



## MEMORANDUM

Re: National Arbitration Forum: California Consumer Arbitration Data

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1. We have prepared this memorandum to summarize the results of certain analyses we have performed with respect to National Arbitration Forum ("NAF") data disclosed pursuant to California Code of Civil Procedure 1281.96.<sup>1</sup> These analyses focus on disposition statistics of NAF cases and make use of a data set also used by Public Citizen in the paper "The Arbitration Trap: How Credit Card Companies Ensnare Consumers," published in September 2007.

### SUMMARY

2. In order to aid comparisons to figures presented by Public Citizen, the analyses presented herein use the NAF data covering the period January 2003 through March 2007. These are the data that Public Citizen has made available in spreadsheet format on the Public Citizen website ("Public Citizen Data").<sup>2</sup> The Public Citizen Data contain information for 33,948 arbitrations.
3. We have concluded that there were 26,665 arbitrations out of this total of 33,948 arbitrations that were either heard or dismissed (i.e., excluding settlements). Of these 26,665 arbitrations, consumer parties were reported to have prevailed outright or had the case against them dismissed in 8,558 cases (32.1%). Claims against consumers were reduced by NAF in an additional 4,376 cases (16.4%).

#### *Dispositions*

4. Table 1 below shows the type of disposition for all 33,948 cases in the Public Citizen Data.

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<sup>1</sup> California Code of Civil Procedure 1281.96 requires private arbitration companies to collect and publish data pertaining to consumer arbitrations heard in California. Consumer arbitrations, as defined by California Rules of Court, Ethics Standards for Neutral Arbitrators in Contractual Arbitration, involve a consumer or employee who was required to accept an arbitration provision in a contract drafted by a non-consumer or its representative.

<sup>2</sup> NAF data from 2003 through the first quarter of 2007 was obtained in spreadsheet format from the Public Citizen website (<http://www.citizen.org/congress/civjus/arbitration/>).

**Table 1- Dispositions**

<b>Disposition</b>	<b>Count</b>	<b>% of Total</b>
Hearing	2,019	5.9%
Hearing/Default	16,056	47.3%
Dismissed	8,590	25.3%
Settled	7,199	21.2%
Award by Settlement Agreement	84	0.2%
<b>Total</b>	<b>33,948</b>	<b>100.0%</b>

*Business vs. Consumer– Prevailing Party*

5. The cases publicly disclosed by NAF are limited to those cases involving a business versus a consumer in California. In the Public Citizen Data, the consumer was identified as the respondent and the business as the claimant in the vast majority of these cases.<sup>3</sup>
6. The Public Citizen Data identify a “Prevailing Party” in cases that were categorized as “Hearing,” “Hearing Default,” and “Dismissed” (i.e., cases that were “Settled” or were “Award by Settlement Agreement” generally do not identify a prevailing party) Therefore, the total number of cases where a prevailing party could be identified is 26,665.
7. Based on the disposition outcomes discussed above, we are able to identify within each category the reported “Prevailing Party.”
  - For cases with a disposition of “Hearing,” a consumer was identified as the respondent in 1,991 of 2,019 cases. A business was identified as the prevailing party in all 1,991 of these cases. A consumer was identified as the claimant and prevailing party in the remaining 28 cases.
  - For cases with a disposition of “Hearing/Default,” a consumer was identified as the respondent in 16,054 of 16,056 cases. In a “Hearing/Default” case the respondent is represented neither in person nor by documents. The claimant was identified as the prevailing party in all 16,056 of these cases. A business was named the prevailing party in 16,054 of these cases and a consumer was named a prevailing party in two of these cases.
  - For cases with a disposition of “Dismissed,” a consumer was identified as the respondent in 8,528 of 8,590 cases. The consumer is named as the prevailing party in all 8,528 cases.

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<sup>3</sup> The Public Citizen Data identify the business party but do not identify the consumer name, instead using “Consumer” to label all consumer parties.

8. Therefore, when a prevailing party could be identified (26,665 cases), the consumer is named the prevailing party in 8,558 cases (30 as claimants and 8,528 dismissals), or 32.1% of the time, and the business is named the prevailing party in 18,107 cases, or 67.9% of the time.

#### *Claims and Awards*

9. The Public Citizen Data include a claim amount (i.e., the initial amount identified by claimant) and an award amount (i.e., the arbitral decision).
  - There were 744 of 1,991 cases (37.4%) disposed of through “Hearing” where the consumer was not the prevailing party but the award amounts were less than the claim amounts. Of the 744 “Hearing” cases where the award amount was less than the claim amount, the median reduction was \$824 and the median percentage reduction was 6.3%.
  - There were 3,632 of 16,054 cases (22.6%) where the consumer was the respondent and the disposition was “Hearing/Default” that resulted in award amounts that were less than the claim amounts. This suggests that consideration was given to the consumers’ cases even when there was no representation either in person or by documents. Of the 3,632 “Hearing/Default” cases where the award amount was less than the claim amount, the median reduction was \$599 and the median percentage reduction was 8.8%.
  - Of the total combined cases in which a claim was reduced (744 “Hearing” cases plus 3,632 “Hearing/Default” cases for a total of 4,376 cases), the median reduction was \$636 and the median percentage reduction was 8.6%.

#### *Fees Paid*

10. An arbitration fee was indicated to have been paid in 33,935 of the total 33,948 cases in the Public Citizen Data. Of the 33,935 cases when a fee was paid, the consumer did not pay any fee in 33,689 cases or 99.3% of those cases. In the 246 cases when the consumer paid a fee, the median consumer fee paid was \$75.

#### *Legal Representation*

11. A consumer was reported to have been represented by an attorney in 1,178 or 3.5% of the total 33,948 cases in the Public Citizen Data. For all other cases, there was no indication of legal representation (i.e., the data were coded as inconclusive).

## *Conclusion*

12. In total, out of 26,665 cases in the Public Citizen Data for which the disposition was identified as "Hearing," "Hearing/Default," or "Dismissed," consumers were reported to have prevailed or had the case against them dismissed in 8,558 cases. There were also an additional 4,376 cases in which claims against consumers were reduced by the NAF.