 2, third-party litigation funding is on the rise and funders have begun to finance mass arbitration campaigns. Courts and lawmakers have rightly raised concerns about the rise of litigation funding and its ethical implications in litigation and mass arbitration. One fundamental problem is that litigation funding arrangements are typically undisclosed. In the words of several non-profits in a recent letter to the Speaker of the House and Senate Majority Leader: litigation funding "essentially invites sophisticated investors—mostly foreign—to use the U.S. court system like a casino to enrich themselves out of view of the American Public."[381]

In an effort to lift the veil, lawmakers in some states have enacted legislation to require disclosure of third-party litigation funding arrangements.

A few states require that funders register with the state or place other restrictions on litigation funding arrangements.[382] Federal lawmakers have proposed legislation along the same lines.[383] Some courts have likewise mandated disclosure, including the U.S. District Court for the District of New Jersey and Chief Judge Connolly of the U.S. District Court for the District of Delaware.[384] But most still do not. To ensure uniform disclosure, Federal Rule of Civil Procedure 7.1 should be amended to require disclosure of non-party financial investments tied directly to the outcome of a particular case.[385]

Some states have not only mandated disclosure of litigation funding, but have expressly forbidden litigation funders from accessing confidential information or exerting control in litigation they finance.[386] Given that litigation funders contend that they are merely "passive"

"There is an acute need for accountability for practices that undermine the integrity of the arbitration process and the legal profession, practices to which lawyers on both sides should ascribe. What many defense practitioners see in this space would be astonishing to most judges and regulators."

investors,[387] these measures should not be controversial. Lawmakers should implement similar restrictions to reduce the risk of misaligned incentives and attorney ethical violations in funded litigation and arbitrations.

A proposed addition to the recently-enacted federal One Big Beautiful Bill Act that did not make it into the final version,[388] the Tackling Predatory Litigation Funding Act, would have gone further still.[389] The proposal: a 40.8% tax rate on profits from litigation funding—without offsets for losses—in place of the current regime under which lower capital gains rates apply.[390] In addition, the proposed bill would have imposed substantial withholding requirements for law firms.[391] By its terms, the proposal would cover any "civil action," defined to encompass any "claim" or "cause of action" without reference to courts.[392] The proposal hence included within its ambit funding arrangements for mass arbitrations, subject to certain exclusions.[393]

Advocates contended that this reform would close a tax loophole to ensure that funders "pay the same U.S. tax rate as the actual plaintiffs who are awarded money from any damages."[394] It would also stem what its sponsor, Sen. Thom Tillis (R-NC), called the "highly questionable practice" of third-party litigation funding, which "adds tremendous costs to U.S. consumers by encouraging and needlessly extending litigation."[395]

Although the Tackling Predatory Litigation Funding Act did not make the final bill, it has the potential to lay the foundation for future legislation aimed at addressing widely-held concerns about the impact of litigation funding in mass litigation and arbitration.

Other Legislative Reform

The FAA establishes a "national policy favoring arbitration," i.e., the enforcement of arbitration agreements on a level field with all other contracts.[396] Nevertheless, state legislatures have increasingly enacted laws that thwart this policy or establish rules that preclude sensible arbitration provisions. For example, as described in the 2023 *Mass Arbitration* paper, California's amendments to its arbitration act, introduced as SB 707 and codified in 2019 at California Code of Civil Procedure §§1281.97-1281.99, created penalties against a party that drafts an arbitration agreement that fails to pay arbitration fees in consumer or employment arbitrations within 30 days after an invoice is issued.[397] A new Rhode Island statute contains a similar mechanism.[398]

Since California's enactment of SB 707, practitioners have seen claimants' counsel repeatedly attempt to weaponize these laws, leveraging the potential penalties for non-payment of fees to increase the pressure on businesses to settle non-meritorious mass arbitrations, even in circumstances where there are compelling arguments that the laws are inapplicable.

Congress could enact legislation that makes clear that such state laws that infringe on the parties' contractual arbitration rights are preempted and also provides remedies to businesses that face frivolous mass arbitration claims.[399]

For example, in February 2025, the United Kingdom implemented the Arbitration Act 2025.[400] The Arbitration Act 2025 codified many important changes to the arbitration systems of England, Wales, and Northern Ireland (albeit not necessarily to specifically address mass arbitration). Among other things, the Act vests arbitral bodies with the authority to resolve cases on a summary basis where claims are frivolous or without merit. Similar changes in the U.S. could help curb some of the most pronounced problems associated with mass arbitration. As discussed in Chapter 2, widespread claimant defects are common in mass arbitrations where plaintiffs' lawyers rarely properly investigate either claimants or claims. The Act allows an arbitrator to make a

"While arbitration is a creature of contract and subject to only limited judicial oversight, courts are regularly drawn into arbitration-related disputes. It is important that they are aware of mass arbitration abuses and, where appropriate, take steps to rectify them."

"Congress could enact legislation that makes clear that such state laws that infringe on the parties' contractual arbitration rights are preempted and also provides remedies to businesses that face frivolous mass arbitration claims."

summary decision if it considers that a party has "no real prospect of succeeding" on "the claim or issue" or in "the defence of the claim or issue."[401]

Proposed legislation seeking to curb abuses within the class action context may also offer useful models for any future legislation endeavoring to address similar issues in the mass arbitration context. The proposed Fairness in Class Action Litigation Act (FICALA) is an example. Through the Act, federal legislators would endeavor to "fix our broken litigation system" through "protections against the abuse of consumers by unscrupulous lawyers, and protections against the filing of unjustified claims and other abusive litigation practices."[402] The proposed Act was passed in the House of Representatives in March 2017, but was never enacted.[403]

As the proposed FICALA illustrates, legislation may be difficult to advance in the current political environment. Moreover,

"In an effort to lift the veil, lawmakers in some states have enacted legislation to require disclosure of third-party litigation funding arrangements."

proposed legislation could be modified in counterproductive ways that infringe on—rather than protect—parties' rights to enter into arbitration agreements.

Regulatory Scrutiny

Plaintiffs' lawyers frequently assert mass arbitration claims under state consumer protection statutes and regulations. These same laws and regulations may serve to protect consumers from improper conduct by mass arbitration claimants' counsel that cause consumer confusion and harm.

State attorneys general and other state regulatory bodies are empowered to investigate and perform pre-litigation discovery into deceptive practices impacting consumers.[404] Issues to investigate include whether consumers are misled by social media "clickbait" solicitations or other deceptive marketing practices, whether consumers have consented to the filing and prosecution of arbitrations on their behalf, whether retainers are presented in a manner or contain terms that render them unenforceable, and whether attorneys are obtaining excessive fees in connection with mass arbitration settlements.

Some state attorneys general have already recognized the risks presented by misleading attorney solicitations. In 2024, New York Attorney General Letitia James issued a cease-and-desist letter to a law firm in connection with its deceptive and misleading solicitations which were causing "undue and harmful confusion."[405] The law firm had claimed on social media and in messaging groups that it would help Uber and Lyft drivers claim their share of a settlement fund in exchange for a 15% fee from their recovery. Yet, under the settlement agreement, the claims process via a settlement administrator was available to drivers for no fee. Attorney General James's letter describes click-bait questionnaires that mirror those used in mass arbitrations. The solicitation read: "to get paid, complete the form here," and linked drivers to a brief questionnaire before "ultimately leading to a link to a retainer agreement."[406] After clicking through, a driver would reach the retainer agreement which specifically noted that while the drivers were not required to hire counsel, they had chosen to do so due to several factors, including the "complicated and time-consuming claim filing process."[407]

Attorney General James argued that this solicitation misrepresented the settlement process and that active solicitations "caused considerable confusion and distrust."[408] She noted further concern that the solicitations were seeking excessive fees contrary to the rules of professional conduct given that the limited nature of the attorneys' service "neither justifies [their] involvement nor the fee

[they] are requiring."[409] The cease-and-desist letter directed the firm to cease further solicitations and to disable the website the law firm created for the service.

Consumers would benefit from similar intervention to address misleading advertising and solicitation at various stages of mass arbitrations.

Given the national reach of many mass arbitration solicitation campaigns, the Federal Trade Commission (FTC) also has the power to police deceptive mass arbitration advertising and solicitation practices.[410] The FTC may investigate misleading advertising pursuant to Section 5 of the FTC Act, which prohibits "unfair or deceptive acts or practices in or affecting commerce." 15 U.S.C. § 45. Courts hold that advertisements are deceptive if they are likely to materially mislead a reasonable consumer based on the overall impression left by the advertisements.[411] As Chapter 2 discussed, social media and other online discourse reacting to mass arbitration solicitations continue to illustrate consumers' confusion arising from mass arbitration solicitations.

"The Florida Bar has also recognized that the failure to vet plaintiffs and the underlying claims in the context of a mass action violates rules of professional conduct."

The FTC might also consider exercising its rulemaking authority to address the use of third-party litigation funding in mass arbitration.

For example, the FTC could promulgate rules that limit interest rates in litigation funding arrangements. The FTC could also mandate comprehensive disclosures to consumers and employees pursuing mass arbitration claims backed by litigation funding. As part of these disclosures, the FTC could mandate that consumers and employees be notified that the funder may seek to control their claim (particularly as to settlement opportunities), that such efforts are likely improper, and that there are remedies available. Several existing state statutes may suggest provisions for such a rule.[412]

Increasing Oversight for Potential Ethics Violations

State bar organizations also have a role to play in addressing conduct by claimants' counsel in mass arbitration that may implicate state rules of professional conduct, as Chapter 3 discussed. State bar authorities are empowered to enforce rules governing attorney conduct, investigate complaints related to potentially unethical practices, and determine appropriate disciplinary action.[413]

In recent years, businesses have raised to state bar authorities potential ethical issues inherent in the mass arbitration process. For example, in 2023, a business

"The FTC might also consider exercising its rulemaking authority to address the use of third-party litigation funding in mass arbitration."

association submitted a letter to the State Bar of California expressing concern regarding "abusive" mass arbitrations.[414] The letter noted that "when some lawyers treat their clients as fungible entries on a spreadsheet designed to maximize settlement payments and concomitant attorneys' fees—rather than treating their clients as unique individuals with claims to be resolved—ethical abuses predictably can and do occur."[415] The letter details concerns that remain features of virtually every mass arbitration campaign. These include claimants' counsel's failure to vet claims—including claims potentially brought on behalf of fictitious or dead claimants—and failure to convey settlement communications to their purported clients.[416] The letter explains that plaintiffs' lawyers abdicate their duty to conduct basic due diligence on claimants and instead "essentially outsourc[e] to defendants the vetting that the mass arbitration filers were ethically obligated to conduct before bringing the claims."[417] This widespread practice, the letter observes, "turns the ethical rules on their head."[418] The California Bar does not appear to have taken action in response to the concerns outlined in the letter.

By contrast, the Florida Bar recently illustrated the active role state bar authorities could play in regulating frivolous claims. In *Florida Bar v. Udell*, the Florida Bar filed a complaint against an attorney for "misconduct in representing multiple plaintiffs in civil litigation without performing any due diligence prior to initiating the lawsuits" and subsequent failure to amend or withdraw their complaints, asking the court to appropriately discipline the attorney.[419] The attorney had allegedly failed to determine whether his clients had the unlimited mobile data plan on which the suit was based prior to initiating the complaints and failed to amend or withdraw complaints after the relevant customer agreements established that they instead had a limited data plan.[420] The Florida Bar argued that this conduct, which resulted in court sanctions upon appeal, violated several of the Rules Regulating the Florida Bar, including Rule 4-3.1 which regulates frivolous claims.[421] The case remains pending.[422]

The Florida Bar has also recognized that the failure to vet plaintiffs and the underlying claims in the context of a mass action violates rules of professional conduct.

In *Florida Bar v. Farah*, the Florida Bar filed a complaint against an attorney for filing over a thousand meritless or unauthorized tobacco claims in court without sufficient factual investigation.[423] The bar sought suspension of the attorney who filed the claims "without investigating or informing himself as to the facts of each case, and for knowingly misrepresenting the viability of the claims to the [court]."[424] The trial court reprimanded the plaintiffs' lawyers and sanctioned them to the tune of more than $4 million.[425]

The ethical issues presented in *Farah* present parallels to those that routinely arise in mass arbitrations. The *Farah* court found that although claimants' counsel claimed to be in communication with his clients, several of the plaintiffs were, in fact, dead.[426] It was clear the attorney "did not adequately communicate" with the plaintiffs, "nor did he exercise reasonable diligence by conducting a pre-suit investigation into their claims."[427] The court emphasized that professional obligations are not diminished by the volume of claims.[428] As the court explained, claimants' counsel had the obligation "to handle all 163 cases with the same standard of care that he would provide to a single case."[429] The same is equally true in a mass arbitration: Whether an attorney represents one client in a single arbitration or 100,000 clients in a mass arbitration, the basic ethical obligations every attorney owes to the tribunal and to each client remain the same.

As discussed more fully in Chapter 2, the U.S. District Court for the Northern District of California in *Lineberry* likewise criticized claimants' counsel for failing to vet named plaintiffs—there in the class action context—and denied class certification on that ground.[430]

"Plaintiffs' lawyers frequently assert mass arbitration claims under state consumer protection statutes and regulations. These same laws and regulations may serve to protect consumers from improper conduct by mass arbitration claimants' counsel that cause consumer confusion and harm."

The Importance of Reform

Chapter

07

For decades, arbitration has been recognized by both Congress and courts as an important method of resolving consumer and employee disputes.[431] The role of arbitration in providing consumers and employees an effective forum to seek redress is especially crucial now as our courts face increased constraints on their ability to adjudicate matters efficiently.[432] The recent rise in mass arbitrations to extract settlements from companies—regardless of the merits of the underlying claims—threatens this established model to the detriment of businesses, consumers, employees, and arbitration providers.

Why Should Consumers, Employees, and Policymakers Care?

Because mass arbitration counsel often amass claimant pools without attempting to confirm the identity of their clients or confirm whether a purported client has a legitimate claim, customers with legitimate complaints are swallowed up in the deluge.[433] These customers' and employees' small-dollar claims could readily be resolved through a business's dispute resolution processes (either informal dispute resolution or individual arbitration). But instead, the claims languish while claimants' counsel attempt to leverage the threat of massive arbitration fees to obtain a settlement that largely benefits counsel, not claimants.[434]

Most businesses have neither the resources to wade through thousands of meritless claims from non-customers and dead individuals to find meritorious disputes to resolve, nor the inclination to cave to claimants' counsel's demands. Instead, companies generally focus on fighting off those demands in unnecessarily contentious proceedings.

Arbitration providers are overwhelmed as they cope with a sea of filings, and courts are similarly hamstrung by clogged dockets and limited budgets. Legitimate claimants are left in the lurch, their disputes unresolved and inquiries to their own counsel unanswered.

Abuse of the arbitration system also injures advocates for consumers and employees who represent individuals with legitimate disputes—even those who represent multiple clients—by cutting off their access to arbitration providers choked by meritless mass arbitration filings. The AAA, for instance, is a non-profit dedicated only to helping parties resolve their claims. Indeed, the only individuals benefitting from the current system seem to be the claimants' counsel, their financial backers, and their vendors.[435]

In the two years since publication of the prior paper, *Mass Arbitration Shakedown*, misuse of arbitration procedures and practices has not abated.[436] Absent significant widespread reforms, no matter how often businesses amend their arbitration agreements or arbitration providers revise their rules, mass arbitration practitioners will

"Arbitration providers are overwhelmed as they cope with a sea of filings, and courts are similarly hamstrung by clogged dockets and limited budgets. Legitimate claimants are left in the lurch, their disputes unresolved and inquiries to their own counsel unanswered."

continue to attempt to abuse the system at the cost of the consumers and employees who most benefit from arbitration's cost-effective and efficient resolution of their disputes. While such reforms are pending, it is imperative that policymakers, regulators, and other stakeholders, with the help of businesses, educate the public on and encourage the use of informal dispute resolution, as well as traditional individual arbitration, both of which are threatened by the mass arbitration model.

Effectiveness of Informal Dispute Resolution

As our judicial system battles docket backlogs and arbitrators are hijacked by mass arbitration practitioners, pre-arbitration informal dispute resolution remains a viable solution to address consumer and employee claims.

Informal dispute resolution provides the same benefits as arbitration but to an even greater degree—more effective, faster, and lower-cost resolution of claims—all before requiring any formal filing process in arbitration.

Many arbitration agreements require that the parties engage in informal dispute resolution before filing an arbitration demand (a requirement mass arbitration claimants' counsel typically ignore). Federal and state courts have extolled pre-arbitration informal dispute resolution procedures as "reasonable" and "laudable."[437]

Consumers and employees benefit because their opportunities for resolution are multiplied—not limited. Before initiating a formal arbitration (much less litigation), the parties instead engage in a consumer-friendly pre-dispute resolution process. Usually, such processes involve filling out a simple online form describing the issue and relief sought, and the company has a short time to address the dispute internally and seek more information from the claimant.[438] Claimants save on costs because they do not need to retain formal legal representation or pay any fees—especially as their claims are typically "small-dollar."[439] Instead, by opening the lines of communication early, the parties can more swiftly come to a mutual agreement as to how to resolve the consumer or employee's claims. Consumers and employees do not lose the opportunity to later bring their claims to arbitration if the issues are not resolved to their satisfaction, as statutes of limitation are generally tolled while this process is ongoing.[440]

Perhaps most importantly, informal dispute resolution provides the opportunity for customers and employees to be heard and have their concerns acknowledged and resolved to their satisfaction.[441] As Judge Fitzgerald succinctly noted in *Flores v. Coinbase, Inc.*, these informal dispute resolution procedures give companies "an opportunity to fix customers[']problems."[442] Informal dispute resolution procedures ensure consumers are engaging with a company team dedicated to addressing their concerns—

"As our judicial system battles docket backlogs and arbitrators are hijacked by mass arbitration practitioners, pre-arbitration informal dispute resolution remains a viable solution to address consumer and employee claims."

consumers are not merely lost in a customer service phone tree or, worse, hoping their attorneys will choose to respond to their email among thousands of mass arbitration "clients," only to be left without any answers or meaningful solutions. Informal dispute resolution saves all parties time and money—consumers and employees do not need to lose time from work or expend costs to find legal representation, while companies save on arbitration costs they would otherwise incur under their consumer-friendly arbitration agreements.[443]

Benefits of Arbitration to Consumers, Employees, and Businesses

If claims cannot be satisfactorily resolved through the pre-arbitration dispute resolution process, individual arbitration can present a better option than litigation for everyone involved. For decades, arbitration has been recognized and embraced as beneficial to claimants. In the U.S. Supreme Court's seminal decision in *Concepcion*, the Court recognized that consumers "were *better off* under their arbitration agreement with AT&T than they

would have been as participants in a class action," which "could take months, if not years, and which may merely yield an opportunity to submit a claim for recovery of a small percentage of a few dollars."[444] This remains true today.

Arbitration's advantages for individuals have also been confirmed through empirical studies, as detailed in the prior *Mass Arbitration Shakedown* paper.[445]

All of these reasons make traditional individual arbitration superior to class action litigation. Beyond the sheer amount of time it takes class actions to reach settlement, plaintiffs' relief—as in mass arbitration—remains largely at the mercy of self-dealing plaintiffs' lawyers.[446]

Companies benefit from traditional arbitration as well. Rather than expend resources on fighting meritless claims, businesses can invest their dispute savings in improving their dispute resolution and customer service programs to better resolve claimants' claims.[447] Arbitration also saves companies (and claimants) the "costs, time, and risk" associated with prolonged discovery disputes.[448]

Finally, it is important to remember that arbitration is the result of a bilateral agreement between consumers or employees and businesses—and it is overall a good thing for our system. After all, "arbitration is a matter of contract and consent."[449] The longevity and preservation of a viable arbitration alternative is necessary, especially given the constraints on the legal system.

Call to Action for Reform and Accountability

The mass arbitration plaintiffs' bar has been emboldened by the lack of accountability for their misuse of arbitration. But arbitration advocates should not be discouraged. Rather, consumers, employees, businesses, arbitration providers, governments, and others can work together to implement improvements to the existing system.

As discussed in Chapter 5, arbitration providers can modify their rules and fee schedules to reduce the opportunity for claimants' counsel to extort unjustified settlements. The judiciary can rectify mass arbitration abuses on the not-infrequent occasions that the issue gives rise to litigation. Congress should consider legislation to allow for remedies in connection with frivolous arbitration filings. State agencies, attorneys general, and bar associations can investigate unfair, fraudulent, or unethical conduct by plaintiffs' lawyers. And industry targets can both revise their arbitration agreements and work to draw public attention to systemic abuses.

Pre-arbitration dispute resolution procedures and traditional individual arbitration benefit almost everyone by obviating the need for costly formal proceedings and by enabling the parties to achieve efficient resolution of disputes.[450] Courts, including the Supreme Court and the Ninth Circuit, have echoed these sentiments.[451] By weaponizing these arbitration agreements, some plaintiffs' lawyers have threatened the foundation of that system. Reform efforts should focus on strengthening existing systems proven to provide consumers and employees with minimal adjudication costs, more efficient proceedings and more favorable results, while retaining the benefits to the business sector.[452] Doing so would improve results for both businesses and for their customers and employees with legitimate claims.

"The mass arbitration plaintiffs' bar has been emboldened by the lack of accountability for their misuse of arbitration. But arbitration advocates should not be discouraged. Rather, consumers, employees, businesses, arbitration providers, governments, and others can work together to implement improvements to the existing system."

Endnotes

[1] The authors would like to acknowledge their colleagues at Skadden who contributed to this paper. Contributions by: John Beisner, Hillary Hamilton, Zachary Martin, Colm McInerney, James Pak, Nigel Tamton, Nancy Wuamett, Clare Connaughton, Sydney Cogswell, Michael Darling, David Kidd, Andrew Quinn, Amelia Senter, Carolyn Taglienti, and Gerri Powell. Special recognition is extended to Kurt Hemr and Shaud Tavakoli, whose expertise and dedication made a significant impact on this paper.

[2] Andrew J. Pincus, Archis A. Parasharami, Kevin Ranlett & Carmen Longoria-Green, *Mass Arbitration Shakedown: Coercing Unjustified Settlements* (U.S. Chamber Institute for Legal Reform, Feb. 2023) (*Mass Arbitration Shakedown*).

[3] *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011).

[4] *See* "The Need for Additional Judgeships: Litigants Suffer When Cases Linger," U.S. Courts, Nov. 18, 2024.

[5] *See* Paul Stinson, "Texas Court Backlog Could Last Five Years Without More Funding," Bloomberg Law, May 24, 2021; Aron Solomon, "The Viral Court Backlog and How to Dig Out Post-Pandemic," The Legal Intelligencer, June 4, 2021.

[6] *See* Dave Bohman & Erik Altmann, "Judicial Logjam Worsens in Florida," WPTV, Mar. 4, 2021.

[7] *In re Certification of Need for Additional Judges*, No. SC2024-1721 (Fla. Sup. Ct. Dec. 12, 2024) (per curiam).

[8] Letter to U.S. House Judiciary Committee Requesting Supplemental Federal Funding for Coronavirus Response, at Enc. 2, p. 11 (Apr. 28, 2020).

[9] *See, e.g.*, Daniel Tidcombe, *Analyzing the Caseload of the Federal District Court in the District of New Jersey and the Effects of Unfilled Vacancies on the Judicial System* (Stockton Univ. William J. Hughes Ctr. Pub. Pol'y, May 2020) (describing that by 2020, the number of backlogged cases in the U.S. District Court for the District of New Jersey sat at 39,000, up more than 230% since 2016); Press Release, "Issa Leads Legislation to Solve Backlogged Courts," Sept. 17, 2024 ("As of March 2023, the Texas federal district court system has a backlog of 14,501 civil cases and 16,436 criminal cases."); Press Release, "Sen. Ossoff-Backed Bipartisan Bill to Add New Judges to Northern District of Georgia, Reduce Wait Times Passes U.S. Senate," Sept. 3, 2024 ("As of December 2023, the Northern District of Georgia had 637 weighted filings per judgeship, an increase of 99 from the prior year.").

[10] *Supra* note 7.

[11] Judges Act of 2025, H.R. 1702, 119th Cong. (2025).

[12] *Id*. § 2.

[13] *Id*.

[14] *See* "United States Courts, U.S. District Courts—National Judicial Caseload Profile," 2025, https://www.uscourts.gov/.

[15] U.S. Judicial Panel on Multidistrict Litigation, "MDL Statistics Report—Distribution of Pending MDL Dockets by Actions Pending," July 1, 2025, https://www.jpml.uscourts.gov.

[16] Statement of Hon. Brian S. Miller before the S. Comm. on the Judiciary, *The Judicial Conference's Recommendation for More Judgeships*, 116th Cong. 9 (June 30, 2020).

[17] Many of the plaintiffs' firms prosecuting mass arbitrations also are involved on the plaintiffs' side of MDL proceedings in court.

[18] For example, a court faced with hundreds or thousands of individual cases that comprise an MDL may lack the capacity to consider motions to dismiss individual cases. Defendants in MDL proceedings are generally unable to obtain interlocutory appellate review of decisions denying significant dispositive motions. And "the number of claims asserted and the informational asymmetry between plaintiffs' counsel and defendants often mean that courts are unable to undertake a meaningful vetting process of individual cases." Archis A. Parasharami & Daniel E. Jones, *A Step in the Right Direction for MDLs: New Federal Rules of Civil Procedure 16.1* (U.S. Chamber Institute for Legal Reform, June 2025) (*ILR Briefly: Rule 16.1*).

[19] John C. Coffee, Jr., Understanding the Plaintiff's Attorney: The Implications of Economic Theory for Private Enforcement of Law Through Class and Derivative Actions, 86 Colum. L. Rev. 669, 710 (1986).

[20] Brief of Center for Class Action Fairness as Amicus Curiae in Support of Petitioner at 6, *AT&T Mobility LLC v. Concepcion*, No. 09-893, 2010 WL 3167314 (U.S. Aug. 9, 2010).

[21] *Id*. at 23.

[22] H.R. Rep. No. 97-542, at 13 (1982) (noting that "arbitration could relieve some of the burdens on the overworked Federal courts").

[23] *Id*.

[24] *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 685 (2010).

[25] Elizabeth Carter, "The Power of Choice: How Flexibility in Arbitration Drives Better Outcomes," JAMS, Mar. 19, 2025.

[26] *See* Nam D. Pham & Mary Donovan, *Fairer, Faster, Better III: An Empirical Assessment of Consumer & Employment Arbitration*, at 14 (U.S. Chamber Institute for Legal Reform, Mar. 2022).

[27] *See* Andrew Pincus, *Statement of the U.S. Chamber of Commerce to the House Committee on Financial Services, Subcommittee on Financial Institutions and Consumer Credit*, at 10 (May 18, 2016).

[28] Y2K Act, Pub. L. No. 106-37, 113 Stat. 185 (July 20, 1999).

[29] J. Maria Glover, Recent Developments in Mandatory Arbitration Warfare: Winners and Losers (So Far) in Mass Arbitration, 100 Wash. U. L. Rev. 1617, 1632 (2023).

[30] *Id*.

[31] Through third party litigation funding, hedge funds and other funders invest in lawsuits and arbitrations in exchange for a portion of any settlement or judgment. U.S. Chamber of Commerce Institute for Legal Reform, "What You Need to Know About Third Party Litigation Funding," https://instituteforlegalreform.com (June 7, 2024).

[32] FairShake now provides only an informational guide. FairShake, "About the Site," https://fairshake.com/.

[33] Sam Heavenrich, Concerted Arbitration, 132 Yale L.J. F. 29, 34 (2022).

[34] Michael Doman, Collective Judo: Ethics and Access to Justice in Mass Arbitration Companies, 25 Pepp. Disp. Resol. L.J. 225 (2025).

[35] *Mass Arbitration Shakedown* at 2, 9-10; Pham, *Fairer, Faster, Better III*, *supra*, at 11.

[36] Sapna Maheshwari, "TikTok Quietly Changes User Terms Amid Growing Legal Scrutiny," *N.Y. Times*, Dec. 14, 2023; Michael Corkery, "Amazon Ends Use of Arbitration for Customer Disputes," *N.Y. Times*, July 22, 202).

[37] U.S. Chamber Institute for Legal Reform, "Mass Arbitration: A Call for Reform," June 4, 2024, https://instituteforlegalreform.com/.

[38] *See* Proposed First Amended Complaint ¶¶ 77-78, *Tubi, Inc. v. Keller Postman LLC*, No. 1:24-cv-01616-ACR, ECF No. 22-1 (D.D.C. Nov. 25, 2024) (Tubi hired a private investigator that interviewed 19 individuals that were former claimants in a claimants' firm's campaign against Tubi. Among other things, the interviews revealed that (i) most denied ever being represented by the claimants' firm; (ii) most were unaware of the very basic nature of their claims against Tubi; and (iii) some were unaware of any claims being filed in their names.).

[39] Richard Frankel, Fighting Mass Arbitration: An Empirical Study of the Corporate Response to Mass Arbitration and Its Implications for the Federal Arbitration *Act*, 78 Vand. L. Rev. 133, 137-138 (2025) (Frankel, *Fighting Mass Arbitration*).

[40] *Id*.

[41] *See* UCC § 2-607(3)(a) (providing that where a tender has been accepted, "the buyer must within a reasonable time after he discovers or should have discovered any breach notify the seller of breach or be barred from any remedy").

[42] *See, e.g.*, Cal. Civ. Code § 1782 (requiring transmission of a written demand at least 30 days prior to the commencement of an action under California Consumer Legal Remedies Act); Ala. Code § 8-19-10 (requiring submission of a written demand for relief to the prospective defendant-respondent at least 15 days prior to commencement of an action under Alabama consumer protection statute).

[43] Kevin S. Ranlett, Zachary D. Miller & Rachel R. Freidman, Mass Arbitration Update: The Battlefield Expands, 80 The Business Lawyer 557, 557 (2025) ("[F]iling lawyers recruit as many claimants as possible and, sometimes, fail to vet their claimants properly to ensure that they are real people with colorable claims.").

[44] *See, e.g.*, Respondents-Appellants' Opening Brief & Required Short Appendix at 44-45, *Wallrich v. Samsung Elecs. Am., Inc.*, No. 23-2842, 2023 WL 8176141 (7th Cir. Nov. 14, 2023) (Samsung's analysis revealed that the claimant pool included individuals who were dead, individuals who never resided in Illinois—and thus had no basis to bring the Illinois statutory claims asserted—and individuals also purportedly represented by other counsel pursuing the same claims against Samsung.).

[45] JAMS, "JAMS Mass Arbitration Procedures and Guidelines," effective May 1, 2024, https://www.jamsadr.com/ ("The filing of dozens, hundreds or even thousands of individual claims may create administrative burden and onerous fees, as well as delay and potential unfairness to all Parties, all of which may impair the integrity of the Arbitration process.").

[46] Frankel, Fighting Mass Arbitration, 78 Vand. L. Rev. at 192.

[47] J. Maria Glover, Mass Arbitration, 74 Stan. L. Rev. 1283, 1363 (2022).

[48] Ken Hagen, "Rethinking Mass Arbitration: Building on MDL's Proven Blueprint," FedArb, May 27, 2025; *see also* Glover, *Mass Arbitration*, *supra*, at 1363 (proceedings "[can]not realistically move forward" expeditiously in arbitral systems ill-equipped for a flood of filings).

[49] Clifford D. Bloomfield, "Mass Arbitrations: The New Landscape of Dispute Resolution and Its Challenges," JAMS, May 2, 2024.

[50] Michael W. McTigue Jr. & Meredith C. Slawe, "The AAA's Infographic and the Continued Abuse of Mass Arbitration," Skadden, Apr. 17, 2025.

[51] *Id*.

[52] *Uber Techs., Inc. v. Am. Arbitration Ass'n*, 167 N.Y.S.3d 66, 67-68 (Sup. Ct. App. Div. 2022).

[53] *Id*. at 69.

[54] Complaint ¶ 66, *Sega of Am., Inc. v. JAMS*, No. 25STCV02240 (Cal. Super. Ct., L.A. Cnty. Jan. 27, 2025).

[55] *Id.* ¶ 18.

[56] Complaint ¶ 77, *Sega of Am., Inc. v. Consovoy McCarthy PLLC*, No. 1:25-cv-00257-CMH-IDD, ECF No. 1 (E.D. Va. Feb. 10, 2025).

[57] *Concepcion*, 563 U.S. at 345-46 (citation omitted).

[58] *See, e.g.*, "Understanding the Mass Arbitration Landscape in 2024: Insights from the AAA's New Infographic," American Arbitration Association, May 7, 2025 (noting that "more than 280,000 individual claims filed with the AAA in 2024 under mass arbitration umbrellas—a sharp illustration of just how significant this procedure has become").

[59] Letter from Stephen Waguespack, President, U.S. Chamber Institute for Legal Reform, to Jennifer Kennedy Gellie, Chief, Counterintelligence and Expert Control Section, Nat'l Sec. Div., U.S. Dep't of Just., Re: *Foreign Agents Registration Act Notice of Proposed Rulemaking* (Mar. 2025) (noting "the secrecy typically surrounding [third-party litigation funding]").

[60] The chart presented provides an estimated breakdown of arbitration fees, calculated using assumptions drawn from a typical scenario. Among other things, this chart assumes that arbitrators are appointed by the list and rank process, rather than through direct appointment. The Final Fee will be billed when an evidentiary hearing is scheduled (likely when an arbitrator is appointed and a preliminary hearing is set). If it is a documents-only proceeding, the Final Fee will be billed when the final submission date is set (likely when a scheduling order has been issued). Actual arbitration fees may differ depending on the specifics of each case and are subject to change.

[61] *See, e.g.*, Meta Ad Library, Junk Email Compensation Claims (Mar. 2024).

[62] The names of targeted businesses and individual consumers have been redacted in the images in this Chapter.

[63] As demonstrated in one of the advertisements, claimants' counsel routinely improperly feature the target company's names and logos in their mass arbitration advertisements. This can expose claimants' counsel to a host of potential claims, ranging from false advertising and trademark infringement under the Lanham Act to unfair competition and trade libel. *See, e.g.*, *Diamond Resorts Int'l, Inc. v. Aaronson*, 371 F. Supp. 3d 1088, 1101 (M.D. Fla. 2019) (denying defendant's summary judgment motion over Lanham Act false advertising claim alleging attorneys and affiliate law firms posted false and misleading solicitations harming plaintiff's reputation). With respect to trademark liability specifically, exposure may arise where claimants' counsel use the target company's source identifiers and brands in a manner that is likely to create confusion or gratuitously exploits a brand.

[64] *See, e.g.*, ABA Model Rule 1.5(a) ("A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses.").

[65] *See* Respondents' Opposition to Petitioners' Motion to Compel Arbitration at 13-14, Ex. 19, *Hoeg v. Samsung*, No. 1:23-cv-01951, ECF No. 38-20 (N.D. Ill. June 14, 2023).

[66] Pallas Enterprise, "Social Media Marketing," https://pallasenterprise.com/.

[67] Reda Marketing, "How A Consumer Protection Law Firm Generated over 200 signed cases in 1 week," YouTube, June 6, 2022.

[68] Scout Legal Marketing, "Changing the Game for Mass Arbitration and Class Action Law Firms," https://go.scoutyourcase.com/.

[69] Chariot Claims, "Chariot Claims Raises $3.6M to Help Consumers and Lawyers Take on Corporate Wrongdoing," July 10, 2025.

[70] Chariot Claims founder, Zim Hang, initially founded a company called ClaimClam, which "use[d] artificial intelligence to identify class members in exchange for a 15% cut" and submitted claims on behalf of those consumers. *See* Amanda Bronstad, "Why a Company Called ClaimClam Is Creating Controversy in the Class Action Bar," Law.com, Sept. 11, 2023. After a settlement administrator rejected ClaimClam claims (finding they lacked identifying information) and the company was criticized by members of the class action bar, the ClaimClam founders announced the creation of Chariot Claims, which focused on matching firms and claimants rather than serving as a third-party claims filer.

[71] Season 4, "About Us," https://season4.io/.

[72] *See* Defendant's Motion to Dismiss at 3, *Allen v. Motorola Mobility, LLC*, No. 2023-CH-09116 (Ill. Cir. Ct., Cook Cnty. Jan. 30, 2024).

[73] *Id.*

[74] *Mass Arbitration Shakedown* at 32-34.

[75] *See* Complaint at 2, *Tubi, Inc. v. Keller Postman LLC*, No. 1:24-cv-01616-ACR, ECF No. 1 (D.D.C. May 31, 2024). The Tubi litigation is discussed in greater detail *infra* in Chapter 4.

[76] *Id.* at 9, 11.

[77] *Id.* at 3-4.

[78] Complaint ¶ 55, *SCPS, LLC v. Kind Law*, No. 1:24-cv-02768-PLF, ECF No. 1 (D.D.C. Sept. 27, 2024).

[79] Complaint ¶ 5, *Epson Am., Inc. v. Adams.*, No. 30-2023-01313431-CU-MC-CXC (Cal. Super. Ct., Orange Cnty. Mar. 13, 2023).

[80] *See* Wells Fargo Bank, N.A.'s Memorandum in Support of Request for Claimants to Provide Basic Information About Each Dispute Prior to Demand Proceeding Through Arbitration Process at 1, Ex. Q to Declaration of Alicia A. Baiardo in Support of Defendants' Motion to Compel Arbitration, *Mosley v. Wells Fargo & Co.*, No. 3:22-cv-01976-DMS-AGS, ECF No. 22-17 (S.D. Cal. Feb. 3, 2023).

[81] *See* Order of Process Arbitrator, Ex. T to Declaration of Alicia A. Baiardo in Support of Defendants' Motion to Compel Arbitration, *Mosley v. Wells Fargo & Co.*, No. 3:22-cv-01976-DMS-AGS, ECF No. 22-20 (S.D. Cal. Feb. 3, 2023) (ordering that all claimants who were pursuing mass arbitration against respondent bank submit amended demands for arbitration that provide bank account numbers and facts sufficient to establish they met the requirements necessary to bring claims under claimants' counsel's theory of liability).

[82] *Mosley v. Wells Fargo & Co.*, No. 22-cv-01976-DMS-AGS, 2023 WL 3185790 (S.D. Cal. May 1, 2023), *aff'd*, No. 23-55478, 2024 WL 977674, at *2 (9th Cir. Mar. 7, 2024).

[83] Defendants' Notice of Motion and Motion to Dismiss or Transfer, *Penuela v. Wells Fargo Bank*, Case No. 4:24-cv-00766, ECF No. 19 (N.D. Cal. May 28, 2024).

[84] *See, e.g., Fla. Bar v. Farah*, No. SC2022-0472, 2025 WL 629341, at *3 (Fla. Feb. 27, 2025) (finding an attorney violated multiple ethical rules in connection with his representation of multiple plaintiffs where "it [was] clear [counsel] did not adequately communicate with all 163 plaintiffs his firm originated, nor did he exercise reasonable diligence by conducting a pre-suit investigation into their claims," and "[h]ad [counsel] diligently conducted a pre-suit investigation in each case and maintained client communication, he surely would have learned of the time-barred claim and the 8 deceased clients before filing their personal injury claims"). This decision is discussed further in Chapter 6.

[85] *See id.*

[86] *See* Kevin Ranlett, Archis A. Parasharami & Daniel Jones, "The Implications of Skyrocketing Fraudulent Claims in Class Action Settlements," Mayer Brown Class Defense Blog, Aug. 21, 2024.

[87] *See id.*

[88] *See* ClaimScore, "Paying Fraudulent Claims Can Cost Millions of Dollars," https://www.claimscore.ai/. ClaimScore has recognized that "bad actors and the orchestrators of programmatic fraud" are drawn to websites like Top Class Actions and ClassAction.org, raising that "being listed on these sites will surely result in fraudulent claims being submitted, often times in the form of programmatic fraud." *See* ClaimScore, "Consolidation vs. Solicitation Sites," https://www.claimscore.ai/.

[89] *Lineberry v. AddShoppers, Inc.*, No. 23-CV-01996-VC, 2025 WL 1533136, at *1 (N.D. Cal. May 29, 2025).

[90] *Id.*

[91] *Id.* at *1, *10.

[92] *ILR Briefly: Rule 16.1* at 5.

[93] *Id.* at 1, 6.

[94] *Id.* at 4.

[95] *See* Fed. R. Civ. P. 16.1 ("Rule 16.1").

[96] Rule 16.1(b)(3)(B).

[97] Rule 16.1(b)(3)(D), (G).

[98] *ILR Briefly: Rule 16.1* at 9.

[99] Complaint, *L'Occitane, Inc. v. Zimmerman Reed LLP*, No. 2:24-cv-01103-PA-RAO, ECF No. 1 (C.D. Cal. Feb. 8, 2024).

[100] *See* Declaration of Andrea M. Gumushian in Support of Plaintiff's Supplemental Brief in Opposition to Defendants' Motion to Compel Arbitration, *L'Occitane, Inc. v. Zimmerman Reed LLP*, No. 2:24-cv-01103-PA-RAO, ECF No. 50-1 (C.D. Cal. Apr. 10, 2024).

[101] *Id.* at 2 & Ex. B (ECF No. 50-3).

[102] *Id.* at 2 & Ex. C (ECF No. 50-4). The court ultimately denied a motion to compel the claims to arbitration, holding that claimants' counsel had failed to establish that any claimant visited the L'Occitane website—a foundational predicate of claimants' counsel's theory of liability. *See L'Occitane, Inc. v. Zimmerman Reed LLP*, No. CV 24-1103 PA (RAOx), 2024 WL 2227182, at *4 (C.D. Cal. Apr. 12, 2024).

[103] *See, e.g., Ryan v. Wilshire Law Firm, P.L.C.*, No. 2:24-cv-08816 (C.D. Cal. Oct. 12, 2024) (TCPA class action alleging law firm engaged in "illegal prerecorded robocalls" and called plaintiff approximately 100 times to solicit their representation); *see also* Complaint 26-44, *Dominguez v. Keller Postman LLC*, No. 3:23-cv-0185, ECF No. 1 (W.D. Tex. May 5, 2023) (alleging law firm violated TCPA by repeatedly calling her "soliciting legal representation," claiming "representatives for [the claimants' firm] called plaintiff 16 times, including 6 times after plaintiff told the firm's representative 'to not call back'").

[104] Mark Behrens, Third Party Litigation Funding: A Call for Disclosure And Other Reforms To Address The Stealthy Financial Product That Is Transforming The Civil Justice System, 34 Cornell J.L. & Pub. Pol. 1 (2025) (*Third-Party Litigation Funding*).

[105] Roy D. Simon, *Simon's NY Rules of Prof. Conduct*, § 1.8:79 (2024). A recent review of public third-party litigation funding contracts reveals that typical agreements give funders significant control over strategic and settlement decisions. *See* Lawyers for Civil Justice, Rules Suggestion to the Advisory Committee On Civil Rules, "An Examination of TPLF Contracts Reveals Common Control Mechanisms that Can Affect the Litigation Process and Influence Substantive Outcomes" (Sept. 3, 2025).

[106] *Third-Party Litigation Funding*, 34 Cornell J.L. & Pub. Pol. at 7.

[107] J. Maria Glover, Mass Arbitration, 74 Stan. L. Rev. at 1339-40 & nn.295-96.

[108] *Id*.

[109] *See* James Anderson, "Is Increased Transparency into Litigation Financing on the Horizon?," National Law Review (Jan. 15, 2020), https://www.natlawreview.com/article/increased-transparency-litigation-financing-horizon.

[110] *See Third-Party Litigation Funding*, at 7; *Simon's NY Rules of Prof. Conduct* § 1.8:79.

[111] U.S. Chamber Institute for Legal Reform, *Third Party Financing: Ethical & Legal Ramifications in Collective Actions*, at 3 (2009); *see also* John H. Beisner, Jessica D. Miller, and Jordan M. Schwartz, *Selling More Lawsuits, Buying More Trouble* (U.S. Chamber Institute for Legal Reform, Jan. 2020); Maya Steinitz, Incorporating Legal Claims, 90 Notre Dame L. Rev. 1155, 1168 (2015) ("[T]he introduction of a financier into the attorney-client relationship can produce conflicts or reinforce existing ones."); J. Maria Glover, Alternative Litigation Finance and the Limits of the Work-Product Doctrine, 12 N.Y.U. J.L. & Bus. 911, 935 (2016) ("[O]ne could imagine any number of legitimate concerns about the ways in which litigation funding could alter the incentives of plaintiffs' counsel and potentially create conflicts between its loyalty to the class and its contractual obligations to the litigation funder.").

[112] *Id., Third Party Financing: Ethical & Legal Ramifications in Collective Actions*, at 3.

[113] Gareth Purnell, The Disclosure of Third-Party Litigation Funding Agreements Is Necessary to Resolve Ethical Dilemmas Created by The Third-Party Lender Industry, 13 St. Mary's J. Legal Mal. & Ethics 361, 371 (2023).

[114] Lisa Miller, Perils of Third-Party Funding, 40 L.A. Law 19, 20 (2017). In a recent presentation to investors, a publicly traded litigation funder explained its strategy to increase profits through involvement in settlement decisions and other critical aspects of the matters it funds. *See, e.g.*, Burford Capital, "Burford Capital Investor Day," Apr. 3, 2025, https://s206.q4cdn.com/737820215/files/doc_presentation/2025-04-03-Burford-2025-Investor-Day-FINAL-1543020-1.pdf. The presentation describes the funder's strategy of "mak[ing] payments to counsel" and "[r]eview[ing] . . . invoices and comparison to budget." It indicates that the funder personnel act as a "Second Set of Expert Eyes" in litigation matters. The presentation references the "[u]se [of Buford] experience to solve the question: How are we going to win?" and notes that the funder's practice is to "[f]ollow case filings and hearings," to "[r]evise and comment on legal briefs and other case documents" and to conduct "[m]oot court[s]." Finally, the presentation explains that the funder conducts "Settlement Modeling . . . [u]sing proprietary data to evaluate and advise on settlement demands and offers." *Id.*

[115] Case Mgmt. Order No. 61 at 3, *In re 3M Combat Arms Earplug Prods. Liab. Litig.*, No. 3:19-md-02885-MCR-HTC, ECF No. 3815 (N.D. Fla. Aug. 29, 2023) (ordering disclosure of TPLF arrangements to ensure that the 3M plaintiffs were "not exploited by predatory lending practices, such as interest rates well above market rates, which [could] interfere with their ability to objectively evaluate the fairness of their settlement options"); *see also* Amended Petition to Vacate Arbitration Award ¶ 40, *Sysco Corp. v. Glaz LLC*, No. 1:23-cv-01451, ECF No. 18 (N.D. Ill. Mar. 20, 2023) (alleging that litigation funder demanded to change the funding arrangement to provide funder with the right to review and reject settlement offers).

[116] N.Y. City Bar Association, *Formal Op. 2011-2* (2011) ("[A]bsent client consent, a lawyer may not permit the company to influence his or her professional judgment in determining the course or strategy of the litigation, including the decisions of whether to settle or the amount to accept in any settlement."). In some circumstances, however, courts have found that attorneys had retained independence of judgment while using third-party funding when their retention letters informed clients of the third-party payer and stated that their obligations were solely to their client. *See In re State Grand Jury Investigation*, 983 A.2d 1097, 1107 (N.J. 2009) (noting that "[f]or the avoidance of future doubt, such retention letters should clearly and conspicuously note that nothing in the representation shall limit the lawyer's responsibilities to the client, as provided in *RPC* 1.8(f)(2), and that the third-party payer shall not, in any way, seek to 'direct or regulate the lawyer's professional judgment in rendering such legal services'" (citation omitted)).

[117] *Maslowski v. Prospect Funding Partners LLC*, 944 N.W.2d 235, 241 (Minn. 2020) (quoting *Huber v. Johnson*, 70 N.W. 806, 808 (Minn. 1897)).

[118] Anthony J. Sebok, *The Rules of Professional Responsibility and Legal Finance: A Status Update*, Faculty Research Paper No. 671 (Cardozo Law Jacob Burns Inst. For Advanced Legal Studies, 2022).

[119] Litigation funding presents national security concerns as well. While those concerns are outside the scope of this chapter, there is increasing evidence that offshore investors may be using litigation funding to harm American interests, gain access to confidential information and intellectual property, or even avoid sanctions. *See, e.g.*, Emily R. Siegel & John Holland, "Putin's Billionaires dodge Sanctions by Financing Lawsuits," Bloomberg Law, Mar. 28, 2024; Thibault Denamiel, Matthew Schleich & William Alan Reinsch, *Is Third-Party Litigation Financing a National Security Problem?* (Ctr. for Strategic & Int'l Stud., Feb. 23, 2024); Howard "Buck" McKeon, Editorial, "Some Third-Party Litigation Funders Pose a Threat to US Security," Bloomberg Law, Apr. 7, 2023; Emily R. Siegel, "China Firm Funds US Suits Amid Push to Disclose Foreign Ties," Bloomberg Law, Nov. 6, 2023; Michael H. Leiter, John H. Beisner, Jordan M Schwartz, and James E. Perry, *A New Threat: The National Security Risk of Third Party Litigation Funding* (U.S. Chamber Institute for Legal Reform, Nov. 2022).

[120] Affidavit of William Bucher ¶ 14, *Zaiger LLC v. Bucher Law PLLC*, No. 154124/2023, ECF No. 29 (N.Y. Cnty. Sup. Ct. May 9, 2023).

[121] *Id.*, Ex. A, at slide 3.

[122] *Id.* at slide 3.

[123] *Id.*

[124] *Id.* at slide 3.

[125] *Id.* at slide 4.

[126] *Id.*

[127] *Id.*

[128] *Id.* at slide 7.

[129] *Id.* at slides 5, 9.

[130] J. Maria Glover, Mass Arbitration, 74 Stan. L. Rev. at 1336.

[131] *Id.*

[132] *Id.* Developers have even sponsored events like "MassArbCon," a summit designed to bring together top practitioners in the field of mass arbitration, to share information and promote their services. *See* "Sponsorship," MassArbCon tech legal, https://massarbcon.com/sponsorship/. Among the sponsors are the firms Simpluris, Pallas Enterprises, Finlegal, Leverage, and Signature Resolution.

[133] Leverage, "Get Started With The Best Client Intake & Management Platform On The Market," https://www.leverage.law/.

[134] Lorelei Laird, "Ray Gallo's Leverage App Automates a Lot of the Administrative Work Involved in Mass Actions," ABA Journal, Sept. 3, 2015 ("'Forget the class action,' [Gallo] says to potential opponents. '. . . I'm going to bring 10,000 individual claims and you're going to wish it was a class action, because you were better off.'"); Ray E. Gallo, A New Aggregate Litigation Model Emerges—Technology-Driven Mass Actions, 27 Cal. Lit. J. 1, 5 (Nov. 2014) (describing use of "arbitration swarms" as a highly favorable tactical development for individual plaintiffs with $25,000 or more in economic damages).

[135] Gallo, *supra*, at 5.

[136] *See, e.g.*, U.S. Chamber Institute for Legal Reform, "How Mass Arbitrations Are the New Abusive Trial Lawyer Racket," Mar. 30, 2023 ("Plaintiffs' lawyers file thousands of the same arbitration claims—often without proper vetting . . . ."); Archis A. Parasharami et al., "Seventh Circuit reverses order forcing Samsung to pay arbitration fees for mass arbitration," Class Defense Blog, Mayer Brown, July 18, 2024 ("Even worse, to increase their settlement leverage, these lawyers sometimes engage in questionable practices to recruit as many claimants as possible so that they can threaten the business with an ever-larger amount of arbitration fees. For example, some businesses have complained that the plaintiffs' lawyers use misleading online solicitations to sign up claimants and then fail to vet them to ensure that they are real people who actually are customers of or workers for the company and have a colorable claim.").

[137] Under ABA Model Rule 3.1, a lawyer has a duty to bring only claims which have a "basis in law and fact for doing so that is not frivolous." *Id.*; *see also* New York Rule 3.1 (same). There is no provision in the model rules, or in any of the applicable state rules, that permits a lawyer to rely on "automated" processes to make the determination that a client's claims are valid and not frivolous.

[138] Amanda Bronstad, "Companies Suing Over Mass Arbitration, Saying It's Unethical," Law.com, Apr. 21, 2025.

[139] For example, wiretapping laws have been repurposed recently for claims arising out of various internet technologies, like cookies, pixels, chat features, scripts, and other technologies.

[140] *See* S. Rep. No. 100-599, at 5 (1988).

[141] *See In re Nickelodeon Consumer Priv. Litig.*, 827 F.3d 262, 288 (3d Cir. 2016) (noting that the VPPA "serves different purposes, and protects different constituencies, than other, broader privacy laws").

[142] *E.g., Sterk v. Redbox Automated Retail, LLC*, 672 F.3d 535 (7th Cir. 2012); *In re Hulu Priv. Litig.*, No. C 11-03764 LB, 2012 WL 3282960 (N.D. Cal. Aug. 10, 2012); *In re Netflix Priv. Litig.*, No. 5:11-CV-00379 EJD, 2012 WL 2598819 (N.D. Cal. July 5, 2012); *Harris v. Blockbuster Inc.*, 622 F. Supp. 2d 396 (N.D. Tex. 2009).

[143] Websites use cookies, pixels, session replay, and other tracking technologies for many different purposes.

[144] For example, in a mass arbitration threat brought against Tubi, a claimants' firm alleged that Tubi, Inc. violated California's Unruh Civil Rights Act, Cal. Civ. Code §§ 51-52, through targeted advertisement practices. Tubi filed a lawsuit against the claimants' firm, noting that the firm "partners with . . . other plaintiff firms to solicit 'clients' using social media platforms, including Instagram and YouTube," and that the firm's partner and "other plaintiff firms use targeted advertising on these platforms—the same manner of advertising that forms the sole basis for their claims of discrimination in the mass arbitration against Tubi." *See* Complaint ¶ 17, *Tubi, Inc. v. Keller Postman LLC*, No. 1:24-cv-01616, ECF No. 1 (D.D.C. May 31, 2024).

[145] In *Solomon v. Flipps Media, Inc.*, 136 F.4th 41 (2d Cir. 2025), the U.S. Court of Appeals for the Second Circuit held that the VPPA prohibits only disclosure of "information that would allow an ordinary person to identify a consumer's video watching habits, but not information that only a sophisticated technology company could use to do so." *Id.* at 52. Applying that standard, the court held that the encoded transmissions sent by the Meta Pixel would not allow an ordinary person to identify either the specific video watched or the identity of the user who watched the video. Subsequently, in *Hughes v. National Football League*, No. 24-2656, 2025 WL 1720295 (2d Cir. June 20, 2025), the Second Circuit confirmed that "*Solomon* effectively shut the door for Pixel-based VPPA claims." *Id.* at *2. The court also clarified that in "*Solomon*, we focused on whether an ordinary person would be able to understand the actual underlying code communication itself, regardless of how the code is later manipulated or used by Facebook." *Id.* at *3.

[146] *See* Complaint, *Eng v. WarnerMedia Direct, LLC et al.*, No. 1:25-cv-02452, ECF No. 1 (S.D.N.Y. Mar. 25, 2025).

[147] *See id.*, Transcript of Conference 15:9-16:8 (Aug. 11, 2025).

[148] *See id.*, ECF No. 27, Notice of Voluntary Dismissal.

[149] *See, e.g.*, Complaint ¶ 45, *L'Occitane, Inc.*, No. 2:24-cv-01103-PA-RAO, ECF No. 1.

[150] *See Flanagan v. Flanagan*, 41 P.3d 575 (Cal. 2002).

[151] Cal. Penal Code § 631(a).

[152] *See Yoon v. Lululemon USA, Inc.*, 549 F. Supp. 3d 1073, 1082-83 (C.D. Cal. 2021) (finding various data, including keystrokes, and mouse clicks did not constitute "content" under CIPA § 631(a)(ii)); *Yoon v. Meta Platforms, Inc.*, No. 24-cv-02612-NC, 2024 WL 5264041, at *6 (N.D. Cal. Dec. 30, 2024) (finding that while button clicks and pages viewed do not typically qualify as contents, "the button click data associated with [specific] video titles are contents").

[153] A pen register is "a device or process that records or decodes dialing, routing, addressing, or signaling information transmitted by an instrument or facility from which a wire or electronic communication is transmitted, but not the contents of a communication." *See* Cal. Penal Code § 638.50(b). A trap and trace device is "a device or process that captures the incoming electronic or other impulses that identify the originating number or other dialing, routing, addressing, or signaling information reasonably likely to identify the source of a wire or electronic communication, but not the contents of a communication." *See id*. § 638.50(c).

[154] For example, the California legislature could have explicitly included internet communications within the scope of CIPA § 638.51 but declined to do so—even while making amendments to other provisions of CIPA that brought internet communications within their scope. A reasonable conclusion is that the California legislature intended CIPA § 638.51 to apply only to the monitoring of a person's telephone communications.

[155] The CCPA establishes a very narrow private right of action for certain data breaches: the unauthorized access and exfiltration, theft, or disclosure of information covered under state data security law that was not encrypted or redacted, and the breach occurred because the business failed to maintain reasonable security. *See* Cal. Civ. Code § 1798.150(a).

[156] *See, e.g.*, Petition for Order Compelling Arbitration at 3-4, *Bernal v. Kohl's Corp.*, No. 2:23-cv-01542-LA, ECF No. 1 (E.D. Wis. Sept. 1, 2023) (claims under California statutes based on allegations of "deceptive pricing practices" because items were "always discounted"); Petition to Compel Individual Arbitration and for Declaratory Judgment at 2-4, *Cellco P'ship v. Lashe*r, No. 8:23-CV-1242-VMC-AAS, ECF No. 1-4 (M.D. Fla. Oct. 24, 2023) (contract claim for allegedly "hidden" "administrative charge" incurred by all customers); Verified Petition to Appoint an Arbitrator, *Tubi, Inc. v. Lyons, et al.*, No. 2024-1172 (Del. Ch. Nov. 15, 2024), Ex. 9 at 2 (allegations that the company "discriminated against the claimants in violation of the Unruh Civil Rights Act, Cal. Civ. Code §§ 51-52," by purportedly providing targeted advertising based on the age, gender, or sex each claimant supplied in registering an account).

[157] *See, e.g.*, Brief in Support of Defendants' Motion to Dismiss or, in the Alternative, to Strike Class Allegations at 23, *Cortez Gomez v. Kohl's Corp.*, No. 3:23-cv-00678, ECF No. 16 (W.D. Wis. Jan. 3, 2024) (arguing that pricing claims underlying claimants' counsel's threatened mass arbitration require individualized proof).

[158] *See Farah*, 2025 WL 629341, at *4 (referring attorney for sanctions because he "took on far more . . . plaintiffs than he could reasonably handle" and should have known "that he could not provide legal services to the thousands of . . . plaintiffs and still fully comply with his professional obligations"); *see also Lineberry*, 2025 WL 1533136, at *1 (in denying motion for class certification, court admonished plaintiffs' counsel for failing to properly vet plaintiffs and "seeming unwillingness to promptly address issues that arise during litigation with named plaintiffs" and further noted that these are "serious problems that the class action plaintiffs' bar desperately needs to rectify").

[159] *See* Chapter 2, Section II.

[160] For example, an attorney-client agreement for a mass arbitration stated: "You give us the right to reject any settlement offer that is not equal to your actual loss, or the maximum allowable damages, whichever is greater, unless we believe that we have achieved the likely best settlement possible under the circumstances." *Mass Arbitration Shakedown* at 39 n.188.

[161] *See* Plaintiff's Supplemental Brief in Opposition to Defendants' Motion to Compel Arbitration at 7-8, *L'Occitane, Inc. v. Zimmerman Reed LLP*, No. 2:24-cv-01103-PA-RAO, ECF No. 50 (C.D. Cal. Apr. 10, 2024). ("Troublingly, numerous individual defendants – individuals [the claimants' firm] purports to represent in its mass arbitration filings – began responding almost immediately that [the firm] does not represent them at all.").

[162] *See* Complaint, *Tubi, Inc. v. Keller Postman LLC*, No. 1:24-cv-01616-ACR, ECF No. 1 (D.D.C. May 31, 2024).

[163] *See* ABA Model Rule 3.1.

164 *See In re Engle Cases*, 283 F. Supp. 3d 1174, 1221 (M.D. Fla. 2017) ("This [c]ourt rejects the notion that the volume of claims somehow lessens an attorney's obligations under Rule 11. Accepting that proposition yields the perverse implication that a lawyer could overwhelm defendants and the court with a tidal wave of lawsuits, and at the same time bear diminished responsibility for filing claims that lack factual support. That simply cannot be. Rule 11 imposes the same obligations on a lawyer regardless of whether he files one complaint or 10,000 complaints."); *see also Fobare v. Weiss, Neuren & Neuren*, Nos. 99-CV-1539, *et al*., 2000 WL 654969, at *1 (N.D.N.Y. May 16, 2000) (reprimanding attorney for "send[ing] out form complaints without undertaking a reasonable inquiry into their validity with respect to a particular client"); *Jones v. Eli Lilly & Co.*, No. 1:15-cv-00701-JMS-MJD, 2015 WL 6132937, at *10 (S.D. Ind. Oct. 19, 2015) ("Plaintiffs' counsel must be prepared to devote the resources needed to effectively litigate each client's claim, and should not file numerous lawsuits on behalf of dozens of clients if unable to do so.").

165 *See* ABA Model Rule 8.4(c).

166 *See Att'y Grievance Comm'n v. Dore*, 73 A.3d 161, 174 (Md. 2013) (finding that "dishonesty and misrepresentation under Rule 8.4(c) do not require intent to deceive"); *but see In re Beauregard*, 189 A.3d 1236, 1247 (Del. 2018) (per curiam) ("The specific conduct referred to in Rule 8.4(c)—dishonesty, fraud, deceit or misrepresentation—implies a state of mind requirement.").

167 *See* Chapter 2, Section II.

168 *See* ABA Model Rule 7.1; *see also* ABA Model Rule 7.1 cmt. 2 ("A truthful statement is misleading if a substantial likelihood exists that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation.").

169 See ABA Model Rule 3.3(a)(1). This rule further requires that a lawyer "not allow the tribunal to be misled by false statements . . . that the lawyer knows to be false." ABA Model Rule 3.3 cmt. 2.

170 *See, e.g., In re Garcia*, 176 A.D.3d 18, 21-22 (N.Y. Sup. Ct. App. Div. 2019) (upholding frivolous claim charges where the claims at issue were based on a doctored piece of evidence); *Borstein v. Henneberry*, 132 A.D.3d 447, 451 (N.Y. Sup. Ct. App. Div. 2015) (upholding frivolous claim charges where "[i]t simply defies logic" that the person pursuing claims ever thought they would succeed).

171 *See* ABA Model Rule 1.7 ("[A] lawyer shall not represent a client if the representation involves a concurrent conflict of interest."), 1.4 (requiring, *inter alia*, that an attorney explain a matter to his or her client "to the extent reasonably necessary to make informed decisions regarding the representation" and that an attorney "promptly inform the client of any decision or circumstance with respect to which the client's informed consent . . . is required").

172 *See* ABA Model Rule 1.8 & cmt. 16 (noting that "[d]ifferences in willingness to make or accept an offer of settlement are among the risks of common representation of multiple clients by a single lawyer" and that "this is one of the risks that should be discussed before undertaking the representation, as part of the process of obtaining the clients' informed consent").

173 *See, e.g.*, ABA Model Rule 1.4; Cal. Ethics R. 1.4.1 ("A lawyer shall promptly communicate to the lawyer's client . . . all amounts, terms, and conditions of any written offer of settlement made to the client[.]")

174 *See supra* note 158.

175 *See* ABA Model Rule 5.5 ("A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.").

176 *Abernathy v. DoorDash, Inc.*, 438 F. Supp. 3d 1062, 1068 (N.D. Cal. 2020).

177 *Id*. at 1067-68.

178 Justin Elliott, "TurboTax Maker Intuit Faces Tens of Millions in Fees in a Groundbreaking Legal Battle Over Consumer Fraud," ProPublica, Feb. 23, 2022.

179 Amanda Robert, "Amazon drops arbitration requirement after facing over 75,000 demands," ABA Journal, June 2, 2021.

180 Some businesses do not designate an arbitration provider in their arbitration agreements and instead self-administer arbitrations. It remains to be seen whether these businesses will be able to effectively administer mass arbitrations.

181 "Bellwether" procedures are similar to "staging" procedures. Bellwether provisions generally involve the parties selecting a handful of individual arbitrations to proceed as bellwether "test cases," followed by mandatory mediation. In some agreements, the primary purpose of bellwethers is to inform the parties of the relative strengths and weaknesses of the cases and thereby promote settlement (much like bellwether trials in aggregate litigation such as multidistrict litigation). Staging procedures differ from bellwether procedures in that staging procedures contemplate repeating this process in multiple rounds, or stages.

182 *Pandolfi v. AviaGames, Inc.*, No. 23-cv-05971-EMC, 2024 WL 4051754, at *7 (N.D. Cal. Sept. 4, 2024).

183 *Pandolfi v. AviaGames, Inc.*, No. 24-5817, 2025 WL 2463742, at *2 (9th Cir. Aug. 27, 2025) (not for publication; non-precedential).

184 *Heckman v. Live Nation Ent., Inc.*, 686 F. Supp. 3d 969 (C.D. Cal. 2023), aff'd, 120 F.4th 670 (9th Cir. 2024), cert. denied, No. 24-1145, 2025 WL 2823733 (U.S. Oct. 6, 2025).

185 Heckman, 120 F.4th at 690 (citation omitted).

186 *New Era ADR Rules & Procedures*, New Era ADR, March 19, 2025.

187 "Terms of Use," Live Nation, https://help.livenation.com.

188 See, e.g., *Cordero v. Coinbase, Inc.*, No. 3:25-CV-04024-CRB, 2025 WL 2223495, at *4 (N.D. Cal. Aug. 5, 2025).

189 See Respondents' Brief in Opposition at 19-20, *Live Nation Ent., Inc. v. Heckman*, No. 24-1145 (U.S. June 12, 2025) (arguing that the Ninth Circuit's decision in Heckman turned on "the unique and deeply unfair procedures at issue in this case"—i.e., the particular New Era rules that were challenged there).

190 Brooks I, 2024 WL 3330305, at *18.

191 *Id.; see also Wray v. Humble Bundle, Inc.*, No. 25-cv-01592-TLT (N.D. Cal. Sept. 8, 2025) (compelling arbitration before NAM; finding that clause in arbitration agreement delegating questions of arbitrability to NAM was not unconscionable and rejecting plaintiffs' challenge to mass arbitration provisions); *Tercero v. Sacramento Logistics LLC*, No. 2:24-cv-00953-DC-JDP, 2025 WL 43125, at *9-11 (E.D. Cal. Jan. 6, 2025) (declining to hold mass arbitration provision unconscionable where defendant had option to submit claims to JAMS or a mutually agreed-upon mediator who "first shall select between five and ten 'test cases' to be arbitrated on an expedited basis" and where provision "allows both parties to opt out of the arbitration process and proceed in court under certain conditions").

192 *Brooks v. WarnerMedia Direct, LLC,* No. 23 CIV. 11030 (KPF), 2025 WL 3073839, at *1 (S.D.N.Y. Nov. 4, 2025) ("Brooks II").

193 *Id.* at 297.

194 *Ruiz v. CarMax Auto Superstores, Inc.*, No. EDCV 23-1986 JGB (KKx), 2024 WL 1136332 (C.D. Cal. Jan. 18, 2024).

195 *Id.* at *6 (citation omitted).

196 *Id.*

197 *Caimano v. H&R Block*, No. 23-3272, 2024 WL 3295589, at *4, *12 (E.D. Pa. July 3, 2024).

198 Notwithstanding the court's ruling, in April 2025, H&R Block's arbitration agreement came under attack again in a different court when a class action complaint was filed alleging that H&R Block's online services agreement was unenforceable because the mass arbitration provisions therein are unconscionable. Class Action Complaint, *Rios v. HRB Digital, LLC*, No. 3:25-cv-03530-EMC, ECF No. 1 (N.D. Cal. Apr. 22, 2025). H&R Block moved to compel arbitration and that motion is pending.

199 *Silva v. WhaleCo, Inc.*, No. 24-cv-02890-SK, 2024 WL 4487421 (N.D. Cal. Oct. 10, 2024).

200 *Id.* at *5 n.3 (citation omitted).

201 *Id.* at *5.

202 *Id.*

203 *Kohler v. Whaleco, Inc.*, 757 F. Supp. 3d 1112 (S.D. Cal. 2024).

204 *Id.* at 1129.

205 *Burkhardt v. Extra Space Mgmt., Inc.*, No. 2:25-CV-00547-DJC-CKD, 2025 WL 2172287 (E.D. Cal. July 31, 2025).

206 *Id.* at *5.

207 *Id.* at *6.

208 *Cordero v. Coinbase, Inc.*, No. 3:25-cv-04024-CRB, 2025 WL 222349 (N.D. Cal. Aug. 5, 2025).

209 *Id.* at *5.

210 *Carolus v. Coinbase Glob., Inc.*, No. 3:25-cv-03089-CRB (N.D. Cal. Oct. 7, 2025).

211 *Id.* at 18.

212 *Id.* at 18-19.

213 *Id.* at 19.

214 *Atkins v. Amplitude, Inc.*, No. 24-CV-04913-RFL, 2025 WL 2521732 (N.D. Cal. Sept. 2, 2025).

215 *Id.* at *4.

216 *Id.*

217 *Id.*

[218] Some companies have responded to mass arbitration by attempting to ban it altogether. In these agreements, plaintiffs' lawyers and their coordinated counsel are prohibited from bringing a certain number of claims within a set period of time (*e.g.*, 180 days). *See, e.g.*, "PetSmart Dispute Resolution Policy," PetSmart § 13 ("It is acknowledged, understood and agreed that under [the terms] and all prior arbitration agreements between the Company and any Covered Individuals, there is not and has never been any intent, agreement or expectation of the parties to allow the prosecution of Mass Arbitrations [50 or more arbitration demands filed within 180 days by same or coordinated counsel], which are not permitted."), https://www.petsmartcorporate.com/; "Walmart.com Terms of Use," Walmart § 20.2, https://www.walmart.com/ ("You and Walmart each agree to waive the right to have any dispute or claim subject to the Arbitration Agreement brought, heard, administered, resolved, or arbitrated as a class arbitration, class action, collective action, or Mass Action to the maximum extent permitted by law. 'Mass Action' means a situation in which a party is represented by a law firm or other representative, or a collection of law firms or other representatives, that has initiated more than one hundred (100) arbitration Demands with common questions of law or fact against Walmart within 180 days of initiating your arbitration Demand.").

[219] Courts have rejected challenges to these policies thus far. *E.g., Scally v. PetSmart LLC*, No. 4:22-CV-06210-YGR, 2023 WL 9103618, at *4 (N.D. Cal. May 25, 2023), *motion to certify appeal denied*, No. 4:22-CV-06210-YGR, 2024 WL 37222 (N.D. Cal. Jan. 2, 2024) (declining to credit argument that provision excluding mass arbitrations from arbitration agreement was unconscionable); *Jenkins v. PetSmart, LLC*, No. CV 23-2260, 2023 WL 8548677, at *14 (E.D. Pa. Dec. 11, 2023) (finding mass arbitration waiver enforceable). But it remains to be seen whether courts and arbitrators will widely uphold and enforce such provisions and whether mass arbitration bans will prove an effective defense against mass arbitration. A common response by claimants' counsel is that any limits or outright bans on mass arbitration purportedly interferes with the individual claimants' rights to select counsel of their choosing. Some companies with mass arbitration bans have drafted fallback procedures in the event a mass arbitration proceeds notwithstanding the ban. *See, e.g.*, "Host Damage Protection Terms," Airbnb §§ 13-14 (banning mass arbitrations (100 or more claims filed within 180 days by the same or coordinated counsel, among other things), but providing fallback batching procedures "[i]f for any reason, notwithstanding [the mass arbitration ban], an arbitration proceeds as part of a [mass arbitration]"), https://www.airbnb.com/.

[220] *Davis v. Experian Info. Sols., Inc.*, No. 25-CV-04819-HSG, 2025 WL 2998157 (N.D. Cal. Oct. 24, 2025).

[221] *Id.* at *6.

[222] *Id.* at *7.

[223] California Civil Practice Code §§ 1281.97-1281.99 was formerly Senate Bill 707 and is commonly referred to as "SB 707."

[224] *See Abernathy*, 438 F. Supp. 3d at 1067-68.

[225] *See* Verified Petition to Compel Arbitration, *Wallrich v. Samsung Elecs. Am., Inc.*, No. 1:22-cv-05506, ECF No. 1 (N.D. Ill. Oct. 7, 2022); Petition to Compel Arbitration, *Hoeg v. Samsung Elecs. Am., Inc.*, No. 1:23-cv-01951, ECF No. 1 (N.D. Ill. Mar. 28, 2023); *Wallrich v. Samsung Elecs. Am., Inc.*, 106 F.4th 609 (7th Cir. 2024); *Hoeg v. Samsung Elecs. Am., Inc.*, No. 24-1274, 2024 WL 3593896 (7th Cir. July 31, 2024).

[226] *Wallrich v. Samsung Elecs. Am., Inc.*, 691 F. Supp. 3d 867, 885 (N.D. Ill. 2023), *rev'd*, 106 F.4th 609 (7th Cir. 2024).

[227] *Wallrich*, 106 F.4th at 618-19.

[228] *Id.* at 620.

[229] *Id.*

[230] *Id.* at 622.

[231] On July 24, 2024, between the Seventh Circuit's decisions in *Wallrich* and *Hoeg*, a federal court in Chicago determined that the substantive claims advanced by the *Wallrich* and *Hoeg* claimants were without merit as a matter of law. *G.T. v. Samsung Elecs. Am. Inc.*, 742 F. Supp. 3d 788, 801 (N.D. Ill. 2024).

[232] *Bernal v. Kohl's Corp.*, 749 F. Supp. 3d 971 (E.D. Wis. 2024), *appeal filed*, No. 24-2806 (7th Cir. Oct. 10, 2024).

[233] *Id.* at 973.

[234] The plaintiffs' firm bringing the mass arbitration campaign against Kohl's appealed the *Bernal* decision to the Seventh Circuit. The appeal is currently pending.

[235] Memorandum & Order, *Allen v. Motorola Mobility, LLC*, No. 2023-CH-09116 (Ill. Cir. Ct., Cook Cnty. Oct. 16, 2024).

[236] *Frazier v. X Corp.*, No. 24-1948, --- F.4th ----, 2025 WL 2502133 (2d Cir. Sept. 2, 2025).

[237] *See also Brooks II*, 2025 WL 3073839, at *6 (holding that "the AAA's application of its own policies and its allocation of arbitral fees are procedural issues outside the purview of this Court").

[238] *See, e.g., Brooks II*, 2025 WL 3073839, at *5 ("The Court cannot award sanctions under Section 1281.97 because such an award violates the equal-treatment principle of the FAA. Indeed, several district courts in the Ninth Circuit have already found that the FAA preempts Section 1281.97 for that reason." (citing cases)).

239 *Hohenshelt v. Sup. Ct. of L.A. Cnty.*, 573 P.3d 944, 954 (Cal. 2025). In reaching this limited holding, the majority concluded that SB 707 did not treat agreements to arbitrate differently from other agreements because (i) the statutory context and legislative history of SB 707 suggested it only called for the waiver of rights due to the willful nonpayment of fees, and (ii) as narrowed, that treatment of arbitration agreements was consistent with how other agreements are treated under California law. The dissent noted that this analysis was undermined by the plain language of SB 707, which states without qualification that a "drafting party is in material breach of the arbitration agreement" if it does not pay certain fees "within 30 days after the due date," and in light of other California laws that allow a party that willfully breaches a contract to assert defenses in other contexts.

240 The Rhode Island law is codified as Rhode Island General Laws § 10-3-24 *et seq.*

241 Complaint, *Tubi, Inc. v. Keller Postman LLC*, No. 1:24-cv-01616-ACR, ECF No. 1 (D.D.C. May 31, 2024).

242 *See id.* ¶ 27(a)(iii).

243 *See* Proposed First Amended Complaint ¶¶ 77-78, *Tubi, Inc. v. Keller Postman LLC*, No. 1:24-cv-01616-ACR, ECF No. 22-1 (D.D.C. Nov. 25, 2024).

244 *See* Memorandum of Points & Authorities in Support of Keller Postman LLC's Motion to Disqualify, *Tubi, Inc. v. Keller Postman LLC*, No. 1:24-cv-01616-ACR, ECF No. 23-1 (D.D.C. Dec. 9, 2024).

245 *See* Complaint, *Keller Postman LLC v. Jenner & Block LLP*, No. 24STCV32754 (Cal. Super. Ct., L.A. Cnty. Dec. 11, 2024)

246 *See* Preliminary Approval of Class Action Settlement Order, *Gregory v. Tubi, Inc.*, No. 24-LA-0000209 (Ill. Cir. Ct., Winnebago Cnty. Aug. 26, 2024).

247 *See* Tubi, Inc.'s Status Report & Request for Status Conference, *Tubi, Inc. v. Keller Postman LLC*, No. 1:24-cv-01616-ACR, ECF No. 28 (D.D.C. Mar. 25, 2025).

248 Petition for an Order Pursuant to CPLR § 7502 Disqualifying Counsel, *In the Matter of the Application of WarnerMedia Direct, LLC, & Discovery Digit. Ventures, LLC v. Zimmerman Reed LLP*, Index No. 652500/2024, NYSCEF Doc. No. 1 (N.Y. Sup. Ct., N.Y. Cnty. Filed May 15, 2024).

249 *See* Stipulation of Discontinuance with Prejudice, *In the Matter of the Application of WarnerMedia Direct, LLC, & Discovery Digit. Ventures, LLC v. Zimmerman Reed LLP*, Index No. 652500/2024, NYSCEF Doc. No. 65 (N.Y. Sup. Ct. filed Dec. 13, 2024).

250 Complaint, *L'Occitane, Inc. v. Zimmerman Reed LLP*, No. 2:24-cv-01103-PA-RAO, ECF No. 1 (C.D. Cal. Feb. 8, 2024).

251 Plaintiff's Supplemental Brief in Opposition to Defendants' Motion to Compel Arbitration at 7, *L'Occitane, Inc. v. Zimmerman Reed LLP*, No. 2:24-cv-01103-PA-RAO, ECF No. 50 (C.D. Cal. Apr. 10, 2024).

252 *Id.*, Ex. B (ECF No. 50-3).

253 *Id.*, Ex. C (ECF No. 50-4).

254 *See L'Occitane, Inc. v. Zimmerman Reed LLP*, No. CV 24-1103 PA (RAOx), 2024 WL 2227182, at *4 (C.D. Cal. Apr. 12, 2024).

255 Complaint, *SCPS, LLC v. Kind Law*, No. 1:24-cv-02768-PLF, ECF No. 1 (D.D.C. Sept. 27, 2024). The complaint originally included the AAA as a nominal defendant, but plaintiffs subsequently voluntarily dismissed the AAA as a nominal defendant shortly after the complaint was filed.

256 *See id.* 62-65.

257 *See* Order, *SCPS, LLC v. Kind Law*, No. 1:24-cv-02768-PLF, ECF No. 55 (D.D.C. Mar. 31, 2025).

258 First Amended Complaint, *Sega of Am., Inc. v. Consovoy McCarthy PLLC*, No. 1:25-cv-00257-CMH-IDD, ECF No. 20 (E.D. Va. May 2, 2025).

259 Defendant's Memorandum in Support of Motion to Dismiss First Amended Complaint, *Sega of Am., Inc. v. Consovoy McCarthy PLLC*, No. 1:25-cv-00257-CMH-IDD, ECF No. 32 (E.D. Va. May 30, 2025).

260 *Sega of Am., Inc. v. Consovoy McCarthy PLLC*, No. 1:25-cv-00257-CMH-IDD, 2025 WL 2222733 (E.D. Va. July 31, 2025), *appeal docketed, Sega of Am., Inc. v. Consovoy McCarthy PLLC*, No. 25-1878 (4th Cir. Aug. 4, 2025).

261 *Sega of Am., Inc. v. Consovoy McCarthy PLLC*, No. 1:25-cv-00257-CMH-IDD, 2025 WL 2732331 (E.D. Va. Sept. 22, 2025), *appeal docketed, Sega of Am., Inc. v. Consovoy McCarthy PLLC*, No. 25-2132 (4th Cir. Sept. 23, 2025).

262 Although not a suit against a claimants' firm directly, in *Roku v. Womble*, a California court enforced an arbitrator's order requiring a claimants' firm to pay a fee award to a business due to the firm's representation of an arbitration claimant who "abject[ly]" failed to comply with contractual pre-dispute requirements and who, in conjunction with "a large number of related cases," filed an arbitration that "was frivolous and brought for an improper purpose." *See* Joint Stipulation and Order on the Confirmation of Arbitration Award; Judgment, *Roku v. Womble*, No. 25-cv-458510 (Cal. Super. Ct., Santa Clara Cnty. June 24, 2025); Petition to Confirm Arbitration Award, Attachment, *Roku v. Womble*, No. 25-cv-458510 (Cal. Super. Ct., Santa Clara Cnty. Feb. 7, 2025).

263 Another set of cases that have called attention to abusive mass arbitration practices are actions filed against arbitration providers. For instance, in June 2023, Jersey Mike's filed a complaint in New Jersey federal court against the AAA and several claimants represented by Swigart Law Group. The complaint alleged that the AAA incorrectly administered arbitrations by, among other things, applying the wrong rules and assessing the wrong fees in connection with frivolous arbitrations filed by Swigart to extract nuisance-value settlements. In May 2024, the court dismissed Jersey Mike's complaint on jurisdictional grounds. *Jersey Mike's Franchise Sys., Inc. v. Am. Arbitration Ass'n, Inc.*, No. Civ-23-03444-ZNQ-TJB, ECF No. 60 (D.N.J. May 31, 2024).

264 As one plaintiffs' lawyer explained to a litigation funder, its tactic hinged on the "use of the AAA as an arbitration provider." Presentation Entitled Mass Arbitration Strategy and Investment Opportunity, at 6, Ex. A to Affidavit of William Bucher, *Zaiger LLC v. Bucher Law PLLC*, Index No. 154124/2023, NYSCEF Doc. No. 29 (N.Y. Sup. Ct. filed May 9, 2023).

265 This report focuses on three of the largest arbitration providers: the AAA, JAMS, and NAM.

266 *See* First Amended Class Action Complaint at 3-4, *Stephens v. Am. Arbitration Ass'n*, No. 2:25-cv-01650-PHX-JJT, ECF No. 11 (D. Ariz. June 18, 2025).

267 *Mass Arbitration Consumer & Employment* (infographic), AAA (2025), https://go.adr.org/. This was the first year the AAA published mass arbitration statistics and other arbitral institutions do not appear yet to publish similar statistics.

268 On November 1, 2020, the AAA amended its consumer fee schedule to include a section addressing "Multiple Consumer Case Filings." *See* AAA Consumer Arbitration Rules Costs of Arbitration (Amended and Effective Nov. 1, 2020).

269 2021 Supplementary Rules, MC-1(b). These supplementary rules also apply to employment arbitration. In fact, the AAA had first promulgated a set of mass arbitration supplementary rules in 2019, exclusively applying to employment arbitrations. *See* Frankel, *Fighting Mass Arbitration*, 78 Vand. L. Rev. at 173 & 216.

270 2021 Supplementary Rules at 3, *Introduction*.

271 *Id*., MC-2.

272 *Id*., MC-6(a)-(b).

273 Id., MC-6(d)(i)-(v).

274 In 2023, the AAA released a new version of the Supplementary Rules, with the main change being the renaming of the rules from the "Supplementary Rules for *Multiple Case Filings*" to the "Mass Arbitration *Supplementary Rules*," and changing the shorthand of each rule from "MC-__" to "MA-__." *See* Mass Arbitration Supplementary Rules (Effective August 1, 2023).

275 On January 15, 2024, the AAA released a new version of the Supplementary Rules, containing some significant changes as described herein (together with the accompanying revised consumer arbitration fee schedule). *See* Mass Arbitration Supplementary Rules (Amended and Effective Jan. 15, 2024). Those rules were further revised on April 1, 2024, but the only change was to provide that in addition to the Supplementary Rules applying to "consumer" and "employment/workplace" arbitrations, they would also apply when "one-hundred or more non-Consumer/non-Employment/Workplace similar Demands [are] filed against or on behalf of the same party or related parties" and "where representation of all parties is consistent or coordinated across the cases." Mass Arbitration Supplementary Rules (Amended and Effective Apr. 1, 2024), https://www.adr.org/.

276 April 1, 2024 Supplementary Rules, MA-1(b).

277 *Id*., MA-1(c).

278 *Id*., MA-1(a), (f).

279 In an accompanying press release, the AAA stated that these modifications were made after "listen[ing] to the needs of individuals and businesses involved in mass arbitrations" and are designed to "save time, reduce costs and foster constructive dialogue." Press Release, AAA, "AAA Announces Updated Mass Arbitration Supplementary Rules," Jan. 16, 2024 (*AAA Press Release*).

280 April 1, 2024 Supplementary Rules, MA-2.

281 *AAA Press Release, supra*.

282 April 1, 2024 Supplementary Rules, MA-4(a)-(b).

283 *See ILR Briefly: Rule 16.1*.

284 *See* AAA Consumer Arbitration Rules, Costs of Arbitration (Amended and effective Jan. 1, 2023).

285 *AAA Press Release, supra*.

286 April 1, 2024 Supplementary Rules, MA-6(c)(i)-(x).

287 *Id*., MA-6(c)(i), (ii).

288 *Id*., MA-6(c)(iii).

289 *Id*., MA-6(c)(iv), (ix), (v), (vii)(b), and (viii).

290 *Id*., MA-6(c)(vii)(a).

291 *Id*., MA-6(c)(x).

292 2023 Supplementary Rules, MA-6(j).

293 April 1, 2024 Supplementary Rules, MA-6(j).

294 In contrast, under the JAMS Mass Arbitration Supplementary Procedures, discussed below, "[t]he determinations of the [JAMS] Process Administrator shall be binding on the Arbitrator(s), unless such determinations are deemed provisional by these Procedures or by the Process Administrator." JAMS Mass Arbitration Supplementary Procedures, Procedure 4(d).

295 *See* 2024 AAA Consumer Mass Arbitration Fee Schedule.

296 *See* Comments by the Chamber, the AFSA, and the AAI in Response to the AAA's Proposed Amendments to the AAA Consumer Arbitration Rules and AAA Employment Rules and Mediation Procedures (February 28, 2025); Comments of the Restaurant Law Center to the AAA's Proposed Changes to the Consumer Arbitration Rules (February 28, 2025); Comments of the National Retail Federation to the AAA's Proposed Changes to the Consumer Arbitration Rules (February 28, 2025).

297 2025 Consumer Rule R-2.

298 *Id*.

299 That said, the AAA disregarded suggestions that (i) a party should have longer than 30 days from the AAA's commencement of administration to request judicial intervention (as R-2 currently provides) and (ii) the stay of arbitrations when judicial intervention is sought should remain in place until the court rules. These suggestions make sense considering that a respondent may not be in a position to know whether they need to seek judicial relief within 30 days and that courts may be unlikely to resolve issues of arbitrability within a 90-day period. *See* Comments by the Chamber, the AFSA, and the AAI in Response to the AAA's Proposed Amendments to the AAA Consumer Arbitration Rules and AAA Employment Rules and Mediation Procedures, *supra*, at 15-16.

300 2025 Consumer Rule R-4.

301 *Id*., R-57.

302 *Id*., R-24.

303 *Id*., R-42(a). Upon the parties' agreement or at one party's request, "the arbitrator may make orders concerning the confidentiality of the arbitration proceedings and may take measures for protecting trade secrets and confidential information." *Id*., R-42(b).

304 *Id*., R-42(b).

305 *Id*., R-1(f). Under the prior rules, any party could request a hearing and the arbitrator could also decide to order one. 2014 Consumer Rule R-1(g).

306 2025 Consumer Rule R-22. In turn, the AAA's Mass Arbitration Supplementary Rules provide that for mass arbitrations, "[v]irtual hearings are the preferred method of evidentiary hearings for cases subject to these Supplementary Rules," AAA Mass Arbitration Supplementary Rules MA-5 (Apr. 1, 2024).

307 2025 Consumer Rule R-5(d).

308 *See* Comments of the Restaurant Law Center to the AAA's Proposed Changes to the Consumer Arbitration Rules, *supra*, at 15-17; Comments of the National Retail Federation to the AAA's Proposed Changes to the Consumer Arbitration Rules, *supra*, at 11-13.

309 *See* Comments by the Chamber, the AFSA, and the AAI in Response to the AAA's Proposed Amendments to the AAA Consumer Arbitration Rules and AAA Employment Rules and Mediation Procedures, *supra*, at 14-15.

310 This limited exchange of information makes sense. The Supreme Court has stated that "the virtues Congress originally saw in arbitration, its speed and simplicity and inexpensiveness," should not be "shorn away" such that "arbitration . . . wind[s] up looking like the litigation it was meant to displace." *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 509 (2018). Courts have thus emphasized the limited nature of discovery in arbitration. *See, e.g., Hyatt Franchising, L.L.C. v. Shen Zhen New World I, LLC*, 876 F. 3d 900, 901-02 (7th Cir. 2017) ("[N]othing in the Federal Arbitration Act requires an arbitrator to allow *any* discovery. Avoiding the expense of discovery under the Federal Rules of Civil Procedure and their state-law equivalents is among the principal reasons why people agree to arbitrate."); *Gavrilovic v. T-Mobile USA, Inc.*, No. 21-12709, 2022 WL 1086136, at *6 (E.D. Mich. Mar. 25, 2022) (rejecting contention that discovery under the Consumer Rules is too limited in comparison to federal proceedings because "[d]iscovery limitations . . . are common in arbitration"), *report & recommendation adopted*, 2022 WL 1085674 (E.D. Mich. Apr. 11, 2022).

311 2014 Consumer Rule R-22(a) (emphasis added).

312 *Id*., R-22(c).

313 2025 Consumer Rule R-20(c).

314 *Id*. The 2025 Consumer Rules further provide that the "necessary exchange of information" may include "depositions, interrogatories, document production, or . . . other means." *Id*., R-20(a), that the parties "shall" make initial disclosures, *id*., R-20(b), and that the arbitrator may "require such other forms of information exchange"—beyond those identified in R-20—"as the arbitrator deems necessary," *id*., R-20(c)(iii).

315 2014 Consumer Rule R-33.

316 2025 Consumer Rule R-31(c).

317 This amendment is also in tension with the changes to Consumer Rule R-4, which requires that when submitting a demand, answer, or counterclaim, "the parties are encouraged to provide sufficient detail to make the dispute clear to the arbitrator," 2025 Consumer Rule R-4(a)(v) which would have the effect of potentially identifying at an early stage of the case if a claim is frivolous or otherwise without merit.

318 JAMS, "About JAMS," https://www.jamsadr.com. JAMS points to its worldwide reach and the breadth of arbitrations it administers, whereas the AAA underscores its volume of consumer and other domestic arbitrations.

319 *Id*.

320 *See* JAMS Streamlined Arbitration Rules & Procedures (Effective June 1, 2021).

321 *See* JAMS Comprehensive Arbitration Rules & Procedures (Effective June 1, 2021).

322 *See* Streamlined Rules, Rule 21(a); Comprehensive Rules, Rule 26(a).

323 Streamlined Rules, Rule 1.

324 *See id*., Rule 13(a) ("The Parties shall cooperate in good faith in the voluntary and informal exchange of all non-privileged documents and information (including electronically stored information ('ESI')) relevant to the dispute or claim . . . . The necessity of additional information exchange shall be determined by the Arbitrator based upon the reasonable need for the requested information, the availability of other discovery options and the burdensomeness of the request on the opposing Parties and the witness."); *id*., Rule 13(d) ("In a consumer or employment case, the Parties may take discovery of third parties with the approval of the Arbitrator.").

325 Comprehensive Rules, Rule 1.

326 *Id*., Rule 17.

327 Kimberly Taylor, "Insight from the President: JAMS Policy Regarding Mass Arbitration Filings, JAMS' core value is neutrality," Mar. 3, 2023.

328 *Id*.

329 JAMS Mass Arbitration Procedures and Guidelines, *Introduction*.

330 *Id*.

331 *Id*., Procedure 1(c).

332 *Id*., Procedure 2(a).

333 *Id*., Procedure 2(c) ("Each Demand also must be accompanied by a sworn declaration from counsel averring that the information in the Demand is true and correct to the best of the representative's knowledge.").

334 *Id*., Procedure 3(a).

335 *Id*., Procedure 3(e)(i)-(iv) and (vii).

336 *Id*., Procedure 4(b). Should the Process Administrator determine "that jurisdictional or arbitrability issues are not arbitrable, the Process Administrator, after consulting with the Parties' representatives, may determine whether to suspend administration pending a court ruling and, if suspended, the duration of such suspension." *Id*., Procedure 4(c).

337 *Id*., Procedure 3(e)(vi).

338 *Id*., Procedure 3(e)(viii).

339 *Id*., Procedure 3(e)(i).

340 JAMS, "Mass Arbitration Procedures Fee Schedule," https://www.jamsadr.com.

341 *Id*. The fees for the remaining phases of the arbitration are the Arbitrator Appointment Fee ($3,500 per arbitrator appointed regardless of the number of individual cases to which he or she is appointed), Arbitrator Compensation, and a Case Management Fee that is 13% of the Process Administrator's and/or merits arbitrator's total fees. *Id*.

342 JAMS Mass Arbitration Procedures and Guidelines, *Introduction; see also id*., Procedure 1(a) ("These Procedures shall apply to Mass Arbitrations, as defined in Procedure 1(c) hereof, that are administered by JAMS, provided the Parties have agreed to the application of these Mass Arbitration Procedures and Guidelines in a pre- or post-dispute written agreement."). *See also id., Introduction* ("When these Procedures are in effect, filing and other fees and expenses are billed according to the applicable Mass Arbitration Fee Schedule, and the Process Administrator's compensation is at the rate set forth in the Process Administrator's General Fee Schedule.").

343 Under Comprehensive Rule 6(e), "[u]nless the Parties' Agreement or applicable law provides otherwise, JAMS, if it determines that the Arbitrations so filed have common issues of fact or law, may consolidate Arbitrations" in certain instances, including "[w]here a Demand or Demands for Arbitration is or are submitted naming Parties that are not identical to the Parties in the existing Arbitration or Arbitrations, JAMS may decide that the new case or cases shall be consolidated into one or more of the pending proceedings and referred to one of the Arbitrators or panels of Arbitrators already appointed." JAMS Comprehensive Rule 6(e)(iii). Further, "[w]hen rendering its decision, JAMS will take into account all circumstances, including the links between the cases and the progress already made in the existing Arbitrations." *Id*.

344 *Jones*, 129 F.4th 1176, discussed in Chapter 4.

345 *See, e.g.*, NAM, "For the 12th Consecutive Year, NAM Has Been Voted One of the Nation's Top 3 ADR Providers," Mar. 11, 2025, https://www.namadr.com.

346 NAM, "Why NAM," https://www.namadr.com/.

347 *See* NAM's Minimum Standards of Procedural Fairness for Consumer and Employment/Workplace Arbitrations (effective December 1, 2021), https://www.namadr.com/. These standards include: "[t]he contract arbitration clause must be clear in order for the Consumer to have proper notice" (Standard 2), "[t]he Arbitrator(s) must be neutral and independent" (Standard 4), and "[t]he arbitration provision must allow for the free exchange of non-privileged information relevant to the dispute through a discovery or exchange of information process." (Standard 8). *Id*.

348 *See* NAM Comprehensive Dispute Resolution Rules and Procedures (updated as of October 1, 2024), https://www.namadr.com/; *see id*., Rule No. 1 (providing that the rules apply when the arbitration agreement specifies them or, in addition, "NAM may administer a case pursuant to these Rules where a written agreement between the parties designates NAM as the Administrator for the arbitration and/or mediation.").

349 *See id*., Rule No. 18(A) ("The parties shall conduct discovery on a voluntary basis, the procedure of which shall be agreed to by the parties. Failing such agreement, the Arbitrator(s) shall have the power to order such discovery, by way of document production, interrogatory, deposition, or otherwise, as the Arbitrator(s) considers necessary for a full and fair exploration of the issues in dispute.").

350 *Id*., Rule No. 18(B).

351 *Id*.

352 *Id*., Rule No. 19(B).

353 *Id*., Rule 3 ("All documents and materials submitted to or filed with NAM shall remain private and are not subject to public scrutiny. All communications, whether oral or written, and all testimony at an Arbitration shall remain confidential and inadmissible in any other judicial or ADR proceeding, with the exception of an appeal if the parties mutually agree in writing to an appeal process or unless otherwise required by law or judicial decision.").

354 *See* NAM, Mass Filing Supplemental Dispute Resolution Rules and Procedures (updated as of October 1, 2024).

355 NAM Mass Arbitration Filings, https://www.namadr.com/services/mass-arbitration-filings/.

356 NAM Mass Filing Supplemental Rules, Rule No. 2.

357 *Id*., Rule No. 5 (emphasis added).

358 *Id*., Rule No. 7.

359 *Id*., Rule No. 7(B). The rules further provide that "[t]he Procedural Arbitrator may allow for streamlined discovery by the parties, if necessary, to assist the Procedural Arbitrator in making his/her determination." *Id*., Rule No. 7(D).

360 *Id*., Rule No. 9(A) (referencing NAM's fee schedules).

361 *See* NAM Fees For Disputes When One Of The Parties Is A Consumer (effective July 1, 2025), https://www.namadr.com/content/uploads/2025/07/Consumer-Fees-as-of-7.1.2025.pdf.

362 *Id*. at 2-4.

363 *Id*.

364 *Id*. at 2-3.

365 *Id*. The following fees are also payable by the business should the arbitrations proceed: Panel Preparation Fee ($400 per matter for claims of $10,000 or less resolved by written submissions, and $525 per claim for in-person virtual hearings or arbitrations based on written submissions if claim is in excess of $10,000), Final Admin Fee ($400 per matter for claims to be resolved by written submissions, or otherwise $525 per claim), and Arbitrator Time (generally arbitrators are paid $600 per hour). *Id.* at 2.

366 *Id*. at 5. The business pays the administrative fee and the Procedural Arbitrator's compensation if it requests the Procedural Arbitrator's appointment; if the consumer requests the appointment, then the parties share equally the administrative fee and compensation.

367 *See* Order of Process Arbitrator, Ex. T to Declaration of Alicia A. Baiardo in Support of Defendants' Motion to Compel Arbitration, *Mosley v. Wells Fargo & Co*., *supra*.

[368] *See* Defendants' Notice of Motion & Motion to Dismiss or Transfer at 1, *Penuela v. Wells Fargo Bank, N.A.*, *supra* (after the Process Arbitrator ordered the provision of additional information, claimants' counsel conceded that they "could not provide the basic information required by the Process Arbitrator for 89% of claimants, and that 41.5% of claimants never had and could never have had the claim they asserted . . . in their demands").

[369] *See* Comments by the Chamber, the AFSA, and the AAI in Response to the AAA's Proposed Amendments to the AAA Consumer Arbitration Rules and AAA Employment Rules and Mediation Procedures, *supra*, at 9-12, 33-35.

[370] *ILR Briefly: Rule 16.1* at 2.

[371] *Id*. at 9.

[372] *See* Comments by the Chamber, the AFSA, and the AAI in Response to the AAA's Proposed Amendments to the AAA Consumer Arbitration Rules and AAA Employment Rules and Mediation Procedures, *supra*, at 35.

[373] Kendal Enz, *AAA Enhances Arbitration with New Mass Arbitration Rule*s (Jan. 30, 2024).

[374] *See* Comments of the Restaurant Law Center to the AAA's Proposed Changes to the Consumer Arbitration Rules, *supra*, at 7-8.

[375] AAA-ICDR International Arbitration Rules (Amended and Effective March 1, 2021), Art. 14(7).

[376] Notably, in litigation at least, defendants are required to disclose any insurance policies under the theory that it is relevant to settlement. *See* Fed. R. Civ. P. 26(a)(1)(A)(iv). That is even more true for third-party funders.

[377] The AAA-ICDR Standards provide that "failure" by "Participants in AAA cases" (with "Participants" defined as "parties and their representatives") to comply with the AAA-ICDR Standards "may result in the AAA's declining to further administer a particular case or caseload." AAA-ICDR Standards at 1. 2025 Consumer Rule R-10 provides that the AAA may "decline to accept a Demand for Arbitration, stop the administration of an ongoing arbitration, and/or decline to administer future cases from a party" where, *inter alia*, "a party *or the party's representative* fails to abide by the *American Arbitration Association-International Centre for Dispute Resolution Standards of Conduct for Parties and Representatives*." 2025 Consumer Rule R-10(a)(i) (emphasis added).

[378] FedArb permits an arbitrator to sanction not just the parties but also counsel for violating attorney affirmation requirements.

[379] *See* Comments by the Chamber, the AFSA, and the AAI in Response to the AAA's Proposed Amendments to the AAA Consumer Arbitration Rules and AAA Employment Rules and Mediation Procedures, *supra*, at 36-38.

[380] NAM Mass Arbitration Fee Schedule at 3 (effective July 1, 2025), https://www.namadr.com/.

[381] *See L'Occitane*, 2024 WL 2227182, at *4 (denying claimants' motion to compel arbitration where claimants had argued that they were parties to an arbitration agreement by virtue of visiting L'Occitane's website, holding that visiting a website was not a transaction for the purposes of the FAA, and even if it was, claimants did not establish by a preponderance of the evidence that they visited the website); *Sega of Am., Inc. v. Consovoy McCarthy PLLC*, No. 1:25-cv-00257-CMH-IDD, 2025 WL 2222733 (E.D. Va. July 31, 2025) (denying claimants' counsel's motion to dismiss where Sega alleged claimants' counsel tortiously interfered with contracts and violated false advertising laws by, among other things, bringing fraudulent claims on behalf of individuals who never agreed to arbitrate their claims with Sega or are not real people).

[382] Letter from Coalition of Nonprofits to Mike Johnson & John Thune (May 19, 2025).

383 *See, e.g.*, Ark. Code Ann. § 4-57-109 (prohibiting litigation funders from charging consumers annual interest rates greater than 17 percent and requiring that funding contracts disclose annual percentage rates); Ga. S.B. 69 (effective Jan. 1, 2026) (requiring funder to register and making any litigation financing agreements discoverable in the underlying lawsuit); Ind. Code Ann. § 24-12-3-1 (mandating disclosure of third-party litigation funding); Me. Rev. Stat. Ann. tit. 9-A, art. 12 (requiring litigation funders to register with the state and to include the total amount consumers must repay in the funding contract, and placing limitations on fees charged to consumers); Mont. Code Ann. § 31-4-108 (requiring disclosure of all third-party litigation funding agreements in civil cases and requiring third-party litigation funding companies to register with the Secretary of State); Neb. Rev. Stat. §§ 25-3301 -25-3309 (requiring litigation funders to register with the state and to include the total amount consumers must repay in the funding contract and placing limitations on fees charged to consumers); Nev. Rev. Stat. ch. 604C (2021) (requiring litigation funders to be licensed and placing restrictions on consumer repayment terms and schedules); Ohio Rev. Code § 1349.55 (placing restrictions on consumer repayment terms and schedule); Okla. Stat. tit. 14A, art. 3, pt. 8 (requiring litigation funders to be licensed and placing restrictions on consumer repayment terms and schedules); Tenn. Code. Ann. tit. 47, ch. 16 (requiring litigation funders to register with the state and placing restrictions on annual fees and consumer repayment terms); Vt. Stat. Ann. tit. 8, ch. 74 (requiring litigation funders to register with the state and file annual reports; requiring funding contracts to include the total funded amount provided to the consumer under the contract, an itemization of charges, and the annual percentage rate of return); W. Va. Code Ann. § 46A-6N-6 (mandating automatic disclosure of third-party litigation funding agreements in all civil cases); Wis. Stat. Ann. § 804.01(2)(bg) (same).

384 *See* Press Release, "Issa, House Colleagues Launch Reform of Third-Party Financed Civil Litigation," Feb. 7, 2025, https://issa.house.gov/; Protecting Our Courts from Foreign Manipulation Act of 2025, H.R. 2675 , 119th Cong. (2025) (legislation introduced by Rep. Ben Cline (R-VA) to combat foreign interference in the U.S. legal system by requiring disclosure of any foreign persons or entities funding litigation in the U.S., prohibiting sovereign wealth funds and foreign governments from funding U.S. litigation, and require the DOJ to submit to Congress an annual report on the scope of foreign third-party litigation funding in the federal courts).

385 *See* D.N.J. Local Rules, Rule 7.1.1; Chief Judge Connoly, Standing Order Regarding Third-Party Litigation Funding Arrangements.

386 Lawyers for Civil Justice and U.S. Chamber of Commerce Institute for Legal Reform, Rules Suggestion to the Advisory Committee on Civil Rules and Rule 7.1 Subcommittee (Mar. 2024).

387 *See, e.g.*, Ga. S.B. 69 (effective Jan. 1, 2026) (restricting the influence of the funder in actions where the funder provided funding); Ind. Code Ann. § 24-12-3-1 (prohibiting funders from accessing proprietary data and banning them from influencing or controlling lawsuits).

388 *Third Party Litigation Funding, supra.*

389 One Big Beautiful Bill Act, H.R. 1, 119th Cong. (2025); *see also* Roy Storm, "Litigation Finance Levy Cut From Tax Bill By Senate Referee," Bloomberg Law, June 30, 2025.

390 One Big Beautiful Bill Act, *supra; see also Litigation Finance Levy Cut, supra.*

391 Tackling Predatory Litigation Funding Act, H.R. 3512, 119th Cong. (2025); S. 1821, 119th Cong. (2025).

392 Tackling Predatory Litigation Funding Act, *supra*; S. 1821, 119th Cong. (2025).

393 *Id.*

394 For example, the proposed tax would not apply if the total amount of funding "with respect to an individual civil action is less than $10,000." Tackling Predatory Litigation Funding Act, *supra*; S. 1821, 119th Cong. (2025).

395 Letter from Coalition of Nonprofits to Mike Johnson & John Thune (May 19, 2025), *supra.*

396 Press Release, "Tillis Introduces Legislation to Target Predatory Litigation Funding Practices," May 22, 2025.

397 *Concepcion*, 563 U.S. at 346 (citation omitted).

398 *Mass Arbitration Shakedown* at 28.

399 *See* 10 R.I. Gen. Laws Ann. § 10-3-23.

400 Awareness of these issues among lawmakers appears to be growing. For instance, on March 25, 2025, the official X page of the Republicans on the House Committee on the Judiciary (@JudiciaryGOP) posted: "Why are plaintiff firms using targeted social media advertising to build frivolous mass arbitration claims to extort quick settlements from great American companies like Fox Corp?," House Judiciary GOP (@JudiciaryGOP), X (Mar. 25, 2025), https://x.com/.

401 *Arbitration Act 2025*, 2025 c. 4 (U.K.), available at https://www.legislation.gov.uk/.

402 LCIA, "The English Arbitration Act 2025," https://www.lcia.org.

403 Fairness in Class Action Litigation and Furthering Asbestos Claim Transparency Act of 2017, H.R. 985, 115th Cong., at 4 (2017); H.R. Rep. No. 115-25, at 4 (2017).

404 *See* Fairness in Class Action Litigation and Furthering Asbestos Claim Transparency Act of 2017, H.R. 985, 115th Cong. (2017). Others have proposed additional legislation to address other class action abuses including: (i) legislation to prohibit persons having familial or business relationships with counsel from serving as class representatives; (ii) expanding interlocutory review of class certification rulings and staying discovery during the pendency of threshold motions; and (iii) "a requirement that attorneys' fees in class actions be tied to the value of money and benefits actually redeemed by the injured class members—not the overall class fund or theoretical value of the cy pres remedy." John H. Beisner, Jordan M. Schwartz & Paden Gallagher, *Unfair, Inefficient, Unpredictable: Class Action Flaws and the Road to Reform* (U.S. Chamber Institute for Legal Reform, Aug. 2022); John Beisner, Jessica Miller & Jordan Schwartz, *A Roadmap for Reform: Lessons from Eight Years of the Class Action Fairness Act* (U.S. Chamber Institute for Legal Reform, Oct. 2013).

405 *See* Chapter 2.

406 *See* Press Release, Attorney General James Warns Law Firm to Immediately Stop Trying to Profit Off of Uber and Lyft Drivers, Feb. 16, 2024; Letter from Letitia James to Mr. Held & Mr. Hines, Re: NY Attorney General Settlement with Uber Techs., Inc and Lyft Inc. (Feb. 16, 2024) (demanding Held & Hines LLP immediately cease solicitations which "appear to be deceptive and misleading" in violation of New York law and "appear to violate the Rules of Professional Conduct" governing excessive fees).

407 *See* Letter from Letitia James to Mr. Held & Mr. Hines at 1.

408 *Id*. at 2.

409 *Id*.; Press Release, Attorney General James Warns Law Firm to Immediately Stop Trying to Profit Off of Uber and Lyft Drivers, *supra*.

410 *See* Letter from Letitia James to Mr. Held & Mr. Hines at 3; *see* N.Y. R. Prof. Cond. 1.5(a).

411 The FTC has previously pursued complaints against law firms for misleading and deceptive practices.

412 In 2019, the FTC issued warning letters to numerous attorneys and lead generators expressing concerns that television advertisements soliciting clients for lawsuits against drug manufacturers could mislead consumers to believe that their medication had been recalled. *See* Federal Trade Commission, "FTC Flags Potentially Unlawful TV Ads for Prescription Drug Lawsuits," Sept. 24, 2019. The FTC specifically took issue with lawsuit ads that open with sensational warnings or alerts, potentially misleading consumers to believe they were watching a public service announcement or a government-sanctioned medical alert. *Id*.

413 In 2014, the FTC filed a complaint against a law firm alleging that it utilized misleading marketing and advertising to "prey[]on financially distressed homeowners." The FTC argued that the law firm lured consumers into paying additional fees based on unfulfilled promises of legal representation from foreclosure defense attorneys, reports identifying errors in their mortgage loans, and the collection of information useful for defending against foreclosure. The Florida Court agreed with the FTC and concluded that the various "promises and guarantees, used to induce consumers to retain a Law Firm's services, were material and misleading." *FTC v. Lanier Law, LLC*, 194 F. Supp. 3d 1238, 1275 (M.D. Fla. 2016). Ultimately, the court issued an injunction prohibiting the law firm from further advertising and marketing any debt relief services. *FTC v. Lanier Law LLC*, No. 3:14-CV-786-J-34PDB, 2016 WL 4262273, at *3 (M.D. Fla. Aug. 12, 2016), *aff'd*, 715 F. App'x 970 (11th Cir. 2017).

414 *See FTC v. Cyberspace.com LLC*, 453 F.3d 1196, 1199 (9th Cir. 2006) ("[A] practice falls within this prohibition (1) if it is likely to mislead consumers acting reasonably under the circumstances (2) in a way that is material."); *Kraft, Inc. v. FTC*, 970 F.2d 311, 314 (7th Cir. 1992) ("Thus, an advertisement is deceptive under the Act if it is likely to mislead consumers, acting reasonably under the circumstances, in a material respect.").

415 *See* Chapter 2.

416 For example, in California, the Office of Chief Trial Counsel within the State Bar investigates potential ethical violations that may ultimately be prosecuted via the State Bar Court and reviewed by the California Supreme Court, if required. In New York, attorney grievance committees appointed by the State Supreme Court process and investigate complaints regarding potential attorney misconduct prior to resolving a complaint or recommending formal proceedings to the court.

417 *See* Civil Justice Ass'n of California, "Request for Inquiry into Potential Ethical Issues Arising in the Context of Mass Arbitration Filings," July 6, 2023, at 1-2 ("Unscrupulous or negligent lawyers may transgress the ethical rules relating to vetting claims, creating an attorney-client relationship, soliciting clients, and communicating with their clients.").

418 *Id.* at 2.

419 *Id.*

420 *Id.* at 3.

421 *Id.*

422 Complaint, *Florida Bar v. Udell*, No. 2024-70,131(11L) (Fla. Feb. 6, 2025).

423 *Id.*

424 *See id.*; Rule 4-3.1 ("Meritorious Claims and Contentions").

425 On June 26, 2025, the court denied the Florida Bar's partial motion for summary judgment because there are disputed issues of material fact. *See Florida Bar v. Udell*, No. SC2025-0166 (Fla. June 26, 2025).

426 *Farah*, 2025 WL 629341, at *2 (per curiam) (finding an attorney violated multiple ethical rules after failing to investigate numerous claims and misrepresenting the accuracy of claims to the court; describing court order reprimanding lawyers and issuing sanctions totaling $4,329,668.43).

427 *Id.* at 2 & n.6 (citing *Florida Bar v. Wilner*, No. SC2021-0373, 2022 WL 619933 (Fla. Mar. 3, 2022)).

428 *Farah*, 2025 WL 629341, at *2.

429 *Id.* at *3.

430 *Id.*

431 *See id.* at *3-4.

432 *Id.* at *3.

433 *Lineberry*, 2025 WL 1533136, at *1.

434 *See Concepcion*, 563 U.S. at 345-46 (The Supreme Court's cases have "repeatedly described the [Federal Arbitration] Act as 'embod[ying] [a] national policy favoring arbitration.'" (first alteration added; citation omitted)); *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 123 (2001) ("Arbitration agreements allow parties to avoid the costs of litigation, a benefit that may be of particular importance in employment litigation, which often involves smaller sums of money than disputes concerning commercial contracts.").

435 *See* Chapter 1.

436 *See* Chapter 2.

437 *See* Chapters 1 & 3.

438 *See* Chapter 2.

439 *See supra*.

440 *See Bielski v. Coinbase, Inc.*, 87 F.4th 1003, 1014 (9th Cir. 2023) (explaining that "[p]re-arbitration dispute resolution procedures are commonplace and can be both 'reasonable and laudable'"); *Serpa v. Cal. Sur. Investigations, Inc.*, 155 Cal. Rptr. 3d 506, 518 (Ct. App. 2013), *as modified* (Apr. 19, 2013), *as modified* (Apr. 26, 2013) (explaining that "a requirement that internal grievance procedures be exhausted before proceeding to arbitration is both reasonable and laudable in an agreement containing a mutual obligation to arbitrate").

441 For example, AT&T's Consumer Service Agreement ("CSA") provides that both consumers and AT&T provide notice of a dispute to the other party by filling out an online form. AT&T CSA § 1.3.2.2. The parties then have 60 days to investigate the claim and "work together in good faith" to resolve the dispute. *Id.* Similarly, Tesla's Service Plan and Agreement asks consumers to provide notification of any issue before submitting a dispute to their dispute settlement program. *See* Tesla, "Tesla Service Plan Terms and Conditions," at 4-5, https://www.tesla.com/. Consumers are to provide Tesla with basic information like name and contact information and reasonable details related to their dispute like their vehicle's identification number. *See id.*

442 *See Fedor v. Nissan of N. Am., Inc.*, 74 A.3d 977, 988 (N.J. Super. Ct. App. Div. 2013) (discussing "benefits provided by alternative dispute resolution forums, including: there are no filing fees or costs for the consumer to initiate use of the mechanism; legal representation is not required and the proceedings are tailored to self-represented consumers; an independent expert inspects . . . all records of complaints, at no cost to the consumer; decisions are swiftly made, unburdened by the formality of court process" (citation omitted)).

443 Frankel, Fighting Mass Arbitration, 78 Vand. L. Rev. at 160 (describing Match.com's terms of service providing for a tolling of the statute of limitations while the parties complete informal dispute requirements); AT&T CSA 1.3.2.2 ("Any applicable statute of limitations or contractual limitations period will be tolled for the claims and requested relief in the Notice during the 'Informal Resolution Period.'" (emphasis omitted)).

444 Ramona L. Lampley, The CFPB Anti-Arbitration Proposal: Let's Just Give Arbitration A Chance, 48 St. Mary's L.J. 313, 321 (2016) (describing AT&T's informal dispute resolution process as "advantageous for the consumer because it puts the incentive on AT&T to settle for a reasonable amount even for claims that are not clearly meritorious, all before the arbitrator is selected, in a dispute resolution mechanism that is free for the consumer").

445 *Flores v. Coinbase, Inc.*, No. CV 22-8274-MWF (KS), 2023 WL 3564756, at *6 (C.D. Cal. Apr. 6, 2023).

446 *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 281 (1995) (Justice Breyer concluding that if business were to "disavow a contract's arbitration provisions . . . the typical consumer who has only a small damages claim (who seeks, say, the value of only a defective refrigerator or television set)" would be left "without any remedy but a court remedy, the costs and delays of which could eat up the value of an eventual small recovery"); *see* Morgan Stanley, Sixth Time's the Charm: Rethinking the Arbitration Fairness Act to Achieve Practical Reform, 10 Arb. L. Rev. 199, 210 (2018) (discussing benefits of arbitration to consumers, including that "many arbitration agreements provide that companies will pay or advance initial arbitration fees").

447 *Concepcion*, 563 U.S. at 352 (citation omitted).

448 *Mass Arbitration Shakedown* at 9-10.

449 Ted Frank, *Class Actions, Arbitration and Consumer Rights: Why* Concepcion *Is a Pro-Consumer Decisio*n, Report No. 16, at 7 (Manhattan Institute Legal Policy, Feb. 2013).

450 Stephen J. Ware, Paying the Price of Process: Judicial Regulation of Consumer Arbitration Agreements, 2001 J. Disp. Resol. 89, 90 (2001) (arguing that arbitration leads to cost-savings for business).

451 Elizabeth M. Weldon & Patrick W. Kelly, Prelitigation Dispute Resolution Clauses: Getting the Benefit of Your Bargain, 31 Franchise L.J. 28, 28 (2011).

452 *Coinbase*, 602 U.S. at 145.

453 *See* Stanley, *supra*, at 214 (arguing that arbitration reform that includes banning pre-dispute arbitration agreements would harm both business and consumer interests).

454 *See, e.g., Epic Sys.*, 584 U.S. at 505 ("[A]rbitration had more to offer than courts recognized—not least the promise of quicker, more informal, and often cheaper resolutions for everyone involved."); *Bielski*, 87 F.4th at 1014.

455 Stanley, *supra*, at 213 & n.106 (citing *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 633 (1985) ("[I]t is often a judgment that streamlined proceedings and expeditious results will best serve their needs that causes parties to agree to arbitrate their disputes; it is typically a desire to keep the effort and expense required to resolve a dispute within manageable bounds that prompts them mutually to forgo access to judicial remedies.")).

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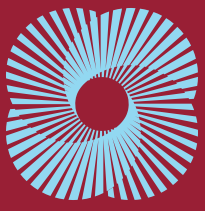

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