

California Supreme Court Allows Class Waivers in Arbitration Agreements, but not PAGA Waivers

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Iskanian was a chauffeur for CLS Transportation, a limousine company. While employed, he signed an agreement to resolve all employment-related disputes in individual arbitration, with no possibility of a class or representative action. After his employment ended with CLS Transportation, in or around 2006, Iskanian filed a class action and representative suit under California's Private Attorney General Act (PAGA) alleging various wage and hour claims against his former employer. CLS Transportation moved to compel arbitration pursuant to the agreement.

The trial court granted CLS Transportation's motion to compel arbitration. Shortly after the trial court issued its ruling, the California Supreme Court decided *Gentry v. Superior Court* (2007) 42 Cal.4th 443 which invalidated class action waivers under certain circumstances. The California Court of Appeals issued a writ of mandate directing the trial court to reconsider its motion to compel arbitration ruling. On remand, CLS Transportation withdrew its motion to compel arbitration. After Iskanian's class was certified, the United States Supreme Court issued *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 321 which invalidated the California Supreme Court decision in *Discover Bank v. Superior Court* (2005) 36 Cal.4th 148, a decision which restricted consumer class action waivers in arbitration agreements. In light of this new ruling, CLS Transportation renewed its motion to compel arbitration. The trial court granted CLS Transportation's motion, and ordered the case to individual arbitration.

Upon appeal, the trial court's decision was affirmed. The California Supreme Court ultimately determined that "an arbitration agreement requiring an employee as a condition of employment to give up the right to bring representative PAGA actions in any forum is contrary to public policy. In addition, we conclude that the FAA's goal of promoting arbitration as a means of private dispute resolution does not preclude our Legislature from deputizing employees to prosecute Labor Code violations on the state's behalf. Therefore, the FAA does not preempt a state law that prohibits waiver of PAGA representative actions in an employment contract."

Employers should review their arbitration agreements to ensure that they are compliant with the ever-changing law on the permissible scope of arbitration in California.

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