A recent Sixth Circuit decision caught my eye because it addressed an important issue on which I have not seen any other appellate decisions (and none were cited in the opinion). The plaintiff argued that the Class Action Fairness Act (CAFA) should be interpreted as overriding the Federal Arbitration Act (FAA), effectively precluding the enforcement of class action waiver provisions in consumer contracts. The Sixth Circuit rejected the argument, finding no clear congressional intent to displace the FAA.

In *Adell v. Cellco Partnership*, No. 21-3570, 2022 WL 1487765 (6th Cir. May 11, 2022), the plaintiff brought a putative class action involving a Verizon Wireless mobile phone contract, claiming that a monthly administrative charge of about $1 was not permitted by the contract. The defendant filed a motion to compel arbitration, which the district court granted. The arbitrator ruled for the defendant, the district court confirmed the award, and the plaintiff appealed.
The plaintiff argued that “CAFA guaranteed her right to federal adjudication of her claim,” asserting support for this position in the statutorily-expressed purpose of CAFA and its legislative history. She also argued that *Epic Systems Corp. v. Lewis*, 138 S. Ct. 1612 (2018), which held that the National Labor Relations Act did not displace the FAA in the employment context, supported her position.

The Sixth Circuit rejected the argument, noting that courts construing two statutes should give effect to both when possible. Construing one statute as displacing another is generally appropriate only if there is “clear and manifest congressional intention” to do so. The Sixth Circuit explained that “CAFA undoubtedly discusses class actions, but it neither mentions arbitration nor offers the ‘clear and manifest congressional intention’ signaling FAA displacement.” While CAFA’s “findings and purposes” “express the importance of class action lawsuits … [t]hese are not clear statements displacing the FAA.” The court also found no support for the plaintiff’s position in CAFA’s legislative history.

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