

ALERTS

California Supreme Court Provides Sweeping Class Waiver Guidance: Accepts Concepcion; Overturns Gentry; Rejects D. R. Horton Theory; Leaves PAGA Loophole

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On June 23, 2014, the California Supreme Court issued its much-anticipated decision in *Iskanian v. CLS Transportation Los Angeles, LLC* (*Iskanian*). In a far-reaching opinion, the Court accepted the decision of the U.S. Supreme Court in *AT&T Mobility LLC v. Concepcion*, 563 U.S. 321 (2011) (*Concepcion*), holding class action waivers in arbitration agreements are enforceable under the Federal Arbitration Act (FAA). This part of the opinion was a victory for California employers in that it overturned a prior California Supreme Court decision, *Gentry v. Superior Court*, 42 Cal.4th 443 (2007), that had invalidated class action waivers in employment contracts requiring arbitration.

The California Supreme Court also rejected arguments made by the plaintiff that class action waivers violate the National Labor Relations Act and affirmed the appeals court's holding that plaintiffs cannot rely on the decision of the National Labor Relation Board (NLRB) in *D.R. Horton*, 357 NLRB No. 184 (2012) (*D.R. Horton*), to circumvent agreements requiring individual arbitration. This holding was consistent with a prior ruling of the Fifth Circuit Court of Appeals that refused to enforce the NLRB's *D.R. Horton* decision. The NLRB, however, continues to rely upon *D.R. Horton* pursuant to its non-acquiescence doctrine.

In *Iskanian*, the plaintiff, Arshavir Iskanian, was hired as a driver by CLS Transportation (CLS) – a limousine company. Upon hire, plaintiff signed a mandatory arbitration agreement that contained a class and representative action waiver. After he left CLS, the plaintiff filed a class action alleging various violations of the Labor Code as well as a representative suit under PAGA. As a private litigant, the California Supreme Court held that Iskanian is bound to that agreement by *Concepcion*. However, the *Iskanian* decision allows his PAGA claim to continue.

California employers are advised to review their arbitration agreements in light of *Iskanian* and assess how best to deal with the ramifications of its rulings.

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