



Altering Arbitration: Sakkab V. Luxottica Retail North America

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Overtime claims that a former LensCrafters employee brought against a California franchise led the Ninth Circuit to once again tweak arbitration rules. The divided Ninth Circuit panel reversed the district court's order granting defendant Luxottica Retail North America, Inc.'s motion to compel arbitration of claims and dismissing plaintiff Shukri Sakkab's first amended complaint, in a putative class action raising class employment-related claims and a non-class representative claim for civil penalties under the Private Attorney General Act.

Mr. Sakkab filed the complaint in San Diego against defendant, alleging that the LensCrafters franchise misclassified employees. Citing a dispute-resolution agreement, defendant successfully compelled arbitration. Though Mr. Sakkab did not dispute that his employment claims were arbitrable, Mr. Sakkab argued that the portion of the arbitration agreement prohibiting him from bringing any PAGA claims on behalf of other employees was unenforceable under California law. Though the U.S. Supreme Court found in [AT&T Mobility LLC v. Concepcion](#), 131 S. Ct. 1740 (2011) that the Federal Arbitration Act pre-empts California's law on unconscionable contracts, the California Supreme Court announced the rule in *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348 (2014) that barred the waiver of representative claims under PAGA.

As such, the Ninth Circuit panel held that the Federal Arbitration Act did not preempt the California rule announced in *Iskanian*. Thus, the panel's majority suggests that an arbitration policy potentially be drafted so that PAGA claims, could be compelled to arbitration, so long as claims of a representative nature under PAGA are not thereby waived. In sum, the decision highlights the ongoing struggle employers face in California dealing with arbitration. California employers should discuss their current arbitration policies with their

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