

**GIBSON DUNN**



**Appellate & Constitutional Law Update**

**July 21, 2025**

## **California Supreme Court Holds That A Forum Selection Clause Is Enforceable Even When It Deprives A Plaintiff Of The Right To A Jury Trial**

*EpicentRx, Inc. v. Superior Court*, S282521 – Decided July 21, 2025

**The California Supreme Court unanimously reaffirmed that forum-selection clauses are presumptively enforceable and rejected the argument that courts may refuse to enforce them when they would deprive plaintiffs of the right to a jury trial.**

*“Forum selection clauses serve vital commercial purposes and should generally be enforced.... A forum selection clause is not unenforceable simply because it requires the parties to litigate in a jurisdiction that does not afford civil litigants the same right to trial by jury as litigants in California courts enjoy.”*

**CHIEF JUSTICE GUERRERO, WRITING FOR THE COURT**

---

### Background:

A shareholder sued a biotech company and its agents in California superior court. The company moved to dismiss on the ground of forum non conveniens. Because the company's corporate charter and bylaws include mandatory forum-selection clauses requiring shareholder claims against it to be brought in Delaware's Court of Chancery, the company argued that the shareholder's claims could not be heard in California.

The trial court denied the company's motion to dismiss. It reasoned that at least some of the shareholder's claims were legal and would be tried to a jury in California, but because there are no jury trials in the Delaware Court of Chancery, the forum-selection clauses would effectively deprive the plaintiff of that jury-trial right. The Court of Appeal denied the company's petition for writ of mandate.

### Issue Presented:

Is a forum-selection clause enforceable when a party that would have a right to a jury trial in a California court would not have the same right in the forum chosen by the parties?

### Court's Holding:

Yes. Even where enforcing a forum-selection clause may effectively deprive a plaintiff of the right to trial by jury, that alone is no basis to refuse enforcement. California does not have a compelling public policy against forum-selection clauses that select a forum that does not recognize a jury-trial right.

### What It Means:

- The Court explained that forum-selection clauses are presumptively enforceable, but made clear that there can be reasons of public policy to refuse to enforce them. The Court left for another day the question what those public-policy grounds for refusing enforcement might be; it decided only that the loss of a jury-trial right alone is not enough to invalidate a forum-selection clause.
- The Court suggested that the fundamental nature of a policy may be revealed by the Legislature's inclusion of an antiwaiver provision in a statute. If a statute itself makes clear that the rights it conveys cannot be contracted away, the forum-selection clause may not be enforceable.
- The combination of forum-selection clauses and the perception that California law is more favorable to plaintiffs in certain types of cases has often resulted in parallel litigation, with one party suing in the forum chosen in an agreement and the other party suing in California. The Court's decision may discourage the filing of California complaints where the only policy supposedly standing in the way of enforcing a forum-selection clause is the potential loss of the right to a jury trial.
- In cases where plaintiffs continue to sue in California notwithstanding a forum-selection clause pointing to another state, defendants may continue (1) filing motions to dismiss on grounds of forum non conveniens and (if unsuccessful) petitions for a writ of mandate challenging orders refusing to enforce forum-selection clauses; and (2) filing and litigating

responsive suits in the forum chosen by the parties. In those cases, the parties will race in different jurisdictions to a final judgment that may have preclusive effect in the other case.

---

**Gibson Dunn** lawyer Russell H. Falconer argued on behalf of amici curiae that also petitioned for review in the California Supreme Court over the enforceability of forum-selection clauses. Mr. Falconer was joined on the amicus brief by Angelique Kaounis, Daniel R. Adler, Aaron Smith, and James Tsouvalas.

### Gibson Dunn Appellate Honors



---

The Court's opinion is available [here](#).

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the California Supreme Court. Please feel free to contact the following practice group leaders:

### Appellate and Constitutional Law

[Thomas H. Dupree Jr.](#)  
+1 202.955.8547  
[tdupree@gibsondunn.com](mailto:tdupree@gibsondunn.com)

[Allyson N. Ho](#)  
+1 214.698.3233  
[aho@gibsondunn.com](mailto:aho@gibsondunn.com)

[Julian W. Poon](#)  
+1 213.229.7758  
[jpoon@gibsondunn.com](mailto:jpoon@gibsondunn.com)

[Lucas C. Townsend](#)  
+1 202.887.3731  
[ltownsend@gibsondunn.com](mailto:ltownsend@gibsondunn.com)

[Bradley J. Hamburger](#)  
+1 213.229.7658  
[bhamburger@gibsondunn.com](mailto:bhamburger@gibsondunn.com)

[Michael J. Holecek](#)  
+1 213.229.7018  
[mholecek@gibsondunn.com](mailto:mholecek@gibsondunn.com)

## **Related Practice: Labor and Employment**

Jason C. Schwartz

+1 202.955.8242

jschwartz@gibsondunn.com

Katherine V.A. Smith

+1 213.229.7107

ksmith@gibsondunn.com

*This alert was prepared by Daniel R. Adler, Ryan Azad, Matt Aidan Getz, and James Tsouvalas.*

Attorney Advertising: These materials were prepared for general informational purposes only based on information available at the time of publication and are not intended as, do not constitute, and should not be relied upon as, legal advice or a legal opinion on any specific facts or circumstances. Gibson Dunn (and its affiliates, attorneys, and employees) shall not have any liability in connection with any use of these materials. The sharing of these materials does not establish an attorney-client relationship with the recipient and should not be relied upon as an alternative for advice from qualified counsel. Please note that facts and circumstances may vary, and prior results do not guarantee a similar outcome.

If you would prefer NOT to receive future emailings such as this from the firm,  
please reply to this email with "Unsubscribe" in the subject line.

If you would prefer to be removed from ALL of our email lists,  
please reply to this email with "Unsubscribe All" in the subject line. Thank you.

© 2025 Gibson, Dunn & Crutcher LLP. All rights reserved. For contact and other information, please visit our [website](#).