ADR UPDATE

AUTHOR*

Hon. Michelle R. Rosenblatt (Ret.)

CHOICE OF LAW CLARIFIED IN EFAA ACTIONS

***Casey v. Superior Court of Contra Costa County*, 108 Cal. App. 5th 575 (2025)**

The plaintiff, Kristin Casey, filed a complaint in December 2022 alleging sexual harassment, as well as Fair Employment and Housing Act (FEHA)[1] and wage and hour claims against her former employer, a national homebuilding company. The defendant moved to compel arbitration.

The Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act (EFAA),[2] effective March 3, 2022, which is part of the Federal Arbitration Act (FAA),[3] prohibits arbitrating sexual harassment and sexual assault claims. However, the arbitration agreement at issue contained a choice of law provision stating that California law governed. In opposition to the motion, Casey introduced evidence of a nexus between the business and interstate commerce, and argued that the FAA applies. She also produced evidence that her duties included interstate business and communication.

The court of appeal found that Casey's evidence was sufficient to show a link to interstate commerce, that the FAA rather than the state's corollary, the California Arbitration Act (CAA)[4] applied, and that the motion to compel arbitration should have been denied.

There are four important take-aways from this case.

1. The CAA is preempted by the EFAA under the doctrine of conflict preemption, which applies "when state law stands as an obstacle to the accomplishment and execution of the full purpose and objectives of Congress."

2. There is no specific California statute akin to the EFAA. When there is a choice of law provision, if the evidence of interstate commerce is sufficient to show that the FAA applies, and there is a cause of action for sexual harassment or sexual assault, the EFAA applies.

3. If the EFAA applies to at least one cause of action, none of the other claims can be compelled to arbitration. The court held that all claims must be heard in court, citing *Liu v. Miniso Depot CA, Inc.*[5]

4. Retroactivity is not governed by the date the arbitration agreement was signed; it is governed by when the dispute or claim arose, in keeping with *Doe v. Second Street Corporation.*[6]

NOTE: *This case is also summarized in the discussion of California employment law cases on page 8.*

SPLIT ON COMPELLING 'HEADLESS PAGA' TO ARBITRATION

***Rodriguez v. Packers Sanitation Services*, 109 Cal. App. 5th 69 (2025)**

The defendant, Packers Sanitation Services, moved to compel arbitration of an individual PAGA claim brought by former employee Jose A. Parra Rodriguez's (Parra) in a PAGA action. Parra represented he was not bringing an individual PAGA claim and was acting in a representative capacity only—a "headless PAGA."

The trial court denied the motion to compel arbitration.

On appeal, the court held that when a defendant moves to compel arbitration and the parties dispute whether the complaint includes individual arbitrable PAGA claims, the court should resolve the dispute by examining the complaint.

In this holding, the court of appeal disagreed with the reasoning of *Leeper v. Shipt, Inc*,[7] which held that a PAGA action necessarily includes an individual component. It held instead that while every PAGA action is supposed to have an individual and a representative claim, it is up to the court to review the complaint to make that determination. In dicta, the court suggested that if it appears that the complaint as pled is a headless PAGA, the defendant may want to challenge the complaint on demurrer before proceeding with a motion to compel arbitration of the individual claim.

SEVERANCE CLAUSE DOES NOT DIVEST TRIAL COURT'S DISCRETION

***Ramirez v. Charter Communications, Inc.* (*Ramirez* III), 108 Cal. App. 5th 1297 (2025)**

In an earlier decision, *Ramirez v. Charter Communications, Inc.* (*Ramirez* I),[8] the court of appeal determined that the controlling arbitration agreement had four unconscionable provisions and therefore declined to enforce it.

In *Ramirez v. Charter Communications, Inc. (Ramirez II)*,[9] the California Supreme Court concluded, among other things, that three of four challenged provisions of the arbitration agreement were substantively unconscionable and remanded the case to the court of appeal to reconsider the severance question in light of its opinion.

In the present case, *Ramirez III*, a different panel of the court of appeal affirmed the trial court's refusal to enforce the arbitration agreement. Based on the lack of mutuality in the covered and excluded claims provisions, the court noted it appeared that the real purpose of the agreement was to subject the employee to arbitration "as a means of maximizing employer advantage." Concluding that the agreement was "so permeated by unconscionability" that severing the unconscionable provisions was not warranted, the court explained that a severance clause does not divest the trial court of its discretion.

COURT ELUCIDATES WHO MUST INITIATE ARBITRATION

***Arzate v. ACE American Insurance Company*, 108 Cal. App. 5th 1191 (2025)**

The trial court granted the defendant ACE American Insurance Company's motion to compel arbitration and stayed the action in the trial court. However, neither ACE nor the plaintiffs, who had filed a class action alleging misclassification and failure to provide various benefits, submitted the claims to arbitration. The plaintiffs moved the trial court to set aside the order on the ground that ACE waived its right to arbitration by not timely initiating the arbitration process.

The trial court granted that motion.

The court of appeal reversed. It held that:

- The specifics of the agreement control which party must initiate arbitration, rather than which party moved to compel it; and
- If a matter is compelled to arbitration and the court action is stayed, but the court later sets aside the order compelling arbitration, that is an appealable order akin to denying a motion to compel arbitration.

ARBITRATION AGREEMENT NOT 'SUBSTANTIVELY UNCONSCIONABLE'

***Vo v. Technology Credit Union*, 108 Cal. App. 5th 632 (2025)**

The trial court denied a motion to compel arbitration, finding that the arbitration agreement was unconscionable due to the arbitrator's inability to compel third party discovery.

The court of appeal reversed. The arbitration agreement incorporated the provider's rules. The relevant rules in effect at the time of the execution of the agreement allowed access to third party discovery "as may be necessary and adequate."

The court distinguished these facts from the holding in *Aixtron, Inc. v. Veeco Instruments, Inc.*[10] as the *Aixtron* court did not consider whether the arbitrator could expand third party discovery. *Vo* holds that under these facts, the arbitrator has the authority to make additional nonparty discovery available.

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. Gov. Code §§ 12900-12996.

2. 9 U.S.C. §§ 401-402.

3. 9 U.S.C. §§ 1-16.
4. Cal. Code Civ. Proc. §§ 1280-1294.2.
5. *Liu v. Miniso Depot CA, Inc.*, 105 Cal. App. 5th 791 (2024).
6. *Doe v. Second Street Corp.*, 105 Cal. App. 5th 552 (2024).
7. *Leeper v. Shipt, Inc.*, 107 Cal. App. 5th 1001 (2024).
8. *Ramirez v. Charter Communications, Inc.*, 75 Cal. App. 5th 365 (2022).
9. *Ramirez v. Charter Communications, Inc.*, 16 Cal. 5th 478 (2024).
10. *Aixtron, Inc. v. Veeco Instruments, Inc.*, 52 Cal. App. 5th 360 (2020).