

California Supreme Court To Review Class Action Arbitration Waivers In Employment Agreements

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As we have been predicting, the issue of class action arbitration waivers has made its way to the California Supreme Court. On Sept. 20, 2012, the Supreme Court granted review of *Iskanian v. CLS Transportation of Los Angeles* (“*Iskanian*”), following the Court of Appeal’s decision affirming an order granting the employer’s motion to compel individual arbitration and dismissing the employee’s class claims.

Presently, the case will involve three issues:

1. Did *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740 (2011), impliedly overrule *Gentry v. Superior Court*, 42 Cal. 4th 443 (2007)?
2. Does the United States Supreme Court’s decision in *Concepcion* permit arbitration agreements to override the statutory right to bring representative claims under the Labor Code’s Private Attorneys General Act of 2004?; and
3. Did the employer waive its right to compel arbitration?

Notably absent from the Court’s statement of the issues presented by *Iskanian* is whether the *D.R. Horton* decision by the National Labor Relations Board will continue to protect employees’ right to bring class claims as a form of concerted activity under Section 7 of the National Labor Relations Act. The Court of Appeal in *Iskanian* had affirmed the trial court’s opinion that *D.R. Horton* did not apply. No dates have been set for oral argument. A decision on these issues likely will not come until late next year.

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