

How Dispute Resolution Provisions Affect Consumer Rights

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Ubiquity

of dispute resolution
language in form
contracts

business in the internet era

enforceability





Governing law

Forum selection

Choice of Law/Venue

jury trial

class/aggregate

Waivers





Limitations on Liability

statute of limitations

caps on damages

certain claims

Attorney Fees



prevailing party



**informal
resolution**

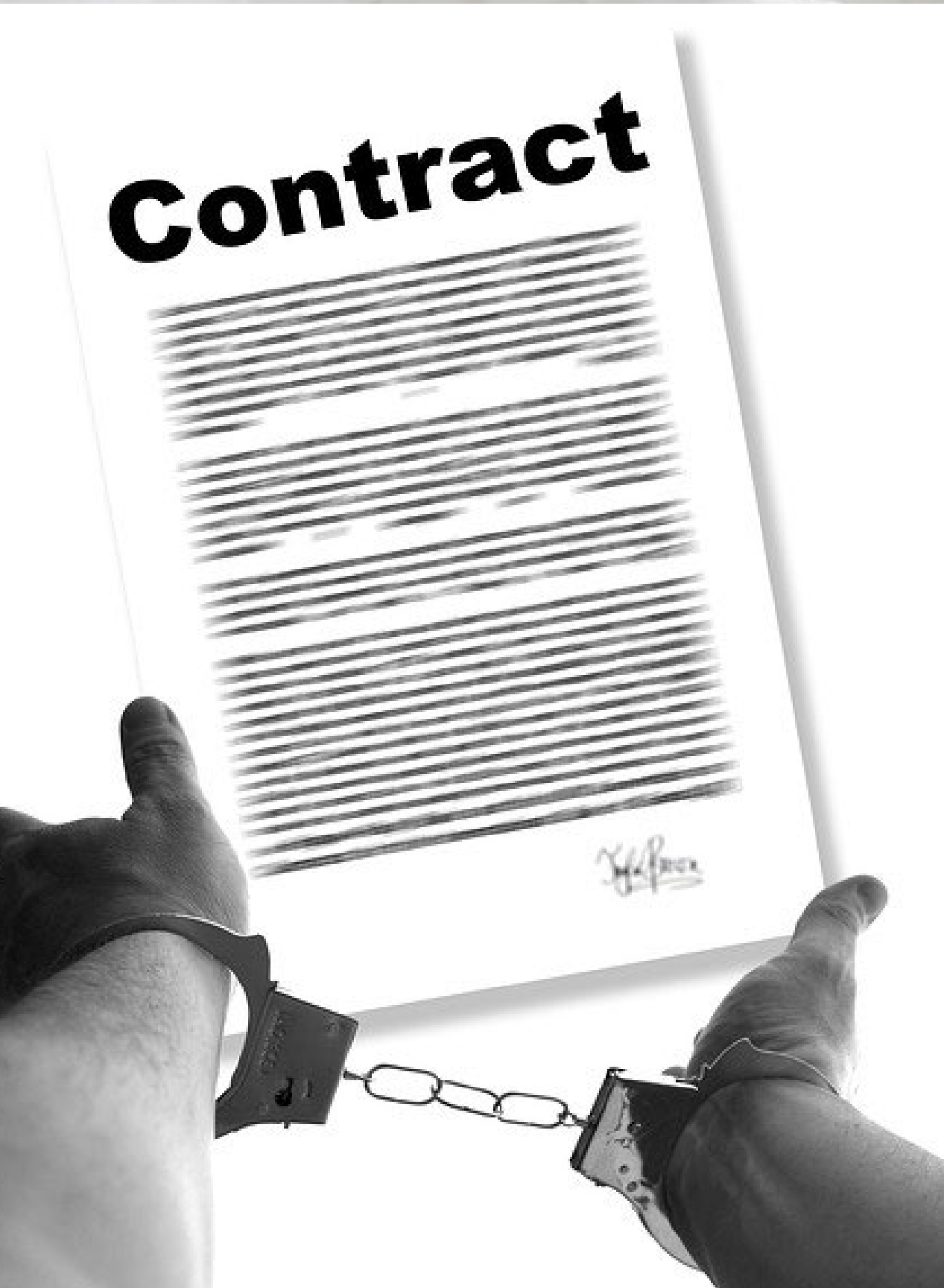
dispute

mediation

**notice
requirements**

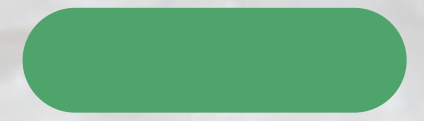


Pre-filing notice



Arbitration

Opt- out
provision
Forum and
rules



Mass arbitration



438 F.Supp.3d 1062 (N.D. Cal. 2020)



For decades, the employer-side bar and their employer clients have forced arbitration clauses upon workers, thus taking away their right to go to court, and forced class-action waivers upon them too, thus taking away their ability to join collectively to vindicate common rights. The employer-side bar has succeeded in the United States Supreme Court to sustain such provisions. The irony, in this case, is that the workers wish to enforce the very provisions forced on them by seeking, even if by the thousands, individual arbitrations, the remnant of procedural rights left to them. The employer here, DoorDash, faced with having to actually honor its side of the bargain, now blanches at the cost of the filing fees it agreed to pay in the arbitration clause. No doubt, DoorDash never expected that so many would actually seek arbitration. Instead, in irony upon irony, DoorDash now wishes to resort to a class-wide lawsuit, the very device it denied to the workers, to avoid its duty to arbitrate. This hypocrisy will not be blessed, at least by this order.

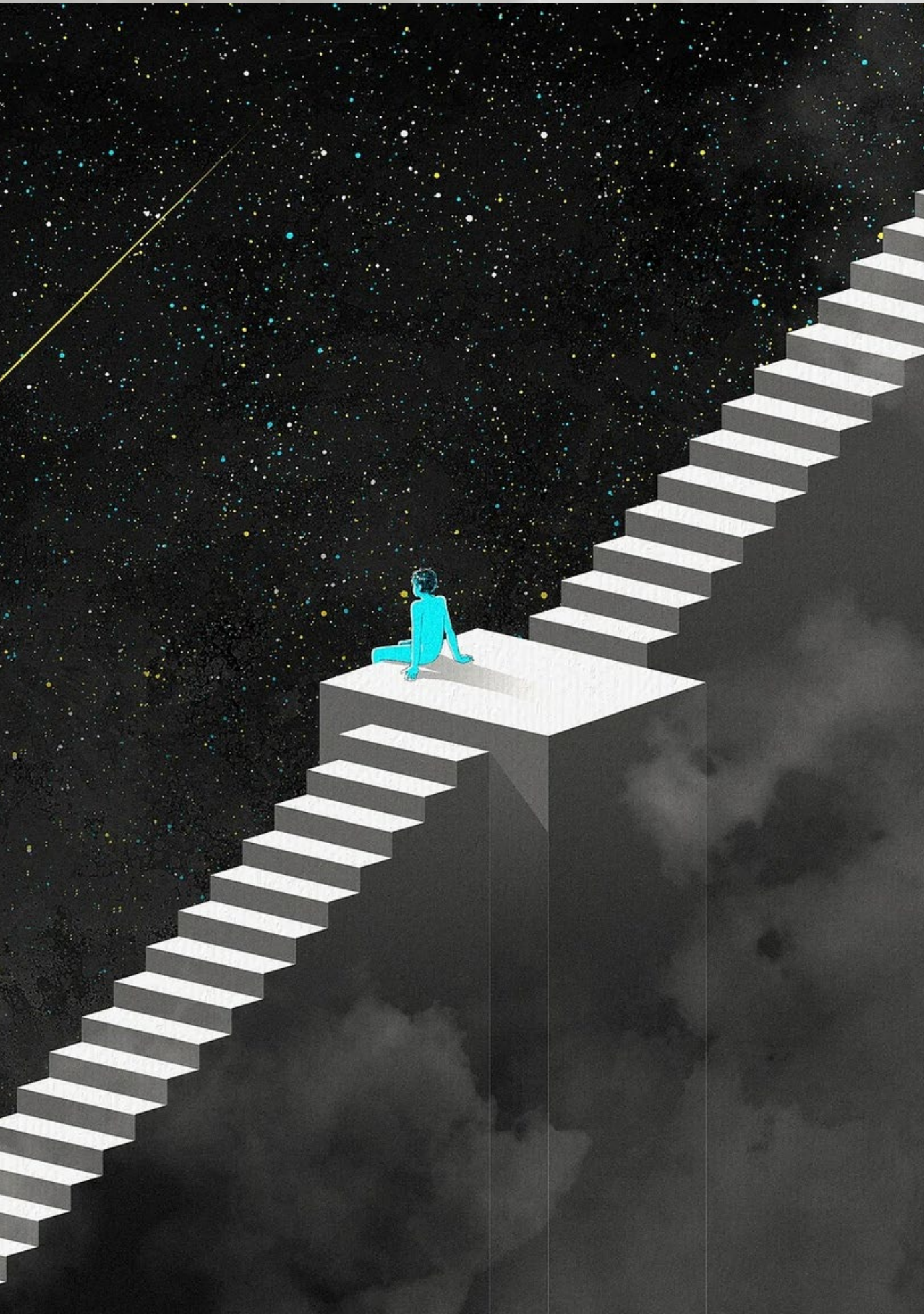
Abernathy v. DoorDash

106 F.4th 609 (7th Cir. 2024)

In sum, even assuming an arbitration agreement between the consumers and Samsung, the consumers cannot compel Samsung to pay the AAA's administrative fees. The parties agreed to abide by the rules and procedures of the AAA, and they proceeded through arbitration in accordance with those rules and their consequences. If the AAA believed Samsung was abusing the arbitration process, it could have stayed the case or threatened to decline administering future consumer arbitrations with Samsung, but it did not. Instead, the AAA terminated the proceedings and invited the parties to resolve their claims in district court. At that point, Samsung and the consumers' arbitration was complete. The consumers may view this result as unjust, but we are here because they invoked their alleged agreement with Samsung; they cannot now complain of that agreement's terms.

Wallrich v. Samsung





**Where do
we go
from here?**

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