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District of Rhode Island invalidates "naked" class action waiver on public policy grounds

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Takeaway: We have written many articles about including class action waivers in consumer-facing arbitration agreements as a means of reducing class action litigation risk. The key to enforcing those waivers is the protection provided by the Federal Arbitration Act (FAA), which generally preempts contrary state law. But a class action waiver that does not implicate the FAA – a so-called "naked" waiver – remains subject to a state law attack. Those legal dynamics recently played out in *Metcalfe v. Grieco Hyundai LLC*, --- F. Supp. 3d ----, C.A. No. 22-378-JJM-LDA, 2023 WL 6441945 (D.R.I. Oct. 3, 2023), where the district court invalidated a waiver on state law public policy grounds.

In May 2019, Elsie Metcalfe leased an automobile from Grieco Hyundai LLC ("Grieco"). She signed a lease agreement providing that she could buy the car at the end of the lease term for $9,520.80, plus a few minor fees. But at the end of the lease three years later, she was required to pay $11,520, or about $2,000 more for the car. 2023 WL 6441945, at *1.

The lease agreement contained a class action waiver that was not included within an arbitration agreement: "CLASS ACTION WAIVER: TO THE EXTENT PERMITTED BY APPLICABLE LAW, YOU HEREBY WAIVE ANY RIGHT YOU MAY HAVE TO BRING OR PARTICIPATE IN A CLASS ACTION RELATED TO THIS LEASE." *Id.* But the documents governing her purchase of the car three years later – a purchase agreement and installment contract – did not include any class action waiver at all. Those contracts included a standard merger clause providing that "[t]his contract contains the entire agreement between you and us relating to this contract." *Id.* at *2.

Seeking to represent herself and a putative class, Ms. Metcalfe sued Grieco for violations of the Rhode Island Deceptive Trade Practices Act (DTPA), for breach of contract, and other claims. Invoking the class action waiver, Grieco responded to her complaint by moving for an order striking the class action allegations or, alternatively, dismissing the class claims with prejudice under Federal Rule 12(b)(6).

The district court invalidated the class action waiver, ruling that it violated Rhode Island public policy (specifically, the public policy embodied in the DTPA's provision authorizing private parties to file class action litigation). *Id.* The district court further noted in a footnote that the Federal Arbitration Act was "not implicated" because the class action waiver was not set out in an arbitration agreement. *Id.* at n.2.

Additionally, the court ruled that the class action waiver was unenforceable because it was "superseded" by the purchase agreement and installment contract, given that they contained a standard merger clause providing that those later-entered contracts constituted the parties' "entire agreement." *Id.* at *2.