

Class Actions: Arbitration Agreements and Class Action Waivers (Federal, CA)

A Practical Guidance® Practice Note by Alejandro (Alex) Moreno and J. Cameron Gates, Sheppard, Mullin, Richter & Hampton LLP



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This practice note, authored by Alejandro (Alex) Moreno and J. Cameron Gates at Sheppard, Mullin, Richter & Hampton LLP, discusses the enforceability of class action waivers in arbitration agreements under both federal and California law and offers practice tips for attorneys. A class action waiver is a powerful tool for a class action defense attorney, as it can turn a massive class suit with millions of potential class members into an individual arbitration with as low as a few dollars at stake.

With cites to controlling law, the practice note looks at such issues as what types of contracts are subject to class action waivers, the unconscionability standard, the procedure for enforcing class action waivers under both federal and California law, litigation strategies, PAGA claims, as well as practical tips for defense attorneys on how to draft enforceable class action waivers and guidance for plaintiff's counsel on how to assess when a class action waiver is in play.

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Alejandro ("Alex") Moreno is a partner in the Business Trial Practice Group and the Office Managing Partner of the Firm's San Diego office. He is the firm's 2021 Leadership Council on Legal Diversity (LCLD) Fellow.

Alex practices general business and commercial litigation in state and federal courts. He is also experienced in private dispute resolution and arbitration, including FINRA arbitration, and has succeeded on behalf of his clients after full arbitration and brokered favorable pre-arbitration settlements. Alex also handles appeals in the California Court of Appeal and the Ninth Circuit.

Alex represents clients in the banking and finance, mortgage, cannabis, hospitality, technology and telecommunications, restaurant and franchise, energy and extraction, and healthcare industries. He defends consumer class actions, securities litigation and shareholder derivative suits, cross-border litigation, and litigation for high-net-worth individuals and companies with a need for Spanish speaking counsel. Alex has prevailed as named counsel in complex securities fraud class actions under Section 10(b) of the Exchange Act of 1934 and has defended derivative claims involving California, Nevada, and Delaware corporations. He is also experienced in the law of receivership and has managed the legal affairs of businesses placed into receivership.

Start-up companies turn to Alex to formalize their corporate governance, set up effective employee equity compensation plans, and analyze potential conflicts of interest to help them ramp up to Series A funding.

Alex lived for two decades in Mexico and Spain and applies his familiarity with Latin American culture to successfully solve legal disputes for Latin American clients. For example, he has successfully resolved labor disputes involving primarily Spanish speaking workforces. Alex has also led and organized fact gathering investigations for U.S. companies with factories in Latin America.

A prolific writer, Alex regularly contributes to various legal blogs discussing developments in the law affecting public companies, issuers of securities, banking and finance regulations, the enforceability of arbitration agreements and class action waivers, and companies with business in Latin America.

As part of his pro bono work, Alex has successfully resolved guardianship and immigration matters. He also regularly advises charities and public interest groups on regulatory and dispute resolution matters.

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