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Labor and Employment Alert: A New Hope: California Appellate Court Upholds an Arbitration Agreement Containing a Class and Representative Action Waiver

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On June 4, 2012, an appeals court in California held that an employment arbitration agreement prohibiting employees from filing class or representative actions was lawful. In *Iskanian v. CLS Transportation Los Angeles, LLC*, the plaintiff filed a class and representative action alleging meal and break, overtime and other violations of California labor law. However, CLS Transportation's employees had signed an arbitration agreement that waived their right to file a class or representative action. The *Iskanian* court held that the U.S. Supreme Court's ruling in *AT&T Mobility LLC v. Concepcion* overruled the California Supreme Court's decision in *Gentry v. Superior Court*, and allowed employees to waive their right to class and representative actions as part of an arbitration agreement. The *Gentry* decision held that class and representative action waivers in employment arbitration agreements were unenforceable.

After concluding that the waiver was valid, the *Iskanian* court sent the plaintiff's individual claims to arbitration. And, more importantly, the *Iskanian* court dismissed the plaintiff's claims brought as a putative class representative as well as claims the plaintiff brought in a representative capacity under the California Private Attorneys General Act of 2004 (PAGA).

The U.S. Supreme Court's *Concepcion* decision and the California *Iskanian* decision provide new hope for employers in California who are faced with a deluge of class and/or representative actions. Based on these recent decisions, California employers may be able to enter into binding arbitration agreements containing class and representative action waivers. While these decisions provide hope for California employers, it should be noted that as an appellate court decision, *Iskanian* is not likely to be the final word on this issue. Other appellate courts in California have come to the opposite conclusion and determined that *Gentry* is still good law. Consequently, the issue will likely be decided by the California Supreme Court.

For more information regarding this or any other employment-related issue, please contact your Vorys attorney or a member of the Vorys Labor and Employment Group by calling 614.464.6400.