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The Evolving Law of Waiver Under the California Arbitration Act: Predictions for a Post-Quach World

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Nearly a century ago, and recognizing the courts' historic hostility toward arbitration agreements, Congress, followed shortly by the California Legislature, adopted laws intended to "favor" arbitration. In recent decades, courts interpreted the enactment of the Federal Arbitration Act (FAA)1 and California Arbitration Act (CAA)2 as indications that arbitration should be fostered and therefore applied arbitration-specific waiver requirements intended to promote arbitration over litigation. Specifically, courts required an additional showing of prejudice to the non-moving party before a finding of waiver could be made.

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