

AUTHOR*



Hon. Michelle R.
Rosenblatt (Ret.)

ADR UPDATE

EMPLOYER'S ACTS INCONSISTENT WITH AN INTENT TO ARBITRATE

Campbell v. Sunshine Behavioral Health, LLC, 105 Cal. App. 5th 419 (2024)

Britnee Campbell, a former employee of Sunshine Behavioral Health, filed wage and hour claims as a putative class action. Sunshine answered and included as an affirmative defense that one or more of the employees had signed an arbitration agreement.

After Campbell served discovery, Sunshine proposed mediation, and the parties entered into a stipulation to stay discovery and mediate the action. On the same day the court signed the stipulation and order to attend mediation, Sunshine told Campbell it would not mediate because it had located Campbell's arbitration agreement. However, Sunshine did not inform the court that it was not going to attend mediation. Six months later, Sunshine filed a motion to compel arbitration.

In affirming the denial of the motion to compel arbitration, the court of appeal discussed the California Supreme Court's recent decision in *Quach v. California Commerce Club, Inc.*,¹ abolishing the arbitration-specific requirement that the plaintiff must show prejudice, overruling *St. Agnes Medical Center v. Pacific Care*.²

In keeping with the U.S. Supreme Court's findings in *Morgan v. Sundance, Inc.*,³ the court noted that an arbitration agreement is on equal footing with other contracts, and as with other contracts, if a party acts inconsistently with an intent to arbitrate, the result may be a finding of waiver.

NOTE: This case is also summarized in the discussion of wage and hour cases, on page 14.

ARBITRAL FINDINGS PRECLUDE STANDING IN STAYED PAGA ACTION

Rodriguez v. Lawrence Equipment, Inc., 2024 Cal. App. LEXIS 714 (Oct. 8, 2024)

Plaintiff Julian Rodriguez's individual labor code violations were compelled to arbitration while his Private Attorneys General Act (PAGA)⁴ action remained stayed in court. The arbitrator found that Rodriguez failed to prove that a violation of the California Labor Code had occurred.

The court of appeal held that if an arbitrator finds that the employee is not a person against whom one or more of the alleged labor code violations were committed, and this determination is confirmed by the court, then the employee lacks standing to relitigate the non-individual claims in the PAGA action. This follows the 2023 decision in *Rocha v. U-Haul of California*⁵ and rejects the holding in *Graviiloglou v. Prime Healthcare Management*,⁶ which was decided the previous year.

NOTE: This case is also summarized in the discussion of wage and hour cases, on page 14.

LITIGATION ALERT

There are several cases to watch that take on the issue of whether the Federal Arbitration Act⁷ preempts California Code of Civil Procedure section 1291.97, which prescribes the procedures for paying arbitration fees and provides for forfeiture of the right to arbitrate when fees are not paid or are paid late.

The California Supreme Court granted review in:

- *Hohenshelt v. Superior Court* S284498/B327524; formerly reported at 99 Cal. App. 5th 1319 (2024);
- *Hernandez v. Sohnen Enterprises*, formerly reported at 102 Cal. App. 5th 222 (2024)—further action deferred pending the decision in *Hohenshelt*; and
- *Keeton v. Tesla*, formerly reported at 103 Cal. App. 5th 26 (2024)—further action also deferred pending the decision in *Hohenshelt*.

ENDNOTES

- * Hon. Michelle R. Rosenblatt (Ret.) has been a mediator and arbitrator on a wide range of civil disputes with ADR Services, Inc. since 2016, when she retired from the bench after 23 years of judicial service. She taught judicial education throughout her career on the bench and is a frequent participant in continuing education programs. She also served for five years as editor of the California Judges Association magazine, *The Bench*.
1. *Quach v. California Com. Club, Inc.*, 16 Cal. 5th 562 (2024).
 2. *St. Agnes Med. Ctr. v. Pacific Care*, 31 Cal. 4th 1187 (2003).
 3. *Morgan v. Sundance, Inc.* 596 U.S. 411 (2022).
 4. CAL. LAB. CODE §§ 2698-2699.5.
 5. *Rocha v. U-Haul of California*, 88 Cal. App. 5th 65 at 77 (2023).
 6. *Graviiloglou v. Prime Healthcare Mgmt.*, 83 Cal. App. 5th 595 (2022).
 7. 9 U.S.C. §§ 1-16.