Press Release

WASHINGTON LEGAL FOUNDATION
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WLF Urges Ninth Circuit to Reverse District Court's Refusal to Enforce Arbitration Agreement

((*Investing Plaintiffs v. Equity Trust Company*)

"Allowing plaintiffs to evade signed arbitration agreements by claiming they never read them would destroy the certainty that written contracts exist to provide."

— Cory L. Andrews, WLF General Counsel & Vice President of Litigation

WASHINGTON, DC—Washington Legal Foundation (WLF) today urged the U.S. Court of Appeals for the Ninth Circuit to reverse a district court order denying arbitration. In its amicus brief, WLF contends that the decision nullifies the parties' express contractual assents and exhibits the very hostility to arbitration that the Federal Arbitration Act forbids.

The case arises from a putative class action by investors against Equity Trust Company, custodian of their self-directed IRAs. Every plaintiff signed an application with two prominent acknowledgments—one in a blue "IMPORTANT" banner and the other in bold type—that they had received, read, and understood the IRA Custodial Account Agreement, including its arbitration provision. Yet the district court denied Equity Trust's motion to compel arbitration, crediting plaintiffs' post-hoc declarations that they never saw or read the clause.

Urging reversal, WLF argues that the district court rewrote California's incorporation-by-reference standard, improperly elevated subjective testimony over objective manifestations of assent, and abused its discretion by deciding the motion on a ground the parties never raised or briefed. Unless corrected on appeal, these errors threaten to convert every signed contract into a revocable promise and expose businesses to unbounded litigation risk.

Celebrating its 49th year, WLF is America's premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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