

February 20, 2025

ADR Case Update 2025 - 4

California

- **ARBITRATION AGREEMENT UNENFORCEABLE UNDER EFAA**

[Casey v Superior Court of Contra Costa County](#)

Court of Appeal, First District, California

2025 WL 366693

February 3, 2025

Real estate agent Kristen Casey filed sexual harassment claims against her former employer, D.R. Horton, Inc., and Horton moved to compel arbitration under Casey's employment arbitration agreement. Casey opposed and elected to proceed under the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act (EFAA), arguing for the arbitration agreement to be unenforceable. The court granted Horton's motion to compel. Under the agreement's choice of law provision, the court held, Casey's claim was governed by California law, and the FAA and EFAA did not apply. Casey appealed.

The Court of Appeal, First District, California reversed. The EFAA applied because the parties' transactions involved interstate commerce: Horton operated its business in 33 states, and Casey frequently worked with out-of-state purchasers. California arbitration law, which otherwise closely tracks the FAA, contains no equivalent to the EFAA. Applying the doctrine of conflict preemption, the Court found that the EFAA's purpose would be "plainly obstructed" by "an attempt to use state law to force a person who is alleging sexual harassment to arbitrate their dispute." The EFAA therefore preempted enforcement of the arbitration agreement under California law and, at Casey's election, her entire case was exempt from arbitration.

- **ARBITRATION AGREEMENT WAS UNCONSCIONABLE**

[Sanchez v Superior Court of Orange County](#)

Court of Appeal, Fourth District, Division 3, California

2025 WL 368722

February 3, 2025

Justo Sanchez, a non-English speaker, signed a retainer agreement with Consumer Defense Law Group (CDLG) seeking to avoid foreclosure on his Bakersfield home. Sanchez had, at the unsolicited recommendation of a consumer organization, driven nearly three hours to CDLG, where he was presented a five-page English-only retainer agreement which he was told to sign on a take-it-or-leave-it basis. During the course of CDLG's representation, Sanchez not only lost his home, but was subject to terminating sanctions. Sanchez filed a legal malpractice action, and CDLG moved to compel arbitration under the retainer agreement. The court tentatively denied the motion, citing substantial procedural and substantive unconscionability but, following hearing, granted CDLG's motion to compel. The court gave no explanation of this reversal and denied Sanchez's request for clarification. Sanchez filed a petition for a writ of mandate.

The Court of Appeal, Fourth District, Division 3, California granted Sanchez's petition for a writ of mandate, directing the lower court to vacate the order to compel and deny CDLG's motion. The "substantially oppressive" circumstances, and "unfair surprise" of pressuring Sanchez to sign an agreement that he couldn't read, with no opportunity to seek assistance from an outside translator or attorney, created substantial procedural unconscionability. The agreement itself imposed unfair surprise by mandating arbitration under the rules of either of two providers or their "equivalent," leaving Sanchez with no way of knowing what rules might actually apply. The agreement was substantively unconscionable in requiring Sanchez, who was on fee waiver, to pay a \$2000 filing fee.

- **ARBITRATION AGREEMENT NOT UNCONSCIONABLE**

[Vo v Technology Credit Union](#)

Court of Appeals, Sixth District, California

2025 WL 384496

February 4, 2025

Thomas Vo filed a wrongful termination action against his former employer, TCU. TCU moved to compel arbitration under Vo's employment arbitration agreement, which incorporated JAMS employment arbitration rules. The court denied the motion, holding the agreement substantively unconscionable. The court relied exclusively on JAMS Rule 17, governing pre-hearing exchange of information. Since the time of Vo's agreement, JAMS had amended Rule 17 to explicitly provide for third party discovery. The version in place at the time of Vo's agreement contained no such provision, and the Court held that the agreement therefore "improperly prevented Vo from obtaining the third party discovery necessary to arbitrate his case." TCU appealed.

The Court of Appeals, Sixth District, California reversed and remanded. Although the version of Rule 17 in place at the time of Vo's contracting did not explicitly grant a claimant the right to compel third party discovery, it gave the arbitrator the authority to expand discovery as needed, which included the authority to grant third party discovery.

Case research and summaries by Deirdre McCarthy Gallagher and Rene Todd Maddox.

Contact Information

David Brandon

Program Manager

JAMS Institute

415-774-2648

DBrandon@jamsadr.com