

Calif. Panel Says Unsigned Arbitration Pact Is Powerless

By Irene Spezzamonte

Law360 (April 20, 2023, 4:31 PM EDT) -- A home care company can't send a former employee's wage and hour suit into arbitration, a California appellate panel ruled, saying the company failed to sign an arbitration pact and therefore there isn't an agreement between the parties.



The panel said a managing director's missing signature on an arbitration agreement was fatal to Cambrian's attempt to compel arbitration of a former employee's wage and hour claims. (iStock.com/gesrey)

In an unpublished opinion Wednesday, a three-judge panel unanimously **affirmed** a trial court's 2021 decision denying Cambrian Homecare's bid to arbitrate Jennifer Playu Alberto's suit, saying that a managing director's signature was missing.

"The arbitration agreement contains two signature blocks, one for 'employee name printed' and one for 'Paul J. Quiroz' as 'managing director.' Alberto signed the arbitration agreement in the signature block allotted for her," the panel said. "But the signature block for Mr. Quiroz, as 'managing director,' was left blank."

Alberto sued in October 2020, and in 2021 added claims under the Private Attorneys General Act. Cambrian claimed the arbitration agreement it presented to her when she started working Sept. 17, 2019, would have forced all her claims in front of an arbitrator, but a trial court denied that bid in 2021.

The panel said Wednesday the lower court reached the correct conclusion, saying that Cambrian's missing signature was fatal.

Even if there was a tangible arbitration agreement between Cambrian and Alberto, the pact was still unenforceable for several reasons, as the trial court correctly determined, the panel said.

The panel turned down Cambrian's argument that a confidentiality agreement was separate from the arbitration

pact, saying that the two "were both separate aspects of a single primary transaction — Alberto's hiring."

"They both governed, ultimately, the same issue — how to resolve disputes arising between Alberto and Cambrian arising from Alberto's employment," the panel said. "Treating them separately fails to account for the overall dispute resolution process the parties agreed upon."

With that in mind, the panel said that the confidentiality agreement was unconscionable because it waived Cambrian's need to obtain a bond before seeking an injunction and its requirement to show irreparable harm, and it required Alberto to agree to an immediate injunction.

Those requirements "exceed the legitimate 'margin of safety' for the employer and are not mutual," the panel said.

The confidentiality agreement's provision preventing Alberto from discussing her wages is also unconscionable because it violated the Labor Code, the panel said.

The panel also said the arbitration agreement's clause waiving Alberto's rights to bring any representative suit also clashes with California law under the California Supreme Court's 2014 decision in [Iskanian v. CLS Transportation Los Angeles LLC](#) .

In *Iskanian*, the California **justices ruled** that arbitration agreements couldn't include PAGA waivers because PAGA plaintiffs act on behalf of the state, which is not a party to their arbitration pacts.

The panel said Wednesday that although the trial court could not yet rely on the 2022 U.S. Supreme Court decision in [Viking River Cruises Inc. v. Moriana](#), which found that **plaintiffs can't keep** PAGA representative claims in court if their individual ones go into arbitration, the outcome would have not changed.

"Both before and after Viking River Cruises, blanket waivers of PAGA claims are unconscionable," the panel said.

David D. Bibiyan of Bibiyan Law Group PC, which represents Alberto, said Thursday the panel's decision underscored that arbitration agreements have limits.

"The recent ruling from the Court of Appeal merely reinforces the notion that an employer's ability to force arbitration on employees as the exclusive means of dispute resolution is not absolute; it has limits," Bibiyan said. "We agree with the trial court and the Court of Appeal that, here, those limits were exceeded."

Representatives of Cambrian did not immediately respond to requests for comment Thursday.

Justice Audrey B. Collins and acting Presiding Justice Brian S. Currey sat on the panel. Judge Nicholas F. Daum also sat on the panel by designation.

Alberto is represented by David D. Bibiyan and Diego Aviles of Bibiyan Law Group PC.

Cambrian is represented by Amber S. Healy, Neil M. Katsuyama and Lauren D. Fierro of Atkinson Andelson Loya Ruud & Romo PLC.

The case is *Alberto v. Cambrian Homecare*, case number B314192, in the Court of Appeal of the State Of California, Second Appellate District.

--Editing by Nick Petruncio.