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ADR UPDATE

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ARBITRATION LOSS PRECLUDES PAGA STANDING

***Sorokunov v. NetApp, Inc.*, 118 Cal. App. 5th 1009 (2026)**

Alexander Sorokunov sued his former employer, NetApp, Inc., alleging various violations of the California Labor Code and seeking relief ,including civil penalties and wages pursuant to the Private Attorneys General Act of 2004 (PAGA).[1]

The trial court granted NetApp's motion to compel arbitration of Sorokunov's individual claims, and the PAGA claim proceeded in court. While arbitration was pending, the court denied NetApp's motion for summary adjudication of the PAGA claim.

In arbitration, NetApp prevailed on the merits. After the arbitration award was confirmed, the court granted NetApp's motion for judgment on the pleadings on the ground that the arbitrator had conclusively determined Sorokunov's lack of standing as an aggrieved employee.

The court of appeal affirmed orders compelling arbitration of the employee's individual (non-PAGA) labor code and related claims, confirming the arbitration award for the employer. It also granted judgment on the pleadings on the employee's remaining PAGA claim on the ground that the confirmed award conclusively established Sorokunov was not an "aggrieved employee" with PAGA standing.

Following *Rocha v. U-Haul Company of California*[2] and *Rodriguez v. Lawrence Equipment, Inc.*,[3] and relying on the California Supreme Court's discussion in *Adolph v. Uber Technologies, Inc.*,[4] the court held issue preclusion applied because the issue of whether the plaintiff suffered the alleged labor code violations was "actually litigated" and necessarily decided in arbitration, so he could not relitigate that identical issue to establish PAGA standing, even though PAGA is prosecuted in a representative capacity.

NOTE: This case is also summarized in the discussion of wage and hour law cases on page 11.

ARBITRATION UNDER THE FAA IS A MATTER OF CONSENT

***Tuufuli v. West Coast Dental Administrative Services, Inc.*, 117 Cal. App. 5th 1048 (2026)**

Sinedou S. Tuufuli sued her employer, West Coast Dental Administrative Services, asserting eight individual and class claims for violations of various provisions of the California Labor and the Business & Professions Codes.

West Coast Dental moved to compel arbitration of Tuufuli's individual claims and to dismiss her class claims. It contended an arbitration agreement Tuufuli signed was governed by the Federal Arbitration Act (FAA).[5] The trial court granted the motion to compel arbitration and dismissed Tuufuli's class claims.

The California Court of Appeal affirmed the order granting the motion to compel arbitration, holding that the parties' arbitration agreement was governed by the FAA because the agreement expressly selected it, making FAA arbitration "a matter of consent, not coercion."

The court rejected Tuufuli's argument that the employer had to prove interstate commerce to invoke the FAA, explaining that "the presence of interstate commerce is not the only manner under which the FAA may apply" because "the parties may also voluntarily elect to have the FAA govern enforcement."

'ILLEGIBLE' ARBITRATION TERMS REQUIRE CLOSER SCRUTINY FOR UNCONSCIONABILITY

***Fuentes v. Empire Nissan*, 19 Cal. 5th 93 (2026)**

The crux of this case is an arbitration agreement, which was in tiny print, and photocopied so many times that it was nearly illegible when Evangelina Yanez Fuentes signed it at the same time she applied for work at Empire Nissan. After 2 ½ years on the job, Fuentes went on medical leave, and then requested an extension of the leave, but Empire Nissan terminated her employment. Fuentes then filed a complaint alleging wrongful discharge and related claims; when Empire Nissan moved to compel arbitration, Fuentes argued that her inability to read the agreement rendered it substantively unconscionable.

The trial court denied Empire Nissan's motion, concluding that the arbitration agreement was unconscionable.

The court of appeal reversed in a divided opinion, with the majority concluding that the illegibility argument went exclusively to procedural unconscionability and not to substantive unconscionability.

The California Supreme Court reversed the court of appeal and remanded, holding that while an agreement's illegibility and tiny font generally bear on *procedural* unconscionability rather than *substantive* unconscionability, a high degree of procedural unconscionability requires that courts closely scrutinize the agreement's terms for unfairness—which is necessary to avoid relying on an arbitration-favoring presumption, and to construe ambiguities against the employer as drafter.

The court explained that "a contract's format generally is irrelevant to the substantive unconscionability analysis," which focuses on the fairness of the contract's terms. However, it noted that "courts must closely scrutinize the terms of difficult-to-read contracts for fairness or one-sidedness."

NOTE: This case is also summarized in the discussion of California employment law cases on page 9.

MID-LITIGATION ARBITRATION ROLLOUT CANNOT SUBVERT RULE 23

***Avery v. TEKsystems, Inc.*, 165 F. 4th 1219 (9th Cir. 2026)**

The Ninth Circuit affirmed the denial of TEKsystems's post-certification motion to compel arbitration in a California wage and hour putative class action.

TEKsystems had rolled out a new "mandatory" arbitration agreement 23 months after a class action was filed and after briefing on certification was closed. The agreement was structured so class members who did nothing were deemed to accept arbitration and thereby effectively exit the class unless they quit or affirmatively opted out of arbitration.

The panel held that Federal Rule of Civil Procedure (FRCP) 23(d), as construed by California Supreme Court precedent,[6] recognizing the district court's "duty and the broad authority to exercise control over a class action," authorizes a court to refuse to enforce an arbitration agreement when necessary to protect the fairness of the class process. The court noted the district court's conclusion that TEKsystems's approach "subverted FRCP 23 by turning this typical Rule 23 opt-out class proceeding into an opt-in proceeding," justifying invalidation rather than a mere corrective notice. The court specifically noted that the new arbitration agreement's procedures undermined the fairness of the process.

NOTE: This case is also summarized in the discussion of California employment law cases on page 9.

ENDNOTES

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1. Cal. Lab. Code §§ 2698-2699.5.
2. *Rocha v. U-Haul Co. of California*, 88 Cal. App. 5th 65 (2023).
3. *Rodriguez v. Lawrence Equipment, Inc.*, 106 Cal. App. 5th 645 (2024).
4. *Adolph v. Uber Technologies, Inc.*, 14 Cal. 5th 10140 (2023).
5. 9 U.S.C. §§ 1-16.
6. *See, Gulf Oil Co. v. Bernard*, 452 U.S 89 (1981).