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SCOTUS Catapults Class Arbitration Onto the Endangered Species List

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On April 24, 2019, the U.S. Supreme Court issued an important decision touching a number of hot button issues and litigation threats facing American businesses — including class actions, arbitration agreements and data privacy.

The case, *Lamps Plus, Inc. v. Varela,* 17-988, 2019 WL 1780275 (U.S. Apr. 24, 2019), stemmed from a data breach in which a hacker posing as a company official "tricked" a Lamps Plus employee into disclosing the tax information of approximately 1,300 workers. Among those 1,300 workers was Frank Varela, the named plaintiff. *Id*. at *2. Following the data breach, Mr. Varela became the victim of identity theft when a fraudulent federal income tax return was filed in his name.

Mr. Varela, like most other employees, had signed an employment agreement with an arbitration clause when he started working at Lamps Plus. That agreement required Mr. Varela to resolve disputes with Lamps Plus through arbitration, as opposed to litigation. The arbitration clause stated that "arbitration shall be in lieu of any and all lawsuits or other civil proceedings relating to my employment."

But after the data breach, Mr. Varela went straight to federal court and filed a putative class action against Lamps Plus on behalf of himself and a putative class of employees whose tax information had also been compromised.

In response, Lamps Plus moved 1) to compel arbitration and 2) to do so on an

individual rather than classwide basis, citing the arbitration provision in the employment agreement Mr. Varela had signed. The District Court granted the motion to compel arbitration but rejected Lamps Plus's request for individual arbitration. *Varela v. Lamps Plus, Inc.*, CV 16-577-DMG (KSX), 2016 WL 9110161, at *1 (C.D. Cal. July 7, 2016), aff'd, 701 Fed. Appx. 670 (9th Cir. 2017), rev'd and remanded, 17-988, 2019 WL 1780275 (U.S. Apr. 24, 2019). Instead, the District Court found that class arbitration was permitted by the arbitration agreement. Lamps Plus appealed the District Court's order, arguing that the court had erred in allowing class arbitration to proceed. On appeal, the Ninth Circuit affirmed. 701 Fed. Appx. 670 (2017). Lamps Plus petitioned for a writ of certiorari, arguing that the Ninth Circuit's decision created a circuit split and contravened a 2010 Supreme Court decision, *Stolt-Nielsen S. A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662 (2010). In that case, the Supreme Court held that a court may not compel arbitration on a classwide basis when an agreement is "silent" on the availability of such arbitration.

The Supreme Court granted certiorari. Writing for the majority, Chief Justice Roberts found that *Stolt-Nielson* was controlling and that the Ninth Circuit erred in its interpretation of that decision. *Id. *4.* Although *Stolt-Nielson* dealt with agreements that were silent on class arbitration, the majority found that it applied to a situation in which the agreements was ambiguous on class arbitration. The majority held that because Lamps Plus had not expressly agreed to class arbitrations, only individual arbitrations were permitted. The majority also observed that class arbitration lacked the key advantages of arbitration in general, including speed, simplicity and inexpensiveness.

Each of the court's four liberal members wrote dissents. In her dissent, Justice Elena Kagan criticized the majority's "policy view" toward class litigation as improperly influencing its decision. She opined that such a policy view should not displace state laws about how to interpret an ambiguous contract. In a separate dissent, Justice Ginsburg emphasized "how treacherously the court has strayed from the principle that arbitration is a matter of consent, not coercion." Justices Breyer and Sotomayor wrote separate dissents, and Justice Clarence Thomas wrote a concurring opinion.

The key takeaway from *Lamps Plus* is that the affirmative, contractual right to class arbitration must be clear and express. But the decision is also the latest example of how serious cyber threats can be, and how businesses must remain vigilant in preventing and responding to data security incidents and adopting contracts that preemptively minimize the related litigation expense and potential liability.