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December 21, 2022

## ADR Case Update 2022 - 23

### California

- **ARBITRABILITY OF NON-INDIVIDUAL PAGA CLAIMS TO BE DECIDED BY ARBITRATOR**

[Lewis v Simplified Labor Staffing Solutions, Inc.](#)

Court of Appeal, Second District, Division 8, California

2022 WL 17414203

December 5, 2022

Employee Sylvia Lewis filed individual and non-individual PAGA claims against Simplified, a staffing services company. Simplified moved to compel arbitration under the Arbitration Agreement Lewis signed upon her hiring. The court denied the motion, holding that any pre-dispute agreement to arbitrate PAGA claims was unenforceable. The court applied the “state-must-consent” rule, holding that the state, rather than the employee, was the party to a PAGA action and that, pre-dispute, the employee was not an agent of the state capable of waiving the state’s rights. Simplified appealed.

The Court of Appeal, Second District, Division 8, California, reversed based on the Supreme Court’s decision in *Viking River Cruises, Inc. v. Moriana*, issued subsequent to Simplified’s appeal. *Viking* established that the employee, rather than the state, is the real party in interest to a PAGA action, and if an employee has agreed to arbitrate future disputes with her employer, the court must “hold her to her choice of forum.” Lewis argued that, even if her individual claims were subject to arbitration, that did not affect her standing to pursue her non-individual PAGA claims. The Court held that it need not decide whether an arbitration agreement can require arbitration of non-individual PAGA claims. The Arbitration Agreement delegated arbitrability to the arbitrator, and it was for the arbitrator to determine whether the Arbitration Agreement extended to Lewis’s non-individual PAGA claims.

- **CORRECTION TO ARBITRATION AWARD IMPROPER**

[E-Commerce Lighting, Inc. v. E-Commerce Trade LLC](#)

Court of Appeal, Fourth District, Division 2, California

2022 WL 17547124

December 9, 2022

E-Commerce Trade (EC Trade) purchased online lighting equipment from E-Commerce Lighting (EC Lighting). EC Trade funded the purchase through two loans from Banc of California (the Bank) and a Promissory Note to EC Lighting. A Subordination Agreement between the three

parties made the Note subordinate to the Bank loans. EC Trade defaulted on the Note, and EC Trade and EC Lighting stipulated to arbitration. The arbitrator found that both parties had breached their purchase agreement, causing roughly \$2 million in damages to each. The arbitrator offset the awards against each other and awarded the difference to ECL. Although EC Trade had proposed the offset, EC Trade and the Bank then petitioned the court to correct the arbitration award by eliminating the offset, arguing that it circumvented the Subordination Agreement. Absent the offset, they argued, EC Trade would have been awarded \$2 million and would have been obligated to use that money to pay its senior debt to the Bank. The court granted the petition to correct the award and eliminated the offset. ECL appealed.

The Court of Appeal, Fourth District, Division 2, California, reversed. EC Trade and the Bank brought their action under Cal. Civ. Proc. Code § 1286.6(b), which allows a court to correct an award if the arbitrators “exceeded their power,” provided that the award “may be corrected without affecting the merits of the decision upon the controversy submitted.” The California Supreme Court has held that the “merits” of a decision include “all the contested issues of law and fact submitted to the arbitrator for decision.” Here, EC Trade submitted the offset proposal to the arbitration, where it was contested between the two parties and ultimately implemented by the arbitrator. The subsequent elimination of that offset would necessarily affect the merits of the arbitrator’s decision and was therefore barred under Section 1286.6(b). Because the correction was disallowed on that basis, the Court declined to determine whether the arbitrator had exceeded his powers, a determination it could have made had EC Trade moved to vacate, rather than to correct, the award.

## Maryland

- **COURT MUST DETERMINE EXISTENCE OF VALID ARBITRATION AGREEMENT**

[Access Funding, LLC v Linton](#)

Court of Appeals of Maryland

2022 WL 17348369

December 1, 2022

Chrystal Linton and Dimeca D. Johnson (Plaintiffs) resolved class action lead paint exposure claims in structured settlements. They then sold their income stream rights to Access Funding in exchange for lump sum cash payments via identical Purchase Agreements. The Purchase Agreement contained a mandatory arbitration clause that applied only to claims arising after the transaction “closed,” which, for purposes of the arbitration agreement, occurred when the transfer received court approval required by the Structured Settlement Protection Act (SSPA). The SSPA required the court to base its approval on several findings, including a determination that each party selling settlement rights “received independent professional advice regarding the legal, tax, and financial implications of the transfer.” Charles Smith, an attorney on Access’s payroll, notified the court that he had provided such independent counsel to Plaintiffs, and in reliance on that notification, the court approved the transfers. Plaintiffs filed a class action against Access, claiming that Smith had misled them and fraudulently misrepresented the nature of his involvement to the court. Access sued to compel arbitration under the Purchase Agreement. The court granted the motion, holding that arbitrability should be decided by the arbitrator. The court of special appeals reversed and remanded, holding that the court, rather than the arbitrator, must determine the existence of a valid arbitration agreement. Access appealed.

The Court of Appeals of Maryland affirmed. By alleging that Access procured the court’s approval of the transfers through fraud, Plaintiffs called into question the existence of a valid arbitration agreement. Plaintiffs’ challenge went to the existence of a valid arbitration agreement which, under Maryland law, must be decided by the court rather than the arbitrator.

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