



California Tries Again: Group PAGA Claims Stay in Court Despite Arbitration Agreements

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In an opinion filed July 17, 2023, the California Supreme Court held that an individual who has had their individual Private Attorneys General Act (PAGA) claim compelled to arbitration may maintain a nonindividual PAGA claim in state court. In doing so, the California high court disagreed with the U.S. Supreme Court's decision in *Viking River*. The case—*Adolph v. Uber Technologies, Inc.*—means that California employers will continue to have to litigate PAGA cases in state court even if they have a valid arbitration agreement and compel an individual's claims to arbitration.

As background, California law allows individuals to bring actions for violations of the Labor Code on behalf of the state Labor and Workforce Development Agency (LWDA). Specifically, PAGA authorizes "an aggrieved employee" to bring an action for violations of the Labor Code "on behalf of himself or herself and other current or former employees." An aggrieved employee means any person who was employed by the alleged violator and against whom one or more of the alleged violations were committed. (Lab. Code 2699(c)). Put another way, PAGA authorizes aggrieved employees to bring either a claim on behalf of themselves for violations committed against them (an individual claim) or a claim on behalf of themselves and other current or former employees for violations committed against those other employees (a nonindividual claim).

In *Viking River Cruises, Inc. v. Moriana*, 142 S. Ct. 1906 (2022) (*Viking River*), the U.S. Supreme Court interpreted the Federal Arbitration Act (FAA) to hold that an individual PAGA claim can be compelled to arbitration pursuant to an arbitration agreement. It further interpreted California state law to hold that a plaintiff no longer has statutory standing to pursue claims on behalf of other aggrieved employees in state court once the plaintiff's individual PAGA claim was compelled to arbitration.

Justice Sotomayor wrote a concurring opinion (which was not the decision of the U.S. Supreme Court) that invited California courts to determine whether the U.S. Supreme Court Justices' interpretation of California state law was wrong, stating: "California courts, in an appropriate case, will have the last word."

In deciding *Adolph*, the California Supreme Court seized on this language and broke from the *Viking River* decision. It identified only two statutory requirements for standing under PAGA: (1) the plaintiff must allege that they are or were employed by the alleged violator and (2) the plaintiff must allege that they are someone against whom one or more of the alleged violations was committed. The California Supreme Court held that if a plaintiff can satisfy those two requirements, their standing to bring a nonindividual claim in state court is not destroyed by their individual

claim being compelled to arbitration. The Court suggested, but did not expressly hold, that a court can stay the nonindividual PAGA claim litigation in court while an arbitrator decides the threshold issue of whether the plaintiff is an “aggrieved employee.”

It is yet to be seen whether *Adolph* is indeed “the last word.” The U.S. Supreme Court has repeatedly emphasized its position that the FAA preempts incompatible state laws that preclude parties from entering into contracts that control what claims are subject to arbitration. The *Adolph* decision is in tension with that. Whether or not Uber explores appeal options, it is possible that this issue may yet again be brought to the U.S. Supreme Court in one way or another in years to come.

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