

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MAYER BROWN LLP

Donald M. Falk (SBN 150256)
Two Palo Alto Square
3000 El Camino Real
Palo Alto, CA 94306-2112
Telephone: (650) 331-2000
Facsimile: (650) 331-4000

Andrew J. Pincus (*pro hac vice*)
Archis A. Parasharami (SBN 321661)
1999 K Street, N.W.
Washington, D.C. 20006-1101
Telephone: (202) 263-3000
Facsimile: (202) 263-3300

*Attorneys for Plaintiffs Chamber of Commerce
Of the United States of America and California
Chamber of Commerce*

LITTLER MENDELSON, P.C.

Bruce J. Sarchet (SBN 121042)
Maurice Baskin (*pro hac vice*)
500 Capitol Mall, Suite 2000
Sacramento, CA 95814
Telephone: (916) 830-7200
Facsimile: (916) 561-0828

*Attorneys for Plaintiffs National Retail
Federation, California Retailers Association
National Association of Security Companies,
Home Care Association of America, and
California Association for Health Services
at Home*

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA,
CALIFORNIA CHAMBER OF COMMERCE,
NATIONAL RETAIL FEDERATION,
CALIFORNIA RETAILERS ASSOCIATION,
NATIONAL ASSOCIATION OF SECURITY
COMPANIES, HOME CARE ASSOCIATION
OF AMERICA, and CALIFORNIA
ASSOCIATION FOR HEALTH SERVICES
AT HOME,

Plaintiffs,

v.

XAVIER BECERRA, in his official capacity as
the Attorney General of the State of California,
LILIA GARCIA BROWER,
in her official capacity as the Labor
Commissioner of the State of California, JULIE
A. SU, in her official capacity as the Secretary
of the California Labor and Workforce
Development Agency, and KEVIN KISH, in his
official capacity as Director of the
Department of Fair Employment and Housing of
the State of California,

Defendants.

Case No. 2:19-cv-02456-KJM-DB

**PLAINTIFFS' SUPPLEMENTAL BRIEF
IN SUPPORT OF MOTION FOR A
PRELIMINARY INJUNCTION**

Date: January 10, 2020
Time: 10:00 a.m.
Courtroom: 3, 15th Floor

Hon. Kimberly J. Mueller

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTRODUCTION	1
ARGUMENT	3
A. This Court Has Subject-Matter Jurisdiction Over Plaintiffs’ Claims.	3
1. Plaintiffs Assert A Cognizable Claim In Equity.....	3
2. Plaintiffs Can Enforce The Federal Rights Conferred By The FAA Under Section 1983.....	7
B. Plaintiffs Have Established Standing.....	9
C. All Agree That The Injunction Should Be Limited To Application Of AB 51 To Arbitration Agreements Governed By The FAA.	13
CONCLUSION.....	15

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

Page(s)

Cases

Am. Trucking Ass’ns, Inc. v. City of Los Angeles,
559 F.3d 1046 (9th Cir. 2009)2, 13

Armstrong v. Exceptional Child Ctr., Inc.,
575 U.S. 320 (2015)..... *passim*

AT&T Mobility LLC v. Concepcion,
563 U.S. 333 (2011).....1, 7

Blessing v. Firestone,
520 U.S. 329 (1997).....7, 8, 9

Cal. Trucking Ass’n v. Becerra,
2020 WL 248993 (S.D. Cal. Jan. 16, 2020).....11

City of Los Angeles v. Lyons,
461 U.S. 95 (1983).....13

EEOC v. Waffle House, Inc.,
534 U.S. 279 (2002).....15

Epic Sys. Corp. v. Lewis,
138 S. Ct. 1612 (2018).....6, 7, 8

Fleck & Assocs., Inc. v. City of Phoenix,
417 F.3d 1100 (9th Cir. 2006)9

Friends of the Earth, Inc. v. Laidlaw Envt’l Servs.,
528 U.S. 167 (2000).....9

Friends of East Hampton Airport, Inc. v. Town of East Hampton,
2015 WL 3936346 (E.D.N.Y. June 26, 2015)6

Gonzaga Univ. v. Doe,
536 U.S. 273 (2002).....8

Heller v. Rasier, LLC,
No. 17-cv-8545 (C.D. Cal. Jan. 7, 2020)13

Henry A. v. Willden,
678 F.3d 991 (9th Cir. 2012)8

Hunt v. Wash. Apple Advert. Comm’n,
432 U.S. 333 (1977).....9

1	<i>Kindred Nursing Ctrs. Ltd. P’ship v. Clark,</i>	
	137 S. Ct. 1421 (2017).....	1, 6, 7, 8
2		
3	<i>KVUE, Inc. v. Moore,</i>	
	709 F.2d 922 (5th Cir. 1983), <i>aff’d</i> , 465 U.S. 1092 (1984).....	12
4	<i>Lujan v. Defenders of Wildlife,</i>	
5	504 U.S. 555 (1992).....	9
6	<i>Mobil Oil Corp. v. Att’y Gen.,</i>	
	940 F.2d 73 (4th Cir. 1991)	12
7		
8	<i>Morales v. Trans World Airlines, Inc.,</i>	
	504 U.S. 374 (1992).....	1, 4
9	<i>Nat’l Council of La Raza v. Cegavske,</i>	
10	800 F.3d 1032 (9th Cir. 2015)	2, 11
11	<i>Nat’l Meat Ass’n v. Harris,</i>	
	565 U.S. 452 (2012).....	7
12		
13	<i>Price v. City of Stockton,</i>	
	390 F.3d 1105 (9th Cir. 2004)	7
14	<i>Seminole Tribe of Florida,</i>	
15	517 U.S. 44 (1996).....	6
16	<i>Shaw v. Delta Air Lines, Inc.,</i>	
	463 U.S. 85 (1983).....	1, 3, 4
17		
18	<i>Smith v. Hickenlooper,</i>	
	2016 WL 759163 (D. Colo. Feb. 26, 2016).....	6
19	<i>Southland Corp. v. Keating,</i>	
20	465 U.S. 1 (1984).....	6
21	<i>Sprint Commc’ns, Inc. v. Jacobs,</i>	
	571 U.S. 69 (2013).....	5
22		
23	<i>Valley View Health Care, Inc. v. Chapman,</i>	
	992 F. Supp. 2d 1016 (E.D. Cal. 2014).....	<i>passim</i>
24	<i>Verizon Md., Inc. v. Pub. Serv. Comm’n of Md.,</i>	
25	535 U.S. 635 (2002).....	1, 4
26	<i>Ex parte Young,</i>	
	209 U.S. 123 (1908).....	<i>passim</i>
27		
28		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Statutes

9 U.S.C. § 1.....13

28 U.S.C. § 1331.....1, 3, 4, 5

42 U.S.C. § 1396a(a)(30)(A)5

42 U.S.C. § 1983.....1, 3, 7, 9

Cal. Bus. & Prof. Code § 48013

Cal. Gov’t Code § 1295315

Cal. Labor Code § 432.6(a).....3, 13, 14, 15

Cal. Labor Code § 432.6(b)3, 13, 14, 15

Cal. Labor Code § 432.6(c).....14, 15

Other Authorities

California AB 51 (Employment Discrimination: enforcement), 2019-2020 Reg. Sess., Senate Rules Committee Analysis (as amended March 26, 2019) (Third Reading – Prepared on September 1, 2019).....2, 10

Mallory Moench, *California has a new law against mandatory arbitration—but it doesn’t cover everyone*, San Francisco Chronicle (Oct. 11, 2019).....10

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.