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## **An Order to Compel Arbitration Is Not Appealable**

The Supreme Court has consistently held that [§ 16\(b\) of the Federal Arbitration Act](#) (the FAA) bars appeals of interlocutory orders compelling arbitration and staying judicial proceedings. See 9 U.S.C. § 16. However, the Ninth Circuit's ruling in [Johnson v. Consumerinfo.com, Inc.](#) addressed the issue of whether an immediate appeal may be taken from a similar order if that decision could be deemed "final" under the collateral order doctrine that has developed under [28 U.S.C. § 1291](#). No. 11-57184, 2014 WL 1085078 (9th Cir. Mar. 20, 2014).

In *Johnson*, the named plaintiffs each filed putative class action suits in the Central District of California alleging that Consumerinfo.com, Inc. (ConsumerInfo) had violated numerous California consumer protection laws. *Johnson*, \*1. The district court granted ConsumerInfo's motion to compel arbitration and stayed plaintiffs' suit. *Johnson*, \*1. The plaintiffs appealed and argued that the Ninth Circuit had jurisdiction under the collateral order doctrine that permits the appeal of non-final orders that resolve critical questions that are isolated from the merits of the case.

The Ninth Circuit dismissed the appeal after examining the "design" of the FAA "as a whole . . . ." *Johnson*, \*2. The court read § 16(b) of the FAA as removing appellate jurisdiction from *all* interlocutory orders "regardless of whether any such order could otherwise be deemed collateral." *Johnson*, \*2. The court then confirmed what it called the "plain meaning" of the statute by reviewing the FAA's legislative history and demonstrating that the FAA was designed to limit appeals of an order staying proceedings and compelling arbitration to those that are truly final.

The Ninth Circuit noted that its conclusion was consistent with the holdings of other circuits. For example, in [ConArt, Inc. v. Hellmuth, Obata + Kassabaum, Inc.](#), a subcontractor appealed an interlocutory order that denied the subcontractor's claim for a declaratory judgment and an injunction against the requirement that it arbitrate his claims. 504 F.3d 1208, 1209–10 (11th Cir. 2007). The Eleventh Circuit held that it did not have jurisdiction over the appeal because the district court's order left the subcontractor's original claims pending before the district court until the parties' arbitration was concluded. The court stated that the FAA reflected an "unequivocal congressional command" that the court could not supersede. *ConArt*, at 1211.

The court's holding in *Johnson* is also consistent with Supreme Court cases holding that orders staying proceedings and compelling arbitration are appealable if they are *final* orders. The Supreme Court has held that an order compelling arbitration *is* final and

appealable only if the district court dismisses all of the claims before it. See, e.g., [Green Tree Fin. Corp.-Alabama v. Randolph](#), 531 U.S. 79 (2000).

In sum, *Johnson* confirms that orders compelling arbitration and staying judicial proceedings are not appealable unless they are final orders that completely dispose of the case before the district court.

**Keywords:** ADR, litigation, arbitration, FAA, collateral order, interlocutory, appeal

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