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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

CHRISTINA MOCINO,

Plaintiff and Appellant,

v.

CATALINA RESTAURANT GROUP,  
INC. et al.,

Defendants and Respondents.

E059845

(Super.Ct.No. RIC1306210)

OPINION

APPEAL from the Superior Court of Riverside County. Gordon R. Burkhart, Judge. (Retired judge of the Riverside Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Dismissed.

Setareh Law Group, Shaun Setareh, Tuvia Korobkin and Neil Larsen for Plaintiff and Appellant.

Ogletree, Deakins, Nash, Smoak & Stewart, Spencer C. Skeen, Tim L. Johnson and Jesse C. Ferrantella for Defendants and Respondents.

Plaintiff and appellant Christina Mocino appeals from an order compelling arbitration of her claims against defendants and respondents Catalina Restaurant Group, Inc.; Carrows California Family Restaurants, Inc.; Coco's Restaurants, Inc.; and JoJo's California Family Restaurants, Inc. Because orders compelling arbitration are not immediately appealable, we dismiss the appeal.

### PROCEDURAL BACKGROUND

On June 22, 2012, Mocino was given a two-and-a-half-page "Team Member Acknowledgement Agreement," which contained a provision requiring her to arbitrate any employment-related claims she might make against her employer, Catalina Restaurant Group, Inc.<sup>1</sup> This agreement contained an opt-out clause that allowed Mocino to retain her right to bring class and private attorney general actions, among others. Mocino signed the agreement and checked the box indicating that she chose to retain her right to assert class and private attorney general actions.

On May 24, 2013, Mocino filed a class action lawsuit against defendants, asserting various wage-related claims and a claim for civil penalties under the Labor Code Private Attorney General Act of 2004 (PAGA) (Lab. Code, § 2698 et. seq.). On September 11, 2013, after hearing oral argument on defendants' motion to compel arbitration, the trial court granted the motion.

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<sup>1</sup> Catalina Restaurant Group, Inc. is the parent company of the other defendant companies.

## DISCUSSION

Because Mocino appeals an order granting a motion to compel arbitration and such orders are not immediately appealable, we dismiss the appeal. (*Abramson v. Juniper Networks, Inc.* (2004) 115 Cal.App.4th 638, 648; Code Civ. Proc. §§ 904.1, subd. (a)(1); 1294.) We also decline to treat the appeal as a petition for a writ of mandate as Mocino urges us to do in her reply brief. Writ review of orders compelling arbitration is available only in “exceptional situations” that are not present here. (See, e.g. *Zembsch v. Superior Court* (2006) 146 Cal.App.4th 153, 160.)

Mocino’s contention that the appeal should not be dismissed because the trial court’s order “acts as a ‘death knell’” to her class and PAGA claims is unavailing. The death knell doctrine only applies to an order compelling arbitration where the arbitration agreement waives class or PAGA claims or where the trial court dismisses the class or PAGA claims. (See e.g., *Sandquist v. Lebo Automotive, Inc.* (2014) 228 Cal.App.4th 65, 69; *Franco v. Athens Disposal Co., Inc.* (2009) 171 Cal.App.4th 1277, 1282, 1287.) In other words, the death knell doctrine only applies where a trial court’s order effectively ends a claim.

Here, Mocino expressly retained her right to assert class and PAGA claims, and the trial court did not dismiss those class claims—it ordered them to arbitration. Thus, the status of the claims was not resolved by the court’s order, and the death knell doctrine does not apply.

Mocino argues that the trial court’s order effectively ends her PAGA claims because, under *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, she cannot pursue her PAGA claims in arbitration. Mocino misconstrues the holding in *Iskanian*, which prohibits waivers of employee PAGA claims, not arbitration of such claims. (*Iskanian*, at pp. 383, 391.) The trial court’s order compelling arbitration is not a death knell to her PAGA claims because she can assert them in arbitration.

DISPOSITION

The appeal is dismissed.

Respondents shall recover costs on appeal.

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RAMIREZ  
P. J.

We concur:

HOLLENHORST  
J.

KING  
J.