

# Management Alert



## Arbitration Agreement Enforced on Behalf of Nonsignatory

By Eric W. May and Timothy Hix

**Seyfarth Synopsis:** The California Court of Appeal has utilized theories of equitable estoppel and agency to hold that an employee must arbitrate claims he asserted against an alleged joint employer, even though that defendant had not signed the employee's arbitration agreement.

### The Facts

In 2011, Narciso Garcia signed on for temporary work with a staffing agency. His job application contained an agreement to arbitrate any dispute regarding employment laws. He then received an assignment to work for Pexco, LLC, which had not signed the arbitration agreement.

In 2014, Garcia, claiming unpaid wages, sued both the staffing agency and Pexco for violations of the Labor Code and unfair business practices. Pexco moved to compel arbitration. The trial court granted the motion. Garcia appealed the order to arbitrate, because Pexco had not signed the arbitration agreement.

### The Court of Appeal's Decision

The Court of Appeal affirmed the order to arbitrate. While the general rule is that only a party to an arbitration agreement can invoke it, two exceptions to the rule—equitable estoppel and agency—both applied here.

*Equitable estoppel.* A nonsignatory to an arbitration agreement may compel a signatory plaintiff to arbitrate “when the causes of action against the nonsignatory are intimately founded in and intertwined with the underlying contract obligations,” and when the claims rely on “the same facts and are inherently inseparable from the arbitrable claims against signatory defendants.” Garcia’s claims against Pexco were all intimately “founded in and intertwined” with his employment relationship with the staffing agency. Garcia alleged identical claims and conduct against both defendants as joint employers, referring to them collectively as “defendants,” without any distinction. It was thus “inequitable for the arbitration about Garcia’s assignment with Pexco to proceed with [the staffing agency], while preventing Pexco from participating.” This reasoning applied to statutory claims as well as contract claims.

*Agency.* Pexco could also enforce the arbitration agreement under a theory of agency: non-signatories can enforce an arbitration agreement “when a plaintiff alleges that a defendant acted as an agent of a party to an arbitration agreement.” Garcia had alleged that each defendant was the agent of the other. The Court of Appeal rejected his argument that this allegation was mere boilerplate, particularly in that Garcia alleged identical claims and conduct against both defendants.

## What *Garcia* Means for Employers

The *Garcia* decision is especially important for employers in today's ever-evolving gig economy: it facilitates the enforcement of arbitration agreements by companies utilizing the services of staffing companies that have an arbitration program in place. Companies that retain staffing companies should review the staffing companies' employment agreements, to determine whether the company can avail itself of those agreements when responding to legal claims.

If you have any questions, please contact [Eric W. May](mailto:emay@seyfarth.com) at [emay@seyfarth.com](mailto:emay@seyfarth.com), or [Timothy Hix](mailto:thix@seyfarth.com) at [thix@seyfarth.com](mailto:thix@seyfarth.com).

[www.seyfarth.com](http://www.seyfarth.com)

Attorney Advertising. This Management Alert is a periodical publication of Seyfarth Shaw LLP and should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

---

**Seyfarth Shaw LLP Management Alert | May 24, 2017**

©2017 Seyfarth Shaw LLP. All rights reserved. "Seyfarth Shaw" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership). Prior results do not guarantee a similar outcome.