

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 arbitration 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* (*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* that had gone the other way. The Court also rejected arguments based upon the NLRB's decision in *D.R. Horton*. As we have reported previously, the Fifth Circuit refused to enforce the NLRB's *D.R. Horton*. The NLRB, however, continues to rely upon *D.R. Horton* in current cases. However, it was not a complete win for employers. In a holding that could see a continuation of mass action litigation in California, the *Iskanian* Court held that waivers of the right to bring representative actions under California's Private Attorneys General Act (PAGA) are contrary to public policy. As such, the Court created a carve-out for such "representative actions" which likely means that such actions will remain active for at least the near term in California.

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