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July 13, 2012

Via Federal Express

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 Blvd.
Santa Ana, CA 92701

Re: ***Caron v. Mercedes-Benz Financial USA LLC***
Court of Appeal Case No. G044550
Request for publication

Dear Presiding Justice O'Leary and Associate Justices Aronson and Bedsworth:

We write on behalf of the Association of Southern California Defense Counsel (ASCDC), requesting publication of the court's June 29, 2012 opinion in this matter.

ASCDC is the nation's largest and preeminent regional organization of lawyers who specialize in defending civil actions, comprised of approximately 1,100 attorneys in Southern and Central California. ASCDC is actively involved in assisting courts on issues of interest to its members. It has appeared as amicus curiae in numerous appellate cases, including recently in *Howell v. Hamilton Meats & Provisions, Inc.* (2011) 52 Cal.4th 541, *Cassel v. Superior Court* (2011) 51 Cal.4th 113, and *Reid v. Google, Inc.* (2010) 50 Cal.4th 512.

In addition to representation in appellate matters and comment on proposed court rules, ASCDC provides its members with professional fellowship, specialized continuing legal education, representation in legislative matters, and multifaceted support, including a forum for the exchange of information and ideas.

This court's opinion merits publication because it readily satisfies several of the criteria for publication under rule 8.1105(c) of the California Rules of Court. It broadly construes the preemptive effect of the Federal Arbitration Act (FAA) and the United States Supreme Court's recent decision in *AT&T Mobility LLC v. Concepcion* (2011) __ U.S. __, [131 S.Ct. 1740, 179 L.Ed.2d 742] (*Concepcion*), and holds for the first time that the FAA preempts the anti-waiver provision of the Consumers Legal Remedies Act (CLRA) (Civ. Code, § 1751). In so doing, it disagrees with the contrary holding in *Fisher v. DCH Temecula Imports LLC* (2010) 187 Cal.App.4th 601, recognizing for the first time that *Fisher* has been nullified by *Concepcion*. Additionally, it endorses and follows the recent opinion in *Iskanian v. CLS Transportation Los Angeles, LLC* (2012) 206 Cal.App.4th 949, 963-966 (*Iskanian*) (as well as the Ninth Circuit's recent opinion in *Kilgore v. KeyBank, Nat. Ass'n* (9th Cir. 2012) 673 F.3d 947, 960-963) that after *Concepcion*, the FAA preempts the *Broughton-Cruz* doctrine that certain public injunctive relief claims under the CLRA and the Unfair Competition Law (UCL) cannot be arbitrated. (See *Broughton v. Cigna Healthplans* (1999) 21 Cal.4th 1066; *Cruz v. PacifiCare Health Systems, Inc.* (2003) 30 Cal.4th 303.) This court's opinion thus fulfills the criteria for publication by criticizing an existing rule of law (rule 8.1105(c)(3)), clarifying the interpretation and application of a federal and a California statute (rule 8.1105(c)(4)), addressing an apparent conflict in the law (rule 8.1105(c)(5)), and involving a legal issue of continuing public interest—FAA preemption of California law (rule 8.1105(c)(6)).

Since *Concepcion* was decided, California courts have struggled with the application of that decision to various aspects of California arbitration law. (See, e.g., *Iskanian, supra*, 206 Cal.App.4th at pp. 958-961, 963-966; *Kinecta Alternative Financial Solutions, Inc. v. Superior Court* (2012) 205 Cal.App.4th 506, 515-517; *Samaniego v. Empire Today, LLC* (2012) 205 Cal.App.4th 1138, 1150; *Sanchez v. Valencia Holding Co., LLC* (2011) 201 Cal.App.4th 74, 88, 89, review granted Mar. 21, 2012, S199119; *Brown v. Ralphs Grocery Co.* (2011) 197 Cal.App.4th 489, 497-503; see also *Sonic-Calabasas A, Inc. v. Moreno* (2011) 51 Cal.4th 659, cert. granted, judg. vacated, and case remanded to the Supreme Court of California for reconsideration in light of *Concepcion*, Oct. 31, 2011, No. 10-1450, __ U.S. __ [132 S.Ct. 496, L.Ed.2d 343].) Trial courts and practitioners should have the benefit of this court's cogent analysis in addressing these issues and advising clients.

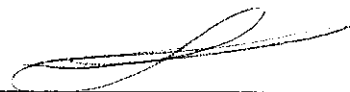
Accordingly, ASCDC respectfully requests that this court order its opinion published.

Presiding Justice Kathleen E. O'Leary
and Associate Justices Aronson and Bedsworth
July 13, 2012
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We thank the court for its attention to this matter.

Respectfully submitted,

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 15760 Ventura Boulevard, 18th Floor, Encino, California 91436-3000.


On July 13, 2012, I served true copies of the following document(s) described as **REQUEST FOR PUBLICATION** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Horvitz & Levy LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 13, 2012, at Encino, California.



Connie Christopher

Caron v. Mercedes-Benz Financial Services USA LLC et al.
Case Number G044550
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