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Employee Did Not Waive Litigation Right By Arbitrating Before "Discovering" She Had Been Sexually Harassed

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

Ding v. Structure Therapeutics, Inc., 2026 WL 2420555 (9th Cir. 2026)

After her termination, former CFO Dr. Ding Ding filed an arbitration demand, alleging discrimination and harassment based on national origin and her status as a domestic-violence victim. Discovery revealed evidence suggesting that the alleged mistreatment was motivated by her sex (based on a document identifying a male as the "ideal phenotype" for the role for which Dr. Ding was hired). After 17 months of arbitrating her case, Dr. Ding withdrew from arbitration and filed a complaint in federal court, arguing the arbitration agreement under which she had been proceeding was unenforceable pursuant to the Ending Force Arbitration Act (EFAA). The Ninth Circuit affirmed the district court's order finding under the EFAA that Dr. Ding could proceed in court because she did not know she had a plausible sex-based harassment claim when she initiated the arbitration. In reaching this conclusion, the Court held that a sex-based hostile-environment claim under the California Fair Employment and Housing Act (FEHA) qualifies as a "sexual harassment dispute" under the EFAA despite not being "sexual in nature." Once such a claim is plausibly alleged as it was here, the employee may invalidate a predispute arbitration agreement as to the entire case, even after initially arbitrating other claims.

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