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# paga representative claims can still be litigated in court despite robust arbitration agreements

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On July 17, 2023, the California Supreme Court broke from the United States Supreme Court by deciding in *Adolph v. Uber Technologies* that a plaintiff in a Private Attorneys General Act ("PAGA") action whose own individual claims are compelled to arbitration nonetheless retains standing to pursue representative PAGA claims in court.

In *Adolph*, the plaintiff, Erik Adolph, worked as an Uber driver, delivering food through Uber Eats. As a part of his services on the Uber platform, Adolph signed an agreement to arbitrate "almost all work-related claims he might have against Uber" on an individual basis only. This arbitration agreement included a waiver that Adolph would not "bring a representative action on behalf of others under [PAGA] in any court or in arbitration."

After Adolph sued Uber for individual and class claims arising out of his classification as an independent contractor, the trial court granted Uber's motion to compel arbitration of Adolph's individual claims and dismissed the class claims. After Adolph filed an amended complaint seeking only civil penalties under PAGA, however, the trial court denied Uber's second motion to compel arbitration on the basis that the arbitration agreement's waiver of PAGA claims was unenforceable.

Shortly thereafter in 2022, the U.S. Supreme Court decided in *Viking River Cruises v. Moriana* that the Federal Arbitration Act preempted California's rule preventing courts from dividing PAGA claims into their individual (i.e. based on violations allegedly suffered by the plaintiff him or herself) and representative (i.e. based on violations allegedly suffered by other employees) components. Under this ruling, a plaintiff's individual PAGA claims could be separated from the representative claims, and the individual claims compelled to arbitration pursuant to an otherwise enforceable arbitration agreement. Further, the U.S.

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Supreme Court found that a plaintiff compelled to individual arbitration loses standing to pursue representative PAGA claims in court, and that the representative claims should therefore be dismissed. Noting lingering uncertainty, however, Justice Sotomayor explained in a concurring opinion that California Courts would have "the last word" regarding PAGA standing, it being purely a question of state law.

Wanting that last word, the California Supreme Court decided to take *Adolph* upon review. In a departure from *Viking River*, the California Supreme Court held in *Adolph* that, "where 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."

In a silver lining for employers, however, the California Supreme Court did explain that the outcome of a PAGA plaintiff's individual arbitration will be controlling on questions of standing for purposes of a representative action. Thus, if a plaintiff cannot prove an individual Labor Code violation in arbitration, and establish his or her status as an "aggrieved employee" under the PAGA statute, that plaintiff loses standing to pursue representative PAGA claims in court. The Court also endorsed a trial court's ability to stay court proceedings pending arbitration of the individual PAGA claims.

Employers are encouraged to review their arbitration agreements in light of these developments. As always, the Labor and Employment team at Mitchell Silberberg & Knupp is ready to assist.