

## *Preliminary Injunction Order Issued for AB51*

On the heels of the Southern District of California’s issuance of a preliminary injunction of AB5 for motor carriers, on January 31, 2020, the Eastern District of California granted plaintiff California Chambers of Commerce’s motion for a preliminary injunction preventing enforcement of AB 51 (No Mandatory Arbitration Agreements for Workers/No Opt-Out Arbitration Agreements/Misdemeanor Penalties for Violation) – at least for all arbitration agreements covered by the Federal Arbitration Act.)

The Court had previously extended its temporary restraining order (TRO) to January 31<sup>st</sup>, to provide time for the parties to provide supplemental briefing on the issues of jurisdiction and severability. The January 31<sup>st</sup> ruling was made in a Minute Order which also advised that a detailed written order will be issued in the coming days. The Minute Order itself enjoins the Attorney General, the Labor Commissioner, the Secretary of the California Labor and Workforce Development Agency and the Director of the California Department of Fair Employment and Housing from: **(1)** enforcing the first three provisions of Labor Code §432.6(a), (b) and (c) [AB51] “where the alleged “waiver of any right, forum, or procedure” is the entry into an arbitration agreement covered by the Federal Arbitration Act, 9 U.S.C. §§ 1-16 (“FAA”) and **(2)** enforcing Government Code §12953 [that part of AB51 that makes it an “unlawful employment practice” and criminalizes “violations” of Labor Code §432.6.

At this time, it is too early to tell whether it is prudent for Final Mile and **interstate** & intermodal trucking companies to enter into arbitration agreements because of the Court’s limitation enjoining only those provisions

of the statute where the alleged “waiver of any right, forum or procedure” involves an arbitration agreement covered by the FAA. In the *New Prime* decision, the U.S. Supreme Court applied the FAA §1 “contract of employment” exemption to independent contractor truck drivers involved in interstate transportation of goods. For many in the transportation of goods sector, the major issue is whether the FAA will be found to apply, so unless and until that is resolved, risk remains under the CA statute. Approaches to whether and how to roll out arbitration agreements/class action waivers at present in CA should be carefully assessed with counsel. Potentially, the reasoning of the written ruling to be issued shortly will provide greater guidance.

Marron Lawyers is actively involved in misclassification issues in the transportation industry and is following these matters closely. We have fought and won battles with regulators and plaintiffs’ attorneys on the cutting edge of this area of law, throughout the state of California and in multiple other states. If you are concerned about the exposure that your business may face, please contact:

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