September 18, 2025

The Honorable Gavin Newsom
Governor, State of California
1021 O Street, Suite 9000
Sacramento, CA 95814

RE: SB 82 (Umberg), Enrolled September 10, 2025 – REQUEST FOR VETO – Likely preempted by the FAA, driving up state costs with wasteful litigation and burdening consumers and small businesses with more lawsuits, excessive contracts, and clogged courts.

The Civil Justice Association of California (CJAC) and the below-signed organizations respectfully request that you **VETO SB 82**, which unduly restricts the use of arbitration agreements in a vast array of consumer contracts including for goods, services, or credit. Although the bill uses the phrase "dispute resolution," the bill encompasses arbitration agreements, which is a form of dispute resolution.

Because the bill is almost certainly preempted by the Federal Arbitration Act (FAA), California courts will be forced to waste time and resources on litigation over its enforceability, rather than on resolving disputes that belong in the judicial system. And while well-intentioned, SB 82 threatens the ability of both consumers and businesses to use arbitration, which is a faster, less costly alternative to expensive courtroom litigation, benefiting all parties as well as our courts.

Below are the reasons why SB 82 should be vetoed:

1. **SB 82 is likely preempted by the Federal Arbitration Act.**

The wide use of arbitration agreements in California creates the potential for time-consuming, costly litigation over whether SB 82 is preempted by the FAA because it restricts the ability of consumers and businesses to choose arbitration as a way to resolve disputes. Although the sponsors of SB 82

may believe that they have found a way around FAA preemption by having the bill regulate "dispute resolution provisions" instead of arbitration provisions, the courts are likely to see through the ruse. The sponsors have made clear that the purpose of the bill is to restrict the circumstances in which parties may agree to have their disputes resolved through arbitration.

The proponents cite, as their basis for SB 82, the reported attempt by Disney to enforce arbitration in a tragic personal injury case. Disney ultimately backed down, showing the current process worked without legislation. Also, the FAA empowers the courts to address arbitration agreements, including "infinite" ones, that they deem unconscionable or unenforceable under the FAA.[1] As the author's office acknowledges, "Courts have often struck down such broad clauses, citing unfairness and lack of clear agreement."[2] This evaluation, however, is for the courts and not in the purview of the California Legislature. Therefore, SB 82's blanket restriction on the use of arbitration in a wide range of contracts, aimed at blocking "infinite" agreements, will likely be preempted.

The FAA preempts state laws aimed at curtailing arbitration, be it overtly or in an ostensibly neutral way. As the U.S. Supreme Court has explained, "state-law rules that stand as an obstacle to the accomplishment of the FAA's objectives" are preempted even if they appear on their face not to disfavor arbitration. *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 343 [131 S.Ct. 1740, 1748, 179 L.Ed.2d 742, 753].

Federal courts evaluating the validity of SB 82 will look with skepticism at claims that SB 82 is not intended to limit arbitration. The U.S. Supreme Court has had to intervene frequently to prevent California rules from standing as an obstacle to accomplishing the FAA's objectives. See *Southland Corp. v. Keating*, 465 U.S. 1 (1984) (California Franchise Investment Law preempted by the FAA); *Perry v. Thomas*, 482 U.S. 483 (1987) (California Labor Code provision preempted); *Preston v. Ferrer*, 552 U.S. 346 (2008) (statute purporting to confer exclusive jurisdiction on a state agency preempted); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011) (California rule regarding arbitrability of classwide proceedings preempted); *DIRECTV, Inc. v. Imburgia*, 577 U.S. 47, 54 (2015) (California courts could not use a choice of law rule to overcome Supreme Court invalidation of a California rule that was hostile to arbitration); *Viking River Cruises, Inc. v. Moriana*, 142 S. Ct. 1906, 1911 (2022) (FAA preempts a California rule that precluded division of statutory representative actions into individual and non-individual claims through an agreement to arbitrate).

The fate of AB 51 (Gonzales, Ch. 7111, Stats. 2019), which attempted to restrict mandatory employment arbitration, is illustrative of the perils of attempting to defend against FAA preemption issues in federal court. Litigation over the legality of AB 51 by the Attorney General lasted for three years and ended in a decision by the Ninth Circuit that AB 51 stood as an obstacle to the FAA. The State of California ended up having to pay the plaintiff over $80,000 in attorneys' fees, in addition to undisclosed costs expended on its own counsel and staff.

2. **SB 82 would lead to increased litigation and costs over whether disputes are within scope and appears to do so retroactively, harming consumers and businesses and further clogging California's courts.**

SB 82 significantly narrows the claims that could go to arbitration in connection with a contract. It limits dispute resolution solely to disputes pertaining to the "use, payment, or provision" of the provided good, service, money, or credit. Moreover, the bill does not specify that it applies to

[1] 9 U.S.C. § 2 (Arbitration agreements enforceable "save upon such grounds as exist at law or in equity for the revocation of any contract.").
[2] Senate Judiciary Committee Analysis, April 18, 2025, at page 3.

contracts newly entered after January 1, 2026 (as it did when introduced), making it retroactive and an unconstitutional impairment to contracts.

The language of SB 82 leaves many potential questions about what is within the scope of the dispute resolution. For example, if a consumer purchases a television, does a dispute over whether the television can be returned fit within the use, payment, or provision of the television? Is the store required to enter into another contract to ensure returns are subject to arbitration?

The questions created by SB 82 could result in businesses requiring customers to enter multiple contracts for each interaction with a business, which will be burdensome and frustrating for both sides. SB 82 could also result in hundreds of thousands of new cases litigating whether an issue meets SB 82's permitted scope, and then if deemed out of scope, litigating those issues up through appeal. Lawyers would collect thousands of billable hours, while simple consumer disputes that could have been resolved quickly are now bogged down in endless litigation.

At a time when Californians are struggling under economic pressures and the state has severe deficits, SB 82, if enacted, will mean more costs for everyone.

3. **Policymakers should promote, not limit arbitration, as arbitration benefits consumers, businesses, and the courts.**

SB 82 runs contrary to long-established principles favoring arbitration, under the FAA and recognized by the courts:

> The [U.S.] Supreme Court's cases "place it beyond dispute that the FAA was designed to promote arbitration." The Court has "repeatedly described the Act as 'embod[ying] [a] national policy favoring arbitration,' and 'a liberal federal policy favoring arbitration agreements, notwithstanding any state substantive or procedural policies to the contrary.'"[3]

Arbitration is a critical means for reducing litigation that wastes the time and resources of consumers, the courts, and businesses. Small businesses, in particular, rely upon arbitration to keep costs low, as the expense of even one court trial can wipe out a small business.

Recent studies show that employees and consumers fare better with arbitration. Arbitration is faster and employees are three times more likely to win in arbitration than in court. Employees on average win twice as much in arbitration as in court, and consumers on average win more as well.[4]

The group that benefits the least from arbitration are lawyers. The more cases drag on in court, the higher their billable hours and attorneys' fees awards.

For the foregoing reasons, this coalition respectfully uges your **VETO** of **SB 82**.

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[3] *Chamber of Commerce of the United States v. Bonta* (9th Cir. 2023) 62 F.4th 473, 483, quoting *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 345-46 (citations omitted).

[4] Nam D. Pham, Ph.D. and Mary Donovan, *Fairer, Faster, Better III: An Empirical Assessment of Consumer and Employment Arbitration*, March 2022. https://instituteforlegalreform.com/wp-content/uploads/2022/03/Fairer-Faster-Better-III.pdf.

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Sincerely,

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