

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 30 2018

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

DOUG MINER, an individual, on behalf of
himself and other persons similarly situated,

Plaintiff-Appellee,

v.

ECOLAB, INC., a Delaware corporation,

Defendant-Appellant.

No. 17-56183

D.C. No. 2:17-cv-02313-FMO-JC

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Fernando M. Olguin, District Judge, Presiding

Submitted November 27, 2018**

Before: CANBY, TASHIMA, and FRIEDLAND, Circuit Judges.

Ecolab, Inc. appeals from the district court's order denying its motion to compel arbitration of federal and state wage-and-hour claims brought by an employee in a putative class and collective action. We have jurisdiction under 9 U.S.C. § 16. We review de novo the district court's denial of arbitration. *Poublon*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

v. C.H. Robinson Co., 846 F.3d 1251, 1259 (9th Cir. 2017). We vacate and remand.

The district court denied Ecolab's motion to compel arbitration on the ground that the parties' arbitration agreement contained a class and collective action waiver, making the agreement to arbitrate unenforceable under *Morris v. Ernst & Young, LLP*, 834 F.3d 975 (9th Cir. 2016). After the district court entered its order, the Supreme Court overruled *Morris*, and held that such agreements do not violate the National Labor Relations Act and must be enforced as written under the Federal Arbitration Act. *See Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1632 (2018).

We vacate the district court's order denying Ecolab's motion to compel arbitration and remand for further proceedings in light of *Epic Systems Corporation*.

The parties shall bear their own costs on appeal.

VACATED and REMANDED.