

ARBITRATION DECISIONS OF NOTE

United States Supreme Court

Allied Bruce-Terminix Companies, Inc. v. Dobson, 513 U.S. 265 (1995) (FAA preempts state law hostile to arbitration where transaction is “in commerce”)

American Express v. Italian Colors Restaurant, ___ U.S. ___, 133 S. Ct. 2304 (2013) (waiver of class action in commercial agreement enforceable)

AT&T Mobility LLC v. Concepcion, 563 U.S. 333 (2011) (FAA pre-empts state laws that stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress and, hence, pre-empt a California law holding class action preclusion clause unconscionable and therefore void in a consumer agreement. Result? Class action preclusion clause is enforceable as written. In *dictum*, Court opines that speed and efficiency are desired statutory goals in the FAA. (5-4 decision)

Buckeye Check Cashing, Inc. v. Cardegna, 546 U.S. 440 (2006) (the severability doctrine of *Prima Paint* is part of the federal substantive law of arbitration, and thereby pre-empts contrary state law. Question of whether contract is void under state law is, therefore, a question for the arbitrator and not the state court)

Circuit City Stores, Inc. v. Adams, 532 U.S. 105 (2001) (enforcement of arbitration clause in employment agreement per FAA)

Commonwealth Coatings Corp. v. Continental Casualty Co., 393 U.S. 145 (1968) (“Evident partiality” of an arbitrator sufficient to vacate an arbitration award under the FAA; section 10 requires something more than the mere appearance of bias)

Compucredit Corp. v. Greenwood, ___ U.S. ___, 132 S. Ct. 665 (2012) (claims under Credit Repair Organizations Act are arbitrable)

DIRECTV v. Imburgia, ___ U.S. ___, 136 S. Ct. 463 (2015) (class action waiver preempted by FAA (*Concepcion*) notwithstanding “poison pill” provision in clause stating that the arbitration clause would be unenforceable if the “law of your state” makes the clause unenforceable. That provision could not properly include a California law provision invalidating class action waivers that was later found preempted by the FAA in *Concepcion*).

Doctor’s Associates, Inc. v. Casarotto, 517 U.S. 681 (1996) (state statute limiting arbitration of certain claims preempted by FAA)

First Options of Chicago, Inc. v. Kaplan, 514 U.S. 938 (1995) (arbitrators may decide questions of arbitrability only when parties “clear[ly] and unmistakabl[y]” manifest an intention for the arbitrators to so decide).

Green Tree Financial Corp. v. Bazzle, 539 U.S. 444 (2003) (arbitrators, and not the court, decide whether a “silent” arbitration clause permits an arbitration to proceed on behalf of a class; arbitration clause in question did not clearly preclude class arbitration, and thus FAA did not foreclose class arbitration, leaving issue to state-law contract interpretation).

Hall Street Associates v. Mattel, Inc., 552 U.S. 576 (2008) (parties may not expand statutory grounds for vacating an award under the FAA by private agreement; case *dictum* questioned the continued viability of “manifest disregard of law” as an independent ground to vacate).

Howsam v. Dean Witter Reynolds, Inc., 537 U.S. 79 (2002) (NASD arbitrators, and not the court, have the right to determine whether a claim is time-barred by the six-year limitation for the commencement of an NASD arbitration. Court distinguished between “gateway matter[s]” and “question[s] of arbitrability,” with arbitrators having the power to determine the former, and not the latter).

Mastrobuono v. Shearson Lehman Hutton, Inc., 514 U.S. 52 (1995) (award of punitive damages rendered by NASD panel in New York affirmed under the FAA where NASD rules permitted arbitrators to award such damages, notwithstanding New York state rule prohibiting arbitrators from awarding punitive damages. FAA pre-empts state law purporting to limit arbitral authority)

Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614 (1985) (any doubts about arbitrability of a dispute must be resolved in favor of arbitration even where claims are founded on statutory rights; international anti-trust claims found arbitrable; agreements on arbitral forum are an “indispensable element of international trade” (*citing M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1 (1972))

Moses H. Cone Memorial Hospital v. Mercury Construction Corp., 460 U.S. 1 (1983) (FAA Section 2 creates a body of federal substantive law of arbitrability applicable to arbitration agreements made under the Act)

Nitro-Lift Techs L.L.C. v. Howard, ___ U.S. ___, 133 S. Ct. 500 (2013) (arbitrator, not court, decides enforceability of non-competition agreement where parties agreed to arbitrate disputes)

Oxford Health Plans v. Sutter, ___ U.S. ___, 133 S. Ct. 2064 (2013) (arbitrator’s decision as to parties’ consent to allow classwide arbitration entitled to deference)

PacifiCare Health Systems, Inc. v. Book, 538 U.S. 401 (2003) (RICO claims found arbitrable, even though parties’ arbitration agreement precluded arbitrators from granting punitive or exemplary damages; such damages could be construed as remedial and not punitive, and, therefore, entire dispute goes to the arbitrators for determination)

Perry v. Thomas, 482 U.S. 483 (1987) (Cal. Labor Code provision requiring court determination of violation)

Preston v. Ferrer, 552 U.S. 346 (2008) (Cal. Statute requiring determination of talent agency dispute by court where agreement permitted arbitration; FAA supersedes state laws that preclude the arbitration of certain disputes when parties agree to arbitrate all questions arising under a contract)

Prima Paint Corp. v. Flood & Conklin Mfg., 388 U.S. 395 (1967) (enunciated the doctrine of “separability,” *i.e.*- an arbitration agreement is separate from the underlying contract in which it is imbedded. Thus, an attack on the contract as a whole, such as an allegation that the agreement is void because of fraud in the inducement, must be determined by the arbitrator and not the court)

Rent-a-Center West, Inc. v. Jackson, 561 U.S. 63 (2010) (under the FAA, where an arbitration agreement includes a clause specifically delegating power to the arbitrator to determine the enforceability of the overall agreement, a party claiming that the agreement is unenforceable must attack the delegation clause – not simply the arbitration clause as a whole-- in order to compel consideration by the court, and not an arbitrator).

Stolt Nielsen SA v. Animalfeeds Int’l. Corp., 559 U.S. 662 (2010) (mere “silence” in an arbitration agreement, standing alone, cannot constitute party consent to a class arbitration)

Southland Corp. v. Keating, 465 U.S. 1 (1984) (FAA applies to states; California statute preventing arbitration of franchise claims is preempted by FAA)

Volt Information Sciences, Inc. v. Stanford Junior University, 489 U.S. 468 (1989) (parties’ arbitration agreement expressly called for the application of California rules of arbitration. Thus, the FAA did not preclude California statute permitting a court to stay arbitration pending resolution of related litigation involving third parties not bound by arbitration agreement)

Federal Cases

Advanced Bodycare Solutions, LLC v. Thione Intern., Inc., 524 F.3d 1235 (11th Cir. 2008) (under the FAA, clause that disputes “shall be submitted to non-binding arbitration or mediation” was not a contract to settle a controversy by arbitration)

Aerojet- General Corp v. Am. Arbitration Ass’n, 478 F.2d 248 (9th Cir. 1973) (decision of AAA as to venue of arbitration challenged by party; court would only intervene in case of extreme need; this issue not meet that test)

Applied Indus. Materials Corp. v. Ovalar Makine etc., 492 F.3d 132 (2d Cir. 2007) (arbitrator knew of a potential conflict, but failed to either investigate or disclose intention not to investigate. Court held that the arbitrator could be disqualified for “evident partiality” under the FAA because a reasonable person, considering all of the circumstances, would have to conclude that the arbitrator was partial to one side)

Affymax, Inc. v. Otho-McNeil-Janssen Pharmaceuticals Inc., 660 F.3d 281 (7th Cir. October 3, 2011) (FAA Section 10(a) sets forth the exclusive grounds for vacating an arbitration award; Manifest disregard of law doctrine no longer viable after *Hall Street*; only ground to vacate would be in the very limited circumstance where an award directed parties to violate a rule of positive law designed for the protection of third parties)

Bosack v. Soward, 586 F.3d 1096 (9th Cir. 2009) (*en banc*) (effect on interim and partial final awards of disqualification of one of three arbitrators)

Contec Corp. v. Remote Solutions, 398 F.3d 205 (2d Cir. 2005); *Group v. Oracle Corp.*, 404 F.3d 657 (2d Cir. 2005) (arbitration award against non-signatory made in Egypt found unenforceable under the New York Convention)

Delta Mines Holding Co. v. Coal Properties, Inc., 280 F.3d 815 (8th Cir. 2002) (party-appointed arbitrator failed to disclose his substantial and ongoing relationship with the party that appointed him. Court held that non-neutral arbitrator's partiality did not warrant vacatur of award)

D.R. Horton v. NLRB, 737 F.3d 344 (5th Cir. 2013) (class action waiver in employment arbitration agreement violates provisions of NLRA)

Everett v. Paul Davis Restoration, Inc., 771 F.3d 380 (7th Cir. 2014) (transferee of a business which was subject to a franchise agreement with a third party franchisor is obligated to arbitrate disputes with the franchisor even though she did not signed the franchise agreement because she is equitably estopped to deny the arbitration obligation, having knowingly accepted the benefits of the franchise agreement)

Ferguson v. Corinthian Colleges, Inc., 733 F.3d 928 (9th Cir. 2013) (holding in California Supreme Court cases *Broughton* and *Cruz*, *infra*, questioned)

Fidelity Federal Bank FSB v. Durga Ma, 386 F.3d 1309 (9th Cir. 2005) (effect of choice of law provision including FAA "opt-out" provision;

Hay Group, Inc. v. E.B.S. Acquisition Corp., 360 F.3d 404 (3d Cir. 2004) (arbitrators do not have power under FAA to compel pre-hearing deposition testimony from third parties; conducting a mini-hearing is an alternative)

Hill v. Gateway 2000, Inc., 105 F.3d 1147 (7th Cir. 1997) (consumer brought to arbitration by agreement that came in the box with the goods; only possible rejection would have been to return the goods in 30 days; clause held to be binding on consumer who retained goods)

HIM Portland, LLC v. DeVito Builders, Inc., 317 F.3d 41 (1st Cir. 2003) (clause called for mediation request as condition for arbitration; arbitration could not be compelled without compliance with the condition)

Hoelt v. MVI Group Inc., 343 F.3d 57 (2d Cir. 2003) (error for district court to compel arbitrator's deposition in support of motion to vacate)

In re Sussex, 781 F.3d 1065 (9th Cir. 2015) (arbitrator in complex real estate dispute was at the same time starting a litigation funding company whose business would potentially fund cases similar to that case, raising a potential conflict of interest; held, these circumstances did not meet *Aerojet, supra*, test of an "extreme case")

Jock v. Sterling Jewelers, Inc., 646 F.3d 113 (2d Cir. 2011) (effect of "silent clause" on classwide arbitration)

Johnson v. Gruma Corp., 614 F.3d 1062 (9th Cir. 2010) (prior affiliation of spouse of arbitrator with counsel for party need not be disclosed; Cal. Ethics Standards amended to override this decision)

Kemiron Atlantic, Inc. v. Aguachem Int'l, Inc., 290 F.3d 1287 (11th Cir. 2002) (Same as *HIM Portland*; failure to request mediation, which was condition precedent to arbitration under the arbitration agreement, precluded enforcement of the agreement to arbitrate)

Khazin v. TD Ameritrade Holding Co., 773 F.3d 488 (3d Cir. 2014) (Dodd-Frank contains an "anti-arbitration" provision which is expressly limited to a single category of disputes – those arising under Section 1514A of the statute (18 USC § 1514A(e)(2) which contains the Sarbanes-Oxley cause of action for retaliation against whistleblowers. Thus, all other Dodd-Frank claims may permissibly be arbitrated)

Kilgore v. KeyBank Nat'l Ass'n, 718 F.3d 1052 (9th Cir. 2013) (*en banc*) (FAA preemption of state law rules limiting arbitral power – *see Cruz and Broughton, infra*)

Life Receivables Trust v. Syndicate 102 at Lloyd's of London, 549 F.3d 210 (2d Cir. 2008) (FAA does not permit arbitrators to compel pre-hearing document discovery from third parties)

Luong v. Circuit City Stores, Inc., 368 F.3d 1109 (9th Cir. 2004) (applying doctrine of manifest disregard to an arbitration award, but finding it not established)

Morris v. Ernst & Young, ___ F.3d ___, 2016 WL 4433080 (9th Cir. 2016) (class action waiver in employment arbitration agreement violates provisions of NLRA)

National Football League Mgmt. Council v. National Football League Players Ass'n, 820 F.3d 527 (2d Cir 2016) (evident partiality may be found only when reasonable person would have concluded arbitrator was partial to one party I arbitration).

New Regency Prod., Inc. v. Nippon Herald Films, Inc., 501 F.3d 1101 (9th Cir. 2007) (vacatur of arbitration award for non-disclosure of arbitrator's former employment by a party)

Positive Software Solutions, Inc., v. New Century Mort. Corp., 476 F.3d 278 (5th Cir. 2007) (arbitrator's failure to disclose that he and counsel for one of the parties had been 2 of 34 of-counsel in unrelated litigation at least 7 years earlier was not "evident partiality")

Prestige Ford v. Ford Dealer Computer Services, Inc., 324 F.3d 391 (5th Cir. 2003) (arbitrator's order denying discovery did not deprive a party of the right to offer material evidence)

Reliastar Life Ins. Co. of New York v. EMC National Life Co., 564 F.3d 81 (2d Cir. 2009) (broad arbitration clause conferred on arbitrator the power to award counsel fees as a sanction for party's bad faith conduct notwithstanding clause calling for each party to bear its own fees)

Sakkab v. Luxxotica Retain North America, Inc., 803 F.3d 425 (9th Cir. 2015) (agreeing with holding in *Iskanian v. CLS Transport of Los Angeles, LLC*, 59 Cal. 4th 358 (2014))

Sandvik AB v. Advent Intern. Corp., 220 F.3d 99 (3d Cir. 2000) (whether agent had authority to bind principal to a contract containing an arbitration clause dealt with contract formation, and was, therefore, an issue for the court and not the arbitrators; case involved an international transaction and a Netherlands Arbitration Institute arbitration clause; district court affirmed notwithstanding doctrine that FAA's presumption in favor of arbitration carries "special force" when international commerce is involved)

Shaw Group v. Triplefine Int'l Corp., 322 F.3d 115 (2d Cir. 2003) (parties selection of provider rules calling for the arbitrator to determine issues of arbitrability constitutes the "clear and unmistakable intention" required under *First Options of Chicago*)

Simula, Inc. v. Autoliv, Inc., 175 F.3d 716 (9th Cir. 1999) ("all disputes arising in connection with the agreement" interpreted as a broad-form clause)

Sink v. Aden Enterprises, Inc., 352 F.3d 1197 (9th Cir. 2004) (defaulting party unable to stay arbitration under FAA § 3 cannot seek to compel arbitration under § 4)

Sovak v. Chugai Pharmaceutical Co., 280 F.3d 1266 (9th Cir. 2002) (effort to "opt-out" of FAA must be expressed clearly)

Sphere Drake Ins. Co. Ltd. v. All American Life Ins. Co., 307 F.3d 617 (7th Cir. 2002) (party appointed arbitrator's alleged failure to fully disclose his prior relationship with reinsurer did not require vacatur of award under "evident partiality" under FAA; "evident partiality" does not apply where an agreement entitles parties to select interested arbitrators)

Thomson-CSF, S.A. v. American Arbitration Association, 64 F.3d 773, 780 (2d. Cir. 1995) (arbitration against non-signatory)

Tillman v. Tillman, 825 F.3d 1069 (9th Cir. 2016) (inability of client to pay arbitration fees in malpractice claim against lawyer on account of financial necessity permitted court to lift stay of litigation and permit client to proceed in court)

Tompkins v. 23andMe, Inc., ___ F.3d ___, 2016 WL 4437615 (9th Cir. 2016) (arbitration provision exempting intellectual property disputes from employment contract's arbitration clause not substantively unconscionable)

Tracer Research Corp. v. Nat. Environmental Services Co., 42 F.3d 1292 (9th Cir. 1994) ("arising out of" phrasing of arbitration clause suggests intent that clause be broad form; but some disagreement among cases)

Trustmark Ins. Co. v. John Hancock Life Ins. Co. (USA), 631 F.3d 869 (7th Cir. 2011) (party-appointed arbitrator's failure to make disclosure of subsequent appointment in another case with same party and expert not support vacatur of award)

California Supreme Court

Advanced Micro Devices, Inc. v. Intel Corp., 9 Cal. 4th 362 (1994) (arbitral power derived from parties' agreement)

Armendariz v. Foundation Health Psychcare Services, Inc., 24 Cal. 4th 83 (2000) (due process for imposed arbitration)

Berglund v. Arthroscopic & Laser Surgery Center of San Diego L.P., 44 Cal. 4th 528 (2008) (third party discovery procedure)

Balthazar v. Forever 21, Inc., 62 Cal. 4th 1237 (2016) (finding employment agreement's arbitration provision not unconscionable)

Broughton v. CIGNA HealthPlans of California, 21 Cal. 4th 1066 (1999) (injunction under CLRA cannot be adjudicated in arbitration) (*but see Ferguson v. Corinthian Colleges, Inc.*, 733 F.3d 928, 934-37 (9th Cir. 2013))

Cable Connection, Inc. v. DIRECTV, Inc., 44 Cal. 4th 1334 (2008) (enhanced review of arbitration award by agreement)

Cronus Investments, Inc. v. Concierge Services, 35 Cal. 4th 376 (2005) (application of CCP § 1281.2(c))

Cruz v. PacifiCare, 30 Cal. 4th 303 (2003) (injunction under unfair competition law cannot be adjudicated in arbitration) (*but see Ferguson v. Corinthian Colleges, Inc.*, 733 F.3d 928, 934-37 (9th Cir. 2013))

Discover Bank v. Superior Court, 36 Cal. 4th 148 (2005) (some class action waivers unconscionable in consumer agreements)

Gentry v. Superior Court, 42 Cal. 4th 443 (2007) (some class action waivers unconscionable in employment agreements) (disapproved in *Iskanian*, *infra*)

Gueyffier v. Ann Summers, Ltd., 43 Cal. 4th 1179 (2008) (arbitrator does not exceed power by interpreting contractual provision)

Graham v. Scissor-Tail, Inc., 28 Cal. 3d 807 (1981) (lack of neutrality of arbitrators undermines enforceability of agreement to arbitrate)

Haworth v. Superior Court (Ossakow), 50 Cal. 4th 372 (2010) (disclosure of judicial discipline not required; Cal. Ethics Standards amended to override this decision)

Iskanian v. CLS Transport of Los Angeles, LLC, 59 Cal. 4th 358 (2014) (*Concepcion* compels conclusion that *Gentry* holding is preempted by the FAA; PAGA claims under California Labor Code not preempted))

Little v. Auto Stiegler, Inc., 29 Cal. 4th 1064 (2003) (enforceability of imposed arbitration agreement in employment agreement)

Moncharsh v. Heily & Blase, 3 Cal. 4th 1 (1992) (arbitration awards not reviewable as to legal error)

Pinnacle Museum Tower Assoc. v. Pinnacle Market Development (US), LLC, 55 Cal. 4th 223 (2012) --CCRs created prior to purchase of condo units require subsequent buyers and HOA to arbitrate claims with developer)

Richey v. AutoNation, Inc., 60 Cal. 4th 909 (2015) (arbitrator's application of the "honest belief" defense in the context of a claim that employer violated employee's rights under the California Family Rights Act (CFRA) -- the court declined to rule whether the "honest belief" defense is valid in California because it found ample evidence to support the arbitrator's decision based on the alternate theory that the employee violated employer's policy of not engaging in outside employment while on leave. So even if the arbitrator applied the wrong legal standard and although that mistake might have deprived employee of an unwaivable statutory right that might have supported vacatur, here that mistake was not prejudicial)

Rosenthal v. Great Western Financial Securities Corporation, 14 Cal. 4th 394 (1996) (CAA may be utilized in case involving interstate commerce where provision not in conflict with FAA)

Saint Agnes Medical Center v. PacifiCare of California, 31 Cal. 4th 1187 (2003) (waiver of right to arbitrate)

Sanchez v. Valencia Holding Co., 61 Cal. 4th 899 (2015) (FAA and *Concepcion* do not preempt state law determining certain arbitration clauses to be unconscionable)

Sandquist v. Lebo Automotive, Inc., 1 Cal. 5th 233 (2016) (no universal rule allocating the question of who – court or arbitrator – decides whether parties agreed to arbitrate classwide claims; issue is determined based on intent of parties to agreement as determined by state contract law principles)

Schatz v. Allen Matkins Leck Gamble & Mallory, 45 Cal. 4th 557 (2009) (*de novo* “trial” following non-binding attorney fee arbitration may be by arbitration based on predispute agreement)

Sonic-Calabasas A, Inc. v. Moreno, 57 Cal. 4th 1109 (2013) (California rule requiring “Berman” hearings to be adjudicated by Labor Commissioner may or may not be preempted by FAA – case-by-case analysis required)

Vandenberg v. Superior Court (Centennial Insurance Co.), 21 Cal. 4th 815 (1999) (non-mutual collateral estoppel)

Wagner Construction Co. v. Pacific Mechanical Corp., 41 Cal. 4th 19 (2007) (waiver of right to arbitrate)

California Courts of Appeal

Ajida Technologies, Inc. v. Roos Instruments, Inc., 87 Cal. App. 4th 534 (2001) (arbitrators, in determining dispute that involves continuing business relations may include a provision for the resolution of future disputes)

A.M. Classic Construction, Inc. v. Tri-Build Dev’t Co., 70 Cal. App. 4th 1470 (1999) (remand to arbitrator to determine attorneys’ fees inadvertently omitted from final award)

Asburn v. AIG Financial Advisors, Inc., 234 Cal. App. 4th 79 (2015) (party resisting a motion to compel arbitration requested an evidentiary hearing of the facts which were sharply in dispute -- an evidentiary hearing should have been conducted)

Azteca Constr. Co. v. ADR Assoc., Inc., 121 Cal. App. 4th 1156 (2004) (DQ of arbitrator permitted without cause)

Baar v. Tigerman, 140 Cal. App. 3d 979 (1983) (arbitrator not protected by immunity where award not completed in permitted time frame)

Brown v. Ralphs Grocery Co. 197 Cal. App. 4th 489 (2011) (*Concepcion*’s ban on class action waivers does not require preemption of contractual prohibition on PAGA claims under the Cal. Labor Code)

Bolter v. Superior Court, 87 Cal. App. 4th 900 (2001) (location of arbitration hearing may be basis for finding of unconscionability)

Bonshire v. Thompson, 52 Cal. App. 4th 803 (1997) (arbitrator must comply with parties' agreement not to allow parol evidence)

Britz, Inc. v. Alfa-Laval Food & Dairy Co., 34 Cal. App. 4th 1085 (1995) (arbitrator's inherent power to award interest)

Burlage v. Sup.Ct. (Spencer), 178 Cal. App. 4th 524 (2009) (exclusion of evidence on motion *in limine* exceeded arbitrator's power)

Casden Park La Brea Retail LLC v. Ross Dress for Less, 162 Cal. App. 4th 468 (2008) (no DQ of arbitrator on account of political contribution)

Century City Medical Plaza v. Sperling, Isaacs & Eisenberg, 86 Cal. App. 4th 865 (2001) (arbitrator may correct award to add attorneys' fees)

Cooper v. Lavelly & Singer, 230 Cal. App. 4th 1 (2014) (arbitrator may not correct final award to change decision on issue previously addressed but may do so in certain circumstances where issue was inadvertently omitted citing *Century City Medical Plaza*)

Comerica Bank v. Howsam, 208 Cal. App. 4th 790 (2012) (alter ego claims against non-signatory)

David v. Abergel, 46 Cal. App. 4th 1281 (1996) (arbitrator's power to sanction)

Elliott & Ten Eyck Partnership v. City of Long Beach, 57 Cal. App. 4th 495 (1997) (court process may not be characterized as an arbitration)

Garrido v. Air Liquide Industrial U.S. LP, 241 Cal. App. 4th 833 (2015) (trucker transporting employer's liquid natural gas in interstate commerce is a "transportation worker" under FAA § 1, and the FAA is therefore inapplicable to the parties' ADR agreement)

Gray v. Chiu, 212 Cal. App. 4th 1355 (2013) (failure to disclose status of lawyer for a party as a panelist on provider panel requires *vacatur* of award)

Greenspan v. LADT, LLC, 185 Cal. App. 4th 1413 (2010); 191 Cal. App. 4th 486 (2011) (court will defer to arbitrator's interpretation of applicable institutional rules)

Hall, Goodhue, etc. v. Marconi Conf. Center Bd., 41 Cal. App. 4th 1551 (1995) (non-signatory alter ego)

Hayden v. Robertson Stephens, Inc., 150 Cal. App. 4th 360 (2007) (no DQ for non-disclosure of prior arbitration with affiliated corporation)

Hightower v. Superior Court, 86 Cal. App. 4th 1415 (2001) (partial final award may be issued by arbitrator in his discretion)

Hoso Foods, Inc. v. Columbus Club, Inc. 190 Cal. App. 4th 881 (2010) (right of party in interest to be present at arbitration)

Hotels Nevada v. L.A. Pacific Center, Inc., 203 Cal. App. 4th 336 (2012) (alter ego claims against non-signatory)

IATSE Local 16 v. Laughon, 118 Cal. App. 4th 1380 (2004) (hearing day disclosures inadequate)

Luce Forward Hamilton & Scripps, LLP v. Koch, 162 Cal. App. 4th 720 (2008) (no DQ where arbitrator associated in inn of court with counsel for a party)

Malone v. Superior Court, 226 Cal. App. 4th 1551 (2014) (delegation clause in employment contract, giving arbitrator authority to determine defense of unconscionability, is enforceable – consideration of arbitrator’s self-interest in determining arbitrability is preempted by FAA)

Marenco v. DirectTV LLC, 233 Cal. App. 4th 1409 (2015) DirecTV acquired 180 Connect Inc. and retained its employees who had signed an arbitration clause for all employment-related claims. Doctrine of equitable estoppel requires employee to arbitrate his claims against non-signatory DirecTV where continuance of employment by DirecTV of predecessor’s employees constituted an implied acceptance by employees of DirecTV’s decision to maintain all existing employment terms)

Marsch v. Williams, 23 Cal. App. 4th 238 (1994) (arbitrator has no power to order appointment of receiver)

Mt. Holyoke Homes, L.P. v. Jeffer Mangels Butler & Mitchell LLP, 219 Cal. App. 4th 1299 (2013) (arbitrator’s failure to disclose listing of one of lawyers for a party in arbitration as a reference requires vacatur of award)

Oakland-Alameda Co. Coliseum Auth. v. CC Partners, 101 Cal. App. 4th 635 (2002) (non-signatory alter ego)

O’Flaherty v. Belgum, 115 Cal. App. 4th 1044 (2004) (no DQ for non-disclosed “lifestyle” circumstances)

Outdoor Services, Inc. v. Pabagold, Inc., 185 Cal. App. 3d 676 (1986) (arbitrator has no power to order attachment)

Ovitz v. Schulman, 133 Cal. App. 4th 830 (2005) (failure to make “continuing disclosure” requires vacatur of award)

Parker v. McCaw, 125 Cal. App. 4th 1494 (2005) (award vacated for denial of party’s right to tripartite arbitration process)

Patterson v. ITT Financial Corp., 14 Cal. App. 4th 1659 (1993) (unconscionable arbitration provision)

Pinela v. Neiman Marcus Group, Inc., 238 Cal. App. 4th 227 (2015) (attorney fee shifting provision in arbitration clause substantively unconscionable as a burden on employee's exercise of statutory rights)

Rebmann v. Rohde, 196 Cal. App. 4th 1283 (2011) (no vacatur where arbitrator fails to disclose his Jewish religion where parties are German nationals)

Rice v. Downs, 248 Cal. App. 4th 175 (2016) (arbitration clause stating claims "arising out of, under or in connection with" were arbitrable was a narrow clause that precluded assertion of tort claims)

Rifkind & Sterling, Inc. v. Rifkind, 28 Cal. App. 4th 1282 (1994) (no due process application to award of punitive damages)

Roehl v. Ritchie, 147 Cal. App. 4th 338 (2007) (partial final award may not be changed in later phase of arbitration)

Sabia v. Orange County Metro Realty, Inc. (2014), 227 Cal. App. 4th 11 (absence of mutuality of remedial choices in arbitration clause makes clause unconscionable and hence unenforceable; dissent reviews California contract law to effect that strict mutuality not required)

Saika v. Gold, 49 Cal. App. 4th 1074 (1996) (unconscionable arbitration clause)

Schlessinger v. Rosenfeld, Meyer & Susman, 40 Cal. App. 4th 1096 (1995) (dispositive motion standard)

Severtsen v. Williams Construction Co., 173 Cal. App. 3d 86 (1985) (scope of permissible correction of arbitration award)

Shahanian v. Cedars-Sinai Med. Center, 194 Cal. App. 4th 987 (2011) (no due process application to award of punitive damages)

SingerLewak LLP v. Grantman, 241 Cal. App. 4th 610 (2015) (enforceability of non-compete provision in parties' agreement for the arbitrator to determine)

Tiri v. Lucky Chances, Inc., 226 Cal. App. 4th 231 (2014) (delegation of arbitrability to arbitrator not unconscionable under FAA preemption analysis)

Titan/Valve Equities Group, Inc. v. Superior Court, 29 Cal. App. 4th 482 (1994) (court may not intervene in pending arbitration)

Tutti Mangia Italian Grill v. American Textile Maint. Co., 197 Cal. App. 4th 733 (2011)
(application of rule in *First Options v. Kaplan*)

Yuen v. Superior Court, 121 Cal. App. 4th 1133 (2004) (consolidation of arbitrations
pending before AAA)

Treatises

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Alternative Dispute Resolution* (The Rutter Group 2017)

I. Macneil, R. Speidel, T. Stipanowich & G. Shell, *Federal Arbitration Law* (1995)