

Daily Journal

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TOP 75 LABOR & EMPLOYMENT

CALIFORNIA'S TOP 75 LABOR AND EMPLOYMENT LAWYERS

EDITORS' NOTE

As the U.S. Supreme Court continued to favor businesses by raising the bar for class actions, California lawyers looked to our state Supreme Court for cues on how it would follow the high court's lead.

2014 gave us some answers.

Three long-awaited rulings in *Iskanian*, *Duran* and *Ayala* are set to illuminate the playing field for employment class action and the enforceability of employment contracts requiring workers to arbitrate their grievances.

In *Iskanian*, the court ruled that an arbitration clause can prohibit a class action, handing defense lawyers a win they desperately wanted. But the decision also gave a significant victory to workers — it said they could sue on behalf of themselves and other workers as representatives of the state.

In *Duran*, the court said statistical sampling could be used in class actions — which many employers sought to avoid — but it set a high bar for the use of such sampling.

Finally, the court held in *Ayala* that in an employee misclassification action, a class should be certified if the employer has the right to

exercise control over its independent contractors, regardless of variations in how the employer exercises that right.

Together the rulings create a challenging body of law for our state's labor and employment lawyers, whose accomplishments continue to boost the California Supreme Court as the most influential in the nation.

In reviewing hundreds of nominations from law firms, alternative dispute resolution providers and others, we sought to recognize work that is having a broad impact on the legal community, the nation and society. We honor the best of them.

Timothy M. Freudenberger

CAROTHERS DISANTE & FREUDENBERGER LLP
IRVINE

SPECIALTY: class action defense



On May 29, 2014, the state Supreme Court issued a long-awaited decision that brought glad tidings to Freudenberger's client.

Two years earlier, he had obtained a reversal of a \$15 million judgment to a class of business banking officers in an overtime misclassification class action, also winning

class decertification. *Duran v. U.S. Bank National Association*, 59 Cal. 4th 1 (2014).

In the new ruling, the state Supreme Court found that the trial plan, which had

resulted in the judgment, was flawed and violated the bank's due process rights.

In addition, "The Supreme Court affirmed the Court of Appeal's decertification order, confirming that the individualized nature of the exemption inquiry in this case — which turns on facts specific to each individual banking officer — rendered the case inappropriate for class treatment," Freudenberger said.

The major problems with the trial court's sampling methodology, he added, was introducing numerous nonscientific elements, as well as preventing the bank from presenting its affirmative defenses to class members outside the sample.

While there has been some debate on whether the ruling leaves a ray of light for plaintiffs going forward, Freudenberger offers his own interpretation.

"While the Supreme Court has not categorically rejected the use of sampling and statistical evidence to determine liability in a misclassification case," he said, "that remains only a theoretical possibility, because the overall text of the opinion makes clear that the substantive law will control any determination of liability in a class action."

And, he said, sampling and statistical evidence cannot be used to undermine a defendant's right to present its affirmative defenses for the sake of "manageability or convenience."

In short, Freudenberger said, "This was a huge win for U.S. Bank and an extremely favorable ruling for employers in California."

Looking ahead to the potential impact of the ruling, he added, "I think there will be fewer class action misclassification cases filed in California, and there will be much fewer misclassification cases certified in California."

— PAT BRODERICK