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Supreme Court Holds That The Federal Arbitration Act Requires Enforcement Of Agreements To Arbitrate Individual Claims Under California's Labor Code Private Attorneys General Act

Client Alert | June 15, 2022

Decided June 15, 2022 ***Viking River Cruises, Inc. v. Moriana*, No. 20-1573 Today, the Supreme Court held that individual claims arising under California's Labor Code Private Attorneys General Act ("PAGA") can be compelled to arbitration.**
Background: PAGA permits an employee to sue her employer for Labor Code violations on behalf of the State of California and share in the recovery. Moriana, an employee of Viking River Cruises, agreed to arbitrate all disputes and waived her ability to bring class-wide, representative, or PAGA claims. She nevertheless brought a PAGA claim in California state court after her employment ended, alleging Labor Code violations affecting her and other employees and seeking aggregated penalties for all of the alleged violations. The California Court of Appeal allowed the case to proceed, holding that under the California Supreme Court's decision in *Iskanian v. CLS Transport Los Angeles, LLC* (2014), the waiver of representative PAGA claims in Moriana's arbitration agreement was unenforceable. Because under *Iskanian*, a PAGA claim cannot be divided into "individual" and "representative" claims brought in separate proceedings, the court permitted all of Moriana's claims to proceed in court. **Issue:** Does the Federal Arbitration Act require enforcement of a bilateral arbitration agreement with respect to an individual claim under PAGA? **Court's Holding:** Yes. The FAA preempts the California Supreme Court's *Iskanian* decision insofar as it precludes the division of PAGA actions into individual and non-individual claims. Viking may compel arbitration of Moriana's individual PAGA claim, and the remaining non-individual PAGA claims must be dismissed because Moriana lacks statutory standing under PAGA without her having an individual claim in the action. The FAA, however, does not preempt *Iskanian*'s prohibition on wholesale waivers of PAGA claims.

> *"We hold that the FAA preempts the rule of Iskanian insofar as it precludes division of PAGA actions into individual and non-individual claims through an agreement to arbitrate. This holding compels reversal in this case."*

Justice Alito, writing for the Court

What It Means:

- The Court's decision is a victory for California employers that will likely lead to the enforcement of arbitration agreements in many PAGA actions—resulting in the compelling of individual PAGA claims to arbitration and the dismissal of non-individual PAGA claims in court—with some potential variation depending on the precise language of the arbitration agreements at issue.

Related People

Lucas C. Townsend

Bradley J. Hamburger

Grace E. Hart

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- The Court's reasoning turned on its conclusion that a PAGA claim can be divided into an individual PAGA claim (based on allegations of Labor Code violations specific to the named plaintiff) and a non-individual PAGA claim (based on allegations of Labor Code violations as to other employees not named in the action). The Court held that the *Iskanian* decision, by mandating the joinder of non-individual PAGA claims with individual PAGA claims, led to a result "incompatible with the FAA."
- In concluding that Moriana's individual PAGA claim was subject to arbitration, the Court relied in part on a severability provision in the arbitration agreement to narrow an otherwise invalid wholesale waiver of PAGA claims. This analysis suggests that whether courts will compel arbitration of individual PAGA claims may turn on the specific language of the arbitration agreement at issue.
- The Court held that the proper result, once Moriana's individual PAGA claim is sent to arbitration, is dismissal of her non-individual PAGA claims, as she no longer would satisfy PAGA's statutory standing requirement. Justice Sotomayor in a concurring opinion suggested that the California courts could decide that the Court's understanding of this aspect of California law is incorrect, or that the California legislature could modify PAGA's standing requirement.

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 Supreme Court. Please feel free to contact the following practice leaders:

Appellate and Constitutional Law Practice

Thomas H. Dupree Jr. +1 202.955.8547 tdupree@gibsondunn.com	**Allyson N. Ho** +1 214.698.3233 aho@gibsondunn.com	**Julian W. Poon** +1 213.229.7758 jpoon@gibsondunn.com
Lucas C. Townsend +1 202.887.3731 ltownsend@gibsondunn.com	**Bradley J. Hamburger** +1 213.229.7658 bhamburger@gibsondunn.com	

Related Practice: Labor and Employment

Jason C. Schwartz +1 202.955.8242 jschwartz@gibsondunn.com	**Katherine V.A. Smith** +1 213.229.7107 ksmith@gibsondunn.com

Related Practice: Class Actions

Christopher Chorba +1 213.229.7396 cchorba@gibsondunn.com	**Kahn A. Scolnick** +1 213.229.7656 kscolnick@gibsondunn.com

Related Capabilities

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