

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE**

MINUTE ORDER

DATE: 04/22/2016

TIME: 09:00:00 AM

DEPT: 53

JUDICIAL OFFICER PRESIDING: David Brown

CLERK: E. Brown

REPORTER/ERM:

BAILIFF/COURT ATTENDANT:

CASE NO: **34-2015-00186855-CU-OE-GDS** CASE INIT.DATE: 11/17/2015

CASE TITLE: **Richard Smigelski in his representative capacity vs. Pennymac Financial Services Inc**

CASE CATEGORY: Civil - Unlimited

EVENT TYPE: Petition to Compel Arbitration - Civil Law and Motion

APPEARANCES

Nature of Proceeding: Ruling on Submitted Matter (Petition to Compel Arbitration) taken under submission on 4/19/2016

TENTATIVE RULING

Defendants Private National Mortgage Acceptance Company, LLC, Penny Mac Financial Services, and PennyMac Mortgage Investment Trust's ("Defendants") petition to compel arbitration is denied.

Defendants previously unsuccessfully sought to compel arbitration of Plaintiff's complaint. They now seek to compel arbitration of Plaintiffs' First Amended Complaint. The Court's ruling denying Defendants' motion for reconsideration "re: Defendants' Petition to Compel Arbitration and Stay Action" effectively disposes of the instant motion. Again, the Court noted in connection with that ruling that the FAC did not constitute new or different facts or circumstances which would allow the Court to reconsider the original ruling denying Defendants' first petition and in any event, the Court found the arbitration agreements invalid and unenforceable in their entirety. The inclusion of individual and putative class claims cannot change that result. Thus, even though a class action waiver is valid and could be subject to the arbitration agreements, the invalidity and unenforceability of the agreements precludes arbitration of any claims.

To the extent that Defendants argue, as they did in connection with the original petition, for example, that the arbitration agreements do not preclude arbitration of PAGA claims, or that the rule precluding the waiver of PAGA claims is not pre-empted by the FAA, or that the question of arbitrability must be decided by the arbitrator, these arguments are rejected. Even if the Court were to find that a successive petition were permitted as a result of the FAC being filed, the Court extensively addressed and rejected these arguments in denying the original petition and the Court simply rejects the arguments for the reasons previously discussed. The Court would also note that any new argument attempting to demonstrate that PAGA claims were not waived or that the Court could sever any PAGA waiver found in the agreements are inappropriate. Those arguments were fully addressed in the Court's original ruling and any attempt to reargue those specific points is nothing more than an inappropriate motion for reconsideration.

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The minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or other notice is required.

COURT RULING

The matter was argued and submitted.

Having taken the matter under submission on 4/19/2016, the Court now rules as follows:

SUBMITTED MATTER RULING

The Court affirmed the tentative ruling.

Declaration of Mailing

I hereby certify that I am not a party to the within action and that I deposited a copy of this document in sealed envelopes with first class postage prepaid, addressed to each party or the attorney of record in the U.S. Mail at 720 Ninth Street, Sacramento, California.

Dated: April 22, 2016

E. Brown, Deputy Clerk _____s/ E. Brown_____

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