



California Supreme Court Holds Express Class Action Waivers in Employment Arbitration Agreements are Enforceable

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On June 23, 2014, the California Supreme Court issued its decision in *Iskanian v. CLS Transportation Los Angeles, LLC*, No. S204032, 2014 WL 2808963 (Cal. June 23, 2014), confirming that an express class action waiver in an employment arbitration agreement is enforceable under California law.

On August 4, 2006, Iskanian filed a class action complaint against CLS, alleging that it failed to pay overtime, provide meal and rest breaks, reimburse business expenses, provide accurate and complete wage statements, or pay final wages in a timely manner. Iskanian signed a pre-dispute arbitration agreement that waived the right to bring class proceedings. Accordingly, CLS moved to compel arbitration, and in March 2007, the trial court granted CLS's motion.

Shortly after the trial court's order, the California Supreme Court issued its decision in *Gentry v. Superior Court*, 42 Cal. 4th 443 (2007), holding class waivers in arbitration agreements should not be enforced if "class arbitration would be a significantly more effective way of vindicating the rights of affected employees than individual arbitration." CLS voluntarily withdrew its motion to compel arbitration in light of *Gentry*, and the parties proceeded to litigate the case. After conducting discovery, Iskanian moved to certify the class, and on October 29, 2009, the trial court granted Iskanian's motion.

However, in 2011, the United States Supreme Court issued *AT & T Mobility LLC v. Concepcion*, 131 S.Ct. 1740 (2011). *Concepcion* specifically invalidated the California Supreme Court's decision in *Discover Bank v. Superior Court*, 36 Cal. 4th 148 (2005), which had restricted consumer class action waivers in arbitration agreements. The *Concepcion* court concluded that because the *Discover Bank* rule stood as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress, it was preempted by the Federal Arbitration Act (FAA).

Shortly after *Concepcion* was issued, CLS renewed its motion to compel arbitration and dismiss the class claims, arguing that *Concepcion* also invalidated *Gentry*. Iskanian opposed the motion, arguing among other things that *Gentry* was still good law. The trial court ruled in favor of CLS, ordering the case into individual arbitration and dismissing the class claims with prejudice. The appellate court affirmed, concluding that *Concepcion* invalidated *Gentry*.

The California Supreme Court granted review. The majority found that the U.S. Supreme Court's opinion in *Concepcion* clearly held that the FAA prevents states from mandating or promoting



procedures incompatible with arbitration. And because *Gentry* prohibited class waivers unless individual arbitration was likely to be an effective dispute resolution mechanism when compared to a class action, the court concluded *Gentry* interfered with the fundamental attributes of arbitration and is therefore preempted by the FAA.

Notably, however, the court held representative actions by employees under the California Labor Code's Private Attorneys General Act (PAGA) are not preempted by the FAA because "an arbitration agreement requiring an employee to give up the right to bring representative PAGA actions in any forum is contrary to public policy." Specifically, the court emphasized the history behind PAGA's enactment to deputize employees as private attorneys general due to the government's shortage of resources to pursue enforcement of the Labor Code. The court explained that "PAGA was clearly established for a public reason, and agreements requiring the waiver of PAGA rights would harm the state's interests in enforcing the Labor Code and in receiving the proceeds of civil penalties used to deter violations." Thus, according to the court, if an employment agreement compels the waiver of representative claims under PAGA, it is unenforceable and contrary to state law. Whether the court's view that PAGA is outside the scope of the FAA will withstand further scrutiny remains to be seen.

For more information on the matters discussed in this *Locke Lord QuickStudy*, please contact the authors:

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