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California Supreme Court Holds Plaintiffs Compelled To Arbitrate Individual PAGA Claims Can Still Have Standing To Litigate Non-Individual PAGA Claims

July 18, 2023

Click for PDF Decided July 17, 2023 ***Adolph v. Uber Techs.*, S274671 The California Supreme Court held yesterday that an order requiring an employee to arbitrate PAGA claims brought on his or her own behalf does not, on its own, deprive the employee of standing to litigate non-individual PAGA claims on behalf of other employees. Background:** Erik Adolph, a driver who used Uber's "Eats" platform, alleged that Uber misclassified drivers as independent contractors rather than employees. He filed a claim under the Private Attorneys General Act of 2004, California Labor Code section 2698 et seq. ("PAGA"), seeking civil penalties on behalf of himself and other drivers.

Uber moved to compel arbitration of Adolph's PAGA claim on the ground that the parties signed an agreement requiring Adolph to individually arbitrate his claims against Uber. The trial court and Court of Appeal rejected that argument based on the California Supreme Court's decision in *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 58 Cal.4th 380, which held that PAGA claims are not subject to arbitration. But while Uber's petition for review was pending before the California Supreme Court, the U.S. Supreme Court issued its decision in *Viking River Cruises, Inc. v. Moriana* (2022) 142 S.Ct. 1906, which held that the Federal Arbitration Act preempted *Iskanian* in relevant part and that individual PAGA claims could be compelled to arbitration.

Viking River also concluded, based on its analysis of California law, that a plaintiff lacks statutory standing to litigate his non-individual PAGA claims once his individual PAGA claim is compelled to arbitration. The California Supreme Court granted review to resolve this issue of state law and heard argument in May 2023.

Issue: Does an aggrieved employee who is compelled to arbitrate an individual PAGA claim lose statutory standing to litigate non-individual PAGA claims on behalf of other employees? **Court's Holding:** No. "Where a plaintiff has brought a PAGA action comprising individual and non-individual claims," an order "compelling arbitration of the individual claims does not strip the plaintiff of standing as an aggrieved employee to litigate [non-individual PAGA] claims on behalf of other employees."

> *"[W]here a plaintiff has filed a PAGA action comprised of individual and non-individual claims, an order compelling arbitration of individual claims does not strip the plaintiff of standing to litigate non-individual claims in court."*
>
> Justice Liu, writing for the Court

Gibson Dunn Represented Defendant and Appellant: *Uber Technologies, Inc.* **What It Means:**

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- The Court acknowledged that the U.S. Supreme Court adopted a different interpretation of state law in *Viking River* but held that it was "not bound by the high court's interpretation of California law." The Court declined to grant the U.S. Supreme Court's interpretation of state law deference because the case did not involve "a parallel federal constitutional provision or statutory scheme."
- A plaintiff has statutory standing to litigate non-individual PAGA claims if he (1) "was employed by the alleged violator" and (2) is someone "against whom one or more of the alleged violations was committed." A plaintiff who satisfies both requirements does not lose standing based on the "enforcement of an agreement to adjudicate [his] individual claim in another forum." The Court reached this conclusion in part because of its determination that the plaintiff's case remains a single action even if the individual and non-individual PAGA claims are split and pursued in different forums under *Viking River*.
- The Court suggested that trial courts should stay non-individual PAGA claims pending arbitration of the individual PAGA claim, and that named plaintiffs would lose standing if they are unsuccessful in arbitration. Specifically, the Court acknowledged that if the arbitrator determines that the plaintiff is "not an aggrieved employee" for purposes of the individual PAGA claim and the court "confirms that determination and reduces it to a final judgment," the court should "give effect to that finding" and dismiss the plaintiff's non-individual PAGA claims for lack of standing.
- The Court "express[ed] no view on the parties' arguments regarding the proper interpretation of the arbitration agreement" at issue in the case and remanded to the Court of Appeal for further proceedings.

The Court's opinion is available here.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the California Supreme Court. Please feel free to contact the following practice leaders:

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