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The Central District of California clarifies private "injunctive relief" for purposes of McGill

by Michele Floyd

Takeaway: The Central District of California recently added class claims seeking to enjoin racial discrimination to the list of claims that fall outside the scope of "public injunctive relief" for purposes of the *McGill* Rule. California's *McGill* Rule renders unenforceable arbitration provisions that preclude recovery of "public injunctive relief" in any forum. *McGill v. Citibank, N.A.*, 2 Cal. 5th 945, 952 (2017). Since *McGill,* courts have grappled with determining what constitutes "public injunctive relief."

As *McGill* defined it, "public injunctive relief" is "injunctive relief that has the primary purpose and effect of prohibiting unlawful acts that threaten future injury to the general public." *Id.* at 951. By contrast, "[r]elief that has the primary purpose or effect of redressing or preventing injury to an individual plaintiff—or to a group of individuals similarly situated to the plaintiff—does not constitute public injunctive relief." *Id.* at 955 (emphasis added). In short, public injunctive relief must do more than incidentally benefit the public.

In *Grigorian v. Citibank, N.A.*, Case No. CV 23-9519-MWF (Ex), 2024 U.S. Dist. LEXIS 71375 (C.D. Cal. Apr. 17, 2024), the district court took a close look at existing precedent and determined that the class plaintiff's request to enjoin Citibank from employing discriminatory credit policies against those of Armenian national origin or heritage was not a request for public injunctive relief. The court's decision turned in large part on the class definition: consumers who (1) applied for and was denied a Citi credit card or had a Citi credit card that was subsequently cancelled, and (2) have last names ending in -ian or -yan. 2024 U.S. Dist. LEXIS 71375, at *8–9. The court found that the class definition described a subset of consumers rather than the general public. Accordingly. the requested injunction constituted private, rather than public, injunctive relief. *Id.* at *9–11 (citing *McGill*, 2 Cal. 5th at 952).

While class claims alone do not foreclose application of *McGill, Gregorian* counsels a close look at the class members and the nature of their claims in determining whether a claim seeks public injunctive relief. Presently, false advertising claims directed at the general public (such as the advertising at issue in *McGill)* and claims of unfair competitive behavior impacting the public generally, *i.e.*, claims under the California's False Advertising Law ("FAL"), Unfair Competition Law ("UCL") and Consumer Legal Remedies Act ("CLRA"), remain examples of claims most likely to trigger *McGill*.