



THE COMMONWEALTH OF MASSACHUSETTS  
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July 28, 2017

The Honorable Mitch McConnell  
Majority Leader  
United States Senate  
317 Russell Senate Office Building  
Washington, DC 20510

The Honorable Charles Schumer  
Minority Leader  
United States Senate  
322 Hart Senate Office Building  
Washington, DC 20510

Re: **Joint Resolution of Disapproval of the Consumer Financial Protection Bureau's Arbitration Rule, S.J.Res. 47**

Dear Leaders McConnell and Schumer:

As State Attorneys General, we write to express our strong opposition to the recently-filed Joint Resolution of Disapproval, S.J.Res. 47, that would set aside the Consumer Financial Protection Bureau's ("CFPB") Arbitration Rule under the Congressional Review Act. We ask that you oppose the Joint Resolution of Disapproval and that you vote against it if it comes up for a vote.

The Arbitration Rule appropriately prevents consumer financial services companies from requiring their customers to agree to a contract that waives their right to join a class action filed against the company. Businesses have used such waivers to force customers to resolve their disputes on an individual basis through secret arbitration proceedings conducted by private companies. In recent years, contract clauses prohibiting consumers from obtaining relief in an otherwise lawful class action have repeatedly blocked consumers from obtaining redress for contractual overcharges and for clear violations of state and federal laws. Arbitration clauses containing class actions waivers are virtually always unilaterally inserted into lengthy financial product agreements, which consumers often do not sign, but are forced to adhere to, without understanding that such provisions waive important legal rights.

The Arbitration Rule would prohibit such contract clauses in most consumer financial products contracts and restore the rights of consumers to participate in consumer protection class actions, a critical and longstanding mechanism for holding financial services companies accountable for contract violations, infringement of property rights, fraud and abuse.

While the financial services industry promotes arbitration, the truth is that most of their consumers can't afford it. When financial services companies require their customers to use individual arbitration to address their complaints or disputes, most consumers simply lack the time and resources to arbitrate a dispute on their own or to hire an attorney to file a claim on their behalf. This is especially true where consumers have been defrauded out of small amounts of money. In the words of Judge Richard Posner of the Seventh Circuit Court of Appeals, "only a lunatic or a fanatic sues for \$30."<sup>1</sup> If consumers cannot join class actions, the result is "not 17 million individual suits, but zero individual suits."<sup>2</sup> For most consumers, an individual arbitration claim is just as daunting as an individual lawsuit.

Congress has itself recognized that "[c]lass action lawsuits are an important and valuable part of the legal system when they permit the fair and efficient resolution of legitimate claims of numerous parties by allowing the claims to be aggregated into a single action against a defendant that has allegedly caused harm."<sup>3</sup> Similarly, the Republican House Liberty Caucus recently noted that "[c]lass action lawsuits are a market-based solution for addressing widespread breaches of contract, violations of property rights, and infringements of other legal rights."<sup>4</sup>

We strongly agree with these assessments. Pursuant to the federal Class Action Fairness Act, our offices review proposed settlements in class actions in federal courts.<sup>5</sup> As a result, we are quite familiar with the many meritorious class actions filed every year across the country and have reviewed thousands of successful class settlements. These cases supplement and expand our enforcement authority and prevent abuses that we do not always have the resources to address. Successful cases also return hundreds of millions of hard-earned dollars to low- and middle-income consumers who would otherwise have no remedy for overcharge, fraud and abuse.

In short, the CFPB's Arbitration Rule would deliver essential relief to consumers, hold financial services companies accountable for their misconduct, and provide ordinary consumers with meaningful access to the civil justice system. We urge you to consider the CFPB's careful and well-researched work in support of the rule, including its thoughtful analysis of the limited cost of the rule to businesses when compared to its benefits to consumers. Finally, the Arbitration Rule does not prohibit all arbitration clauses in financial services contracts, but only those that contain class action waivers – even though a number of States Attorneys General had urged the CFPB to ban all mandatory, pre-dispute arbitration clauses. Where available, consumers would still be free to choose individual arbitration for their disputes.

We urge you to vote against the Joint Resolution of Disapproval. Everyday consumers deserve nothing less.

Sincerely,

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<sup>1</sup> *Carnegie v. Household Int'l, Inc.*, 376 F.2d 656, 661 (7th Cir. 2004)

<sup>2</sup> *Id.*

<sup>3</sup> Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. §1711, *et seq.* (notes at Pub. L. 109–2, § 2(a)(1)).

<sup>4</sup> House Liberty Caucus statement on H.R. 985, Fairness in Class Action Litigation Act of 2017

<sup>5</sup> 28 U.S.C. §1715.



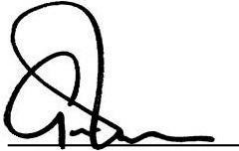
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Maura Healey  
Massachusetts Attorney General



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Xavier Becerra  
California Attorney General



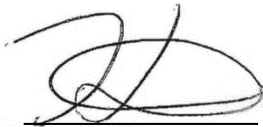
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George Jepsen  
Connecticut Attorney General



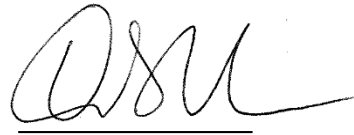
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Matthew P. Denn  
Delaware Attorney General



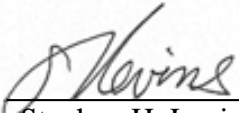
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Karl A. Racine  
Attorney General for the District of Columbia



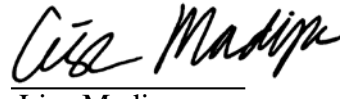
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Douglas S. Chin  
Hawaii Attorney General



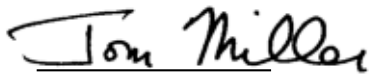
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Stephen H. Levins  
Executive Director  
State of Hawaii, Office of Consumer Protection



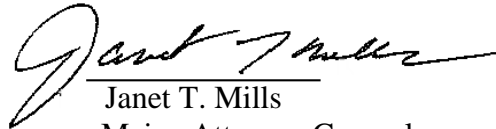
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Lisa Madigan  
Illinois Attorney General



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Tom Miller  
Iowa Attorney General



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Janet T. Mills  
Maine Attorney General



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Brian E. Frosh  
Maryland Attorney General



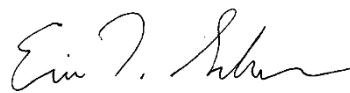
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Lori Swanson  
Minnesota Attorney General



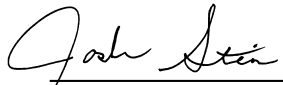
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Hector Balderas  
New Mexico Attorney General

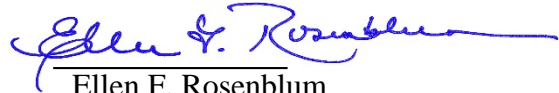


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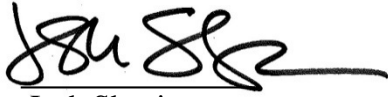
Eric Schneiderman  
New York Attorney General



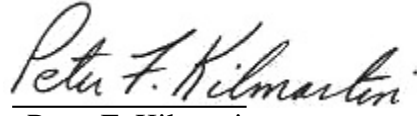
Josh Stein  
North Carolina Attorney General



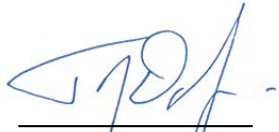
Ellen F. Rosenblum  
Oregon Attorney General



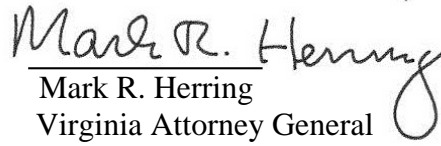
Josh Shapiro  
Pennsylvania Attorney General



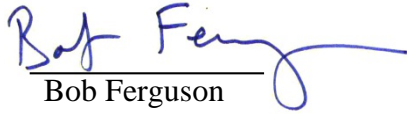
Peter F. Kilmartin  
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Thomas J. Donovan, Jr.  
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Washington Attorney General