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An Arbitration With Class

If an arbitration agreement waives all rights to a civil class action lawsuit, may the plaintiff submit those class claims in arbitration? The answer is yes, according to *Garner v. Inter-State Oil Company* (2020) 52 Cal.App.5th 619. Garner sued Inter-State Oil, alleging employment claims and seeking certification of a class action. The trial court granted Inter-State Oil's petition to compel arbitration of individual claims only, effectively denying Garner's ability to pursue class action claims. Garner appealed.

The arbitration agreement provides: "To resolve employment disputes . . . [Garner] and Inter-State Oil Co. agree that any and all claims . . . that could be filed in a court of law, *including* but not limited to . . . class action shall be submitted to final and binding arbitration and not to any other forum." (Italics added.) The agreement further stated in bold lettering just above the signature lines: "**This Arbitration Agreement Is A Waiver Of All Rights To A Civil Jury Trial Or Participation In A Civil Class Action Lawsuit For Claims Arising Out Of Your Employment.**" The issue was whether the agreement waived class claims in any forum, or only the right to present class claims in court.

The Court of Appeal applied the "plain meaning rule" to give effect to the mutual intention of the parties, and found that the agreement contained an express agreement to arbitrate class action claims. The sentence in bold waived "'participation in a civil class action *lawsuit*,' not participation in any class action claim." (Italics in original.) Lawsuits generally refer to court actions. The agreement did not indicate that the word "lawsuit" was intended to apply, uncharacteristically, to both court actions and arbitration claims. "[R]ead as a whole, this is an agreement to arbitrate all claims, including class claims, with a notice at the end of the agreement that it is a waiver of all jury trials and class action lawsuits." Thus, the parties consented to arbitrate class claims.

Garner argued that Inter-State Oil waived the right to arbitrate because it breached the agreement by refusing to arbitrate the class claims, and that such conduct showed "a lack of mutuality of consideration that renders the [arbitration agreement] null and void." The court disagreed. There was no evidence of bad faith or willful misconduct to justify a waiver. "Here, the parties made mutual, obligating promises to arbitrate. The dispute over the meaning of the arbitration agreement did not change those mutual, obligating promises. Adequacy of consideration is in the formation of the contract, not in its performance." Noting the public policy favoring arbitration, the court concluded that the arbitration agreement must be enforced.