

# One Minute Memo®



## Electronic Agreement to Arbitrate Bytes Employer

By David D. Kadue and Andrew C. Crane

Since the California Civil Code was amended in 1999 to state that an electronic signature has the same legal effect as a handwritten signature, many employers switched from using hard copy agreements to arbitrate to electronic agreements.

A recent California Court of Appeal decision, *Ruiz v. Moss Bros. Auto Group, Inc.*, may at first glance appear to dissuade the use of electronic signatures. *Ruiz* upheld a trial court decision to deny a petition to compel arbitration on the ground that the employer could not prove that the electronic signature on the arbitration agreement was really that of the employee.

But *Ruiz* is hardly a harbinger of doom for electronically signed arbitration agreements. Rather, *Ruiz* provides a how-to manual for authenticating electronic signatures, and assures us that meeting the authentication standard is “not difficult.”

### The Facts

Ernesto Ruiz worked for Moss Bros. Auto Group, Inc. (“the Company”), and, on behalf of himself and other workers, sued for unpaid wages. The Company’s petition for an order compelling arbitration of Ruiz’s individual claims cited an arbitration agreement electronically signed in September 2011. But the supporting declaration failed to explain how the Company verified that it was Ruiz who actually electronically signed the agreement. Instead, the declaration merely stated that Ruiz electronically signed the agreement.

In opposing the petition, Ruiz declared that he did not recall signing an arbitration agreement in September 2011, and that he would not have signed such an agreement. In reply, the Company again failed to explain how the it had verified Ruiz’s electronic signature, and instead simply stated that the September 2011 agreement was “presented” to all Company employees, and that each employee had to log onto the human resources system with a “unique login ID and password” to review and electronically sign the arbitration agreement.

The trial court denied the Company’s petition to compel arbitration on the ground that it had failed to present sufficient evidence that the electronic signature was “the act of Ruiz.” The Company appealed.

### The Appellate Court Decision

The Court of Appeal upheld the trial court’s decision. The Court of Appeal noted that, once Ruiz challenged the authenticity of the electronic signature, the Company had to prove, by a preponderance of the evidence, that the electronic signature was authentic; i.e., that it was “the act of Ruiz.”

The Court of Appeal highlighted the Company’s failure to explain “how, or upon what basis” it inferred that the electronic signature on the agreement was the act of Ruiz. The mere use of a unique login ID and password, without further accompanying facts, was insufficient to authenticate the electronic signature.

In so holding, the Court of Appeal, stating repeatedly that the burden of authenticating an electronic signature is “not great,” specified what the Company *should* have done to authenticate the electronic signature: (1) explain that the electronic signature in Ruiz’s name could only have been placed on the arbitration agreement by a person using Ruiz’s unique login ID and password; (2) state that the date and time printed next to the electronic signature indicated the date and time the signature was made; (3) explain that each Company employees had to use his or her unique login ID and password when logging into the system and signing electronic forms and agreements; and (4) state that, for the foregoing reasons, the electronic signature was made by Ruiz.

Although the Company had described the use of the unique login ID and password, it had failed to connect the dots to support the conclusion that the electronic signature was made by Ruiz. As a result, the Company had failed to meet its evidentiary burden.

## What *Ruiz* Means For Employers

This unfortunate loss for a single employer is a boon for the employment community generally. The takeaway from *Ruiz* is that declarations authenticating an arbitration agreement containing an electronic signature are sufficient if they explain *all* steps made in deducing that the electronic signature was in fact made by the employee in question. The Company in *Ruiz* failed to do so by relying on assumptions and inferences, rather than stating the step-by-step process used to authenticate its employees’ electronic signatures.

Authenticating declarations should therefore explain in detail exactly how the electronic signature process works, how the company ensures that the electronic signature is made by the employee named (and not by another employee), and all other assumptions made to determine the authenticity of the signature. Given the Court of Appeal’s repeated assurances that the burden of authenticating an electronic signature is “not great,” and its short and simple roadmap to full compliance, *Ruiz* may serve as helpful guidance to employers instituting arbitration agreements that are signed electronically.

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