

# JAMS Class Action Procedures

*Effective May 1, 2009*



# JAMS CLASS ACTION PROCEDURES

JAMS provides arbitration and mediation services worldwide. We resolve some of the world's largest, most complex and contentious disputes, utilizing JAMS Rules & Procedures as well as the rules of other domestic and international arbitral institutions.

JAMS arbitrators and mediators are full-time neutrals who come from the ranks of retired state and federal judges and prominent attorneys. These highly trained, experienced ADR professionals are dedicated to the highest ethical standards of conduct.



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## **Rule 1. Applicability**

(a) JAMS will not administer a demand for class action arbitration when the underlying agreement contains a class preclusion clause, or its equivalent, unless a court orders the matter or claim to arbitration as a class action.

(b) Subject to Rule 1(a), these Class Action Procedures (“Procedures”) shall apply to any dispute arising out of an agreement that provides for arbitration pursuant to any of the JAMS Arbitration Rules where a party submits a dispute to arbitration on behalf of or against a class or purported class, and shall supplement any other applicable JAMS Rules. These Procedures shall also apply whenever a court refers a matter pleaded as a class action to JAMS for administration, or when a party to a pending JAMS arbitration asserts new claims on behalf of or against a class or purported class.

(c) Subject to Rule 1(a), where inconsistencies exist between these Procedures and other JAMS Rules that apply to any dispute, these Procedures shall control. The Arbitrator has the authority to resolve any inconsistency between any agreement of the parties and these Procedures, and in doing so shall endeavor to avoid any prejudice to the interests of absent members of a class or purported class.

(d) Subject to Rule 1(a), the Arbitrator shall follow any order of a court relating to any matter that would otherwise be decided by an Arbitrator under these Procedures.

## **Rule 2. Construction of the Arbitration Clause**

Subject to Rule 1(a), once appointed, the Arbitrator, following the law applicable to the validity of the arbitration

clause as a whole, or the validity of any of its terms, or any court order applicable to the matter, shall determine as a threshold matter whether the arbitration can proceed on behalf of or against a class. In construing the applicable arbitration clause, the Arbitrator shall not consider the existence of these Supplementary Rules to be a factor either in favor of or against permitting the arbitration to proceed on a class basis.

The Arbitrator shall set forth his or her determination with respect to the matter of clause construction in a partial final award subject to immediate court review.

### **Rule 3. Prerequisites to a Class Certification**

(a) The Arbitrator shall determine whether a class should be certified.

In making that determination, the Arbitrator shall consider the criteria enumerated in this Rule 3 and any law that the Arbitrator determines applies to the arbitration. The Arbitrator also shall determine whether one or more members of a class may act in the arbitration as representative parties on behalf of all members of the class described. The Arbitrator shall permit a class member to serve as a representative only if the conditions set forth in the Federal Rules of Civil Procedure, Rule 23(a), are met.

(b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, in addition to the criteria set forth in the Federal Rules of Civil Procedure, Rule 23(b).

(c) The Arbitrator shall set forth his or her determination with respect to the matter of Class Certification in a partial final award subject to immediate court review.

### **Rule 4. Notice of Class Determination**

The Arbitrator shall direct that class members be provided the best notice practicable under the circumstances (“Notice of Class Determination”). The Notice of Class Determination shall be given to all members who can be identified through reasonable effort. The Notice of Class Determination must concisely and clearly state in plain, easily understood language:

- (1) the nature of the action;
- (2) the definition of the class certified;

(3) the class claims, issues or defenses;

(4) that a class member may enter an appearance through counsel if the member so desires, and may attend the hearings;

(5) that the Arbitrator will exclude from the class any member who requests exclusion, with information about when and how members may elect to be excluded;

(6) the binding effect of a class award on class members; and

(7) the identities of, and biographical information about, the Arbitrator and the class representative(s) and class counsel that have been approved by the Arbitrator to represent the class.

## Rule 5. Final Award

The final award on the merits in a class arbitration, whether or not favorable to the class, shall be reasoned, shall define the class with specificity and shall set forth the reasons the class was or was not certified and the legal and factual findings underlying the award on the merits. The final award shall also specify or describe those to whom the notice provided in Rule 4 was directed, those whom the Arbitrator finds to be members of the class and those who have elected to opt out of the class.

**A partial final award dealing with class certification may be altered or amended by the Arbitrator before a final award is rendered.**

## Rule 6. Settlement, Voluntary Dismissal or Compromise

(a) (1) The Arbitrator may direct that notice be provided in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal or compromise.

(2) The Arbitrator may approve a settlement, voluntary dismissal or compromise that would bind class members only after a hearing and a finding that the settlement, voluntary dismissal or compromise is fair, reasonable and adequate.

(3) Any settlement, voluntary dismissal or compromise of the claims, issues or defenses of an arbitration filed as a class arbitration shall not be effective unless approved by the Arbitrator.

(b) The parties seeking approval of a settlement, voluntary dismissal or compromise under this Rule must submit to

the Arbitrator any agreement made in connection with the proposed settlement, voluntary dismissal or compromise.

(c) The Arbitrator may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so.

(d) Any class member may object to a proposed settlement, voluntary dismissal, or compromise that requires approval under this Rule. Such an objection may be withdrawn only with the approval of the Arbitrator.

