No. 10-948

IN THE

Supreme Court of the United States

COMPUCREDIT CORPORATION AND SYNOVUS BANK,
Petitioners,
v.
WANDA GREENWOOD, *et al.*,
Respondents.

BRIEF IN OPPOSITION

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RESTATED QUESTION PRESENTED

Whether the Credit Repair Organizations Act, 15 U.S.C. § 1679 *et seq.*, by the terms of its text prohibits arbitration of claims brought under it.

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The decision of the United States Court of Appeals for the Ninth Circuit is reported at 615 F.3d 1204, and is reprinted in the Appendix hereto ("App.") at 1a-24a. The opinion of the United States District Court for the Northern District of California is reported at 617 F. Supp. 2d 980, and is reprinted at App. 25a-37a.

STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions of the Credit Repair Organizations Act, 15 U.S.C. § 1679 *et seq.*, are reproduced in the Appendix. App. 39a-57a.

INTRODUCTION

The Ninth Circuit held below that the text of the Credit Repair Organizations Act, 15 U.S.C. § 1679 *et seq.* ("CROA"), demonstrates Congressional intent to preclude arbitration of claims brought under it. This decision conflicts with decisions of the Third and Eleventh Circuits. But the Ninth Circuit reached its decision by applying well-accepted rules of statutory construction, while the Third and Eleventh Circuits did not. The decision of the Ninth Circuit is therefore correct. And while a conflict between the circuits exists, the conflict does not present "compelling reasons" for this Court to invest its valuable resources in resolving it, as Rule 10 contemplates for review to be granted. Among other things, petitioners' prediction of an explosion of CROA class actions being forum-shopped to the Ninth Circuit is exaggerated and factually unsupported. The concerns of the *amici* are factually or legally unsupported, or are immaterial. Of particular relevance here, the CROA is a very seldom-used statute. Respondents therefore submit that this Court should, in the exercise of its discretion, deny review.

STATEMENT OF THE CASE

1. The CROA was enacted "to ensure that prospective buyers of the services of credit repair organizations are provided with the information necessary to make an informed decision regarding the purchase of such services," and "to protect the public from unfair or deceptive advertising and business practices by credit repair organizations." 15 U.S.C. § 1679(b). The CROA defines a "credit repair organization" as an entity that provides services "for the express or implied purpose of improving any consumer's credit record, credit history, or credit rating," or that provides "advice or assistance to any consumer" with regard to such services. *Id.* § 1679a(3)(A)(i), (ii).

The CROA prohibits certain unfair or deceptive practices by credit-repair organizations. *Id.* § 1679b. The CROA also specifies certain rights possessed by consumers of credit-repair services, *id.* § 1679c(a), and at various places in the statute sets out other protections provided to such consumers.

The CROA contains three interlocking provisions that control the Question Presented in this case. First, the CROA requires credit-repair organizations, before entering into any agreement with a consumer, to provide the consumer with a written statement disclosing four rights of consumers created by the CROA and related statutes. *Id.* § 1679c(a). The disclosure provision requires that the consumer be informed of the following right in the following language: "You have a right to sue a credit repair organization that violates the Credit Repair Organization Act. This law prohibits deceptive practices by credit repair organizations." *Id.*

Second, the specific term "right to sue" refers to the CROA's more general civil-liability provision, which states: "Any person who fails to comply with any provi-

sion of [the CROA] with respect to any other person shall be liable to such person" in an amount determined by methods then set out. *Id.* 1679g.

Third, the CROA contains a precisely worded and extremely broad anti-waiver provision, which provides: "Any waiver by any consumer of any protection provided by or *any right* of the consumer under [the CROA] shall be treated as void," and "may not be enforced by any Federal or State court or any other person." *Id.* § 1679f(a) (emphasis added).

2.a. Petitioner CompuCredit Corporation marketed and serviced a subprime credit card with the brand name Aspire Visa. App. 2a. Petitioner Synovus Bank's predecessor in interest, Columbus Bank and Trust, issued the Aspire Visa card. App. 2a-3a. Respondents each applied for and received an Aspire Visa card. Respondents agreed that any dispute arising from or related to their credit-card accounts would be arbitrated. The arbitration agreement reads as follows:

> Any claim, dispute or controversy (whether in contract, tort, or otherwise) at any time arising from or relating to your Account, any transferred balances or this Agreement (collectively, "Claims"), upon the election of you or us, will be resolved by binding arbitration pursuant to this Arbitration Provision and the Code of Procedure ("NAF Rules") of the National Arbitration Forum ("NAF") in effect when the Claim is filed. If for any reason the NAF cannot, will not or ceases to serve as arbitration administrator, we will substitute another nationally recognized arbitration organization utilizing a similar code of procedure.
>
> Upon such an election, neither you nor we will have the right to litigate in court the claim being arbitrated, including a jury trial, or to engage in prearbitra-

> tion discovery except as provided under NAF Rules. In addition, you will not have the right to participate as representative or member of any class of claimants relating to any claim subject to arbitration. Except as set forth below, the arbitrator's decision will be final and binding. Other rights available to you in court might not be available in arbitration.
>
> App. 4a-5a.

The agreement also provides: "This Agreement, and your Account, and any claim, dispute or controversy (whether in contract, tort or otherwise) . . . are governed by and construed in accordance with applicable federal law and the laws of Georgia." App. 5a.

b. The agreement's designation of the National Arbitration Forum ("NAF") as the arbitration-service provider renders inaccurate petitioners' representations that there is an undisputedly valid arbitration agreement between them and respondents. Petition at i (the Question Presented refers to "a valid arbitration agreement"), 15-16 ("there is no dispute that the agreements between respondents and petitioners call for arbitration of actions like this one"). As outlined below, petitioners moved the district court to compel arbitration of respondents' CROA claims, the district court denied the motion, and petitioners appealed. After the district court's ruling, and while the appeal was pending, the NAF stopped arbitrating consumer disputes. The NAF thus became unavailable as an arbitration-service provider in this case.

This development resulted in an appellate-briefing dispute between the parties in the Ninth Circuit as to whether the parties' arbitration agreements were valid even if the CROA did not preclude arbitration of claims brought under it. *Greenwood v. Compucredit Corp.*, No. 09-15906, Dkt. No. 15 at 6-30, Dkt. No. 20 at 7-12 (9th

Circuit). The agreement provides for a substitute arbitration-service provider, should the NAF become unavailable, subject to two criteria as specified above. One of respondents' briefing points was that the district court would have to resolve in the first instance whether a "nationally recognized arbitration organization" with a "similar code of procedure" to that of the NAF, as required by the parties' agreements, exists to be substituted as the arbitration-service provider. *Id.*, Dkt. No. 15, 28-30. Respondents argued that if such an entity does not exist, the arbitration agreements are unenforceable. *Id.* at 29. The court of appeals did not reach this issue, and it remains unresolved.

It is for this reason that respondents have restated the Question Presented to delete petitioners' predicate of "a valid arbitration agreement."

3. Respondents filed suit against petitioners alleging several violations of the CROA, most prominently deceptive practices by petitioners in their marketing of the Aspire Visa card, with regard to certain fees assessed by the card.[1] App. 3a. Respondents sought to represent a nationwide class of Aspire Visa cardholders. App. 29a.

Petitioners moved the district court to compel arbitration of respondents' CROA claims. The district court denied the motion, holding that the CROA establishes a "non-waivable right to sue" in court for violations of the statute, which rendered respondents' arbitration agreements void and unenforceable. App. 37a. Petitioners took an interlocutory appeal of the district court's refusal to compel arbitration.

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[1] Respondents also alleged violations of California law, on behalf of a California-only proposed class, which are not raised in the Question Presented and are not at issue. Petitioners did not move to compel arbitration of the claims asserted under California law. App. 29a-30a.

4. A panel of the court of appeals affirmed the district court's ruling in a two-to-one split. App. 1a-24a. The panel majority consisted of Judge Kleinfeld and Judge Thomas. Judge Tashima dissented. Petitioners subsequently moved for panel rehearing and rehearing en banc, which were denied. App. 38a.

In reaching its conclusion, the court of appeals considered the "liberal federal policy favoring arbitration agreements," and followed this Court's directive for determining whether Congress intended to preclude a waiver of judicial remedies for statutory rights: the Congressional intent to preclude waiver must be discoverable in the text of the statute, its legislative history, or an inherent conflict between arbitration and the statute's underlying purposes. App. 6a-7a. The court then engaged in a straightforward analysis which showed that precise intent is apparent from the text of the CROA. App. 7a-14a.

The court began by examining the statute as a whole, and by applying the well-established rule of construction that terms not defined within a statute are accorded their plain and ordinary meaning. App. 8a. The court noted that the CROA's anti-waiver provision applies to "any right" of the consumer under the statute, so the plain language of the anti-waiver provision encompasses the "right to sue" previously specified in the disclosure provision. App. 12a. The term "to sue" is not defined in the statute, so the court read it as having its plain and ordinary meaning: to bring an action in a court of law. App. 8a-9a. An arbitration, the court observed, is an entirely different creature, a proceeding which does not take place in a court of law. App. 9a. The court concluded that Congress clearly evinced its intention to preclude a waiver of judicial remedies, by mandating that any waiver of a consumer's right to sue is void. App. 13a-14a.

The court of appeals further reasoned that the term "right to sue" is not merely a "simplified shorthand" for the more general language of the CROA's civil-liability provision, because the plain and ordinary meaning of the term "right to sue" would then become superfluous. App. 10a-11a. The court also addressed the anti-waiver provision's language that a waiver of any consumer right may not be enforced by any federal or state court "or any other person." App. 12a-13a. The court rejected the argument that the "any-other-person" language demonstrates a Congressional intent for arbitrators to decide CROA claims. This is because, the court reasoned, the CROA creates non-waivable consumer rights and protections other than the right to sue, and one of those other rights or protections could arise in an arbitration proceeding instituted by a credit-repair organization or debt-collection agency for collection of the organization's fees under its contract with the consumer. App. 13a. The "any-other-person" language does not require a different construction because of the plain and ordinary meaning of the non-waivable right to sue: a consumer's right to bring an action in a court of law. App. 13a.

The court of appeals candidly recognized that its decision conflicted with the decisions in *Gay v. CreditInform*, 511 F.3d 369 (3d Cir. 2007), and *Picard v Credit Solutions, Inc.*, 564 F.3d 1249 (11th Cir. 2009). The court explained that *Gay* and *Picard* gave too little regard to the "right-to-sue" language in the statute, and relied upon reasoning in decisions by this Court that addressed statutes which are quite different from the CROA. App. 14a. The court of appeals went on to explain in considerable detail why those decisions of this Court are distinguishable. App. 14a-17a.

REASONS WHY THE PETITION SHOULD BE DENIED

A. The Decision of the Ninth Circuit Conflicts With the Decisions of the Third and Eleventh Circuits, But the Conflict Does Not Present the "Compelling Reasons" For Granting the Petition Contemplated by Rule 10.

1.a. Petitioners argue that the petition should be granted because: (1) The decision of the Ninth Circuit squarely conflicts with the decisions of the Third and Eleventh Circuits. (2) Claims brought under the CROA will greatly multiply in the future, so the issue of whether CROA claims can be arbitrated will become correspondingly more important. (3) Forum-shopping class-action plaintiffs will flock to the arbitration-free domain of the Ninth Circuit, such that the Ninth Circuit's rule will become the *de facto* nationwide rule. (4) The parties to a CROA claim should not be treated differently on the arbitration issue depending on where the suit is filed. (5) This case presents a particularly suitable vehicle for resolving the Question Presented.

The decision of the Ninth Circuit obviously conflicts with the decisions of the Third and Eleventh Circuits. But that alone is not enough. Upon examination, petitioners' arguments (and the arguments of the *amici*) do not demonstrate the "compelling reasons" for granting the petition contemplated by Rule 10. This is well illustrated by petitioners' argument that the number of CROA lawsuits is "ever growing." Petition at 15.

b. Petitioners note that the number of personal-bankruptcy filings has risen dramatically in the past few years, from 822,590 in 2007 to 1,412,838 in 2009, an increase of approximately 72%. *Id.* Petitioners then argue that "because the demand for credit repair services presum-

ably correlates strongly with a decline in the quality of consumer credit," as evidenced by the increase in personal-bankruptcy filings, "the number of CROA suits … will only increase in the years to come." *Id.* But this argument is refuted by the number of CROA lawsuits that have actually been filed. The CROA has always been, and remains, a very little-used statute, especially when compared to other consumer-protection statutes.

Since the CROA's enactment in 1996, there have been 116 reported cases asserting CROA claims. This figure consists of all the cases reported (both published and unpublished) on Westlaw and LexisNexis.[2]

Circuit	Total CROA cases	Class Actions	Individual Suits	% Class Actions
First	4	2	2	50%
Second	10	3	7	30%
Third	12	6	6	50%
Fourth	8	2	6	25%
Fifth	3	1	2	33%
Sixth	10	1	9	10%
Seventh	23	11	12	48%
Eighth	5	2	3	40%
Ninth	15	8	7	53%
Tenth	4	2	2	50%
Eleventh	22	4	18	18%
TOTAL	116	42	74	36%

[2] Shepardizing CROA in these databases actually yielded 145 results, but only 116 discrete cases in which CROA claims were asserted. This is because one case can yield multiple results by having different orders and opinions reported, and because the CROA statute can simply be mentioned in a case which was not brought under the statute.

The number of CROA cases filed, and reported, per year since the statute's enactment is as follows:

Year	**Number of CROA filings**
1997	1
1998	4
1999	3
2000	2
2001	7
2002	2
2003	12
2004	9
2005	14
2006	5
2007	20
2008	22[3]
2009	11
2010	4
Total	116

Detailed information on the CROA filings by year and by circuit is set out in the Appendix. App. 58a-79a.

According to petitioners' argument based on personal-bankruptcy statistics, there should have been an explosion of CROA lawsuits from 2007 through 2009. There was not. Petitioners' corresponding argument that there will be an explosion of CROA lawsuits in the future, rendering the Question Presented one of national impor-

[3] The 2008 figure includes 11 individual CROA lawsuits filed in the Southern District of Florida by one attorney, Bryan Manno. The 2008 figure may be skewed upward for that reason.

tance, cannot be reconciled with what happened from 2007 through 2009. Petitioners' prediction of a deluge of CROA lawsuits is a chimera.

It is also instructive to compare the number of CROA lawsuits with suits filed under two other consumer-protection statutes, the Truth in Lending Act ("TILA"), 15 U.S.C. § 1601 *et seq.*, and the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 *et seq.* The three statutes were compared by Shepardizing each statute on LexisNexis. The number of search results does not correspond to the exact number of cases filed, for the reasons explained above. Although the search results overreport to some extent the number of lawsuits filed, they do, however, clearly show that on a comparative basis, the CROA is a little-used statute:

Without any date restrictions, the following results were yielded: (1) TILA: over 3,000. (2) FCRA: 2,490. (3) CROA: 145.

A search from January 1, 2006, until February 23, 2011, yielded the following results: (1) TILA: 2,266. (2) FCRA: 1,358. (3) CROA: 91.

A search from January 1, 2001, to December 31, 2005, yielded the following results: (1) TILA: 979. (2) FCRA: 658. (3) CROA: 48.

A search from January 1, 2007, to December 31, 2009, yielded the following results: (1) TILA: 1,212. (2) FCRA: 728. (3) CROA: 58.

c. Petitioners also summon the bugbear of class-action forum shopping, as does *amicus curiae* the Consumer Data Industry Association ("CDIA"). But the specter of a mass migration of CROA class-action forum-shoppers to the Ninth Circuit is not supported by the number of CROA lawsuits that have been filed in the past, by the per-

centage of those lawsuits that were class actions (36%), by the number of CROA lawsuits that will expectably be filed in the future based on the 2007-2009 experience, or by a comparison of CROA filings with TILA and FCRA filings. Moreover, one would expect most class actions that are truly forum-shopped to the Ninth Circuit to be transferred elsewhere under 28 U.S.C. §1404(a).[4]

A class action based on a federal claim such as this one would be brought in a judicial district where any defendant resides, if all defendants reside in the same state, or, in a judicial district where a substantial part of the events or omissions giving rise to the named plaintiff's claim occurred. *See* 28 U.S.C. § 1391(b). Certainly many corporate defendants (and most CROA defendants would be corporations) would be deemed to reside in a judicial district in the Ninth Circuit, under the statutory venue provisions applicable to corporations. *See* 28 U.S.C. § 1391(c). However, 28 U.S.C. § 1404(a) provides: "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." This would result in many, if not most, forum-shopped CROA class actions being transferred either to the judicial district where the named plaintiff resided when the CROA violation occurred, or to a judicial district where a defendant has its principal place of business.

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[4] A truly forum-shopped case would be filed in a district with no real connection to the controversy, only a technical connection under the venue statute because the corporate defendant did business there. And presumably this is what petitioners are referring to. Of course, lawyers could always look for a named class-action plaintiff residing in the Ninth Circuit. But this would present considerably less opportunity than transplanting a case that arose in the lawyer's home territory, and it would arguably not be forum shopping at all because the CROA cause of action would arise where the named plaintiff resided.

Upon a §1404(a) transfer from the Ninth Circuit, the transferee district court would apply its own circuit's interpretation of federal law, including the CROA, not the Ninth Circuit's. *See* Murphy v. F.D.I.C., 208 F.3d 959, 964-66 (11th Cir. 2000) (collecting cases). The class-action forum-shopper would gain nothing. As *Murphy* and the cases it discusses demonstrate, the disparate application of federal law from circuit to circuit is simply a fact of life in some instances, with binding precedent for all set only by this Court, on issues it deems of sufficient importance. But for all the reasons discussed, the successful forum-shopping of a multitude of CROA class actions to take advantage of the Ninth Circuit's holding on arbitration is unlikely to materialize as predicted by petitioners, which renders the Question Presented less needful of this Court's attention than petitioners would have it.

d. Finally, whether this case presents a "highly suitable vehicle" for resolving the Question Presented, as petitioners argue, is debatable. The decision by the NAF to stop arbitrating consumer disputes may ultimately render the parties' arbitration agreements unenforceable, even if this Court determined that the CROA does not prohibit arbitration of claims brought under it. This is because the agreements require a substitute arbitration-service provider to be a "nationally recognized arbitration organization" with a "similar code of procedure" to that of the NAF. It is by no means certain that such an entity exists.

If this Court grants the petition, it will resolve the Question Presented for parties that may not ultimately have a stake in that resolution, because the arbitration agreements may not be enforceable in any event. Resolving the Question Presented will not resolve the arbitration issue for the parties. Respondents therefore submit that this Court should await a case wherein a res-

olution of the Question Presented will finally resolve the arbitration dispute between the parties to that case.

2.a. The two *amici curiae* take divergent approaches to the petition. The CDIA argues that the petition should be granted because the court of appeals' decision will actually harm consumers. This is so, it says, because its members provide credit-related products and services to consumers, and are able to charge affordable prices because arbitration agreements allow them to hold down litigation costs if disputes arise. Therefore, the CDIA says, if arbitration is foreclosed, the availability of these products and services may be drastically reduced or even eliminated. The accuracy of this sky-is-falling prediction is obviously open to question. But more to the point, the CDIA's members do not appear to be credit-repair organizations, the only kind of entity that can be sued in a court of law under the CROA's right-to-sue and anti-waiver provisions.

The CDIA's website, www.cdiaonline.org, reveals that its members do not fit the definition of credit-repair organizations, which provide services to consumers for the purpose of improving a consumer's credit record, credit history or credit rating. *See* 15 U.S.C. § 1679a(3)(A)(i), (ii). According to the CDIA's website, it represents "consumer information companies that provide fraud prevention and risk management products, credit and mortgage reports, tenant and employment screening services, check fraud and verification services, and collection services." The CDIA does not explain how these activities bring its members within the definition of a credit-repair organization, and in fact, its website cautions consumers "to be wary of companies that make claims indicating they can 'repair' your credit." This is unusual advice from those who claim to be exposed to CROA lawsuits that are reserved for credit-repair organi-

zations. The CDIA appears to be oversensitive to concerns that are more hypothetical than real.

b. *Amicus curiae* DRI argues the prevalence and utility of arbitration. But this is irrelevant if Congress evinced an intent in the text of the CROA to preclude arbitration of claims brought under it, which Congress has the power to do. *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 624, 628 (1985). DRI also argues that the Ninth Circuit's decision will throw contracts made under other statutes "into turmoil," and that the Ninth Circuit's decision conflicts with this Court's entire approach to the arbitration of statutory claims. These points are addressed below, in respondents' discussion of the merits of the Ninth Circuit's decision.

3. In sum, respondents submit that there are several real-world reasons why this Court should deny the petition and not expend its valuable resources on resolving the Question Presented. The policy concerns of the *amici curiae* are exaggerated or irrelevant. And, as discussed below, the Ninth Circuit reached the right result in this case.

B. The Court of Appeals Correctly Held That the Text of the CROA Prohibits Arbitration of Claims Brought Under It.

1.a. The CROA, with its three linked provisions – – the "right to sue" specified in the disclosure provision, the civil-liability provision, and the anti-waiver provision – – is a unique statute, different from any statute which this Court has previously considered in determining whether Congress evinced an intent to preclude waiver of judicial remedies for the statutory claims at issue. Petitioners' entire argument is based on de-linking these three provisions, one from another. Petitioners view each of these three provisions in isolation, contrary to the accepted

rule that a statute must be construed as a whole. *Samanatar v. Yousuf*, 130 S. Ct. 2278, 2289 (2010). If these three provisions are read together, as they should be, petitioners' argument unravels.

b. The court of appeals correctly gave the term "to sue" in the disclosure provision its ordinary meaning, according to *Black's Law Dictionary* and usual parlance, because that term is not defined in the CROA. *Lopez v. Gonzales*, 549 U.S. 47, 53 (2006) ("regular usage" determines the meaning of an undefined statutory term). The ordinary meaning of a "right to sue," for the reasons explained by the court of appeals, is a right to bring an action in a court of law. And it is illogical to posit that Congress intended the term "right to sue" to have any meaning other than its ordinary meaning. This is because the term is set out in a disclosure statement that must be provided to consumers, and a Congressional purpose in enacting the CROA was to provide consumers with sufficient information to make an informed decision regarding the purchase of credit-repair services. Part of the information necessary to make that decision is thus the consumer's right to bring an action *in a court of law* against a credit-repair organization that violates the CROA. Defining "right to sue" to mean a right to an alternative, non-judicial, dispute-resolution procedure would mean Congress was at best cryptic and at worst misleading with ordinary consumers in the disclosure statement, in direct contravention of the informative Congressional purpose in enacting the CROA. [5]

[5] The ordinary meaning of the word "sue" is also illustrated by this Court's use of the term to distinguish an action brought in court from an arbitration proceeding. *See*, *e.g.*, *Allied-Bruce Terminix Cos.*, *Inc. v. Dobson*, 513 U.S. 265, 294 (1995) (observing that § 4 of the Federal Arbitration Act "holds the defendants to their promise to submit to arbitration rather than making the other party sue them.").

The term "right to sue" thus has a quite specific meaning which controls the general language of the CROA's generic civil-liability provision. *Bloate v. U.S.*, 130 S. Ct. 1345, 1354 (2010) (a specific provision in a statute controls one of more general application). The court of appeals did not expressly rely on this rule of statutory construction, but it is consistent with the court of appeals' reasoning. The "right-to-sue" provision is also more specific than the general civil-liability provision, and thus controls the latter, because it only confers a right to sue (bring an action in a court of law against) a credit-repair organization, while the general civil-liability provision allows a claim to be brought against "[a]ny person" that violates the CROA. *See* 28 U.S.C. § 1679g(a).

Amicus curiae DRI says "mainstream" dictionaries should be used to define the term "sue," not *Black's Law Dictionary*, and it cites four dictionary definitions of "sue," two of which might accommodate arbitration. But one of the cited dictionary definitions refers to "[i]nstituting a *suit*," while another recites, "bring a *civil action* against." Brief of *amicus curiae* DRI at 11 (emphasis added). "Suit" and "civil action" are terms from judicial proceedings that are incompatible with arbitration. Other non-legal dictionary definitions also exclude arbitration. The *American Heritage Dictionary of the English Language* defines "sue" as "[t]o petition (a court) for redress of grievances or recovery of a right." *Webster's New World College Dictionary* (4th ed.) defines "sue" as "to petition (a court) for legal redress."

Moreover, *Black's Law Dictionary* is a well-accepted, uniform and specific tool for determining the ordinary meaning of statutory terms. This Court regularly relies on *Black's* for this purpose. *See*, *e.g.*, *CSX Transp., Inc. v. Alabama Dept. of Revenue*, 131 S. Ct. 1101, 1108 (2011) (using *Black's* to determine the ordinary meaning of the

statutory term "discriminates"); *Lopez v. Gonzales*, 549 U.S. at 54 (using *Black's* to determine what the statutory term "trafficking" ordinarily means). And as the court of appeals pointed out, courts and other authorities have consistently distinguished arbitration from suing in a court of law. App. 9a. The most cogent interpretive authority confirms that the ordinary meaning of "sue" is what a layman, to whom the CROA disclosure statement must be given, means when he tells another layman, "I'll sue you" – – and he does not mean, "I'll take you to arbitration."

c. The anti-waiver provision is linked to the "right to sue" provision specified in the disclosure statement, which in turn modifies the CROA's generic civil-liability provision, because the anti-waiver provision renders void any waiver of "any right of the consumer under [the CROA]," and the only consumer rights specified in the CROA are specified in the disclosure provision. Congress's intent to preclude a waiver of judicial remedies for claims arising under the CROA is thus clearly evinced by the text of the statute read as a whole.

d. In an attempt to override the statutory text with the federal presumption favoring arbitration, petitioners point out that in recent memory this Court has not once rejected the arbitrability of a federal statutory cause of action. But this point only goes so far. All of this Court's cases relied upon by petitioners, and *amici*, addressed statutes which are materially distinguishable from the CROA's unique framework of correlated provisions, as explained in considerable detail by the court of appeals. App. 17a-19a. Petitioners then say that nothing in the CROA's text (because the civil-liability provision does not mention arbitration), history or purposes overcomes the federal presumption favoring arbitration, and "[t]hat should be the end of the matter." Petition at 18. But that

is not the end of the matter, because the specific "right-to-sue" provision controls and modifies the CROA's generic civil-liability provision.[6] Petitioners then argue that the "right-to-sue" provision does not create any right, it only describes the cause of action available under the CROA's civil-liability provision. But the "right-to-sue" provision is not merely descriptive. This is because of the accepted rule of statutory construction that this specific provision controls and modifies the generic civil-liability provision. Petitioners further observe that any statutory cause of action can properly be described as a "right to sue." But that is true only as a generic observation, and does not take into account this *particular* statute when standard rules of statutory construction are applied to it.

e. As for the CROA's anti-waiver provision, petitioners (and *amici*) view that provision in isolation by saying the CROA does not create a right to a judicial forum. But this argument collides with accepted rules of statutory construction, as discussed above. Petitioners then say the anti-waiver provision demonstrates Congressional intent for CROA claims to be arbitrable, because the provision states that any waiver of any right of the consumer "may not be enforced by any Federal or State court or *any other person*." 15 U.S.C. § 1679f(a) (emphasis added). However, as the court of appeals explained, the CROA creates non-waivable consumer rights and protections other than the right to sue, which could arise in an arbitration proceeding brought by a credit-repair organization against a consumer, for example, to collect the organization's

[6] Applying this rule of statutory construction, the CROA's text is clear. Its legislative history is therefore irrelevant. *Barnhill v. Johnson*, 503 U.S. 393, 401 (1992) (appeals to legislative history are well taken only to resolve statutory ambiguity).

fees under its contract with the consumer.[7] This view of the "any-other-person" language is consistent with the term "right to sue" having its ordinary meaning, and with that term being a specific provision which controls and modifies the far more general language of the civil-liability provision. It is thus the only view which conforms to recognized methods of statutory construction. Petitioners' view of the "any-other-person" language does not do this. Petitioners' view would have a general provision (the generic civil-liability provision) control a specific provision (the "right-to-sue" provision).[8]

Petitioners next argue that the title of the section in which the anti-waiver provision appears, "noncompliance

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[7] The anti-waiver provision speaks of "any *protection* provided by *or* any *right* of the consumer." 15 U.S.C. § 1679f(a) (emphasis added). Among the non-waivable consumer protections provided by the CROA, which could arise in an arbitration proceeding instituted by the credit-repair organization against the consumer for collection purposes, are: No payment can be required until the credit-repair service is fully performed. *Id.* § 1679b(b). A credit-repair-services contract must estimate when the services will be completed. *Id.* § 1679d(b)(2)(B). The contract must state the total amount of all payments, *i.e.*, there can be no open-end contract. *Id.* § 1679d(a)(b)(1). The contract must contain "a full and detailed description of the services to be performed," *i.e.*, there can be no vague summary of amorphous services undertaken. *Id.* § 1679d(b)(2). A waiver of any of these protections would constitute a defense to a collection proceeding, because the contract would be void. *Id.* 1679f(c). DRI's *amicus* brief also supports the court of appeals' view of the "any-other-person" language. DRI observes that between 2003 and 2007, the NAF administered 33,948 arbitrations, and all but 15 were collection proceedings instituted against the consumer. Brief of *amicus curiae* DRI at 5.

[8] *Amicus curiae* the CDIA argues that the "any-other-person" language creates doubts about arbitrability that must be resolved in favor of arbitration. But there are no such doubts when accepted rules of statutory construction are applied to this language.

with this subchapter," shows the anti-waiver provision concerns itself only with waivers of "compliance" with the CROA's substantive provisions. Therefore, petitioners say, the anti-waiver provision does not address arbitration agreements, because arbitration agreements do not waive compliance with a statute's substantive provisions, but provide for their enforcement in an arbitral forum. The two cases upon which petitioners rely, *see* Petition at 21-22, involved statutes clearly distinguishable from the CROA, as explained by the court of appeals. App. 15a-17a. But more to the point, the title of a statute and the heading of a statutory section can be used for interpretive purposes only when the statute or section is ambiguous. *Whitman v. American Trucking Assns.*, 531 U.S. 457, 483 (2001); *Bhd. of R.R. Trainmen v. Baltimore & Ohio R., Co.*, 331 U.S. 519, 528-29 (1947). Petitioners do not explain why the precisely worded anti-waiver provision is ambiguous, which they must do in order to invoke the title of the section as an interpretive tool. And it is not ambiguous. As noted, the anti-waiver provision refers to "any right of the consumer under [the CROA]," and the only consumer rights specified in the CROA are specified in the disclosure provision, which includes the "right to sue." Moreover, the anti-waiver provision also refers to any consumer "protection" provided by the CROA, and the CROA provides various protections that are not denominated as rights, in various of its provisions. This is not ambiguity.

f. Petitioners conclude by saying two things. First, they say Congress was aware of the presumption in favor of arbitration when it enacted the CROA, but it was silent on the arbitration of CROA claims, thus indicating arbitration is not precluded. But when the statute is read as a whole, as discussed above, its text shows Congress was not silent. And, petitioners argue that any doubts about whether the anti-waiver provision precludes arbitration

of CROA claims must be resolved in favor of arbitration. This is correct, but reading the statute as a whole leaves no such doubts.

g. The Third and Eleventh Circuits in *Gay* and *Picard* fell into the same piecemeal analysis advanced by petitioners, and like petitioners, failed to appreciate the proper, limited role of section titles as interpretive aids. The Ninth Circuit painstakingly analyzed the statute as a whole, in accordance with accepted rules of statutory construction. The fact that arbitrability issues must be addressed with a "healthy regard" for the federal policy favoring arbitration, as the Ninth Circuit recognized, does not mean the accepted rules of statutory construction should be bent or broken in that endeavor.

2.a. This brings us to certain separate points argued by the *amici*. Both DRI and the CDIA apply the same piecemeal analysis as petitioners, viewing each relevant statutory provision in isolation, without employing some or all of the governing rules of statutory construction. And *amici* expressly (the CDIA) or impliedly (DRI) accuse the court of appeals of displaying the judicial hostility to arbitration that the Federal Arbitration Act was intended to overcome, despite the court of appeals' express recognition of the liberal federal policy favoring arbitration and its placement of the burden of proof on respondents.

b. The CDIA says the Ninth Circuit framed the dispositive issue in a way that could only lead to an unjustified and unsupported result. According to the CDIA, the court of appeals improperly framed the dispositive issue as what the word "sue," as used in the CROA, means. DRI agrees, arguing that the "right-to-sue" language is the "wrong starting point," because, it says, the substantive right is created by the arbitration-friendly general language of the civil-liability provision, which the "right-to-

sue" provision "merely incorporate[s]." Brief of *amicus curiae* DRI at 10. But by any measure the meaning of the word "sue" is the ultimate issue in this case. The *Gay* and *Picard* courts both addressed the meaning of "sue" as used in the statute, as they had to do to resolve the issue before them. The CDIA and DRI simply disagree with the Ninth Circuit's use of standard rules of statutory construction to determine the meaning of the word "sue," a method of analysis not followed by the Third and Eleventh Circuits.

c. The CDIA argues that it is irrelevant to the Ninth Circuit whether a defendant is actually a credit-repair organization subject to the CROA, because the assertion of a CROA claim will be sufficient to defeat arbitration, and then postulates dire results from this state of affairs. As an initial matter, respondents observe that the Ninth Circuit did not reach the issue of whether petitioners were credit-repair organizations because the district court did not address that issue. App. 7a. In the district court, petitioners took the position that it was unnecessary to decide this issue. *See Greenwood v. Compucredit Corp.*, No.4:08-cv-4878, Dkt. No. 53, at 2 (N.D. Cal.). The district court allowed petitioners to raise the issue in later proceedings. *Id.*, Dkt. No. 76 at 2.

The CDIA says, if a defendant won summary judgment on a CROA claim because it proved it was not a credit-repair organization, the district court that had previously denied a motion to compel arbitration would then have to stay the judicial proceedings and compel arbitration of the remaining claims at some point down the road in the litigation. The CDIA says this result conflicts with the Congressional policy favoring arbitration as set forth in the Federal Arbitration Act, and defendants should not be forced to participate in litigation until they establish that they are not subject to the CROA.

The first flaw in this argument is that courts are routinely presented with motions to compel arbitration when the complaint alleges both arbitrable and non-arbitrable claims, and courts routinely compel arbitration of the arbitrable claims while allowing the remaining claims to proceed in litigation. All the claims asserted, both arbitrable and non-arbitrable, do not proceed in litigation, as the CDIA's hypothetical erroneously posits. It is only claims brought against a credit-repair organization under the CROA that are not arbitrable.

Second, because Congress has specified that claims brought against a credit-repair organization under the CROA are not arbitrable, the fact that a defendant would have to participate in litigation until it showed it was not a credit-repair organization and obtained a dismissal is simply irrelevant. In any event, this would logically be treated as a threshold issue to be determined as an initial matter, instead of far down the road in the litigation process. In this case, respondents raised at the outset the issue of petitioners' status as credit-repair organizations, and argued that they are subject to the CROA. *See Greenwood v. Compucredit Corp.*, No. 4:08-cv-4878, Dkt. No. 46 at 3-7 (N.D. Cal.). It was petitioners, for whatever reason, who then took the position that it was unnecessary to decide this issue at that juncture. *Id.*, Dkt. No. 53 at 2.

d. DRI argues that the term "right to sue" can be defined by the parties' contacts to mean arbitration, and that, if the term "right to sue" does mean what it says, an affirmative defense of arbitration can still be asserted. But these arguments simply disregard the CROA's anti-waiver provision, a one-provision-at-a-time approach that ignores the linkage between the "right-to-sue" provision, the general civil-liability provision, and the non-waiver provision. DRI's definition-by-contract and affirmative-defense arguments are foreclosed by the anti-waiver provision.

e. DRI further says that under the Ninth Circuit's methodology, any statute with a private right of action and a non-waiver provision can void an arbitration agreement, and because such statutes exist, the Ninth Circuit's decision will create "turmoil" with many contracts in different arenas. The "turmoil" accusation is a red herring, because DRI's preference for arbitration is immaterial if Congress in those statutes evinced an intent to preclude arbitration. But in fact, the statutes DRI cites are quite distinguishable from the CROA's unique statutory framework.

The Housing and Community Development Act of 1980 confers a private right of action, providing that unless limited by law, "any person aggrieved by a violation of this chapter may sue at law or in equity." 15 U.S.C. § 3611(a). Its anti-waiver provision states, "Any condition, stipulation, or provision binding any person to waive compliance with any provisions of this chapter shall be void." *Id.* § 1314. Unlike the CROA, this statute does not designate the ability to sue as a "right to sue," and unlike the CROA, this statute's anti-waiver provision does not invalidate any waiver of "rights" conferred by the statute, including a "right to sue." Moreover, the anti-waiver provision only addresses "compliance" with the statute's provisions. Under this Court's analysis in *Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220, 228 (1987), this statute only prohibits waivers of compliance with its substative obligations, and the provision of a judicial forum is not a substative obligation. The text of the CROA's anti-waiver provision is not so limited.

The Migrant and Seasonal Agricultural Worker Protection Act provides the following private right of action: "Any person aggrieved by a violation of this chapter or any regulation under this chapter … may file suit in any district court of the United States …." 29 U.S.C. § 1854. The statute's anti-waiver provision provides in per-

tinent part: "Agreements by employees purporting to waive or to modify their rights under this chapter shall be void as contrary to public policy …." *Id.* § 1856. As with the Housing and Community Development Act of 1980, the ability to file suit is not designated as a "right to sue," so the provision against waiver of "rights" under the statute does not apply to the private cause of action. The Ninth Circuit's CROA analysis is likewise inapplicable.

40 U.S.C. § 3133(b)(1) and (2) provide that persons who have supplied labor or material under a contract for which a payment bond is furnished, and who have not been paid, "may bring a civil action on the payment bond for the amount unpaid." The statute further provides that "[a] waiver of the right to bring a civil action on a payment bond required under this subchapter is void" unless the waiver is in writing, signed, and executed post-performance. *Id.* § 3133(c). Unlike the CROA, this statute does not mandate that the persons allowed to sue must be informed in writing, before the contract is executed, that they have a *right* to sue, and the statute does not have an announced Congressional purpose of providing consumers with accurate information, as does the CROA. Thus, another element of the Ninth Circuit's CROA analysis is missing. None of the statutes relied upon by DRI prohibit arbitration of claims brought under them.

f. DRI finally says the Ninth Circuit's analysis is dangerous because it conflicts with how this Court has approached the arbitrability of statutory claims in the past. But there is no conflict. The Ninth Circuit explained why the statutes previously considered by this Court are wholly distinguishable from the CROA. App. 15a-19a. The Ninth Circuit's analysis did nothing more than apply correct and accepted rules of statutory construction to a statute with a unique framework of interlocking provisions. To iterate, the federal presumption

favoring arbitration does not instruct that accepted rules of statutory construction should be bent or broken.

CONCLUSION

Respondents respectfully submit that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX A

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 09-15906
D.C. No. 4:08-cv-04807-CW
OPINION

WANDA GREENWOOD LADELLE HATFIELD;
DEBORAH MCCLEESE, on behalf of themselves
and other similarly situated,
Plaintiffs-Appellees,

v.

COMPUCREDIT CORPORATION and OPINION
COLUMBUS BANK AND TRUST,
jointly and individually,
Defendants-Appellants.

Appeal from the United States District Court
for the Northern District of California Claudia Wilken,
District Judge, Presiding

Argued and Submitted
April 12, 2010—San Francisco, California

Filed August 17, 2010

Before: Andrew J. Kleinfeld, A. Wallace Tashima, and
Sidney R. Thomas, Circuit Judges.

Opinion by Judge Thomas;
Dissent by Judge Tashima

COUNSEL

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OPINION

THOMAS, Circuit Judge:

This appeal presents the question, *inter alia*, as to whether the word "sue," as used in the Credit Repair Organization Act ("CROA"), means "arbitrate." Or, perhaps the question is, as Alice put it: "whether you can make words mean so many different things?"[1] We conclude that Congress meant what it said in using the term "sue," and that it did not mean "arbitrate." We affirm the order of the district court denying the Credit Providers' motion to compel arbitration.

I

CompuCredit marketed a subprime credit card under the brand name Aspire Visa to consumers with low or weak credit scores through massive direct-mail solicitations and the internet.[2] CompuCredit marketed the card

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[1] Lewis Carroll, THROUGH THE LOOKING GLASS AND WHAT ALICE FOUND THERE, IN THE ANNOTATED ALICE: THE DEFINITIVE EDITION 213 (Martin Gardner ed., Norton Publishers) (2000).

[2] At this stage in the litigation, the facts as recited here are based on the allegations in Plaintiffs' complaint.

and the cards were issued by Columbus Bank and Trust (collectively "Credit Providers").

Greenwood and her fellow plaintiffs ("Consumers") allege CompuCredit marketed the card by representing to consumers it could be used to "rebuild your credit," "rebuild poor credit," and "improve your credit rating." Consumers allege the promotional materials noted there "was no deposit required," and that consumers would immediately receive $300 in available credit when they received the card. In fact, they allege, Credit Providers charged a $29 finance charge, a monthly $6.50 account maintenance fee, and a $150 annual fee, assessed immediately against the $300 limit before the consumer received the card. In aggregate, the card had $257 in fees the first year. Although the promotional material mentioned the fees, it did so in small print amidst other information in the advertisement, and not in proximity to its representations that no deposit was required. Consumers each applied for and received an Aspire card, and were charged these fees. Consumers allege the Credit Providers' actions constitute several violations of the CROA and of California's Unfair Competition Law.

Before receiving the Aspire Visa credit card, each Consumer received a mailing entitled "Pre-Approved Acceptance Certificate." The Acceptance Certificate includes the following paragraph:

> By signing, I request an Aspire Visa card and ask that an account be opened for me. I certify that everything I have stated in the Acceptance Certificate is true and accurate to the best of my knowledge. I have read and agree to the be bound by the "Summary of Credit Terms" and "Terms of Offer" printed on the enclosed insert, which insert includes a discussion of arbitration applicable to my account, and is incorporated here by reference.

One Consumer mailed in her acceptance, one applied over the internet, and the other applied over the phone.

The "Terms of Offer" states:

> Important — The agreement you receive contains a binding arbitration provision. If a dispute is resolved by binding arbitration, you will not have the right to go to court or have the dispute heard by a jury, to engage in pre-arbitration discovery except as permitted under the code of procedure of the National Arbitration Forum ("NAF"), or to participate as part of a class of claimants relating to such dispute. Other rights available to you in court may be unavailable in arbitration.

The "Summary of Credit Terms" contains the following:

> ARBITRATION PROVISION
> (AGREEMENT TO ARBITRATE CLAIMS)
>
> Any claim, dispute or controversy (whether in contract, tort, or otherwise) at any time arising from or relating to your Account, any transferred balances or this Agreement (collectively, "Claims"), upon the election of you or us, will be resolved by binding arbitration pursuant to this Arbitration Provision and the Code of Procedure ("NAF Rules") of the National Arbitration Forum ("NAF") in effect when the Claim is filed. If for any reason the NAF cannot, will not or ceases to serve as arbitration administrator, we will substitute another nationally recognized arbitration organization utilizing a similar code of procedure.
>
> Upon such an election, neither you nor we will have the right to litigate in court the claim being arbitrated, including a jury trial, or to engage in prearbitration discovery except as provided under NAF Rules. In addition, you will not have the right to participate as representative or member of any class of

> claimants relating to any claim subject to arbitration. Except as set forth below, the arbitrator's decision will be final and binding. Other rights available to you in court might not be available in arbitration.

The agreement also provides, "This Agreement, and your Account, and any claim, dispute or controversy (whether in contract, tort or otherwise) . . . are governed by and construed in accordance with applicable federal law and the laws of Georgia."

Consumers brought this action in federal district court, and the Credit Providers moved to compel arbitration of Consumers' CROA claims. The district court held the arbitration clause in the Credit Providers' Aspire Visa credit card agreements was invalid and void under the CROA's prohibition of the waiver of a consumer's right to sue in court, and denied the motion to compel arbitration. The district court also denied the Credit Providers' Motion for Leave to File Motion for Reconsideration. The Credit Providers filed a timely interlocutory appeal challenging the denial of the motion to compel arbitration.

We review the denial of a motion to compel arbitration de novo. *Balen v. Holland Am. Line Inc.*, 583 F.3d 647, 652 (9th Cir. 2009); *Lozano v. AT&T Wireless Servs., Inc.*, 504 F.3d 718, 725 (9th Cir. 2007) ("Whether [a federal statute] permits adjudication by binding arbitration is a question of law that we review de novo.").

II

The district court correctly concluded that the arbitration agreement was void because the CROA specifically prohibits provisions disallowing any waiver of a consumer's right to sue in court for CROA violations.

A

We employ our usual methodology in statutory con-

struction. As always, our starting point is the plain language of the statute. *Children's Hosp. & Health Ctr. v. Belshe*, 188 F.3d 1090, 1096 (9th Cir. 1999). "[W]e examine not only the specific provision at issue, but also the structure of the statute as a whole, including its object and policy." *Id.* If the plain meaning of the statute is unambiguous, that meaning is controlling and we need not examine legislative history as an aid to interpretation unless "the legislative history clearly indicates that Congress meant something other than what it said." *Carson Harbor Village, Ltd. v. Unocal Corp.*, 270 F.3d 863, 877 (9th Cir. 2001) (en banc). If the statutory language is ambiguous, we consult legislative history. *United States v. Daas*, 198 F.3d 1167, 1174 (9th Cir. 1999).

[1] In this context, we also note that Congress has manifested a "liberal federal policy favoring arbitration agreements." *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 25 (1991) (internal quotation marks omitted). Specifically, the Federal Arbitration Act declares that "[a] written provision in . . . a contract evincing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2.

[2] The Supreme Court has held that "[h]aving made the bargain to arbitrate, the party should be held to it unless Congress itself has evinced an intention to preclude a waiver of judicial remedies for the statutory rights at issue." *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 624, 628 (1985). "[I]f Congress intended the substantive protection afforded by a given statute to include protection against waiver of the right to a judicial forum, that intention would be deducible from text or legislative history." *Id.* More recently, the Supreme Court has reiterat-

ed that the Congressional intent to preclude waiver "will be discoverable in the text of the [statute], its legislative history, or an 'inherent conflict' between arbitration and the [statute's] underlying purposes." *Gilmer*, 500 U.S. at 26. The burden is on the party opposing arbitration to show that Congress intended to preclude a waiver of judicial remedies for the statutory rights at issue. *Id.*

B

With these principles in mind, we turn to the Credit Reporting Organization Act. The CROA expressly identifies four rights, which appear in the disclosures section of the statute, 15 U.S.C. § 1679c. The first two rights concern rights that consumers have in relation to credit bureaus, which are not implicated by this suit. The third and fourth rights specifically concern rights that consumers have in relation to credit repair organizations.[3] The third right directly addresses the Consumers' argument: "You have the right to sue a credit repair organization that violates the Credit Repair Organization Act." 15 U.S.C. § 1679c(a). In addition, each credit repair organization is required to (1) inform the consumer of his or her right to sue, (2) provide such information to the consumer in a separate document containing a verbatim copy of an eightparagraph text specified by Congress, which enumerates the "right to sue," (3) obtain from the consumer a signature confirming receipt of such information, and (4) keep such signed confirmations on file for two years from the date of signing. 15 U.S.C. § 1679c(a)-(c). The disclosure document must be provided to every consumer "before any contract or agreement between the consumer and the credit repair organization is executed." *Id.* § 1679c(a).

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[3] The district court did not rule on whether the Credit Providers are "credit repair organizations" under the meaning of the statute. Therefore, we will not reach this issue on appeal.

The CROA also contains a non-waiver provision, phrased in unusually comprehensive and precise language: "Any waiver by any consumer of any protection provided by or any right of the consumer under this subchapter– (1) shall be treated as void; and (2) may not be enforced by any Federal or State court or any other person." 15 U.S.C. § 1679f(a).

[3] Thus, the plain language of the CROA provides consumers with the "right to sue." 15 U.S.C. § 1679c. The "right to sue" means what it says. The statute does not provide a right to "some form of dispute resolution," but instead specifies the "right to sue." The act of suing in a court of law is distinctly different from arbitration. *See Eljer Mfg., Inc. v. Kowin Dev. Corp.*, 14 F.3d 1250, 1254 (7th Cir. 1994) ("Arbitration . . . is a private system of justice" distinct from state and federal courts). The right to sue protected by the CROA cannot be satisfied by replacing it with an opportunity to submit a dispute to arbitration.

Where terms are not defined within a statute, they are accorded their plain and ordinary meaning. *McHugh v. United Serv. Auto. Ass'n*, 164 F.3d 451, 455 (9th Cir. 1999). The plain and ordinary meaning of terms can be deduced through reference sources, including Black's Law Dictionary and general usage dictionaries. *See Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 955 (9th Cir. 2009) (determining the plain meaning of a contract term by referencing *Black's and Webster's* Dictionary).

To sue is "[t]o institute a lawsuit against (another party)." BLACK'S LAW DICTIONARY 1473 (Bryan A. Garner ed., 8th ed., 2004). For "lawsuit," Black's directs us to "suit," *id.* at 905, which is defined as: "[a]ny proceeding by a party or parties against another *in a court of law*." *Id.* at 1475 (emphasis added); *see also Weston v. City*

Council of Charleston, 27 U.S. (Pet) 449, 464 (1829) (defining "suit" as "any proceeding *in a court of justice*, by which an individual pursues that remedy in a court of justice, which the law affords him") (emphasis added). The plain meaning of the phrase "right to sue" thus clearly involves the right to bring an action in a court of law.

By contrast, "arbitration" is "[a] method of dispute resolution involving one or more neutral third parties who are usu- [ally] agreed to by the disputing parties and whose decision is binding." BLACK'S LAW DICTIONARY 112. Arbitration is one of several mechanisms of "alternative dispute resolution," which is "[a] procedure for settling a dispute *by means other than litigation*, such as arbitration or mediation." *Id.* at 86 (emphasis added). The Corpus Juris Secondum underscores that "[a]rbitration is not a judicial proceeding either at common law or under statutes. It is a proceeding separate from litigation based upon its underlying purpose of encouraging dispute resolution *without result to the courts*, and may be characterized as an alternative to litigation." 6 C.J.S. Arbitration § 2 (June 2005) (emphasis added) (citations omitted); *see also Wolsey, Ltd. v. Foodmaker, Inc.*, 144 F.3d 1205, 1208 (9th Cir. 1998) ("Arbitration is a creature of contract, a device of the parties rather than the judicial process.") (citation omitted); *Becker v. Davis*, 491 F.3d 1292, 1299 (11th Cir. 2007) ("[A]rbitration is a contractual right that is generally predicated on an express decision to waive the right to a trial in a judicial forum."); *Morrison v. Colo. Permanente Med. Group*, 983 F. Supp. 937, 944 (D. Colo. 1997) ("[C]ases and statutes discuss consistently the terms "arbitration" and "civil action" in a manner that leaves no doubt that arbitration is a creature separate from, and not just a form of, a civil action.").

[4] As a matter of parlance, reference, and common sense, we cannot conclude that when Congress used the

word "sue," it really meant "arbitrate." The district court correctly read the statute, and determined that the consumer's statutory right to sue could not be waived.

III

The Credit Providers raise a number of counter-theories, none of which is persuasive.

A

Credit Providers first argue that, by placing the "right to sue" in the mandatory "Disclosures" section of the statute, thus *requiring* it be explicitly stated to all consumers, does not actually create a right to sue as the terms are ordinarily understood. Under such a reading, Congress, whose purpose in enacting the statute included protecting consumers from misinformation, see 15 U.S.C. § 1679(b), drafted a statute which requires credit repair organizations to misinform consumers about a fictional right. Under Defendant's interpretation, Congress was requiring that consumers be told a lie: that they possessed a non-existent right. We should "avoid, if possible, a [statutory] interpretation that would produce 'an absurd and unjust result which Congress could not have intended.' " *United States v. Middleton*, 231 F.3d 1207, 1210 (9th Cir. 2000) (quoting *Clinton v. City of New York*, 524 U.S. 417, 429 (1998)). We do not believe Congress was playing Humpty Dumpty with the statute, and we decline to accept the Credit Providers' invitation to go down that particular rabbit hole.

B

The Credit Providers characterize the language stating "you have the right to sue" in Section 1679c as merely a simplified shorthand for the more "complicated" right to bring a claim under Section 1679g. This is actually a two-step argument. First, Credit Providers argue the "right to

sue" language should not be examined independently because it is merely a "simplified" restatement for consumers of the "substantive" rights embodied in the rest of the statute, particularly Section 1679g, which sets out the punishments available for violations of the Act. Second, Credit Providers argue the more general language of Section 1679g does not preclude arbitration.

We disagree. We must, if possible, interpret a statute such that all its language is given effect, and none of it is rendered superfluous. *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001). Under Credit Providers' interpretation, the "right to sue" language, indeed, the entire "Disclosures" section, becomes superfluous and insignificant, merely a restatement of other sections of the statute that expand upon the rights set out in Section 1679c. We decline to adopt such a reading.

In addition, Credit Providers argue the language "right to sue" was used in the Section because it is more "understandable" to the average consumer than a broader phrase such as the "right to bring a claim." This is despite the fact that, according to Credit Providers, Congress meant to give consumers that latter right, rather than the former. If the purpose of the "Disclosures" was to communicate to consumers their right to sue or to proceed using some form of alternative dispute resolution, the phrase "right to sue" is a phrase particularly likely to cause confusion, and lead consumers to misunderst and their rights under the CROA. We see no reason to interpret the language in a way that goes against the purpose even Credit Providers have ascribed to it. The language actually chosen by Congress should be given effect because it is plain and clear on its face, and we "presume that [the] legislature says in a statute what it means and means in a statute what it says there." *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004) (cit-

ing *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992).

[5] The extremely broad anti-wavier provision in the CROA protects the enumerated "right to sue," by treating as void "[a]ny waiver by any consumer of any protection provided *by or any right of the consumer* under this subchapter . . . ." 15 U.S.C. § 1679f(a) (emphasis added). The Act further provides that "[a]ny attempt by any person to obtain a waiver from any consumer of any protection provided or any right of the consumer under this subchapter shall be treated as a violation of this subchapter." 15 U.S.C. § 1679f(b). The plain language of the statute demonstrates that the waiver provision applies to the previously enumerated "right to sue." First, the use of the word "any" to describe which rights are covered is "expansive language [that] offers no indication whatever that Congress intended" to limit a statute's reach. *Harrison v. PPG Indus., Inc.*, 446 U.S. 578, 588-89 (1980). Thus, we read the term "any right of the consumer" to apply to all the rights in the statute, including the "right to sue." Second, Congress's consistent use of the word "right" indicates the waiver prohibition applies to the "right to sue," as identical words in a statute should be given a consistent and identical meaning throughout the statute. *See Powerex Corp v. Reliant Energy Servs., Inc.*, 551 U.S. 224, 232 (2007). Therefore, we conclude that Congress meant what it said. Accordingly, the nonwaiver provision invalidates any waiver of the right to sue.

C

We are also not convinced by Credit Providers' argument regarding the language in 15 U.S.C. § 1679f(a). The section states a consumer waiver of any right or protection "may not be enforced by any Federal or State court or any other person." 15 U.S.C. § 1679f(a). Credit Providers argue the "any other person" language demon-

strates Congress intended arbitrators to be able to decide CROA claims. First, we do not think this language leads to such a clear and unilateral conclusion. For example, it is foreseeable that a credit repair organization would institute arbitration proceedings against a consumer for collection of the organization's fees under its contract with the consumer. The CROA creates various nonwaivable consumer rights and protections other than the right to sue. In an arbitration collection proceeding, one of the other non-waivable consumer rights or protections could arise. The "any other person" language of Section 1679f(a) assures that these rights and protections would be preserved in an arbitration instituted by a credit repair organization or debt collection agency. It is consistent with a consumer's explicitly stated non-waivable right to sue. Given the plain language creating such a right, we do not find this language requires a different conclusion.

In addition, the statutory language underscores the central role of courts in enforcement of the statute in § 1679g. This section, which sets out available damages for violations of the CROA, repeatedly refers only to "courts" as the enforcement mechanism. For example, punitive damages may be assessed in "such additional amount as *the court* may allow" and lays out factors that "*the court* shall consider." 15 U.S.C. § 1679g(a)(2)(A), (b) (emphasis added). Thus, the language in the remainder of the statute supports the plain reading of the text creating the right to sue, rather than requiring a different outcome.

[6] We agree with other courts that the "CROA's nonwaiver of rights provisions, combined with its proclamation of a consumer's right to sue, represent precisely the expression of congressional intent required by" the Supreme Court to find that a waiver of judicial remedies is precluded. *Alexander v. U.S. Credit Management, Inc.*, 384 F. Supp. 2d 1003, 1011 (N. D. Tex. 2005).

"Congress did not intend to void all waivers of rights under the Act, and require consumers to sign a congressionally mandated enumeration of their rights underthe Act, only to permit those very same rights to waived mere moments later upon the signing an agreement such as the one in question here." *Id.* at 1012. We agree with the district court that "[t]o recognize that CROA voids all waivers of 'any *right of the* consumer' and mandates that any waiver of the right to sue is void strikes the court as embracing an *unhealthy* regard for the federal policy favoring arbitration." Dkt. 64, at 8 (citation omitted). Thus, we hold the plain language of the CROA prohibits enforcement of the arbitration agreement.[4]

IV

We realize this decision is in conflict with that of two of our sister circuits, but we are unpersuaded by the reasoning of those cases. *See Gay v. CreditInform*, 511 F.3d 369 (3d Cir. 2007); *Picard v. Credit Solutions, Inc.*, 564 F.3d 1249 (11th Cir. 2009). Both *Gay* and *Picard* give surprisingly little regard to the "right to sue" language in the statute, and rely upon reasoning in Supreme Court cases that are distinguishable from the situation here. As *Picard* essentially follows and adopts the reasoning in *Gay*, we will not deal with the two cases separately.

Gay dispatches with the explicit language creating a consumer's "right to sue" in a mere footnote. The court states that since the section does not specify the forum for resolution of the dispute, it does not support the argument that it provides a "judicial, rather than an arbitral, forum for CROA violations." *Gay*, 511 F.3d at 377 n.4. As

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[4] Having found a congressional intent to preclude the waiver of judicial remedies under the CROA in the text of the Act itself, there is no need for us to examine legislative history or any inherent tension between arbitration and the Act's underlying purpose.

discussed in more detail above, this ignores the plain meaning of the word "sue." The Third Circuit continues that even if "sue" implies the availability of a judicial forum (which we believe it does), use of the word "would not mean that the organization could not assert defenses that it had to such an action including the right to invoke a contractual arbitration provision to change the forum." *Id.* This ignores completely the anti-waiver clause of the statute. The anti-waiver clause explicitly states that any waiver of any right by the consumer "shall be treated as void" and "may not be enforced by any Federal or State court . . . ." 15 U.S.C. § 1679f(a)(1)-(2). Thus, the organization might assert the defense of the contractual arbitration provision, but the court is explicitly forbidden from enforcing this waiver of the right to sue.

Gay also relies upon analogies to several Supreme Court arbitration cases that we find unavailing. The Third Circuit first analogized the issue to the one the Supreme Court considered in *Shearson/Am. Express*, *Inc. v. McMahon*, 482 U.S. 220 (1987), when it determined whether Section 29(a) of the Exchange Act prohibited arbitration agreements. Section 27 of the Act provides, "The district courts of the United States . . . shall have exclusive jurisdiction of violations of this chapter or the rules and regulations thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by this chapter or the rules and regulations thereunder." 15 U.S.C. § 78aa. Section 29(a) of the Act declares void "[a]ny condition, stipulation, or provision binding any person to waive compliance with any provision of [the Act]." *Id.* § 78cc(a). The plaintiffs in *McMahon* argued that Section 29(a) prohibited waiver of the Section 27 right to bring suit in a federal district court.

As pointed out by the court in *McMahon*, the Exchange Act's anti-waiver provision, § 29(a),

> forbids [ ] enforcement of agreements to waive "compliance" with the provisions of the statute. But § 27 itself does not impose any duty with which persons trading in securities must "comply." By its terms, § 29(a) only prohibits waiver of the substantive obligations imposed by the Exchange Act. Because § 27 does not impose any statutory duties, its waiver does not constitute a waiver of "compliance with any provision" of the Exchange Act under § 29(a).

McMahon, 482 U.S. at 228. In summary, because the Exchange Act only prohibits waivers of compliance with its substantive obligations and the mandate of a judicial forum is not a substantive obligation, the Exchange Act does not preclude arbitration agreements.

Applying *McMahon*, the Third Circuit observed that "the section [of the CROA] in which this anti-waiver provision appears is entitled 'Noncompliance with this subchapter.' " Gay, 511 F.3d at 385. The Third Circuit reasoned that the CROA's anti-waiver provision only "extend[s] to rights premised on the imposition of statutory duties." *Id.* Because the right to sue in a judicial forum is not a statutory duty under the CROA, the court concluded that the anti-waiver provision did not apply to it. *Id.* However, the plain text of 15 U.S.C. § 1679f encompasses waivers of "any protection" or "any right" under the CROA–categories which are much broader than mere noncompliance. "[H]eadings and titles are not meant to take the place of the detailed provisions of the text," and where the plain text of the statute is unambiguous, "the heading of a section cannot limit the plain meaning of the text." *Bhd. of R.R. Trainmen v. Balt. & Ohio R.R., Co.*, 331 U.S. 519, 528-29 (1947); *Pa. Dep't of Corr. v. Yeskey*, 524 U.S. 206, 212 (1998) ("[T]he title of a statute . . . cannot limit the plain meaning of the text. For interpretive purposes, it is of use only when it sheds light on some

ambiguous word or phrase."). Here, because the text of § 1679f(a) is not ambiguous, we need not turn to the title of the section to clarify its meaning. Further, the substantive-procedural distinction has no application to the CROA. Unlike the Exchange Act, the CROA grants consumers the "right to sue." Vesting jurisdiction to hear a claim in a particular court is quantitatively different from a statute that expressly provides for a right to sue. Thus, § 1679f's prohibition on waivers may not be limited to "compliance" with the CROA, and *McMahon* does not apply.[5]

We are also not persuaded that the other Supreme Court cases regarding the availability of arbitration require allowing arbitration in this case. For instance, in *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985), the Supreme Court considered whether the language in 15 U.S.C. § 15(a) rendered antitrust claims non-arbitrable in the context of an international commercial dispute. In relevant part, § 15(a) provides that "any person who shall be injured in his business or property by reason of anything forbidden in antitrust laws may sue therefor in any district court

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[5] The Third Circuit also relies upon the Supreme Court's reasoning in *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 481-83 (1989), which held that the Securities Act of 1933 does not preclude arbitration. *Gay*, 511 U.S. at 385. *Rodriguez de Quijas* considered jurisdictional and non-waiver language virtually identical to the language considered in *McMahon*. The main difference between the two is that the Securities Act allows for concurrent jurisdiction in state and federal courts whereas the Exchange Act provides for exclusive federal jurisdiction. *Rodriguez de Quijas*, 490 U.S. at 481-83. The court relied on the same distinction between procedural and substantive provisions and held that waiving the jurisdictional provision does not fall under the prohibition against waiving "compliance" with the Act. *Id.* We find this reasoning unpersuasive here for the same reasons discussed in regards to *McMahon*.

of the United States." The Court held that this section "did not evidence a congressional intent to preclude Sherman Act claims from being arbitrable, emphasizing that the Federal Arbitration Act and the Convention on the Recognition of Enforcement of Foreign Arbitral Awards favor arbitration for disputes in international commerce. The Court concluded that it was important "to subordinate domestic notions of arbitrability to the international policy favoring commercial arbitration." *Mitsubishi*, 473 U.S. at 639. The present case differs in that it does not contain an international component. More importantly, the CROA contains express language which precludes waiving "any right of the consumer." 15 U.S.C. § 1679f(a). A plain reading of the statute dictates that one of those rights is the "right to sue a credit repair organization that violates" the CROA. *Id.* § 1679c. The Sherman Act does not contain similar non-waiver language, and thus does not apply to this situation.

In *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 29 (1991), the Supreme Court considered whether an arbitration agreement in a securities registration application could be avoided on the theory that arbitration "deprives claimants of the judicial forum provided for by the [Age Discrimination in Employment Act (ADEA)]." The ADEA contains the following non-waiver provision: "any individual may not waive any right or claim under this Act unless the waiver is knowing and voluntary." However, the ADEA does not explicitly provide for a "right to sue." Rather, the ADEA takes a "flexible approach to resolution of claims. The EEOC for example, is directed to pursue 'informal methods of conciliation, conference, and persuasion,' 29 U.S.C. § 626(b), which suggests that an out-of-court dispute resolution, such as arbitration, is consistent with the statutory scheme established by Congress." *Gilmer*, 500 U.S. at 29.

Contrary to the ADEA, the CROA specifically grants access to a judicial forum and a right to sue, and reveals no such "flexibility" toward alternative methods of dispute resolution. Moreover, in contrast to language in the ADEA that permits "knowing and voluntary" waiver of statutory rights, the CROA proscribes any "waiver by any consumer of any protection provided by or any right of the consumer under this title" irrespective of a consumer's knowledge or intent. 15 U.S.C. § 1679f(a). Thus, *Gilmer* is also inapplicable here.

Finally, in *Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79, 80 (2000), the Supreme Court considered whether claims under the Truth in Lending Act (TILA) were arbitrable. The party challenging arbitration did not "contend that the TILA evinces an intention to preclude a waiver of judicial remedies." *Id.* Instead, plaintiffs challenged arbitration because the costs and fees would be prohibitive. Id. The Court, finding no showing regarding prohibitive costs was made, rejected the argument. Here, arbitration is challenged on the ground that the CROA evinces an intention to preclude a waiver of judicial remedies. *Green Tree* simply does not apply.

V

[7] The CROA gives consumers the "right to sue," and prevents any waiver of "any right" under the statute. We find this sufficient to demonstrate Congress intended that consumers cannot waive their right to sue under the CROA, and instead submit to arbitration. Therefore, we affirm the district court's holding that the forced arbitration clause is void and the court's denial of the motion to compel arbitration of the CROA claims.

AFFIRMED.

TASHIMA, Circuit Judge, dissenting:

Because I disagree with the majority's conclusion that Congress intended to preclude a waiver of a judicial forum for claims under the Credit Repair Organizations Act ("CROA"), I respectfully dissent.

As the majority acknowledges, Congress has manifested "a liberal federal policy favoring arbitration agreements." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983). Under the Federal Arbitration Act, courts should enforce arbitration agreements involving statutory claims " 'unless Congress itself has evinced an intention to preclude a waiver of judicial remedies for the statutory rights at issue.' " *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 26 (1991) (quoting *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth*, 473 U.S. 614, 628 (1985)). Congress' intent to preclude a waiver of judicial remedies must be shown by the statute's text, its legislative history, or an inherent conflict between arbitration and the statute's underlying purpose. *Id.* Plaintiffs bear the burden of showing that Congress intended to preclude a waiver of a judicial forum for CROA claims. *See Shearson/Am. Express Inc. v. McMahon*, 482 U.S. 220, 227 (1987) ("The burden is on the party opposing arbitration . . . to show that Congress intended to preclude a waiver of judicial remedies for the statutory rights at issue.").

The majority concludes that the plain language of 15 U.S.C. § 1679c(a) provides consumers with the "right to sue," that the right to sue implies a judicial forum, and that 15 U.S.C. § 1679f prohibits any waiver of this right. (Maj. Op. at 12080.) I submit, however, that the plain language of § 1679c(a) does not confer this right upon consumers, and neither the CROA nor its legislative history shows that Congress intended to preclude a waiver of judicial remedies.

All that § 1679c(a) requires is that a credit repair organization provide consumers with the following written disclosure:

> You have a right to dispute inaccurate information in your credit report . . . .
>
> You have a right to obtain a copy of your credit report . . . .
>
> You have a right to sue a credit repair organization that violates the Credit Repair Organization Act. This law prohibits deceptive practices by credit repair organizations.
>
> You have the right to cancel your contract with any credit repair organization for any reason within 3 business days from the date you signed it . . . .

15 U.S.C. § 1679c(a). This section does not purport to create any substantive rights, including the right to sue. Rather, its sole purpose is to set forth a disclosure statement to be communicated verbatim to consumers.

Each of the rights referred to in § 1679c(a) is separately conferred within Chapter 41 of Title 15, thus indicating that Congress included § 1679c(a) to advise consumers of relevant rights provided for *elsewhere* in the CROA. *See Rex v. CSACredit Solutions of America, Inc.*, 507 F. Supp. 2d 788, 798- 99 (W.D. Mich. 2007) ("The inclusion of separate sections actually providing the substantive rights indicates that the language in the disclosures in § 1679c does not create any rights. Rather, the language in § 1679c only sets forth the phrasing that is to be used in advising consumers of their rights under other sections of Chapter 41 of Title 15."). For example, 15 U.S.C. § 1681i provides a consumer with the right to dispute inaccurate information in his credit report, 15 U.S.C. § 1681j provides a consumer with the right to obtain a copy of his credit

report, and 15 U.S.C. § 1679e(a) provides a consumer with the right to cancel a contract with a credit repair organization within three business days. *See Rex*, 507 F. Supp. at 799 n.5.

The "right to sue" listed in § 1679c(a) is provided for in 15 U.S.C. § 1679g, which establishes civil liability for violations of the CROA. Because § 1679g provides for civil liability, a consumer ordinarily has the "right to sue" a credit repair organization which violates the CROA. Nowhere in the CROA, however, does Congress mandate a judicial forum for enforcement of the CROA's substantive provisions. The disclosure language in § 1679c(a), while recognizing a right to sue, does not itself confer that right. *See Gay v. CreditInform*, 511 F.3d 369, 381-82 (3d Cir. 2007) ("Although the statutes clearly contemplate consumers' actions being brought in a judicial forum . . . and to that extent may be said to recognize a consumer's right to proceed in court, they neither contain provisions creating such rights nor indicate that Congress . . . intended to exclude claims asserted under the CROA . . . from arbitration agreements."). Because § 1679c(a) does not establish any rights, but only requires credit repair organizations to make a written disclosure to consumers, the disclosure statement's mention of a "right to sue" cannot be the basis of a non-waivable right under 15 U.S.C. § 1679f.

In addition, 15 U.S.C. § 1679f indicates that Congress intended that CROA claims to be enforceable outside a judicial forum. It provides that "[a]ny waiver . . . of any protection . . . or any right . . . under this subchapter . . . may not be enforced by any Federal or State court *or any other person.*" 15 U.S.C. § 1679f(a) (emphasis added). By including "or any other person" in the same sentence that lists Federal and State courts as appropriate fora for CROA claims, Congress clearly indicated that arbitrators, mediators, and other third parties may decide CROA

claims. This language indicates that Congress contemplated a role for arbitrators in enforcing CROA claims. On the other hand, the majority's suggestion that the references to "the court" in § 1679g support a right to sue in court, does not overcome the "liberal federal policy favoring arbitration agreements." *Moses H. Cone Mem'l Hosp.*, 460 U.S. at 24. Such language merely indicates Congress' expectation that the question of civil liability will normally be resolved in a judicial forum. It does not confer a non-waivable right to a judicial forum.

Finally, the mere mention of a "right to sue" does not necessarily mean the right to sue *in court*, especially given the lack of other statutory language supporting this interpretation. The only other circuits to have ruled on this issue are in agreement. *See Picard v. Credit Solutions, Inc.*, 564 F.3d 1249, 1255 (11th Cir. 2009) ("Although CROA requires credit repair organizations to inform consumers of their right to a private cause of action, such does not preclude arbitration under CROA"); *Gay*, 511 F.3d at 377 n.4 ("[15 U.S.C. § 1679c(a)] does not specify the forum for the resolution of the dispute and therefore does not support [the] argument that the CROA provides a consumer with the right to bring suit in a judicial, rather than an arbitral, forum for CROA violations."). We should not lightly create a circuit split on an issue of national application on the basis of the flimsy evidence on which the majority relies. *See Maniar v. Fed. Deposit Ins. Corp.*, 979 F.2d 782, 785 (9th Cir. 1992) ("[U]niformity among the circuits in matters having general application to the various states is preferable as long as individual justice is not sacrificed."). We should be "hesitant to create such a split, and we should do so only after the most painstaking inquiry" and only if required by the "unambiguously expressed intent of Congress." *Zimmerman v. Dep't of Justice*, 170 F.3d 1169, 1183-84 (9th Cir. 1999).

The majority does not even address whether the legislative history of the CROA or any inherent conflict between arbitration and the statute's underlying purpose may form a basis for prohibiting waiver of the judicial forum. Nothing cited by Plaintiffs suggests that Congress actually considered the issue of arbitrability of CROA claims, and the legislative history does not establish that Congress intended CROA claims to be non-arbitrable. *See Rex*, 507 F. Supp. 2d at 800 ("In the absence of any discussion of arbitration in the legislative history, the legislative history cannot provide a basis for the Court to conclude that Congress intended claims under the CROA to be nonarbitrable."). In addition, there is no inherent conflict between arbitration and CROA's underlying purpose because Plaintiffs may enforce their rights under the substantive provisions of CROA even if compelled to arbitrate. *See Mitsubishi Motors Corp.*, 473 U.S. at 628 ("By agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than a judicial, forum.").

Because neither the plain text of the statute, its legislative history, nor any inherent conflict between the purpose of CROA and arbitration shows that Congress intended to preclude a waiver of judicial remedies, I would reverse the district court's order and remand with instructions to compel arbitration.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

WANDA GREENWOOD LADELLE HATFIELD; DEBORAH MCCLEESE, on behalf of themselves and other similarly situated,

Plaintiffs,

v.

COMPUCREDIT CORPORATION and OPINION COLUMBUS BANK AND TRUST, jointly and individually,

Defendants.

No. C 08-04878 CW
ORDER DENYING DEFENDANTS' MOTION TO COMPEL ARBITRATION

Defendants Compucredit Corporation and Columbus Bank and Trust move to compel Plaintiffs Wanda Greenwood, Ladelle Hatfield and Deborah McCleese to arbitrate their claims brought pursuant to the Credit Repair Organization Act (CROA). Plaintiffs oppose the motion. The motion was heard on February 26, 2009. Having considered all of the parties' papers and oral argument on the motion, the Court denies Defendants' motion. The Court concludes that CROA prohibits consumers from waiving their right to sue.

BACKGROUND

The following facts are alleged in the complaint. Defendant Compucredit marketed a subprime credit card under the brand name Aspire Visa to consumers with low

or weak credit scores through massive direct-mail solicitations and the internet. Compucredit is the exclusive marketer and advertiser of Aspire Visa credit cards and the credit cards are issued by Columbus Bank and Trust. Compucredit marketed the card by representing to consumers that an Aspire Visa credit card could be used by the consumer to "rebuild your credit," "rebuild poor credit," and "improve your credit rating." The promotional materials also noted that there was "no deposit required," and that consumers would immediately receive $300 in available credit when they received their credit card. However, once Columbus Bank and Trust issued the credit card, consumers were charged a $29 finance charge, a monthly $6.50 account maintenance fee and a $150 annual fee. These fees were immediately assessed against the $300 credit limit before the consumer received the credit card. Although Compucredit's promotional materials mentioned these fees, it did so in small print, buried in other information in the advertisement, and not in proximity to its representations that no deposit was required. Plaintiffs allege that Defendants' actions constitute several violations of the CROA and of California's Unfair Competition Law.

Before receiving an Aspire Visa credit card, each Plaintiff received a mailing entitled, Pre-Approved Acceptance Certificate. The Acceptance Certificate includes the following paragraph:

> By signing, I request an Aspire Visa card and ask that an account be opened for me. I certify that everything I have stated in the Acceptance Certificate is true and accurate to the best of my knowledge. I have read and agree to be bound by the "Summary of Credit Terms" and "Terms of Offer" printed on the enclosed insert, *which insert includes a discussion of arbitration applicable to my account*, and is incorporated here by reference.

(emphasis in original). Plaintiffs signed the Acceptance Certificate. The "Terms of the Offer" states, in very small bold print in all capitals,

> **IMPORTANT — THE AGREEMENT YOU RECEIVE CONTAINS A BINDING ARBITRATION PROVISION. IF A DISPUTE IS RESOLVED BY BINDING ARBITRATION, YOU WILL NOT HAVE THE RIGHT TO GO TOCOURT OR HAVE THE DISPUTE HEARD BY A JURY, TO ENGAGE IN PRE-ARBITRATION DISCOVERY EXCEPT AS PERMITTED UNDER THE CODE OF PROCEDURE OF THE NATIONAL ARBITRATION FORUM ("NAF"), OR TO PARTICIPATE AS PART OF A CLASS OF CLAIMANTS RELATING TO SUCH DISPUTE. OTHER RIGHTS AVAILABLE TO YOU IN COURT MAY BE UNAVAILABLE IN ARBITRATION.**

In even smaller print, the "Summary of Credit Terms" contains the following:

> ARBITRATION PROVISION (AGREEMENT TO ARBITRATE CLAIMS)
>
> Any claim, dispute or controversy (whether in contract, tort, or otherwise) at any time arising from or relating to your Account, any transferred balances or this Agreement (collectively, "Claims"), upon the election of you or us, will be resolved by binding arbitration pursuant to this Arbitration Provision and the Code of Procedure ("NAF Rules") of the National Arbitration Forum ("NAF") in effect when the Claim is filed. If for any reason the NAF cannot, will not or ceases to serve as arbitration administrator, we will substitute another nationally recognized arbitration organization utilizing a similar code of procedure.
>
> Upon such an election, neither you nor we will

> have the right to litigate in court the claim being arbitrated, including a jury trial, or to engage in pre-arbitration discovery except as provided under NAF Rules. In addition, you will not have the right to participate as representative or member of any class of claimants relating to any claim subject to arbitration. Except as set forth below, the arbitrator's decision will be final and binding. Other rights available to you in court might not be available in arbitration.

The agreement also provides, "This Agreement, and your Account, and any claim, dispute or controversy (whether in contract, tort or otherwise) . . . are governed by and construed in accordance with applicable federal law and the laws of Georgia.[1]

LEGAL STANDARD

I. Motion to Compel Arbitration

Under the Federal Arbitration Act (FAA), 9 U.S.C. § 1 *et seq.*, written agreements that controversies between the parties shall be settled by arbitration are valid, irrevocable, and enforceable. 9 U.S.C. § 2. A party aggrieved by the refusal of another to arbitrate under a written arbitration agreement may petition the district court which would, save for the arbitration agreement, have jurisdiction over that action, for an order directing that arbitration proceed as provided for in the agreement. 9 U.S.C. § 4. The FAA further provides that:

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[1] The Court takes judicial notice of Compucredit's most recent annual registration with the Georgia Secretary of State and its most recent notice of annual meeting of shareholders, although not of the truth of the facts stated therein. *See Intri-Plex Techs., Inc. v. Crest Group, Inc.*, 499 F.3d 1048, 1052 (9th Cir. 2007) (court may take judicial notice of facts not reasonably subject to dispute, either because they are generally known, are matters of public record or are capable of accurate and ready determination).

> If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement . . . .

9 U.S.C. § 3.

If the court is satisfied "that the making of the arbitration agreement or the failure to comply with the agreement is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement." *Id.* The FAA reflects a "liberal federal policy favoring arbitration agreements." *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 25 (1991) (quoting *Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983)). A district court must compel arbitration under the FAA if it determines that: 1) there exists a valid agreement to arbitrate; and 2) the dispute falls within its terms. *Stern v. Cingular Wireless Corp.*, 453 F. Supp. 2d 1138, 1143 (C.D. Cal. 2006) (citing *Chiron Corp. v. Ortho Diagnostic Sys.*, 207 F.3d 1126, 1130 (9th Cir. 2000)).

DISCUSSION

I. Motion to Compel Arbitration

Plaintiffs argue that the Court should not compel arbitration because the arbitration agreement is void under the CROA as to the national class, and it is void and unconscionable under California law as to the California class. Defendants clarify in their reply brief that they move to compel arbitration of the CROA claims as to the

national class only, not of the claims pursued by the California class under California law. Therefore, the Court need not address whether the arbitration provision is void and unconscionable under California law.

Plaintiffs argue that the arbitration agreement is void as to the national class because the CROA contains specific provisions disallowing any waiver of a consumer's right to sue in court for CROA violations.[2] Each credit repair organization is required to (1) inform the consumer of his or her right to sue, (2) provide such information to the consumer in a separate document containing a verbatim copy of an eight-paragraph text specified by Congress, which enumerates the "right to sue," (3) obtain from the consumer a signature confirming receipt of such information and (4) keep such signed confirmations on file for two years from the date of signing. 15 U.S.C. § 1679c(a)-(c). The written disclosure specifically states that consumers "have a *right to sue* a credit repair organization that violates the Credit Repair Organization Act." 15 U.S.C. § 1679c (emphasis added). This disclosure document must be provided to every consumer "before any contract or agreement between the consumer and the credit repair organization is executed." *Id.* § 1679c(a). The CROA contains a non-waiver provision, which states:

> Any waiver by any consumer of any protection provided by or *any right of the consumer* under this

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[2] Defendants do not dispute that they are a "credit repair organization" as defined by 15 U.S.C. § 1679a(3)(A). That section provides,

> The term "credit repair organization" (A) means any person who uses any instrumentality of interstate commerce or the mails to sell, provide, or perform (or represent that such person can or will sell, provide, or perform) any service, in return for the payment of money or other valuable consideration, for the express or implied purpose of (i) improving any consumer's credit record, credit history, or credit rating; or (ii) providing advice or assistance to any consumer with regard to any activity or service described in clause (i).

> subchapter—(1) shall be treated as void; and (2) may not be enforced by any Federal or State court or any other person.

15 U.S.C. § 1679f(a) (emphasis added). Based on these sections, Plaintiffs argue that they have a right to sue under CROA that cannot be waived. The issue of arbitration under CROA appears to be one of first impression in the Ninth Circuit.

In *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 624, 628 (1985), the Supreme Court held, "Having made the bargain to arbitrate, the party should be held to it unless Congress itself has evinced an intention to preclude a waiver of judicial remedies for the statutory rights at issue." The Court continued, "If Congress intended the substantive protection afforded by a given statute to include protection against waiver of the right to a judicial forum, that intention would be deducible from text or legislative history." *Id.* The party seeking to avoid arbitration of a statutory claim has the burden of establishing Congressional intent to preclude arbitration of the claim. *Shearson/Am. Express, Inc. v. McMahon*, 482 U.S. 220, 227 (1987).

Only a few courts around the country have confronted this issue. A district court in Texas concluded that "CROA's non-waiver of rights provisions, combined with its proclamation of a consumer's right to sue, represent precisely the expression of congressional intent required by" the Supreme Court to find that a waiver of judicial remedies is precluded. *Alexander v. U.S. Credit Management, Inc.*, 384 F. Supp. 2d 1003, 1011 (N.D. Tx. 2005). That court also stated that "Congress did not intend to void all waivers of rights under the Act, and require consumers to sign a congressionally mandated enumeration of their rights under the Act, only to permit those very same rights to be waived mere moments later upon the

signing an agreement such as the one in question here." *Id.* at 1012. A district court in Alabama recently noted, "The striking congruence of the language used in the disclosure provision, § 1679c, and the non-waiver provision, § 1679f, convinces the court that Congress intended to create a right to go to court under CROA that cannot be waived." *Reynolds v. Credit Solutions, Inc.*, 541 F. Supp. 2d 1248, 1258 (N.D. Ala. 2008). That court continued, "To recognize that CROA voids all waivers of 'any right of the consumer' and mandates that any waiver of the right to sue is void strikes the court as embracing an unhealthy regard for the federal policy favoring arbitration." *Id.* (emphasis in original).

However, a district court in Michigan noted that "besides entitling consumers to the actual disclosure statement, § 1679c does not afford consumers any rights or protections." *Rex v. CSA-Credit Solutions of America, Inc.*, 507 F. Supp. 2d 788, 798 (W.D. Mich. 2007). The court concluded that a different section of the statute, § 1679g(a), provides consumers with the actual right to bring a claim, and that section "does not contain any language indicating that claims under the CROA are nonarbitrable." *Id.* at 799.

The Third Circuit addressed this issue and similarly held that CROA's "anti-waiver provision as a matter of legislative intent would not apply to a right to assert claims in a judicial forum or on a class action basis, and a consumer asserting claims pursuant to the CROA may therefore waive such rights." *Gay v. Creditinform*, 511 F.3d 369, 383 (3d Cir. 2007).

The Third Circuit analogized the issue to one that the Supreme Court considered in *Shearson/Am. Express, Inc. v. McMahon* when it determined whether section 29(a) of the Exchange Act prohibited arbitration agreements. Section 27 of the Act provides, "The district courts

of the United States . . . shall have exclusive jurisdiction of violations of this chapter or the rules and regulations thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by this chapter or the rules and regulations thereunder." 15 U.S.C. § 78aa. And section 29(a) of the Act declares void "any condition, stipulation, or provision binding any person to waive compliance with any provision of [the Act]." *Id.* § 78cc(a). The plaintiffs in *McMahon* argued that section 29(a) prohibited waiver of the section 27 right to bring suit in a federal district court.

The Third Circuit took particular note of the following analysis in *McMahon:* "What the anti-waiver provision of § 29 forbids is enforcement of agreements to waive 'compliance' with the provisions of the statute," and "§ 27 itself does not impose any duty with which persons trading in securities must 'comply.'" *McMahon*, 482 U.S. at 228. The Supreme Court distinguished between the procedural right that section 27 provides, the right to file an action in a federal district court, and the substantive rights that section 29(a) provides. The Court continued, "By its terms, § 29(a) only prohibits waiver of the substantive obligations imposed by the Exchange Act," and "[b]ecause § 27 does not impose any statutory duties, its waiver does not constitute a waiver of 'compliance with any provision' of the Exchange Act under § 29(a)." *Id.*

Applying *McMahon*, the Third Circuit observed that "the section [of the CROA] in which this anti-waiver provision appears is entitled 'Noncompliance with this subchapter.'" *Gay*, 511 F.3d at 385. The Third Circuit reasoned that CROA's anti-waiver provision only "extend[s] to rights premised on the imposition of statutory duties." *Id.* Because the right to sue in a judicial forum is not a statutory duty under the CROA, the court concluded that the antiwaiver provision did not apply to it. *Id.*

The Court finds the reasoning of *Alexander* and *Reynolds* more persuasive than that in *Rex* and *Gay*. In making this decision, the Court is mindful that "questions of arbitrability must be addressed with a healthy regard for the federal policy favoring arbitration." *Gilmer*, 500 U.S. at 26. The Court also notes that the Supreme Court has regularly concluded that statutory claims in a variety of contexts are arbitrable. *See, e.g.*, *Green Tree Financial Corp.-Alabama v. Randolph*, 531 U.S. 79, 88-92 (2000) (Truth in Lending Act); Gilmer, 500 U.S. at 35 (Age Discrimination in Employment Act); *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 479-86 (1989) (Securities Act of 1933); *McMahon*, 482 U.S. at 227-40 (Securities Exchange Act of 1934, Racketeer Influenced and Corrupt Organization Act); *Mitsubishi Motors*, 473 U.S. at 628-40 (Sherman Anti-Trust Act).

However, the "right to sue" and non-waiver language used in CROA is different in important respects from other statutory language that the Supreme Court found not to preclude a waiver of judicial remedies. For instance, in *Mitsubishi Motors*, the Court considered whether language in 15 U.S.C. § 15(a) rendered antitrust claims non-arbitrable. In relevant part, § 15(a) provides that "any person who shall be injured in his business or property by reason of anything forbidden in antitrust laws may sue therefor in any district court of the United States." The Court held that this section did not evidence a congressional intent to preclude Sherman Act claims from being arbitrable. Further, the Court noted that the Federal Arbitration Act and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards favor arbitration for disputes in international commerce. The Court concluded that it was important "to subordinate domestic notions of arbitrability to the international policy favoring commercial arbitration." *Mitsubishi*, 473 U.S. at 639. The present case differs from *Mitsubishi* in

that it does not contain an international component. Further, CROA contains express language which precludes waiving "any right of the consumer." 15 U.S.C. § 1679f(a). A plain reading of the statute dictates that one of those rights is the "right to sue a credit repair organization that violates" CROA. *Id.* § 1679c. The Sherman Act does not contain similar non-waiver language.

In *Rodriguez de Quijas*, the Court held that the Securities Act of 1933 does not preclude arbitration. 490 U.S. 481-83. There, the Court considered jurisdictional and non-waiver language virtually identical to the language considered in *McMahon*. The main difference between the two is that the Securities Act allows for concurrent jurisdiction in state and federal courts whereas the Exchange Act provides for exclusive federal jurisdiction. *Id.* The Court relied on the same distinction between procedural and substantive provisions and held that waiving the jurisdictional provision does not fall under the prohibition against waiving "compliance" with the Act. *Id.*

Again, the non-waiver provision in CROA differs from the nonwaiver provisions at issue in *McMahon* and *Rodriguez*. CROA's nonwaiver provision is not limited to the waiver of compliance with the Act. Though the section of the CROA in which the non-waiver provision appears is entitled "Noncompliance with this subchapter," the following text of the statute specifically voids the waiver of any rights of the consumer. 15 U.S.C. § 1679f(a). The Supreme Court has noted that "the title of a statute . . . cannot limit the plain meaning of the text. For interpretive purposes, it is of use only when it sheds light of some ambiguous word or phrase." *Pennsylvania Dept. of Corrections v. Yeskey*, 524 U.S. 206, 212 (1998). Here, because the text of § 1679f(a) is not ambiguous, the Court need not turn to the title of section to clarify its meaning.

Further, the substantive–procedural distinction has no application to CROA. Unlike the Exchange Act and the Securities Act, CROA grants consumers the "right to sue." Vesting jurisdiction to hear a claim in a particular court is qualitatively different from a statute that expressly provides for a right to sue.

In *Gilmer*, the Court considered whether an arbitration agreement in a securities registration application could be avoided on the theory that arbitration "deprives claimants of the judicial forum provided for by the [Age Discrimination in Employment Act (ADEA)]." 500 U.S. at 29. The ADEA contains the following nonwaiver provision: "any individual may not waive any right or claim under this Act unless the waiver is knowing and voluntary." However, the ADEA does not explicitly provide for a "right to sue." Rather, the ADEA takes a "flexible approach to resolution of claims. The EEOC, for example, is directed to pursue 'informal methods of conciliation, conference, and persuasion,' 29 U.S.C. § 626(b), which suggests that out-of-court dispute resolution, such as arbitration, is consistent with the statutory scheme established by Congress." *Gilmer*, 500 U.S. at 29.

Contrary to the ADEA, CROA specifically grants access to a judicial forum as a right and reveals no such "flexibility" toward alternative methods of dispute resolution. Moreover, in contrast to language in the ADEA that permits "knowing and voluntary" waiver of statutory rights, CROA proscribes any "waiver by any consumer of any protection provided by or any right of the consumer under this title" irrespective of a consumer's knowledge or intent. 15 U.S.C. § 1679f(a).

In *Green Tree*, the Supreme Court considered whether claims under the Truth in Lending Act (TILA) were arbitrable. The party challenging arbitration did not "contend that the TILA evinces an intention to preclude a waiver of

judicial remedies." 531 U.S. at 90. Instead, arbitration was challenged because the costs and fees would be prohibitive. *Id.* The Court held that the party seeking to avoid arbitration on such grounds "bears the burden of showing the likelihood of incurring such costs." *Id.* at 92. The Court concluded that "neither during discovery nor when the case was presented on the merits was there any timely showing at all on the point." *Id.* Therefore, the Court rejected the argument that prohibitive costs made it impossible to vindicate statutory rights in arbitration. *Id.* Unlike *Green Tree*, in the present case, arbitration is directly challenged on the ground that CROA evinces an intention to preclude a waiver of judicial remedies.

In sum, the Court concludes that Congress intended claims under the CROA to be non-arbitrable. Requiring a dispute to be resolved through arbitration is incompatible with CROA's non-waivable right to sue. Therefore, the Court finds that the arbitration clause is void.[3]

CONCLUSION

For the foregoing reasons, the Court denies Defendants' motion to compel arbitration of Plaintiffs' CROA claims as they pertain to the national class (Docket Nos. 17 and 27).

IT IS SO ORDERED.

Dated: 4/1/09

CLAUDIA WILKEN
United States District Judge

[3] To the extent the Court relied upon evidence to which Defendants objected, the objections are overruled. To the extent the Court did not rely on such evidence, Defendants' objections are overruled as moot.

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

WANDA GREENWOOD; *et al.*,

Plaintiffs - Appellees,

v.

COMPUCREDIT CORPORATION AND COLUMBUS BANK AND TRUST, jointly and individually,

Defendants - Appellants.

No. 09-15906
D.C. No. 4:08-cv-04878-CW
Northern District of California, Oakland

ORDER

Before: KLEINFELD, TASHIMA and THOMAS, Circuit Judges.

Judges Kleinfeld and Thomas have voted to deny the appellants' petition for rehearing. Judge Tashima has voted to grant the appellants' petition for rehearing. Judge Thomas has voted to deny the appellants' petition for rehearing en banc and Judge Kleinfeld has so recommended. Judge Tashima has recommended that the appellants' petition for rehearing en banc be granted.

The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on the petition for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing and the petition for rehearing en banc are rejected.

APPENDIX D

RELEVANT STATUTE

SUBCHAPTER II–A— CREDIT REPAIR ORGANIZATIONS

§ 1679. Findings and purposes

(a) Findings

The Congress makes the following findings:

(1) Consumers have a vital interest in establishing and maintaining their credit worthiness[1] and credit standing in order to obtain and use credit. As a result, consumers who have experienced credit problems may seek assistance from credit repair organizations which offer to improve the credit standing of such consumers.

(2) Certain advertising and business practices of some companies engaged in the business of credit repair services have worked a financial hardship upon consumers, particularly those of limited economic means and who are inexperienced in credit matters.

(b) Purposes

The purposes of this subchapter are—

(1) to ensure that prospective buyers of the services of credit repair organizations are provided with the information necessary to make an informed decision regarding the purchase of such services; and

(2) to protect the public from unfair or deceptive advertising and business practices by credit repair organizations.

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[1] So in original. Probably should be "creditworthiness,".

(Pub. L. 90–321, title IV, § 402, as added Pub. L. 104–208, div. A, title II, § 2451, Sept. 30, 1996, 110 Stat. 3009–455.)

Prior Provisions

A prior title IV of Pub. L. 90–321, May 29, 1968, 82 Stat. 164, as amended by Pub. L. 91–344, July 20, 1970, 84 Stat. 440; Pub. L. 92–321, June 30, 1972, 86 Stat. 382, which was set out as a note under section 1601 of this title, established a bipartisan National Commission on Consumer Finance to study the functioning and structure of the consumer finance industry as well as consumer credit transactions generally. The Commission was to submit a final report by Dec. 31, 1972, and was to cease to exist thereafter.

Effective Date of Subchapter

Section 413 of title IV of Pub. L. 90–321, as added by Pub. L. 104–208, div. A, title II, § 2451, Sept. 30, 1996, 110 Stat. 3009–462, provided that: "This title [enacting this subchapter] shall apply after the end of the 6-month period beginning on the date of the enactment of the Credit Repair Organizations Act [Sept. 30, 1996], except with respect to contracts entered into by a credit repair organization before the end of such period."

§ 1679a. Definitions

For purposes of this subchapter, the following definitions apply:

(1) Consumer

The term "consumer" means an individual.

(2) Consumer credit transaction

The term "consumer credit transaction" means any transaction in which credit is offered or extended to an individual for personal, family, or household purposes.

(3) Credit repair organization

The term "credit repair organization"—

(A) means any person who uses any instrumentality of interstate commerce or the mails to sell, provide, or perform (or represent that such person can or will sell, provide, or perform) any service, in return for the payment of money or other valuable consideration, for the express or implied purpose of—

(i) improving any consumer's credit record, credit history, or credit rating; or

(ii) providing advice or assistance to any consumer with regard to any activity or service described in clause (i); and

(B) does not include—

(i) any nonprofit organization which is exempt from taxation under section 501(c)(3) of title 26;

(ii) any creditor (as defined in section 1602 of this title), with respect to any consumer, to the extent the creditor is assisting the consumer to restructure any debt owed by the consumer to the creditor; or

(iii) any depository institution (as that term is defined in section 1813 of title 12) or any Federal or State credit union (as those terms are defined in section 1752 of title 12), or any affiliate or subsidiary of such a depository institution or credit union.

(4) Credit

The term "credit" has the meaning given to such term in section 1602(e) of this title.

(Pub. L. 90–321, title IV, § 403, as added Pub. L. 104–208, div. A, title II, § 2451, Sept. 30, 1996, 110 Stat. 3009–455.)

PRIOR PROVISIONS

For a prior section 403 of Pub. L. 90–321, see note set out under section 1679 of this title.

§ 1679b. Prohibited practices

(a) In general

No person may—

(1) make any statement, or counsel or advise any consumer to make any statement, which is untrue or misleading (or which, upon the exercise of reasonable care, should be known by the credit repair organization, officer, employee, agent, or other person to be untrue or misleading) with respect to any consumer's credit worthiness,1 credit standing, or credit capacity to—

(A) any consumer reporting agency (as defined in section 1681a(f) of this title); or

(B) any person—

(i) who has extended credit to the consumer; or

(ii) to whom the consumer has applied or is applying for an extension of credit;

(2) make any statement, or counsel or advise any consumer to make any statement, the intended effect of which is to alter the consumer's identification to prevent the display of the consumer's credit record, history, or rating for the purpose of concealing adverse information that is accurate and not obsolete to—

(A) any consumer reporting agency;

(B) any person—

(i) who has extended credit to the consumer; or

(ii) to whom the consumer has applied or is applying for an extension of credit;

(3) make or use any untrue or misleading representation of the services of the credit repair organization; or

(4) engage, directly or indirectly, in any act, practice, or course of business that constitutes or results in the commission of, or an attempt to commit, a fraud or deception on any person in connection with the offer or sale of the services of the credit repair organization.

(b) Payment in advance

No credit repair organization may charge or receive any money or other valuable consideration for the performance of any service which the credit repair organization has agreed to perform for any consumer before such service is fully performed.

(Pub. L. 90–321, title IV, § 404, as added Pub. L. 104–208, div. A, title II, § 2451, Sept. 30, 1996, 110 Stat. 3009–456.)

Prior Provisions

For a prior section 404 of Pub. L. 90–321, see note set out under section 1679 of this title.

§ 1679c. Disclosures

(a) Disclosure required

Any credit repair organization shall provide any consumer with the following written statement before any contract or agreement between the consumer and the credit repair organization is executed:

"Consumer Credit File Rights Under State and Federal Law

"You have a right to dispute inaccurate information in your credit report by contacting the credit bureau directly. However, neither you nor any 'credit repair' company or credit repair organization has the right to have accurate, current, and verifiable information removed from your credit report. The credit bureau must remove accurate, negative information from your report only if it is over 7 years old. Bankruptcy information can be reported for 10 years.

"You have a right to obtain a copy of your credit report from a credit bureau. You may be charged a reasonable fee. There is no fee, however, if you have been turned down for credit, employment, insurance, or a rental dwelling because of information in your credit report within the preceding 60 days. The credit bureau must provide someone to help you interpret the information in your credit file. You are entitled to receive a free copy of your credit report if you are unemployed and intend to apply for employment in the next 60 days, if you are a recipient of public welfare assistance, or if you have reason to believe that there is inaccurate information in your credit report due to fraud.

"You have a right to sue a credit repair organization that violates the Credit Repair Organization Act. This law prohibits deceptive practices by credit repair organizations.

"You have the right to cancel your contract with any credit repair organization for any reason within 3 business days from the date you signed it.

"Credit bureaus are required to follow reasonable procedures to ensure that the information they report is accurate. However, mistakes may occur.

"You may, on your own, notify a credit bureau in writing that you dispute the accuracy of information in your credit file. The credit bureau must then reinvestigate and modify or remove inaccurate or incomplete information. The credit bureau may not charge any fee for this service. Any pertinent information and copies of all documents you have concerning an error should be given to the credit bureau.

"If the credit bureau's reinvestigation does not resolve the dispute to your satisfaction, you may send a brief statement to the credit bureau, to be kept in your file, explaining why you think the record is inaccurate. The credit bureau must include a summary of your statement about disputed information with any report it issues about you.

"The Federal Trade Commission regulates credit bureaus and credit repair organizations. For more information contact:

"The Public Reference Branch
"Federal Trade Commission
"Washington, D.C. 20580".

(b) Separate statement requirement

The written statement required under this section shall be provided as a document which is separate from any written contract or other agreement between the credit repair organization and the consumer or any other written material provided to the consumer.

(c) Retention of compliance records

(1) In general

The credit repair organization shall maintain a copy of the statement signed by the consumer acknowledging receipt of the statement.

(2) Maintenance for 2 years

The copy of any consumer's statement shall be maintained in the organization's files for 2 years after the date on which the statement is signed by the consumer.

(Pub. L. 90–321, title IV, § 405, as added Pub. L. 104–208, div. A, title II, § 2451, Sept. 30, 1996, 110 Stat. 3009–457.)

REFERENCES IN TEXT

The Credit Repair Organization Act, referred to in subsec. (a), probably means the Credit Repair Organizations Act, Pub. L. 90–321, title IV, as added Pub. L. 104–208, div. A, title II, § 2451, Sept. 30, 1996, 110 Stat. 3009–454, which is classified generally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

PRIOR PROVISIONS

For a prior section 405 of Pub. L. 90–321, see note set out under section 1679 of this title.

§ 1679d. Credit repair organizations contracts

(a) Written contracts required

No services may be provided by any credit repair organization for any consumer—

(1) unless a written and dated contract (for the purchase of such services) which meets the requirements of subsection (b) of this section has been signed by the consumer; or

(2) before the end of the 3-business-day period beginning on the date the contract is signed.

(b) Terms and conditions of contract

No contract referred to in subsection (a) of this section

meets the requirements of this subsection unless such contract includes (in writing)—

(1) the terms and conditions of payment, including the total amount of all payments to be made by the consumer to the credit repair organization or to any other person;

(2) a full and detailed description of the services to be performed by the credit repair organization for the consumer, including—

(A) all guarantees of performance; and

(B) an estimate of—

(i) the date by which the performance of the services (to be performed by the credit repair organization or any other person) will be complete; or

(ii) the length of the period necessary to perform such services;

(3) the credit repair organization's name and principal business address; and

(4) a conspicuous statement in bold face type, in immediate proximity to the space reserved for the consumer's signature on the contract, which reads as follows: "You may cancel this contract without penalty or obligation at any time before midnight of the 3rd business day after the date on which you signed the contract. See the attached notice of cancellation form for an explanation of this right.".

(Pub. L. 90–321, title IV, § 406, as added Pub. L. 104–208, div. A, title II, § 2451, Sept. 30, 1996, 110 Stat. 3009–458.)

PRIOR PROVISIONS

For a prior section 406 of Pub. L. 90–321, see note set out under section 1679 of this title.

§ 1679e. Right to cancel contract

(a) In general

Any consumer may cancel any contract with any credit repair organization without penalty or obligation by notifying the credit repair organization of the consumer's intention to do so at any time before midnight of the 3rd business day which begins after the date on which the contract or agreement between the consumer and the credit repair organization is executed or would, but for this subsection, become enforceable against the parties.

(b) Cancellation form and other information

Each contract shall be accompanied by a form, in duplicate, which has the heading "Notice of Cancellation" and contains in bold face type the following statement:

‘ ‘You may cancel this contract, without any penalty or obligation, at any time before midnight of the 3rd day which begins after the date the contract is signed by you.

"To cancel this contract, mail or deliver a signed, dated copy of this cancellation notice, or any other written notice to [name of credit repair organization] at [address of credit repair organization] before midnight on [date]

"I hereby cancel this transaction,

[date]

[purchaser's signature].".

(c) Consumer copy of contract required

Any consumer who enters into any contract with any credit repair organization shall be given, by the organization—

(1) a copy of the completed contract and the disclosure statement required under section 1679c of this title; and

(2) a copy of any other document the credit repair organization requires the consumer to sign, at the time the contract or the other document is signed.

(Pub. L. 90–321, title IV, § 407, as added Pub. L. 104–208, div. A, title II, § 2451, Sept. 30, 1996, 110 Stat. 3009–459.)

PRIOR PROVISIONS

For a prior section 407 of Pub. L. 90–321, see note set out under section 1679 of this title.

§ 1679f. Noncompliance with this subchapter

(a) Consumer waivers invalid

Any waiver by any consumer of any protection provided by or any right of the consumer under this subchapter—

(1) shall be treated as void; and

(2) may not be enforced by any Federal or State court or any other person.

(b) Attempt to obtain waiver

Any attempt by any person to obtain a waiver from any consumer of any protection provided by or any right of the consumer under this subchapter shall be treated as a violation of this subchapter.

(c) Contracts not in compliance

Any contract for services which does not comply with the applicable provisions of this subchapter—

(1) shall be treated as void; and

(2) may not be enforced by any Federal or State court or any other person.

(Pub. L. 90–321, title IV, § 408, as added Pub. L. 104–208, div. A, title II, § 2451, Sept. 30, 1996, 110 Stat. 3009–459.)

§ 1679g. Civil liability

(a) Liability established

Any person who fails to comply with any provision of this subchapter with respect to any other person shall be liable to such person in an amount equal to the sum of the amounts determined under each of the following paragraphs:

(1) Actual damages

The greater of—

(A) the amount of any actual damage sustained by such person as a result of such failure; or

(B) any amount paid by the person to the credit repair organization.

(2) Punitive damages

(A) Individual actions

In the case of any action by an individual, such additional amount as the court may allow.

(B) Class actions

In the case of a class action, the sum of—

(i) the aggregate of the amount which the court may allow for each named plaintiff; and

(ii) the aggregate of the amount which the court may allow for each other class member, without regard to any minimum individual recovery.

(3) Attorneys' fees

In the case of any successful action to enforce any liability under paragraph (1) or (2), the costs of the action, together with reasonable attorneys' fees.

(b) Factors to be considered in awarding punitive damages

In determining the amount of any liability of any credit repair organization under subsection (a)(2) of this section, the court shall consider, among other relevant factors—

(1) the frequency and persistence of noncompliance

by the credit repair organization;

(2) the nature of the noncompliance;

(3) the extent to which such noncompliance was intentional; and

(4) in the case of any class action, the number of consumers adversely affected.

(Pub. L. 90–321, title IV, § 409, as added Pub. L. 104–208, div. A, title II, § 2451, Sept. 30, 1996, 110 Stat. 3009–459.)

§ 1679h. Administrative enforcement

(a) In general

Compliance with the requirements imposed under this subchapter with respect to credit repair organizations shall be enforced under the Federal Trade Commission Act [15 U.S.C. 41 et seq.] by the Federal Trade Commission.

(b) Violations of this subchapter treated as violations of Federal Trade Commission Act

(1) In general

For the purpose of the exercise by the Federal Trade Commission of the Commission's functions and powers

under the Federal Trade Commission Act [15 U.S.C. 41 et seq.], any violation of any requirement or prohibition imposed under this subchapter with respect to credit repair organizations shall constitute an unfair or deceptive act or practice in commerce in violation of section 5(a) of the Federal Trade Commission Act [15 U.S.C. 45(a)].

(2) Enforcement authority under other law

All functions and powers of the Federal Trade Commission under the Federal Trade Commission Act shall be available to the Commission to enforce compliance with this subchapter by any person subject to enforcement by the Federal Trade Commission pursuant to this subsection, including the power to enforce the provisions of this subchapter in the same manner as if the violation had been a violation of any Federal Trade Commission trade regulation rule, without regard to whether the credit repair organization—

(A) is engaged in commerce; or

(B) meets any other jurisdictional tests in the Federal Trade Commission Act.

(c) State action for violations

(1) Authority of States

In addition to such other remedies as are provided under State law, whenever the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating this subchapter, the State—

(A) may bring an action to enjoin such violation;

(B) may bring an action on behalf of its residents to recover damages for which the person is liable to such residents under section 1679g of this title as a result of the violation; and

(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorney fees as determined by the court.

(2) Rights of Commission

(A) Notice to Commission

The State shall serve prior written notice of any civil action under paragraph (1) upon the Federal Trade Commission and provide the Commission with a copy of its complaint, except in any case where such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action.

(B) Intervention

The Commission shall have the right—

(i) to intervene in any action referred to in subparagraph (A);

(ii) upon so intervening, to be heard on all matters arising in the action; and

(iii) to file petitions for appeal.

(3) Investigatory powers

For purposes of bringing any action under this subsection, nothing in this subsection shall prevent the chief law enforcement officer, or an official or agency designated by a State, from exercising the powers conferred on the chief law enforcement officer or such official by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(4) Limitation

Whenever the Federal Trade Commission has instituted a civil action for violation of this subchapter, no State may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Commission for any violation of this subchapter that is alleged in that complaint.

(Pub. L. 90–321, title IV, § 410, as added Pub. L. 104–208, div. A, title II, § 2451, Sept. 30, 1996, 110 Stat. 3009–460.)

REFERENCES IN TEXT

The Federal Trade Commission Act, referred to in subsecs. (a) and (b), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

§ 1679i. Statute of limitations

Any action to enforce any liability under this subchapter may be brought before the later of—

(1) the end of the 5-year period beginning on the date of the occurrence of the violation involved; or

(2) in any case in which any credit repair organization has materially and willfully misrepresented any information which—

(A) the credit repair organization is required, by any provision of this subchapter, to disclose to any consumer; and

(B) is material to the establishment of the credit repair organization's liability to the consumer under this subchapter, the end of the 5-year period begin-

ning on the date of the discovery by the consumer of the misrepresentation.

(Pub. L. 90–321, title IV, § 411, as added Pub. L. 104–208, div. A, title II, § 2451, Sept. 30, 1996, 110 Stat. 3009–461.)

§ 1679j. Relation to State law

This subchapter shall not annul, alter, affect, or exempt any person subject to the provisions of this subchapter from complying with any law of any State except to the extent that such law is inconsistent with any provision of this subchapter, and then only to the extent of the inconsistency.

(Pub. L. 90–321, title IV, § 412, as added Pub. L. 104–208, div. A, title II, § 2451, Sept. 30, 1996, 110 Stat. 3009–462.)

APPENDIX E

CROA Filings by Year & Circuit

1. 1996
2. 1997
   a. Sixth Circuit:
      i. **Sannes v. Jeff Wyler Chevrolet, Inc**., 1999 WL 33313134, (S.D.Ohio Mar 31, 1999) (NO. C-1-97-930)
         1. Class Action: No
         2. Filed: 10/15/97
3. 1998
   a. Third Circuit:
      i. **In re National Credit Mgmt. Group, L.L.C.,** NO. 98-936 (AJL), UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY, 21 F. Supp. 2d 424; 1998 U.S. Dist. LEXIS 6870, March 25, 1998, Decided , March 25, 1998, Original Filed
         1. Class Action: No
         2. Filed: 3/3/98
   b. Fifth Circuit:
      i. **U.S. v. Cornerstone Wealth Corp., Inc.**, Not Reported in F.Supp.2d, 2006 WL 522124, N.D. Tex., March 03, 2006 (NO. CIV.A.3:98CV0601-D)
         1. Class Action: No
         2. Filed: 3/4/98
   c. Seventh Circuit:
      i. **Nielsen v. United Creditors Alliance Corp.**, Not Reported in F.Supp.2d, 1999 WL 674740, N.D.Ill., August 23, 1999 (NO. 98 C 5910)
         1. Class action: Yes

2. Filed: 9/22/98

d. Ninth Circuit:

i. **F.T.C. v. Gill**,71 F.Supp.2d 1030, C.D.Cal., November 03, 1999 (NO. CV98-1436LGBMCX)

1. Class Action: No
2. Filed: 3/2/98

4. 1999

a. Seventh Circuit:

i. **Vance v. National Ben. Ass'n**, Not Reported in F.Supp.2d, 1999 WL 731764, N.D.Ill., August 30, 1999 (NO. 99 C 2627)

1. Class Action: No
2. Filed: 4/21/99

ii. **White v. Financial Credit Corp.**, Not Reported in F.Supp.2d, 2000 WL 816783, N.D.Ill., June 21, 2000 (NO. 99 C 4023, 99 C 5001)

1. Class Action: Yes
2. Filed: 4/8/99

iii. **Bigalke v. Creditrust Corp.**, 162 F.Supp.2d 996, N.D.Ill., August 08, 2001 (NO. 99 C 2303)

1. Class Action: Yes
2. Filed: 4/8/99

5. 2000

a. Second Circuit:

i. **Cooper v. Sunshine Recoveries, Inc.**, Not Reported in F.Supp.2d, 2001 WL 740765, S.D.N.Y., June 27, 2001 (NO. 00CIV8898 LTSJCF)

1. Class Action: Yes
2. Filed: 11/21/2000

b. Third Circuit:

i. **Orloff v. Syndicated Office Systems, Inc.**, 2004 WL 870691, *1 (E.D.Pa. Apr 22, 2004) (NO. CIV.A.00-CV-5355)

1. Class Action: Yes
2. Filed: 10/20/2000

6. 2001

a. Third Circuit:

i. **Oslan v. Collection Bureau of Hudson Valley**, Not Reported in F.Supp.2d, 2001 WL 34355648, E.D.Pa., December 13, 2001 (NO. CIV.A. 01-2173)

1. Class Action: Yes
2. 5/21/03

b. Seventh Circuit:

i. **Parker v. 1-800 Bar None, a Financial Corp., Inc.**, Not Reported in F.Supp.2d, 2002 WL 215530, N.D.Ill., February 12, 2002 (NO. 01 C 4488)

1. Class Action: No
2. Filed: 6/14/01

i. **Dortch v. Financing Alternative, Inc.**, Not Reported in F.Supp.2d, 2002 WL 598518, N.D.Ill., April 17, 2002 (NO. 01 C 7416)

1. Class Action: Yes
2. Filed: 9/25/01

ii. **Arnold v. Goldstar Financial Systems, Inc.**, Not Reported in F.Supp.2d, 2002 WL 1941546, N.D.Ill., August 22, 2002 (NO. 01 C 7694)

1. Class Action: Yes
2. Filed: 10/4/01

c. Eighth Circuit:

i. **Wojcik v. Courtesy Auto Sales, Inc.**, Not Reported in F.Supp.2d, 2002 WL 475173, D.Neb., March 29, 2002 (NO. 8:01CV506)

1. Class Action: No
2. Filed: 9/28/01

iii. **Cabrera v. Lake Manawa Nissan**, CASE NO. 1-01-CV-10032, UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA, WESTERN DIVISION, 2002 U.S. Dist. LEXIS 25945, November 18, 2002, Decided

1. Class Action: No
2. Filed: 8/8/01

d. Tenth Circuit:

i. **Roe v. Gray**, 165 F.Supp.2d 1164, D.Colo., October 10, 2001 (NO. CIV. A. 01-B-0409)

1. Class Action: Yes
2. Filed: 3/7/01

7. 2002

A. Third Circuit:

i. **Luqman v. Interbay Funding, L.L.C**., 2003 WL 22594228, *1+ (E.D.Pa. Sep 30, 2003) (NO. CIV.A. 02-CV-7566)

1. Class Action: No
2. Filed: 9/27/02

b. Seventh Circuit:

i. **Lacey v. William Chrysler Plymouth Inc.**, Not Reported in F.Supp.2d, 2004 WL 415972, N.D.Ill., February 23, 2004 (NO. 02 C 7113)

1. Class Action: No
2. Filed: 10/3/02

8. 2003
    a. First Circuit:
        i. **Zimmerman v. Cambridge Credit Counseling Corp.**, 322 F.Supp.2d 95, D.Mass., June 24, 2004 (NO. CIV.A.03-30261-MAP)
            1. Class Action: Yes
            2. Filed: 11/3/2003
    b. Second Circuit:
        i. **Limpert v. Cambridge Credit Counseling Corp.,** 328 F.Supp.2d 360, 361+, RICO Bus.Disp.Guide 10,730, 10730+ (E.D.N.Y. Aug 05, 2004) (NO. CV-03-5986)
            1. Class Action: Yes
            2. Filed: 11/25/03
        ii. **Petrolito v. 1st Nat'l Credit Servs. Corp**., Civil Action No. 3:03CV1085 (CFD) , UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT, 2004 U.S. Dist. LEXIS 15758, August 10, 2004, Decided , As Amended, August 12, 2004. Dismissed without prejudice by, On reconsideration by Petrolito v. 1st Nat'l Credit Servs. Corp., 2005 U.S. Dist. LEXIS 1908 (D. Conn., Feb. 2, 2005)
            1. Class Action: No
            2. Filed: 6/20/03
    c. Third Circuit:
        i. **Pilgrim v. Metro Chrysler Plymouth Subaru**, Not Reported in F.Supp.2d, 2005 WL 61454, E.D.Pa., January 11, 2005 (NO. CIV.A.03-3219)
            1. Class action: No
            2. Filed: 5/21/03

d. Seventh Circuit:

i. **Iosello v. Lexington Law Firm**, Not Reported in F.Supp.2d, 2003 WL 21696991, N.D.Ill., July 21, 2003 (NO. 03 C 0987)

1. Class Action: Yes
2. Filed: 2/10/03

ii. **Shulman v. CRS Financial Services, Inc.**, Not Reported in F.Supp.2d, 2003 WL 22400211, N.D.Ill., October 21, 2003 (NO. 03 C 1634)

1. Class Action: Yes
2. Filed: 3/5/03

iii. **Rodriguez v. Lynch Ford, Inc.**, Not Reported in F.Supp.2d, 2004 WL 2958772, N.D.Ill., November 18, 2004 (NO. 03 C 7727)

1. Class Action: No
2. Filed: 10/30/03

iv. **Costa v. Mauro Chevrolet, Inc.**, 390 F.Supp.2d 720, N.D.Ill., July 18, 2005 (NO. 03 C 8223)

1. Class Action: No
2. Filed: 11/17/03

v. **Plattner v. Edge Solutions, Inc.**, 422 F.Supp.2d 969, N.D.Ill., March 22, 2006 (NO. 03 C 2646)

1. Class Action: No
2. Filed: 4/18/03

vi. **Iosello v. Lawrence**, 2005 WL 2007147, *1 (N.D.Ill. Aug 18, 2005) (NO. 03 C 987)

1. Class Action: Yes
2. Filed: 2/10/03

e. Ninth Circuit:

i. **Croxon v. Enterprise America**, Inc., 2009 WL 1331090, *1 (N.D.Cal. May 13, 2009) (NO. C 03-01144 JW)

1. Class Action: No
2. Filed: 3/17/03

f. Eleventh Circuit:

i. **Helms v. Consumerinfo.com, Inc.**, 436 F.Supp.2d 1220, N.D.Ala., February 14, 2005 (NO. CV 03 HS 1439 M)

1. Class Action: Yes
2. Filed: 6/17/03

9. 2004

a. Second Circuit:

i. **Cortese v. Edge Solutions, Inc.**, Not Reported in F.Supp.2d, 2007 WL 2782750, E.D.N.Y., September 24, 2007 (NO. CIVA040956 DRHARL)

1. Class Action: Yes
2. Filed: 3/05/04

b. Third Circuit

i. **Baker v. Family Credit Counseling Corp.**, 440 F.Supp.2d 392, RICO Bus.Disp.Guide 11,162, E.D.Pa., July 28, 2006 (NO. 04-5508)

1. Class Action: Yes
2. Filed: 11/23/04

ii. **Townes v. Trans Union, LLC**, Not Reported in F.Supp.2d, 2007 WL 2457484, D.Del., August 30, 2007 (NO. CIV.A. 04-1488-JJF)

1. Class Action: Yes
2. Filed: 12/1/04

c. Fourth Circuit:

   i. **Polacsek v. Debticated Consumer Counseling, Inc.**, 413 F.Supp.2d 539, D.Md., November 23, 2005 (NO. CIV. PJM 04-631)

      1. Class Action: Yes.
      2. Filed: 3/1/04

d. Sixth Circuit:

   i. **Asmar v. Benchmark Literacy Group, Inc.**, Not Reported in F.Supp.2d, 2005 WL 2562965, E.D.Mich., October 11, 2005 (NO. 04-70711)

      1. Class Action: Yes
      2. Filed: 2/25/04

e. Seventh Circuit:

   i. **Banks v. Capital Credit Alliance, Inc.**, Not Reported in F.Supp.2d, 2005 WL 1563220, N.D.Ill., June 28, 2005 (NO. 04 C 6999)

      1. Class Action: Yes
      2. Filed: 10/29/04

   ii. **D'Agostino v. Lawrence**, No. 04 C 3660 , UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION, 2005 U.S. Dist. LEXIS 20731, March 9, 2005, Decided , March 9, 2005, Filed

      1. Class Action: Yes
      2. Filed: 5/26/04

f. Ninth Circuit:

   i. **Browning v. Yahoo! Inc.**, Not Reported in F.Supp.2d, 2006 WL 1390555, N.D.Cal., May 19, 2006 (NO. C04-01463 HRL)

      1. Class Action: Yes
      2. Filed: 4/15/04

g. Eleventh Circuit:

i. **Hillis v. Equifax Consumer Services, Inc.**, 237 F.R.D. 491, N.D.Ga., August 18, 2006 (NO. CIV.A.1:04CV3400TCB)

1. Class Action: Yes
2. Filed: 11/19/04

10. 2005

a. First Circuit:

i. **In re Plamondon**, 2005 WL 3116569, *1, 2005 BNH 35, 035 (Bankr.D.N.H. Nov 14, 2005) (NO. 05-1058-JMD, 05-10592-JMD)

1. Class Action: No
2. Filed: 4/20/05

b. Second Circuit:

i. **Vertucci v. Orvis**, Not Reported in F.Supp.2d, 2006 WL 1688078, D.Conn., May 30, 2006 (NO. 3:05CV1307 (PCD))

1. Class Action: No
2. Filed: 8/18/05

ii. **Goktepe v. Lawrence**, 220 F.R.D. 8, 9, 58 Fed.R.Serv.3d 111, 111 (D.Conn. Jan 27, 2004) (NO. CIV.3:03CV89 (MRK))

1. Class Action: No
2. Filed: 1/13/05

c. Third Circuit:

i. **Millett v. Truelink, Inc.**, Not Reported in F.Supp.2d, 2006 WL 2583100, D.Del., September 07, 2006 (NO. CIV.05-599 SLR)

1. Class Action: Yes
2. Filed: 8/16/05

ii. **Gay v. CreditInform**, 511 F.3d 369, C.A.3 (Pa.), December 19, 2007 (NO. 06-4036)

1. Class action: Yes
2. Filed: 12/23/05

d. Fifth Circuit:

i. **Alexander v. U.S. Credit Management, Inc.**, 384 F.Supp.2d 1003, N.D.Tex., September 01, 2005 (NO. CIV.A. 3:05-CV-339-M)

1. Class Action: Yes
2. Filed: 2/18/05

ii. **In re Zuniga**, 332 B.R. 760, Bkrtcy.S.D.Tex., September 22, 2005 (NO. 05-33416-H4-7)

1. Class Action: No
2. Filed: 3/07/05

e. Sixth Circuit:

i. **Conley v. Aggeler**, Not Reported in F.Supp.2d, 2006 WL 461343, W.D.Mich., February 24, 2006 (NO. 1:05-CV-406)

1. Class Action: No
2. Filed: 6/10/05

ii. **Keener v. Shonowo**, Not Reported in F.Supp.2d, 2006 WL 2290519, M.D.Tenn., August 08, 2006 (NO. CIV. 3:05-0259)

1. Class Action: No
2. Filed: 3/31/05

iii. **Brown v. Advanced Realty Sys. LLC**, Case No. 1:05-CV-837 , UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION, 2006 U.S. Dist. LEXIS 38722, June 12, 2006, Decided , June 12, 2006, Filed

1. Class Action: No
2. Filed: 12/16/05

f. Seventh Circuit:

i. **Kessler v. American Resorts International's Holiday Network, Ltd.**, Not Reported in F.Supp.2d, 2007 WL 4105204, N.D.Ill., November 14, 2007 (NO. 05 C 5944, 07 C 2439)

1. Class action: No
2. Filed: 10/14/05

g. Ninth Circuit:

i. **Slack v. Fair Isaac Corp.**, 390 F.Supp.2d 906, N.D.Cal., June 27, 2005 (NO. C 05-0257 MHP)

1. Class Action: Yes
2. Filed: 1/18/05

h. Tenth Circuit:

i. **In re Jensen**, 395 B.R. 472, Bkrtcy.D.Colo., September 30, 2008 (NO. ADV.05-1940-EEB, BKR.05-28263 EEB)

1. Class action: No
2. Filed: 11/11/05

i. Eleventh Circuit:

i. **In re Wright**, Not Reported in B.R., 2007 WL 1459475, Bkrtcy.N.D.Ala., May 16, 2007 (NO. 05-40829JJR13, ADV. 05-40186)

1. Class Action: No
2. Filed: 3/11/05

11. 2006

a. Second Circuit:

i. **Spencer v. Arizona Premium Finance Co**., Inc., 2008 WL 5432245, *1 (W.D.N.Y. Dec 30, 2008) (NO. 06-CV-160S

1. Class Action: No
2. Filed: 3/16/06

b. Third Circuit:

i. **Poskin v. TD Banknorth, N.A.**, 687 F.Supp.2d 530, W.D.Pa., September 11, 2009 (NO. CIV.A. 06-463)

1. Class Action: No
2. Filed: 4/27/06

c. Fourth Circuit:

i. **Stith v. Thorne**, 247 F.R.D. 89, 92 (E.D.Va. Nov 26, 2007) (NO. 3:06CV240); 88 F.Supp.2d 534, 538 (E.D.Va. May 29, 2007) (NO. 3:06 CV 240)

1. Class Action: No
2. Filed: 4/10/06

d. Sixth Circuit:

i. **Rex v. CSA-Credit Solutions of America, Inc.**, 507 F.Supp.2d 788, W.D.Mich., June 27, 2007 (NO. 106-CV-633)

1. Class Action: No
2. Filed: 9/1/06

e. Ninth Circuit:

i. **Rannis v. Fair Credit Lawyers, Inc.**, 489 F.Supp.2d 1110, C.D.Cal., May 23, 2007 (NO. EDCV 06 0373 AG JCX)

1. Class Action: Yes
2. Filed: 4/6/06

12. 2007

a. Second Circuit:

i. **Henry v. Westchester Foreign Autos, Inc.**, 522 F.Supp.2d 610, S.D.N.Y., November 09, 2007 (NO. 07 CV. 1363 (CLB))

1. Class Action: No
2. Filed: 2/23/07

ii. **Flemming v. Goodwill Mortg. Services, LLC**, 648 F.Supp.2d 292, D.Conn., August 27, 2009 (NO. CIV.3:07CV00803AWT)

1. Class Action: No
2. Filed: 5/21/07

b. Fourth Circuit:

i. **Bentley v. Alan Vester Auto Group, inc**., 2009 WL 3125539, *1 (E.D.N.C. Sep 29, 2009) (NO. 5:07-CV-434-F)

1. Class Action: No
2. Filed: 11/7/07

ii. **Nixon v. Alan Vester Auto Group, Inc**., 2008 WL 4544369, *1 (M.D.N.C. Oct 08, 2008) (NO. 1:07 CV 839)

1. Class Action: Yes
2. Filed: 11/2/07

c. Sixth Circuit:

i. **Deans v. Long Beach Mortg. Co.**, Not Reported in F.Supp.2d, 2007 WL 772892, W.D.Mich., March 12, 2007 (NO. 1:07-CV-205)

1. Class Action: No
2. Filed: 3/6/07

ii. **Schultz v. Burton-Moore Ford, Inc.**, Not Reported in F.Supp.2d, 2008 WL 2355588, E.D.Mich., June 05, 2008 (NO. 07-13932-BC)

1. Class Action: No
2. Filed: 9/18/07

iii. **Jackson v. Telegraph Chrysler Jeep, Inc.**, Not Reported in F.Supp.2d, 2009 WL 928224, E.D.Mich., March 31, 2009 (NO. 07-10489)

1. Class Action: No
2. Filed: 1/31/07

iv. **Vegter v. Forecast Financial Corp**., 2007 WL 4178947, *1 (W.D.Mich. Nov 20, 2007) (NO. 1:07-CV-279)

1. Class Action: No.
2. Filed: 3/26/07

d, Seventh Circuit:

i. **Pena v. Freedom Mortg. Team, Inc.**, Not Reported in F.Supp.2d, 2007 WL 3223394, N.D.Ill., October 24, 2007 (NO. 07 C 552)

1. Class Action: Yes
2. Filed: 1/31/07

ii. **Martinez v. Freedom Mortg. Team, Inc.**, 527 F.Supp.2d 827, N.D.Ill., December 19, 2007 (NO. 07 C 3442)

1. Class action: No
2. Filed: 6/19/07

iii. **Newman v. Apex Financial Group, Inc.**, Not Reported in F.Supp.2d, 2008 WL 130924, N.D.Ill., January 11, 2008 (NO. 07 C 4475)

1. Class Action: No
2. Filed: 8/8/07

iv. **Ware v. Indymac Bank, FSB**, 534 F.Supp.2d 835, N.D.Ill., February 14, 2008 (NO. 07 C 1982)

1. Class Action: Not as to CROA
2. Filed: 4/10/07

e. Eighth Circuit:

i. **Schreiner v. Credit Advisors, Inc.,** 2007 WL 2904098, *4 (D.Neb. Oct 02, 2007) (NO. 8:07CV78)

1. Class Action: Yes
2. Filed: 2/20/07

f. Ninth Circuit:

i. **Abat v. Chase Bank USA, N.A.**, 2010 WL 3632809, C.D.Cal., September 14, 2010 (NO. SACV 07-01476-CJC)

1. Class Action: Yes
2. Filed: 12/28/07

ii. **Wagner v. Choice Home Lending**, 266 F.R.D. 354, D.Ariz., September 29, 2009 (NO. CV-07-02136-PHX-ROSW)

1. Class Action: No
2. Filed: 11/1/07

iii. **Mason v. CreditAnswers**, LLC, 2008 WL 4165155, *1 (S.D.Cal. Sep 05, 2008) (NO. 07CV1919-L(POR))

1. Class Action: No
2. Filed: 10/1/07

iv. **Yang v. DTS Financial Group**, 570 F.Supp.2d 1257, 1258 (S.D.Cal. Aug 12, 2008) (NO. 07CV1731 JLS WMC)

1. Class Action: No
2. Filed: 9/10/07

g. Tenth Circuit:

i. **Dilley v. Academy Credit, LLC**, Not Reported in F.Supp.2d, 2008 WL 4527053, D.Utah, September 29, 2008 (NO. 2:07CV301DAK)

1. Class Action: Yes
2. Filed: 8/07/07

h. Eleventh Circuit:

i. **Reynolds v. Credit Solutions, Inc.**, 541 F.Supp.2d 1248, N.D.Ala., February 26, 2008 (NO. CIV.A. 07-AR-1516-S)

1. Class Action: No
2. Filed: 8/17/07

ii. **In re Barnes**, 397 B.R. 149, Bkrtcy.N.D.Ala., November 13, 2008 (NO. BK 07-71949CMS13, AP 08-70016-CMS)

1. Class Action: Yes
2. Filed: 10/31/07

13. 2008

a. Second Circuit:

i. **Thrane v. Franklin First Financial, Ltd.**, 266 F.R.D. 51, E.D.N.Y., March 12, 2010 (NO. 08CV4149ADSARL)

1. Class Action: No
2. Filed: 10/10/08

b. Third Circuit:

i. **Rodriguez v. Master Cars USA, Inc**., 2008 WL 3200683, *1 (D.N.J. Aug 06, 2008) (NO. CIV. A. 08-2376 JLL)

1. Class Action: No
2. Filed: 5/15/08

c. Fourth Circuit:

i. **Cappetta v. GC Services Ltd. Partnership**, Not Reported in F.Supp.2d, 2008 WL 5377934, E.D.Va., December 24, 2008 (NO. CIV. A. 3:08CV288)

1. Class action: No
2. Filed: 5/09/08

ii. **Kindred v. McLeod**, Slip Copy, 2010 WL 4814360, RICO Bus.Disp.Guide 11,955, W.D.Va., November 19, 2010 (NO. 3:08CV00019)

1. Class Action: No
2. Filed: 4/8/08

iii. **Capital One Bank (USA) N.A. v. Hess Kennedy Chartered, LLC**, 2008 WL 4467160, *1 (E.D.Va. Sep 30, 2008) (NO. 3:08CV147)

1. Class Action: No
2. Filed: 3/6/08

d. Seventh Circuit:

i. **Whitley v. Taylor Bean & Whitacker Mortg. Corp.**, 607 F.Supp.2d 885, N.D.Ill., April 20, 2009 (NO. 08 C 3114)

1. Class action: No
2. Filed: 5/30/08

e. Ninth Circuit:

i. **Greenwood v. Compucredit Corp.**, 617 F.Supp.2d 980, N.D.Cal., April 01, 2009 (NO. C 08-04878 CW)

1. Class action: Yes
2. Filed: 10/24/08

f. Tenth Circuit:

i. **Finely v. CSA-Credit Solutions of America, Inc.**, Not Reported in F.Supp.2d, 2008 WL 5280551, E.D.Okla., December 18, 2008 (NO. CIV-08-250-RAW)

1. Class Action: No
2. Filed: 7/3/08

g. Eleventh Circuit:

i. **F.T.C. v. RCA Credit Services, LLC**, Not Reported in F.Supp.2d, 2008 WL 5428039,

M.D.Fla., December 31, 2008 (NO. 8:08-CV-2062-T27MAP)

1. Class Action: No
2. Filed: 10/16/08

ii. **Lopez v. ML #3, LLC**, 607 F.Supp.2d 1310, 21 Fla. L. Weekly Fed. D 681, N.D.Fla., April 15, 2009 (NO. 4:08CV579-RH/WCS)

1. Class Action: No
2. Filed: 12/24/08

iii. **Hyppolite v. Citi Residential Lending, Inc.**, Not Reported in F.Supp.2d, 2009 WL 1109320, S.D.Fla., April 24, 2009 (NO. 08-62022-CIV)

1. Class Action: No
2. Filed: 12/17/08

iv. **Moret v. Select Portfolio Servicing, Inc.**, Not Reported in F.Supp.2d, 2009 WL 1288062, S.D.Fla., May 06, 2009 (NO. 08-61996-CIV)

1. Class action: No
2. Filed: 12/12/08

v. **Silva v. Countrywide Home Loans, Inc.**, Slip Copy, 2009 WL 2046164, S.D.Fla., July 09, 2009 (NO. 08-62098-CIV)

1. Class action: No
2. Filed: 12/31/08

iv. **St. Louis v. Countrywide Home Loans, Inc.**, Slip Copy, 2009 WL 2046162, S.D.Fla., July 09, 2009 (NO. 08-23518-CIV)

1. Class action: No
2. Filed: 12/22/08

vii. **Tejada v. Countrywide Home Loans, Inc.**, Slip Copy, 2009 WL 2046158, S.D.Fla., July 09, 2009 (NO. 08-61978-CIV)

1. Class action: No.
2. Filed: 12/11/08

viii. **Washington v. Countrywide Home Loans, Inc.**, Slip Copy, 2009 WL 2046155, S.D.Fla., July 09, 2009 (NO. 08-10115-CIV)

1. Class action: No
2. Filed: 12/31/08

ix. **Alvarez v. Countrywide Home Loans, Inc.**, Slip Copy, 2009 WL 2046152, S.D.Fla., July 09, 2009 (NO. 08-23505-CIV)

1. Class Action: No
2. Filed: 12/19/08

x. **Bien-Aime v. EMC Mortg. Corp.**, Slip Copy, 2009 WL 2046150, S.D.Fla., July 09, 2009 (NO. 08-61995-CIV)

1. Class action: No
2. Filed 12/12/08

xi. **Buteau v. Countrywide Home Loans, Inc.**, Slip Copy, 2009 WL 2046143, S.D.Fla., July 09, 2009 (NO. 08-81552-CIV)

1. Class Action: No
2. Filed: 12/22/08

xii. **Petilien v. Countrywide Home Loans, Inc.**, Slip Copy, 2009 WL 2046142, S.D.Fla., July 09, 2009 (NO. 08-61982-CIV

1. Class action: No
2. Filed: 12/11/08

xiii. **Tejada v. Countrywide Home Loans, Inc.**, Slip Copy, 2009 WL 2046141, S.D.Fla., July 09, 2009 (NO. 08-61992-CIV)

1. Class action No
2. Filed: 12/12/08

xiv. **F.T.C. v. RCA Credit Services, LLC**, 727 F.Supp.2d 1320, 2010-2 Trade Cases P 77,237, M.D.Fla., July 21, 2010 (NO. 8:08-CV-2062-T-27AEP)

1. Class action: No
2. Filed: 10/16/08

14. 2009

a. First Circuit:

i. **Zimmermann v. Epstein Becker and Green, P.C.**, Slip Copy, 2010 WL 2724001, D.Mass., July 08, 2010 (NO. 09-CV-30194-MAP)

1. Class Action: Yes
2. Filed: 11/10/2009

ii. **Mantz v. Wells Fargo Bank, N.A.**, Slip Copy, 2011 WL 196915, D.Mass., January 19, 2011 (NO. CIV.A. 09-12010-JLT)

1. Class action: No
2. Filed: 11/17/2009

b. Third Circuit:

i. **Mack v. Bear Stearns Residential Mortg. Corp.**,2010 WL 5136033, E.D.Pa., November 30, 2010 (NO. CIV.A. 09 - 5370)

1. Class Action: No
2. Filed: 1/13/09

c. Fourth Circuit:

i. **Berry v. Cook Motor Cars**, Ltd., 2009 WL 1971391, *1 (D.Md. Jun 29, 2009) (NO. CIVIL AMD 09-426)

1. Class Action: No
2. Filed: 2/20/09

d. Seventh Circuit:

   i. **Zimmerman v. Logemann**, Not Reported in F.Supp.2d, 2009 WL 4407205, W.D.Wis., November 30, 2009 (NO. 09-CV-210-SLC)

      1. Class Action: No
      2. Filed: 4/09/09

e. Eighth Circuit:

   i. **Mongold v. Universal Nationwide, L.L.C.**, Not Reported in F.Supp.2d, 2009 WL 3297508, D.Neb., October 13, 2009 (NO. 8:09CV86)

      1. Class Action: Yes
      2. Filed: 3/11/09

f. Ninth Circuit:

   i. **Stanton v. Bank of America, N.A.**, Slip Copy, 2010 WL 4176375, D.Hawai'i, October 19, 2010 (NO. CV 09-00404 DAE-LEK)

      1. Class Action: No
      2. Filed: 8/27/09

   ii. **Puttner v. Debt Consultants of America**, 2009 WL 1604570, *1 (S.D.Cal. Jun 04, 2009) (NO. 09CV123 WQH (NLS))

      1. Class Action No
      2. Filed: 1/22/09

g. Eleventh Circuit:

   i. **Bedasee v. Fremont Inv. & Loan**, Not Reported in F.Supp.2d, 2010 WL 98996, M.D.Fla., January 06, 2010 (NO. 2:09-CV-111-FTM29SPC)

      1. Class Action: No
      2. Filed: 2/23/09

   ii. **Phan v. Accredited Home Lenders Holding Co.**, Not Reported in F.Supp.2d, 2010 WL

1268013, M.D.Fla., March 29, 2010 (NO. 309-CV-328-J-32TEM)

1. Class action: No
2. Filed: 4/10/09

iii. **Citibank (South Dakota), N.A. v. Duncan**, 2010 WL 379869, *1 (M.D.Ala. Jan 25, 2010) (NO. 209-CV-868-WKW WO)

1. Class Action: Yes
2. Filed: 9/11/09

15. 2010

a. Eighth Circuit:

i. **Rice v. Greenhaven Group, LLC**, Slip Copy, 2011 WL 43481, D.Minn., January 06, 2011 (NO. 10-3830 RHK/JJK)

1. Class action: No
2. Filed: 9/2/2010

b. Ninth Circuit:

i. **Del Rio v. CreditAnswers, LLC**, Slip Copy, 2010 WL 1337700, S.D.Cal., April 01, 2010 (NO. 10CV346-WQHBLM)

1. Class Action: Yes
2. Filed: 2/11/10

ii. **Billing v. CSA-Credit Solutions of America, Inc.**, Slip Copy, 2010 WL 2542275, S.D.Cal., June 22, 2010 (NO. 10-CV-0108 BEN (NLS))

1. Class Action: Yes
2. Filed: 1/14/10

iii. **DuCharme v. Heath**, 2010 WL 5211502, *3 (N.D.Cal. Dec 16, 2010) (NO. C 10-02763 CRB)

1. Class Action: Yes
2. Filed: 6/24/10