FLOOR ALERT

SB 82 (Umberg), as Amended April 10, 2025 – OPPOSE

The Civil Justice Association of California (CJAC) and the organizations above respectfully **OPPOSE SB 82**, which unduly restricts the use of arbitration agreements in a broad array of consumer contracts including for goods, services, or credit. Although recent amendments swapped in the phrase "dispute resolution" for "arbitration," the bill still encompasses arbitration agreements and is even expanded in scope.

SB 82 as amended would still likely be preempted by the Federal Arbitration Act (FAA). Because of this, SB 82 could result in significant new costs to the state and the courts due to its broad scope as it would impact numerous consumer contracts and could lead to significant new litigation challenges over its validity. Litigation against the state challenging AB 51 of 2019 resulted in the state being ordered by the court to pay $822,496 in the plaintiffs' attorneys' fees alone.

Below are the reasons for our opposition:

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

State and federal courts have long held that the Federal Arbitration Act supersedes state laws aimed at curtailing arbitration, be it overtly or in an ostensibly neutral way.

The Ninth Circuit recently found that California's 2019 bill, AB 51 (Gonzales), which would have prohibited employers from making it a condition of employment that the employee agree to resolve disputes through arbitration, is preempted by the Federal Arbitration Act. *See Chamber of Commerce of the United States v. Bonta*, 62 F.4th 473 (9th Cir. 2023).

In *Bonta*, the Ninth Circuit noted that state rules that burden the formation of arbitration agreements stand as an obstacle to the FAA. The Court further agreed with two sister circuits that the FAA preempts a state rule that discriminates against arbitration by discouraging or prohibiting the formation of an arbitration agreement. The Ninth Circuit explained that the FAA will preempt even seemingly neutral state laws when they "evinc[e] hostility towards arbitration." *Id.* at 487.

Though the latest version of SB 82 avoids using the term "arbitration," SB 82 is likely still preempted by the FAA because it has the effect of disfavoring a key feature of arbitration, which is the ability to define the scope of arbitrable disputes. SB 82 legislates around this feature by providing that an agreement that extends beyond the limited scope permitted by the bill will be treated as an attempted "waiver" of the

provisions and thus be "void and unenforceable." This is in effect a restriction on the formation of the agreement, which courts have found to be hostile to the FAA.

Notably, the Ninth Circuit in *Chamber of Commerce of the United States v. Bonta*, 62 F.4th 473 (9th Cir. 2023) underscored that AB 51 was preempted by the FAA despite a provision that explicitly stated that "[n]othing in this section is intended to invalidate a written arbitration agreement that is otherwise enforceable under the [FAA]." *Id*. Here, like AB 51, the bill explicitly states that it "*shall not be construed to relieve any party from any duties or obligations imposed under any other law, and do[es] not limit any rights or remedies under any other law."* This language does not dispense with the preemption hurdles the bill faces under the FAA.

2. **SB 82 will lead to increased litigation and costs, harming consumers and businesses and further clogging California's courts.**

SB 82 flies in the face of long-established principles underlying arbitration, which is to promote speedy and fair resolution of claims rather than requiring parties to undergo the lengthy and costly route of pursuing a lawsuit in the courts. Arbitration is a critical means for reducing litigation that wastes the time and resources of consumers, the courts, and employers.

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 than in court, and consumers on average win more as well. The group that benefits the least from arbitration are plaintiffs' lawyers. The more that cases drag on in court, the higher their billable hours and attorneys' fees awards.

Additionally, as noted above, not only would SB 82 significantly narrow the claims that could go to arbitration in connection with a contract, requiring those cases to be added to crowded court dockets, but the bill would also potentially result in hundreds of thousands of new cases litigating arbitrability of claims. Lawyers on both sides of these cases would collect thousands of billable hours, while simple consumer disputes are denied access to timely justice.

At a time when our state is under extreme economic pressure, SB 82, if enacted, will waste resources. The wide use of arbitration agreements in California creates the potential for significant caseload increases for our clogged courts. The state will also be on the hook for significant costs if SB 82 is challenged in court as preempted by the FAA like AB 51, which was litigated for over three years.

For the foregoing reasons, the above coalition respectfully **OPPOSES SB 82** and urges a **NO vote**. If you have any questions, please contact: Chris Micheli at (916) 743-6802, cmicheli@snodgrassmicheli.com.