

## Federal Appeals Court Upholds Arbitration Institution's Authority to Consolidate Mass Arbitrations

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Defending against numerous individual arbitrations that share common factual and legal issues can cost companies significant time and money. The U.S. Court of Appeals for the Ninth Circuit recently held that such arbitrations can be consolidated when permitted by the applicable arbitration agreement and arbitration rules and affirmed the denial of a petition to compel individual arbitration. But the Ninth Circuit's decision underscores that companies must pay careful attention to the language of their arbitration agreements and their selected arbitration rules in order to ensure that consolidation is an option.

### Case Background

In *Kiana Jones v. Starz Entertainment, LLC*, the plaintiff, Kiana Jones, created a Starz account and agreed to Starz's Terms of Use. The Terms included a mandatory arbitration clause incorporating the rules of Judicial Arbitration and Mediation Services (JAMS), one of the major arbitration institutions in the U.S. The Terms prohibited class or representative proceedings but did not explicitly bar consolidation of individual arbitrations into a single proceeding.

Jones and thousands of other claimants (all represented by the same counsel) later filed individual arbitration claims against Starz, alleging privacy violations. JAMS, applying its own rules, consolidated 7,300 of these claims into a single proceeding. Among other things, this had the effect of significantly reducing Starz's potential arbitration fees, which otherwise would have exceeded \$12 million. Claimants' counsel opposed consolidation and objected to every arbitrator suggested, preventing arbitration from moving forward. Jones then petitioned a federal district court to compel individual arbitration, arguing that JAMS's consolidation amounted to Starz refusing to arbitrate under Section 4 of the Federal Arbitration Act ("FAA"), 9 U.S.C. § 4. The district court denied the petition, holding that Starz had not refused to arbitrate and that consolidation was a procedural issue for the arbitrator, not the courts, to decide.

### The Ninth Circuit's Decision

The Ninth Circuit affirmed the district court's ruling, emphasizing that Starz had not refused to arbitrate but had actively participated in the arbitration process. The court held that:

- Under Section 4 of the FAA, a party seeking to compel arbitration must show that the opposing party has failed, neglected, or refused to arbitrate. Starz had done none of these things, and so Jones could not make the required showing.
- The consolidation of claims by JAMS did not present a "gateway" arbitrability issue requiring judicial intervention. "Gateway" arbitrability issues typically concern the validity and scope of the agreement to arbitrate and are for a court to decide unless the parties have clearly and unmistakably indicated otherwise. But in this case, the arbitration institution's application of its own rules on consolidation fell within its authority.
- Jones' argument that JAMS's consolidation converted the arbitration into a prohibited "class or representative proceeding" in violation of the Terms was unfounded. The Terms did not explicitly require individual arbitration or prohibit consolidation. Moreover, consolidation is not the same as class or representative arbitration, because "[i]n a

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class or representative arbitration, an individual brings claims *on behalf of* others, whereas a claimant in a consolidated arbitration brings the claim in her *individual* capacity."

- Jones' attempt to invoke unconscionability as a means to force individual arbitration was improper. The FAA does not allow a party to modify an arbitration agreement on unconscionability grounds while simultaneously seeking to enforce it.

The court distinguished this case from *Heckman v. Live Nation Ent., Inc.*, 120 F.4th 670 (9th Cir. 2024), where the applicable arbitration rules provided for "mass arbitration" in which bellwether cases served as precedents for all other cases in a given "batch," without giving the claimants in those other cases notice of the bellwether cases, the opportunity to participate in the bellwether cases or to otherwise be heard, or the right to opt out of the "batch." The Ninth Circuit had therefore found the "mass arbitration" rules in *Heckman* unconscionable and thus unenforceable under California law. By contrast, under the JAMS consolidation rule in this case, Jones (and the other individual claimants) could still challenge consolidation within the arbitration proceeding itself and were not bound by decisions in bellwether cases where they had no opportunity to be heard. As the Ninth Circuit put it, under the JAMS consolidation rule at issue in this case, "no claimant is at the mercy of another claimant's representation of her."

### Implications

This decision reinforces that arbitration institutions have discretion to apply their own rules, including consolidation procedures, when those rules are incorporated into arbitration agreements. It also underscores that procedural objections to an arbitration institution's management of a case do not justify judicial intervention under the FAA.

For businesses, this ruling highlights the importance of carefully drafting arbitration agreements, particularly with respect to mass arbitration risks. While this case did not involve a specific mass arbitration clause, it demonstrates how consolidation can mitigate excessive costs in large-scale arbitration claims.

The authors are members of Miller Canfield's International Disputes Group. For more information on this decision or its implications, please contact the authors or your Miller Canfield lawyer.