

AUTHOR*



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(Ret.)

ADR UPDATE

POSTMARK DOES NOT FULFILL PAYMENT DEADLINE

Doe v. Superior Court for the City and Cty. of San Francisco, 95 Cal. App. 5th 346 (2023)

The requirement of California Code of Civil Procedure section 1281.98(a)(1) that arbitration fees and costs must be “paid” within a 30 day grace period after the due date also requires that the fees and costs must be “received” by the arbitrator within 30 days after the due date, not merely remitted. Here, the fees and costs were to be paid by Monday, October 3, 2022.

The employer mailed the check to the arbitrator on the Friday before the due date: September 30, 2022. The check did not arrive by the 30 day deadline (October 3), and instead was received on October 5, 2022. The court held that the mailing in this case did not constitute payment as statutorily required, so that the plaintiff could not be forced to remain in arbitration.

AWARD VACATED AFTER FINDING BASED UPON USING INTERPRETER

FCM Investments, LLC v. Grove Pham, LLC, 2023 WL 6826821

Under California Code of Civil Procedure section 1286.2(a) and 9 United States Code section 10(a), an arbitration award can be vacated based upon an arbitrator’s prejudicial misconduct or conduct that exceeds the arbitrator’s powers. Here, appellant alleged linguistic bias. In the written award, which was primarily based on an assessment of witness credibility, the arbitrator made an adverse credibility finding against a party witness, underscoring that the use of the interpreter appeared to be a ploy given that the party had lived in the United States for decades, had engaged in sophisticated business transactions, and had herself acted as an interpreter. The court held that this finding gave a “reasonable impression of possible bias,” causing substantial prejudice to the party.

The court further noted that litigants must feel assured that the choice to use an

interpreter will not affect the impartiality of the decisionmaking. While the grounds for vacatur were presented for the first time on appeal, the court of appeal found that the forfeiture rule did not apply in the present case.

INDIVIDUAL PAGA CLAIM COMPELLED TO ARBITRATION

Barrera v. Apple American Group LLC, 95 Cal. App. 5th 346 (2023)

Following a year of active litigation of plaintiffs’ individual and representative PAGA claims, defendants Apple American Group and its related companies moved to compel arbitration. In finding that defendants did not waive their right to compel arbitration, the court of appeal accepted their explanation that they moved to compel as soon as there was a chance of success of prevailing on that motion following the U.S. Supreme Court’s grant of certiorari in *Viking River Inc. v. Moriana*.³

While the aggrieved employees retained standing to bring their representative PAGA claims in court, the plaintiffs’ individual PAGA claim was compelled to arbitration pursuant to the holding in the *Viking River* case.

NOTE: See also *In re Uber Tech. Wage and Hour Cases*, summarized on page 15 of this issue.

ENDNOTES

* Hon. Michelle R. Rosenblatt (Ret.) has been a mediator and arbitrator on a wide range of civil disputes with ADR Services, Inc. since 2016, when she retired from the bench after 23 years of judicial service. She taught judicial education throughout her career on the bench and is a frequent participant in continuing education programs. She also served for five years as editor of the California Judges Association magazine, *The Bench*.

1. CAL. BUS. & PROF. CODE §§ 17200-17209.
2. 9 U.S.C. §§ 1-16.
3. *Viking River Cruises, Inc. v. Moriana*, 142 S. Ct. 1906 (2022).