

Judge Tells Michael Jackson Plaintiffs to Beat It Out of Court and Into Arbitration

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It was perhaps inevitable that one of the most "horrific," to use the apt words of the judge in this case, instances of sexual assault to reach the courts in the past decade would come up against the most significant piece of legislation that affects where those claims get heard. The Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2022 (EFAA) put an end to perpetrators of sexual abuse crimes hiding behind closed doors in an arbitration, even where—especially where—they had a contract with the victim that called for these claims to be arbitrated. Henceforth, such cases had to be heard in court.

Enter victims of Michael Jackson. In early 2026, certain victims brought sex trafficking and other claims in federal court against the Michael Jackson Company, Jackson having long since been deceased. The Company moved to compel arbitration based on an agreement with the plaintiffs. The plaintiffs opposed arbitration, relying on the EFAA's taking these type of claims out of arbitration and into court.

Jacksons' victims lost. The case is headed to arbitration. How could this have happened? How can sexual assault victims who Congress freed from the confines of arbitration be sent to the very forum Congress prohibited? How could *Michael Jackson's victims* not get the benefit of the new law?

The answer rests in what non-lawyers might call legal technicalities and lawyers would call the plain language of the statute. The decision highlights important limits on the retroactive application of the EFAA. It will not apply to arbitration agreements made before its passage and where the dispute originated before its enactment.

THE ENDING FORCED ARBITRATION OF SEXUAL ASSAULT AND HARASSMENT ACT

The Federal Arbitration Act (FAA), 9 U.S.C. Section 1, reversed the judiciary's longstanding hostility to arbitration and declared a "liberal federal policy favoring arbitration agreements," *Moses H. Cone Mem'l Hosp. v. Mercury Constr.*, 460 U.S. 1, 24 (1983). Courts thus routinely respected arbitration agreements—if the parties agreed to arbitrate their disputes, then arbitrate they would.

The FAA stood unamended for nearly a century. During that time, and over the protests of plaintiffs' lawyers, employees, consumers and others who found themselves in a forum that did not provide for high jury verdicts (or

even high arbitration awards) and to which they might never have recalled agreeing to, courts expanded arbitration. It rolled over labor agreements, *Epic Sys. v. Lewis*, 584 U.S. 497 (2018); class action bans, *AT&T Mobility v. Concepcion*, 563 U.S. 333 (2011); plaintiffs who said that it would prevent them from banding together with fellow plaintiffs in damages claims, *Am. Express v. Italian Colors Rest.*, 570 U.S. 228 (2013), and pretty much everything else, see Myriam E. Gilles, *Arbitration's Unraveling*, 172 U. Pa. L. Rev. 1063, 1081–83 (2024).

Until #metoo. Many employment agreements contained arbitration agreements, so employees with credible sexual assault or harassment claims against their employers would have to resolve their disputes through private arbitration rather than public litigation. Congress responded, and the EFAA became law on March 3, 2022. The EFAA provides that

at the election of the person alleging conduct constituting a sexual harassment dispute or sexual assault dispute ... no predispute arbitration agreement ... shall be valid or enforceable with respect to a case which is filed under Federal, Tribal, or State law and relates to the sexual assault dispute or the sexual harassment dispute.

9 U.S.C. Section 402(a). Importantly, the EFAA applies only “to any dispute or claim that arises or accrues *on or after the date of enactment*”—i.e., March 3, 2022. Section 403 (emphasis added).

CASCIO V. MICHAEL JACKSON COMPANY

In *Cascio v. Michael Jackson*, the plaintiffs were a group of adults who claimed that Michael Jackson sexually abused or assaulted them when they were children. No. 2:26-cv-2129, 2026 WL 32337568, at *1 (C.D. Cal. Aug. 12, 2026). In 2019, the plaintiffs shared details of their alleged abuse with representatives for the Jackson Estate. The Jackson Estate offered the plaintiffs millions of dollars to “compensate them fairly,” and in December 2019 the plaintiffs signed an “Acquisition and Consulting Agreement” which memorialized the compensation agreement. Critically, the agreement contained an arbitration clause in which the plaintiffs agreed that any future disputes about the agreement or “allegations that either party has violated any state or federal statutory or common law right ... shall be determined by binding arbitration.”

The *Cascio* plaintiffs were not of the type that had a dispute that then had to be litigated somewhere, either in court or arbitration. Instead, they had *already* settled that dispute. This distinguished the case from one in which allegations of abuse remained to be determined. Rather, the case presented an arbitration agreement in a settlement agreement where the parties had already determined compensation. Liability was not in question. This is distinctly different from the kinds of cases that Congress heard about when considering and passing the EFAA, and it proved the plaintiffs’ undoing.

In February 2026, the plaintiffs filed a lawsuit in the U.S. District Court for the Central District of California. They asserted claims for, among other things, sex trafficking. The Company moved to compel arbitration based on the agreement’s arbitration clause.

The plaintiffs argued that the EFAA exempted their suit from arbitration. The Company argued that the EFAA did not apply because the plaintiffs’ claims arose in 2019—when the plaintiffs first raised a dispute with the Jackson Estate that led to the agreement and payment—years before the EFAA’s enactment. The plaintiffs countered that the “dispute” arose in 2024, when the plaintiffs told the Jackson Estate that they intended to challenge the validity of the agreement. They argued that no dispute arose in 2019 since they did take legal action at that time.

On August 12, 2026, Judge Hernán D. Vera ruled in the Company's favor, holding that a dispute "arose when the the plaintiffs first disclosed the alleged abuse to the Jackson Estate and entered into a series of negotiations over the Agreement," which was in 2019. So, "during the summer of 2019, the parties' interests were undoubtedly adverse to each other," and "[i]t belies common sense to argue otherwise." And because "[t]he EFAA by its terms cannot apply to a dispute that arose before the effective date of the statute," the plaintiffs would have to arbitrate their claims.

CONCLUSION

Cascio is a straightforward application of the EFAA's anti-retroactivity language and it consistent with rulings of courts across the country.

Even still, the EFAA continues to present at least three thrillers to come for the legal community. First, does the EFAA exempt a plaintiff's *entire* case from arbitration, or just plaintiff's sexual assault or harassment claims? Next, can the defendant test the plausibility of the plaintiff's sexual assault or harassment claims in court without waiving the right to arbitration? Finally, what exactly constitutes a claim of sexual assault or harassment? These questions lay ahead in the courts.

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