



The United States Supreme Court recently held that classwide arbitration cannot be inferred from an ambiguous agreement.

The Supreme Court's decision reverses a Ninth Circuit decision that relied on state contract principles to compel classwide arbitration of a putative class action filed by an individual employee. In *Lamps Plus, Inc. v. Varela*, ___ U.S. ___ (April 24, 2019), the Court considered whether the Federal Arbitration Act ("FAA") forecloses interpretation of an ambiguous arbitration agreement compelling classwide arbitration. The Ninth Circuit affirmed the trial court's determination that an agreement that stated "arbitration shall be in lieu of any and all lawsuits or other civil legal proceedings" was ambiguous as to whether it authorized class arbitration. Applying California state contract principles to construe the agreement against the drafter, the Ninth Circuit held there was

sufficient ambiguity to conclude the parties agreed to class arbitration. In reversing the Ninth Circuit, the Supreme Court relied heavily on its prior decision in *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662 (2010) where it held that "courts may not infer consent to participate in class arbitration absent an 'affirmative' contractual basis for concluding that the party agreed to do so." Consistent with the *Stolt-Nielsen* decision, the Court held that "[c]ourts may not infer from an ambiguous agreement that parties have consented to arbitrate on a classwide basis." The Court explained that although state contract principles may be used to interpret and enforce arbitration agreements, state law is preempted to the extent it contradicts the purposes and objectives of the FAA. Because consent to arbitration is the foundational FAA principle, class arbitration cannot be inferred even from an ambiguous agreement. The Court further highlighted that the consent requirement guards against the risks, costs, and serious due process concerns that result from class arbitration. **Takeaway:** The *Lamps Plus* decision confirms that neither silence nor ambiguity in a contract is enough to compel class arbitration. Rather, arbitration—whether individual or classwide—requires consent of all parties to the agreement.

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