

Congress of the United States
Washington, DC 20510

May 21, 2015

The Honorable Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street NW,
Washington, DC 20552

Dear Director Cordray:

We write to commend the Consumer Financial Protection Bureau (CFPB) for completing its study on the use of mandatory, pre-dispute arbitration (“forced arbitration”) in consumer financial products or services contracts,¹ and to urge the CFPB swiftly to undertake a rulemaking to eliminate the use of forced arbitration clauses in these contracts.

These clauses force individuals into private binding arbitration as a condition of buying a product or service, and are designed to stack the deck against consumers and ensure that the final outcome of forced arbitration is unreviewable by courts. Forced arbitration clauses—often buried deep within the fine print of financial products and service contracts—harm American consumers by depriving them of their day in court even when companies have violated the law.

Recognizing the potential harm to the rights of consumers, workers, and small business owners, Congress has taken several actions to limit the harmful effects of forced arbitration agreements. To date, Congress has passed a series of laws to limit the abusive use of forced arbitration clauses in mortgage loans,² transactions involving auto dealers and automobile and truck manufacturers;³ livestock and poultry growers;⁴ military members with respect to payday loans, vehicle title loans, and tax refund anticipation loans;⁵ employees of government defense contractors with respect to Title VII and sexual assault tort claims,⁶ and whistleblower claims under the Sarbanes-Oxley Act of 2002.⁷ Congress directed the CFPB in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) to study forced arbitration clauses and gave the CFPB express authority to issue regulations to prohibit or limit these clauses in consumer financial contracts.⁸

¹ CONSUMER FIN. PROTECTION BUREAU, ARBITRATION STUDY REP. TO CONG., PURSUANT TO DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT § 1028(a) (2015), http://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf.

² Dodd-Frank Wall Street Reform and Consumer Protection Act, 2 U.S.C. 1639c(e) (2015).

³ Motor Vehicle Franchise Contract Arbitration Fairness Act, 15 U.S.C. 1226(a)(2) (2015).

⁴ Food, Conservation, And Energy Act of 2008, 7 USC 197c(a) (2015).

⁵ Military Lending Act, 10 U.S.C. 987(e)(3), (f)(4) (2015).

⁶ Department of Defense Appropriations Act of 2010, Sec. 8116, Pub. L. No. 111-118.

⁷ Dodd-Frank Act, 18 U.S.C. 1514A (e).

⁸ 12 U.S.C. § 5518(b) (“The Bureau, by regulation, may prohibit or impose conditions or limitations on the

The CFPB's comprehensive report underscores the devastating effects of forced arbitration on tens of millions of consumers.⁹ The study found not only that more than three in four consumers were unaware of forced arbitration clauses in their contracts,¹⁰ but also that consumers rarely use arbitration on an individualized basis, especially for small-dollar claims, and that there is no evidence that forced arbitration lowers costs for consumers.¹¹ The findings also demonstrate that forced arbitration clauses often prevent consumers from banding together through class actions,¹² even though it is clear from the study that collective action more effectively compensates individuals and deters abusive corporate practices than arbitration on an individual basis.¹³ Indeed, while class actions resulted in over \$200 million in average yearly settlements for consumers, disputes settled through arbitration netted just over \$350,000 in damages and debt forbearance for consumers over a two-year period.¹⁴

In total, the study conducted by CFPB at Congress's request roundly confirms that individuals unknowingly sign away their rights through forced arbitration agreements, which do not reduce consumer costs for financial services. Moreover, forced arbitration shields corporations from liability for abusive, anti-consumer practices, encouraging even more unscrupulous business conduct at the expense of individuals and law abiding businesses.¹⁵

Based on this substantial bedrock of evidence, we urge the CFPB to move forward quickly to use its authority under the Dodd-Frank Act to issue strong rules to prohibit the use of forced arbitration clauses in financial contracts and give consumers a meaningful choice after disputes arise.

Sincerely,

use of an agreement between a covered person and a consumer for a consumer financial product or service providing for arbitration of any future dispute between the parties, if the Bureau finds that such a prohibition or imposition of conditions or limitations is in the public interest and for the protection of consumers.”).

⁹ CONSUMER FIN. PROTECTION BUREAU, ARBITRATION STUDY REP. TO CONG., PURSUANT TO DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT § 1028(a) (2015), http://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf.

¹⁰ *Id.* at 13.

¹¹ *Id.* at 397 (“Using two measures of credit offered, we did not find any statistically significant evidence that companies that eliminated arbitration provisions reduced the credit they offered.”).

¹² CONSUMER FIN. PROTECTION BUREAU, CONSUMER FIN. PROTECTION BUREAU STUDY FINDS THAT ARBITRATION AGREEMENTS LIMIT RELIEF FOR CONSUMERS 3 (2015) (“By design, arbitration clauses can be used to block class actions in court.”), http://files.consumerfinance.gov/f/201503_cfpb_factsheet_arbitration-study.pdf.

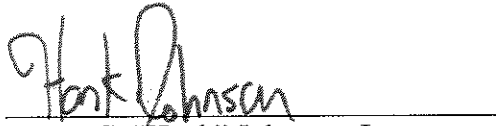
¹³ *Id.*

¹⁴ *Id.*

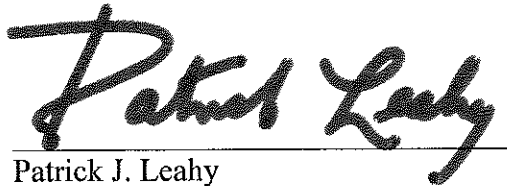
¹⁵ *See id.* at 3 (“[T]hese figures do not include the potential value to consumers of companies changing their behavior.”); Joshua M. Frank, *Stacked Deck: A Statistical Analysis of Forced Arbitration*, CENTER FOR RESPONSIBLE LENDING 1–2 (May 31, 2009) (“Companies that have more cases before arbitrators get consistently better results from these same arbitrators,” while arbitrators “who favor firms over consumers receive more cases in the future.”), http://www.responsiblelending.org/credit-cards/research-analysis/stacked_deck.pdf.



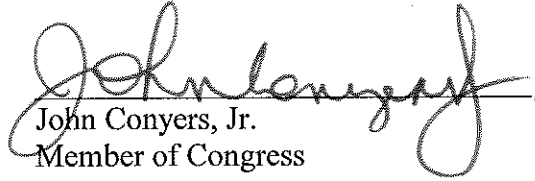
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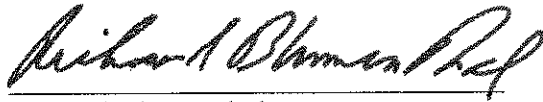
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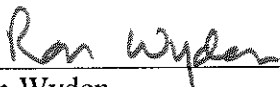
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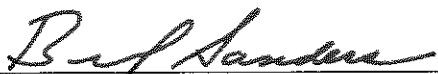
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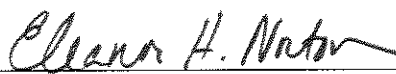
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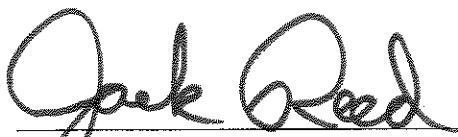
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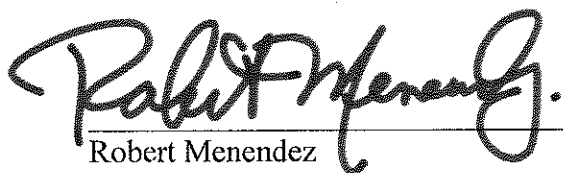
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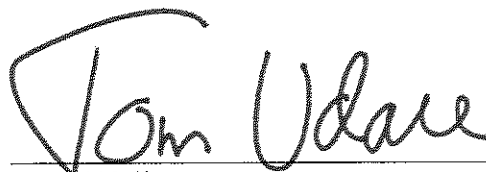
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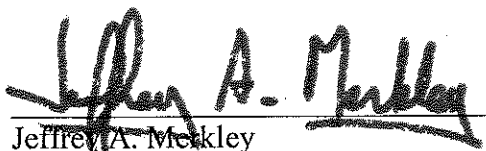
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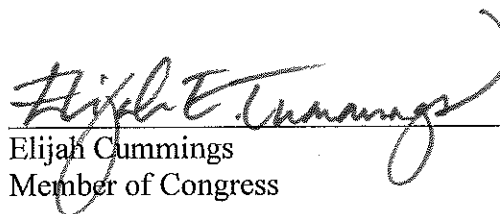
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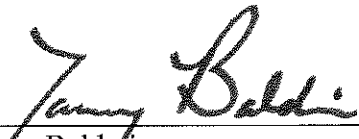
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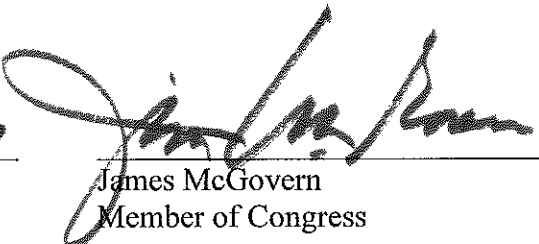
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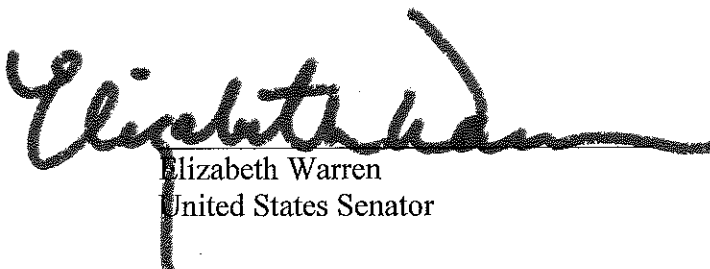
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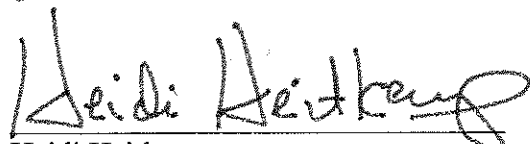
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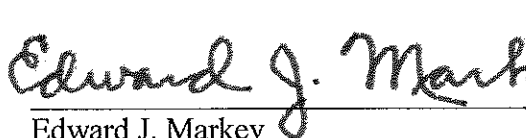
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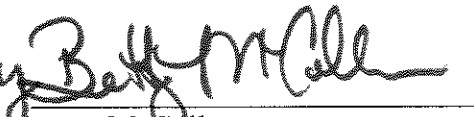
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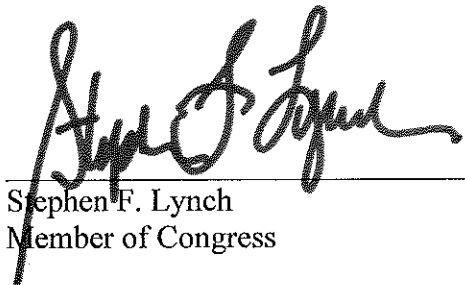
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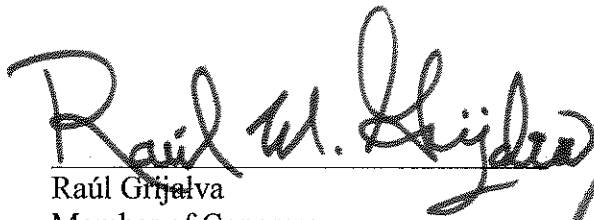
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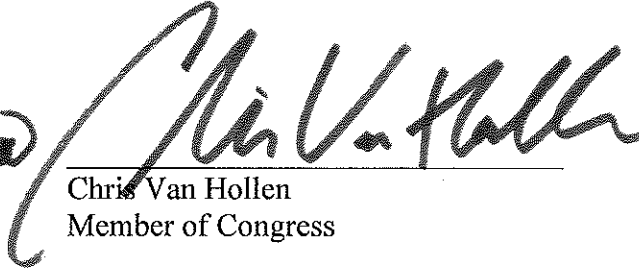
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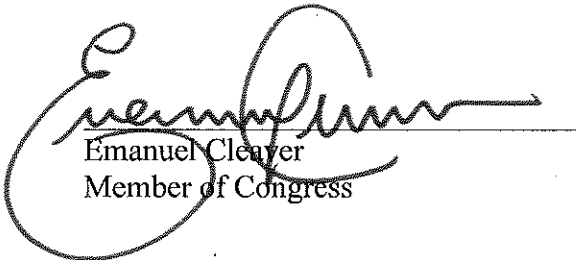
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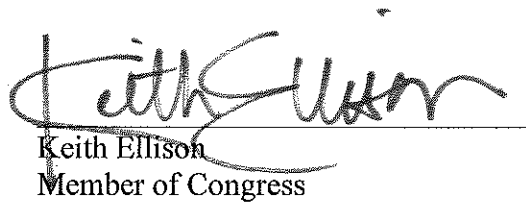
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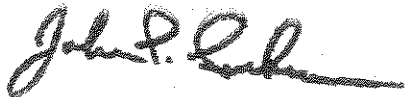
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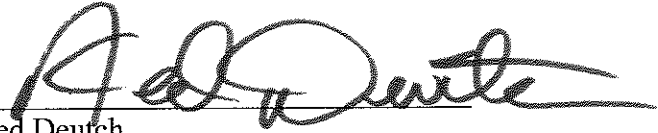
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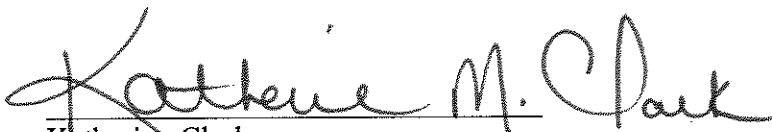
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Letter to Director Cordray

May 21, 2015

Page 8



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