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ADR Quarterly Case Update – Labor Code § 218.5 Trumps CCP § 998

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In wage-and-hour suit, Labor Code § 218.5 superseded CCP § 998 and prevented cost-shifting where plaintiff was prevailing party, though recovered less than defendant's § 998 settlement offer.

In *Chavez v. California Collision* (Dec. 10, 2024) 2024 WL 5064368, Plaintiffs Jorge Chavez, Aldo Isas, and Samuel Zarate sued Defendant California Collision, LLC for various wage-and-hour and employment claims. Defendant served Code of Civil Procedure Section 998 settlement offers that Chavez and Isas accepted. Zarate did not accept his offer and proceeded to trial. He prevailed, thought the amount recovered was less than his Section 998 offer. The trial court concluded the cost-shifting provisions of Section 998 applied and awarded the post-998 costs to the Defendant. Zarate appealed, arguing that Section 998 was superseded by the Labor Code that precluded an award of costs to an employer in wage claims unless the employee brought the action in bad faith.

Reversed in part. Section 998 generally allows for defendants to recover post-998 costs if a plaintiff prevails, but fails to accept a qualifying settlement offer for a higher amount. However, in any action brought for the nonpayment of wages, Labor Code Section 218.5 provides that an employer would only be entitled to cost if it was the prevailing party *and* the court determined the employee brought the action in bad faith. Here, the appellate court noted that California precedent supported the conclusion that the Labor Code superseded general cost–shifting provisions, and further emphasized the strong public policy interest in supporting an employee's ability to pursue wage claims without the fear of incurring significant costs. Because Zarate prevailed, the trial court's order awarding post-998 costs to Defendant was reversed. Labor Code Section 218.5 superseded CCP Section 998.

In another CCP § 998 case, Fourth District holds that simultaneous offers to the same party may be valid to shift costs.

In *Zavala v. Hyundai Motor America* (Dec. 17, 2024) 2024 WL 5135020, Maritza Zavala brought this lawsuit against Hyundai Motor America (HMA) under the Song-Beverly Consumer Warranty Act (Civ. Code, § 1790 et seq.), alleging that HMA failed to honor its warranty obligations for the vehicle Zavala purchased in 2016. After Zavala prevailed at trial, the trial court granted Zavala's motion for attorney fees, and it ruled on the parties' competing motions to tax costs. As a result, judgment was entered in favor of Zavala in the amount of $276,104.61 for her attorney fees and costs. HMA appealed, contending that the trial court erred in awarding fees and costs to Zavala because the offer to compromise that HMA made pursuant to Code of Civil Procedure Section 998 at the beginning of the

litigation was sufficiently specific and certain to trigger Section 998's cost-shifting provisions.

"Disagreeing with Gorobets v. Jaguar Land Rover (2024) 105 Cal.App.5th 913, the Fourth District reasoned that when faced with two simultaneous offers, the trial court must look at each offer separately to determine whether either of them exceeded the amount of the verdict."

Reversed and remanded. To be valid, a statutory offer to compromise must be clear and specific, both from the perspective of the offeree and trial court. Here, the Fourth District (Div. One) concluded HMA's offer to compromise was valid to trigger cost-shifting under Section 998 because it contained two independent options, the first of which was sufficiently specific and certain and in an amount greater than the jury verdict. The trial court erred as it did not s*eparately* consider the validity of the two separate offers and therefore improperly concluded that the offer to compromise, as a whole, was invalid due to the lack of specificity of one of the options. Disagreeing with *Gorobets v. Jaguar Land Rover* (2024) 105 Cal.App.5th 913, the Fourth District reasoned that when faced with two simultaneous offers, the trial court must look at each offer separately to determine whether either of them exceeded the amount of the verdict.

Plaintiff may not avoid arbitration by filing a PAGA claim "in a purely representative capacity," since PAGA claims necessarily include an individual component.

In *Leeper v. Shipt, Inc.* (Dec. 30, 2024) 2024 WL 5251619, Christina Leeper Entered into an independent contractor agreement with Shipt that included an arbitration provision governed by the Federal Arbitration Act. Leeper filed a complaint against Shipt under the Private Attorneys General Act of 2004 (Labor Code, § 2698 et seq.) alleging that she was filing the action solely in a representative capacity on behalf of similarly aggrieved individuals. Shipt moved to compel arbitration. Leeper successfully opposed the motion, arguing she was not alleging individual claims, only representative ones that are not subject to arbitration.

"In light of the clear use of the conjunctive "and" in the statute, a PAGA action necessarily includes both an individual claim component and a representative component."

Reversed. Under Labor Code, § 2698(a), PAGA claims are civil actions brought by an aggrieved employee on behalf of the employee *and* other employees. In light of the clear use of the conjunctive "and" in the statute, a PAGA action necessarily includes both an individual claim component and a representative component. The existence of such an individual claim component in every PAGA action means that a plaintiff may be compelled to arbitrate his or her individual claim while the representative claim is stayed. The trial court erred by failing to compel arbitration of Leeper's individual claim.

In another PAGA case, trial court erred by dismissing the representative claims after compelling arbitration of the individual claims.

In *Huff v. Interior Specialists, Inc.* (Dec. 27, 2024) 2024 WL 5231468, Pauline Mary Huff filed a class action and an action under the Private Attorneys General Act of 2004 against her former employer, Interior Specialists, Inc., alleging wage-and-hour violations under the Labor Code. Huff had signed an arbitration agreement as part of her initial hiring paperwork. Interior Specialists first moved to compel arbitration of Huff's claims in the class action. In opposing this motion, Huff argued that the agreement to arbitrate was invalid because, when she attempted to sign the agreement in DocuSign, an electronic signature for someone else named "William" was already entered into the agreement. The trial

court found sufficient evidence showing that Huff consented to the agreement and granted the motion to compel. After the class and PAGA actions were consolidated, Interior Specialists filed a separate motion to compel Huff's PAGA claims to arbitration. The trial court reiterated its earlier finding that Huff validly signed the agreement. Then, relying on the United States Supreme Court's then-recent decision in *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639, it ordered Huff's claims brought on her own behalf (her individual PAGA claims) to arbitration, and dismissed the claims brought on behalf of other current or former employees (her nonindividual PAGA claims) without prejudice for lack of standing. Huff appealed, contending the trial court erred in finding that she signed the arbitration agreement and in dismissing her nonindividual PAGA claims.

"Plaintiffs bringing a PAGA action may not be stripped of their standing as aggrieved employees to litigate claims on behalf of other employees."

Reversed and remanded with instructions. In *Adolph v. Uber Technologies, Inc. (2023)* 14 Cal.5th 1104, the California Supreme Court rejected *Viking River*'s interpretation of California law on the issue of standing. Plaintiffs bringing a PAGA action may not be stripped of their standing as aggrieved employees to litigate claims on behalf of other employees. Here, the trial court did not have the benefit of the *Adolph* decision when ruling on the motion to compel arbitration. In relying on *Viking River*, it erred in concluding Huff lost her standing to pursue the nonindividual claims. Consequently, the trial court's order dismissing the action was reversed and the case remanded with directions for the trial court to stay Huff's nonindividual claims pending completion of arbitration of Huff's individual claims. Because the appellate court reversed based on *Adolph*, it did not address Huff's additional arguments concerning the electronic signature.

Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act rendered arbitration provision unenforceable as applied to conduct that began prior to and continued following effective date of statute.

In *Doe v. Second Street Corp.* (Sept. 30, 2024) 105 Cal.App.5th 552, Plaintiff Jane Doe filed an action against Second Street Corporation dba The Huntley Hotel and two of its supervisors for sexual harassment and discrimination both before and after the effective date of the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act (EFAA) (9 U.S.C. §§ 401–402). In general terms, the EFAA renders arbitration agreements unenforceable at the plaintiff's election in sexual assault and sexual harassment cases that arise or accrue on or after March 3, 2022, the EFAA's effective date. Defendants moved to compel arbitration, citing an arbitration provision in the hotel's employee handbook. The trial court denied the motion to compel, concluding that the EFAA rendered the arbitration provision unenforceable as to all of Plaintiff's claims. The Defendants appealed.

"Plaintiff's other causes of action are also exempt from mandatory arbitration under the EFAA because they are part of the same 'case.'"

Affirmed. The trial court properly found that under the EFAA's plain language, (1) Plaintiff's sexual harassment claims alleging continuing violations both before and after the EFAA's effective date are exempt from mandatory arbitration, and (2) Plaintiff's other causes of action are also exempt from mandatory arbitration under the EFAA because they are part of the same "case." Accordingly, the trial court properly denied Defendants' motion to compel arbitration.

So also, the Act exempts entire case from arbitration where plaintiff asserts at least one sexual harassment claim subject to the Act.

In *Liu v. Miniso Depot CA, Inc.* (Oct. 7, 2024) 105 Cal.App.5th 791, Plaintiff Yongtong Liu was hired by Defendant Miniso Depot as a human resources administrator and paid an hourly wage. She was later re-classified as an exempt employee, though her duties remained the same. Liu alleged that she was subject to pervasive discrimination and harassment based upon her gender and sexual orientation. She resigned and sued Miniso, alleging sexual harassment and wage-and-hour violations. Miniso moved to compel arbitration based upon an arbitration agreement Liu signed when she accepted Miniso's job offer. The trial court denied the motion under the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act). Miniso appealed, asserting that only Liu's two sexual harassment causes of action were exempt from arbitration and that her other claims should be arbitrated.

" … the appellate court concluded that because the statute used the phrase "with respect to a case," as opposed to a "claim," the plain text unambiguously allowed Liu to opt out of arbitration of her entire case because at least one of her claims was subject to the EFAA."

Affirmed. The EFAA amended the Federal Arbitration Act to provide that, at the election of the person alleging sexual harassment, no pre-dispute arbitration agreement is valid or enforceable with respect to a case relating to a sexual harassment dispute. Here, the appellate court concluded that because the statute used the phrase "with respect to a case," as opposed to a "claim," the plain text unambiguously allowed Liu to opt out of arbitration of her entire case because at least one of her claims was subject to the EFAA.

CCP § 1281.98's late fee arbitration waiver does not apply to parties who make post-dispute stipulations to arbitrate.

In *Trujillo v. J-M Manufacturing Co., Inc.* (Dec. 2, 2024) 107 Cal.App.5th 56, Stephanie Trujillo sued her former employer, J-M Manufacturing Company (JMM), and four former coworkers for sexual harassment, discrimination, and related claims. She had signed an arbitration agreement with JMM. The parties entered into a stipulation to arbitrate and stayed the court proceedings. JMM timely paid the first three of the arbitrator's invoices. The arbitrator sent a fourth invoice on July 13, 2022, for 20 hours of anticipated work to be completed by October 11 and 12, 2022, with a due date of September 12, 2022. On October 18, 2022, the arbitrator contacted JMM and requested payment of the fourth invoice before the "completed rulings" would be released, which JMM immediately paid. Later that evening, Plaintiff gave notice of her intent to withdraw from arbitration due to JMM's late payment. She filed a motion to withdraw under Code of Civil Procedure Section1281.98, which the trial court granted. On appeal, the coworkers argued that Section 1281.98 did not apply to them because they entered into a post-dispute stipulation to arbitrate with mutually agreed-upon terms, whereas that statute governs only mandatory pre-dispute arbitration agreements.

" … the appellate court reversed, holding that Section 1281.98 does not apply to parties who submit to arbitration based on a post-dispute arbitration agreement."

Reversed and remanded. The Legislature added Section 1281.98 to the California Arbitration Act to avoid "procedural limbo" when parties submit to arbitration pursuant to a mandatory arbitration agreement. An employer's failure or refusal to pay its share of arbitration fees may constitute a material breach of the arbitration agreement and result in waiver of the right to compel arbitration.

Here, the appellate court determined that the Legislature intended to limit Section 1281.98's applicability to arbitration arising from a *pre-dispute* agreement. The court compared Section 1281.98 to Section 1280, and concluded the former refers to the failure to timely pay arbitration fees by the "drafting party," a term defined by the latter as "the company or business that included a pre-dispute arbitration provision in a contract with a consumer or employee." Thus, the appellate court reversed, holding that Section 1281.98 does not apply to parties who submit to arbitration based on a post-dispute arbitration agreement. Is short, the coworkers were entitled to compel arbitration, notwithstanding JMM's late payment.

Plaintiffs not required to arbitrate their consumer law, public injunctive relief claims against cryptocurrency company.

In *Kramer v. Coinbase, Inc.* (Oct. 4, 2024) 105 Cal.App.5th 741, Plaintiffs opened an online Coinbase, Inc. account to buy and sell cryptocurrencies. They accepted the user agreement terms that required arbitration of disputes. They filed a complaint for public injunctive relief under the Consumer Legal Remedies Act (Civ. Code, § 1750), the California False Advertising Law (Bus. & Prof. Code, § 17500), and the California Unfair Competition Law (Bus. & Prof. Code, § 17200), alleging that Coinbase failed to protect their accounts from hackers, who stole their funds. The trial court denied Coinbase's motion to compel arbitration on the basis that Plaintiffs sought public injunctive relief not subject to arbitration. Defendant appealed.

"Arbitration provisions purporting to waive a plaintiff's right to seek public injunctive relief are invalid and unenforceable."

Affirmed. Arbitration provisions purporting to waive a right to seek public injunctive relief are invalid and unenforceable. Here, Plaintiffs' complaint sought public injunctive relief, alleging that Coinbase's misrepresentations about security deceived and harmed the public. Any references to specific individual harm as to Plaintiffs were examples of how Coinbase's actions differed from the advertised statements made to the public.

Trial court properly declined to compel arbitration of home solar contract where plaintiff with dementia did not ratify the agreement and probably lacked capacity.

In *West v. Solar Mosaic* (Oct. 16, 2024) 105 Cal.App.5th 985, a sales representative for Elite Home visited Harold and Lucy West's home to sell them a home solar installation package with financing through Solar Mosaic. Harold and Lucy were both in their 90's and suffered from dementia. Neither used e-mail, computers, or mobile phones. They lived with their adult daughter, Deon, who alleged that the sales representative obfuscated his employers by claiming to work with a government program that helped senior citizens repair their homes. The representative then sent documents to Deon's email address, which were signed in Harold's name. During a recorded phone call with another Solar Mosaic representative to verify the documents' execution, it took Harold tremendous effort, and in some cases prompting from Deon, to give his full name, birthdate, and social security number. That phone call concluded with the representative asking Harold if he understood the next steps, to which he paused for several seconds and then affirmed, "yes." When Deon discovered the documents Harold

signed were a construction contract and loan agreement, she attempted to cancel them, but Elite Home refused. The Wests filed suit against Solar Mosaic and Elite Home. Solar Mosaic petitioned the court to compel arbitration based on the provisions in the loan agreement. The trial court denied the petition. Mosaic appealed, arguing that the agreement's arbitration provision was binding because Harold ratified the agreement by phone.

"For an agreement to be binding under a theory of ratification, the law requires that a principal be apprised of all facts surrounding the transaction."

Affirmed. For an agreement to be binding under a theory of ratification, the law requires that a principal be apprised of all facts surrounding the transaction. Here, the court of appeal reviewed the recorded call during which Harold struggled to provide his personal identifying information. Noting the call's brevity and content, specifically Harold's demonstrated clear lack of comprehension during the conversation, the appellate court concluded that the trial court did not err in finding it was of insufficient character and weight to demonstrate ratification. As a result, the order denying the petition to compel arbitration was affirmed.

Trial court properly refused to enforce and sever procedurally and substantively unconscionable provisions in employment arbitration agreement.

In *Jenkins v. Dermatology Management , LLC* (Dec. 19, 2024) 2024 WL 5182213, Annalycia Jenkins was hired by Dermatology Management, LLC, to work in one of its medical dermatology offices. She singed a three–page arbitration agreement that required her to arbitrate all of her claims, though it exempted Defendant from certain claims. It also shortened the applicable statute of limitations to one year, imposed restrictions on the parties' discovery rights, and required Jenkins to pay one-half of the arbitrator's fees and cost. She resigned and filed a class action. Defendant moved to compel arbitration. The trial court found the agreement was unconscionable substantively and procedurally. Substantively, it contained unfair terms and lacked mutuality. Procedurally, it was an adhesion contract and made it difficult for any employee to prevail. Finally, the trial court declined to sever the unconscionable terms because it deemed them pervasive. Defendant appealed.

" … if the unconscionability cannot be cured by eliminating the offending provisions, but instead requires augmentation to cure the unconscionability, the court should refuse to enforce the contract."

Affirmed. A contract is unconscionable if one of the parties lacked a meaningful choice in deciding whether to agree and the contract contains terms that are unreasonably favorable to the other party. If a court finds unconscionable terms, it may exercise discretion to sever those terms from the rest of the contract. However, if the unconscionability cannot be cured by eliminating the offending provisions, but instead requires augmentation to cure the unconscionability, the court should refuse to enforce the contract. Reviewing the issue *de novo*, the appellate court agreed with the trial court's conclusion that the agreement was both substantively and procedurally unconscionable. Furthermore, it found that the trial court did not abuse its discretion in declining to sever the unconscionable terms, as it carefully considered the terms of the contract and did not misinterpret or misapply the law.

Arbitration agreement to be conducted under New Era's Expedited/Mass Arbitration rules was unconscionable, due in part to its "bellwether process" (Ninth Cir.).

In *Heckman v. Live Nation Entertainment, Inc.* (Oct. 28, 2024, 9th Cir.) 120 F.4th 670, Plaintiffs bought tickets to live entertainment promoted by Live Nation Entertainment, Inc., and sold through Ticketmaster LLC's website. Their online ticket purchase agreement on the Ticketmaster website included an agreement to comply with Ticketmaster's Terms of Use, which provided that any claim arising out of the ticket purchase, as well as any prior ticket purchase, would be decided by an arbitrator employed by a newly created entity, New Era ADR ("New Era"), using novel and unusual procedures. Plaintiffs filed a putative class action in district court against Live Nation and Ticketmaster LLC, alleging anticompetitive practices in violation of the Sherman Act. Defendants moved to compel arbitration. The district court denied the motion, holding that the clause delegating to the arbitrator the authority to determine the validity of the arbitration agreement—the "delegation clause"—was unconscionable under California law, both procedurally and substantively. The district court found "that the mass arbitration protocol creates a process that poses a serious risk of being fundamentally unfair to claimants, and therefore evinces elements of substantive unconscionability." Defendants appealed.

"New Era's Rules provided to Defendants many of the protections and advantages of a class action, but provide to non-bellwether Plaintiffs virtually none of its protections and advantages."

Affirmed. The delegation clause of the arbitration agreement, and the arbitration agreement as a whole, were unconscionable and unenforceable under California law. New Era's Rules provided to Defendants many of the protections and advantages of a class action, but provide to non-bellwether Plaintiffs virtually none of its protections and advantages. The Terms of Use allowed unilateral modification by Defendants without prior notice and permitted retroactive application. Additional substantive unconscionable elements were the lack of discovery, the limited right of appeal, and the rule that precedent from "bellwether" decisions (those selected as purportedly exemplary or representative) would bind claimants who had no opportunity to participate in, or even learn of, them. Application of California's unconscionability law to the facts of the case was not preempted by the Federal Arbitration Act. Finally, as an alternate and independent ground, the FAA did not preempt California's prohibition of class action waivers contained in contracts of adhesion in large-scale small-stakes consumer cases.

Interim arbitration award not "final" because arbitrator expressly reserved the right to make a final determination.

In *Ortiz v. Elmcrest Care Center, LLC* (Nov. 7, 2024) 106 Cal.App.5th 594, Plaintiff Ericka Ortiz, on behalf of the Estate of Jose de Jesus Ortiz, sued Defendant Elmcrest Care Center for elder abuse and neglect that allegedly resulted in the death of Jose de Jesus Ortiz. The parties arbitrated the claim pursuant to decedent's arbitration agreement with Elmcrest. The arbitrator served the parties with a First Interim Award, finding the Estate failed to establish a causal nexus between the failure to assess decedent and his subsequent death. The Estate filed a request to amend the First Interim Award, claiming Elmcrest's staff acted recklessly and caused decedent to suffer indignity prior to and at

death. The arbitrator then served the parties with a Second Interim Award, in which she wrote that she failed to consider reckless neglect causing pre-death pain and suffering and, therefore, awarded $100,000 in damages against Elmcrest. The Estate and Elmcrest then moved to vacate the First interim Award and the Second Interim Award, respectively. The arbitrator rendered a Final Award confirming $100,000 in damages against Elmcrest. Elmcrest subsequently filed a petition in trial court to confirm the First Interim Award and vacate the Final Award, claiming that the First Interim Award addressed all issues necessary to the resolution of the controversy. The trial court entered an order confirming the First Interim Award in favor of Elmcrest and vacated the Final Award. The Estate appealed, arguing that the arbitrator had expressly reserved the right to make a final determination.

"The appellate court noted that by its own terms, the First Interim award was not a "final award" because the arbitrator explicitly reserved for further proceedings on her ultimate decision on whether all questions necessary to a determination of the controversy had been resolved, and whether either party was entitled to further relief."

Reversed and vacated. A ruling is an "award" under the California Arbitration Act (Cal. Code of Civ. Proc., Section 1280, et seq.) only if it determines all questions submitted to the arbitrator that are necessary to determine the controversy. The appellate court noted that by its own terms, the First Interim award was not a "final award" because the arbitrator explicitly reserved for further proceedings on her ultimate decision on whether all questions necessary to a determination of the controversy had been resolved, and whether either party was entitled to further relief. Thus, the First Interim award could not be construed as a "final award" under applicable law, and the trial court was ordered to enter the Final Award.

Equitable estoppel appropriate to compel arbitration of claim brought against related entities arising out of employment agreement with one of the entities.

In *Gonzalez v. Nowhere Beverly Hills, LLC* (Dec. 3, 2024) 107 Cal.App.5th 111, Edgar Gonzalez filed a putative class action against his former employer, Nowhere Santa Monica, and nine related LLCs for alleged wage-and-hour violations of the Labor Code and unfair business practices. The Defendant entities operated organic grocery stores and cafes throughout the Los Angeles area. As a condition of employment, Gonzalez entered into an individual (i.e., non-class) arbitration agreement with Nowhere Santa Monica. The Defendants filed a joint motion to compel arbitration. The trial court granted the motion as to Nowhere Santa Monica, but denied the motion as to the non-signatory entities, concluding the claims against them were not intimately founded in and intertwined with the arbitrable claim against Nowhere Santa Monica. The non-signatory Defendants appealed, arguing they could compel arbitration under principles of equitable estoppel.

"Application of equitable estoppel principles in the employment context requires that the claim rely on or reference the employment agreement at issue."

Reversed. Application of equitable estoppel principles in the employment context requires that the claim rely on or reference the employment agreement at issue. Here, Plaintiff's only claim against the non-signatory entities was under a joint employer theory, and that any liability would derive solely from their share of liability for Nowhere Santa Monica's legal obligations which, in turn, derived from the employment agreement. Therefore, Plaintiff's claims were inextricably intertwined with his employment agreement for equitable estoppel purposes and

he was equitably estopped from raising the entities' nonsignatory status to oppose arbitrating his claims.

Although an arbitrator's decision cannot preclude a Sarbanes-Oxley (SOX) claim, a confirmed arbitral award can sometimes preclude re-litigation of the issues underlying a SOX claim (Ninth Cir.).

"… the Ninth Circuit concluded that, even if SOX claims may not be arbitrated, the arbitrator's finding may nevertheless be given preclusive effect, which was fatal to Hansen's SOX claim."

In *Hansen v. Musk.* (Dec. 10, 2024, 9th Cir.) 122 F.4th 1162, Karl Hansen brought a lawsuit against Tesla, Inc., Tesla's CEO Elon Musk, and U.S. Security Associates alleging Defendants retaliated against him for reporting misconduct at Tesla to Tesla's management and the Securities and Exchange Commission. After Hansen filed his complaint, Defendants successfully moved to compel arbitration of most claims on the ground that Hansen's employment agreement contained a provision mandating arbitration of disputes arising out of his assignment at Tesla. Defendants, however, did not move to compel arbitration of Hansen's SOX claim, which is prohibited under 18 U.S.C. Section 1514A(e)(2) that renders unenforceable any "predispute arbitration agreement. In arbitration, Hansen brought new allegations, including racketeering and whistleblowing claims. The arbitrator disposed of the RICO claims in two interim awards and granted summary judgment for Defendants on the breach of contract and tortious interference claims. The arbitrator issued a final ruling rejecting the retaliation claim. Defendants then moved to dismiss the remainder of the lawsuit – the SOX claim - in district court. The court granted the motion and dismissed the suit, finding that Hansen could not relitigate the issues adjudicated in arbitration – primarily, the finding that Hansen had not engaged in protected activity at all, a sine quo non in a SOX claim.

Affirmed. A federal court order confirming an arbitration award has the same force and effect as a final judgment on the merits, including the same preclusive effect. Here, the Ninth Circuit concluded that, even if SOX claims may not be arbitrated, the arbitrator's finding may nevertheless be given preclusive effect, which was fatal to Hansen's SOX claim.

In nursing home case, trial court correctly declined to compel arbitration where principal's actions did not evidence granting agent authority to enter into arbitration agreement.

"Parties who are not signatories to the agreement may, nevertheless, be bound by an agent with actual or ostensible authority."

In *Lombardo v. Gramercy Court* (Dec. 31, 2024) 2024 WL 5265017, Plaintiffs Lisa Lombardo, Daniel Bates, and James Bates sued defendant Gramercy Court as heirs of decedent Elizabeth Stein, alleging several causes of action based on Defendant's care of Stein during her stay at Defendant's nursing facility shortly before Stein died. Defendant petitioned to compel arbitration based on an arbitration agreement Lombardo signed on behalf of Stein. The trial court denied the petition, finding Lombardo lacked actual or ostensible authority to execute the arbitration agreement based on Stein's durable power of attorney.

Affirmed. A petition to compel arbitration must be based upon an agreement to arbitrate. Parties who are not signatories to the agreement may, nevertheless, be bound by an agent with actual or ostensible authority. As to actual authority, Stein's durable power of attorney did not give Lombardo the authority to sign arbitration agreements on her behalf. It did not include the authortiy to enter into arbitration agreements, or even medical or healthcare decisions; nor did Stein check the box that would provide Lombardo with authority to engage in litigation,

including arbitration claims. Regarding ostensible authority, non of Stein's actions would have led a third-party to reasonably believe Stein had authorized Lombardo to enter into an arbitration agreement on Stein's behalf. The trial court correctly denied Defendant's motion to compel arbitration.

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