Proskauer

California Employment Law Notes

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"Nearly Unreadable" Arbitration Agreement May Be Unconscionable

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

When applying to work at Empire Nissan, Evangelina Yanez Fuentes was given an employment application packet that included an arbitration agreement that was written in a very small font with text that was "so blurry and broken up that it is nearly unreadable." When Fuentes went on medical leave for cancer treatment two and a half years after her employment began, her employment was terminated, and then she sued for wrongful discharge and related claims. In response, the employer filed a motion to compel arbitration, which the trial court denied on the ground that the agreement was procedurally and substantively unconscionable. Empire Nissan appealed the denial of its motion to compel arbitration, and the court of appeal reversed the trial court and directed it to grant the motion to compel arbitration, holding that arguments about illegibility go exclusively to procedural unconscionability and do not implicate substantive unconscionability. The Supreme Court in turn reversed the appellate court, holding that the lower court erred by relying on a presumption in favor of arbitration to conclude that the agreement was not substantively unconscionable while declining to rule on whether the agreement was procedurally unconscionable. The appellate court also erred by directing the trial court to grant the employer's motion to compel arbitration rather than permitting the trial court to consider on remand Fuentes's argument that the agreement was unenforceable. (Note: Chief Justice Guerrero's spirited dissent is well worth reading!)

Employer's Roll Out Of Arbitration Agreement During Class Action Litigation Was Ineffective

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

More than 22 months after the commencement of a putative class action alleging various wage and hour law violations, TEK rolled out a new, mandatory arbitration agreement that automatically applied to putative class members unless they quit their jobs or affirmatively opted out of the Agreement. The district court declined to enforce the agreement after determining that TEK had subverted FRCP 23 by substituting a presumption of opt-out of litigation/opt into the arbitration agreement rather than the federal rule's presumption of opt-into litigation/opt out of arbitration. The district court also concluded that TEK's roll out communications threatened the fairness of the litigation by characterizing class actions as "wasteful," "inefficient," involving "exorbitant fees," and tending "to enrich only attorneys," among other things. The Ninth Circuit affirmed the district court's order denying TEK's motion to compel arbitration on similar grounds and also held that notwithstanding the agreement's delegation provision requiring a determination of arbitrability by the arbitrator, the district court could determine arbitrability if there was a challenge to the entire agreement. *Compare Sandler v. Modernizing Medicine, Inc.*, 2026 WL 773099 (9th Cir. 2026) (presence of a severability clause in an arbitration agreement does not render delegation clause unenforceable; district court erred by relying upon state law for contrary result).

Unsuccessful PAGA Claimant Was Properly Denied Standing in Civil Action

Sorokunov v. NetApp, Inc., 2026 WL 590943 (Cal. Ct. App. 2026)

Alexander Sorokunov sued NetApp for various Labor Code violations, including PAGA. NetApp filed a petition to compel arbitration of Sorokunov's individual claims, which the trial court granted. After the arbitrator entered an award in favor of NetApp, the trial court confirmed the award and granted NetApp's motion for judgment on the pleadings on the ground that Sorokunov lacked standing as an aggrieved employee based on issue preclusion. The Court of Appeal affirmed. *See also Ayala-Ventura v. Superior Court*, 2026 WL 752428 (Cal. Ct. App. 2026) (trial court properly rejected unconscionability arguments in compelling individual claims to arbitration, dismissing putative class claims, and distinguishing/failing to follow *Cook v. University of S. Cal.*, 102 Cal. App. 5th 312 (2024)); *Ehrenkranz v. San Francisco Zen Ctr.*, 2026 WL 576079 (Cal. Ct. App. 2026) (individual defendants were not plaintiff's employer and thus were not required to post an undertaking pursuant to Labor Code § 98.2(b)).

Resident Property Manager Was Properly Compelled to Vacate Premises Upon Termination of Employment

De Paolo v. Rosales, 118 Cal. App. 5th Supp. 1 (2026)

John R. De Paolo is the owner and trustee of the real property for which Jenny Rosales was the property manager/tenant. After De Paolo terminated Rosales's employment, he served her with a 30-day notice to quit the premises. The trial court found that Rosales did not have an independent right of possession of the unit that was separate from the "Resident Manager's Agreement," and her right to continued occupancy was dependent upon the continuation of her employment as resident manager. The court further determined that Rosales had not met her burden to prove that the termination of her employment was unlawful or retaliatory and that the Tenant Protection Act of 2019 (Cal. Civ. Code § 1946.2, *et seq.*) was inapplicable because the occupancy of the premises was not lawful after Rosales's employment was terminated. The Appellate Division of the Superior Court affirmed the judgment in favor of De Paolo.

Employer That Violates Consumer Reporting Act Is Liable For at Least $10,000 per Violation

Parsonage v. Wal-Mart Assocs., Inc., 118 Cal. App. 5th 399 (2026)

Before beginning employment with Wal-Mart, Tina Parsonage executed a "Background Report Disclosure" form that authorized Wal-Mart to conduct a background check on her. Three years later, Parsonage sued Wal-Mart for violating the California Investigative Consumer Reporting Agencies Act (ICRAA, Cal. Civ. Code § 1786, *et seq.*) by failing to identify the name, address, and telephone number of the particular agency that conducted the investigation and by failing to provide a checkbox to request a copy of the report and also by failing to supply the required certification of compliance to the furnishing agency before procuring the report. Pursuant to the statute, Parsonage sought recovery of damages in the amount of $10,000 for each violation of the ICRAA. Wal-Mart successfully moved for summary judgment on the ground that Parsonage had no standing to sue because she suffered no injury or harm from the "technical violations" of the statute and had received the job for which she had applied. The Court of Appeal reversed, holding that plaintiffs need not show any injury beyond a violation of their rights in order to have standing under the ICRAA. In reaching that conclusion, the Court declined to follow cases interpreting the federal Fair Credit Reporting Act, which does require a showing of injury to establish standing.

Cambodian Villagers Could Proceed With Human Trafficking Lawsuit

***Ratha v. Rubicon Resources, LLC*, 168 F.4th 541 (9th Cir. 2026) (*en banc*)**

Plaintiffs are villagers from rural Cambodia who allegedly were forced to work at seafood factories in Thailand and who alleged that Rubicon marketed in the United States seafood products from those factories, thus participating in a venture that benefited from human trafficking. The district court had previously granted summary judgment to Rubicon on the ground that it had only "attempted to benefit" from plaintiffs' allegedly forced labor. However, Congress subsequently passed the Abolish Trafficking Reauthorization Act of 2022 (ATRA), which made defendants civilly liable when they attempt to benefit, but do not succeed in benefitting, from human trafficking. The district court then denied plaintiffs' motion for relief from the summary judgment pursuant to FRCP 60(b)(6) on the ground that Congress did not intend for ATRA attempt liability to apply retroactively. In this *en banc* decision, the Ninth Circuit reversed the district court for having abused its discretion in determining ATRA did not have retroactive effect.

- **Anthony J. Oncidi**
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