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## BLOGS

Noncompetes

# Ninth Circuit Reaffirms That In-Term Covenant Not to Compete Was Only Partially Enforceable Under California Law

One year after issuing its original opinion, the Ninth Circuit has reaffirmed its order vacating that portion of an arbitrator's award that enforced a broad covenant against competition in the franchise context. In *Comedy Club, Inc. v. Improv West Associates*, 553 F.3d 1277 (9th Cir. Jan. 29, 2009), the Ninth Circuit considered again its previous decision in light of an order from the United States Supreme Court vacating its prior opinion.

As previously reported in Issue 100 of *The GPM Memorandum*, the arbitrator in this dispute enforced a broad in-term covenant against competition that prohibited a franchisee from opening competing comedy clubs. The Ninth Circuit reversed that portion of the arbitrator's decision, finding that the arbitrator had manifestly disregarded California law with respect to the noncompete issue. The Supreme Court vacated that opinion after its decision in *Hall Street Associates, LLC v. Matel, Inc.*, in which it held that the Federal Arbitration Act provided exclusive grounds to modify or vacate an arbitration award. The Supreme Court remanded this case to the Ninth Circuit to determine whether "manifest disregard of the law" constituted a permissible basis on which to vacate an arbitration award given its absence from the provisions of the FAA.

On remand, the Ninth Circuit affirmed its previous decision. The court stood by its holding that the manifest disregard of the law standard was "shorthand" for the statutory ground in the FAA permitting an award to be vacated where an arbitrator exceeds his or her powers. The court found again that the arbitrator had displayed a manifest disregard for the law by enforcing a restrictive covenant that applied geographically to the contiguous United States and extended until the year 2019. The court also affirmed its previous holding that the franchisor was entitled to enforce its restrictive covenant only in counties where the franchisee was already operating a franchised location.