

## ***Chambers v. Crown Asset Management (2021) DJDAR 11747***

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*The Fourth Appellate District Court of Appeal reminds litigants to follow the sine qua non of the Evidence Code, particularly with respect to the “business records exception” to the hearsay rule.*

**FACTS:** In October of this year, Pamela Chambers filed a putative class action lawsuit against Crown Asset Management, LLC (“Crown”) based on alleged violations of the California Fair Debt Buying Practices Act (“CFDBPA”). Crown moved to compel arbitration. Crown relied on an affidavit from Chambers’ original creditor, Synchrony Bank, to support its contention that Chambers had failed to opt out of an arbitration agreement set forth in statements mailed to Chambers’ address. The affidavit was signed by Jodi Anderson, then-employed as a “litigation analyst” with Synchrony (the “Anderson Affidavit”); it stated in pertinent part that “Synchrony’s records show that” in December 2012, and again several years later, Synchrony had sent – and Chambers had received – copies of credit card account agreements. These agreements contained the arbitration clause by which Crown argued Chambers was now bound. Crown filed a motion to compel arbitration.

**PROCEDURAL POSTURE:** Various evidentiary objections were raised by Chambers in response to Crown’s motion. Chambers objected to the affidavit as hearsay; her attorney argued that opposing counsel had failed to establish the admissibility of records underlying the Anderson Affidavit from Synchrony’s litigation analyst under the business records exception. on various evidentiary grounds. The trial court sustained the objections and denied Crown’s motion to compel. It ruled that there was insufficient admissible evidence to show the existence of an arbitration agreement.

**HOLDING:** Affirmed. The Fourth Appellate District Court of Appeal stated that in order to qualify under the business records exception to the hearsay rule if, “among other things,” the records were made in the regular course of business near the time of the fact they are purporting to prove and possess sufficient indicia of reliability. (See Evidence Code § 1271.)

**DISCUSSION:** On appeal, Crown contended that the trial court erred by sustaining Chambers’ evidentiary objections and denying the motion to compel arbitration – which Crown argued was a result of the trial court’s improper exclusion of the Anderson Affidavit on hearsay grounds. Because the trial court’s order was based on a decision of fact, the court reviewed for substantial evidence. After its review of the substantial evidence at issue – the Anderson Affidavit – the *Chambers* court was unconvinced by Crown’s arguments. Notably, the *Chambers* court rejected Crown’s contention that the Anderson Affidavit was admissible under another statutory exception to the hearsay rule, citing insufficient voluminosity on the part of the underlying records at issue. (See Evidence Code § 1523(d).)

The unanimous three-judge panel in *Chambers* repeatedly stressed the lack of detail in the Anderson Affidavit, which the court said failed to describe neither the records themselves, nor how – or when – they were prepared. The court explained that “Crown attempted to prove mailing [i.e., basically, notice] by reference to Synchrony’s records, rather than by testimony of a witness with personal knowledge of mailing.” The court in *Chambers* found the Anderson Affidavit defective primarily for Anderson’s failure to specify sources of information for underlying records – most importantly when and how the referenced “mailing[s]” occurred. In the absence of these factual details, the trial court could not even begin to evaluate the trustworthiness of the putative business records underpinning the Anderson Affidavit. The Fourth District Court of appeal therefore affirmed the trial court’s ruling, concluding that “The trial court could reasonably [have found] that Anderson had not shown those specific records – whatever they were – were made in the regular course of Synchrony’s business.”