

U.S. SUPREME COURT HOLDS INDIVIDUAL PAGA CLAIMS MAY BE COMPELLED TO ARBITRATION

On June 15, 2022, the Supreme Court issued its decision in *Viking River Cruises, Inc. v. Moriana*. As detailed below, the Court held the Federal Arbitration Act (FAA) preempts *Iskanian v. CLS Transportation Los Angeles, LLC*, a 2014 California Supreme Court ruling, to the extent that *Iskanian* precludes the arbitration of an individual employee's claims under the California Private Attorneys General Act ("PAGA"). The Court also determined that, per PAGA's standing requirements, once an employee's individual PAGA claims are compelled to arbitration, the representative PAGA claims brought on behalf of other individuals must be dismissed.

Plaintiff, Angie Moriana, a former Viking River Cruises, Inc. sales representative, sued Viking on behalf of herself and other similarly situated workers under PAGA. As part of her employment with Viking, Moriana agreed to submit to binding arbitration any dispute arising out of her employment. Notwithstanding that agreement, Moriana declined to submit to arbitration, relying on *Iskanian*, which held arbitration agreements that waive the right to bring PAGA representative actions are unenforceable. Viking moved to compel arbitration. The trial court denied Viking's motion and the Court of Appeal affirmed. The case eventually landed at the U.S. Supreme Court.

In the highly anticipated decision, the Supreme Court concluded the FAA preempted *Iskanian's* holding finding PAGA claims could not be divided into individual and representative claims. Instead, the Court determined that PAGA claims can be separated into individual claims and representative claims and, further, that individual PAGA claims can be compelled to arbitration. Notably, the Court found the prohibition on "wholesale" waivers articulated in *Iskanian* remains valid.

As for representative claims, the Court determined that, under California law, an individual bringing a PAGA representative claim must be an aggrieved employee. As such, a plaintiff has standing to maintain representative PAGA claims only by also maintaining an individual claim in an action. The Court concluded, "when an employee's own dispute is pared away from a PAGA action, the employee is no different from a member of the general public, and PAGA does not allow such person to maintain a suit." The Court held that aggrieved employees lack statutory standing to maintain non-individual claims once the individual claims are compelled to arbitration.

In a concurring opinion, Justice Sonia Sotomayor called upon California to act, positing that "California courts, in an appropriate case, will have the last word" and that "the California Legislature is free to modify the scope of statutory standing under PAGA within state and federal constitutional limits." Thus, it seems unlikely this decision is the final chapter of this story.

For now, however, California employers with updated, carefully drafted arbitration agreements can compel individual PAGA claims to arbitration, resulting in the dismissal of the representative claims.