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# **Arbitration Reporting in California: Compliance with CCP §1281.96**

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Public Law Research Institute, UC Hastings College of the Law

This report does not necessarily represent the view of the Board of Directors of UC Hastings, nor its Faculty

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# 1. Goals

Assessing how many arbitration firms are disclosing the required information about consumer arbitrations in California.

Evaluating how have reporting firms adapted to the changed disclosure requirements of AB 802 in 2014.

Gauging whether compliance with CCP §1281.96 improved since the 2013 PLRI report.

Providing a look into some of substance of the disclosure reports: who wins arbitration hearings, and what's the average time from filing to disposition?

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# Executive Summary

32 firms appear to be offering consumer arbitration services in California. Of those, only 11 firms follow the **substantive requirements** of §1281.96(a) , and of those, only three firms can be said to evidence robust and full compliance with the statutory regime, including §1281.96(b)'s **formal requirements** as to format, timing and depth of reporting.

Some 12 firms self-reported to us that they were not covered by §1281.96, either due to not performing arbitration services, or for other reasons. 9 firms did not respond to our emails or phone calls; they may not be in business any longer.

# 2013 Data

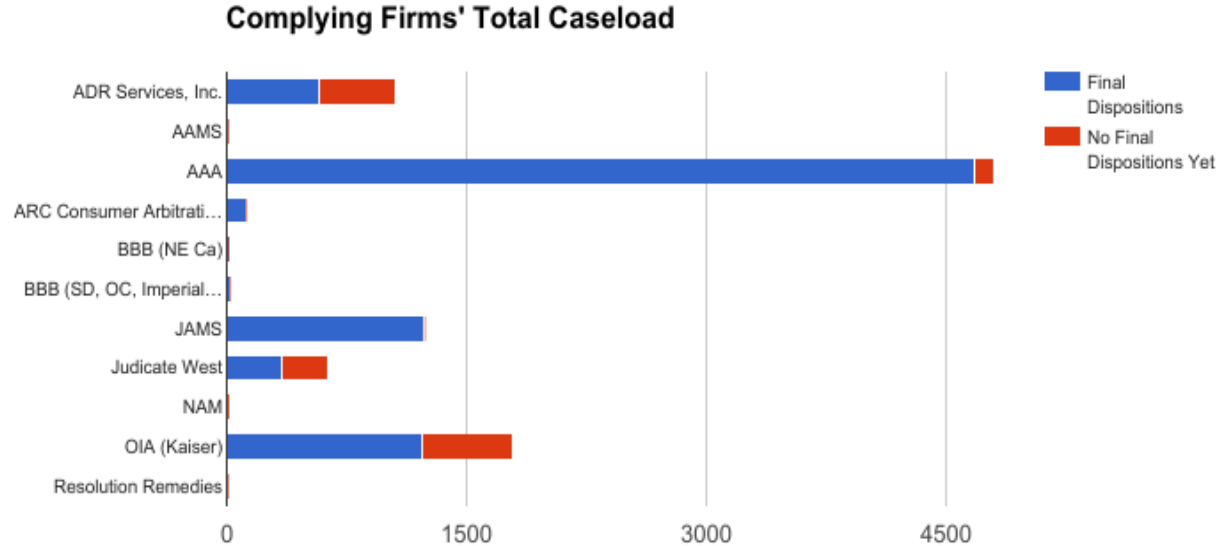
Compliance	Link on Website but No Data	No Disclosure Data
ADR Services Inc.	Advantage ADR	Arbitration and Mediation Center
American Arbitration Association (AAA)	Agency for Dispute Resolution	Arbitration and Mediation Conciliation Center
BBB (LA)	First Resolution Services	BBB (Bakersfield)
BBB (NE CA)		BBB (Central Ca)
JAMS		BBB (Golden Gate and Nor. Ca)
Judicate West		BBB (San Diego)
NAF		BBB (Silicon Valley)
National Arbitration and Mediation		BBB (Tri-Counties)
OIA (Kaiser)		DMA Dispute Management & Avoidance
Resolution Remedies		Inland Valley Arbitration and Mediation Svcs
		PMA Dispute Resolution
		United States Arbitration & Mediation, Inc.

# 2017 Data - the 11 Reporting Firms

Good Compliance with §1281.96(b)	Compliant, But not Downloadable	Searchable, Limited Sortability	Not Sortable
ADR Services, Inc. *	OIA (Kaiser)	Judicate West	BBB (Northeast California)
AAMS *			Resolution Remedies
AAA			National Arbitration and Mediation
ARC Consumer Arbitrations			
BBB (SD, OC, Imperial County)			
JAMS *			

\* complies with all formal requirements of §1281.96(b)

# Compliance Caseload



## 2017 Data - Firms Not Reporting

Self-Reporting as Not Covered	Non-responsive to PLRI contact
Arbi Claims	Agency for Dispute Resolution
Arbitration Mediation Conciliation Center	Arbitration & Mediation Center
Arbitration Resolution Services, Inc.	Better Business Bureau (Los Angeles & Silicon Valley)
Better Business Bureau (Central California)	California Arbitration & Mediation Services (CAMS)
Conflict Resolution & Legal Services	California Lawyers for the Arts
Federal Arbitration, Inc. (FedArb)	DMA Dispute Management & Avoidance
FINRA	First Resolution Services
Inland Valley Arbitration and Mediation Services	Inland Valley Arbitration and Mediation Services
Judicial Dispute Resolution	PMA Dispute Resolution
Lubaroff Mediation	
Southern California Mediation Association	
United States Arbitration and Mediation	



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## **A few substantive points**

AAA only reports prevailing party in 46% of cases that had hearings and awards.

Claimed amount tends to be underreported (e.g., JAMS reports “unknown” in 84% of cases).

Kaiser OIA reported 98 cases with a prevailing party; 92 of those cases were resolved in favor of the nonconsumer party, or 94%.

ARC Services: 0% compliance as to reporting repeat arbitration customers, even when its disclosures show identical named parties.

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## **2. Background: Arbitration in the US**

Some 30,000,000 US employees are subject to mandatory arbitration clauses.\*

Hundreds of millions of US wireless cell phone users are subject to mandatory arbitration clauses, as are credit card debtors.

Unlike the transparency of the judicial system, the arbitration system is a relatively opaque means of dispensing justice.

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# Background - CCP §1281.96

California's landmark 2003 consumer arbitration disclosure statute required "any private arbitration company that administers or is otherwise involved in consumer arbitration" to collect and publish data.

Section 1281.96 has been a "key source of data" about arbitration.

Maryland, Maine and the District of Columbia now have similar statutes.

AB 802 (2014) substantially revised §1281.96; this presentation looks at the reporting of arbitration cases filed since AB 802's effective date of January 1, 2015, and updates PLRI/UC Hastings College of the Law research from 2014.

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## **AB 802 (2014) - the major changes**

§1281.96(b) now mandates disclosure reports be “in a format that allows the public to search and sort the information using readily available software”;

"[be] directly accessible from a conspicuously displayed link" with the “identifying description: ‘consumer case information’” §1281.96(b); and,

"[specify whether] arbitration was demanded pursuant to a pre-dispute arbitration clause and, if so, whether the pre-dispute arbitration clause designated the administering arbitration company."

Also amended: new required fields include identifying party initiating the action; name of consumer’s attorney; and if a hearing occurred, the type of hearing.

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## **3. Methodology**

We followed the methodology of the 2013 UC Hastings/PLRI report, in order to facilitate comparisons of compliance over the interval.

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# Methodology: Step One

## Identification of private arbitration companies.

- Section 1281.96 requires “any private arbitration company that administers or is otherwise involved in consumer arbitration” to collect and publish data.
- We came up with 32 firms potentially in the business of consumer arbitration by canvassing public databases (Yelp, Google, the California Secretary of State’s website, etc.) to capture firms potentially covered by §1281.96.
- We emailed/phoned all identified firms to confirm their participation in the private arbitration sector.
- We visited firm websites to check for disclosure reports.

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# Methodology: Step Two

## Assessment Criteria

- 11 firms currently disclose information about consumer arbitration services under CCP §1281.96 on their websites. This is the same number as in the 2013 PLRI report. We downloaded or otherwise captured their most recent disclosure reports from the Internet.
- We reviewed reporting for cases filed after January 1, 2015
  - We only looked at the most recent quarterly report (NB: this might have the effect of maximizing compliance rate, if the latest report fixes gaps in prior reports).
  - We did not check with firms about individual cases.
- Did the reports contain all statutorily mandated fields?
- Were the responses in each field consistent and complete?

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# Methodology: Step Three

## Compliance Measurement

Compliance Percentage: (# of cases properly reported)/(total number of relevant cases).

In most instances, the denominator is simply the total number of cases reported.

However, in certain fields, the denominator is smaller, accounting only for relevant cases.

For example, the salary amount compliance percentage was calculated using the total number of employment cases as the denominator. Similarly, the awarded amount compliance percentage used the total number of cases that were not pending, settled, dismissed, or withdrawn as the denominator.



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# Methodology: Step Three

## Compliance Measurement

We held firms accountable for using terms other than provided by statute in some circumstances:

- See ARC results, which use "Nicole/off" in lieu of the statutorily mandated terms of "settled," etc;
- ADR Services: used "Third Party" 25% of the time in the "initiating party" field.

We also held firms accountable for blank or missing fields for categories such as:

- "prevailing party," "award amount," "type of disposition," if the case otherwise showed a final disposition.
- However, we did not hold firms accountable for not indicating arbitration fees in settled cases or for answering "pending" as to the disposition, even though "pending" is not a statutorily authorized term.

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## 4. Assessing Compliance

1. The barebones: which firms are reporting arbitration data?
2. And, of those reporting, how thorough is their compliance with:
  - §1281.96(b)'s formal requirements of quarterly reporting of data that are searchable/sortable, etc.
  - §1281.96(a)'s substantive requirements as to arbitration fees, prevailing party, etc.

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## **32 potential reporting firms**

12 of these firms self-reported to us that they were not covered by §1281.96

Another 9 firms did not respond to our inquiries.

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## **Not covered**

Many firms indicated that their online arbitration services did not fall under the scope of CCP §1281.96, or that they no longer conducted consumer arbitrations.

*E.g, ArbiClaims.com: “We do not provide ‘consumer arbitration’ as defined in the CA Codes, or as contemplated by §1281.96 and its legislative history.”*

- Per its website, the firm provides low-cost arbitration services, as an alternative to small claims court.

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# Not reporting

Several firms have extensive arbitration websites promoting their arbitration services but have no obvious links to §1281.96 reporting and have not responded to our emails or phone calls.

E.g, Agency for Dispute Resolution:



“ **Arbitration:** A formal adversarial hearing before a neutral, called the arbitrator, with a relaxed evidentiary standard. The arbitrator is usually a subject matter expert.”

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## Reporting Firms (11)

ADR Services, Inc.

Advantage Arbitration and Mediation Services, Inc. [new since 2013 report]

American Arbitration Association (AAA)[NB: includes data for all states]

ARC Consumer Arbitrations

Better Business Bureau (Northeast California)

Better Business Bureau (San Diego, Orange, and Imperial counties)

JAMS

Judicate West

National Arbitration and Mediation (NAM)

Office of the Independent Administrator (Kaiser)

Resolution Remedies

Note: National Arbitration Forum (or “Forum”) no longer reports

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# A tale of two markets

## The big

AAA (nationally, 4600 cases closed since 1/1/15; 1021 in California alone)

JAMS (1236 cases closed)

Judicate West (634 cases pending and closed)

Kaiser OIA (1225 cases pending and closed)

## The little

BBB (SD and OC): 18

NAM: 15

BBB (NE California): 15

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# The basics - §1281.96(b)

	Date of Last Report	Link to “Consumer Case Information”	3 Years of Data	Search and Sort
ADR Services, Inc.	Q3 2016 (but data to 11/16)	Yes	Yes	Yes
<b>Advantage Arbitration and Mediation Services</b>	Q4 2016	Yes (but not on home page)	Yes	Yes
American Arbitration Association (AAA)	Q4 2016	No	Yes	Yes
ARC Consumer Arbitrations	<b>Q2 2016</b>	No	Yes	Yes
Better Business Bureau (San Diego, Orange, and Imperial counties)	Q4 2016	No	Yes	Yes



# The basics - §1281.96(b)

	Date of Last Report	Link to “Consumer Case Information”	3 Years of Data	Search and Sort
BBB (Northeast California)	Q1 2017	No	Yes	No
National Arbitration and Mediation (NAM)	Q4 2016	No	Yes	No
JAMS	Q4 2016	Yes	Yes	Yes
Judicate West	Q4 2016	No	Yes	Yes, but not Excel
Office of Independent Arbitrator (Kaiser)	Q4 2016	No	Yes	Yes, but not Excel
Resolution Remedies	Q1 2016	No	Yes	No, PDF

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# The basics, in detail

Use of the descriptor “consumer case information” as prominent link on website to assist in consumer access to the disclosure report is unevenly honored: of the 11 firms reporting arbitration information, only 6 use the statutory term.

Instead:

AAA: "Consumer Arbitration Statistics"; and no link on the main page.

JAMS: "Consumer Arbitration Disclosures"

NAM: “List Consumer Arbitration Cases”; and no link on main page

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## The basics, continued

The information should be available in a format that can be searched and sorted by readily available software.

Some firms provide downloadable excel spreadsheets, but some of the major firms only provide a web-based search engine, that is sortable to a limited extent, and not amenable to data analysis: Judicate West, e.g.

Other firms provide PDFs only.

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## Searchable, not sortable (screenshot of NAM reporting)

### NAM Consumer Arbitrations

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Case Caption	<u>Claimant vs. CarMax</u>
Date Submitted	11/9/2016
Case Type	Employment
Salary Range	N/A
Claim Amount	N/A
Disposition	Pending
Prevailing Party/Award	Pending
Claimant Represented by Counsel	No
Fee Paid to NAM	\$0
Pct. of Fee paid by Claimant	0%
Pct. of Fee Paid by Respondent	0%
Arbitrator	Not Yet Appointed
Appointment Date	N/A
<i>Number of times Respondent has been a party in Arbitration at NAM other than subject case: 91</i>	

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Case Caption	<u>Claimant vs. Galpin Volkswagon of San Fernando Valley</u>
Date Submitted	9/28/2016
Case Type	Consumer
Salary Range	N/A
Claim Amount	\$75,000

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# Sortable, but by limited fields, and only once

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search disclosures

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Sort By  
Disposition ▾

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- Arbitrator
- Appointment Date
- Disposition
- Disposition Date
- Respondent Party
- Type of Dispute

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## Consumer Arbitration Disclosures

<b>Case Number:</b>	A225395	<b>Type of Dispute:</b>	Personal Injury	<b>Filing Date:</b>	8/24/2016
<b>Appointment Date:</b>	9/27/2016	<b>Arbitrator:</b>	Sharkey, Esq., Thomas E.		
<b>Claimant Party:</b>	Claimant				
<b>Respondent Party:</b>	Worldwide Driving School; Rani Rafat Yacoub; Aisha Candor Aoranim ; Mignon Eloise Ingram; A Plus Driving School	<b>Amount of Claim:</b>	Unknown	<b>Award:</b>	\$0.00
<b>Consumer Rep. By Attorney:</b>	Yes	<b>Disposition:</b>	Awarded	<b>Prevailing Party:</b>	Claimant
<b>Disposition Date:</b>	10/28/2016	<b>Award Comments:</b>			
<b>Arbitration Fees:</b>	\$7,670.00	<b>Fee Allocation:</b>	Pro Rata		
		<b>Non Consumer Party Previous Cases:</b>	None		

<b>Case Number:</b>	A224977	<b>Type of Dispute:</b>	Personal Injury	<b>Filing Date:</b>	8/10/2016
<b>Appointment Date:</b>	9/14/2016	<b>Arbitrator:</b>	Graver, Esq., Darryl H.		
<b>Claimant Party:</b>	Claimant				
<b>Respondent Party:</b>	GEICO	<b>Amount of Claim:</b>	Unknown	<b>Award:</b>	\$0.00
<b>Consumer Rep. By Attorney:</b>	Yes	<b>Disposition:</b>	Awarded	<b>Prevailing Party:</b>	Claimant
<b>Disposition Date:</b>	10/21/2016	<b>Award Comments:</b>			
<b>Arbitration Fees:</b>	\$3,330.00	<b>Fee Allocation:</b>	Pro Rata		
		<b>Non Consumer Party Previous Cases:</b>	Geico (65)		

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# Data challenges

Several firms did not report their arbitration statistics in the form of Excel spreadsheets.

Our researchers converted the Judicate and Kaiser OIA online databases (and the PDFs of other firms) into Excel format to facilitate analysis. Some errors may have ensued in the process of conversion.

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## General flaws in data

Duplicate case numbers, particularly in the AAA data. We culled obvious duplicates, but many could remain, throwing off compliance percentages. This could lead to overly high apparent compliance or overly low, depending on whether a compliant case or noncompliant case is doubly reported.

AAA's explanation is that multiple lines may represent similar cases (e.g., different consumer parties but same respondent and claim), although case numbers should be distinct, per AAA. But they're not.

Also, numerous date issues: sometimes the date of filing is "2016" when the same case is shown as being resolved in 2015, for example.

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## **The substance of reporting: §1281.96(a)**

- Type of disposition
- Mandatory arbitration clauses and designated arbitrators
- Previous arbitrations with the firm
- Arbitrator fees and allocations
- Claimed amount
- Salary range
- Prevailing party
- Awarded amount



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## Particular fields: “type of disposition”

Use of nomenclature distinct from the statute’s mandate for type of disposition a particular area of concern

AAA: “administrative” as a form of disposition - what does this mean?

NAM: type of disposition: “pending” “settled” “none” “dismissal due to non-appearance by claimant” and “settled prior to hearing” in lieu of the statutory language.

RRR: dispositions include "disqualified," "recused," TBD," and "concluded"

ARC: "closed," "heard," "off/file," "off/Nicole," and "pending"

BUT: “Pending” a useful designation for firms reporting open cases; some firms only report finalized cases (e.g., AAA); “pending” as a permissible tag would encourage deeper reporting, in advance of disposition.

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## **Filed cases vs. closed cases**

JAMS and AAA only report resolved cases - no pending cases appear on their mostly highly compliant reporting.

The other firms report pending cases, too.

The absence of “pending” as an acceptable notation under §1281.96(a)(9) lends itself to the interpretation that the statute only covers cases with a final disposition. The legislature could clarify this; useful information is gleaned even from “pending” cases. Thus, “pending” would be an acceptable notation for “type of disposition.”

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## **Particular fields: “type of disposition”**

ARC Services: a low compliance of 1.59% if we insist on strict adherence to §1281.96(a)(9)'s terms of "settlement" & "award after hearing" etc.

ARC Services uses tags of "set," "settled prior," "heard," "off/file," "settled," "off/Nicole," "closed," "pending," and "disclosure only."

A less strict interpretation gives ARC Services a 92% compliance rate.

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# Mandatory Arbitration Clauses and Designated Arbitrators

Compliance with subdivision 1281.96(a)(1) is fairly robust: near 100% compliance among firms reporting.

No surprise – reported arbitration data show that the arbitration is contractually agreed to, and the arbitration firm was designated in the contract itself.

- AAA: 100% of cases designated AAA as the arbitration firm;
- By contrast, ADR Services 621 of 1058 cases specified mandatory arbitration; only 31 designated ADR Services

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## **Previous arbitrations §1281.96(a)(5)**

Compliance is generally robust; but, as noted in the PLRI's 2013 report, most firms only supply a cumulative number, based on the number of times the arbitration firm has served as an arbiter for that nonconsumer party as of the last arbitration.

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# Statutory ambiguity

In some cases, sub-entities of non-consumer parties appear.

Should these count as the same entity (concern about repeat dealings breeding appearance of conflict of interest):

- “Kaiser Foundation Hospitals” and “Kaiser Foundation Health Plan”; or,
- “Wells Fargo, Inc.” versus “Wells Fargo Bank National Association”

An opportunity to clarify: the legislature could provide that legally related entities should be bundled together for purposes of aggregating instances of repeat use of an arbitrator. Concerns about bias in favor of repeat users are not blunted by the profusion of legal/business entities under unitary control.

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**JAMS - HSBC entities not fully aggregated for prior arbitration or mediation count (screenshot of spreadsheet)**

NONCONSUMER PARTY	ARB COU	MED COU
HSBC Bank Nevada NA	44	60
HSBC Bank Nevada NA	44	60
HSBC Bank USA, N.A.	44	60
HSBC Finance Corporation	64	30
HSBC Card Services	10	3
HSBC Bank	44	60
HSBC Card Services	10	3
HSBC Card Services, Inc.	0	0

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## **JAMS - Wells Fargo and sub-entities - prior arbitrations and mediations**

REPEAT NONCONSUMER PARTY	ARBITRATION COUNT	MEDIATION COUNT
Wells Fargo Advisors LLC	104	705
Wells Fargo Bank, N.A.	104	705
Wells Fargo Bank	104	705
Wells Fargo Bank, National Association	104	705
Wells Fargo Bank, N. A.	104	705
Wells Fargo Bank, N. A.	104	705
Wells Fargo Bank, N. A.	104	705
Wells Fargo	104	705
Wells Fargo Dealer Services, Inc., a California Corporation	13	125
Wells Fargo Dealer Services, Inc.	13	125
Wells Fargo Dealer Services, Inc.	13	125
Wells Fargo Bank National Association	104	705
Wells Fargo Bank N.A.	104	705
Wells Fargo Bank National Association	104	705



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## Arbitrator fees

Many firms used “0” for stated fees. We didn’t know whether this was the actual fee. For example, AAA in California reported 46% of cases with no arbitrator fee; is this lack of compliance or actual reporting of no fees?

In calculating compliance with the “fee allocation” field, we used number of cases with nonzero arbitrator fees as the denominator.

e.g. AAA California cases had 554 non-zero fees, with allocations reported in 523 cases: 94% compliance.

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# The weakest areas of compliance

## 1. Claimed amount

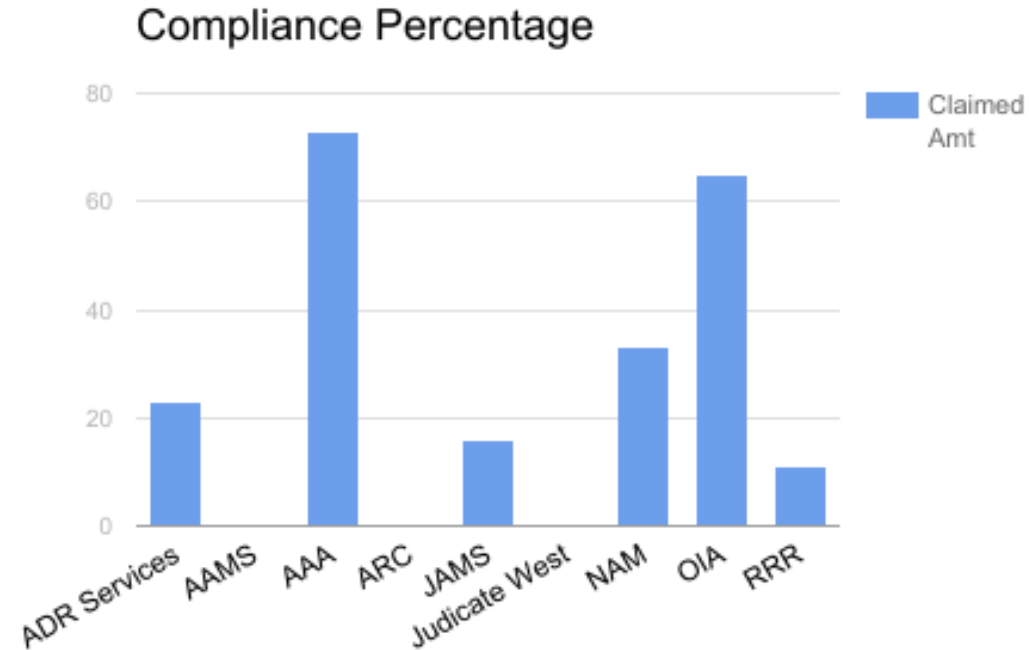
- a. Though this information should be available at the outset of a case's filing, compliance with §1281.96(a)(10) ranges from 0% (Judicate West) to 71% (AAA), among the big firms.

## 2. Salary range in employment disputes

- a. Of the subset of disputes touching on employment, the required salary range is more often excluded than not.
- b. JAMS reporting uses the notation "Employee Declined to Provide"; other firms simply use "N/A" or "unknown," perhaps signifying the same cause for this gap in the data.

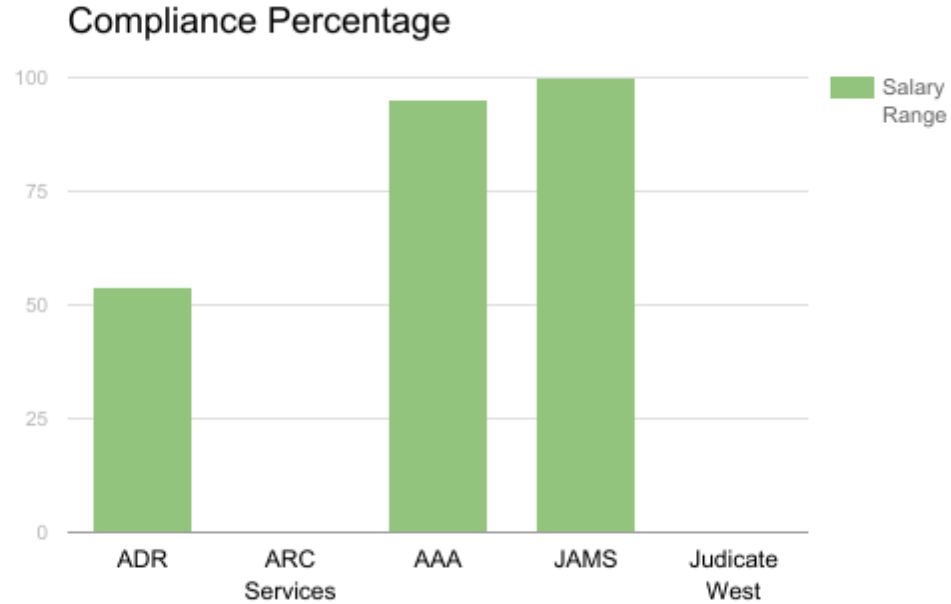
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# Claimed amount



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## Salary range, if employment dispute



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# Who prevailed?

Using only cases designated as “awarded,” the compliance rate was fairly robust for setting out the prevailing party.

AAA is the outlier: only reports the prevailing party for 46% of cases with awards (California only cases, 4Q2016);

Most of the other firms reporting came in above 90% compliance, e.g.:

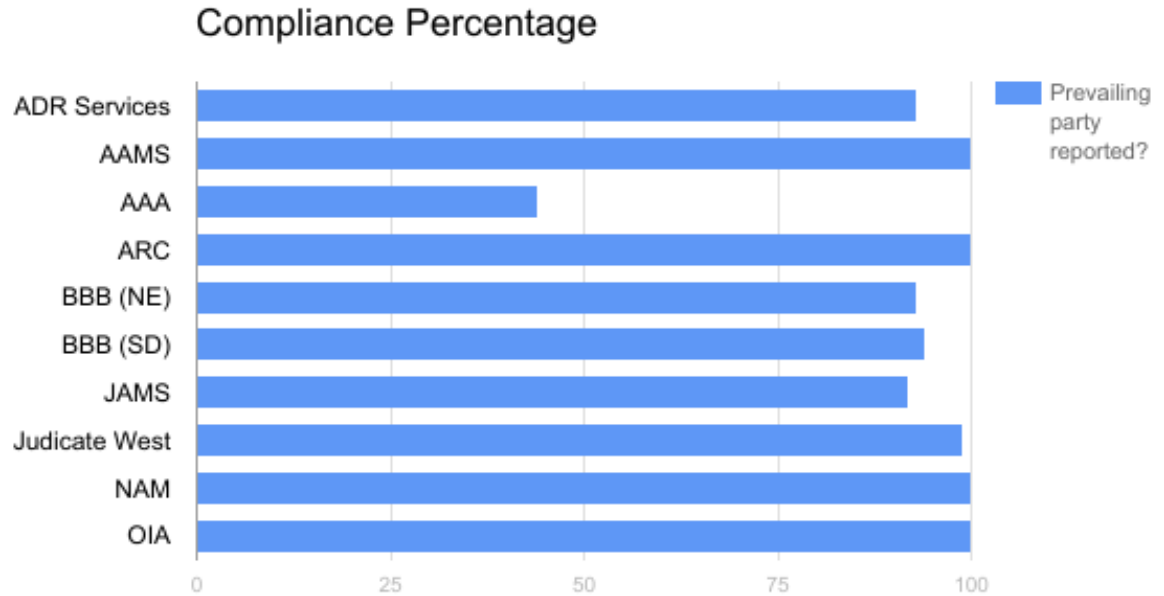
ADR Services: 93%

JAMS: 92%

Judicate West: 99%

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## Who prevailed (if disposition indicated “award”)



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# The award

Substantial data holes in reporting the award after hearing: compliance percentage based on only those cases resolved with “award after hearing” or “award without hearing.”

A wide compliance range:

Judicate West: 0%

AAA (California only): 59%

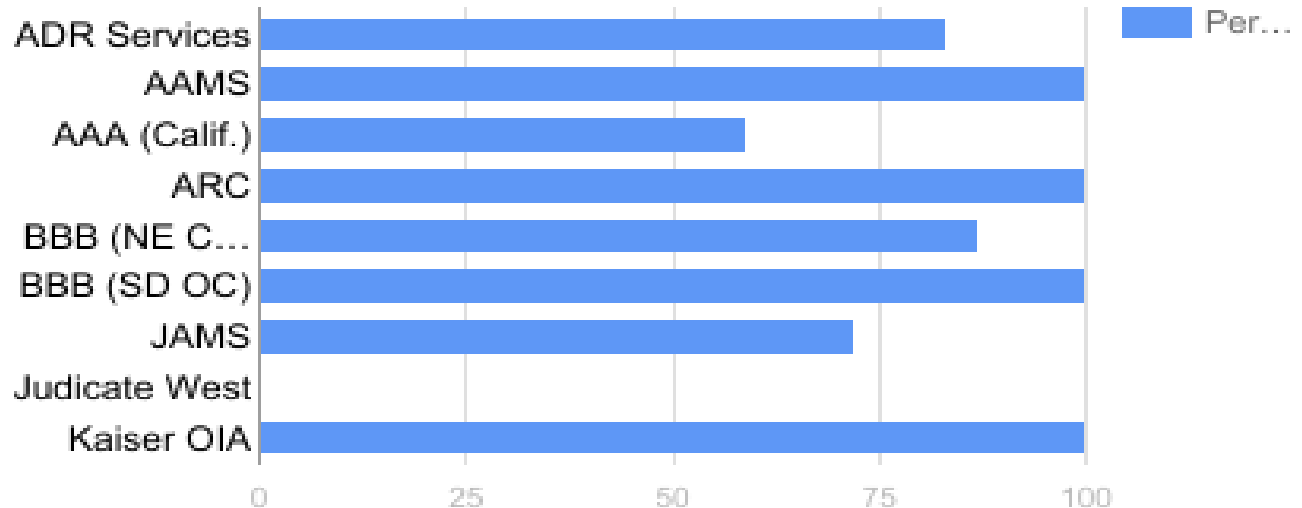
Kaiser OIA: 100%.

Note: many firms reported award amounts for cases that settled.

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# Awarded amount - (a)(10)

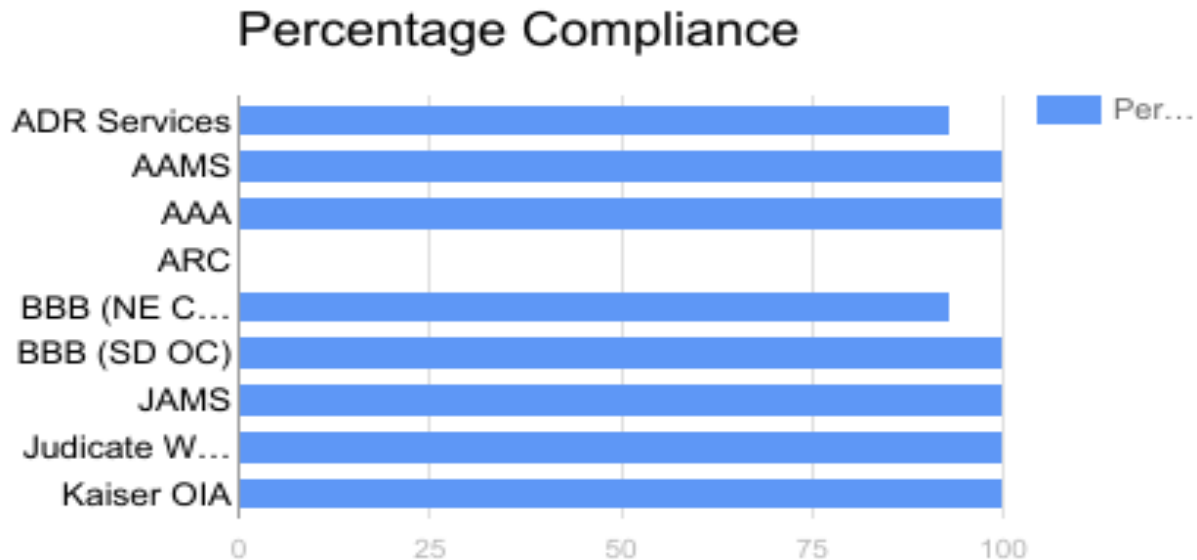
## Percentage Compliance





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# Repeat users



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## 5. Some substance

Kaiser OIA reported 98 cases with a prevailing party (out of 1225 cases filed post 1/1/2015).

- 92 of those cases were resolved in favor of the nonconsumer party, or 94%.
- Some commentators explain this seemingly odd result in terms of “repeat player” bias.
- Others point to informational asymmetries: one party may have better sense of the merits of claims and refuse to settle.

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**Substantive note: “extreme” repeat players**

Kaiser

1225 cases in two years at the OIA;

498 cases at Judicate West

Wells Fargo: 291 cases at AAA (nationally)

Verizon: 1166 cases at AAA (nationally)

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## **Substantive note: fees**

Average arbitration fee as reported by Judicate West:

\$6100/ for cases “awarded”; and,

\$2500 for cases “completed, canceled, withdrawn and settled.

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## **Substantive note: speed to decision**

Arbitration proponents often justify the imposition of arbitration based on its supposed informality, inexpensiveness and efficiency.

The data show that a preponderance of cases filed with arbitrators never make it to a hearing, and most settle e.g., AAA - 64.9% “settled” (nationally).

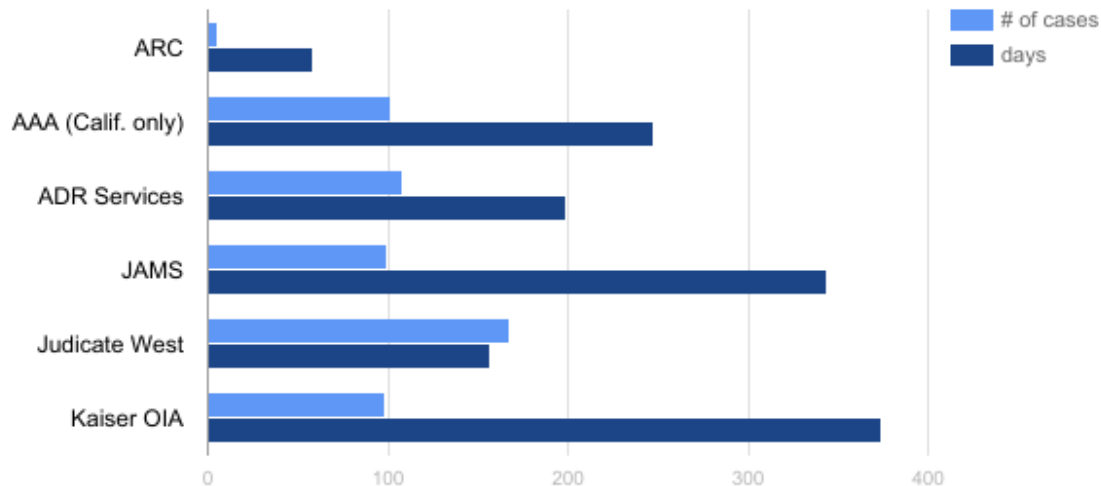
==> 374 days between “filing” and “disposition” in cases with hearings (Kaiser OIA)

==> 229 days for AAA (nationally)

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# Speed to decision

Average Time from Filing to Disposition (with Hearing)



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# Acknowledgements

Professor Steven Bonorris, Project Manager

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