July 19, 2012

Via Facsimile

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| Presiding Justice Kathleen E. O’Leary  Associate Justice Richard M. Aronson  Associate Justice William W. Bedsworth  California Court of Appeal  Fourth Appellate District, Division Three  601 West Santa Ana Boulevard  Santa Ana, California 92701 |  |

Re: ***Caron v. Mercedes-Benz Financial Services USA LLC, et al*., No. G044550**

**Request for Publication of Opinion**

Dear Presiding and Associate Justices:

Pursuant to California Rule of Court 8.1120(a), DIRECTV respectfully requests that the Court publish its opinion in *Caron v. Mercedes-Benz Financial Services USA LLC, et al*., No. G044550 (“*Caron*”), which issued on June 29, 2012.

DIRECTV is a defendant in several pending lawsuits in California and across the country, in which courts are considering the enforceability of the individual arbitration agreements DIRECTV enters into with its subscribers. The Court’s decision in *Caron* provides important guidance on some of the issues—including the enforceability of individual arbitration provisions when plaintiffs seek to assert classwide claims under the Consumers Legal Remedies Act (“CLRA”)—that arise regularly in cases DIRECTV is defending.

The federal Ninth Circuit Court of Appeals has long recognized that the Federal Arbitration Act (“FAA”) preempts use of the CLRA anti-waiver provision (Cal. Civ. Code § 1751) to refuse to enforce an individual arbitration agreement. *See Ting v. AT&T*, 319 F.3d 1126, 1147-48 (9th Cir. 2003). But one California court of appeal recently took the opposite view, holding that the CLRA conferred a right to bring a class action that could not be waived, and that the FAA did not preempt the CLRA anti-waiver provision. *See* *Fisher v. DCH Temecula Imports LLC*, 187 Cal. App. 4th 601 (2010) (“*Fisher*”). The United States Supreme Court’s decision in *AT&T Mobility, LLC v. Concepcion*, 131 S. Ct. 1740 (2011) (“*Concepcion*”) confirmed that the position taken by the Ninth Circuit was the correct one. As *Concepcion* makes clear, arbitration agreements governed by the FAA cannot be invalidated under state law on the basis that they do not permit classwide arbitration. *Id.* at 1748.

Nonetheless, plaintiffs in California, seeking to avoid having to arbitrate as they agreed, continue to argue that they must be allowed to bring classwide claims under the CLRA in court because of the CLRA anti-waiver provision. And even after *Concepcion*, at least one lower court in a case involving DIRECTV has accepted the argument, refusing to enforce a valid FAA-governed arbitration agreement because the plaintiffs asserted a putative class claim under the CLRA. That decision is presently on appeal before the Second District. *See Imburgia v. DIRECTV, Inc.*, Case No. B239361.

The Court’s opinion in *Caron* addressing these issues should be certified for publication because it meets the standards for publication under California Rule of Court 8.1105(c), in that it “explains . . . or criticizes with reasons given, an existing rule of law”, “[a]dvances a new interpretation, clarification, criticism, or construction of a provision of a constitution, statute, ordinance, or court rule”, and “[i]nvolves a legal issue of continuing public interest.” *See* Cal. R. Ct. 8.1105(c)(3), (4), (6). In a thorough, well-reasoned opinion, the Court in *Caron* applied *Concepcion*, rejected the reasoning in *Fisher*, and became the first California court of appeal to recognize that the FAA does in fact preempt use of the CLRA anti-waiver provision to invalidate an arbitration provision. In addition, the Court rejected—and explained its rejection of—the plaintiff’s alternative argument that her CLRA claim should not be arbitrated because requiring arbitration would prevent her from “vindicating her substantive rights” under the CLRA, an argument that parties seeking to avoid arbitration have made with regularity following *Concepcion*. Certifying the Court’s opinion in *Caron* would provide lower courts with much-needed guidance on how to address the enforceability of an arbitration agreement in the context of CLRA claims.

For all of these reasons, DIRECTV respectfully requests that the Court publish its opinion in this case.

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|  | Sincerely,  Shaun Paisley  Kirkland & Ellis LLP  Counsel for DIRECTV |