



STEVEN H. KRUIS, ESQ.



“The Cal. Supreme Court found no indication that the statute intended to strip companies and employers of their contractual right to arbitration where nonpayment of fees results from a good faith mistake, inadvertence, or other excusable neglect.”

ADR Quarterly Case Update – Federal Arbitration Act Does *Not* Preempt California Arbitration Act

October 1, 2025

Cal. Supreme Court holds that employer may compel arbitration after late payment of arbitration fees if delay due to good faith mistake, inadvertence, or other excusable neglect.

In *Hohenshelt v. Superior Court (Golden State Foods Corp.)* (Aug. 11, 2025) 18 Cal.5th 310, Dana Hohenshelt was hired by Golden State Foods Corporation, and signed an arbitration agreement. After his termination, he sued for retaliation claiming his termination was because he complained about the sexual harassment of a co-worker. Golden State compelled arbitration, which proceeded for about a year. Upon setting the date for a final hearing, the arbitrator issued an invoice to Golden State for \$32,300 on July 29, 2022, followed by another invoice for \$11,760 on August 29 of the same year.

On September 30, JAMS sent a letter to both parties stating that it “has not yet received full payment of the fees” and that “[p]ursuant to [its] fee and cancellation policy” a failure to pay by October 28 could subject the hearing to cancellation. Because more than 30 days had passed since the July 29 and August 29 invoices, Hohenshelt filed a motion in superior court on September 30 asserting that Golden State was “in default of the arbitration” and that he was electing to “withdraw his claims ‘from arbitration and proceed in . . . court.’ ”

Hohenshelt moved to lift the stay and return the matter to Court. The motion was denied by the trial court based on a finding that the arbitrator had issued a new (later) due date for payment and Golden State paid by that date. The Court of Appeal reversed finding that: (1) the arbitrator could not set a new due date without agreement of all parties; and (2) Code of Civil Procedure Section 1281.98 (requiring the drafting party [usually respondent] in consumer and employment arbitrations to forfeit the right to arbitrate a dispute with a consumer or employee if arbitration fees are not paid pursuant to the statutory 30-day deadline) was not preempted by the Federal Arbitration Act, with a dissent finding otherwise from one of the appellate panel justices. The Cal. Supreme Court granted review to resolve whether the FAA preempts section 1281.98.

Reversed and Remanded. Section 1281.98’s purpose is to ensure arbitration fees are paid in a timely manner and to deter companies and employers from engaging in nonpayment of arbitration fees to delay arbitration. This is consistent with the FAA’s overriding goal of enforcing private arbitration agreements. Therefore, Section 1281.98 was not preempted by the FAA, which was consistent with the Court of Appeal. However, in reviewing Section 1281.98’s legislative history, the Cal. Supreme Court rejected the harsh and rigid rule imposed by the Court of Appeal that resulted in Golden State’s forfeiture of its



right to arbitrate. Instead, the Cal. Supreme Court concluded that the respondent/drafting party has an opportunity to show that any untimely payment was the result of mistake, inadvertence or excusable neglect. Section 1281.98 did not abrogate the longstanding principle, established by statute and common law, that one party's nonperformance of an obligation automatically extinguishes the other party's contractual duties only when nonperformance is willful, grossly negligent, or fraudulent. The Legislature sought to deter companies and employers from engaging in bad-faith, strategic nonpayment of arbitration fees. The Cal. Supreme Court found no indication that the statute intended to strip companies and employers of their contractual right to arbitration where nonpayment of fees results from a good faith mistake, inadvertence, or other excusable neglect. Here, Court of Appeal was directed to remand the matter to the trial court for consideration of whether Golden State may be excused for its failure to timely pay arbitration fees, such that the stay of litigation should not be lifted and the parties should be returned to arbitration, and whether the delay resulted in compensable harm to Hohenshelt.

Cal. Supreme Court holds that auto manufacturer may not compel arbitration as third-party beneficiary of contract between buyer and dealer.

In *Ford Motor Company Warranty Cases* (July 3, 2025) 17 Cal. 5th 1122, several consumers purchased Ford vehicles from various dealerships. The sales contracts expressly disclaimed any warranty, though provided that the disclaimer, "does not affect any warranties covering the vehicle that the vehicle manufacturer may provide." After experiencing transmission problems with the vehicles, the consumers sued Ford. They alleged Ford marketed the models knowing of the defects while concealing them from the public. Ford moved to compel arbitration based upon the arbitration clauses in the dealer contracts. Although not a party to those contracts, Ford argued the plaintiffs were estopped from pursuing remedies in court. The lower courts disagreed and denied Ford's motions to compel arbitration. Ford sought review by the California Supreme Court.

Affirmed. As a general rule, one must be a party to an arbitration agreement to be bound by or to invoke it. However, under the analysis in *Metalclad Corp. v. Ventana Environmental Organizational Partnership* (2003) 109 Cal.App.4th 1704, in limited circumstances, if a plaintiff sues a third-party to assert a claim that is "intimately founded in and intertwined with" a contractual provision, that third-party may move to compel arbitration of the claim even though it is a stranger to the contract. Here, the California Supreme Court concluded that the *Metalclad* approach was inapplicable because Ford was invoking the arbitration clauses in disputes flowing from obligations imposed by statute or conventional fraud theories, not from the contracts where the arbitration provisions appeared. Because those claims were not "intimately founded in or intertwined with the sales contracts," it found that plaintiffs were *not* estopped from pursuing their remedies in court. Therefore, Ford's motions to compel arbitration were properly denied.

Cal. Supreme Court holds that parents/heirs are not required to arbitrate their wrongful death claim against skilled nursing facility.

"Because those claims were not intimately founded in or intertwined with the sales contracts," it found that plaintiffs were not estopped from pursuing their remedies in court."



In *Holland v. Silverscreen Healthcare, Inc.* (Aug. 14, 2025) 18 Cal.5th 364, Skyler Womack, a dependent adult with disabilities, died in 2020 while a patient at Silverscreen Healthcare, Inc., a 24-hour skilled nursing facility. His parents/heirs sued Silverscreen alleging both survivor claims and an individual claim for wrongful death. Silverscreen moved to compel arbitration pursuant to *Ruiz v. Podolsky* (2010) 50 Cal.4th 838, which allows a patient-provider agreement to bind the patient's heirs in a wrongful death action. The agreement Skyler signed covered not only medical malpractice claims under Code of Civil Procedure section 1295, but also any disputes relating to Skyler's treatment and care. It further bound "all parties, including [Skyler's] representatives, executors, family members, and heirs." The trial court granted Silverscreen's motion to compel arbitration of the three survivor claims, though denied the motion as to Plaintiffs' individual wrongful death claim. The Court of Appeal reversed. It found that the scope of the agreement included the wrongful death claim because it was based on the facility's neglect and thus implicated the manner in which the health care provider rendered professional services. It directed the trial court to compel arbitration of the wrongful death claim. The California Supreme Court granted review.

"It found that claims premised on the manner in which skilled nursing, or other long-term care facilities, protect the basic welfare and safety of residents fall outside the scope of Section 1295(a) and thus outside of Ruiz's holding".

Reversed and remanded. Because wrongful death claimants are entitled to sue in their own right, they are not ordinarily bound by a decedent's arbitration agreement. *Ruiz* is an exception to the rule for section 1295 malpractice claims. But not every claim of injury against a health care provider qualifies for this exception. Instead, the claim must be based on negligence in the provision of medical services. The California Supreme Court rejected the notion that Plaintiffs' claims fell within section 1295 simply because they involved a nursing facility's failure to fulfill its duties to Skylar. It found that claims premised on the manner in which skilled nursing, or other long-term care facilities, protect the basic welfare and safety of residents fall outside the scope of Section 1295(a) and thus outside of *Ruiz's* holding. Therefore, the wrongful death claim was not subject to arbitration.

Ninth Circuit holds in ERISA case that email linking document with hidden arbitration clause was insufficient to compel arbitration.

In *Platt v. Sodexo, S.A.* (August 4, 2025, 9th Cir.) 148 F.4th 709, Robert Platt, a nonsmoker, worked for Sodexo, Inc. and enrolled in its health insurance plan. He later filed a class action challenging the tobacco surcharge added to his monthly premium under the Employment Retirement Income Security Act, 29 U.S.C. § 1001 et seq., claiming the surcharge was improperly assessed without regard to whether the plan participant smoked. Sodexo moved to compel arbitration under an arbitration clause that was added to the plan, arguing Platt's continued participation in the plan manifested his consent to arbitration. The district court disagreed and denied the motion. Sodexo appealed.

Affirmed in part. Under California law, assenting to arbitrate may be shown through the parties' outward conduct - writings, words, or actions - and determined based on an objective rather than subjective standard. Moreover, mutual assent minimally requires the party moving to compel arbitration to "establish that the party had notice and gave some indication of agreeing to



“The undisputed facts demonstrated that he received an email with a link to a 170–page document with the arbitration provision obscured in page 153 and the email did not expressly alert him to the new arbitration provision.”

arbitrate.” *Jackson v. Amazon.com*, 65 F.4th 1093 (2023). Here, Sodexo failed to show that Platt agree to arbitrate. His continued participation was not an assent to arbitrate because he was never provided proper notice. The undisputed facts demonstrated that he received an email with a link to a 170–page document with the arbitration provision obscured in page 153 and the email did not expressly alert him to the new arbitration provision. Objectively, it would be unreasonable to expect that Platt had been sufficiently notified that his continued participation was his express agreement to arbitrate under these circumstances. Furthermore, Sodexo acknowledged that it never required Platt to take an outward, affirmative action showing he had agreed to arbitrate. Under California contract law, receipt of an offer stating that silence will be deemed as consent is insufficient to bind the other party to an agreement.

Website’s Terms of Service with arbitration clause insufficient to compel arbitration.

In *Cruz v. Tapestry, Inc.* (Aug. 27, 2025) 113 Cal.App.5th 943, Leslie Cruz purchased items on the Kate Spade Outlet website and then sued Kate Spade and related entities claiming unfair competition and false advertising. Defendants moved to compel arbitration based upon an arbitration clause in the terms of use. A hyperlink to the terms of use was included in the following text, which notice text was in gray font and located below the button Cruz clicked to complete the online transactions on Defendants’ website: “BY CLICKING SUBMIT YOUR ORDER, YOU ARE AGREEING TO OUR TERMS OF USE AND PRIVACY POLICY.” The trial court denied the motion because Cruz was not required to check a box or click a button stating she agreed to the terms of use and had no reason to anticipate that purchasing the merchandise would give rise to an ongoing relationship with defendants governed by extensive contractual terms. Defendants appealed.

“To be bound by the terms of use, the question is whether a reasonably prudent person would be on inquiry notice.”

Affirmed. The existence of an arbitration agreement hinged on whether the website called Cruz’s attention to the notice quoted above. A consumer’s consent to a sign-in wrap agreement is largely passive. To be bound by the terms of use, the question is whether a reasonably prudent person would be on inquiry notice. Here, the notice was difficult to read and far less prominent than numerous other visual elements (e.g., graphics and other text) appearing on Defendants’ cluttered two-column checkout pages. Thus, a reasonably prudent person would not be on inquiry notice that by clicking the action button she would be bound to the terms of use. The trial court’s order denying the motion to compel arbitration was correct.

Trial court properly declined to compel arbitration where defendants could not establish precise arbitration provision to which signatory agreed.

In *Brockman v. Kaiser Foundation Hospital* (Sep. 19, 2025) 25 WL 2701643, Chloe E. Brockman, brought a medical malpractice claim against Kaiser regarding the gender-affirming care she received as a minor. Her mother, a Kaiser nurse, became a member of the nurse’s union and was covered under the union’s health care plan by signing a one-page enrollment form containing an arbitration disclosure statement. In the ensuing decade, Brockman’s mother



“There was no evidence showing that the parties expressly agreed to the specific arbitration provisions Kaiser sought to enforce.”

enrolled in other plans involving arbitration disclosures. After Brockman filed suit, Kaiser Hospital moved to compel arbitration, relying on the arbitration provision in the Evidence of Coverage of a 2017 membership agreement for the union group health care plan, as well as the arbitration provision in the 2020 Kaiser Employee Benefits Booklet. The trial court ultimately denied the motion because Kaiser did not submit a copy of any arbitration agreement containing the signature of Brockman’s mother. While each of those enrollment forms contained an arbitration disclosure, each indicated that the “full arbitration provision” was contained in a separate document, such as the Evidence of Coverage, Service Agreement, and Summary Plan Description.

Affirmed. It is insufficient for the party seeking to compel arbitration to demonstrate the parties generally agreed to arbitrate their disputes by incorporating some arbitration provision into their contract. Instead, the moving party must establish the precise arbitration provision the parties incorporated into their agreement to govern their disputes. Here, the Court of Appeal agreed that the arbitration disclosure in the enrollment form stated that “the full arbitration provision” was contained in the “Evidence of Coverage” and/ or “Summary Plan Description.” The arbitration disclosure made no reference to the Benefits Booklet. Moreover, the record demonstrated that the Benefits Booklet, Evidence of Coverage, and Summary Plan Description were distinct documents. There was no evidence showing that the parties expressly agreed to the specific arbitration provisions Kaiser sought to enforce. Kaiser submitted only evidence showing that Brockman’s mother signed enrollment forms in 2004 and 2005 and completed an online enrollment form in 2020 for another health care plan. Therefore, the trial court’s denial of the motion to compel arbitration was proper and affirmed.

Attorney Mediator/Arbitrator must maintain active status.

In *Getzels v. State Bar of California* (June 26, 2025) 112 Cal.App.5th 388, Plaintiff Morris S. Getzels, a retired attorney and licensee of defendant the State Bar of California sought to continue serving as a private mediator/arbitrator while on inactive status. He sued the State Bar, challenging State Bar Rule 2.30 that precludes inactive licensees from serving as private arbitrators and mediators. Getzels argued Rule 2.30 violated the Equal Protection Clauses of the federal and California Constitutions by treating inactive licensees differently from everyone else in “the entire world.” He contended the rule’s disparate treatment of inactive licensees was subject to strict scrutiny because the rule impinged on a fundamental liberty, “freedom of contract.” Alternatively, he claimed there was no rational basis for the rule. The State Bar successfully demurred without leave to amend and Getzel appealed.

“A rational basis existed for Rule 2.30, which bears a rational relationship to the State Bar’s legitimate interest in maintaining a competent bar and assuring the professional conduct of licensees.”

Affirmed. When a statute involves neither a suspect classification nor a fundamental right, the legislation is presumed to be valid and will be upheld if the statute is rationally related to a legitimate state interest. This standard, the rational-basis review, is the basic and conventional standard for reviewing economic and social welfare legislation that differentiates between classes or individuals. Under this standard, if a plausible basis exists for a disparity, courts may not second-guess its wisdom, fairness or logic. Here, Rule 2.30 does not



involve a suspect class nor interfere with a fundamental constitutional right. “Freedom of contract” is not a fundamental right, and case law that has so held has been overruled and repudiated. A rational basis existed for Rule 2.30, which bears a rational relationship to the State Bar’s legitimate interest in maintaining a competent bar and assuring the professional conduct of licensees. It is rational to conclude that licensees who act as private arbitrators and mediators should be required to continue paying active annual licensee fees, whereas those who have distanced themselves from the practice of law (and are therefore unlikely to invoke the jurisdiction of the State Bar) should not.

In qui tam action under Proposition 65, plaintiff who agreed to arbitrate as an individual did not bind the state, the real party in interest.

In *Consumer Advocacy Group, Inc. v. Walmart, Inc.* (June 30, 2025) 112 Cal.App.5th 679, Michael Marcus, was the Secretary and Chief Financial Officer of Plaintiff Consumer Advocacy Group, Inc. (CAG). He purchased various products from Defendant Walmart, Inc., through its website. To buy the products online, Marcus was required to complete the Walmart.com checkout process. The website provided that by clicking on the “Place order” button, the customer agreed to Walmart’s Terms of Use, which were hyperlinked next to the button and included an arbitration clause. After purchase, CAG sent Walmart notices of alleged violations of Proposition 65 (the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.5 et seq.), alleging that they unlawfully failed to warn that several products they sold, manufactured, or distributed could expose consumers to chemicals known to cause cancer or reproductive toxicity. CAG subsequently sued Walmart, alleging failure to warn under Proposition 65. Walmart moved to compel arbitration, alleging that Marcus had bound CAG to arbitration. The trial court denied Walmart’s petition to compel arbitration on the basis that Walmart failed “to prove the existence of an agreement to arbitrate qui tam actions” like those under Proposition 65. The order concluded that the arbitration agreement addressed “only ... the rights of the individual consumer, and nothing in the agreement preclude[d] an action brought by the state.” Walmart appealed.

Affirmed. Proposition 65 cases are qui tam actions brought on behalf of the state by private individuals acting as representatives of the government. Arbitration agreements executed before a private “realtor” meets the statutory requirements to bring a qui tam action do not encompass the action. Rather, before satisfying those requirements, the realtor enters into the agreement as an individual, not as an agent or representative of the state. Here, the state was a nonsignatory to the arbitration agreement. When Marcus allegedly agreed to arbitrate, he did not yet meet the requirements to bring a proposition 65 action. Therefore, he was not yet an agent or representative of the state, and had no authority to bind it to the arbitration agreement.

Steven H. Kruis, Esq. has mediated thousands of matters throughout Southern California since 1993, and is with the San Diego Office of ADR Services, Inc. He may be reached at skruis@adrservices.com.

“Arbitration agreements executed before a private “realtor” meets the statutory requirements to bring a qui tam action do not encompass the action.”