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AG Balderas to Feds: NM Consumers Deserve Their Day in Court; Arbitration Clauses Prevent Enforcement Agencies from Discovering Patterns of Unlawful Conduct by Big Business

Balderas testified that arbitration clauses hurt all consumers but in particular low-income, distressed and minority consumers

Albuquerque, NM - This morning, New Mexico Attorney General Hector Balderas addressed the Consumer Financial Protection Bureau (CFPB) at a field hearing that was held in downtown Albuquerque regarding proposed federal rule changes for arbitration clauses. Attorney General Balderas is the chief law enforcement officer of New Mexico and is tasked with protecting the state's consumers and vulnerable populations. The Attorney General made it clear that he will work with the CFPB to protect New Mexico consumers and root out the bad actors that prey on low-income, distressed and minority consumers. In addressing the CFPB, Attorney General Balderas endorsed the proposed rule changes by the federal government to ban the use of one-sided, forced arbitration clauses that only benefit big businesses and harm New Mexico consumers.

Before addressing arbitration clauses, Attorney General Balderas discussed New Mexico's unique culture and economy, and talked about his upbringing in rural, northeastern New Mexico. Below are Attorney General Balderas' remarks as prepared for delivery at today's hearing:

I want to thank Director Cordray and the CFPB for the important work that they are doing on the promulgation of this rule, which is critical to protecting New Mexico consumers and consumers all across the country. I am not here today to choose between profits for trial lawyers over industry, or profits for industry over trial lawyers. I am here to strengthen protections for New Mexico consumers.

As the top law enforcement official in the State tasked with protecting vulnerable consumer populations, I have seen firsthand how the collaboration of our agencies can truly strengthen and enhance consumer protections for everyone from students who are borrowing money to attend college to those who engage in everyday commerce from purchasing cell phone service to credit services.

We are here today to address the specific topic of the use of mandatory arbitration clauses in contracts of adhesion, which are increasingly prevalent in everyday consumer transactions. Now more than ever, when a consumer wants to assert claims in court against a business for unlawful conduct the business, especially very large national or multi-national businesses, raises the

shield of arbitration and tells the consumer that he or she has waived the right to have a day in court.

That usually comes as a great surprise to the consumer because these arbitration clauses are often buried deep in the contract, in exceedingly fine print. The consumer doesn't even know they've signed away this right.

Arbitration clauses hurt all consumers but in particular low-income, distressed and minority consumers. The clauses are rarely presented in Spanish. Companies regularly use such clauses to prevent consumers from going to court. In the nursing home arena, arbitration clauses are heavily litigated because the nursing home operators seek to shield themselves from court actions.

A lone consumer does not have equal bargaining power with a national credit card company or a cellular phone company. New Mexicans who struggle to find the resources to pay for a week's worth of groceries do not have the ability to negotiate against these large companies. New Mexico courts have held that many times these clauses are so one-sided in favor of the business that they are too unfair to be enforced. Further, we know that businesses require that arbitrations be conducted in secret – there is no transparency or open record for these proceedings that may act to warn other consumers.

Arbitration does not make products more affordable for New Mexicans. In fact, any savings a business realizes from arbitration are held by the business and not passed on to New Mexico consumers.

Relatively small consumer claims which could be combined to form a class action are simply not brought in arbitration because a consumer is extremely unlikely to initiate an arbitration action over a \$40 or \$100 claim. Additionally, these small claims that would likely only ever be brought as part of class action, are often left unclaimed because of the ban these arbitration clauses place on class action suits.

Arbitration agreements which contain a ban on consumer class actions therefore cause three serious problems:

- 1) They deny access to the courts and meaningful relief for consumers who have small claims.*
- 2) They prevent enforcement agencies like the Office of the Attorney General from discovering patterns of unlawful conduct.*
- 3) They prevent other consumers from finding out about the claims of consumers who have been harmed.*

There's no question that this process must strike a balance in order to provide benefits to consumers. Class actions, in their perfect form, enable large groups of plaintiffs to pursue valid claims that, standing alone, would be too small to justify a lawsuit or arbitration. But it's equally clear that the costs and benefits associated with class action lawsuits should be subject to an honest and open debate as to not ultimately harm consumers through higher interest rates, higher fees, and diminished access to credit.

Thank you again for the opportunity to speak briefly to this body. I am confident that further rulemaking such as this will strengthen our agencies' ability to protect consumers and root out those bad actors that seek to harm them.

My office stands ready to support the efforts of the CFPB in any way that we can toward that end.

New Mexico consumers who believe that they are the victims of predatory business practices should contact the Office of the Attorney General toll free at 1-866-627-3249 or visit <http://www.nmag.gov/consumer-protection.aspx>.

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