

CALIFORNIA
LAWYERS
ASSOCIATION



BARCELONA CLA SUMMER
LAW CONFERENCE

CONSUMER MEDIATION & ARBITRATION IN THE U.S.

July 18, 2023

PRESENTED BY

Ana Sambold, Mediator and Arbitrator

MEET OUR SPEAKER: ANA SAMBOLD, ESQ

- California -based Attorney, Mediator & Arbitrator
- Conducts mediations & negotiations in English and Spanish, -in -person, online & hybrid
- Has served as a neutral in +1,000 cases: business, consumer, employment, real estate and W&T
- National Academy of Distinguished Neutrals, IMI Certified Mediator, ArbitralWoman
- Incoming Chair of the American Bar Association Dispute Resolution Section



AGENDA

1	Overview of Consumer Protection Law In the U.S.
2	Consumer Mediation In the U.S.
3	Consumer Arbitration In the U.S.
4	<u>The Future of Consumer Dispute Resolution</u>
5	<u>Resources</u>

CONSUMER TRANSACTIONS

Purchase of
Goods and
Services

Buying a phone or a vehicle, signing up for a cable service, or hiring a contractor.

Financial
Transactions

Opening a checking or deposit account, using a credit card

Subscriptions

Signing up for a streaming service, magazine subscription, or gym membership

Anytime you buy
for personal,
family or
household use

You're engaged In consumer transaction



NATURE OF CONSUMER CONTRACTS

The relationship between a consumer and a provider of goods and services will be governed by a contract of adhesion



U.S. FEDERAL CONSUMER PROTECTION LAWS

- Federal Trade Commission Act (FTCA): The FTCA empowers the Federal Trade Commission (FTC) to prevent unfair and deceptive business practices, including false advertising and fraud.
- Consumer Product Safety Act (CPSA): The CPSA authorizes the Consumer Product Safety Commission (CPSC) to regulate and enforce safety standards for consumer products, reducing the risk of injury or harm.
- Fair Credit Reporting Act (FCRA): The FCRA regulates how consumer credit information is collected, used, and shared by credit reporting agencies. It gives consumers the right to access and correct their credit reports.

U.S. FEDERAL CONSUMER PROTECTION LAWS

- **Electronic Fund Transfer Act (EFTA):** The EFTA establishes the rights and liabilities of consumers and financial institutions concerning electronic fund transfers, including ATM and debit card transactions.
- **Fair Debt Collection Practices Act (FDCPA):** The FDCPA establishes guidelines for debt collection agencies and prohibits abusive, deceptive, and unfair debt collection practices.
- **Truth in Lending Act (TILA):** The TILA requires lenders to disclose key terms and costs of credit to consumers, including annual percentage rates (APR) and other loan terms, enabling borrowers to make informed decisions.

STATE CONSUMER PROTECTION LAWS

- **Lemon Laws:** These laws protect consumers who purchase vehicles with substantial defects that affect their safety, value, or use. Lemon laws provide remedies such as refunds, replacements, or repairs.
- **Unfair and Deceptive Acts and Practices (UDAP) laws:** Many states have UDAP laws that prohibit unfair, deceptive, or fraudulent practices in consumer transactions, covering various industries and business practices.
- **State-specific consumer protection agencies:** Some states have dedicated agencies or departments responsible for enforcing consumer protection laws, addressing complaints, and providing resources and information to consumers.

CALIFORNIA CONSUMER PROTECTION LAWS

- California Consumer Privacy Act (CCPA)
- California Online Privacy Protection Act (CalOPPA)
- Song-Beverly Consumer Warranty Act
- Consumers Legal Remedies Act (CLRA)
- Rosenthal Fair Debt Collection Practices Act (RFDCPA)
- Automobile Sales Finance Act (ASFA), Mobilehome Residency Law (MRL)

CALIFORNIA CONSUMER PROTECTION LAWS

- Consumers Legal Remedies Act (CLRA): The CLRA prohibits unfair methods of competition and deceptive or unfair practices by businesses, including false advertising, and fraud.
- Examples of unfair and deceptive practices:
 - “Passing off” goods or services as those of another, Selling used goods as new,
 - “Robocalling” non -customers, and Making false or misleading statements about someone else’s products, Knowingly recommending unnecessary replacement
- Remedies for violation of the CLRA can include:
 - The consumer’s actual [monetary damages](#) , A court order enjoining (prohibiting) the unfair practices, Restitution of property, [Punitive damages](#) , Recovery of attorney’s fees, Injunctive relief, and Any other relief that the court deems proper

RESOLVING CONSUMER DISPUTES



- Internal dispute settlement procedure
- Litigation
- Mediation
- Arbitration

ADR BENEFITS TO CONSUMERS AND COURTS

Report of the Task Force on
the Quality of Justice
August 1999



"The availability of ADR processes (mediation & arbitration), whether in the private, community, or court related context, generally offers courts and the public a number of potential benefits, including the following:

- For courts: Reducing court workloads
- For public: Greater choice for of ways to resolve disputes, allowing the matching of disputes to the most appropriate dispute resolution process available.
- The potential for earlier, faster resolution than with traditional litigation
- The potential for less costly means for resolving disputes; and
- The potential for greater satisfaction with the dispute resolution process and outcome than with traditional litigation"

CONSUMER MEDIATION

- Voluntary process of dispute resolution between consumers and businesses.
- A mediator, who is a neutral third party, facilitates communication and negotiation between a consumer and a business to help them reach a mutually agreeable resolution.
- The mediator does not make decisions or impose solutions but helps parties explore options, generate creative solutions, find common ground, understand each other's perspectives and reach a final agreement.



CHARACTERISTICS OF MEDIATION

- Aims to foster a Collaborative and Amicable Resolution
- Empowers the parties
- Cost and time efficient
- Preserve relationships
- Flexible and Informal
- Confidential
- Promotes creativity
- Greater compliance



MEDIATION PROCESS



- Initial request for mediation
- Selection of a neutral mediator
- Scheduling of session
- Mediation Session: In caucus and joint sessions, the mediator facilitates communication, encourages dialogue, and helps parties identify common interests and potential solutions.
- Agreement/non -agreement

CA MEDIATION LEGAL FRAMEWORK

- California Evidence Code: Section 703.5 and Sections 11151-128: admissibility of evidence, confidentiality, etc.
- California Standards of Conduct for Mediators
- California Business and Professions Code
- California Rules of Court
- California Association of Realtors (CAR) Mediation Guidelines
- California Consumer Protection Laws
- California's Department of Consumer Affairs
- California Dispute Resolution Programs Act (DRPA)



CA MEDIATION LAWS

DISPUTE RESOLUTION PROGRAMS ACT

Business and Professions Code "465-471.5."

- (a) The resolution of many disputes can be unnecessarily costly, time-consuming, and complex when achieved through formal court proceedings where the parties are adversaries and are subjected to formalized procedures.
- (b) To achieve more effective and efficient dispute resolution in a complex society, greater use of alternatives to the courts, such as mediation, conciliation, and arbitration should be encouraged. Community dispute resolution programs and increased use of other alternatives to the formal judicial system may offer less threatening and more flexible forums for persons of all ethnic, racial, and socioeconomic backgrounds. These alternatives, among other things, can assist in the resolution of disputes between neighbors, some domestic disputes, consumer-merchant disputes, and other kinds of disputes in which the parties have continuing relationships. A noncoercive dispute resolution forum in the community may also provide a valuable prevention and early intervention problem-solving resource to the community.

CONSUMER ARBITRATION

- Process in which an Arbitrator, who is a neutral third party, reviews the evidence and arguments presented by both the consumer and the business and renders a binding decision.
- Arbitration can be either voluntary or mandatory, depending on the agreements between the parties, such as a contract or terms of service.
- The purpose of consumer arbitration is to provide a more streamlined and efficient alternative to traditional court litigation, allowing for a prompt resolution of disputes.



CHARACTERISTICS OF CONSUMER ARBITRATION

- It is a creature of contract
- Aims to provide a faster and more efficient dispute resolution, with less formal procedures and quicker timelines
- Flexibility that allows parties to tailor the process to their specific needs and preferences
- Private and confidential
- Cost-effective: Fees and Arbitrator's Compensation are paid by business/company
- Decision rendered by the arbitrator is generally binding on both parties
- Arbitration awards are subject to limited judicial review



ARBITRATION LEGAL FRAMEWORK

- **The Federal Arbitration Act (FAA):** The FAA is a federal law that governs the enforceability of arbitration agreements in contracts involving interstate commerce. The FAA has shaped the landscape of consumer arbitration in the United States.
- **California Arbitration Act (CAA):** The CAA governs the enforceability of arbitration agreements in California. The CAA provides consumers with certain protections in arbitration, such as the right to be informed about the arbitration process and the right to choose an arbitrator.

FEDERAL CONSUMER PROTECTION LAWS AND ADR

- The Consumer Financial Protection Act (CFPA): Its role is to increase oversight and help to protect consumers with financial transactions.
 - The act resulted in the creation of the Consumer Financial Protection Bureau (CFPB)
- The Magnuson-Moss Warranty Act (MMWA): Enacted in 1975, it governs warranties on consumer products. It does not require any product to have a warranty, but if it does have a warranty, the warranty must comply with this law.
- Both of these laws require companies to provide consumers with clear and conspicuous notice information about their right to mediation and arbitration .

PRE-DISPUTE ARBITRATION CLAUSES

- "Pre-dispute" arbitration clauses commit the parties to use arbitration before there is a dispute between them.

These arbitration clauses generally give each party to the contract two distinct contractual rights:

- Either side can file claims against the other in arbitration and obtain a binding decision from the arbitrator.
- If one side sues the other in court, the party that has been sued in court can invoke the arbitration clause to require that the dispute proceed, if at all, in arbitration instead.



U.S. SUPREME COURT CASES

In 2011

AT&T Mobility LLC v. Concepcion
upholds the validity of class action waivers in
pre-dispute consumer arbitration agreements



ARBITRATION PROCESS

1

Filing an arbitration demand

2

Pre-hearing:
Management Conference

3

Evidentiary Hearing

AWARD

ARBITRATION RULES AND PROVIDERS

Consumer arbitration can be conducted under various rules and procedures, such as those provided by arbitration organizations like:

- The American Arbitration Association (AAA) and JAMS



EMPIRICAL ASSESSMENT OF CONSUMER ARBITRATION

New Study: Consumers Win More Money, More Often, and More Quickly In Arbitration Than In Court

Washington, D.C.—A new study released today by the U.S. Chamber Institute for Legal Reform (ILR) found that consumers win more money, more often, and more...

Fairer, Faster, Better II: An Empirical Assessment of Consumer Arbitration

NOVEMBER 2020



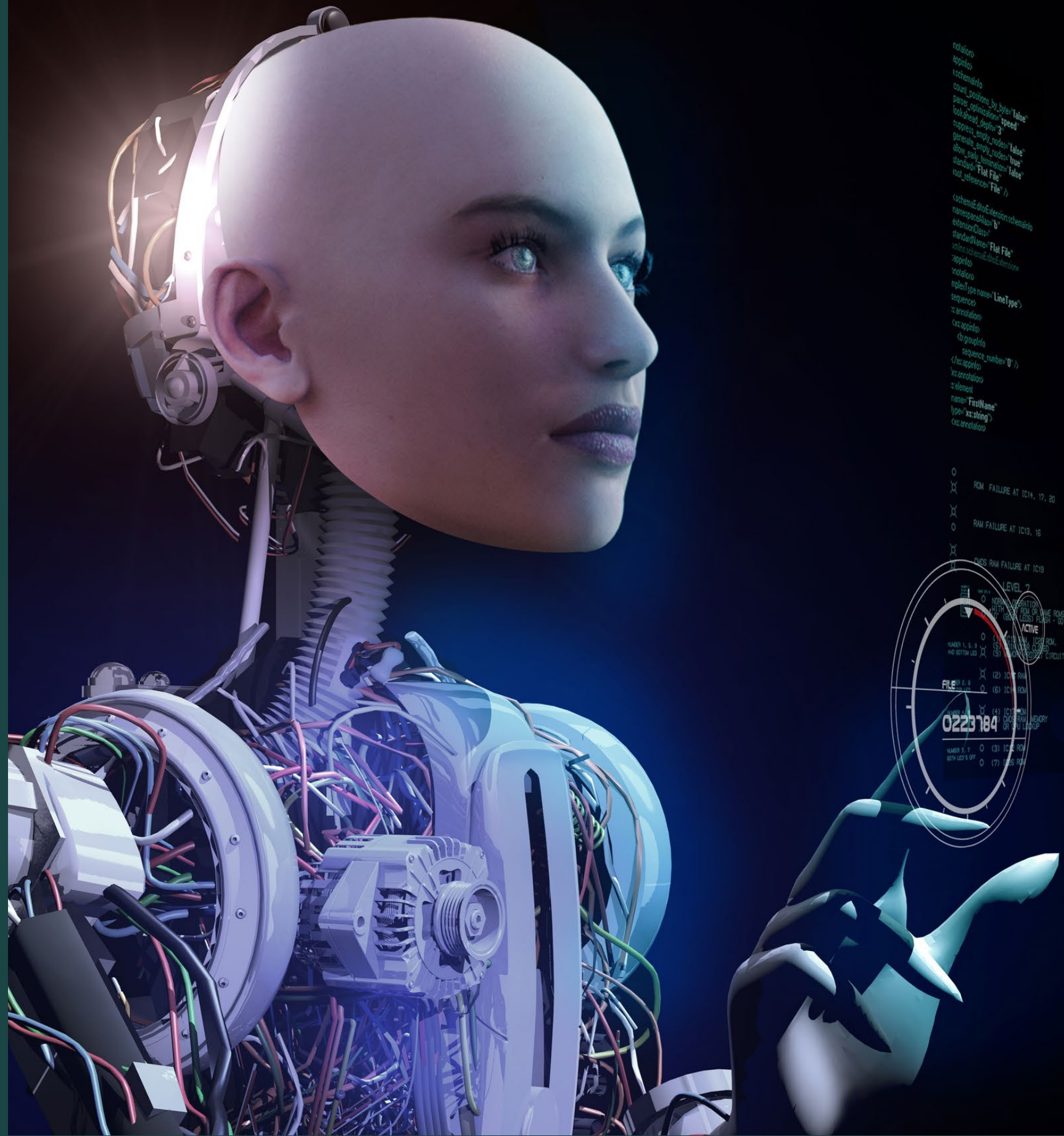
ARBITRATION EVOLVING LANDSCAPE: PROPOSED LEGISLATION

- The Forced Arbitration Injustice Repeal Act of 2022 (“The FAIR Act”), if passed by the Senate, would end the ability to utilize pre-dispute arbitration agreements in employment, consumer, antitrust and civil right disputes.
- The bill was originally passed by the House of Representatives on March 17, 2022, but it was not taken up by the Senate. Some of the reasons:
 - The bill would interfere with the Federal Arbitration Act (FAA) and
 - It would make it more difficult for businesses to resolve disputes with consumers.
- Despite not being passed by the Senate, the FAIR Act is still a significant piece of legislation. The bill has been reintroduced in the 118th Congress, and it is possible that it could be passed in the future.

WHAT'S NEXT?



Artificial Intelligence?



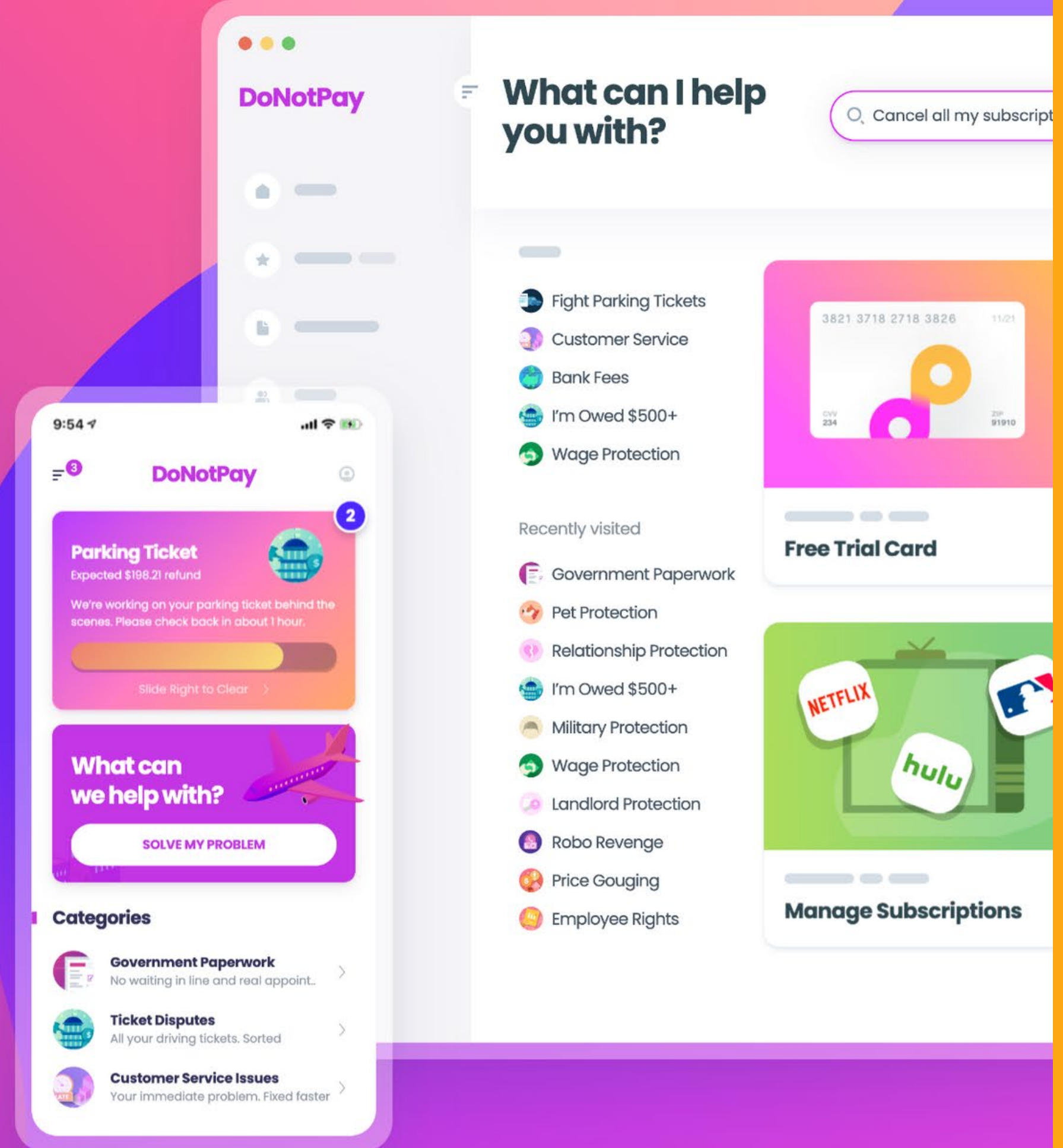
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[Remove Negative Reviews & Photos](#)

[Airline Flight Compensation Hacks](#)

RESOURCE Page



Small Claims Court Guide

https://www.dca.ca.gov/publications/small_claims/court.shtml#court_cost

California Local Dispute Resolution Programs

https://www.dca.ca.gov/consumers/dispute_resolution_programs.shtml

California Dispute Resolution Programs Act - Statutes

https://www.dca.ca.gov/publications/drpa_statutes.shtml

AMERICAN ARBITRATION ASSOCIATION CONSUMER ARBITRATION RULES

AMERICAN ARBITRATION ASSOCIATION ADR CLAUSE BUILDER

<https://www.sdcourt.ca.gov/sites/default/files/sdcourt/generalinformation/forms/civilforms/civ730.pdf>



KEEP IN TOUCH



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