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## The Federal Arbitration Act Preempts State Law (Again)

The Supreme Court recently reiterated its strong policy favoring the enforcement of arbitration provisions and class action waivers under the Federal Arbitration Act (FAA). In *DirecTV, Inc. v. Imburgia*, a non-franchise case, a California customer attempted to initiate a class action lawsuit against DirecTV over the company's early termination fees under a consumer contract that contained a mandatory arbitration provision and a waiver of class action. Under California law in effect when the contracts at issue were entered into, the provisions would have been unenforceable (the unenforceability was overturned in a subsequent case). In a 6-3 decision, the Supreme Court disregarded language in the contract that could have supported the plaintiff's position and held that the FAA required that the arbitration and class waiver provisions be enforced.

Too often franchisors gloss over the dispute resolution provisions of their franchise agreements, viewing them as mere boilerplate. However, the *Imburgia* decision reflects the Supreme Court's intolerance for state efforts to circumvent federal policy favoring arbitration, and it drives home both the procedural and substantive importance of these provisions. Franchisors would be wise to consider the value of arbitration as a means of resolving disputes with franchisees and the importance of appropriately worded class

action waivers. The *Imburgia* decision confirms that a well-drafted dispute resolution provision can go a long way toward allowing a franchisor to effectively control where and how a dispute with a franchisee will be resolved.

For questions or to discuss this case further, please contact us.

Many Cheng Cohen lawyers will be at the IFA Convention in San Antonio from February 19-23, and we'd be happy to meet with you there to discuss this and any other issues important to your franchise system. We hope to see you there!

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