

Filed 10/5/26; See dissenting opinion

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

ANDREW CHIN,

Plaintiff and Respondent,

v.

DOORDASH, INC.,

Defendant and Appellant.

B348844

Los Angeles County
Super. Ct. Nos. 24STCV03751 &
25STCV09762

APPEAL from orders of the Superior Court of Los Angeles County, Jon R. Takasugi, Judge. Reversed and remanded with instructions.

Reed Smith, Raymond A. Cardozo, Kathryn M. Bayes;
Ogletree Deakins Nash Smoak & Steward, Danielle R. Goodman
for Defendant and Appellant.

Aitken Campbell Heikaus Weaver, Darren J. Campbell and
Christopher M. Heikaus Weaver for Plaintiff and Respondent.

The Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 (EFAA; 9 U.S.C. §§ 401–402) permits a plaintiff to invalidate an arbitration agreement, and to proceed in court, if asserting claims of sexual assault or harassment. However, when a plaintiff, as here, brings suit in court, strategically withholds a known sexual harassment claim arising from the same events pleaded in that suit, and leads the court to compel arbitration without timely asserting that claim or the EFAA by proper opposition or other appropriate mechanism, that plaintiff has relinquished the benefits of the EFAA as to both the pleaded and withheld claims. We accordingly reverse the trial court’s denial of arbitration, which it based on the EFAA, as well as several related orders.

I.

Defendant DoorDash, Inc., hired plaintiff Andrew Chin in 2020. Chin took nine weeks of parental bonding leave in early 2023. Chin’s return to work did not go as hoped. According to Chin, DoorDash retaliated against him for taking leave and for asserting his right to that leave. DoorDash denied him the same or comparable position upon his return to work, interfered with his right to take three additional weeks of leave, and, at the end of 2023, terminated Chin. A superior to whom Chin reported asked Chin “repeatedly . . . when he would be taking his remaining parental leave.”

Citing these alleged facts, Chin sued DoorDash in superior court in February 2024 (case No. 24STCV03751). Chin brought causes of action for violations of the Moore-Brown-Roberti Family Rights Act (see Gov. Code, §§ 12945.1, 12945.2), whistleblower retaliation (see Lab. Code, § 1102.5), wrongful termination in violation of public policy, and unfair competition. He alleged he

had obtained the requisite “right to sue” letter from the state’s Civil Rights Division to bring these claims.

DoorDash moved to compel arbitration in March 2024. It provided a copy of the arbitration agreement Chin had signed when accepting employment with DoorDash. The agreement applied to “any dispute arising out of or related to” Chin’s employment with the company.

Chin opposed the motion to compel in May 2024. His written opposition gave three reasons, all relating to whether a valid arbitration agreement existed. First, Chin noted the agreement DoorDash had appended to its motion lacked the signature of a DoorDash representative. Second, Chin contended he never saw, heard about, or signed the agreement. And third, Chin contended the declaration of a DoorDash senior manager in support of the company’s motion did not establish the existence of an agreement. Chin did not mention a sex-based harassment claim, a desire to amend his complaint, or the EFAA.

On May 28, 2024, the trial court held a hearing. Chin, responding to a tentative ruling in favor of compelling arbitration, reiterated his concerns about whether an arbitration agreement existed. At the end of his argument, Chin told the court that if it was indeed going to compel arbitration and stay court proceedings, Chin “would . . . request for leave from the stay to amend his complaint to add a sexual harassment claim in order to avoid arbitration under federal law.” Chin did not explain what he meant by “federal law” and did not mention the EFAA. The court adopted its tentative ruling, announced its view that a valid arbitration agreement did exist, and ordered arbitration of Chin’s entire action while staying court proceedings. Chin then pressed the court to clarify it was “not

going to give the plaintiff the opportunity to amend, to add a sexual harassment claim at this point in time,” and the court responded, “not at this time.”

Following the hearing and the court’s order, Chin unsuccessfully petitioned this court for a writ of mandate. Chin asked this court to address the enforceability of the arbitration agreement and the amendment-related requests he made at the hearing. Chin told this court that “[f]or strategic purposes, [Chin] did not include a claim for sexual harassment under FEHA in his initial [c]omplaint.” At oral argument in this appeal, Chin conceded it was at least a fair inference, if not necessarily so, that the strategy was to try and invalidate the arbitration agreement entirely before relying on the EFAA.

After denial of the writ petition, in August 2024, Chin filed an arbitration demand. It raised the identical claims as his court complaint. Four months later, in December 2024, Chin amended his arbitration demand to include a claim for sex-based harassment under the Fair Employment and Housing Act (FEHA; Gov. Code, § 12900, et seq.). Chin newly alleged DoorDash encouraged female employees to take the full parental leave allotted by law but discouraged male employees from doing so. “DoorDash not only discouraged its male employees from taking the full amount of parental leave allotted,” alleged Chin, “but DoorDash actively discouraged through intimidation, ridicule, and insults its male employees from taking any parental leave.” Chin alleged he and other men at DoorDash were “made to feel like they were less than a man.” Chin accordingly chose an abbreviated nine-week leave with the hope of avoiding unwanted criticisms from coworkers, but criticisms came nonetheless. Chin cited a single example of harassment, that

being when a superior he reported to repeatedly “hounded” him about when he would take the rest of his parental leave. This allegation echoed one from Chin’s original complaint, where he alleged he “was asked repeatedly” by this superior about “when he would be taking his remaining parental leave.” Chin alleged the harassment he endured was severe and pervasive, based on sex, and actionable against DoorDash under FEHA. Chin further alleged he had obtained a new “right to sue” letter from the Civil Rights Division to encompass his harassment claim.

After filing this amended demand in arbitration, Chin, in early 2025, asked the arbitrator to send proceedings back to the superior court. He claimed his addition of the sex-based harassment claim entitled him to elect court resolution of all his claims. He cited the EFAA. (9 U.S.C. § 402.) As Chin would later tell the superior court, his “decision to amend . . . to include a cause of action for sexual harassment pursuant to California’s FEHA, after being compelled to arbitration, was done specifically to avoid arbitration.” In March 2025, the arbitrator stayed proceedings for 10 days so Chin could petition the superior court regarding the EFAA’s applicability. When Chin did not meet this deadline, the arbitrator lifted the stay.

In April 2025, nearly a year after the order compelling arbitration, Chin returned to superior court and filed a second suit against DoorDash (case No. 25STCV09762). Chin’s new complaint proffered a duplicate of the sex-based harassment cause of action he had pleaded in the arbitration. Chin’s new complaint also included a cause of action for declaratory relief. It sought a declaration that the arbitration agreement was invalid, not only as to the sex-based harassment cause of action in the

second suit but also as to the causes of action in the stayed first suit previously ordered to arbitration.

In light of Chin's new case filing, the arbitrator again stayed proceedings in that forum.

Back in superior court, the parties filed the competing motions at issue in this appeal.

First, Chin moved to consolidate his new suit with his earlier, stayed suit, for all purposes including discovery and trial. DoorDash opposed, contending that the court could not take action in the earlier, stayed suit, and that consolidation would prejudice DoorDash's right to the benefits of its arbitration agreement.

Second, Chin filed a motion to invalidate the arbitration agreement under the EFAA. He sought, in line with his cause of action for declaratory relief, to invalidate the arbitration agreement not only as to the sex-based harassment cause of action in the second suit but also as to the causes of action in the first suit, previously sent to arbitration, should the court consolidate that first suit with the second. DoorDash opposed.

Third, DoorDash filed a motion to compel arbitration of Chin's second suit. It argued the new sex-based harassment claim did not implicate the EFAA because it failed to state a viable claim for relief. It argued Chin had already submitted the sex-based harassment claim to arbitration and had not elected to invoke the EFAA in the superior court despite having had ample opportunity to do so prior to the court's order compelling arbitration. This "voluntary and affirmative choice" was "waiver." Chin opposed.

The trial court heard argument on all three motions in July 2025.

The trial court noted it was “not happy with the way this has gone” and did not “like [its] ruling” but thought the law compelled it to rule for Chin. It granted Chin’s motions to consolidate and to invalidate the arbitration agreement as to all causes of action in both cases. It denied DoorDash’s motion to compel arbitration of the second suit.

The trial court started its analysis with the EFAA. It determined the statute applies if a plaintiff plausibly pleads a sex-based harassment claim, and it concluded Chin had done so. It then determined Chin had not waived his EFAA rights by asserting his harassment claim in arbitration. It further viewed the lack of an adjudication of EFAA issues in the first suit as benefiting Chin, as there was no prior EFAA determination binding on the court. It, however, did not address DoorDash’s contention that Chin’s own conduct prior to the order compelling arbitration demonstrated waiver of the EFAA. Flowing from its analysis of the EFAA issues, the trial court invalidated the arbitration agreement and denied arbitration, necessarily undoing the prior order compelling arbitration, and consolidated the two lawsuits for all purposes.

DoorDash timely appealed from these orders. (See Code Civ. Proc., § 1294, subd. (a).) The trial court stayed its proceedings pending resolution of this appeal.

II.

On appeal, there is no dispute that Chin and DoorDash agreed to arbitrate, that the Federal Arbitration Act governs their agreement, or that, barring the EFAA, all of Chin’s claims in both suits would fall under that agreement. The question is the EFAA’s impact. As we explain, Chin has waived the statute’s protections through his litigation conduct in the first suit.

A.

“Ordinarily, we review a denial of a petition to compel arbitration for substantial evidence or an abuse of discretion, but where the trial court’s denial of a petition to arbitrate presents a pure question of law, including a question of statutory interpretation, we review the order de novo.” (*Doe v. Second Street Corp.* (2024) 105 Cal.App.5th 552, 564 (*Doe*).) A trial court’s order that vacates a prior order compelling arbitration is akin to an order denying arbitration. (*Gallo v. Wood Ranch USA, Inc.* (2022) 81 Cal.App.5th 621, 633; cf. *MKJA, Inc. v. 123 Fit Franchising, LLC* (2011) 191 Cal.App.4th 643, 654–655; see generally *Pinela v. Neiman Marcus Group, Inc.* (2015) 238 Cal.App.4th 227, 237.) Dovetailing with standard of review governing denials of arbitration, waiver can be a factual question reviewed for substantial evidence, but review is de novo on undisputed facts. (*Lynch v. California Coastal Com.* (2017) 3 Cal.5th 470, 476 (*Lynch*); *Divino Plastic Surgery, Inc. v. Superior Court* (2022) 78 Cal.App.5th 972, 992; cf. *Smith v. GC Servs. Ltd. P’ship* (7th Cir. 2018) 907 F.3d 495, 499.)

Here, the trial court drew several conclusions regarding waiver, but did so without an evidentiary hearing and without addressing DoorDash’s contentions, which we now address, regarding Chin’s pre-arbitration conduct in the first lawsuit. Neither party has urged a deferential standard of review, identified a disputed finding of fact to which we should defer, or asserted further factfinding is compelled. If the standard of review might be different in another case in which waiver is the central issue, we will review the record de novo here. (Cf. *Quach v. California Commerce Club, Inc.* (2024) 16 Cal.5th 562, 585 (*Quach*) [applying de novo review to “undisputed record of the

trial court proceedings” when trial court had applied an incorrect test for waiver]; see also *People v. Franco* (2024) 99 Cal.App.5th 184, 196, fn. 5 [questions of appellate remedy should be timely raised during the appeal]; *King v. U.S. Bank National Assn.* (2020) 53 Cal.App.5th 675, 721 [same].)

Although the parties did not brief what quantum of proof must support a finding that a litigant has waived a statutory right, we assume such a finding must be, as it is for the waiver of contractual rights, by clear and convincing evidence. (See *Quach*, *supra*, 16 Cal.5th at p. 585, fn. 6; see *Hofer v. Boladian* (2025) 111 Cal.App.5th 1, 10 (*Hofer*).)

B.

“‘No procedural principle is more familiar . . . than that a constitutional right,’ or a right of any other sort, ‘may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it.’” (*United States v. Olano* (1993) 507 U.S. 725, 731 (*Olano*).) Similarly, constitutional and statutory rights are presumptively waivable. (*United States v. Mezzanatto* (1995) 513 U.S. 196, 200–201.) These principles, which protect the integrity of the judicial system and conserve judicial resources, are background features of law we presume legislative bodies have internalized and rely upon when drafting statutes. (*Ibid.*; *United States v. Severino* (9th Cir. 2003) 316 F.3d 939, 947 [“The Supreme Court has made clear that the default rule — assumed unless the statute expressly provides otherwise — is that rights can be waived, both in the affirmative sense (explicit waiver) and by failing to object to error (default or forfeiture)”].)

The EFSA’s core provision provides: “[A]t the election of the person alleging conduct constituting a sexual harassment

dispute or sexual assault dispute, or the named representative of a class or in a collective action alleging such conduct, no predispute arbitration agreement or predispute joint-action waiver shall be valid or enforceable with respect to a case which is filed under Federal, Tribal, or State law and relates to the sexual assault dispute or the sexual harassment dispute.” (9 U.S.C. § 402(a).) Whether the EFAA “applies with respect to a dispute shall be determined under Federal law” and, moreover, by a court, not an arbitrator. (*Id.*, § 402(b).)

The EFAA does not automatically void arbitration agreements. Its protections must be “elect[ed].” (9 U.S.C. § 402(a).) The congressional language, then, does not disturb the default rule that litigants can waive statutory rights, and Chin does not contend otherwise. “A plaintiff may waive her EFAA rights under ordinary waiver principles.” (*Ding v. Structure Therapeutics, Inc.* (9th Cir., Aug. 19, 2026, No. 25-1532) __ F.4th __ [2026 U.S. App. LEXIS 25027, at pp. *16-17] (*Ding II*).) We also note, more generally, there is no “bespoke rule of waiver for arbitration.” (*Morgan v. Sundance, Inc.* (2022) 596 U.S. 411, 417 (*Morgan*); accord, *Quach, supra*, 16 Cal.5th at p. 569 [abrogating the “arbitration-specific prejudice requirement”].)

Waiver is the “‘intentional relinquishment or abandonment of a known right.’” (*Olano, supra*, 507 U.S. at p. 733; see *Hamer v. Neighborhood Hous. Servs.* (2017) 583 U.S. 17, 20, fn. 1; *Bickel v. City of Piedmont* (1997) 16 Cal.4th 1040, 1048.) Knowledge in this context may be actual or constructive. (*In re Marriage of Vomacka* (1984) 36 Cal.3d 459, 469; accord, *Design Gaps, Inc. v. Distinctive Design & Constr. LLC* (4th Cir. 2025) 162 F.4th 452, 481; *Berzanskis v. FCA US, LLC* (6th Cir. 2025) 143 F.4th 718, 724 (*Berzanskis*).) Waiver depends on voluntariness, not the

wisdom of the choice made. (See *Brady v. United States* (1970) 397 U.S. 742, 757 [“A defendant is not entitled to withdraw his plea merely because he discovers long after the plea has been accepted that his calculus misapprehended” the scenario]; *People v. Scott* (1997) 15 Cal.4th 1188, 1209 [“The law . . . does not impose on the trial court an obligation to explore a defendant’s reasons for giving up the right to a jury”]; *People v. Windham* (1977) 19 Cal.3d 121, 128 [*Faretta* waivers are accepted “irrespective of how unwise such a choice might appear to be”]; *United States v. Lucero-Asencio* (7th Cir. 2026) 173 F.4th 927, 928 [“Counsel now tells us that the strategy was foolish. The question, however, is whether it was deliberate, not whether it was wise”].)

“Waiver may be the result of either express consent or,” in some circumstances, implied from “a failure to raise an objection in a clear and timely manner.” (*Tecnicas Reunidas de Talara S.A.C. v. SSK Ingenieria y Construccion S.A.C.* (11th Cir. 2022) 40 F.4th 1339, 1345; accord, *Barsamyan v. Appellate Division of Superior Court* (2008) 44 Cal.4th 960, 969 [waiver of statutory speedy trial rights can be implied from silence].) An implied abandonment must demonstrate an intent “so inconsistent with an intent to enforce the right as to induce a reasonable belief that such right has been relinquished.” (*Lynch, supra*, 3 Cal.5th at p. 475; accord, *United States v. Amwest Sur. Ins. Co.* (9th Cir. 1995) 54 F.3d 601, 602–603 [“An implied waiver of rights will be found where there is ‘clear, decisive and unequivocal’ conduct which indicates a purpose to waive the legal rights involved”].) A litigant can waive a litigation venue, such as an Article III federal court, “based on

‘actions rather than words.’ ” (*Wellness Int’l Network, Ltd. v. Sharif* (2015) 575 U.S. 665, 684.)

Waiver can include “understandingly and knowingly fore[going] the privilege of seeking to vindicate [court] claims . . . , whether for strategic, tactical, or any other reasons that can fairly be described as the deliberate by-passing of [court] procedures.” (*Fay v. Noia* (1963) 372 U.S. 391, 439; *Peterson v. Highland Music* (9th Cir. 1998) 140 F.3d 1313, 1318.) It can “occur[] by an affirmative choice . . . to forego any remedy . . . , presumably for real or perceived benefits.” (*United States v. Dodson* (5th Cir. 2002) 288 F.3d 153, 160.) In contrast to mere “inaction,” waiver can arise from “deliberate, strategic behavior” in litigation, such as “deliberately refraining from pursuing” a matter “in the hopes of receiving a favorable disposition on” another. (*Peterson*, at p. 1318; see also *Berzanskis*, *supra*, 143 F.4th at p. 724 [noting waiver can follow a “ ‘course of conduct . . . deliberately chosen to reap some tactical advantage’ ”].)

Sandbagging the court and litigation opponents by withholding known objections causes disorder and waste, and it represents unbecoming gamesmanship. (*Stern v. Marshall* (2011) 564 U.S. 462, 482 [noting “particularly severe” consequences]; accord, *People v. Stewart* (1967) 250 Cal.App.2d 829, 835.)

“Normally,” then, “the question of the enforceability of an arbitration clause must be raised before the parties proceed to arbitration.” (*Reed v. Mutual Service Corp.* (2003) 106 Cal.App.4th 1359, 1372.) *Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, distinguished between illegalities in contracts that affect whether a dispute can be arbitrated and those that do not. (*Id.* at pp. 29–30.) As to illegalities that do *not* impact arbitrability and which are for an arbitrator, a party is “not

required to first raise the issue of illegality in the trial court in order to preserve the issue for later judicial review.” (*Id.* at p. 30.) “[U]nless a party is claiming (i) the entire contract is illegal, or (ii) the arbitration agreement itself is illegal, he or she need not raise the illegality question prior to participating in the arbitration process.” (*Id.* at p. 31.) The converse, however, is that grounds to oppose arbitration must be raised beforehand in court. We cannot condone “ ‘procedural gamesmanship’ ” or “permit a party to sit on his rights, content in the knowledge that should he suffer an adverse decision, he could then raise the illegality issue in a motion to vacate the arbitrator’s award.” (*Id.* at p. 30.)

Cummings v. Future Nissan (2005) 128 Cal.App.4th 321, though speaking of “forfeiture,” employs the concept of “knowledge” associated with waiver and furthers the discussion. (*Id.* at pp. 328–329.) *Cummings* concludes the “proper criterion” for assessing forfeiture “is a litigant’s *knowledge* of a defense to the jurisdiction of the arbitrator.” (*Id.* at p. 328.) Those who are aware of a basis for finding the arbitration process invalid must raise it promptly to avoid “wasting the time of the adjudicator(s) and the parties. If a trial court compels arbitration nonetheless, the party resisting arbitration may seek review of the ruling on appeal from an order that confirms the award. [Citation.] If the arbitration process is found to be invalid, the responsibility for a waste of resources would then lie with the trial court, not the litigant, and there has not been any hidden trump card. On the other side of the line, a party who knowingly participates in the arbitration process without disclosing a ground for declaring it invalid is properly cast into the outer darkness of forfeiture.” (*Id.* at p. 329, fn. omitted.)

Chin withheld his sex-based harassment cause of action during the court proceedings in 2024 not because it was unknown, but for self-described “strategic purposes.” Indeed, a comparison of the 2024 and 2025 court complaints demonstrates the sole specified harassing conduct, a superior’s repeated entreaties to take leave, was alleged in both the old and new pleadings. The 2025 court complaint alleges no additional specific harassing conduct.

After DoorDash’s March 2024 motion to compel arbitration, Chin did not attempt to file an amended pleading. Importantly, he did not reference a sex-based harassment claim or the EFAA when opposing DoorDash’s motion to compel arbitration in May 2024. At the hearing on the motion to compel, after receiving the court’s tentative ruling, Chin floated the idea that he might seek relief from an ensuing stay to seek leave to add a claim for sex-based harassment “to avoid arbitration under federal law.” After the court compelled arbitration and ordered a stay, Chin asked if the court was granting Chin an opportunity to amend at that time, and the court said it was not. Even at the hearing, then, when it was already inappropriate to proffer new grounds to defeat arbitration (see *Garcia v. Stoneledge Furniture LLC* (2024) 102 Cal.App.5th 41, 54; cf. *Santa Ana Unified School Dist. v. Orange County Dev. Agency* (2001) 90 Cal.App.4th 404, 411), Chin suggested he would want to pursue amendment during the yet-to-occur stay — not prior to the court’s ruling — and Chin did not cite the EFAA or unpack his cryptic reference to “federal law” or explain how federal law might affect the question of arbitrability. After the hearing, Chin never again sought leave to amend, waiting almost a year to bring his second lawsuit. Chin’s purpose in raising his new cause of action for sexual harassment

was, he told the trial court upon his return, “specifically to avoid arbitration.”

In sum, Chin strategically withheld a known sex-based harassment claim arising from the same conduct pleaded in his complaint. He also, despite vigorously opposing arbitration, let the court compel arbitration without timely asserting his known, related claim by proper opposition or other appropriate mechanism. Chin does not dispute he was actually or constructively aware of the EFAA. Chin’s conduct has led the litigants to ping between arbitration and court in a state of procedural uncertainty and at presumably no small cost. It constitutes waiver by clear and convincing evidence.

Both Chin and DoorDash discuss the federal district court decision in *Ding v. Structure Therapeutics, Inc.* (N.D.Cal. 2024) 755 F.Supp.3d 1200, 1218 (*Ding I*), which the Ninth Circuit recently affirmed in *Ding II*. The Ninth Circuit’s opinion, as noted already, clarifies that “[a] plaintiff may waive her EFAA rights under ordinary waiver principles.” (*Ding II, supra*, 2026 U.S. App. LEXIS 25027, at p. *16; see *id.* at pp. *27, 31 (dis. opn. of Rawlinson, J.) [embracing the court’s “precedent addressing waiver in the arbitration context”].) While the Ninth Circuit majority affirmed the lower court’s rejection of waiver (*Ding II*, at pp. *16–17), the facts of that case differ from ours. That plaintiff, according to the district court’s supported findings, did not know she had a sexual harassment claim, “uncovered” that claim during arbitral discovery, and then filed a court proceeding in which she included that claim and invoked the EFAA. (*Ding II*, at pp. *15, 17–18.) The case did not address potential waiver from withholding a known sexual harassment claim while opposing a motion to compel arbitration. (See *Ding II*, at p. *13;

Ding I, at p. 1215.) Even so, the Ninth Circuit concluded “a court may find waiver where a plaintiff is aware of the facts giving rise to a sexual harassment claim and either unduly delays in bringing such a claim through intentional acts or decides to pursue that claim in arbitration rather than court.” (*Ding II*, at p. *17.) The district court noted, not inconsistent with this statement by the Ninth Circuit, that an “election” under the EFAA should reflect a choice and surmised Congress “contemplated that a plaintiff would ‘elect’ to invalidate a forced arbitration clause at the time the employer seeks to remove the case from her preferred court forum.” (*Ding I*, at p. 1216.) Unlike Chin here, as soon as the plaintiff in the *Ding* cases found herself opposing a motion to compel arbitration in court, she invoked the EFAA. (*Ding I*, at p. 1216; *Ding II*, at p. *10.) *Ding I* and *Ding II*, then, both support our waiver conclusion.

To the extent the district court, in *Ding I*, rejected waiver in part because of concerns that a plaintiff with a viable sexual harassment claim might be hesitant to plead it (*Ding I*, *supra*, 755 F.Supp.3d at p. 1218), we note the Ninth Circuit did not embrace this rationale but rather noted “ordinary” rules of waiver apply (*Ding II*, *supra*, 2026 U.S. App. LEXIS 25027 at p. *17). Regardless, Chin has not offered any assertion of his own skittishness, Chin already alleged the harassing conduct in his public 2024 court complaint, and there was thus no impediment to Chin invoking the EFAA when opposing the motion to compel arbitration.

Chin contends he could not have waived his EFAA rights prior to the arbitration’s start because he had, in fact, not yet proffered a sexual harassment cause of action in any forum. But Chin’s original complaint had already pleaded the harassing

conduct, and Chin’s strategic refrain from proffering his known, related harassment claim and from invoking the EFAA to bar arbitration of his case is the deliberate choice that demonstrates he waived his EFAA right to pursue his “case . . . relate[d] to . . . the sexual harassment dispute” in court. (9 U.S.C. § 402(a); cf. *Casey v. Superior Court* (2025) 108 Cal.App.5th 575, 588 [EFAA applies to whole cases that relate to sexual harassment disputes, not individual claims].) Newly raising the known, related harassment claim and the EFAA only after the order compelling arbitration did not “hit[] the proverbial ‘reset button’” and erase the choices Chin now regrets in first opposing arbitration. (*Hofer, supra*, 111 Cal.App.5th at p. 14 [rejecting argument that a plaintiff “could not have sought to compel arbitration of [a] cross-complaint until it was filed” as its filing did not erase “nearly six months of delay prior to that”].) It would be problematic if litigants, without restrictions, could strategically delay invocation of the EFAA by strategically delaying their presentation of harassment claims such as those Chin has injected here. We reject Chin’s argument that the “EFAA explicitly grants a victim of sexual harassment the right to forum shop” to the extent he asserts a right to forum hop at whim.

Chin also argues against waiver by asserting his trial counsel was under the impression an amended complaint could not be filed to invoke the EFAA once DoorDash moved to compel arbitration. But Chin does not cite to a declaration of counsel supporting this assertion or to a brief preserving this argument in the trial court. The lone case Chin cites on appeal to support his trial counsel’s asserted impression, *Doe, supra*, 105 Cal.App.5th 552, not only holds the opposite but notes it had been “cite[d] no case authority for [the contrary] proposition.” (*Id.* at p.

578.) Even if Chin’s trial counsel feared the prospects of a standalone motion for leave to amend were bleak, that does not explain the choice to remain silent on the EFAA when opposing the motion to compel arbitration, nor does it address the strategic withholding of the sexual harassment claim in the first place. (Cf. *Hofer, supra*, 111 Cal.App.5th at p. 16 [finding waiver of arbitration despite argument that litigant was “unsure” whether all parties could be compelled to arbitrate; nothing precluded the litigant from testing this theory in court].)

We acknowledge *Quilala v. Securitas Security Services USA, Inc.* (2025) 117 Cal.App.5th 75. There, the trial court, amidst a motion to compel arbitration of a plaintiff’s claims, invoked the EFAA of its own accord after noticing plaintiff’s complaint included a sexual harassment claim. After giving the parties an opportunity to address the EFAA, the court denied arbitration. (*Id.* at pp. 82, 85.) *Quilala*, in deeming this course of events a sufficient “election” of the EFAA by the plaintiff, acknowledged that statutory rights are generally waivable, but concluded “applying a waiver principle here would depend on an unduly narrow reading of ‘election’ ” in section 402(a) of the EFAA. (*Id.* at p. 88.) The plaintiff had “opted to proceed in court by filing a complaint in the superior court and opposing defendants’ motion to compel arbitration,” including, ultimately, on the trial court’s suggested ground that the EFAA applied. (*Ibid.*) *Quilala* did not analyze a claim of waiver, as we have here, based on the abandonment of a known right. Its conclusions about under what circumstances a plaintiff may elect the EFAA and avoid forfeiture do not undermine our conclusions about waiver on our different facts.

Because Chin waived the EFAA, the trial court erred in granting Chin's motion to invalidate the arbitration agreement and in denying DoorDash's motion to compel arbitration. We also must reverse the order granting consolidation, as the trial court premised its ruling on the EFAA's application and the unavailability of arbitration.

C.

Finding waiver, we need not address DoorDash's argument that Chin did not proffer a sexual harassment claim sufficient to unlock the EFAA's protections.

DISPOSITION

We reverse the trial court's orders granting Chin's motion to invalidate the arbitration agreement, denying DoorDash's motion to compel arbitration, and granting Chin's motion to consolidate. Under the circumstances, we direct the trial court on remand to grant DoorDash's motion compelling arbitration. We award appellate costs to DoorDash.

SCHERB, J.

I concur:

VIRAMONTES, J.

WILEY, Acting P. J., Dissenting:

The Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 (9 U.S.C. §§ 401–402) is highly significant legislation. This Act signals the first time Congress has attended to the many critics of arbitration. The new law has its limits, and we are still trying to determine them.

Andrew Chin alleged sexual harassment. As a new father, Chin said he suffered workplace harassment for trying fully to exercise his rights to parenting leave. If true, this was harassment based on biases about gender roles: this impermissible view is that raising children is woman's work, and that men are the breadwinners who should leave home to support the woman and her maternal duties. A parenting couple is free to opt for this division of labor. An employer is not free to insist on it.

No one disputes the seriousness of Chin's allegations.

Chin was tardy in asserting this claim. He told the trial court about his intention to amend, but he did not actually add this claim until the case was in arbitration. Then the case returned to the trial court after costly and time-consuming motion practice.

This delay and needless litigation expense was lamentable. Courts should discourage such roundabout conduct. I would be sympathetic to a trial court that considered sanctioning plaintiffs' counsel by making that counsel reimburse the other side's attorney fees wasted on the pointlessly circuitous process.

Lamentable though it was, Chin's course of action was not waiver. Waiver, classically, is purposely relinquishing a known right. Chin never purposely relinquished a jury trial. Chin's

whole goal was to get out of arbitration and to litigate in court. That purpose is the opposite of waiver.

My colleagues emphasize Chin's conduct was strategic. It does not look strategic to me. It looks more like a blunder. But a blunder is not a purposeful relinquishment of a known right.

In chess, you might think for a while and then move your queen. To your dismay, your opponent's next move is to take your queen with a bishop you had not considered. You blundered. You thought you were playing strategically, but you miscalculated. You certainly did not purposely relinquish your queen.

It disserves this important statute, in my humble opinion, to find waiver where the plaintiff is trying to allege sexual harassment and to escape arbitration. In my view, Chin's miscalculation was not enough.

I would affirm the trial court.

WILEY, Acting P. J.