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With SB 365, CAOC looks to stop corporate abuse when arbitration is denied

WHEN A COMPANY'S ARBITRATION AGREEMENT WITH AN EMPLOYEE OR CUSTOMER IS RULED INVALID, TOO OFTEN THE CORPORATION WILL FILE A FRIVOLOUS APPEAL TO DELAY THE VICTIM'S CASE

Consumer Attorneys of California is working to prevent powerful corporations from delaying justice for workers and consumers in cases where a court rules either that a company's arbitration agreement with a victim is invalid or that a signed agreement does not exist.

CAOC has sponsored, along with California Attorney General Rob Bonta and the California Employment Lawyers Association, Senate Bill 365 (Wiener), which would protect workers and consumers from the delay tactics that corporations use. Current law allows corporate defendants to effectively pause a worker's or consumer's case – sometimes for years at a time – by simply filing an appeal. SB 365 would allow such a case to move forward even if a company files an appeal, instead of putting the case on hold.

SB 365 was approved by the state Senate Judiciary Committee last month with full Democratic support, despite fierce opposition by the business lobby. CAOC's attorney advocates are working hard to bring the bill to Gov. Newsom's desk.

Forced arbitration provisions have become an ever-growing aspect of consumer transactions and employment relationships. More than half of America's workforce have been forced to sign mandatory arbitration clauses as a condition of employment. Under these clauses, consumers and workers whose rights have been violated cannot pursue their claims in court or with a state agency. Instead, they must submit their claims in a private arbitration proceeding that overwhelmingly favors businesses and employers.

In some cases, the court will rule a forced arbitration agreement invalid. It might find the agreement "unconscionable" or find that the agreement was never signed in the first place. When a court rules that a company's arbitration agreement with a victim is invalid, or that a signed agreement does not exist, too often the corporation will file a frivolous appeal to delay the victim's case – sometimes for years on end.

Existing law gives an aggrieved party (typically the defendant corporation) the right to a full appeal when a court orders

the case dismissed or denies the defendant's petition to compel a case to private arbitration. (CCP § 1294(a).) Workers and consumers, however, are not afforded the same luxury. Existing law does not allow a worker or consumer the same automatic appeal rights and a pause on the arbitration when the court grants a company's petition to move the case to private arbitration. Powerful corporations abuse the law to force lengthy delays on plaintiffs seeking justice – during which time important documents disappear, key witnesses move away and witnesses' memories fade. Employees deserve meaningful access to justice when their rights are violated.

SB 365 amends Code of Civil Procedure section 1294 to establish that an appeal of a court's decision denying a corporation's motion to compel arbitration will not stay the consumer's or worker's court proceedings in the trial court while the appeal is pending, allowing the case to move forward while the appeal is being considered.

CAOC Executive Committee member Sarah London testified for CAOC before the Senate Judiciary Committee, telling the story of her client Mayah Curtis, who suffered two years of delay due to a meritless appeal of a motion to compel an arbitration agreement that never existed. Mayah was one of many patients whose frozen eggs and embryos were damaged and destroyed due to a storage tank failure at a San Francisco fertility center. The victims sought justice against the storage tank manufacturer, who immediately moved to compel arbitration, even though the patients never signed an arbitration agreement with them. The judge denied the manufacturer's motion to compel arbitration, but the tank manufacturer simply appealed that decision, which immediately stayed the case.

The California patients' suit proceeded in state court, while out-of-state patients filed in federal court. Federal law allowed the federal cases to move forward even while the appeal was ongoing, but because of California's unique automatic stay, Mayah and other California victims

were forced to wait more than two years for the appellate court to affirm the trial judge's decision and allow the case to proceed. Timing could not be more critical than in a fertility case, where the biological clock is unforgiving. Every month the plaintiffs were forced to wait, their fertility options diminished.

The examples of consumers harmed by this type of delay are unfortunately vast: Workers seeking justice for racial discrimination at Tesla, elders who suffer elder abuse at a nursing facility and never signed an arbitration clause, workers seeking to recover wage theft.

It's not only private attorneys' clients who are affected by this abuse. When the California Labor Commissioner brought an action against Uber and Lyft for misclassifying their workers as "independent contractors," the companies filed meritless motions to compel the case into private arbitration. The court ruled against the motions, because the State and the Labor Commissioner never signed the arbitration agreements and clearly could not be bound by them. But due to the one-sided provision in the Code of Civil Procedure that places the court case on pause if an appeal is filed – even though no arbitration clause even existed to bind the State or Labor Commissioner to arbitration – Uber and Lyft were able to file a frivolous appeal to delay the State's case and prevent it from proceeding until the appeal is resolved. These delays typically last one to three years.

CAOC is part of an impressive coalition supporting SB 365, including labor unions, consumer advocacy groups, the city attorneys of San Francisco and San Diego and the San Francisco district attorney. But we face heavy opposition from the business lobby; defeating SB 365 has been deemed to be a top priority of the California Chamber of Commerce, as they have designated the bill as a "job killer." CAOC will represent you and your clients in the fight to right this wrong and stop bad actors from delaying justice.

