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Supreme Court Upholds Right to Compel Arbitration of Claims Brought Under California Private Attorneys General Act (PAGA)

Decision Allows Employees and Employers to Agree to Arbitration of Individual PAGA Claims, Which Generally Will Preclude "Representative" PAGA Claims on Behalf of Others

SUMMARY

On June 15, 2022, in an 8-1 decision authored by Justice Alito in *Viking River Cruises, Inc.* v. *Moriana*, 596 U.S. __, 2022 WL 2135491 (June 15, 2022), the U.S. Supreme Court concluded that individual claims brought under the California Labor Code Private Attorneys General Act (PAGA), which authorizes employees to act as private attorneys general by bringing claims against employers "on behalf of himself or herself and other current or former employees,"[1] are arbitrable under the Federal Arbitration Act (FAA). Although the Court further held that the FAA did not preempt the California Supreme Court holding in *Iskanian* v. *CLS Transportation Los Angeles, LLC* that a wholesale waiver of an employee's right to bring a PAGA action is contrary to California public policy and therefore unenforceable, the Court interpreted PAGA to require a plaintiff to bring an individual PAGA suit in order to have standing to bring a representative PAGA claim. Therefore, the Court held that once the individual PAGA claim is sent to arbitration, non-individual PAGA claims must be dismissed for lack of standing.

BACKGROUND

PAGA allows employees to enforce California labor law by bringing claims seeking civil penalties that previously could only have been recovered by California's Labor and Workforce Development Agency (LWDA) in a state enforcement action. PAGA also allows "aggrieved employee[s]" to bring cases on behalf

of "other current or former employees" against the same employer.[2] To do so, the representative must bring a predicate individual claim. All PAGA claims are brought by an employee as an "agent or proxy" of the state, rather than in an individual capacity.[3] Accordingly, the LDWA receives 75 percent of the award from any successful PAGA action, with only the remaining 25 percent distributed among the employees affected by the violation at issue.[4]

Angie Moriana, a former sales representative at the cruise company Viking River Cruises, Inc. (Viking), brought individual and representative claims against Viking under PAGA in California state court, alleging that Viking failed to provide her with her final wages within 72 hours of her last day of work in violation of the California Labor Code and asserting various other Labor Code violations on behalf of other Viking employees. In her employment agreement with Viking, Moriana agreed to arbitrate any disputes arising out of her employment, and waived the right to bring any arbitration dispute as a "class, collective, or representative PAGA action."[5]

Viking sought to compel arbitration of Moriana's individual claim and moved to dismiss her representative claims. The trial court denied that motion, and the California Court of Appeal affirmed, relying on the California Supreme Court's 2014 decision in *Iskanian* v. *CLS Transp. Los Angeles* to conclude that (1) a wholesale waiver of the right to bring PAGA claims in court, rather than in arbitration, contravenes California public policy, and (2) PAGA claims may not be divided into individual claims and non-individual claims. The question before the Supreme Court was whether the FAA preempts this California precedent invalidating waivers of the right to assert representative claims under PAGA in court.

THE SUPREME COURT'S DECISION

The Court held that *Iskanian* is preempted by the FAA to the extent it precludes dividing a PAGA action into individual and non-individual PAGA claims through an arbitration agreement. In reaching its decision, the Court highlighted what it perceived as a conflict between PAGA's procedural structure and the FAA, which "preempts any state rule discriminating on its face against arbitration."[6]

The Court explained that PAGA's mechanism for claim joinder "permits 'aggrieved employees' to use the Labor Code violations they personally suffered as a basis to join to the action any claims that could have been raised by the State in an enforcement proceeding."[7] Under *Iskanian*, parties could not contract around this joinder because *Iskanian* invalidated agreements to arbitrate only individual PAGA claims. The Court found that PAGA's "built-in mechanism of claim joinder," together with *Iskanian*'s prohibition on agreements to arbitrate individual PAGA claims, is incompatible with arbitration because it infringes parties' freedom to determine the scope of the issues subject to arbitration, thereby "violat[ing] the fundamental principle that 'arbitration is a matter of consent.'"[8] Because representative PAGA claims are at odds with the arbitration forum and cannot be brought in arbitration without all parties' consent, and *Iskanian* prohibits parties from dividing PAGA claims into individual and representative claims, the Court concluded that *Iskanian*

"effectively coerces parties to opt for a judicial forum rather than forgoing the procedural rigor and appellate review of the courts in order to realize the benefits of private dispute resolution," which "is incompatible with the FAA."[9]

The Court therefore invalidated *Iskanian*'s prohibition on separating individual PAGA claims from representative PAGA claims,[10] allowing Viking to compel arbitration of Moriana's individual PAGA claim separate from her representative claims. The Court further concluded that Moriana's representative PAGA claims could not survive in court as a matter of California law, because "under PAGA's standing requirement, a plaintiff has standing to maintain non-individual PAGA claims in an action **only by virtue of** also maintaining an individual claim in that action."[11] In other words, PAGA requires an individual cause of action as a prerequisite to bring representative claims. Therefore, the Court concluded that "the correct course is to dismiss [Moriana's] remaining [representative] claims."[12]

In a brief concurrence, Justice Sotomayor noted that because the Court's conclusion that a plaintiff must be able to bring an individual PAGA claim in court in order to also bring a representative PAGA claim was based on an interpretation of California law, California courts "will have the last word" on whether that interpretation is correct.[13] The California legislature, she noted, can amend PAGA's standing requirements in order to avoid cases like Moriana's, which leave employees subject to mandatory arbitration agreements without any forum to bring representative PAGA claims. Justice Sotomayor specifically stated that "the California Legislature is free to modify the scope of statutory standing under PAGA within state and federal constitutional limits."[14]

Justice Barrett also authored a concurrence, joined by Justices Kavanaugh and Roberts, which agreed that PAGA's joinder mechanism resembled "other aggregation devices that cannot be imposed on a party to an arbitration agreement" and thus supported the majority's conclusion, but found that the majority's discussion of the bilateral nature of PAGA actions, and their ruling striking down *Iskanian*'s prohibition on severing individual and representative PAGA cases, involved "disputed state-law questions" that were "not pressed" in this case, and were "unnecessary to the result."[15] Justice Thomas dissented on the grounds that "the Federal Arbitration Act . . . does not apply to proceedings in state courts" and therefore "does not require California's courts to enforce" the arbitration agreement at issue here, given its prohibition on arbitrating representative PAGA claims.[16] For that reason, Justice Thomas said he would uphold the decision of the California Court of Appeals, which invalidated the contract term at issue and allowed Mariana's claims to proceed in court.

IMPLICATIONS

This decision reaffirms the Supreme Court's repeated holdings that a court may invalidate an arbitration agreement based on generally applicable contract defenses but not legal rules that apply only to arbitration, and that class arbitration may not proceed without all parties' consent.

As a result of the decision, California employers may be able to effectively prevent representative PAGA claims by requiring employees to agree to individual arbitration of PAGA claims, which would leave them without standing to bring representative PAGA claims in court. Still, employers should be mindful that *Viking River Cruises* does not put an end to representative PAGA suits for employees not subject to such mandatory arbitration clauses, who can still bring individual and representative PAGA claims in court. And, as Justice Sotomayor noted in her concurrence, California may reinterpret or amend PAGA to allow employees who have agreed to individual arbitration to nevertheless bring representative claims in court.

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ENDNOTES

1 *Viking River Cruises, Inc.*, 2022 WL 2135491, at 1 (quoting Cal. Lab. Code §2698 *et seq*.).

2 *Id.* (quoting Cal. Lab. Code §2698 *et seq*.).

3 *Id.* at 3.

4 *Id.* at 2.

5 *Id.* at 5.

6 *Id.* at 8 (quoting *Kindred Nursing Centers L. P.* v. *Clark,* 581 U. S. 246, 251 (2017) (internal citations and quotations omitted)).

7 *Id.* at 17-18.

8 *Id.* at 18 (quoting *Stolt-Nielsen S.A.* v. *AnimalFeeds Int'l Corp*., 559 U. S. 662, 684 (2010)).

9 *Id.* at 20.

10 *Id.*

11 *Id.* at 21 (emphasis added).

12 *Id.*

13 *Id.* (Sotomayor, J., concurring).

14 *Id.*

15 *Id.* (Barrett, J., concurring).

16 *Id.* (Thomas, J., dissenting).

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