

# KICKED OUT OF COURT IN 2023



## 50 Cases Showing the Real-World Impact of Forced Arbitration

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"Fighting to protect the right to jury trial and an independent judiciary for all Americans."

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# KICKED OUT OF COURT IN 2023

## 50 Cases Showing the Real-World Impact of Forced Arbitration

### INTRODUCTION

Mistreatment by tech giants like TikTok. Automobiles and appliances sold with dangerous defects. Nude photos posted online by medical offices. Farms and crops ruined due to corporate indifference. Thefts of lifetime savings due to online security failures. Rampant workplace racism and sexism. Apps that secretly store face biometrics and track keystrokes and mouse clicks. Eyesight damaged due to medical negligence. Wages stolen from traveling nurses. A child hurt by adventure park equipment.

Each of these scenarios recently happened and are described more fully in this study—a random survey of 2023 lawsuits. In each case, individuals who were harmed made the decision to go to court seeking to hold a culpable company responsible. But each time, their suits were kicked out of court due to a forced arbitration clause that was buried in a contract they seldom knew they “signed.”<sup>1</sup> The contract may have been written in a foreign language or under duress. The contract may have been with a company that was entirely different from the one committing the wrongdoing. The lawsuit may have already been proceeding in courts for months. Yet they were all still booted out of court.\*

We will never know what ultimately happened to these cases, but it is not hard to guess. Forced arbitration systems are private, secretive, rigged, controlled by the company, may require the victim to pay for it, and lack any right to appeal. The *Wall Street Journal* has reported that as more companies use forced arbitration clauses and class action waivers,<sup>2</sup> “many employees are walking away from harassment, wrongful-termination and discrimination claims rather than taking them to a privately run tribunal.”<sup>3</sup> Often, the claims are simply dropped.<sup>4</sup> A 2019 report from the American Association for Justice found that “Americans are more likely to be struck by lightning than they are to win a monetary award in forced arbitration.”<sup>5</sup> Even worse, companies often fight consumers in arbitration with claims or counterclaims. In those situations, arbitrators grant companies relief 93% of the time, and then often order the consumer to pay the financial institution. So considering “both sides of this equation,” in arbitration, the average consumer is actually paying \$7,725 to the company.<sup>6</sup>

This study takes a deeper look at a very small subset of cases from just this year—50 cases in 2023—where individuals tried to fight for the right to sue in open court but were forced into

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\* Some suits were dismissed altogether while others were stayed pending the outcome of arbitration (or likely a dropping of the claim). Regardless of whether the case was dismissed or stayed, the immediate impact was the same: Individuals were blocked from pursuing their claims in court.

secret arbitration. It's an even smaller fraction when compared to the untold number of 2023 cases where individuals suffered harm and desired accountability but, faced with a forced arbitration clause, simply gave up at the outset. Undoubtedly this allowed continuation of countless illegal acts by corporate wrongdoers. While we will never know the actual numbers of cases quashed by forced arbitration clauses, examining these lawsuits allows us to assess the kinds of harm such clauses can cause.

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## BACKGROUND

In 2011 and again in 2013, the U.S. Supreme Court ruled that corporations can strip people of their constitutional right to civil jury trial and force them into private, corporate-controlled arbitration systems to resolve disputes. The Court also said that companies have the unilateral right to ban class actions by inserting class action "waivers" into these arbitration clauses.<sup>7</sup> In the 2018 *Epic Systems* case, the Supreme Court greatly expanded the scope of these decisions for workers, ruling that employment contracts with class action waivers do not violate legal rights granted to workers by the 84-year-old National Labor Relations Act.<sup>8</sup> The case affected millions of employment contracts.<sup>9</sup>

Forced arbitration clauses in contracts make it nearly impossible for harmed workers, consumers, patients, servicemembers, and small businesses to seek accountability through federal and state laws enacted to empower and protect them, ensuring that misconduct stays secret and allowing companies to cover up and continue their wrongdoing. That is why corporate use of forced arbitration has grown exponentially since those Supreme Court decisions. For example, a 2019 survey of large companies found, "Eighty-one companies in the Fortune 100, including subsidiaries or related affiliates, have used arbitration agreements in connection with consumer transactions."<sup>10</sup> More than 90 percent of banks use forced arbitration against consumers,<sup>11</sup> the tech industry makes nearly universal use of these clauses on apps and websites,<sup>12</sup> and by 2024, it is estimated that more than 80 percent of the private-sector nonunion workforce will be bound by forced arbitration.<sup>13</sup>

There is some good news. In 2022, a strongly bi-partisan bill titled, "The Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021," passed the U.S. House of Representatives by a vote of 335 to 97. It then passed the Senate and was signed into law. It is the first major, permanent crack in the "forced arbitration" wall erected by the U.S. Supreme Court. But because the law has some loopholes, some sexual assault survivors have not been protected by it and examples are included here. In addition, as this study clearly shows, these clauses are as bad for sexual harassment and assault victims as they are for the defrauded bank customer, the ripped-off wage earner, and the child or senior citizen who experiences physical harm.

The urgent need for more legislation or regulations (where possible) to end forced arbitration becomes clearer by the day. Employment discrimination, online privacy violations, cheating by banks and lenders, medical injuries, injuries caused by defective products, and other types of systemic or illegal misconduct are flourishing because forced arbitration clauses have reduced any chance of meaningful accountability. It is well past time for public officials to act.

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## CASE SUMMARIES

### ADVENTURE PARK INJURIES

On April 1, 2022, Kirstin Headlee and her seven-year-old daughter, K.H., visited an Urban Air indoor trampoline and adventure park in Mokena, Illinois. Kirstin had to agree to a "Release" before K.H. could play there. The Release, which was pre-drafted and presented on a kiosk display, contained an arbitration clause. K.H. then participated in "Wipeout," an attraction that "consists of two machine-operated bars that require participants to hop and/or duck under the bars as the bars rotate in a circle." While playing Wipeout, K.H. was hit by one of its rotating bars and "dragged around the attraction, causing severe injuries, including a broken femur." In July 2022, K.H. and her parents filed a lawsuit against Urban Air. The company moved to compel arbitration. In October 2023, the court granted the motion, finding that Urban Air had no obligation to explain the arbitration provision to Kirstin, she chose to sign the contract and allow her child to play on the attraction, and K.H. was bound by the arbitration provision as an "intended beneficiary" of the contract.<sup>14</sup>

### AUTO FINANCE RIP-OFF

In 2014, Cecilia Macasero purchased a car, financing it through an agreement with the dealer, which it then assigned to Ent Credit Union. (To complete the assignment to Ent, Cecilia had become a member of Ent Credit Union and signed forms to accept electronic documents.) She also purchased a Guaranteed Automobile Protection or "GAP" waiver, meaning that if during the course of the loan she were to have a "total loss" accident and her insurance company did not cover the loan balance, Ent would waive the difference. Cecilia paid for the GAP waiver by adding it to the finance agreement's principal balance. She paid off her loan early, in 2018. But Ent failed to refund the unearned GAP waive fees. A year later, Ent added a forced arbitration clause to her Membership and Account Agreement by burying a sentence at the bottom of a routine email, which she did not open. In July 2020, Cecilia filed a class action on behalf of customers "who paid off their agreements ahead of schedule and weren't refunded the unearned GAP waiver fees." Ent moved to compel arbitration, which the trial court denied in August 2021 finding she had no notice of any forced arbitration clause. In May 2023, a Colorado appeals court reversed the decision and forced her claims into arbitration.<sup>15</sup>

### BLOOMBERG PRIVACY VIOLATIONS

On February 16, 2021, Justin Graham purchased a subscription to Bloomberg's online news service. He later found out that the company collected and gave Facebook his and other digital subscribers' personally identifiable information without consent. In August 2022, Justin filed a class action against Bloomberg for violations of the Video Privacy Protection Act. Bloomberg "moved to compel Graham to arbitrate his claims on an individual basis and dismiss the complaint." In September 2023, the court determined that "the design of Bloomberg's page put Graham on inquiry notice that by purchasing a subscription to Bloomberg, he validly assented to the Arbitration Agreement." As a result, the judge compelled arbitration.<sup>16</sup>

## BROKER HIDDEN AGREEMENT

Charles Schwab & Co, the investment advisor and broker-dealer giant, is obligated by law to get clients the “best execution” on trade orders. However, unbeknownst to its clients, Schwab had a side agreement with UBS Securities LLC whereby “at least 95% of its nondirected trades” were routed through UBS. When they found out about Schwab’s agreement, Robert Wolfson, Frank Pino, and K. Scott Posson brought a class action against the company over its material omission (*i.e.*, concealing the arrangement from clients) and for failing to verify “that UBS was providing best execution,” thus undermining Schwab’s duty of best execution. In October 2021, the court denied class certification. Schwab then sought to force arbitration citing a clause in their account agreement. In February 2023, the judge ruled that even though the account agreement was “potentially ambiguous,” he was required to “resolve any ambiguity in favor of arbitration.” Schwab’s motion to compel arbitration was granted.<sup>17</sup>

## CELLPHONE MADE OBSOLETE

In 2020, Sprint marketed its 5G network (and phones on which it operated), boasting of the “network’s widespread coverage and ‘blazing fast download speeds.’” Relying on this, Jose Luis Garcia Moreno bought a Sprint OnePlus 7 Pro 5G, which was a 5G-capable cell phone. A few months later, T-Mobile bought Sprint, which began operating under the T-Mobile banner. At that point, T-Mobile “suddenly began to ‘shut down older networks without addressing Network incompatibilities for numerous devices dependent on them.’” This left approximately 75,000 sold 5G phones without the ability to receive a 5G signal, making them unusable and forcing customers to buy entirely new phones at higher rates and fees. In June 2022, Jose Luis filed a class action against T-Mobile for, among other things, breach of warranties and violations of Washington’s Consumer Protection Act. T-Mobile moved to compel arbitration. In January 2023, the court found that Jose Luis had agreed to several different arbitration provisions when he became a Sprint customer and that the “question of the unconscionability of the contracts’ purported bar on public injunctive relief [was left] to an arbitrator.”<sup>18</sup>

## CELLPHONE STORAGE DECEPTION

The Galaxy S21 Ultra 5G smartphone, which Samsung sold by touting its memory capacity, came with an operating system and pre-installed applications that used 21 percent of the device’s storage space. Phone buyers were not informed before purchase that a large amount of storage space had already been taken up. What’s more, it was impossible for customers to later free up storage by removing any of the pre-installed apps or to add a memory card. Their only option was to buy a new phone. In January 2023, Tiffany McDougall brought a class action against Samsung over these problems. Samsung filed a motion to force arbitration, which the court granted in October 2023, finding that Tiffany had agreed to arbitrate disputes with the company since it had “provided notice of the arbitration agreement on the phone’s packaging, in a ‘Terms and Conditions’ pamphlet in the phone’s box, and through an interactive set-up process on the screen....”<sup>19</sup>

## CREDIT CARD ABUSE

In April 2013, Mark Bernsley applied for a credit card account with Barclays Bank Delaware (Barclays). After his application was approved, the company mailed him several documents,



including a Cardmember Agreement with a forced arbitration clause. Nearly seven years after first activating the card, Amazon charged Mark \$14.22 for an Amazon Prime membership, which he didn't want. Amazon reversed the charge. But a few weeks later, the \$14.22 charge reappeared. Amazon was unresponsive so Mark contacted Barclays, explaining that he'd cancelled his membership, wanted the latest charge reversed, and any further charges blocked. Barclays failed to act, resulting in Mark closing his credit card account to prevent more charges. But Barclays kept insisting he pay the \$14.22, which Mark disputed in a formal letter that he sent twice when he received no response the first time. Barclays's response was to keep accruing charges and penalties amounting to \$155.44 and to report his account as delinquent to credit agencies. Months after Mark paid the charges and penalties, Barclays told him the dispute was resolved in his favor yet refused to refund the late fees and charges and failed to advise credit agencies that he never owed the disputed charges. In the summer of 2022, Mark applied for a credit card with Home Depot which was denied based on his uncorrected credit report. In October 2022, he sued Barclays. The company responded with a motion to compel arbitration, which was granted in February 2023.<sup>20</sup>

## CREDIT SCORE RUINED

Barbara Hartmann opened a Home Depot credit card financed by Citibank in January 2020. She subsequently used the card. She then discovered from Experian, Equifax and Trans Union credit reports that Citibank had reported her account as late even though she'd paid it in full. Despite her repeated outreach asking them to remove their mistake, Experian, Equifax, Trans Union and Citibank failed to act, harming Barbara's credit score and creditworthiness. In November 2022, Barbara filed suit against all four companies for violating the Fair Credit Reporting Act. Citibank moved to compel arbitration, pointing to the arbitration provision in the Card Agreement she received when she applied for the credit card. The court granted the motion in August 2023, forcing Barbara to arbitrate her claim against Citibank (although allowing her to seek accountability from the credit reporting agencies in court).<sup>21</sup>

## CRYPTOCURRENCY THEFT (CLASS)

Coinbase is the largest cryptocurrency investment platform in the United States. In October 2022, George Kattula and others pursued a class action against the company on behalf of numerous people whose money was stolen due to major security failures and other horrendous customer practices. These practices included not only failing to protect users' accounts—which allowed large thefts of money—but also locking customers out of their accounts and otherwise failing to help them as thefts were taking place. Among the dozens of customers suing: Lolletta Cohen, whose \$25,000 worth of cryptocurrency was stolen when an unknown third-party was allowed access to her account; Dan Hyatt, who lost over \$20,000 worth of cryptocurrency when Coinbase approved a transfer to an unknown external location; Jane Krieser, who lost everything in her Coinbase account when the company allowed an unknown person to convert her entire balance totaling \$32,062.43 into a bank account that was never associated with her; and Ngoun Mang, whose entire \$51,674 account was depleted due to unapproved (by him) transactions. Coinbase moved to compel arbitration. In July 2023, the court granted the motion, ruling that the customers had agreed to an arbitration provision in their user agreements when they opened accounts on the platform.<sup>22</sup>

## CRYPTOCURRENCY THEFT (INDIVIDUAL)

Manish Aggarwal and Mostafa El Bermaw both had Coinbase accounts. In 2022, Coinbase updated its User Agreement with a forced arbitration clause that Manish and Mostafa unknowingly agreed to after they logged into their accounts via the Coinbase Pro iOS mobile app. In April 2022, hackers gained access to Manish's Coinbase account, locked him out, and drained it of more than \$200,000 of his family savings. When he attempted to alert Coinbase, "the company routed him through its automated complaint processing—a recursive loop of impenetrable screens that prevented him from explaining his situation to any human being and was incapable of redressing the theft of his savings." A similar thing happened to Mostafa in July 2022 when Coinbase failed to help him and canceled his account after hackers robbed it of \$70,000 worth of crypto and U.S. dollars. Both sued not only for the company's obvious security failures but also for its atrocious customer service that failed to help mitigate those thefts. In August 2023, the court granted Coinbase's motion to compel arbitration based on the 2022 User Agreement update, kicking the cases out of court.<sup>23</sup>

## DANGEROUS RANGE DEFECT

In November 2021, Pedro Brito purchased an expensive new LG range from a Miami, Florida Best Buy for approximately \$1,499.99. He relied on marketing materials, assurances from the salesperson, and the Range's Owner's Manual that the product was covered by a warranty "against defects in materials and workmanship for one year." Soon after the range was in his home, he noticed that the front-mounted burner control knobs were depressing and rotating with "minor, inadvertent contact," activating the range without warning and causing a serious risk of burns and fire. Indeed, on August 5, 2022, the range ignited a bag sitting next to his cooktop. Apparently, LG had known about the defective knobs but kept selling these ranges. Pedro contacted LG, which sent a service technician who said there was no way to fix the defect and suggested he remove the knobs when he wasn't using the range. In September 2022, Pedro filed a class action against LG for selling this defective and dangerous product. LG filed a motion to compel arbitration, arguing that Pedro was bound by the arbitration agreement contained in the Owner's Manual and one-year warranty. In March 2023, the court granted the motion.<sup>24</sup>

## DEBT COLLECTION ABUSE

In August 2018, Keith Ford obtained a \$15,000 personal loan through a website operated by LendingClub Corporation. The loan was transferred multiple times, ultimately ending up with debt collector UHG. After UHG acquired the loan, Keith defaulted on it. That's when he and many people in his life began receiving harassing phone calls related to the loan. He "was called every working day, sometimes twice"; his employer and extended family were also called. In November 2021, UHG brought a debt collection lawsuit against Keith in state court. In February 2022, Keith filed a class action suit against UHG for violating federal and state laws regarding illegal debt collection activities. UHG moved to compel arbitration. Citing Keith's original borrower agreement with LendingClub Corporation, a court found that UHG, as a "subsequent holder" of the agreement, had the right to force Keith into arbitration. It also found that "UHG hadn't waived its right to force arbitration by commencing a debt collection lawsuit against Keith in state court."<sup>25</sup>

## DEBT COLLECTION HARASSMENT

Andrea Audish was an employee of Laser Prostate Centers of America (LPCA) until September 2016. The company gave her an American Express credit card for LPCA business. She left the company in September 2016 and returned the credit card, never using it again. But in 2019, American Express started harassing her with debt collection phone calls related to the LPCA credit card. She kept explaining to American Express that this debt was not hers and they needed to stop calling. The calls didn't stop. In November 2021, Andrea filed a class action against American Express for violating the Telephone Consumer Protection Act. American Express moved to compel arbitration, saying she was bound to the arbitration provision found in the American Express Cardmember Agreement even though "she was not a signatory" to it and was never "'offered' anything that she could accept." In March 2023, the court sided with American Express and ordered her claims into arbitration.<sup>26</sup>

## DISNEY PRIVACY VIOLATIONS

On November 12, 2022, Joshua Sadlock browsed Disney's ESPN.com on his computer. During the visit, Oracle's Blue Kai Pixel, a product Disney was using to improve its own marketing and analytical capabilities, intercepted in real time Joshua's "keystrokes, mouse clicks, and other communications including specific web pages he viewed." This was done without his awareness or consent. In December 2022, Joshua filed a class action against Disney for violating Pennsylvania's Wiretapping and Electronic Surveillance Control Act. Disney moved to compel arbitration. In July 2023, the court found that, "although Disney's subscriber payment webpage failed to provide reasonably conspicuous notice of the subscriber agreement"—which contained an arbitration provision—Joshua had consented to Disney's subscriber agreement "by continuing to use ESPN after the company sent him emails regarding updates to the subscriber agreement." As a result, the case was forced into arbitration.<sup>27</sup>

## FINGERPRINT COLLECTION ABUSES

For about 18 years, Kimberly Coons worked at Taco Bell restaurants. Her last employment—as a manager—was at a Taco Bell in Caseyville, Illinois, which was franchised by Bell American Group (Bell). Her employment contract with Bell contained a forced arbitration clause. During her 3-year tenure in Caseyville, Taco Bell restaurants converted to a biometric timekeeping system based on fingerprints. Fingerprint collection was compulsory for her and those she managed. Kimberly sued Yum! Brands (Taco Bell's corporate parent) and its subsidiaries for violating the Illinois Biometric Privacy Act. The companies filed a motion to compel arbitration, which the court granted in May 2023, ruling that Kimberly must comply with their arbitration demand even though they were non-signatories to her employment contract.<sup>28</sup>

## FINTECH OVERDRAFT HARM

Fintech company Klarna "allows shoppers to buy a product and pay for it in four equal installments over time without incurring any interest or fees." In pitching its "buy now, pay later" service, Klarna didn't warn customers that automatic payment deductions could result in bank-overdraft fees if funds aren't there when the deduction is made. This is exactly what happened

to Najah Edmundson after she made two online purchases. In June 2021, Najah brought a class action against Klarna for misrepresenting and concealing the risk of bank-overdraft fees in violation of Connecticut state law. Klarna moved to compel arbitration based on a forced arbitration clause buried in its Services Terms. In February 2022, the district court denied the motion, concluding that there was no “conspicuous notice of and unambiguously manifest assent to Klarna’s terms.” The 2nd Circuit reversed, ruling in November 2023 that “(1) notice of Klarna’s terms (and thus the arbitration provision contained therein) was reasonably clear and conspicuous such that a reasonable internet or smartphone user would be on inquiry notice of them, and (2) Edmundson objectively and unambiguously manifested assent to the terms.”<sup>29</sup>

## FUNERAL HOME NEGLECT

Maria Gonzalez passed away in Edinburg, Texas on June 22, 2019. She had paid SCI Texas Funeral Services for her final arrangements before her death. On June 24, one of Maria’s daughters signed an agreement with SCI regarding visitation and embalment services that included an arbitration clause. At the June 26 viewing, which was held from noon to 10pm, Maria’s children and grandchildren were horrified to notice her “eye and mouth had begun to open and fluid began to leak down the side of her head. The parlor was filled with an odor emanating from the body that was of a rotting nature.” The family alerted the funeral director, who responded that “these things happen,” had everyone leave the visitation area, and spent 20-30 minutes working on Maria’s remains with an assistant. But the problem was not fixed and Maria’s “eye and mouth again began to open before the service finally ended at 10:00 p.m.,” continuing to upset the family. In July 2020, her adult children and adult grandchildren sued SCI for negligence and intentional infliction of emotional distress. SCI moved to compel arbitration. The judge denied the arbitration motion in November 2021. However, an appeals court disagreed, ruling in May 2023 that the contract signed by one of Maria’s daughters forced her immediate family members’ allegations into arbitration.<sup>30</sup>

## GM TRANSMISSION DEFECT

A California dealership sold Caroline Harper a 2016 Cadillac CT6 with a defective eight-speed transmission that would “slip, buck, kick, jerk and harshly engage,” accelerate suddenly or too slowly, and clearly made the car unsafe to drive. She filed a class action against General Motors. The company responded with a motion to compel arbitration, pointing to sales paperwork she signed that contained an arbitration clause. In March 2023, the court sided with GM, ruling that even if Caroline “didn’t read the full contract and didn’t understand the entire contract when she signed it,” she was bound to the terms of what she’d signed, leaving it to an arbitrator to decide whether the contract was signed by mistake.<sup>31</sup>

## GRINDR WRONGFUL TERMINATION

In October 2020, Ronald De Jesus was hired as Senior Privacy Director for the social networking app Grindr. During his tenure, he complained to executives that the company may be violating state and international privacy laws by keeping and sharing with advertisers “highly sensitive user data, including users’ nude photos, even after accounts were deleted.” Despite receiving raises and positive reviews, Ronald was abruptly fired in 2022 soon after new leadership took over. Ronald believed that “instead of working with him to address his compliance concerns, in late 2022,” the company pushed him out of the company. When he sued for wrongful termination, Grindr moved to compel arbitration, citing the terms of an agreement Ronald signed that was

buried in a non-disclosure agreement. In September 2023, the trial court reluctantly upheld the arbitration agreement, stating “‘I’m not a great fan of arbitration ... Courts say arbitration is a faster and cheaper way of resolving disputes, but [this] court finds that it isn’t.’ If litigation was to proceed before the court, ‘we’d get to trial a year from now,’ whereas arbitration would take at least two years to complete, the judge added, ‘but nonetheless, that’s the law in the state of California.’”<sup>32</sup>

## MEDICAL LEAVE MISCALCULATED

Adam Bixby, who suffers from several serious health conditions, including eosinophilic esophagitis and irritable bowel syndrome, began working for Toyota Motor North America (TMNA) in November 2018. He requested and the company approved Family Medical Leave Act (FMLA) leave as a result of his conditions, allowing him to take leave on a continual basis and an intermittent basis. However, on January 24, 2022, TMNA denied that leave and “assessed him three points under its attendance policy,” which subjected him to potential termination. In May 2022, Adam filed a class action alleging that his employers, TMNA and Toyota Motor Sales, U.S.A., were intentionally miscalculating FMLA leave entitlement. The companies responded with a motion to compel arbitration, which the court granted in February 2023, ruling that only Adam’s individual claims—not the class action—could proceed and would have to go to arbitration given a class action waiver in the parties’ arbitration agreement.<sup>33</sup>

## MEDICAL MALPRACTICE – LASIK

On September 27, 2017, Carlos Lopez Rivera underwent eye surgery at Lasik Vision Institute in Burlington, Massachusetts. That morning, before the procedure, Carlos, whose primary language was Spanish, was asked to sign a stack of documents printed in English and provided by the doctor doing the surgery. One of them was a forced arbitration agreement covering “any and all actions for medical malpractice.” Carlos signed and initialed the document. Following the surgery, his left eye vision was blurred, and there were other complications requiring a second surgery with a new doctor. However, his blurred vision could not be corrected. In September 2020, Carlos sued his first doctor for medical malpractice. The trial court would not compel arbitration since “no one explained the arbitration agreement to Lopez in his primary language (Spanish),” he “lacked a sufficient understanding of English to know what he was signing, and ‘that in signing a stack of multiple forms without translating into Spanish that one of these forms was for binding arbitration, [Lopez] was led to believe that he was signing medical forms.’” In August 2023, a Massachusetts appeals court reversed, finding there was no fraud, duress, or unconscionability to invalidate the arbitration agreement.<sup>34</sup>

## NUDE PHOTOGRAPHS POSTED

M.P. scheduled outpatient, elective cosmetic surgery at the Guiribitey Cosmetic & Beauty Institute in Miami, Florida. Weeks before the procedure, she paid a substantial nonrefundable deposit. On August 6, 2020, the day before surgery, she received a 49-page packet that included a “Consent to Taking and Publication of Photographs” form and a “Patient Arbitration Agreement.” She would have lost a large nonrefundable deposit if she had refused to sign. After the surgery, images of her nude body started appearing on Instagram. She sued the Institute and her doctor for commercial appropriation, breach of fiduciary duty, and invasion of privacy. They moved to compel arbitration, which was granted despite the obvious duress under which

she signed the arbitration agreement. An appeals court upheld the arbitration in an October 2023 decision.<sup>35</sup>

## NURSING HOME DEATH

Phyllis Montoya, 93, who was in need of constant care due to “dementia, macular degeneration, and persistent atrial fibrillation,” was admitted to Pacifica Rosemont nursing home on November 30, 2019. Her children filled out a residence and care agreement that included a forced arbitration clause. Within 19 days, while “unsupervised by any staff at Pacifica,” her “wheelchair fell backwards and she hit her head against the wall with such force that it left a dent in the facility’s wall.” She was taken to a hospital ER, where she was diagnosed with a brain hemorrhage for which she could not be treated. She was sent back to Pacifica. Less than a month later, she was dead. When Phyllis’s estate filed a wrongful death suit against Pacifica in state court, Pacifica filed a motion to compel arbitration in federal court. In August 2023, a New Mexico district court ruled that: 1) Phyllis’s children had the authority to enter into an arbitration agreement on her behalf; 2) the agreement could be upheld even though it “required claimants to arbitrate their claims against Pacifica Rosemont while allowing the facility to litigate its claims against residents or their representatives”; and 3) the estate could only pursue wrongful death claims via arbitration.<sup>36</sup>

## NURSING HOME INJURIES

In June 2021, 81-year-old Edith Rotan went to Park Manor nursing home, operated by Unlimited Development, Inc., to recover from knee surgery. In order to receive care at Park Manor, she was required to sign a residency agreement and a standalone arbitration agreement (which referred to property, not personal injuries) before being admitted. She was then injured while at Park Manor. When she filed a lawsuit against the nursing home, the company sought to compel arbitration. A state trial court denied the motion in February 2022, finding that the “Residency Contract and the Arbitration Agreement could not be construed as one contract, and that the Arbitration Agreement did not contain ‘a clearly expressed intent to arbitrate controversies arising out of the separate Residency Contract.’” The following year, an appeals court reversed the ruling in a 2-1 decision, with Justice Judy Cates writing a strong dissent, noting that the majority “create[d] a new arbitration agreement” which was “not agreed to by the parties” and “then found that their newly minted rules constituted clear and unmistakable evidence that the parties agreed to arbitrate arbitrability.”<sup>37</sup>

## PHOTO PRIVACY VIOLATIONS

Prisma has a photo editing app, Lensa, whose popularity skyrocketed in late 2022 “with the launch of its ‘magic avatar’ feature—using AI to turn user’s photos into artistic or cartoonish depictions of their likeness, applying different styles such as ‘cosmic,’ ‘anime,’ or ‘fairy princess.’” What users may not have known is that Prisma was storing biometric data of their faces obtained from their photos. Five Illinois residents brought a class action against Prisma for violating the state’s Biometric Information Privacy Act. However, Prisma’s terms of use agreement contained a forced arbitration provision. In August 2023, the court sided with Prisma and sent the case into arbitration.<sup>38</sup>

## PIPELINE DAMAGED CROPS

In 1997, Alliance Pipeline L.P. (“Alliance”) contracted with landowners (as well as with several states) to build a natural gas pipeline. The contracts with landowners—73 percent of which had forced arbitration clauses—provided easements for the pipeline right-of-way. However, the pipeline also damaged crops and Alliance refused to pay for this. In 2018, some landowners filed a class action against Alliance over the crop damages. After the class was certified, Alliance moved to compel arbitration for those with such clauses. “The district court found the [landowners] whose easements contain arbitration provisions had agreed to arbitrate some, but not all, of the relevant issues in the litigation.” In August 2023, the 8th Circuit disagreed, ruling that the landowners who entered into easements that contained arbitration clauses had to arbitrate all their claims.<sup>39</sup>

## POLLUTER POISONED FARM

Dennis Clark owns an active farming operation in Macedonia, Illinois that includes livestock. His farm is located about one-quarter of a mile from the Sugar Camp Energy Mining Complex. In 2019, the mining complex caused damages to structures and facilities on Dennis's farm, leading to a settlement and release containing an arbitration clause. Then in August 2021, the mine used foam containing per- and polyfluoroalkyl substances (PFAS), also known as “forever chemicals,” to fight an underground fire in one of the mines. The following month, toxic water suddenly sprung up on a livestock pasture area on Dennis' farm. In November 2021, several animals pastured in the area with the upwelled water died, including one herd bull, four cows, one calf, and four sheep. In January 2023, Dennis filed a complaint against the 11 companies involved with the mining complex over this substantial loss. The companies moved to compel arbitration based on the 2019 release. The trial court denied the motion since the 2021 conduct was not covered by the 2019 release. That decision was reversed in September 2023, with an appeals court ruling that the agreement contained a “generic arbitration clause” that must be considered broadly, so “any dispute that even arguably arises from the Waiver and Release must be arbitrated” and “[w]hether the waiver and release forecloses recovery for the plaintiff's claims is for the arbitrators to decide.”<sup>40</sup>

## RACE DISCRIMINATION/ABUSE

Nega Naizgi began working as a security officer at HSS, Inc. in 2004. He was later promoted to Trainer, Training Department Supervisor and ultimately Operations Manager at Denver airport in 2018. Throughout this time, he received excellent reviews as well as awards for his job performance. During his employment, Nega—who identifies as Black and Ethiopian—also “experienced discrimination and harassment from his immediate supervisor and other managers, was denied promotional opportunities and paid less than the minimum contractual requirements.” When he “complained to HSS executives and HR officers about the discrimination, his supervisor retaliated against him by fabricating performance issues and a sexual harassment charge,” according to a lawsuit Nega filed in September 2022. “These inhumane working conditions created so much stress for [Nega] that he was forced to take five weeks off – including three weeks of unpaid FMLA leave – to recuperate. [Nega] was fired only two weeks after returning to work from his legally protected leave.” HSS moved to compel arbitration, pointing to an arbitration agreement Nega signed in 2006. The motion was granted in August 2023.<sup>41</sup>

## RACIAL PREJUDICE/DISCRIMINATION

On October 15, 2020, Dakota Powell started working as a sales representative for Prime Comms Retail, an authorized AT&T retailer with branches in New Jersey. While employed at the company's Edison store, she received a text from her manager, Muhammad Chohan, that contained a racial slur. Dakota informed her district manager and later "transferred to another branch because she 'did not feel safe reporting ... Chohan's discriminatory remark while working with [him] out of a fear of retaliation.' She then filed a complaint with HR on January 10, 2021, and was fired four days later." The following month, Dakota sued the company and Chohan. They responded with a motion to compel arbitration, stating that, when she was hired, Dakota had electronically signed an agreement to arbitrate by clicking a box. In May 2022, the trial court rejected her claim that she'd never seen the arbitration agreement and granted the motion. An appeals court upheld that decision in March 2023.<sup>42</sup>

## RETIREMENT FUNDS MISHANDLED

Beth Berkelhammer and Naomi Ruiz participated in a 401(k) savings plan whose investment portfolio was managed by NFP Retirement, Inc. Unbeknownst to Beth and Naomi, their employer—but neither Beth nor Naomi—had agreed to a forced arbitration clause as part of its arrangement with the retirement plan. In May 2020, Beth and Naomi filed a class action against the company for charging excessive fees and making bad investments. NFP moved to compel arbitration, and in June 2021, the court granted it, ruling that since Beth and Naomi's claims were being brought for relief to the retirement plan, it only mattered what the plan had agreed to, not whether Beth and Naomi had personally agreed to arbitration. The 3rd Circuit upheld the decision in July 2023, forcing their claims into arbitration.<sup>43</sup>

## SEX DISCRIMINATION/ABUSE

Michelle Cornelius had worked for CVS for 35 years when she became store manager at the company's Passaic, New Jersey location, where she "accomplished the highest percentage above budget and for profit for the year of 2018." That same year, Michelle had a new supervisor, Shardul Patel, who began targeting her with grossly discriminatory and demeaning behavior.<sup>44</sup> She informed CVS's regional manager and its Chief Compliance Officer about the hostile work environment but no action was taken. The unchecked daily discrimination left her "on the verge of a nervous breakdown, with no choice but to resign from CVS and to take a lesser-paying job elsewhere." After she filed a lawsuit alleging violations of federal and state employment laws, CVS moved to compel arbitration, arguing that Michelle's claims fell within a 2014 arbitration agreement that she accepted by not opting out. In October 2023, the court agreed and forced Michelle's case into arbitration.<sup>45</sup>

## SEXUAL ABUSE/HARASSMENT

When corporate law firm Buchalter hired legal analyst Karen Hurdle in June 2016, they required her to sign an employment contract with a forced arbitration clause. Never could she have imagined the relentless and grotesque sexual abuse and harassment that she would soon be subjected to from her supervisor, Gary Wolensky. (This extremely offensive and graphic misconduct is detailed in Notes.<sup>46</sup>) When Karen sued, Buchalter moved to compel arbitration. The court agreed with the firm, ruling in June 2023 that Karen's case could not be heard in court



since her claims accrued before the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act went into effect, which otherwise would have barred this employer from forcing Karen to arbitrate her sexual harassment claims.<sup>47</sup>

## SEXUAL ASSAULT/HARASSMENT

On April 9, 2021, Crystal Settle was horrifically sexually assaulted by Steven Medina, her superior at Securitas Security Services USA, Inc. in New Jersey. (This extremely offensive and graphic misconduct is detailed in Notes.<sup>48</sup>) Crystal reported the assault to another supervisor and the Weehawken Police Department. She never returned to work. When Crystal sued Securitas and Medina, they moved to compel arbitration, pointing to a document she signed before starting work as a security officer. In October 2022, a judge forced Crystal's claims into arbitration. The decision was affirmed on appeal, with the court ruling in April 2023 that the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act, which invalidates forced arbitration clauses in these situations, did not apply because her claims stemmed from actions that occurred before the law went into effect.<sup>49</sup>

## SEXUAL IDENTITY HARASSMENT

Madalyne Barnes worked as a lifeguard at Festival Fun Parks' Idlewild Park and SoakZone in Ligonier, Pennsylvania. She was promoted in June 2020 to lead lifeguard. However, in June 2021 after she began dating another female employee, the Head of Operations at the park "began subjecting [her] to demeaning and derogatory slurs," some of which she perceived as physical intimidation. She reported this to her supervisor but nothing was done. After other attempts to get the company to investigate her claims, Madalyne was fired. In September 2022, she sued Festival Fun Parks. The company moved to compel arbitration which, unbeknownst to Madalyne, was in her employment agreement. What's more, the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act did not apply since "the dispute giving rise to [her] claim occurred just under two years prior to the Act's effective date of March 3, 2022." As a result, in June 2023, the court forced her claim into arbitration.<sup>50</sup>

## SEXUAL PRIVACY ABUSE

Former Temple University assistant football coach Antoine Smith used the pet-sitting app, Rover, to lure women to his home under the pretense of house-sitting his dog and then "used hidden cameras disguised as clocks, Bluetooth speakers, and other items" to secretly film them in his home "while they showered, used the bathroom, slept, and were in various stages of undress." Rover's Terms of Service had a forced arbitration clause. The company was aware of Smith's past inappropriate conduct but kept allowing him to use the app. In June 2023, Kaitlin Bailey and two other women<sup>51</sup> whom he preyed upon filed suit against Rover for, among other things, violations of Pennsylvania's Human Trafficking statute. They also pointed to the federal Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act, which should have made the arbitration clause unenforceable. However, the court disagreed, ruling in October 2023 that Rover's conduct did not qualify as "sexual harassment" as defined in the statute.<sup>52</sup>

## SOUTHWEST WAGE THEFT

Latrice Saxon was a Southwest ramp supervisor, whose job was to personally load and unload cargo from planes and supervise others. The company consistently required Latrice and other ramp supervisors to work overtime, specifically to arrive early to perform work before the start of their official shift and to work through meal breaks. However, “it did not pay them for this work.” In January 2019, Latrice brought a Federal Labor Standards Act suit against Southwest. Southwest countered that the claims belonged in arbitration, pointing to yearly agreements Latrice and her non-union co-workers had signed. In October 2019, the trial court sided with Southwest. That decision was reversed by the 7th Circuit in 2021 and ultimately affirmed by the U.S. Supreme Court, which held in a unanimous June 2022 ruling that a carveout in the Federal Arbitration Act for transportation workers exempted Latrice from arbitrating her claim. Soon after that decision, Southwest renewed its bid for arbitration, arguing that the arbitration agreement was enforceable under Illinois law. In March 2023, the district court sided with Southwest and granted the company’s motion to compel arbitration.<sup>53</sup>

## SOUTHWEST WORKERS’ COMP

In April 2014, Southwest hired Heather Swanson as a ramp employee at Chicago’s Midway Airport and promoted her to ramp supervisor later that year. She suffered a head injury on the job and, two years later, another injury to her “hip, back, neck, and right leg.” Her own doctors concluded that her injuries were too severe to permit her to return to work; Southwest’s doctor concluded the opposite, and so in October 2016, Swanson went back to work. “Her supervisors promised that they would put her on light duty given her recent injuries.” Instead, they put her “out on the ramp at full duty,” causing her to reinjure herself. Contrary to her own doctor’s recommendation, Southwest’s workers’ compensation insurance carrier denied her claims the next day and ordered her back to work. In December 2016, Heather was “fired for allegedly violating her light work restrictions by carrying her grandmother’s groceries.” She “received significant medical treatment related to these injuries over the next two years.” Heather sued Southwest, claiming retaliation for exercising her rights under the Illinois Workers’ Compensation Act. Nearly eight months after Swanson filed her complaint in state court and nearly six months after it was removed to federal court, Southwest moved to compel arbitration under the Federal Arbitration Act and the Texas Arbitration Act. In August 2023, the trial court ordered the case into arbitration.<sup>54</sup>

## TESLA PRIVACY ABUSES

Tesla cars are built with certain systems, marketed as Autopilot or self-driving, which rely on cameras and sensors to operate. Some of these cameras recorded people in cars while the vehicles were parked. What’s more, Tesla employees have been caught sharing recorded images of people, including children and adults doing “intimate things.” In June 2023, Henry Yeh and his one-year-old son filed a class action suit against Tesla<sup>55</sup> for violating California consumer protection laws and its own privacy policy by allowing owners to be filmed without their knowledge. Henry said that his family worked to safeguard their one-year-old’s privacy—not sharing any photos of him online or in social media—efforts undermined by Tesla. Tesla brought a motion to compel arbitration, stating that Henry agreed any claims would be submitted to arbitration on an individual basis when he purchased his vehicle. In October 2023, the court

sided with Tesla, ruling that Henry's signature on the order agreement also subjected his child to the arbitration clause.<sup>56</sup>

## TESLA TECHNOLOGY FAIL

Tesla marketed its optional advanced driver assistance systems (ADAS) technology with assurances to customers that the company was on the precipice of delivering fully self-driving cars and that the technology was safe. But neither were actually true: Tesla has yet to deliver on its driverless car promises, and there are concerns about the safety of this technology. In September 2022, Brenda T. Broussard, Dominick Battiato, Christopher Mallow, Jazmin Imaguchi, and Thomas LoSavio—who each bought Tesla vehicles at different times between January 2017 and May 2022, with all but one of them buying the optional ADAS technology package—brought a class action against Tesla and moved for a preliminary injunction “shutting down the ‘advanced driver assistance systems’ in Tesla’s vehicles and alert[ing] customers that the company’s use of such terms as ‘autonomous’ and ‘self-driving’ to describe the technology was inaccurate.” Tesla sought to compel arbitration, arguing that the car buyers entered into valid arbitration agreements when they purchased their vehicles online. In September 2023, the court rejected the injunction request and ruled that they had to pursue their claims individually in arbitration.<sup>57</sup>

## TICKETING PRICES EXCESSIVE

Since Ticketmaster and Live Nation merged in 2010, they've been providing primary ticketing services for major concert venues, secondary ticketing services for major concert venues, and concert promotion services for major concert venues. Such huge market power is likely resulting in “supracompetitive fees on primary and secondary ticket purchases.” Ticket purchasers Mitch Oberstein, Sophie Burke, and Gary Matty tried to stop this excessive pricing by bringing an antitrust case against Ticketmaster and Live Nation. However, Mitch, Sophie, and Gary's claims were thrown out of court because of the websites' terms of use agreements which contain forced arbitration clauses. An appeals court affirmed the decision in February 2023.<sup>58</sup>

## TIKTOK EMPLOYMENT ABUSE

In 2021, Telus, an outsourcing company that provides various information technology services, hired Ashley Velez to moderate TikTok content, which involved “reviewing videos that TikTok users flag for inappropriate content.” Some of this content was extremely unsettling. Because TikTok set demanding work quotas and other requirements (“underperforming content moderators faced reprimand, docked pay, unfavorable schedule changes, and loss of advancement opportunities”), Ashley and others were unable to take adequate breaks from watching disturbing content in order to protect their mental health. Nor were they able to access “adequate mental health services.” As a condition of employment, Ashley signed a contract with Telus—not TikTok—that included an arbitration agreement. In March 2022, Ashley filed a class action against TikTok and its parent company, Chinese tech firm ByteDance, for putting workers at an increased risk of mental health problems. She blamed TikTok, not Telus, for that elevated risk. The companies moved to compel arbitration, which the judge granted in October 2023, forcing Ashley's claims out of court.<sup>59</sup>

## TWITTER MASS LAYOFFS

Francisco Rodriguez was employed by Twitter through Magnit, a payroll administration company. “While these employees were classified as employees of Magnit, the duties that they performed for Twitter were indistinguishable from the employees who were employed directly by Twitter. Twitter referred to these employees as its ‘contingent workforce.’” After Elon Musk purchased the company, he started mass lay-offs at the company, and on November 12, 2022, Twitter fired thousands of employees (reportedly between 4,400 and 5,500) including Francisco. None were provided legally-required notice, “their full final pay, benefits, and expense reimbursement the same day that they were terminated, as required by California law.” When Francisco and others filed a class action, Twitter and Magnit moved to compel arbitration based on the Magnit employment agreement. The court granted their motion in an April 2023 order.<sup>60</sup>

## UBER CAR ACCIDENT

On October 3, 2021, Maurice Williams, Jeannette Williams, and Michael Floyd requested a ride through the Uber app. During the trip, their car collided with another vehicle, causing them to sustain permanent injuries. In May 2022, Maurice, Jeannette, and Michael filed a negligence suit against Uber (among others). The company then moved to compel arbitration, stating that they had waived their right to trial when they agreed to the company’s terms of service. The victims countered that they hadn’t done so since the pop-up they had to click on during the process of signing up for Uber on their smartphones “did not expressly advise them of the arbitration agreement and they were ‘not directed to or required to read’ the Terms of Use.” The trial judge rejected their argument, ruled that the agreement was enforceable, and ordered their claims into arbitration. An appeals court affirmed the decision in September 2023.<sup>61</sup>

## UBER PRIVACY BREACH

To become an Uber driver, individuals’ backgrounds are checked via Uber’s “Real Time ID Check” software. That check includes having pictures taken via the software as well as submitting additional identifying information. What drivers don’t know, however, is that Real Time ID Check uses Microsoft’s Face Application Programming so that Microsoft captures, stores, and disseminates their facial biometrics. Emad Kashkeesh and Michael Komorski were Uber drivers who submitted their photographs to Uber’s program. Like other drivers under contract with Uber, both signed the company’s 2020 Platform Access Agreement, which included a forced arbitration clause. They signed nothing with Microsoft. In May 2021, Emad and Michael filed suit against Microsoft for violating the Illinois Biometric Information Privacy Act. Over a year and half later, Microsoft moved to compel arbitration. In June 2023, the court ruled Microsoft could enforce the contracts as a third-party beneficiary and hadn’t waived its right to compel arbitration, forcing Emad and Michael to arbitrate their claim.<sup>62</sup>

## UBER WAGE THEFT

Jaswinder Singh and James Calabrese filed separate class action suits on behalf of current and former Uber drivers in 2016 and 2019, respectively, for misclassifying drivers as independent contractors, failing to pay them the minimum wage, and failing to reimburse them for business

expenses. The cases were consolidated and challenged by Uber, which argued that “each driver had agreed to Uber’s ‘Technology Services Agreement’” and this agreement contained a forced arbitration clause. In November 2021, the district court granted Uber’s motion, holding that the drivers were required to arbitrate their disputes. The 3rd Circuit Court of Appeals affirmed in April 2023.<sup>63</sup>

## WAGE THEFT/FRAUD

In July 2022, travel nurses Carolyn Miller, Teayl Miller, and Jennifer Reents brought a class action against Maxim Healthcare Services over the company’s predatory “‘bait-and-switch’ practices.” According to the complaint, Maxim offered contracts to travel nurses with a fixed-term assignment at an agreed-upon pay rate. But after the nurse accepted the position and began working, Maxim made a new “take-it-or-leave-it” demand to accept less pay or be terminated even though these nurses had already incurred travel expenses, secured short-term housing, and uprooted their lives to accept the assignment. Maxim moved to compel arbitration based on an electronic onboarding packet that it sent to these nurses. The women countered that they were the victims of fraud and “would not have accepted an assignment through Maxim or completed the arbitration agreement or its delegation provision” if they’d been aware of the company’s shady conduct. In April 2023, the court ruled that the arbitration agreement was valid and covered the nurses’ claims, forcing their case into arbitration.<sup>64</sup>

## WAGE THEFT/OVERTIME

From October 2018 to September 2021, Kenneth Holley-Gallegly worked as a truck mechanic for TA Operating in Ontario, California. In January 2022, Kenneth filed a class action against TA for failing to pay overtime wages, provide legally-compliant rest periods, furnish accurate itemized wage statements, and reimburse work expenses. Because his employment agreement contained a forced arbitration clause, TA moved to compel arbitration. The judge denied the motion, ruling it was part of a “a take it or leave it offer” that Kenneth had to sign as a condition of employment but also because it “limits Plaintiff’s rights to a jury trial even if the Agreement is unenforceable.” The 9th Circuit disagreed, ruling in July 2023 that the case must go before an arbitrator who would then decide whether the arbitration agreement was enforceable.<sup>65</sup>

## WEBSITE FEES CONCEALED

Home improvement retailer Menards sold items for in-store pickup via their website, listing prices next to each item displayed on the site. Menards failed to disclose that it would be tacking on a \$1.40 fee for each item ordered for pickup. “For example, if a customer orders a can of paint, a paintbrush, some masking tape, and a drop cloth for pickup in-store, Menard’s [would] assess a fee of \$5.60 in addition to the listed purchase price of the item.” Pilar Domer was a customer deceived by these hidden fees. In October 2022, Pilar filed a class action complaint over the “bait-and-switch scheme,” alleging violations of Indiana law. Menards sought to compel arbitration, arguing that she had agreed to arbitrate any claims against the company by accepting its terms of service (which contained an arbitration clause) when placing her order. In July 2023, the court agreed and forced Pilar’s claims into arbitration.<sup>66</sup>

## WEBSITE PRODUCT INJURIES

In March 2020, Jeffrey Santana purchased clear teeth aligners from SmileDirectClub (SDC) using its telemedicine platform and registering an account on SDC's website. He used the aligners for several months but stopped when he noticed an upper tooth was discolored. Soon after, a necrotic abscess developed in that tooth, requiring two root canals and additional treatment. He also developed a related bone infection, which spread to another tooth. When Jeffrey filed a products liability action against SDC in August 2021, the company sought to compel arbitration based on an arbitration agreement in hyperlinked documents that preceded his setting up an SDC account. The trial court denied the motion, saying the arbitration agreement was buried and the process was structured so Jeffrey could agree without even viewing the hyperlinked documents. In April 2023, a New Jersey appeals court reversed the decision and forced Jeffrey's claim into arbitration.<sup>67</sup>

## WRONGFUL TERMINATION/RETALIATION

In March 2013, Shellie Goodman started working at Deer Creek, an assisted living facility in Wimberly, Texas, where she was employed as an occupational therapist assistant. Over eight years later, when working an additional shift, she noticed severe understaffing at the facility resulting in dangerous patient neglect. She reported the situation to her supervisor and the Texas Health and Human Services Commission. Nine days after the Commission investigated, Shellie was fired. She sued for wrongful termination and retaliation, which was met with a motion to compel arbitration based on her employment agreement. The trial court found that a valid arbitration agreement didn't exist, but in January 2023, an appeals court reversed and ordered the case into arbitration.<sup>68</sup>

## NOTES

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<sup>1</sup> Legal scholarship, including empirical studies, firmly establishes that consumers do not meaningfully consent to arbitration clauses in boilerplate contracts. Nor do consumers understand the implications of arbitration clauses. See, e.g., Letter from Consumer Law Professors to Consumer Financial Protection Bureau Director Rohit Chopra re: Petition to Require Meaningful Consumer Consent Regarding the Use of Arbitration to Resolve Disputes Involving Consumer Financial Products and Services, Petition No. CFPB-2023-0047-0001, November 14, 2023, <https://fingfx.thomsonreuters.com/gfx/legaldocs/zgvorxbxypd/frankel-cfpbrule-lawprofletter.pdf>; Roseanna Sommers, "What Do Consumers Understand About Predispute Arbitration Agreements? An Empirical Investigation," July 23, 2023, <https://ssrn.com/abstract=4521064>; Jeff Sovern et al., "'Whimsy Little Contracts' with Unexpected Consequences: An Empirical Analysis of Consumer Understanding of Arbitration Agreements," 75 Md. L. Rev 1 (2015), <https://digitalcommons.law.umaryland.edu/mlr/vol75/iss1/2/>. Similarly, the Consumer Financial Protection Bureau found in 2015 that "consumers are generally unaware of whether their credit card contracts include arbitration clauses; ... less than 7% of consumers whose credit card agreements included predispute arbitration clauses stated that they could not sue their credit card issuers in court; [and] most consumers whose [credit card] agreements contain arbitration clauses wrongly believe that they can participate in class actions." Consumer Financial Protection Bureau, *Arbitration Study: Report to Congress, pursuant to Dodd-Frank Wall Street Reform and Consumer Protection Act § 1028(a)* (March 2015), [http://files.consumerfinance.gov/f/201503\\_cfpb\\_arbitration-study-report-to-congress-2015.pdf](http://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf)

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<sup>2</sup> Arbitration clauses typically include class action bans, preventing consumers from joining with others to resolve disputes. For example, as the Consumer Financial Protection Bureau found in 2015, “Nearly all the arbitration clauses studied include provisions stating that arbitration may not proceed on a class basis. Across each product market, 85-100% of the contracts with arbitration clauses – covering close to 100% of market share subject to arbitration in the six product markets studied – include such no-class arbitration provisions. Although these terms effectively preclude all class proceedings, in court or in arbitration, some arbitration clauses also expressly waive the consumer’s ability to participate in class actions in court.” Consumer Financial Protection Bureau, *Arbitration Study: Report to Congress, pursuant to Dodd–Frank Wall Street Reform and Consumer Protection Act § 1028(a)* (March 2015), [http://files.consumerfinance.gov/f/201503\\_cfpb\\_arbitration-study-report-to-congress-2015.pdf](http://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf)

<sup>3</sup> Jacob Gershman, “As More Companies Demand Arbitration Agreements, Sexual Harassment Claims Fizzle,” *Wall Street Journal*, January 25, 2018, <https://www.wsj.com/articles/as-more-employees-sign-arbitration-agreements-sexual-harassment-claims-fizzle-1516876201>

<sup>4</sup> Ibid.

<sup>5</sup> American Association for Justice, *The Truth About Forced Arbitration* (September 2019), <https://www.justice.org/resources/research/the-truth-about-forced-arbitration>

<sup>6</sup> Economic Policy Institute, “Correcting the record,” August 1, 2017, <https://www.epi.org/publication/correcting-the-record-consumers-fare-better-under-class-actions-than-arbitration/>

<sup>7</sup> *American Express v. Italian Colors Restaurant*, 133 S. Ct. 2403 (2013); *AT&T Mobility LLC v. Concepcion*, 131 S.Ct. 1740 (2011).

<sup>8</sup> *Epic Systems Corp. v. Lewis*, 138 S. Ct. 1612 (2018).

<sup>9</sup> Adam Liptak, “Supreme Court Divided on Arbitration for Workplace Cases,” *New York Times*, October 2, 2017, <https://www.nytimes.com/2017/10/02/us/politics/supreme-court-workplace-arbitration.html>

<sup>10</sup> Imre Stephen Szalai, “The Prevalence of Consumer Arbitration Agreements by America’s Top Companies,” 52 *UC Davis L. Rev. Online* 233 (February 2019), <https://lawreview.law.ucdavis.edu/online/vol52/52-online-Szalai.pdf>

<sup>11</sup> Guy Molyneux and Geoff Garin, *National Survey on Required Arbitration*, Hart Research Associates (2019). The U.S. Defense Department also found that “most predatory lenders require borrowers to waive their rights to go to court to resolve disputes and instead submit borrowers to private adjudication through mandatory arbitration.” U.S. Department of Defense, *Report on Predatory Lending Practices Directed at Members of the Armed Forces and their Dependents* (August 9, 2006), <https://apps.dtic.mil/sti/pdfs/ADA521462.pdf>

<sup>12</sup> See, e.g., David Dayen, “Tech Companies’ Big Reveal: Hardly Anyone Files Arbitration Claims,” *American Prospect*, November 26, 2019, <https://prospect.org/power/tech-companies-hardly-anyone-files-arbitration-claims/>

<sup>13</sup> Economic Policy Institute, *Unchecked corporate power; Forced arbitration, the enforcement crisis, and how workers are fighting back* (May 2019), <https://files.epi.org/uploads/Unchecked-Corporate-Power-web.pdf>

<sup>14</sup> Collin Krabbe, “Mother Must Arbitrate Child’s Trampoline Park Injury Suit,” *Law360*, October 25, 2023, <https://www.law360.com/articles/1736036/mother-must-arbitrate-child-s-trampoline-park-injury-suit>; *K.H. by and through Guardians v. Chicago Urban Air LLC*, 2023 WL 6976990 (memorandum opinion and order); *Headlee v. Chicago Urban Air*, Case No. 2022LA000441 (Will County Cir. Ct., Ill.) (complaint, July 13, 2022).

<sup>15</sup> Kelcey Caulder, “Colo. Judges Say Car Buyer Must Arbitrate With Credit Union,” *Law360*, May 5, 2023, <https://www.law360.com/articles/1604472>; *Macasero v. Ent Credit Union*, 533 P.3d 982 (2023), *Macasero v. Ent Credit Union*, 2022 WL 20334643 (plaintiff-appellee’s answer brief).

<sup>16</sup> Henrik Nilsson, “Bloomberg Subscriber Must Arbitrate Tracking Privacy Suit,” *Law360*, September 15, 2023, <https://www.law360.com/articles/1722318/bloomberg-subscriber-must-arbitrate-tracking-privacy-suit>; *Graham v. Bloomberg L.P.*, 2023 WL 6037974 (opinion and order); *Graham v. Bloomberg L.P.*, Case No. 1:22-cv-07015 (S.D.N.Y.) (class action complaint, August 17, 2022).

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- <sup>17</sup> Katryna Perera, "Schwab Gets Traders' 'Best Execution' Suit Sent To Arbitration," *Law360*, February 3, 2023, <https://www.law360.com/articles/1572554>; *Crago v. Charles Schwab & Co., Inc.*, 2023 WL 1478469 (order granting motion to compel arbitration and denying renewed motion for class certification); *Crago v. Charles Schwab & Co., Inc.*, 2021 WL 4990234 (order denying motion for class certification); *Crago v. Charles Schwab & Co., Inc.*, Case No. 3:16-cv-03938 (N.D. Cal.) (complaint, July 13, 2016).
- <sup>18</sup> Nadia Dreid, "T-Mobile Gets Suit Over 5G Move Kicked Into Arbitration," *Law360*, January 26, 2023, <https://www.law360.com/articles/1569514>; *Moreno v. T-Mobile USA, Inc.*, 2023 WL 401913 (order granting motion to compel arbitration); *Moreno v. T-Mobile USA, Inc.*, Case No. 2:22-cv-00843 (W.D. Wash) (class action complaint, June 15, 2022).
- <sup>19</sup> Julie Steinberg, "Samsung Sends Galaxy Phone Buyer's False-Ad Suit to Arbitration," *Bloomberg Law*, October 4, 2023, <https://www.bloomberglaw.com/bloomberglawnews/litigation/X7L364IS000000>; Gina Kim, "Samsung Hit With False Ad Suit Over Galaxy Storage Capacity," *Law360*, January 10, 2023, <https://www.law360.com/articles/1563523/samsung-hit-with-false-ad-suit-over-galaxy-storage-capacity>
- <sup>20</sup> *Bernsley v. Barclays Bank Delaware*, 2023 WL 2291251 (order granting motion to compel arbitration); *Bernsley v. Barclays Bank Delaware*, Case No. 2:22-cv-07592 (L.A. County Superior Ct., Cal.) (complaint, October 18, 2022).
- <sup>21</sup> *Hartmann v. Citibank NA*, 2023 WL 5759585 (order); *Hartmann v. Citibank NA*, Case No. 2:22-cv-01961-MHB (D. Ariz.) (complaint, November 17, 2022).
- <sup>22</sup> Bonnie Eslinger, "Coinbase Wins Bid To Arbitrate Suit Over Data Safeguards," July 6, 2023, *Law360*, <https://www.law360.com/classaction/articles/1696802/coinbase-wins-bid-to-arbitrate-suit-over-data-safeguards>; *Kattula v. Coinbase Global, Inc.*, 2023 WL 4373385 (opinion and order); *Kattula v. Coinbase Global, Inc.*, 2022 WL 20112665 (first amended complaint).
- <sup>23</sup> Katryna Perera, "Coinbase Gets Hacker Theft Suit Sent To Arbitration," *Law360*, August 2, 2023, <https://www.law360.com/articles/1706837/coinbase-gets-hacker-theft-suit-sent-to-arbitration>; *Aggarwal v. Coinbase, Inc.*, 2023 WL 4935003 (order granting motion to compel arbitration and staying case); *Aggarwal v. Coinbase, Inc.*, Case No. 3:22-cv-4829 (N.D. Cal.) (complaint, August 23, 2022).
- <sup>24</sup> *Brito v. LG Electronics USA, Inc.*, 2023 WL 2675132 (opinion); *Brito v. LG Electronics USA, Inc.*, Case No. 2:22-cv-05777 (D. N.J.) (complaint filed September 29, 2022).
- <sup>25</sup> *Ford v. UHG I, LLC*, 2023 WL 2185751 (memorandum opinion and order); *Ford v. UHG I, LLC*, Case No. 1:22-CV-00840 (Anne Arundel County Cir. Ct., MD) (complaint, February 21, 2022).
- <sup>26</sup> *Audish v. American Express Company*, 2023 WL 2366888 (opinion and order); *Audish v. American Express Company*, Case No. 1:21-cv-10127 (S.D.N.Y.) (complaint, November 29, 2021).
- <sup>27</sup> Hailey Konnath, "Disney Can Arbitrate ESPN Subscriber's Site Tracking Claims," *Law360*, August 1, 2023, <https://www.law360.com/articles/1706398/disney-can-arbitrate-espn-subscriber-s-site-tracking-claims>; *Sadlock v. Walt Disney Company*, 2023 WL 4869245 (order granting defendant's motion to compel arbitration and stay the action); *Sadlock v. Walt Disney Company*, Case No. 3:22-cv-09155-AGT (N.D. Cal.) (class action complaint, December 29, 2022).
- <sup>28</sup> *Coons v. Yum! Brands, Inc.*, 2023 WL 3320149 (memorandum and order).
- <sup>29</sup> *Edmundson v. Klarna, Inc.*, 2023 U.S. App. LEXIS 29285 (opinion); *Edmundson v. Klarna, Inc.*, 642 F. Supp. 3d 256 (2022); *Edmundson v. Klarna, Inc.*, Case No. 3:21-cv-00758-KAD (D. Conn.) (complaint, June 2, 2021).
- <sup>30</sup> *SCI Texas Funeral Services, LLC v. Gonzalez*, 2023 WL 3637979 (memorandum opinion); *SCI Texas Funeral Services, LLC v. Gonzalez*, 2022 WL 903578 (appellee's second amended brief).
- <sup>31</sup> Danielle Ferguson, "Mich. Judge Sends GM Transmission Dispute To Arbitration," *Law360*, March 22, 2023, <https://www.law360.com/classaction/articles/1588931/mich-judge-sends-gm-transmission-dispute-to-arbitration>; *Harper v. General Motors*, 2023 WL 2586298 (opinion and order granting motion to compel arbitration and denying as moot motion to stay discovery). According to *Law360*, a similar class action was not forced into arbitration since GM sought to force arbitration too late. Danielle Ferguson, "Mich. Judge Sends GM Transmission Dispute To Arbitration," *Law360*, March 22, 2023, <https://www.law360.com/classaction/articles/1588931/mich-judge-sends-gm-transmission-dispute-to-arbitration>



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<sup>32</sup> Gina Kim, "Ex-Grindr Privacy Exec Must Arbitrate Wrongful Firing Suit," *Law360*, September 8, 2023, <https://www.law360.com/compliance/articles/1719633/ex-grindr-privacy-exec-must-arbitrate-wrongful-firing-suit>; Dorothy Atkins, "Ex-Grindr Exec Accuses App Of Violating Privacy Laws," *Law360*, June 15, 2023, <https://www.law360.com/articles/1689669/ex-grindr-exec-accuses-app-of-violating-privacy-laws>

<sup>33</sup> *Bixby v. Toyota Motor North America, Inc.*, 2023 WL 2110884 (memorandum opinion and order); *Bixby v. Toyota Motor North America, Inc.*, Case No. 2:22-cv-00059-DLB-CJS (E.D. Ky.) (complaint, May 4, 2022).

<sup>34</sup> Eric T. Berkman, "Arbitration agreement enforceable in med-mal case vs. eye surgeon," *Massachusetts Lawyers Weekly*, September 14, 2023, <https://masslawyersweekly.com/2023/09/14/arbitration-agreement-enforceable-in-med-mal-case-vs-eye-surgeon/>; *Rivera v. Stetson*, 103 Mass. App. Ct. 187 (2023); *Rivera v. Stetson*, 2022 WL 18780629 (opposition brief of plaintiff-appellee).

<sup>35</sup> Y. Peter Kang, "Panel Backs Arbitration For Suit Over Nude Instagram Photos," *Law360*, October 4, 2023, <https://www.law360.com/articles/1729408/panel-backs-arbitration-for-suit-over-nude-instagram-photos>; *M.P. v. Guiribitey Cosmetic & Beauty Institute, Inc.*, 2023 WL 6450457 (opinion); *M.P. v. Guiribitey Cosmetic & Beauty Institute, Inc.*, 2022 WL 18493741 (appellant's initial brief).

<sup>36</sup> Mary Anne Pazanowski, "Arbitration Clause Binds Estate in Suit Against Nursing Home," *Bloomberg Law*, August 14, 2023, <https://www.bloomberglaw.com/bloomberglawnews/litigation/X9KJF188000000>; *Pacifica Rosemont LLC v. Wrongful Death Est. of Montoya*, 2023 U.S. Dist. LEXIS 140284 (memorandum opinion and order); *Pacifica Rosemont LLC v. Wrongful Death Estate of Phyllis Montoya*, 2022 WL 17819186 (defendant's response in opposition to plaintiff's motion to compel arbitration).

<sup>37</sup> *Rotan v. Unlimited Development, Inc.*, 2023 WL 2173681 (order).

<sup>38</sup> *Flora v. Prism Labs, Inc.*, 2023 WL 5061955 (order granting motion to compel arbitration).

<sup>39</sup> *H&T Fair Hills, Ltd. V. Alliance Pipeline L.P.*, 76 F.4th 1093 (2023).

<sup>40</sup> *Clark v. Foresight Energy, LLC*, 2023 WL 5660087 (opinion).

<sup>41</sup> *Naizgi v. HSS, Inc.*, 2023 WL 4933183 (order); *Naizgi v. HSS, Inc.*, Case No. 1:22-cv-02409-RMR (D. Col.) (complaint, September 19, 2022).

<sup>42</sup> *Powell v. Prime Comms Retail, LLC*, 2023 WL 2375918 (opinion).

<sup>43</sup> *Berkelhammer v. ADP TotalSource Group, Inc.*, 74 F.4th 115 (2023); *Berkelhammer v. NFP Retirement, Inc.*, 2022 WL 1617665 (appellants' brief); *Berkelhammer v. ADP TotalSource Group, Inc.*, 2022 WL 1059474 (order); *Berkelhammer v. ADP TotalSource Group, Inc.*, Case No. 2:20-cv-05696 (D.N.J.) (complaint, May 7, 2020).

<sup>44</sup> According to the April 2023 complaint, Patel did this by "denying [her] promotion and increased compensation based on an alleged 'performance deficiency,' while promoting a male employee who exhibited the same 'performance deficiency'; permitting a male employee to engage in conduct and receive benefits [Patel] repeatedly denied [Michelle]; replacing [her] with a man while she was still on the job; dismissing [her] questions or concerns with disrespectful responses; abusing [her] with rude and unnecessary text messages outside of working hours and expecting immediate responses; sending employees of the Store to other CVS locations when [he] knew that [she] needed those employees, resulting in intentionally overworking [Michelle], sometimes over 80 hours a week; destroying morale and undermining [her] with employees she managed by refusing to grant reasonable raises she approved for those employees; minimizing [her] needs as an adult outside of work, such as by saying, 'I don't need excuses' when [she] informed [Patel] that 'after 10 hours of work, [she] went home to take care of [her] husband,' who CVS knew had cancer; [and] pressuring [her] to shovel snow during a blizzard." *Cornelius v. CVS Pharmacy, Inc.*, Case No. 2:23-cv-01858-SDW-AME (D.N.J.) (complaint, April 3, 2023).

<sup>45</sup> *Cornelius v. CVS Pharmacy, Inc.*, 2023 WL 6876925 (opinion); *Cornelius v. CVS Pharmacy, Inc.*, Case No. 2:23-cv-01858-SDW-AME (D.N.J.) (complaint, April 3, 2023).

<sup>46</sup> As Karen and Wolensky discussed a work project via email, he "unexpectedly responded to [her] work inquiry by stating, 'BMBWC.' 'BMBWC' is an acronym for 'Bite My Big White Cock.'" Wolensky "messed her a task and disgustingly stated, 'Karen, could you type something up for Han and then give me a blowjob please? Thanks!!' with laughing face emoticons." Wolensky would go into Karen's office and write sexually inappropriate comments on her whiteboard. "Such comments included, 'Goal for 2021 SMBFDYW' which meant 'suck my big fat dick you whore,'" and "'I need my cock sucked,' after she requested

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medical time off to recover from her surgery." During a firm meeting regarding sexual harassment training, Wolensky said, "'Why do I need to take sexual harassment training? I have insurance.'" Firm management "heard his comment and laughed." Co-workers witnessed Wolensky's sexually offensive conduct towards Karen, with one colleague stating she saw Wolensky "pointing to his penis while having a conversation with [Karen]" and that Buchalter condoned a "frat-boy and 'good old boys' club' culture...." When Karen alerted Wolensky to the fact that she was having a second surgery in 2020, "he responded: 'You want a war? You got one. Take another offer.'" Wolensky publicly ridiculed Karen by posting on his LinkedIn account, "'Karen Hurdle #Kudos #ThankYou very much for everything you do. NOT!!!" When Karen told Wolensky that she didn't want to be humiliated again, he responded: "'Is that a threat? After everything I have done for you have now crossed the line. I think it is time we part from each other. Let's try and make it amicable. I will talk to administration shortly.'" Thinking she was being fired, Karen received an email from Wolensky a few hours later saying that he was "'having a bad day.'" *Hurdle v. Buchalter*, Case No. 22STCV23133 (L.A. County Superior Ct., Cal.) (complaint, July 18, 2022).

<sup>47</sup> Craig Clough, "Buchalter Wins Bid To Arbitrate Worker's Sex Harassment Suit," *Law360*, June 5, 2023, <https://www.law360.com/articles/1684854/buchalter-wins-bid-to-arbitrate-worker-s-sex-harassment-suit>; *Hurdle v. Buchalter*, 2023 Cal. Super. LEXIS 36163 (opinion).

<sup>48</sup> Crystal was called to Medina's office, where he proceeded to close the door, direct Crystal to his desk, and put his hands down her pants, digitally penetrating her vagina. In shock, she didn't know how to react. He "then pulled down her pants and performed cunnilingus on her" and "then pulled his pants down and put a condom on his penis. At that point, [Crystal] told [him] to stop and that she had a husband. In response, [he] stated that her 'pussy' tasted good enough for now and that she could leave." *Settle v. Securitas Security Services USA, Inc.*, Case No. HUD-L-001934-22 (Hudson County Super. Ct., N.J.) (complaint, June 14, 2022).

<sup>49</sup> *Settle v. Securitas Security Services USA, Inc.*, 2023 WL 2909118 (opinion); *Settle v. Securitas Security Services USA, Inc.*, 2022 WL 20139857 (order); *Settle v. Securitas Security Services USA, Inc.*, Case No. HUD-L-001934-22 (Hudson County Super. Ct., N.J.) (complaint, June 14, 2022).

<sup>50</sup> *Barnes v. Festival Fun Parks, LLC*, 2023 WL 4209745 (opinion); *Barnes v. Festival Fun Parks*, Case No. 3:22-cv-00165-SLH (W.D. Pa.) (complaint, September 23, 2022).

<sup>51</sup> The two women chose to use pseudonyms in bringing their claims.

<sup>52</sup> "Ex-Football Coach, Rover Get Arbitration In Hidden-Cam Suits," *Law360*, <https://www.law360.com/personal-injury-medical-malpractice/articles/1738870/ex-football-coach-rover-get-arbitration-in-hidden-cam-suits>; *K.T. v. A Place for Rover*, 2023 WL 7167580 (memorandum re: motion to compel arbitration and to stay); *K.T. v. A Place for Rover*, Case No. 230600573 (Phil. Ct. Common Pleas, Pa.) (complaint, June 6, 2023).

<sup>53</sup> Abby Wargo, "Southwest Pushes Ramp Agent's OT Suit Into Arbitration," *Law360*, March 13, 2023, <https://www.law360.com/articles/1584923/southwest-pushes-ramp-agent-s-ot-suit-into-arbitration>; *Saxon v. Southwest Airlines Co.*, 2023 WL 2456382 (memorandum opinion and order); *Southwest Airlines Co. v. Saxon*, No. 21-309 (brief of respondent, February 24, 2022), [https://www.supremecourt.gov/DocketPDF/21/21-309/214945/20220224201804879\\_2022.2.24%20Saxon%20merits%20opp.pdf](https://www.supremecourt.gov/DocketPDF/21/21-309/214945/20220224201804879_2022.2.24%20Saxon%20merits%20opp.pdf); *Saxon v. Southwest*, Case No. 1:19-cv-00403 (N.D. Ill.) (collective action complaint, January 18, 2019).

<sup>54</sup> Bernie Pazanowski, "Southwest Forces Retaliatory Discharge Suit Into Arbitration," *Bloomberg Law*, August 28, 2023, <https://www.bloomberglaw.com/bloomberglawnews/litigation/X5TGDLPO000000>; *Swanson v. Southwest Airlines Co., Inc.*, Case No. 211-cv-05595 (N.D. Ill.) (memorandum opinion and order, August 26, 2023), <https://law.justia.com/cases/federal/district-courts/illinois/ilndce/1:2021cv05595/408172/34/>

<sup>55</sup> Henry's lawsuit "came on the heels of a [Reuters report](#) that Tesla employees had used an internal messaging system to privately share highly invasive videos and images that were captured on customers' cameras between 2019 and 2022." Mike Scarella, "US judge says Tesla privacy case belongs in arbitration, not court," *Reuters*, October 13, 2023, <https://www.reuters.com/legal/litigation/us-judge-says-tesla-privacy-case-belongs-arbitration-not-court-2023-10-13>

<sup>56</sup> Jonathan Capriel, "California Judge Sends Tesla Camera Suit To Arbitration," *Law360*, October 13, 2023, <https://www.law360.com/articles/1732437/california-judge-sends-tesla-camera-suit-to-arbitration>; *Yeh v. Tesla, Inc.*, Case No. 3:23-cv-01704 (N.D. Cal.) (order granting motion to compel arbitration, October 12, 2023); *Yeh v. Tesla, Inc.*, 2023 WL 6476306 (first amended complaint).

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- <sup>57</sup> Bonnie Eslinger, "Tesla Can Arbitrate Buyers' 'Full Self-Driving' Car Claims," *Law360*, October 2, 2023, <https://www.law360.com/articles/1728313/tesla-can-arbitrate-buyers-full-self-driving-car-claims>; *In re Tesla Advanced Driver Assistance Systems Litigation*, 2023 WL 6391477 (order granting motion to compel arbitration, granting motion to dismiss, and denying motion for preliminary injunction). Thomas's claims were dismissed as time-barred since the relevant statutes of limitations for his claims ranged from two to four years and he filed suit more than five years after purchasing his Tesla. Bonnie Eslinger, "Tesla Can Arbitrate Buyers' 'Full Self-Driving' Car Claims," *Law360*, October 2, 2023, <https://www.law360.com/articles/1728313/tesla-can-arbitrate-buyers-full-self-driving-car-claims>
- <sup>58</sup> *Oberstein v. Live National Entertainment, Inc.*, 60 F.4th 505 (2023); *Oberstein v. Live Nation Entertainment, Inc.*, 2021 WL 4772885 (ruling on Ticketmaster LLC and Live Nation Entertainment, Inc.'s amended motion to compel arbitration).
- <sup>59</sup> *Young v. ByteDance Inc.*, 2023 WL 7096937 (order granting motion to compel arbitration); *Young v. ByteDance Inc.*, Case No. 3:22-cv-01883 (N.D. Cal.) (complaint, March 24, 2022).
- <sup>60</sup> *Rodriguez v. Twitter, Inc.*, 2023 WL 3168321 (order re arbitration); *Rodriguez v. Twitter, Inc.*, Case No. 3:22-cv-7222 (N.D. Cal.) (class action complaint and jury demand, November 16, 2022).
- <sup>61</sup> Jonathan Capriel, "NJ Court Sends Uber Crash Suit To Arbitration," *Law360*, September 8, 2023, <https://www.law360.com/articles/1719173/nj-court-sends-uber-crash-suit-to-arbitration>; *Williams v. Ysabel*, 2023 WL 5768422 (opinion).
- <sup>62</sup> *Kashkeesh v. Microsoft Corp.*, 2023 WL 4181226 (memorandum opinion and order); *Kashkeesh v. Microsoft Corp.*, Case No. 1:21-CV-03229 (N.D. Ill.) (docket viewed November 4, 2023).
- <sup>63</sup> "3rd Circuit: Uber Drivers Are Not Interstate Drivers Exempt From Arbitration," 23-5 *Mealey's Litig. Rep. Class Actions* 13 (2023); *Singh v. Uber Technologies, Inc.*, 67 F.4th 550 (2023); *Singh v. Uber Technologies, Inc.*, 571 F.Supp.3d 345 (2021); *Singh v. Uber Technologies, Inc.*, Case No. L-1464-16 (Monmouth County Superior Ct., NJ) (individual and class action complaint, April 22, 2016)
- <sup>64</sup> *Miller v. Maxim Healthcare Services, Inc.*, 2023 WL 2957413 (memorandum opinion); *Miller v. Maxim Healthcare Services, Inc.*, Case No. 1:22-cv-01782-ADC (D. Md.) (class action complaint, July 20, 2022).
- <sup>65</sup> Emmy Freedman, "9th Circ. Sends Mechanic's Wage Suit To Arbitrator," *Law360*, July 21, 2023, <https://www.law360.com/articles/1702622/9th-circ-sends-mechanic-s-wage-suit-to-arbitrator>; *Holley-Gallegly v. TA Operating LLC*, 74 F.4th 997 (2023); *Holley-Gallegly v. TA Operating LLC*, 2022 WL 9959778 (order denying defendant's motion to compel arbitration and vacating September 19, 2022 hearing); *Holley-Gallegly v. TA Operating LLC*, Case No. CIVSB2201378 (San Bernadino County Superior Ct., Cal.) (class action complaint, January 19, 2022).
- <sup>66</sup> *Domer v. Menard, Inc.*, Case No. 3:22-cv-00444-JDP (W.D. Wis.) (opinion and order, July 26, 2023); *Domer v. Menard, Inc.*, 2023 WL 7096646 (appellant's brief); *Domer v. Menard, Inc.*, Case No. 3:22-cv-00444-JDP (W.D. Wis.) (amended class action complaint, October 7, 2022).
- <sup>67</sup> *Santana v. SmileDirectClub, LLC*, 475 N.J.Super. 279 (2023); *Santana v. SmileDirectClub LLC*, 2021 WL 11536709 (complaint).
- <sup>68</sup> Janet Miranda, "Nursing Home Gets Arbitration of Fired Worker's Retaliation Suit," *Bloomberg Law*, January 12, 2023, <https://news.bloomberglaw.com/litigation/nursing-home-gets-arbitration-of-fired-workers-retaliation-suit>; *SSC Wimberley Operating Company, LLC v. Goodman*, 665 S.W.3d 729 (2023); *SCC Wimberly Operating Company, LLC v. Goodman*, Case No. 04-22-00355-CV (Tex. Ct. App.) (appellee brief, October 14, 2022).