September 23, 2019

The Honorable Gavin Newsom
Governor, State of California
State Capitol
Sacramento, CA 95814

SUBJECT: SB 707 (WIECKOWSKI) ARBITRATION AGREEMENTS: ENFORCEMENT REQUEST FOR VETO

Dear Governor Newsom:

We respectfully **REQUEST** your **VETO** of **SB 707** (Wieckowski), as we are concerned with the extremely broad definition of a "material breach," which could lead to significant sanctions and costs against a "drafting party" to an arbitration agreement.

SB 707 basically states that any "material breach" of an arbitration agreement by the drafting party, which is defined in the bill as any failure to timely pay a fee or cost associated with arbitration, will result in severe sanctions against the company, a potential default judgment, as well as attorney's fees. While the coalition is not opposed to the application of sanctions and attorney's fees when a company is intentionally withholding any payment to strategically delay arbitration, that is not always the case with a failure to pay. Rather, there are several justified reasons for withholding payment, which have not been addressed or acknowledged in the definition of "material breach," including:

(1) Since the California Supreme Court holding in *Dynamex Operations West v. Superior Court ("Dynamex")* that completely changed the standard for classifying individuals as independent contractors versus employees, trial attorneys have filed thousands of requests for arbitration, claiming misclassification. However, numerous individuals whom the trial attorneys have "signed up" for pursuing a claim (1) dispute that they are actually represented by the attorney; (2) are no shows at arbitration and basically have abandoned their claims; and/or (3) have never worked for the company. In such circumstances, the companies have **legitimately** withheld payment of arbitration fees and costs, while a court determines whether the arbitration should move forward. Yet, under **SB 707**, their failure to pay for an abandoned claim/arbitration would be deemed a "material breach," allowing the recovery of attorney's fees, and the potential for monetary or evidentiary sanctions and even a default judgment;

(2) Under **SB 707**, the failure to pay even a nominal amount in arbitration is treated the same as failure to pay the entire cost/fee for arbitration. Accordingly, an employer or company that makes an unintentional mistake regarding payment will be treated the same as an employer or company who intentionally withheld the entire payment in an effort to delay the arbitration.

(3) An employer or company that enters into an arbitration agreement at the outset of the relationship may not have the same financial means at the time arbitration is demanded. For example, a company could go bankrupt before an arbitration is demanded by a consumer or employer and unable to pay the fees and costs associated with arbitration. While this certainly should entitle a consumer or employee to go to court instead of arbitration, it is not bad faith or willful conduct on the part of the employer or company to avoid arbitration and should not then trigger the sanctions set forth in **SB 707** with a failure to pay.

We attempted to resolve these concerns with the author and sponsor but were unable to reach a resolution.

Accordingly, we respectfully **REQUEST** your **VETO** of **SB 707.**

Sincerely,