

**BLOGS**

Arbitration

Oregon Federal Court Enforces Arbitration Provision Against Franchisees' Employees but Strikes Forum Selection Provision and Limitation on Damages

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A federal court in Oregon held that plaintiff franchisee employees were bound by the arbitration provision of relevant franchise agreements and could be compelled to arbitrate by affiliates of the franchisor, even though none of them were parties to the franchise agreements. However, the court struck the provision's forum selection and limitation on damages clauses as unconscionable. *Escobar v. Nat'l Maint. Contractors, LLC*, 2021 WL 3572652 (D. Or. Aug. 12, 2021). Escobar, along with other franchisees and their employees, sued janitorial and building maintenance services company National Maintenance Contractors, its affiliated franchisor entity, another affiliate, and several key employees of those entities (together, NMC), asserting various violations of federal and state laws, including wage and hour laws. NMC moved to compel arbitration based on the arbitration agreement in the relevant franchise agreements. The plaintiffs opposed arbitration on several grounds, including that the franchisees' employees and the franchisors' affiliates were not parties to the franchise agreements, and that the arbitration provision was unconscionable.

The court held that the franchisees' nonsignatory employees were estopped from repudiating the franchise agreements' arbitration provision, having knowingly and affirmatively benefited from the franchise agreements by being employed and receiving compensation by the franchisees. Furthermore, the court held that the nonsignatory NMC parties could enforce the arbitration provision because the claims they faced were "intertwined with and directly relate[d] to the franchise agreement." The court, however, agreed with the plaintiffs' arguments that the arbitration provision's forum selection and limitation of damages clauses were unconscionable—the forum selection clause because, by requiring the predominantly low-income Oregon- and Washington-based plaintiffs to arbitrate in Minneapolis, it effectively denied them an opportunity to arbitrate, and the punitive damages waiver because it would have resulted in the plaintiffs foregoing statutorily granted rights. Finally, the court held that it could sever the unconscionable provisions while still enforcing the arbitration agreement because the agreement provided for the severability of such provisions, and they were not so pervasive as to permeate the entire agreement with unconscionability.

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