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Hon. Gary Gensler, Chair
Financial Consumer Protection Commission
3E Senate Office Building
Annapolis, MD 21401

Re: State measures to address forced arbitration

Dear Mr. Gensler,

I thank you for the opportunity to speak with you, both as a private attorney and on behalf of the National Association of Consumer Advocates, on the issue of forced arbitration. My testimony is based on my personal experiences as a civil litigator for 30 years and a consumer protection attorney for the last 16 years.

In 2002, shortly after I transitioned from being a personal injury defense attorney to a plaintiff's attorney in a private practice, people began calling who were victims of consumer protection violations, primarily auto fraud. As I heard their stories I became incensed that people could be treated this way. When I read the state and federal consumer protection statutes I realized that I could use these laws to help them. For the last 16 years I have built a consumer protection practice along with my personal injury practice, handling primarily car fraud cases.

The consumer protection cases have never been easy. In contrast to negligence cases, these cases involve unfair and deceptive business practices, and most businesses fight hard to protect their status quo. There are only a handful (approximately 8) private consumer protection attorneys in Maryland, and even less handling auto fraud, which should indicate that the practice is neither easy nor very lucrative. However, for 15 years, until 2017 when I began being forced into arbitration on a regular basis, I estimate that I have able to assist over 120 clients in getting out of bad car loans and dangerous cars and get compensated when they were victims of illegal behavior. During this time, I have written auto fraud articles which were published in the Maryland Bar Journal and other local bar publications, taught nationally and throughout the state on auto fraud issues, testified before Congressional committees and the Maryland legislature, and been interviewed by national and local press on auto fraud issues.

Despite my passion for an underrepresented and sorely needed area of practice, I recently I made the difficult decision to stop handling any consumer matter which contains an arbitration clause, and this has essentially ended my car fraud practice. The reason is that in my experience arbitrations are biased, do not fairly enforce the law, are slanted in favor of companies in numerous ways, do not adequately compensate consumers, and are no quicker or less time consuming than court cases. Unlike cases filed in court, cases subject to arbitration cannot settle for a reasonable amount, and overwhelmingly can't be won.

The facts and legal arguments in my cases have remained essentially the same. The only variable is that my clients no longer have access to their constitutional right to a jury trial. I have spoken with defense counsel who have admitted that arbitration strongly favors their clients. When defense counsel in my last arbitration learned the identity of the arbitrator, months before the arbitration took place, their reaction was glee. I knew I had lost the case before I ever presented a piece of evidence.

When arbitration clauses first began appearing in contracts in Maryland there were defenses which we could successfully raise. Unfortunately, due to some recent Supreme Court decisions and Maryland appellate decisions, our ability to fight these clauses has greatly decreased. As a result, I have been forced into arbitration more frequently in the last few years. Here are my experiences based on the five arbitrations I have since January 2017, unless otherwise noted.

1. **Delays:** These last 5 arbitrations averaged *two years and three months* between the time the case was filed and when the arbitrator made his or her decision. One case had been litigated for almost a year before it was forced into arbitration. In another, the car dealer repeatedly missed the arbitration-imposed deadlines but, despite requests, the arbitration company refused to dismiss the case.
2. **Attorney Time Spent**: 137.62 hours per case. This number, based on a 40-hour week, translates into almost one month of work per case. In the last 15 years I have only had one case where an arbitrator awarded attorneys' fees. In contrast, I regularly received fees in court cases, and when the court refused to award them, was able to appeal.
3. **Findings of Consumer Protection Violations** - Only one arbitrated case in the last 15 years resulted in a finding that the Consumer Protection Act had been violated, and in that case the arbitrator still refused to award non-economic damages despite that case law allowed for same. This is in direct contrast to trials, where I have never had a jury refuse to find a violation of the Consumer Protection Act under similar fact patterns.
4. **Settlement Offers**: In arbitrations, the maximum offer I have received is $15,000, with most offers in the $5,000 range. In contrast, prior to arbitration, settlements were generally in the $25,000 to $75,000 range. Defense counsel and their clients know that the risk of losing an arbitration is low, so there is little incentive to settle.
5. **Awards**: In 3 of the 5 recent cases the arbitrator ruled against my clients outright. In the other two the arbitrator only awarded economic damages, refusing non-economic damages or fraud damages. In only one case did the arbitrator award attorney's fees. In contrast, a recent car fraud jury trial resulted in an award of $97,000 before attorneys'

fees and costs. It is not unusual for cases that are tried to result in verdicts, including attorney's fees, in the $100,000 range.

6. **Class Actions**: These are not allowed in arbitration, meaning that there is no accountability for harm to a wide number of people, even if widespread pattern is proven, as in the case of *Martin-Bowen v. J. D. Byrider*, an arbitration of mine from 2013, which was featured in the New York Times video *Beware the Fine Print*.
7. **Applicability of law**: In one of the 5 arbitrations there was uncontradicted testimony that my clients were not provided a copy of the signed contract, which, in accordance COMAR regulations, is automatic grounds for cancellation. Despite this the arbitrator ruled against my clients, a military couple, holding that the case was simply one of "buyer's remorse". In another arbitration, the testimony was uncontradicted that a key document was altered, and in another, uncontradicted testimony that the vehicle should not have passed inspection. Despite this, the arbitrators ruled against the consumers every time.
8. **Presentation of the Case**: Although arbitrations are touted as more informal, often defense counsel will try them like regular trials, complete with discovery disputes and rules of evidence. Because the arbitrator is the final authority (with virtually no right to appeal) it is often impossible to tell what, if any procedural rules, including rules of evidence, will apply. This is in stark contrast to a trial, where the Rules of Procedure govern.
9. **Bias:** I have repeatedly asked for arbitrators with experience in the consumer protection field. I have never been provided such an arbitrator. A recent arbitrator's background was as a debt collection and corporate attorney.

In summary, it is with tremendous sadness that, in order to survive in private practice, I must forego cases which cry for justice. While I will continue to practice in other areas, the Maryland citizens whom I was once able to help now have even fewer options. Until arbitration laws change, the bad guys are winning.

Very truly yours,

Jane Santoni