

69306-9

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No. 69306-9

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

DAMON TULIP,

Petitioner-Appellant,

v.

SERVICE CORPORATION INTERNATIONAL, SCI FUNERAL AND
CEMETERY PURCHASING COOPERATIVE, INC., SCI WESTERN
MARKET SUPPORT CENTER, L.P. a/k/a SCI WESTERN MARKET
SUPPORT CENTER, INC., SCI WASHINGTON FUNERAL
SERVICES, INC., GREENWOOD MEMORIAL PARK CEMETERY &
FUNERAL HOME, JANE D. JONES, THOMAS RYAN,

Respondents-Respondents.

APPELLANT'S OPENING BRIEF

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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	ASSIGNMENTS OF ERROR	2
III.	STATEMENT OF THE CASE.....	2
	A. Mr. Tulip’s Arbitration Agreement With SCI	2
	B. The FLSA Litigation.....	6
IV.	ARGUMENT.....	7
	A. Mr. Tulip Has a Valid Arbitration Agreement With SCI.....	7
	B. Mr. Tulip Did Not Waive His Right to Arbitrate His State Law Claims	11
	1. The State Law Claims Mr. Tulip Seeks to Arbitrate Were Not Part of the <i>Stickle</i> Litigation.....	13
	2. The Merits of Mr. Tulip’s FLSA Claims Were Not Litigated in <i>Stickle</i>	14
	3. Mr. Tulip’s Demand for Arbitration Was Consistent With the Action SCI Declared Was Mandatory in <i>Reynolds</i>	17
	C. The Statute of Limitations is an Issue for the Arbitrator, Not the Court	18
V.	CONCLUSION.....	19

TABLE OF AUTHORITIES

Cases - Washington

<i>City of Spokane v. Marr</i> , 129 Wn. App. 890, 120 P.3d 652 (2005)	9
<i>Hill v. Garda CL Northwest, Inc.</i> , 169 Wn. App. 685, 281 P.3d 334 (2012)	12, 13
<i>Johnson v. Si-Cor, Inc.</i> , 107 Wn. App. 902, 28 P.3d 832 (2001)	9
<i>Mansker v. Farmers Ins. Co. of Washington</i> , No. C10-0511, 2010 WL 3699847 (W.D. Wash. Sept. 14, 2010)	16
<i>Munsey v. Walla Walla College</i> , 80 Wn. App. 92, 906 P.2d 988 (1995)	8
<i>Shoreline Sch. Dist. No. 412 v. Shoreline Ass'n of Educ. Office Emp.</i> , 29 Wn. App. 956, 631 P.2d 996 (1981)	12
<i>Townsend v. Quadrant Corp.</i> , 153 Wn. App. 870, 224 P.3d 818 (2009)	7, 8, 18
<i>Townsend v. Quadrant Corp.</i> , 173 Wn.2d 451, 268 P.3d 917 (2012)	18
<i>Zuver v. Airtouch Communications, Inc.</i> , 153 Wn.2d 293, 103 P.3d 753 (2004)	7, 8

Cases - Federal

Beauperthuy v. 24 Hour Fitness USA, Inc.,
No. 06-715 SC, 2011 WL 6014438 (N.D. Cal. Dec. 2, 2011)..... 15-16

Countrywide Home Loans, Inc. v. Mortgage Guaranty Ins. Corp.,
642 F.3d 849 (9th Cir. 2011)..... 8

Dean Witter Reynolds Inc. v. Byrd,
470 U.S. 213 (1985)..... 8

Doctor's Assocs., Inc. v. Distajo,
107 F.3d 126 (2d Cir. 1997)..... 13

Howsam v. Dean Witter Reynolds, Inc.,
537 U.S. 79 (2002)..... 17

Microstrategy, Inc. v. Lauricia,
268 F.3d 244 (4th Cir. 2001)..... 13

Mitchell v. Acosta Sales, LLC,
841 F. Supp. 2d 1105 (C.D. Cal. 2011)..... 15

Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.,
460 U.S. 1 (1983)..... 7

New Hampshire v. Maine,
532 U.S. 742 (2001)..... 9

O'Neel v. Nat'l Ass'n of Securities Dealers, Inc.,
667 F.2d 804 (9th Cir. 1992)..... 18

Subway Equip. Leasing Corp. v. Forte,
169 F.3d 324 (5th Cir. 1999)..... 13

Cases - Other

Doers v. Golden Gate Bridge etc. Dist.,
23 Cal.3d 180, 151 Cal. Rptr. 837 (1979)..... 14

St. Agnes Med. Ctr. v. PacifiCare of California,
31 Cal.4th 1187, 8 Cal. Rptr. 3d 517 (2003)..... 14

Statutes - Washington

RCW § 49.12.020 3

RCW § 49.46.010 3

RCW § 49.46.130 3

RCW § 49.48.010 3

RCW § 49.52.050 3

UAA, chapter 7.04 RCW 7

UAA § 6 cmt. 2, 7 U.L.A. 24 (2005)..... 18

Statutes - Federal

FAA, 9 U.S.C. § 1..... 7

Regulations and Rules

WAC 296-126-025..... 3

WAC 296-126-092..... 3

WAC 296-126-021..... 3

I. INTRODUCTION

This case arises from the refusal of a billion-dollar funeral services corporation to honor the standard agreement entered into with its employees to arbitrate claims arising out of their employment. The Petitioner-Appellant, Damon Tulip (“Mr. Tulip”), is a former employee of Respondents, Service Corporation International, et al. (“SCI”), who regularly performed work for SCI for which he was not compensated.

During the course of his employment with SCI, Mr. Tulip entered into a valid arbitration agreement providing that all disputes relating to any aspect of his employment with SCI would be resolved by binding arbitration. Mr. Tulip served a demand for arbitration on SCI seeking to arbitrate his claims for unpaid wages under Washington state law and after receiving no response from SCI, he filed a Petition to Compel Arbitration in Superior Court on November 15, 2011. In response to Mr. Tulip’s Petition, SCI claimed that by opting into a Fair Labor Standards Act (“FLSA”) collective action, in which the only issue that was litigated was whether a collective action would be certified, Mr. Tulip somehow waived his right to arbitrate his Washington state law claims which were never part of the FLSA action. SCI also opposed arbitration on the grounds that not all of the respondents are bound by the arbitration agreement and that Mr. Tulip’s claims are barred by the statute of limitations.

After a hearing on July 12, 2012 before the Honorable Laura Inveen, the Superior Court issued an order denying the Petition to Compel Arbitration. The Superior Court did not issue a written opinion explaining its reasoning. Mr. Tulip appeals from that order.

II. ASSIGNMENTS OF ERROR

The Superior Court erroneously denied Mr. Tulip's Petition to Compel Arbitration. This appeal presents the following issues for review:

1. Does Mr. Tulip have a valid arbitration agreement with SCI requiring arbitration of his state law claims for unpaid wages?
2. Did Mr. Tulip waive his right to arbitrate his state law claims by opting into an FLSA collective action where the only issue that was litigated was whether the FLSA claims could proceed on a collective basis?
3. Is the issue of whether the claims sought to be arbitrated are time barred properly decided by a court on a petition to compel arbitration?

III. STATEMENT OF THE CASE

A. Mr. Tulip's Arbitration Agreement With SCI

Mr. Tulip was employed by SCI as a Family Service Counselor and a Community Service counselor at the Greenwood Memorial Park and Funeral Home in Renton, Washington from approximately September

2004 until September 2007. Clerk's Papers ("CP") 3, 211. Mr. Tulip was also employed by SCI as a Community Service Counselor at the Acacia Memorial Park and Funeral Home in Seattle, Washington from March 2010 until September 2011. CP 3. Throughout the course of Mr. Tulip's employment, SCI regularly suffered or permitted Mr. Tulip to perform work, both overtime and non-overtime, but did not compensate him for all hours worked. *Id.*

Mr. Tulip is seeking to arbitrate his individual claims for unpaid overtime and other wages and compensation due under RCW § 49.46.010, § 49.46.130; § 49.48.010, § 49.52.050, § 49.12.020, and WAC 296-126-025, 296-126-092, 296-126-021, and Washington State common law against SCI. *Id.* Mr. Tulip has never raised the state law claims he seeks to arbitrate in any litigation. CP 3 at ¶ 10.

Mr. Tulip entered into an Arbitration Agreement (hereinafter "Agreement") with SCI as a condition of his employment. CP 251-52. The Agreement provides that, except for three circumstances not applicable here,¹ disputes relating to employment are subject to arbitration:

¹ Pursuant to Section 2 of the Agreement, claims brought under federal discrimination statutes, claims for workers' compensation or unemployment benefits or claims brought to enforce any non-competition

Employee and the Company agree that, except for the matters identified in Section 2 below and except as otherwise provided by law, all disputes relating to any aspect of Employee's employment with the Company shall be resolved by binding arbitration. This includes, but is not limited to, any claims against the Company, its affiliates or their respective officers, directors, employees, or agents for breach of contract, wrongful discharge, defamation, misrepresentation, and emotional distress, as well as any disputes pertaining to the meaning or effect of this Agreement. The arbitration shall be conducted in accordance with the procedures attached hereto as Exhibit "A." This agreement to arbitrate shall cover disputes arising both before and after the execution of this document, except to the extent that any litigation has already been filed as of the date hereof.

CP 251. Mr. Tulip's claims for unpaid wages fall squarely within the scope of the Agreement.

The Agreement is between Mr. Tulip, the "Employee" and his employer, identified as "the Company." CP 251-52. SCI is "the Company" referred to in the Agreement. CP 64. The express language of the Agreement itself indicates that "claims against the Company, its affiliates or their respective officers, directors, employees, or agents" are subject to arbitration. CP 251. Similarly, many of the same respondents named in this action have successfully enforced the same Agreement in other actions. Respondent Service Corporation International successfully

or confidentiality agreement between the parties are not governed by the Agreement. CP 252. No such claims are at issue here.

enforced the same Agreement in another lawsuit in the District Court for the Southern District of Texas captioned *Green v. Serv. Corp. Int'l* (“the *Green* action”) and represented that it was “the Company” referred to in the Agreement. CP 29-72. Service Corporation International further represented that “SCI and its subsidiaries are clearly ‘affiliates’ of each other.” CP 64. On appeal of the order compelling arbitration and confirming the arbitrator’s award in the *Green* action, the Fifth Circuit Court of Appeals confirmed the district court’s holding that SCI was “the Company” referred to in the arbitration agreement. CP 8.

Also, in a lawsuit filed by former SCI employees in Indiana who sought to litigate their claims for unpaid wages and overtime under Indiana state law, *Reynolds, et al. v. Serv. Corp. Int'l, et al.*, Service Corporation International, SCI Funeral and Cemetery Purchasing Cooperative, Inc., Jane D. Jones, and Thomas Ryan (who are also respondents in this action), moved to dismiss that lawsuit because each of the *Reynolds* plaintiffs “entered into the Principles of Employment & Arbitration Procedures, wherein each agreed to arbitrate all disputes arising between them, individually, and SCI regarding the associate’s employment.” CP 19. The SCI defendants in *Reynolds* declared that the state law claims the Indiana employees sought to litigate “must be submitted to binding arbitration.” CP 25. SCI filed its motion to dismiss

in *Reynolds* based on the existence of an arbitration agreement on February 4, 2011. CP 19.

Shortly after SCI declared that the state law claims of the former SCI employees in Indiana must be arbitrated, Mr. Tulip, in accordance with the terms of the Agreement and SCI's declaration in the *Reynolds* action, served a Demand for Arbitration on SCI on May 19, 2011 seeking to individually arbitrate his state law claims for unpaid wages. CP 16-17.

B. The FLSA Litigation

In January 2008, several former SCI employees filed a collective and class action lawsuit in the District of Arizona captioned *Stickle, et al. v. Serv. Corp. Int'l* ("*Stickle*"), seeking to pursue a collective action under the FLSA on behalf of themselves and other similarly situated employees to recover unpaid overtime wages. CP 407-54. Derivative claims under two other federal statutes, ERISA and RICO, were also included in the *Stickle* action. CP 452-53. No state law claims were asserted in *Stickle*. *Id.*

Mr. Tulip was not a named plaintiff in *Stickle*, but he did opt into *Stickle* on December 14, 2009, along with more than 1,400 other opt-in plaintiffs. CP 112-117. *Stickle* was conditionally certified as a collective action under the FLSA, and the parties subsequently conducted decertification discovery for approximately two years. CP 117-98. The

court required all of the opt-in plaintiffs to respond to written discovery requests from SCI as part of decertification discovery, and Mr. Tulip responded to the written discovery requests. CP 145 at Dkt. No. 1484; 209-24. After decertification discovery concluded, SCI filed a decertification motion, and on April 25, 2011, the court granted SCI's motion and decertified the conditionally certified collective action, dismissing the FLSA claims of all of the opt-in plaintiffs, including Mr. Tulip, from *Stickle* without prejudice. CP 198 at Dkt. No. 1995.

IV. ARGUMENT

A. Mr. Tulip Has a Valid Arbitration Agreement With SCI

The standard of review of a trial court's decision on a motion to compel arbitration is *de novo*. *Zuver v. Airtouch Communications, Inc.*, 153 Wn.2d 293, 302, 103 P.3d 753, 759 (2004). The party opposing arbitration has the burden of showing the arbitration agreement is unenforceable. *Id.*

Both the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1 and Washington's Uniform Arbitration Act ("UAA"), chapter 7.04 RCW evince a strong policy in favor of arbitration. *See, e.g., Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 22-23 (1983). Under Washington public policy all doubts regarding arbitrability should be resolved in favor of arbitration. *Townsend v. Quadrant Corp.*, 153 Wn.

App. 870, 887, 224 P.3d 818 (2009); *Munsey v. Walla Walla College*, 80 Wn. App. 92, 94, 906 P.2d 988 (1995).

The FAA “leaves no place for the exercise of discretion by a district court, but instead mandates that district courts shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed.” *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 218 (1985); *see also Countrywide Home Loans, Inc. v. Mortgage Guaranty Ins. Corp.*, 642 F.3d 849, 854 (9th Cir. 2011). Both the FAA and UAA require a court to compel arbitration upon a showing that a valid written arbitration agreement exists and that the claims at issue fall within the scope of the agreement. *Townsend*, 153 Wn. App. at 887.

SCI does not dispute that Mr. Tulip has a valid arbitration agreement and that the claims he seeks to arbitrate fall within the scope of the Agreement. CP 88-89 at ¶¶ 7-9. Rather, SCI argued below that it is not bound by the Agreement. Such an argument must be rejected as contrary to the express language of the Agreement and SCI’s own actions and representations.

The Agreement identifies the employer as “the Company,” and defines matters subject to arbitration as “any claims against the Company, its affiliates or their respective officers, directors, employees, or agents.” CP 251. SCI admits its Washington subsidiary, SCI Washington Funeral

Services, Inc., one of the named Respondents in this action, is a party to the Agreement. CP 88 at ¶ 7. As such, at a minimum, at least one of the Respondents, SCI Washington Funeral Services, Inc., is bound by the Agreement and must be compelled to arbitrate Mr. Tulip's claims. The other Respondents are likewise bound by the Agreement, as they are expressly encompassed by "the Company, its affiliates or their respective officers, directors, employees, or agents," as defined by the Agreement. CP 251.

Moreover, the doctrine of judicial estoppel bars the other Respondents from asserting they are not bound by the Agreement. As the Supreme Court has held, "[t]he doctrine of judicial estoppel prevents a party from asserting a claim in a legal proceeding that is inconsistent with a claim taken by that party in a previous proceeding." *New Hampshire v. Maine*, 532 U.S. 742, 749-51 (2001); *see also City of Spokane v. Marr*, 129 Wn. App. 890, 893, 120 P.3d 652 (2005) (holding judicial estoppel "precludes a party from gaining advantage by asserting one position in a court proceeding and later seeking a second advantage by taking a clearly inconsistent position."). Judicial estoppel applies "if a litigant's prior inconsistent position benefited the litigant or was accepted by the court." *Id.* (quoting *Johnson v. Si-Cor, Inc.*, 107 Wn. App. 902, 909, 28 P.3d 832 (2001)).

Here, the Respondents, other than SCI Washington Funeral Services, Inc. (which concedes it is bound by the Agreement), are judicially estopped from asserting they are not bound by the Agreement based on their successful enforcement of the same Agreement in at least two previous actions.

First, SCI succeeded in compelling arbitration pursuant to the terms of the same Agreement at issue here in an action regarding a former employee's whistleblower claim in the Southern District of Texas, *Green v. Serv. Corp. Int'l*, 4:06-CV-00833. CP 29-72. In *Green*, SCI represented that it was "the Company" referred to in the Agreement and that "SCI and its subsidiaries are clearly 'affiliates' of each other." CP 64. On appeal of the order compelling arbitration and confirming the arbitrator's award in the *Green* action, the Fifth Circuit Court of Appeals confirmed the district court's holding that SCI was "the Company" referred to in the arbitration agreement. CP 8.

Similarly, SCI successfully dismissed an action brought by former employees in Indiana seeking compensation for unpaid wages under Indiana state law, similar to the state law claims Mr. Tulip seeks to arbitrate here, on the basis that those employees were required to individually arbitrate their claims pursuant to the terms of SCI's arbitration agreement. In *Reynolds*, defendants Service Corporation

International, SCI Funeral and Cemetery Purchasing Cooperative, Inc., Jane D. Jones and Thomas Ryan successfully argued that plaintiffs' action should be dismissed because they were required to arbitrate "all disputes arising between them, individually, and SCI regarding the associate's employment." CP 19.

Hence, based on the positions taken by "the Company" in other litigation, all of the Respondents fall within the categories of "the Company, its affiliates or their respective officers, directors, employees, or agents," as defined by the Agreement. CP 251. SCI should not be allowed to assume a contrary position here because it has decided it is no longer in its interest to comply with its own arbitration agreements. Therefore, all of the Respondents here are judicially estopped from asserting that they are not bound by the arbitration agreement.

Accordingly, a valid agreement to arbitrate exists between Mr. Tulip and all of the Respondents, and his Petition to Compel Arbitration must therefore be granted.

B. Mr. Tulip Did Not Waive His Right to Arbitrate His State Law Claims

Mr. Tulip did not act inconsistently with his right to individually arbitrate his state law claims for unpaid wages by opting into an FLSA

collective action, where the only issue litigated was whether the FLSA claims could proceed collectively.

First, no state law claims were ever asserted in the FLSA litigation. Second, to the extent SCI argues that the state law claims arise out of the same facts as the FLSA claims and that the *Stickle* litigation was therefore sufficient to waive the state law claims, the *merits* of Mr. Tulip's FLSA claims were never litigated in *Stickle*. Third, Mr. Tulip's request to arbitrate his state law claims was in accordance with the very action SCI declared was mandatory only months earlier in the *Reynolds* action.

The issue of waiver is subject to *de novo* review, "applying the legal test for waiver to the facts established in the trial court." *Hill v. Garda CL Northwest, Inc.*, 169 Wn. App. 685, 690, 281 P.3d 334 (2012). "A waiver [of the right to arbitrate] will not be found...absent conduct inconsistent with any other intention but to forego that right." *Shoreline Sch. Dist. No. 412 v. Shoreline Ass'n of Educ. Office Emp.*, 29 Wn. App. 956, 958, 631 P.2d 996 (1981). Whether waiver has occurred is dependent on the facts of the case, and a waiver determination "is not susceptible to bright line rules." *Hill*, 169 Wn. App. at 691.

The facts here do not support a finding that Mr. Tulip's conduct was inconsistent with any other intention but to forego his right to individually arbitrate his state law claims. SCI claims that Mr. Tulip acted

inconsistently with his right to individually arbitrate his state law claims for unpaid wages by opting into the *Stickle* FLSA litigation and responding to decertification discovery in that action. SCI's argument must be rejected because, as in *Hill*, under the totality of the circumstances, Mr. Tulip's actions were not inconsistent with arbitration.

1. The State Law Claims Mr. Tulip Seeks to Arbitrate Were Not Part of the *Stickle* Litigation

First, the state law claims Mr. Tulip seeks to arbitrate were never even part of the *Stickle* FLSA litigation. It is a well-established rule that in order to support a finding of waiver, it must be established that the party seeking arbitration previously litigated *the same claims* that party now seeks to arbitrate. *See, e.g., Microstrategy, Inc. v. Lauricia*, 268 F.3d 244, 250 (4th Cir. 2001); *Doctor's Assocs., Inc. v. Distajo*, 107 F.3d 126, 133 (2d Cir. 1997) (holding "only prior litigation of the *same* legal *and* factual issues as those the party now wants to arbitrate results in waiver of the right to arbitrate.") (emphasis added); *Subway Equip. Leasing Corp. v. Forte*, 169 F.3d 324, 328 (5th Cir. 1999) ("We hold today that a party only invokes the judicial process to the extent it litigates a specific claim it subsequently seeks to arbitrate."). It is clear from the *Stickle* complaint that the only claims asserted in that action were federal claims under the FLSA, ERISA and RICO. CP 452-53. The *Stickle* complaint is devoid of

any reference to state law claims whatsoever—the only claims Mr. Tulip seeks to arbitrate. CP 407-54.

2. The Merits of Mr. Tulip’s FLSA Claims Were Not Litigated in *Stickle*

Even, assuming, *arguendo*, Mr. Tulip’s pursuit of collective certification of his FLSA claims in the *Stickle* action could somehow be construed as an intent to litigate the separate individual state law claims he is seeking to arbitrate, “waiver generally does not occur where the arbitrable issues have not been litigated to judgment.” *St. Agnes Med. Ctr. v. PacifiCare of California*, 31 Cal.4th 1187, 1201, 8 Cal. Rptr. 3d 517 (2003); *see also Doers v. Golden Gate Bridge etc. Dist.*, 23 Cal.3d 180, 188, 151 Cal. Rptr. 837 (1979) (“Because the arbitrable issues in the instant action were never litigated by the parties in the federal court, we find that appellant did not waive his contractual arbitration rights.”).

The merits of Mr. Tulip’s FLSA claims were never litigated in *Stickle*. Discovery and litigation in *Stickle* were limited solely to the issue of whether a collective action could be certified. CP 291-300. Mr. Tulip’s participation in *Stickle* was limited to filing a consent form to opt into that action and responding to decertification-related written discovery requests that every other opt-in plaintiff was required to respond to. CP 112-17; 145 at Dkt. No. 1484; 209-24. After the collective action was decertified in *Stickle*, the FLSA claims of all of the opt-in plaintiffs, including Tulip,

were dismissed without prejudice. CP 198 at Dkt. No. 1995. The decertification decision in *Stickle* did not adjudicate or otherwise dispose of Mr. Tulip's individual FLSA claims on the merits, and he retained the right to pursue those claims on an individual basis. *See e.g., Mitchell v. Acosta Sales, LLC*, 841 F. Supp. 2d 1105, 1116 (C.D. Cal. 2011) ("If the court determines that the plaintiffs are not similarly situated, it may decertify the collective action and dismiss the opt-in plaintiffs without prejudice.").

Not only was Mr. Tulip's participation in the *Stickle* FLSA litigation limited, but SCI would have had to expend the same resources defending against certification in that case regardless of whether Mr. Tulip had opted into that action. SCI would have been in no different position had Mr. Tulip not opted into the *Stickle* litigation. The only determination made in the *Stickle* litigation was that the SCI employees who opted into that action had to pursue their FLSA claims for unpaid wages on an individual rather than a collective basis.

Accordingly, even if the FLSA claims were the same as the state law claims Mr. Tulip seeks to arbitrate (which they are not), there is nothing inconsistent about litigating the collective action issue and then proceeding with individual arbitration once a determination is made that a collective action is not viable. *See e.g. Beauperthuy v. 24 Hour Fitness*

USA, Inc., No. 06–715 SC, 2011 WL 6014438, at *5 (N.D. Cal. Dec. 2, 2011) (after denial of class certification, plaintiffs could either litigate or arbitrate individual claims); *Mansker v. Farmers Ins. Co. of Washington*, No. C10-0511, 2010 WL 3699847, at *3 (W.D. Wash. Sept. 14, 2010) (postponing ruling on question of arbitrability until after class certification is decided). The theory behind the waiver of arbitration rights is to avoid a situation where a party proceeds in one forum, is unhappy with the outcome, and attempts a second bite at the apple in another forum. In contrast, here, in addition to the fact that Mr. Tulip’s state law claims were not even part of the *Stickle* litigation, his participation in *Stickle* was limited merely to a determination as to whether he could proceed with his FLSA claims as part of a collective action. This is not inconsistent with Mr. Tulip seeking to pursue his individual state law claims in arbitration, pursuant to his obligation under the Agreement. Mr. Tulip is not seeking a second bite at the apple. Rather, he is merely seeking to adjudicate his individual state law claims *for the first time* and is seeking to do so in arbitration, as SCI required when insisting upon the Agreement as a condition of Mr. Tulip’s employment.

3. Mr. Tulip’s Demand for Arbitration Was Consistent With the Action SCI Declared Was Mandatory in *Reynolds*

Mr. Tulip’s demand for arbitration of the state law claims in May 2011 was entirely consistent with what SCI declared was mandatory only

a few months earlier in February 2011 in the *Reynolds* action. SCI represented in the *Reynolds* action, that state law claims for unpaid wages, like the ones Mr. Tulip seeks to arbitrate here, **must** be arbitrated. Like Mr. Tulip, the three named plaintiffs in *Reynolds* were also opt-in plaintiffs in *Stickle*. CP 21. Notwithstanding that these individuals had opted into the FLSA litigation, SCI did not believe that the *Reynolds* named plaintiffs' participation in *Stickle* presented any barrier to individually arbitrating their state law claims. Rather, SCI argued in its February 4, 2011 motion to dismiss in *Reynolds* that the state law claims of the three named plaintiffs who filed that action **must** be individually arbitrated. CP 19-26. Mr. Tulip served his demand for individual arbitration of his state law claims on May 19, 2011, a mere three months after SCI represented that the similar state law claims of the *Reynolds* plaintiffs, who were also opt-in plaintiffs in *Stickle*, must be arbitrated. CP 16-17. It is inconceivable for SCI to be prejudiced by the very action it argued was mandatory.

C. The Statute of Limitations is an Issue for the Arbitrator, Not the Court

Issues of procedural arbitrability, such as whether the statute of limitations has run, are matters for the arbitrator, not for the judge, to decide. *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 85 (2002);

O'Neel v. Nat'l Ass'n of Securities Dealers, Inc., 667 F.2d 804, 807 (9th Cir. 1992); *Townsend v. Quadrant Corp.*, 173 Wn.2d 451, 457, 268 P.3d 917 (2012) (quoting *Townsend*, 153 Wn. App. at 879, 224 P.3d 818 (quoting UAA § 6 cmt. 2, 7 U.L.A. 24 (2005)) (“whether prerequisites such as time limits...and other conditions precedent to an obligation to arbitrate have been met, are for the arbitrators to decide.”). Hence, whether Mr. Tulip's claims may be barred by the statute of limitations is an issue to be decided by the arbitrator, not by a court on a petition to compel arbitration. Accordingly, that the claims sought to be arbitrated may be barred by the statute of limitations is not grounds for denial of a petition to compel arbitration.

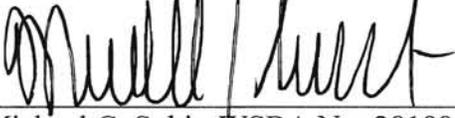
V. CONCLUSION

Mr. Tulip has a valid agreement to arbitrate with SCI, and he did not waive his right to individually arbitrate his state law claims through the *Stickle* litigation. Moreover, whether the claims Mr. Tulip seeks to arbitrate may be time barred is not an issue for the court to decide on a petition to compel arbitration. Accordingly, and for the reasons stated above, the order appealed from should be reversed, and this matter remanded to the Superior Court with directions that Mr. Tulip's petition to compel arbitration be granted and that he be awarded attorney's fees on

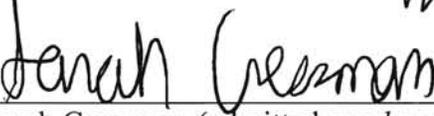
his motion and this appeal, together with such other and further relief as this Court deems just and proper.

Respectfully submitted this 20th day of December, 2012.

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By: 
Sarah Cressman (admitted *pro hac vice*)
Attorneys for Appellant Damon Tulip

CERTIFICATE OF SERVICE

I, Janet Francisco, certify and state as follows:

1. I am a citizen of the United States and a resident of the State of Washington; I am over the age of 18 years and not a party of the within entitled cause. I am employed by the law firm of Frank Freed Subit & Thomas LLP, whose address is 705 Second Avenue, Suite 1200, Seattle, Washington 98104.

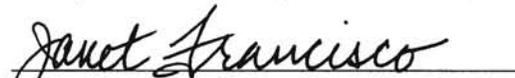
2. I caused to be served the foregoing document upon counsel of record at the address and in the manner described below, on December 20, 2012: **APPELLANT'S OPENING BRIEF.**

Renee Grant Bluechel	<input checked="" type="checkbox"/>	U.S. Mail
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Stinson Morrison Hecker LLP	<input type="checkbox"/>	ABC Legal Messenger
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Phoenix, AZ 85004	<input checked="" type="checkbox"/>	E-Mail
lwilliams@stinson.com		

I hereby declare under the penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

DATED at Seattle, Washington this 20th day of December, 2012.


Janet Francisco