March 12, 2025

ADR Case Update 2025 - 5

Federal Circuit Courts

- **ARBITRATION RIGHTS WAIVED**

  Al-Nahhas v 777 Partners LLC
  United States Court of Appeals, Seventh Circuit
  2025 WL 546908
  February 19, 2025

  Eido Al-Nahhas took out "payday loans" at exorbitant interest rates from ZocaLoans, a lender purportedly owned by Rosebud Sioux Tribe. Al-Nahhas filed a class action claiming that ZocaLoans was a front for two private equity firms, 777 Partners and Tactical Marketing Partners, who used Rosebud's sovereign immunity to evade usury laws. The parties proceeded in discovery, during which the three Defendants imposed onerous discovery requests on Al-Nahhas, yet delayed and missed their own deadlines, all the while assuring the court of their intention to comply. After fourteen months, Defendants moved to compel arbitration under Al-Nahhas's loan documents. The court denied the motion on waiver grounds, and Defendants appealed.

  The United States Court of Appeals, Seventh Circuit affirmed. The Court had "no trouble" concluding that Defendants had waived their arbitration rights by engaging in fourteen months of discovery "plagued by delay and dysfunction." The Court rejected Defendants' claims that they had been previously unaware of their arbitration rights and were victims of bad lawyering. The loan documents containing the arbitration provisions were attached to Al-Nahhas's initial complaint, and Defendants were "sophisticated parties" who "should have known to exercise their right to arbitrate."

- **NO AGREEMENT TO ARBITRATE**

  Chabolla v Classpass Inc.
  United States Court of Appeals, Ninth Circuit
  2025 WL 630813
  February 27, 2025

Katherine Chabolla filed a class action against ClassPass, a subscription service that allowed her access to a selection of gyms and fitness studios, for violating California's Automatic Renewal Law and other consumer protection statutes. ClassPass moved to compel arbitration under its Terms, to which Chabolla had allegedly agreed in registering for ClassPass online. The court denied the motion, finding that Chabolla's online registration process had not formed an agreement to arbitrate. ClassPass appealed.

The United States Court of Appeals, Ninth Circuit affirmed. ClassPass's online registration process failed to put a reasonably prudent user on notice of the Terms. The initial landing screen made no mention of the Terms. Terms notices and hyperlinks on subsequent screens were "notably timid in both size and color," and, placed beneath larger text on cluttered screens, seemed "to fade into the irrelevancy of other aspects of the page." There was no obvious "sign up" button by which Chabolla could manifest meaningful assent to the Terms, and the meanings of the buttons she was required to click were ambiguous. Chabolla therefore did not agree to be bound by the Terms or their arbitration provision.

- **NO RIGHT TO COMPEL INDIVIDUAL ARBITRATION OF CONSOLIDATED CLAIM**

Jones v Starz Entertainment, LLC
United States Court of Appeals, Ninth Circuit
2025 WL 649705
February 28, 2025

Kiana Jones and more than 7,000 other users of the Starz streaming service initiated JAMS arbitration against Starz for privacy violations. JAMS consolidated the claims into one action, but the arbitration stalled as claimants repeatedly disqualified arbitrators. Jones petitioned the district court to compel arbitration of her individual claim, arguing that the consolidation amounted to Starz's refusal to engage in individual, bilateral arbitration as required by the Terms. The court denied the petition, holding that Jones was not an "aggrieved" party for purposes of compelling arbitration under the FAA. Jones appealed.

The United States Court of Appeals, Ninth Circuit affirmed. The FAA gives the power to compel arbitration to a party who is "aggrieved by the failure, neglect, or refusal of another to arbitrate." Jones was not an "aggrieved party" because Starz did not fail, neglect, or refuse to arbitrate her claim. Starz in fact "engaged in the arbitration process at every step" by paying its fees and participating in arbitrator selection. While the Terms' arbitration provision gave both parties the right to initiate arbitration, it nowhere mentioned "individual arbitration" or prohibited consolidation. Jones was not without other options for relief, as she could raise her argument before the arbitrator or petition the California Superior Court to appoint an arbitrator.

California

- **SEVERABILITY DENIED**

Ramirez v Charter Communications, Inc.
Court of Appeal, Second District, California
2025 WL 586455
February 24, 2025

Angelica Ramirez filed claims for discrimination and retaliation against her former employer, Charter Communications, and Charter moved to compel arbitration under Ramirez's employee Arbitration Agreement. The court denied the motion, holding that multiple provisions of the Agreement were unconscionable and were sufficiently pervasive as to bar severance. The Court of Appeals affirmed. On Charter's petition for certiorari, the California Supreme Court reversed and remanded. The Court agreed with the lower courts that three elements of the arbitration provision were unconscionable: 1) exclusion of multiple employer-side claims; 2) shortened claim-filing times; and 3) cost-shifting provisions that failed to limit attorney fee awards to cases involving "frivolous or bad faith" claims, and required an interim fee award to be paid to a party

who successfully compelled arbitration. The lower courts erred, however, in holding the Agreement's discovery limits unconscionable, and the Court remanded for reconsideration of severability.

The Court of Appeal, Second District, California, on remand, affirmed its previous decision. The Arbitration Agreement was permeated with unconscionability that could not be cured by severance. The Agreement conveyed to Ramirez that 1) her claims against Charter would likely be arbitrated while Charter's claims against her would not; 2) she could be required to initiate arbitration before any FEHA investigation could be conducted; and 3) she bore a high risk in challenging enforceability, because "even if some of her arguments are successful, she is still required to pay Charter's attorneys' fees and costs if the court ultimately compels arbitration." Mere severance would create an incentive for a company to continue to impose one-sided agreements in the hope of deterring employee challenges, knowing that, if faced with such a challenge, the court would "simply modify the agreement to include the bilateral terms the employer should have included in the first place."

- **REPRESENTATIVE PAGA CLAIM NOT ARBITRABLE**

  Rodriguez v Packers Sanitation Services Ltd.
  Court of Appeal, Fourth District, Division 1, California
  2025 WL 615064
  February 26, 2025

  Jose Rodriguez filed a PAGA action, acting "in a Representative Capacity only," against his employer, Packers Sanitation. Packers moved to compel arbitration under Rodriguez's employee arbitration agreement. The agreement designated "binding individual arbitration" as the "sole and exclusive" means to resolve all employment disputes, but exempted NLRA claims, medical and disability claims, and "other claims that are not subject to arbitration under current law." The court interpreted "current law" to mean the governing law at the 2019 time of signing, i.e., before the Supreme Court's 2022 decision in *Viking River Cruises, Inc. v Moriana*. The court denied the motion to compel, holding that, at that time, neither individual nor representative PAGA claims were subject to arbitration, and the parties therefore had not "agreed to arbitrate PAGA claims at all." Packers appealed.

  The Court of Appeal, Fourth District, Division 1, California affirmed. A motion to compel arbitration begins with the determination of whether the complaint includes an arbitrable PAGA claim. Rodriguez's complaint did not assert any individual PAGA claim, and the court below did not err in denying the motion to arbitrate Rodriguez's representative claim. The Court did not reach Packers' argument that any representative PAGA claim "necessarily" includes an individual claim. If the complaint failed to raise a necessary claim, that would constitute a pleading deficiency to be appropriately addressed in a pleading challenge.

Illinois

- **ARBITRATION RIGHTS WAIVED**

  Smith v Jones
  Appellate Court of Illinois, Fifth District
  2025 IL App (5th) 231136
  February 18, 2025

  Misti Tennant contracted with C.A. Jones, Inc. for the construction of a new home. An addendum to the contract later added Tennant's partner, John Smith, as a "buyer." After taking possession of the home, Tennant and Smith sued C.A. Jones and Chris Jones (Defendants) for breach of implied warranty of good workmanship and breach of implied warranty of habitability. Defendants moved to dismiss. Following hearing, the court 1) dismissed claims against Chris Jones based on evidence that he had retired from, and relinquished operational control of, C.A. Jones prior to the contract; 2) dismissed Smith's claims against C.A. Jones because Smith was a non-signatory; and 3) dismissed Tennant's remaining claims against C.A. Jones for failure to allege sufficient

facts to state a cause of action. The court then ordered Tennant, Smith, and C.A. Jones to arbitration under the contract. Plaintiffs appealed.

The Appellate Court of Illinois, Fifth District affirmed in part and reversed in part. The court affirmed dismissal of the claims against Jones, but reversed all remaining dismissals. Smith was a party to the contract by virtue of the addendum, and the lower court could not order him to arbitration under the contract while at the same time dismissing his claims. Tennant had pleaded sufficient facts to state a claim, as her complaint alleged that she had notified C.A. Jones of the alleged defects and that the defects were not remedied, and specified how the work failed to meet state building standards. The court reversed the arbitration order, finding that Defendants had waived their arbitration rights by asking the court to rule on the merits of the underlying case in their motion to dismiss.

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

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