

# Daily Journal

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## Top 75 Labor & Employment Attorneys

California will see important developments in employment law soon, as the state Supreme Court considers three cases that will impact class action waivers and arbitration agreements. Our state's labor and employment lawyers have always led the nation in the development of the issues of the day and the creation of law, and they're some of the most experienced practitioners in the country. To pick the Daily Journal's annual list of top 75 employment litigators, public labor negotiators and corporate and regulatory specialists in California, we reviewed hundreds of nominations from law firms, alternative dispute resolution providers and nonprofits. We sought to recognize work that is having a broad impact on the legal community, the nation and society.

— The Editors

### LABOR & EMPLOYMENT



#### Felix Shafir

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**Specialty:** appellate, class actions

employer Sonic-Calabasas A Inc., which owns and operates an automobile dealership. *Sonic-Calabasas A. Inc. v. Moreno*, S174475 (Cal. 2011).

Sonic-Calabasas then filed a petition to force Moreno to arbitrate his claim. The trial court denied the petition, but an appellate court reversed the ruling.

The state Supreme Court then granted review, holding that the employer's arbitration agreement could not be enforced as written. That judgment was vacated by the U.S. Supreme Court, which directed reconsideration in light of another closely watched case. *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740 (2011).

Last year, Shafir helped prepare and file an amicus brief contending that previous California decisions holding that arbitration agreements were unenforceable were preempted by the Federal Arbitration Act under the high court's decision in *Concepcion*.

Since then, the state Supreme Court has ordered the parties to file supplemental briefs discussing the impact of a recent decision by the U.S. Supreme Court in another major arbitration case. *American Express Co. v. Italian Colors Restaurant*, 2013 DJDAR 7944 (June 20, 2013).

In that ruling, the high court upheld a provision in an arbitration agreement barring class actions, even when arbitrating individual claims would place a heavy economic burden

on the plaintiff.

"We explained to the California Supreme Court that the procedures set by an arbitration contract cannot be invalidated simply because a court believes, as a matter of public policy, that the procedure threatens the plaintiff's ability to vindicate a statutory claim in arbitration," Shafir said. "Parties have to honor the terms of their contracts. State courts can't set aside arbitration procedures based on their public policy disapproval of those procedures."

The other case in which Shafir filed an amicus brief on behalf of the California New Car Dealers Association involves a wage and hour class action brought against CLS Transportation Los Angeles, which successfully moved to compel arbitration.

After plaintiff Arshavir Iskanian's appeal was denied, the state Supreme Court granted review. *Iskanian v. CLS Transportation Los Angeles LLC*, S204032 (Cal. 2012).

Iskanian contends that the class-action waiver in the arbitration agreement must be invalidated under another landmark decision, *Gentry v. Superior Court*, 42 Cal. 4th 443 (2007).

That ruling required California courts to invalidate class arbitration waivers in an arbitration agreement where class arbitration would seemingly better vindicate the plaintiff's wage and hour rights than individual arbitration, Shafir said.

"This raises the very issue that has been argued in *Sonic*," he added. "The American-Express ruling shows that this type of reasoning is wrong, and really hammers home that point. Courts need to honor the terms of arbitration agreements."

— Pat Broderick

Shafir has been at the forefront of two closely watched wage and hour disputes that are putting the spotlight on mandatory arbitration agreements in the workplace.

In one case, on behalf of the California New Car Dealers Association, Shafir filed an amicus brief and presented oral argument in the state Supreme Court in April.

At issue, Frank Moreno filed a wage claim with the labor commissioner against his former