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RECENT CALIFORNIA COURT DECISION IS A REMINDER TO REVIEW YOUR ONLINE SERVICE ARBITRATION AGREEMENTS

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If your business has an online presence, chances are you have an online service agreement or terms of use that include an arbitration agreement. But simply having such an agreement in place doesn't necessarily mean it will be enforceable – and a recent California court decision illustrates this point. In October 2025, the Northern District Court of California denied a company's motion to compel arbitration by holding that its Online Services Agreement arbitration clause was unenforceable due to procedural and substantive unconscionability under California law. For companies that rely on arbitration as a core risk-management tool, the *Rios v. HRB Digital LLC* case provides guidance on the types of provisions courts are unwilling to enforce and the standards arbitration agreement drafting must meet.

The Case at a Glance

In *Rios*, the plaintiffs brought a putative class action alleging that HRB unlawfully intercepted and disclosed confidential taxpayer data to third parties via its tracking pixels embedded in its online tax preparation platform without user consent. *See the Fisher Phillips Digital Wiretapping Litigation webpage and related Insights on this area of privacy litigation.*

HRB moved to compel individual arbitration pursuant to its Online Services Agreement, which plaintiffs accepted via a clickwrap agreement in January 2024. The plaintiffs did not challenge their acceptance of the Online Service Agreement; rather, they challenged the arbitration clause

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within that agreement. The court ultimately agreed with them and found the arbitration clause was both procedurally and substantively unconscionable.

Key Holdings

As to **procedural unconscionability**, which generally looks at the circumstances around contract formation, the court found:

- The arbitration agreement was part of a standard-form, non-negotiable contract presented during tax season, leaving consumers with little practical ability to reject it.
- Although HRB included a 30-day opt-out, the court held that this did not cure the issues or mitigate gap in the parties' bargaining power because the opt-out provision was buried in a lengthy agreement and required repeated annual action.
- HRB had buried a complex and unexpected arbitration scheme in a lengthy contract, not something consumers would generally expect, including a process that could delay claims for years.
- The Online Services Agreement was oppressive, because it was a dense, non-negotiable agreement that misrepresented dispute resolution speed and unexpectedly conditioned claimants' rights on factors like choice of counsel and other users' claims.

As to **substantive unconscionability**, which generally looks at the fairness of contract terms, the court found:

- The mass arbitration and bellwether provisions capped how many cases could proceed at once and required claims to be arbitrated in sequential rounds.
- This process could delay resolution for many years, effectively chilling or preventing claims altogether.

There was a **small claims carveout** in the agreement, but the court found it did not remedy the unfairness. It explained that small claims courts often bar counsel, limit discovery, and are ill-suited for complex privacy claims.

In addition, the court refused to **sever the offending provisions**, finding that unconscionability permeated the entire arbitration agreement. Because the challenged

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provisions were structurally designed to make arbitration an inferior forum and severing them would preserve their chilling effects, the court refused to sever and instead held the entire arbitration agreement unenforceable.

Key Takeaways

Drafting arbitration agreements is complex and requires careful consideration so seek the help of legal counsel. If your arbitration agreement includes any of the issues raised in this case, flag them for review. Consider matters such as context and presentation of the terms, whether important provisions are prominent and fair to all parties, and ensure compliance with applicable law.

Conclusion

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