

# US Court of Appeals Affirms District Court's Ruling Denying Motion to Compel Arbitration

06.09.2020

Bailey Glasser is pleased to announce that the US Court of Appeals for the Fourth Circuit affirmed the decision of the US District Court for the Southern District of West Virginia denying a defendant employer's motion to compel arbitration as to a group of opt-in Plaintiffs, in a case brought by employees of Applebee's Restaurants alleging violations of state and federal wage-and-hour laws. The employer moved to compel arbitration of all claims of a conditionally certified class, and the district court found that it failed to prove any agreement to arbitrate with respect to a group of opt-in Plaintiffs for whom no arbitration agreement was produced.

The Fourth Circuit agreed, after considering and rejecting the employer's proffered affidavit of its human resources manager as well as circumstantial evidence in the form of other agreements produced. The Court found the affidavit attesting to corporate policy regarding arbitration to be insufficient without testimony from any individuals with first-hand knowledge of the employee onboarding process. And the Court found evidence of other employees' arbitration agreements unpersuasive, as "[w]hen pressed on this point at oral argument before this Court, [Defendant's] counsel could not point to any record evidence or provide the Court the total number of employees and therefore the estimated rate of compliance (i.e., the number of signed arbitration agreements versus the number of employees onboarded for the relevant period)... It should go without saying that a numerator is of scant value without a denominator."

The Court accordingly held that no reasonable jury could find that the employer had proven an agreement to arbitrate as to the Plaintiffs at issue, and that no agreement to arbitrate exists.

*Hill v. Employee Resource Group, LLC*, No. 18-2009 (4th Cir. June 9, 2020)

Bailey Glasser attorneys Elizabeth Ryan and Jonathan Marshall drafted the appellate briefing, and Patricia Kipnis argued the appeal virtually before the Fourth Circuit in March 2020.

This win comes on the heels of the firm's victory before the West Virginia Supreme Court of Appeals on another arbitration formation issue, in *TD Auto v. Reynolds*.

US COURT OF APPEALS AFFIRMS DISTRICT COURT'S RULING DENYING MOTION TO  
COMPEL ARBITRATION

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