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E.D.N.Y. bars arbitration rollout to class members between preliminary and final settlement approval

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Takeaway: Defendants often want to roll out arbitration agreements with class action waivers despite the pendency of class litigation. While Second Circuit courts generally allow this practice as long as the communications are clear, voluntary, and not coercive, a recent district court decision recognized that, even when accompanied by clear communications, a new arbitration agreement may still create confusion among class members because of the stage of the litigation. *Calderon v. Public Partnerships, LLC*, No. 25-cv-02320 (FB) (LKE), 2026 WL 2620030 (E.D.N.Y. Sept. 4, 2026). Specifically, the *Calderon* court held that a class defendant's well-drafted, non-misleading arbitration agreement may not go to settlement class members during the period between preliminary and final approval of a class settlement.

The *Calderon* plaintiffs—personal assistants (PAs) paid through Public Partnerships, LLC (PPL), under New York's Medicaid Consumer Directed Personal Assistance Program—alleged that PPL failed to pay them accurately and on time, in violation of state and federal law. 2026 WL 2620030, at *1. After mediation, the parties reached a class settlement and moved for preliminary approval in June 2026. *Id.*

At the July 1 preliminary approval hearing, PPL discussed its intent to adopt a dispute resolution agreement (DRA) that included a class action waiver, to avoid what it called a “never-ending loop” of class and collective actions tied to its role as the statewide fiscal intermediary. *Id.* PPL planned to send the DRA to current PAs in the preliminarily-certified class in *Calderon*; PAs in the putative class in *Flanagan v. Public Partnerships, LLC*, No. 25-cv-6225 (W.D.N.Y.); and current downstate PAs who started after May 1, 2026, and are not *Calderon* class members. *Id.*

The plaintiffs opposed the rollout to settlement class members and sought an order under Rule 23(d) barring it until final approval. *Id.* at *2. They argued that sending court-approved class notice and an arbitration agreement at the same time, each with its own opt-out procedure, would confuse class members. *Id.* They also pointed out that PPL had withdrawn an earlier DRA after it caused significant class confusion. *Id.* at *1.

Magistrate Judge Eshkenazi declined to rule on the DRA as to anyone outside the settlement class, citing the lack of jurisdiction over non-parties. *Id.* at *2. As to settlement class members, the court relied on its Rule 23 responsibility to restrict communications that are potentially coercive or misleading. *Id.* The pertinent factors include (1) class members' relative vulnerability; (2) actual or contextual risk of coercion; (3) any intent to narrow the class; (4) whether the agreement was imposed unilaterally; and (5) misleading conduct, language, or omissions. *Id.* (citing *Chen-Oster v. Goldman, Sachs & Co.*, 449 F. Supp. 3d 216, 255 (S.D.N.Y. 2020)). The court stressed that it did not need to find actual or willful misconduct, "so long as the effect is to interfere with class members' rights." *Id.* (citation omitted).

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The court emphasized it did not find the DRA itself coercive or misleading, and it acknowledged PPL's efforts to reduce confusion (including prominently disclosing the pending litigation, noting participation was voluntary, and prohibiting retaliation against anyone who declined). *Id.* at *2–3. But the timing—between preliminary and final approval of the class settlement—triggered three risks: (1) a risk of class member confusion as to the relationship between the DRA notice and the settlement notice; (2) the possibility that class members (many of whom did not speak English as their first language) might inadvertently opt out of the settlement; and (3) the potential that class members might believe they had to accept arbitration as a condition of the settlement. *Id.* at *2.

The *Calderon* court distinguished *Carusillo v. FanSided, Inc.*, No. 20-cv-4766, 2021 WL 4311167 (S.D.N.Y. Sept. 21, 2021), on which PPL relied and which allowed an arbitration rollout during pending litigation, because of "the timing." 2026 WL 2620030, at *3. Whereas the *Carusillo* defendant rolled out the new arbitration agreement during the relatively early collective action opt-in period (when a prohibition on the rollout could have forced the defendant to wait months or years), *Calderon* had entered its final stages, with final approval set for November 2026. *Id.* PPL offered no explanation for why it could not wait "just a few months" and could not specify how that short delay would harm its stated operational purposes. *Id.* Neither PPL nor the court found any case approving communications with settlement class members about arbitration agreements during "the particularly sensitive period between preliminary and final approval." *Id.*

Weighing these points, the court concluded that the risk of confusion outweighed PPL's operational interests, particularly because PPL remained free to roll out the DRA to everyone outside the class. *Id.* The *Calderon* court also rejected PPL's request to allow the rollout after expiration of the deadline for class members to opt out or object to the settlement, agreeing with the plaintiffs that class members may continue learning about their settlement rights after the deadline. *Id.* The court therefore extended the bar through final approval. *Id.*

The *Calderon* decision confirms that timing matters, even where a class defendant has created a non-coercive arbitration agreement rollout process. A defendant contemplating such a rollout before finalization of a class settlement should include the rollout process as part of the settlement itself. And defendants seeking to implement an arbitration rollout during class litigation should develop an optimal rollout process that they implement at the earliest feasible time (the plaintiffs in *Calderon* pointed to PPL's earlier, withdrawn rollout). Finally, a class defendant remains free under *Calderon* to implement a new arbitration program that does not include class members subject to an imminently final class settlement.