Good News For Employers: In the Aftermath of the SCOTUS Class Action Waiver Case, A Los Angeles County Superior Court Dismisses Class Claims and Orders Claims Brought Individually in Arbitration

by Diane Marie O'Malley

On June 1, 2018, the Los Angeles County Superior Court granted a Defendant's Motion to Compel Individual Arbitrations of the two Plaintiffs' wage claims, dismissed the class claims and stayed the action with regard to the remaining Private Attorney Generals Act (PAGA) claim. The Court, in *Navarrete v. Louis Vuitton*, Case No. BC667893, found that the class action waivers in the Defendant employer's Arbitration Agreements were enforceable despite Plaintiffs asserting that they were not told they were signing Arbitration Agreements. The case is a bit of a road map for employers who are drafting arbitration agreements with class action waivers.

In March 2018, Defendant Louis Vuitton brought a Motion to Compel Arbitration in two class actions that had been filed against it in 2017 alleging claims for Failure to Pay Wages, Failure to Provide Meal Breaks, Failure to Permit Rest Breaks, Failure to Provide Accurate Itemized Wage Statements, Failure to Pay All Wages Due Within the Required Time and Upon Separation of Employment, Violation of Business and Professions Code Section 17200, *et seq*. and Labor Code Section 2698, *et seq*.

The Motion was based on a 2012 roll-out of an Arbitration Agreement along with a new employee manual for all Louis Vuitton employees. According to Judge Carolyn B. Kuhl's decision, two Human Resources representatives made presentations to the workforce regarding the manual and the new Arbitration Agreement. The two named-Plaintiffs attended one of those sessions. One of the HR representatives was bi-lingual and explained in Spanish "the nature of the Arbitration Agreement, including that final and binding arbitration would be the exclusive remedy for any disputes with the company and that this meant the disputes would not be decided by a jury trial in a court. Ms. Picazzo also explained in Spanish that the employees were waiving any right to arbitrate claims as a class, collectively or on a representative basis." (Op. at 2)

The representatives presented both Plaintiffs with the Arbitration Agreements, which were written in English, but they offered to have the Agreements read to them in Spanish. The Arbitration Agreements provided that employees had thirty (30) days to opt out of the Arbitration Agreement. Neither Plaintiff opted out.

Plaintiffs opposed the Motion to Compel stating that they never heard of the Arbitration Agreement. The Court, nonetheless relied upon the Defendant's "consistent documentary evidence" and found that the Plaintiffs had received, and were bound by, the Arbitration Agreements.

Although the court does not doubt the sincerity of the testimony of the Plaintiffs that they do not recall hearing about the Arbitration Agreement or receiving a copy, the testimony offered by the Defendants is specific and is supported by consistent documentary evidence, and the court credits that testimony. The court notes that the declarations of individual line employees offered by Defendant with the Reply Brief do not assert that the employees received a copy of the Arbitration Agreement. However, these employees' testimony is consistent with the Defendants' account of the October 2012 meeting introducing the new employee manual. The court concludes that, like the named Plaintiffs, the line employees whose testimony is offered by Defendant honestly did not recall the Arbitration Agreement. Their lack of recollection does not suggest that Ms. Ramirez and Ms. Picazzo are testifying falsely with respect to the procedures they followed in presenting the Arbitration Agreement. The court finds that there was no fraud in the inducement and that Plaintiffs entered into the Arbitration Agreement with their employer. (Op. at 4)

Finally, the court ruled that the Arbitration Agreement was not substantively unconscionable even though the JAMS arbitration procedures referenced in the Arbitration Agreement were not provided to the employees. (Op. at 5) Importantly, without citing the SCOTUS' *Epic Systems Corp. v. Lewis,* No. 16-285; *Ernst & Young LLP v. Morris*, No. 16-300; and *NLRB v. Murphy Oil USA, Inc*., No. 16-307 decisions, the Court noted "[t]he waiver of the right to seek relief by way of a class action is enforceable." (Op. at 6)

Thus, the two Plaintiffs must arbitrate their individual claims and then litigate their PAGA claim. The Court apparently gave them nearly a year to do so as the next court date – a status conference regarding the arbitration – is scheduled for March 29, 2019.

The Court's decision is important for employers on at least three grounds. First, it had no problem following the SCOTUS *Epic Systems* decision that class action waivers are not unconscionable; second, it provides employers some instruction on how to document the roll out of an arbitration program. The Court relied heavily on the "consistent documentary evidence" that the Defendant provided to the Court to demonstrate notice to employees of the Arbitration Agreement. The Court specifically referenced sign-up sheets from the employee meetings where the Arbitration Agreement was discussed (Op. at 1) and the PowerPoint presentation for the new employee manual that discussed the Arbitration Agreement (Op. at 2). The Court also had before it the acknowledgment of receipt forms for the 2012 employee manual that both Plaintiffs signed. Finally, with its ruling, the Court confirms that Arbitration Agreements can be rolled out to current employees.

The decision is at the trial court level, but, hopefully is a bellwether of things to come.

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