A WAY AROUND THE PROHIBITION ON CLASS PROCEEDINGS

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ABSTRACT

The Federal Arbitration Act (FAA) provides that arbitration agreements are "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract."[1] As a result, individuals bound by an arbitration clause must present claims to an arbitrator and cannot bring suit themselves or on behalf of others in court unless they can prove that "grounds as exist at law or in equity" justify revocation of the contract. If the contract also contains a class action waiver an individual is forced to pursue claims in arbitration on an individual basis.

The combination of an arbitration clause and a class action waiver clause operate as a complete bar to individuals pursuing claims on a collective basis. The arbitration clause forces individuals into arbitration and the class action waiver requires that the plaintiffs pursue arbitration on an individual basis. As a result, Myriam Gilles and Gary Friedman argue "that many – indeed, most – of the companies that touch consumers' day-to-day lives can and will now place themselves beyond the reach of aggregate litigation."[2] Class action waivers, along with other developments in the law, bar private plaintiffs "from bringing many of the cases that most broadly affect US consumers."[3] Moreover, a number of courts interpret *Concepcion* "to deprive them of the power to annual class-arbitration waivers even 'when such waivers preclude effective vindication of statutory rights.'"[4] Individual arbitration clauses in consumer contracts "bar people from joining together in class-action lawsuits, realistically the only tool citizens have to fight illegal or deceitful business practices."[5] However, CrowdSuit has discovered a way around the prohibition on class proceedings.

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[1] 9 U.S.C.A. § 2 (West 2016).

[2] Myriam Gilles & Gary Friedman, *After Class: Aggregate Litigation in the Wake of at&t Mobility v.Concepcion*, 79 U. Chi. L. Rev. 623, 627 (2012).

[3] *Id.* at 675.

[4] David Horton, *Federal Arbitration Act Preemption, Purposivism, and State Public Policy*, 101 Geo. L.J. 1217, 1242 (2013).

[5] Jessica Silver-Greenberg & Robert Gebeloff, Arbitration Everywhere, Stacking the Deck of Justice, N.Y. Times, Oct. 31, 2015, at A1.

CrowdSuit is a company that is attempting to essentially bring class proceedings against cellphone companies. Many cellphone service contracts contain an arbitration clause as well as a class action waiver, forcing customers to address any claims in arbitration on an individual basis. As a result, CrowdSuit argues that cellphone companies are able to charge consumers small fees in violation of their contracts and consumers do not sue because it is not economical to attempt to recover damages on an individual basis.[6] CrowdSuit explains that since consumers cannot pursue claims on a class basis, they cannot hold these companies accountable.[7] To address this issue, CrowdSuit found a way to bring multiple claims against these companies in one proceeding.

CrowdSuit attempts to get around the class action prohibition by asking individuals to assign their claims against cellphone companies to it. CrowdSuit then files a lawsuit against the defendant and consolidates the claims. Part I of this paper will address the history of the prohibition on class action suits. Part II will discuss CrowdSuit's method of getting around the prohibition. Part III will discuss limitations on CrowdSuit's method. Part IV will conclude.

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I. HISTORY

In *Achem Products*, the Supreme Court agreed with a Seventh Circuit quote that:

> "'[T]he policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights. A class action solves this problem by aggregating

[6] *Id*.

[7] CrowdSuit, *What is CrowdSuit?*, http://crowdsuit.com/what-is-crowdsuit (last visited Feb. 5, 2017).

> the relatively paltry potential recoveries into something worth someone's (usually an attorney's) labor.'"[8]

The California Supreme Court, citing the above quote from *Achem*, emphasized the importance of class action remedies in *Discover Bank*.[9] In that case, the plaintiffs alleged that Discover Bank had a practice of telling customers that late fees would not be assessed if they paid on a certain day, but then fined them if payment was received after 1:00 p.m. on that day.[10] The plaintiffs sought to proceed as a class in arbitration, but the contract with Discover Bank contained a class action waiver.[11] The Supreme Court of California held that "the law in California is that class action waivers in consumer contracts of adhesion are unenforceable, whether the consumer is being asked to waive the right to class action litigation or the right to classwide arbitration."[12] The court then explained that not all class action waivers are unconscionable.[13] But, waivers in adhesion contracts, "when it is alleged that the party with the superior bargaining power has carried out a scheme to deliberately cheat large numbers of consumers out of individually small sums of money," are unconscionable.[14]

Achem and *Discover Bank* both acknowledged that class actions are a vital tool to vindicate the rights of groups of people who individually would not be able to pursue a lawsuit. However, Supreme Court cases limit the availability of class actions to redress injuries suffered by consumers.

In *Stolt-Nielsen*, the Supreme Court held that an arbitration agreement that was silent on the issue of class arbitration did not create an inference that the parties intended to allow class arbitration.[15] In that case, the parties were forced to enter into arbitration.[16] AnimalFeeds filed a request to proceed as a class and the arbitrators permitted the request.[17] The petitioners filed suit asking the court to vacate the arbitrators' decision to allow class proceedings.[18] The Supreme Court explained that class arbitration changes the very nature of arbitration and, therefore, parties cannot be presumed to have agreed to class arbitration simply

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[8] *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 617 (1997) (quoting *Mace v. Van Ru Credit Corp.*, 109 F.3d 338, 344 (1997)).

[9] *Discover Bank v. Superior Court*, 36 Cal. 4th 148, 156-57 (2005) abrogated by AT&T Mobility LLC v. Concepcion, 563 U.S. 333 (2011)

[10] Discover Bank v. Superior Court, 36 Cal. 4th 148, 152 (2005), *abrogated by* AT&T Mobility LLC v. Concepcion, 563 U.S. 333 (2011).

[11] *Id.*

[12] *Id.* at 153.

[13] *Id.* at 162.

[14] *Id.* at 162-63.

[15] Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp., 559 U.S. 662, 687 (2010).

[16] *Id*. at 668.

[17] *Id.* at 667-68.

[18] *Id.* at 669.

because they agreed to submit their claims to an arbitrator.[19] Under *Stolt-Nielsen* class arbitration is not allowed if a contract is silent on the issue and one party does not want to proceed on a class basis.

In *Concepcion*, the district court found that AT&T's arbitration provision was unconscionable under the California Supreme Court's decision in *Discover Bank*.[20] The Ninth Circuit affirmed, holding that the class action waiver was invalid under *Discover Bank* and that the FAA did not preempt California law.[21] The United States Supreme Court disagreed and held that the FAA preempted the *Discovery Bank* rule. The Court concluded that prohibitions on class arbitrations were enforceable under the FAA and state law could not require class wide arbitration.[22] Class arbitration, the Court reasoned, is inconsistent with the FAA when it is not consensual.[23] The Court determined that even if "class proceedings are necessary to prosecute small-dollar claims that might otherwise slip through the legal system. . .States cannot require a procedure that is inconsistent with the FAA."[24]

In *Italian Colors*, merchants who accepted American Express cards signed contracts with American Express containing a prohibition on class arbitration.[25] Merchants brought a class action against American Express.[26] They alleged that the credit card company violated anti-trust laws by using "its monopoly power in the market. . .to force merchants to accept its credit cards at rates roughly 30% higher than fees for competing credit cards."[27] American Express filed a motion to compel individual arbitration.[28] In response, the merchants filed a declaration from an economist.[29] The economist "estimated that the cost of an expert analysis necessary to prove the antitrust claims would be 'at least several hundred thousand dollars, and might exceed $1 million.'"[30] The maximum recovery that each plaintiff would receive individually would be about $38,549.[31] The Supreme Court held that the parties were bound by the arbitration clause and had to arbitrate individually.[32] The Supreme Court held that the parties

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[19] *Id.* at 685.
[20] AT&T Mobility LLC v. Concepcion, 563 U.S. 333, 338 (2011).
[21] *Id.*
[22] *See id.* 348-52.
[23] *Id.* at 348.
[24] *Id*. at 351.
[25] Am. Exp. Co. v. Italian Colors Rest., 133 S. Ct. 2304, 2308 (2013).
[26] *Id.*
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] *Id.* at 2312.

were bound by the arbitration clause and had to arbitrate individually.[33] The fact that it would be more expensive to litigate individually did not justify an exception to the arbitration clause.[34]

In *Oxford Health*, a pediatrician signed a contract with a health insurance company, Oxford Health.[35] Years later, the pediatrician filed a class action suit against Oxford Health for breach of contract.[36] The parties entered into arbitration after the court granted Oxford Health's motion to compel arbitration.[37] The arbitrator decided that the contract did authorize class arbitration.[38] Oxford Health filed a motion in federal court to vacate the decision, arguing that the arbitrator had exceeded his powers under the FAA.[39] The Supreme Court ruled that the arbitrator had not exceeded his authority.[40] The Court contrasted this case with *Stolt-Nielsen* and explained that in this case, the arbitrator interpreted the contract and found an agreement that permitted class arbitration.[41] The difference in *Stolt-Nielsen*, the Court clarified, was that the arbitrator had "abandoned their interpretive role."[42] The Court concluded that since Oxford Health agreed that an arbitrator should decide the meaning of the contract, it was bound by the arbitrator's interpretation even if the interpretation was wrong.[43]

Although *Achem* noted the importance of class actions, there is a ban on class proceedings if individuals sign contracts containing arbitration clauses and class action waivers. Individuals who sign an arbitration clause cannot proceed on a class wide basis if the contract is silent on the issue.[44] Further, defendants can expressly require individuals to agree not to pursue claims on a class basis.[45] Even if pursuing claims on an individual basis would not be economical, the plaintiffs cannot overcome a class action waiver under *Italian Colors*.[46]

The Consumer Financial Protection Bureau (CFPB) conducted a study and found that companies rarely attempted to compel an individual who had filed suit in court to submit to arbitration.[47] But, the study discovered, it was common

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[33] *Id*.
[34] *Id.*
[35] Oxford Health Plans LLC v. Sutter, 133 S. Ct. 2064, 2067 (2013).
[36] *Id.*
[37] *Id.*
[38] *Id.*
[39] *Id.*
[40] *Id.* at 2068.
[41] *Id.* at 2069.
[42] *Id.* at 2070.
[43] *Id.* at 2071.
[44] *See* Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp., 559 U.S. 662 (2010).
[45] *See* AT&T Mobility LLC v. Concepcion, 563 U.S. 333 (2011).
[46] *See* Am. Exp. Co. v. Italian Colors Rest., 133 S. Ct. 2304 (2013).
[47] Consumer Fin. Prot. Bureau, *Consumer Financial Protection Bureau Study Finds that Arbitration Agreements Limit Relief for Consumers*, (Apr. 29, 2016), http://files.consumerfinance.gov/f/201503_cfpb_factsheet_arbitration-study.pdf.

for companies to invoke arbitration clauses to block class actions.[48] One example from the study involved credit card issuers.[49] The report found that when a class of plaintiffs bound by an arbitration clause sued credit card issuers, the defendants invoked the arbitration clause 65% of the time to block class proceedings.[50] But, of the 1,200 individuals who filed individual suits, the defendants invoked the arbitration clause less than one percent of the time.[51] Defendants appear to be more concerned with avoiding class proceedings, in arbitration and in court, than with avoiding individual proceedings in court.[52] Based on the CFPB's study, the purpose of arbitration clauses is not to require individuals to arbitrate their claims, but rather to prevent class proceedings.

Furthermore, "the demise of the consumer class action has not sparked a barrage of low-value arbitrations."[53] According to *After the Revolution: An Empirical Study of Consumer Arbitration*, it appears that individuals with minor grievances rarely decide to bother with arbitration.[54] The study found that out of 4,839 arbitration claims filed by consumers, only 184 demanded less than $1,000.[55] Thus, arbitration clauses result not only in a ban on class proceedings, but also the failure of individuals to bother pursuing small claims individually.

The prohibition on class proceedings allows companies like American Express to incur small amounts of damages against individuals and not be subjected to class actions. In *Italian Colors*, the merchants could theoretically proceed on an individual basis, but it would not be economical for them to do so. As a result, when companies owe individuals small amounts in damages, they never have to pay because it is not economical for individuals to pursue the claims.

CrowdSuit alleges that many cellphone service providers have taken advantage of the prohibition on class proceedings. According to CrowdSuit, AT&T and other cellphone providers have been charging customers "administrative fees."[56] The fees are small, but CrowdSuit argues that they are a violation of the customers' contracts.[57] Since these contracts contain arbitration

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[48] *Id.*
[49] *Id.*
[50] *Id.*
[51] *Id.*
[52] *Id.*
[53] David Horton & Andrea Chandrasekher, *After the Revolution: An Empirical Study of Consumer Arbitration*, 104 GEO. L.J. 57, 117 (2015). Available at SSRN: https://ssrn.com/abstract =2614773.
[54] *Id.*
[55] *Id.*
[56] CrowdSuit, AT&T Administrative Fee, http://crowdsuit.com/claims/details/att-illegal-charge (last visited Feb. 5, 2017); CrowdSuit, *What is CrowdSuit?*, http://crowdsuit.com/what-is-crowdsuit (last visited Feb. 5, 2017).
[57] CrowdSuit, *What is CrowdSuit?*, http://crowdsuit.com/what-is-crowdsuit (last visited Feb. 5, 2017).

clauses, individuals cannot bring claims in court. Furthermore, because the contracts contain class action waivers, or are silent on the issue, and thus, individuals cannot proceed on a class basis in arbitration. Instead, customers are forced to proceed on an individual basis to obtain relief – a futile endeavor due to the amount of fees.

II. HOW CROWDSUIT GETS AROUND THE PROHIBITION ON CLASS PROCEEDINGS

CrowdSuit has discovered a way around the prohibition on class proceedings. Basically, CrowdSuit asks individuals to assign their claims against certain companies to it. CrowdSuit then consolidates the claims. Consolidating the claims allows CrowdSuit to essentially bring a class action on its own against defendants.

A. The First Step is for Individuals to Assign their Claims for Breach of Contract to CrowdSuit

An assignee "stands in the shoes of the assignor."[58] Therefore, an assignee cannot acquire rights greater than those possessed by the assignor.[59] All of the rights and remedies that were available to the assignor are available to the assignee.[60] The assignee may sue for the entire amount that the assignor would have been entitled to.[61] However, the assignee may not file a lawsuit if the assignor could not have brought suit.[62]

When an individual assigns their claim to CrowdSuit, CrowdSuit "stands in the shoes of the assignor." This means that CrowdSuit is limited to the remedies that were available to the consumer at the time the consumer assigned the claim. CrowdSuit has asked consumers who have contracts with AT&T, Verizon, and T-Mobile to assign their claims to it. All of these contracts contain a provision allowing individuals to file a claim in small claims court rather than submit to arbitration. The American Arbitration Association (AAA) rules, which governs most consumer contracts, requires such a provision permitting an individual to choose small claims court over arbitration. This means that one of the remedies available to consumers is the right to file a claim in small claims court. CrowdSuit, as the assignee of the consumer claims, is entitled to take advantage of this remedy.

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[58] 29 WILLISTON ON CONTRACTS § 74:47 (4th ed.).
[59] *Id.*
[60] 6A C.J.S. *Assignments* § 111 (2016).
[61] *Id.*
[62] *Id.*

B. Step Two is to File Suit in Small Claims Court

Rule R-9 of the AAA's Consumer Arbitration Rules provides that "if a party's claim is within the jurisdiction of a small claims court, either party may choose to take the claim to that court instead of arbitration."[63] Small claims courts are designed to be quick, inexpensive, and simple.[64] Whether a party's claim falls within the jurisdiction of a small claims court generally depends on the amount of the claim. The limit on damages available in small claims court varies from state to state.

In Minnesota, where CrowdSuit has filed a lawsuit, the small claims court's jurisdiction is limited to claims of $15,000 or less.[65] The jurisdiction of small claims courts in California[66] and New York[67] only extends to claims less than $5,000. Texas allows plaintiffs to bring claims of up to $10,000 in small claims court.[68] Since some states limit the jurisdiction of small claims courts to claims less than $5,000, it probably would not be economical to bring these types of proceedings there. In contrast, in states like Minnesota, consolidating assigned claims against a defendant in small claims court could justify legal expenses.

Some states allow a plaintiff or defendant to appeal the judgment against them to the district court. In Minnesota, a party may appeal the decision of the small claims court to the district court for a new trial.[69] Further, the party may request a jury trial.[70] Texas also allows a party to appeal an adverse judgment.[71] When a party appeals an adverse judgment, the case "must be tried de novo in the county court."[72] Like Minnesota and Texas, Delaware allows a party to appeal the judgment from the small claims court to the Court of Common Pleas for a *de novo* trial.[73] The procedural rules for small claims courts in New York are different. There, a party may appeal the judgment from the small claims court.[74] However, review of the decision is limited to whether "substantial justice" was done between the parties.[75] A party does not have the right to a new trial on appeal.[76]

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[63] R-9. Small Claims Option for the Parties, AAA-ARBRLCAR 14 R 9.
[64] 20 AM. JUR. 2D *Courts* § 13 (2016).
[65] MINN. STAT. ANN. § 491A.01 (West 2016).
[66] CAL. C.C.P. § 116.220 (West 2010).
[67] N.Y. CITY CIV. CT. ACT § 1801 (2016).
[68] TX R. R.C.P. 500.3 (West 2016).
[69] MINN.GEN.R.PRAC. 521 (West 2016).
[70] *Id.*
[71] TX R. R.C.P. 506.1 (West 2016).
[72] TX R. R.C.P. 506.3 (West 2016).
[73] DEL. CODE ANN. tit. 10, § 9571 (West 2016).
[74] N.Y. CITY CIV. CT. ACT § 1701 (2016).
[75] *Id.* § 1807.
[76] *Id.*

In states like Minnesota, Texas, and Delaware, it is possible for defendants to essentially face class action suits in state courts in front of a jury. For example, CrowdSuit filed a lawsuit against AT&T in small claims court in Minnesota.[77] CrowdSuit then proceeded to consolidate the claims that had been assigned to it. In this manner, it avoided the class action waivers contained in contracts because CrowdSuit is an individual pursuing multiple claims against the defendant. The decision of the small claims court was appealed to the Minnesota district court where the case is currently pending.[78] Essentially, AT&T is now facing a class action suit in state court brought by CrowdSuit, despite arbitration clauses and class action waivers contained in the assignors' contracts.

Although assignors do not receive any of the damages awarded to CrowdSuit, they do benefit from the assignment. Historically, class actions were the method used to prevent companies from harming individuals in small amounts. Since arbitration clauses and class action waivers operate as a bar to class proceedings, most individuals can no longer rely on class actions. CrowdSuit's method, however, can possibly result in companies changing their actions. In addition, CrowdSuit donates a portion of the award it receives to a charity voted on by the assignors.

III. LIMITATIONS

Anti-assignment clauses are one potential limitation to this method. Some courts hold that generally worded anti-assignment clauses do not destroy the power to assign, only the right to assign.[79] Under this approach, an individual who signs a contract containing a generally worded anti-assignment clause, such as "rights shall not be assigned," promises not to assign their claim.[80] This eliminates their right to assign a claim.[81] If the individual then proceeds to break their promise and assign their claim, they breach the contract.[82] The obligor is able to sue for breach of contract, but the assignment is still valid.[83]

The Restatement of Contracts follows this approach. It provides that, unless a different intention is manifested, a contract term prohibiting assignment of rights under the contract, or assignment of the contract, does not prohibit the

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[77] CrowdSuit LLC v. AT&T Mobility LLC, No. 27-CO-15-4567, (Minn. Concil. Ct.), http://pa.courts.state.mn.us/CaseDetail.aspx?CaseID=1617747873.

[78] CrowdSuit LLC v. AT&T Mobility LLC, No. 27-CV-15-16241, (Fourth Jud. Dist. Ct.), http://pa.courts.state.mn.us/CaseDetail.aspx?CaseID=1619288692.

[79] Joy Anderson, *Case Note: Contracts-Looking for "Something": Minnesota's New Rule for Interpreting Anti-Assignment Clauses in Travertine Corp. v. Lexington-Silverwood*, 32 WM. MITCHELL L. REV. 1435, 1440 (2006).

[80] *Id.*

[81] *Id.*

[82] *Id.*

[83] *Id.*

assignment of a right to damages for breach of the contract.[84] Moreover, an obligor has a right to damages for breach of the anti-assignment clause, but the assignment clause is not rendered ineffective.[85]

Many states follow this approach. Texas law provides that causes of action are freely assignable absent language to the contrary in the contract.[86] In *City of Brownsville*, the contract required written consent from the other party in order to assign rights and duties under the agreement.[87] The Texas court held that, based on the language of the contract, it did not prohibit the parties' ability to assign causes of action arising from breach of the contract.[88] New Jersey follows "the general rule that contractual provisions limiting or prohibiting assignments operate only to limit a party's *right* to assign the contract, but not their *power* to do so, unless the parties manifest an intent to the contrary with specificity."[89] The Supreme Court of New Jersey stated that absent language stating that an assignment will be "void" or "invalid," or that "an assignee shall acquire no rights," the anti-assignment clause will be interpreted as a promise not to assign.[90] If a party breaks that promise, the non-assigning party can sue for damages but the assignment remains valid.[91]

Similarly, "Florida law distinguishes between the assignment of performance due under a contract and the assignment of a claim for damages. . .arising from breach of contract."[92] Like New Jersey, New York also requires express language that an assignment will be void.[93] Absent such language, the non-assigning party may seek damages but the assignment remains valid.[94]

A few states, like Colorado, follow the "classical approach."[95] In *Condo*, a Colorado appeals court explained that "under the classical approach, an anti-assignment clause renders a nonconforming assignment void even in the absence of 'magic words.'"[96] This means that if a contract prohibits assignment and a

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[84] RESTATEMENT (SECOND) OF CONTRACTS § 322 (1981).
[85] *Id.*
[86] City of Brownsville ex rel. Pub. Utilities Bd. v. AEP Texas Cent. Co., 348 S.W.3d 348, 358 (Tex. App. 2011).
[87] *Id.*
[88] *Id.*
[89] Owen v. CNA Ins./Cont'l Cas. Co., 167 N.J. 450, 461 (2001).
[90] *Id.*
[91] *Id*.
[92] C.P. Motion, Inc. v. Goldblatt, 193 So. 3d 39, 43 (Fla. Dist. Ct. App. 2016).
[93] Marion Blumenthal Trust v. Arbor Commercial Mtge. LLC, 40 Misc. 3d 1215(A) (N.Y. Sup. Ct. 2013).
[94] *Id.*
[95] Condo v. Conners, 271 P.3d 524, 528 (Colo. App. 2010).
[96] *Id.*

party then assigns a claim, the assignment will be considered void even if there is no language in the contract specifying that any assignment will be void.

Generally, anti-assignment clauses must indicate that an assignment will be "void" to prevent assignment of claims for damages. Therefore, in most states, anti-assignment clauses will only limit individuals' ability to assign their claims to entities like CrowdSuit if contracts contain the correct language. Language that only prohibits the "right" to assign will not affect an individuals' ability to assign a claim for damages. But, in states like Colorado, where the classical approach is followed, courts might find assignments for breaches of contract invalid even if the contract does not contain express language declaring that assignments will be invalid.

The procedural rules of small claims courts presents another potential limit to CrowdSuit's method. In Utah, small claims courts do not allow assignees to pursue claims.[97] California also prohibits an assignee of a claim from filing or maintaining an action in small claims court.[98] Missouri requires a plaintiff to sign a statement certifying that he or she is not an assignee of the claim being sued on.[99]

In states that prohibit an assignee from pursuing a claim in small claims court, CrowdSuit's method will not work. Because no assignee may pursue a claim, it is not possible to consolidate multiple claims and pursue them in one proceeding. Plaintiffs' only option in these states is to pursue claims individually.

IV. CONCLUSION

In conclusion, it appears that defendants are more concerned with avoiding class proceedings, in arbitration and in court, rather than with ensuring disputes are always resolved in arbitration. However, CrowdSuit has discovered a way around the prohibition on class proceedings. Contracts that contain arbitration clauses governed by the AAA must allow a plaintiff the option to file a claim in small claims court. CrowdSuit uses this provision to file suit in small claims court on the basis of claims individuals assign to it. Once a judgment is reached in small claims court, the losing party can appeal the decision to the district court, where the parties undergo a new trial.

Although anti-assignment clauses are a potential limit to this method, contracts generally have to contain express language to bar this procedure. Procedural rules are a more difficult hurdle to overcome. Some states, like Minnesota, allow plaintiffs to file claims of up to $15,000, allow appeals to the district court for *de novo* review, and do not prohibit assignees from pursuing claims. These states are excellent venues for CrowdSuit's method. But,

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[97] UTAH CODE ANN. § 78A-8-103 (West 2008).
[98] CAL. CIV. PROC. CODE § 116.420 (West 2016).
[99] MO. ANN. STAT. § 482.330 (West 2016).

CrowdSuit's method will not work well in other states that have low jurisdictional amounts for claims because it is not economical to pursue those claims. Further, this method will not work in states that bar assignees from pursuing claims. Although there are limitations, CrowdSuit's method is one way of essentially maintaining a class proceeding, in court, against a defendant without violating the arbitration and class action waiver clauses.