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Can You Spot a "Public" Injunction in California?

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In *McGill v. Citibank, N.A.*, the California Supreme Court held that an arbitration provision is invalid and unenforceable if it purports to waive a plaintiff's statutory right to seek public injunctive relief in all forums. 393 P.3d 85 (Cal. 2017). Following that decision, plaintiffs often invoke the so-called *Mc*Gil/rule to invalidate arbitration agreements on the ground that the injunction they seek is public in nature. These disputes often involve claims under California's Unfair Competition Law (UCL), which features injunctions as the primary form of relief and which allows plaintiffs to seek both private and public injunctions.

To help clarify the distinction between private and public injunctive relief, the *Mc*Gill court reiterated that public injunctive relief is "primarily 'for the benefit of the general public'" and only benefits the plaintiff incidentally or as a member of the general public. *Id.* at 94. By contrast, private injunctive relief primarily resolves a private dispute between the parties; rectifies individual wrongs; and benefits the public only incidentally, if at all. Thus, injunctive relief that has the "primary purpose or effect of redressing or preventing injury to an individual plaintiff—or to a group of individuals similarly situated to the plaintiff—does not constitute public injunctive relief." *Id.* at 90.

California Appellate Decisions: Generally Broad Interpretations of "Public"

State intermediate appellate courts applying the *McGill* rule consistently cite the definitions of "public injunction" and "private injunction" set forth in *McGill,* but they have made inconsistent determinations regarding whether the relief sought is *primarily* for the benefit of the general public.

For instance, in *Clifford v. Quest Software Inc.*, the plaintiff asserted wage and hour claims arising from his employer's alleged misclassification of him as an exempt employee and sought an injunction to prevent his employer from committing "further violations of the Labor Code and the unfair business practices alleged herein." 251 Cal. Rptr. 3d 269, 745 (Cal. Ct. App. 2019). California's Fourth Appellate District held that this prospective injunctive relief was not "public" because the primary beneficiaries were a defined group of similarly situated persons.

The same appellate district then reached the opposite conclusion in both *Maldonado v. Fast Auto Loans, Inc.* and *Mejia v. DACM Inc.* In *Maldonado,* a customer alleged that a lender charged unconscionable interest rates on auto title loans and requested an injunction to prevent "future violations of the aforementioned unlawful and unfair practices." 275 Cal. Rptr. 3d 82, 86 (Cal. Ct. App. 2021). The court found that the injunction requested in that case *did* seek public injunctive relief because it encompassed "all consumers and members of the public." *Id.* at 90. In

Mejia, a motorcycle dealership allegedly failed to provide proper notice for the financing terms of its sales to purchasers. 268 Cal. Rptr. 3d 642 (Cal. Ct. App. 2020). The plaintiff sought an injunction enjoining the dealership from selling motor vehicles without providing the required disclosure, which the court also found fit the definition of "public injunctive relief" under *McGill.*

Ninth Circuit: Narrower Definition of Public Injunctive Relief

In 2021, the U.S. Court of Appeals for the Ninth Circuit expressly rejected *Mejia* and *Maldonado* in *Hodges v. Comcast Cable Communications, LLC.* 21 F.4th 535 (9th Cir. 2021). The *Hodges* court observed that the injunction in *Mejia* would primarily benefit the class of persons who *actually* purchase motorcycles, and that the injunction in *Maldonado* would primarily benefit the class of persons who *actually* signlending agreements, rather than the public more generally. Thus, like in *Clifford,* the primary beneficiaries were a defined group of similarly situated persons, and the requested relief did not *"primarily* benefit the general public as a more diffuse whole." *Id.* at 549 (emphasis in original). Moreover, the Ninth Circuit noted that *Mejia* substantially broadened the *McGill rule* and effectively defined *public injunctive relief* as"any forward-looking injunction that restrains *any* unlawful conduct." *Id.* at 544 (emphasis in original).

Noting the limitations on public injunctive relief that were emphasized in *McGill,* the *Hodges* court reasoned that public injunctive relief "is limited to forward-looking injunctions that seek to prevent future violations of law for the benefit of the general public as a whole, as opposed to a particular class of persons, and that do so without the need to consider the individual claims of any non-party." *id.* at 542. Although the plaintiff in *Hodges* expressly sought "public injunctive relief," the Ninth Circuit determined that the relief requested was for the benefit of Comcast cable subscribers only. As a result, the relief was not sufficiently public in nature because it would only benefit a "group of individuals similarly situated to the plaintiff"—namely, those who subscribed to Comcast's cable service.

Applying the Ninth Circuit's reasoning in *Hodges,* a hypothetical benefit to persons outside a putative class or group of similarly situated persons would be considered "incidental" and therefore constitute *private* injunctive relief. However, if the broader reading of *Mejia* and *Maldonado* is applied, the same hypothetical benefit might constitute *public* injunctive relief, even if there is an ascertainable group of similarly situated individuals that would more directly benefit from the injunction.

The Ninth Circuit's guidance in *Hodges* provides district courts a more circumscribed framework for determining whether an injunction primarily benefits the general public. Moreover, by following this framework, district courts are not forced to reconcile any inconsistencies between the various California state appellate decisions that apply the *McGill* rule.

Continuing Applications of *Mejia* and *Maldonado* Holdings

Despite the Ninth Circuit's holding in *Hodges,* decisions from the California courts of appeal continue to rely on *Maldonado* in finding that claims for injunctive relief are public in nature. For instance, in *Vaughn v. Tesla, Inc.*, the First Appellate District recently rejected the argument that a public injunction is available only to acts "directed to the entire public," which it found was inconsistent with the reasoning in *Maldonado.* 303 Cal. Rptr. 3d 457, 474 (Cal. Ct. App. 2023). The *Vaughn* court acknowledged that the Ninth Circuit's majority opinion in *Hodges* declined

to follow *Maldonado* but noted that it was not bound by that decision. Rather, the *Vaughn* court observed—without elaborating—that "the analysis of the *[Hodges]* dissent is more consistent with *McGill." Id.* at 475 n.16.

On December 29, 2023, the Sixth Appellate District issued an unpublished opinion in *Ramsey v. Comcast Cable Communications*, LLC that likewise declined to follow the Ninth Circuit's reasoning in *Hodges.* No. 21CV384867, 2023 WL 9468916 (Cal. Ct. App. 2023). There, the plaintiff alleged violations of the UCL and the California Consumers Legal Remedies Act and sought to enjoin Comcast from, among other things, issuing allegedly secret discounts and engaging in deceptive practices relating to pricing models. Opposing those allegations, Comcast argued that the relief sought was private—rather than public—in nature because the injunction would primarily benefit a "limited group of existing Comcast subscribers whose promotional terms are coming to an end." *Id.* at *5. The court disagreed, despite noting that the injunction might not benefit the entire public as a "diffuse whole." *Id.* at *8. Relying on *Mejia* and *Maldonado,* it found that the injunction still qualified as a public injunction because it benefited "any member of the public who considers signing up with Comcast." *Id.* at *6.

California Supreme Court: Need for Input

To date, the California Supreme Court has declined to weigh in on the divergent applications of the McGill rule, including in its recent opinion in *California Medical Ass'n v. Aetna Health of California Inc.* 532 P.3d 250 (Cal. 2023). In that case, the California Medical Association argued that it sought injunctive relief that would "primarily benefit the public rather than [its] membership," *id.* at 262 n.6, and the parties raised the disparate holdings in *Hodges* and *Maldonado* in their briefs. However, the California Supreme Court reasoned that it did not need to resolve the dispute and expressed no opinion on the issue. The court also declined to consider a petition for review filed in *Vaughn,* as well as a petition for review filed in *Dixon v. Fast Auto Loans, Inc.,* a case in which the Second Appellate District applied the reasoning in *Maldonado* and found that the plaintiffs request for an injunction was public in nature. No. 20STCV04632 (Cal. Ct. App. 2022).

Although the California Supreme Court appears reluctant to provide additional guidance on the *Mc*Gil/rule at this time, appeals currently pending before the California courts of appeal may present additional opportunities to demarcate the *Mejia* and *Maldonado* holdings or create a split in authority from these published Fourth Appellate District opinions. The several pending and recently decided appeals underscore the need for an opinion from the California Supreme Court that provides more clarity on how to determine whether a claim for injunctive relief provides a "primary" or an "incidental" benefit to the general public.

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