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Employer Waived Arbitration By Litigating Before Seeking To Compel

California Employment Law on **September 22, 2026**

Mitchell v. Lilac Solutions, Inc., 2026 WL 2443955 (Cal. Ct. App. 2026)

Employees sued for wrongful termination, discrimination, and sexual harassment. The employer answered, pursued extensive discovery over the course of three months, filed cross-claims, and otherwise advanced the court proceedings before moving to compel arbitration shortly after the employees filed an anti-SLAPP motion. Applying the California Supreme Court decision in *Quach v. California Commerce Club, Inc.* 16 Cal. 5th 562 (2024), the Court of Appeal upheld the trial court's finding — by clear and convincing evidence — that the employer had waived its arbitration rights through conduct showing an intent to litigate in court. The employer argued that the EFAA made an earlier arbitration motion impractical because the complaint included sexual harassment allegations that were the focus of the discovery that defendants had pursued. The Court of Appeal was unpersuaded: the employer could have promptly sought a stay or requested limited discovery focused on arbitrability rather than broadly litigating the merits. Merely listing arbitration as an affirmative defense did not preserve that right.

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