Supplement to the Los Angeles and San Francisco
Daily Journal
JULY 16, 2014

LABOR & EMPLOYMENT

CALIFORNIA'S TOP 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.

Lee R. Feldman

FELDMAN BROWNE OLIVARES APC
LOS ANGELES

SPECIALTY: plaintiffs' employment litigation

Feldman is now immersed in two nationwide class action lawsuits that he considers to be potentially groundbreaking.

Plaintiffs allege that John Paul Mitchell The School and Aveda Beauty Schools failed to pay minimum wage to tens of thousands of students who also were serving customers. *Jennings v. Estee Lauder Inc., et al.,* BC543276 (L.A. Super. Ct., filed May 27, 2014); *Gerard v. John Paul Mitchell Systems*, BC543275 (L.A. Super. Ct., filed May 14, 2014).

The students pay $20,000 to attend their schools, which require the students to have a certain number of hours of practical training, Feldman said.

The schools operate salons that are attached to the beauty schools and charge the public for services at discounted prices, he added, while the students perform the unpaid labor and also sell the school's beauty products to the public.

"They have hundreds of students with little or no supervision," Feldman said. "These schools are making tens of millions of dollars and don't pay students a dime. "

The schools could have offered free haircuts to the public in order to get the students the needed training, Feldman said, "But they've turned an apprenticeship, that generally is paid under the law, into slave labor."

The plaintiffs are asking for unpaid wages, overtime and penalties, along with other alleged violations, including failure to provide meal and rest breaks.

In another ongoing matter, Feldman is litigating a class-action lawsuit against California-area concert and sporting venues for allegedly failing to pay more than 3,000 vendors the minimum wage. *Noe v. Sarnoff, et al.*, BC486653 (L.A. Super. Ct., filed June 2012).

Noting that in recent years, the bar has been set higher for certifying classes, Feldman said, "Cases still will be certified if they attack common policies and practices through common proof."

— PAT BRODERICK