

## SCOTUS' Viking River Decision is a Victory for California Employers

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On June 15, 2022, in an 8-1 decision, the United States Supreme Court ruled in favor of employer Viking River Cruises, Inc. in a case deciding whether Viking River could compel its former employee, Angie Moriana, to arbitrate her claims brought under California's Private Attorneys General Act ("PAGA") in lieu of litigation. In short, the Court held that the Federal Arbitration Act ("FAA") can preclude representative non-individual PAGA claims based on an otherwise enforceable arbitration agreement.

### Background

When Moriana was hired, she executed an agreement to arbitrate any dispute arising out of her employment. After leaving her position with Viking River, she filed a PAGA action against Viking River in California superior court. Her complaint contained a claim that Viking River had failed to provide her with her final wages within 72 hours, as required by §§ 101 – 102 of the California Labor Code. The complaint also asserted a wide array of other labor code violations allegedly sustained by other Viking River employees. Viking River moved to compel arbitration of Moriana's "individual" PAGA claim, pursuant to the arbitration agreement, and to dismiss her "non-individual" PAGA claims.

The trial court denied the motion, and the California Court of Appeal affirmed, holding that categorical waivers of PAGA standing are contrary to state policy and that PAGA claims cannot be split into arbitrable individual claims and nonarbitrable "representative" claims. This ruling was dictated by the California Supreme Court's decision in *Iskanian v. CLS Transportation*. In that case, the court held that pre-dispute agreements to waive the right to bring "representative" PAGA claims are invalid as a matter of public policy. Based on *Iskanian*, California courts have historically rejected efforts to split PAGA claims into individual and representative components.

Following briefing and oral argument, the Supreme Court found that a conflict between PAGA's procedural structure and the FAA exists, and that it derives from PAGA's built-in mechanism of claim joinder. The Court stated that *Iskanian's* prohibition on contractual division of PAGA actions into constituent claims unduly circumscribes the freedom of parties to determine "the issues subject to arbitration" and "the rules by which they will arbitrate," (See *Lamps Plus, Inc. v. Varela*, 587 U.S. \_\_\_ (2019)), and does so in a way that violates the fundamental principle that "arbitration is a matter of consent." (*Stolt-Nielsen S. A. v. AnimalFeeds Int'l Corp.*, 662 (2010).)

The Court concluded that a state rule imposing an expansive rule of joinder in the arbitral context would defeat the ability of parties to control which claims are subject to arbitration by permitting parties to "superadd" new claims to the proceeding, regardless of whether the agreement committed those claims to arbitration. When made compulsory by way of *Iskanian*, the Court emphasized that PAGA's joinder rule functions in exactly this way.

Ultimately, the Court held that the FAA preempts a California law that invalidates contractual waivers of the right to assert representative claims under PAGA, “insofar as that rule precludes division of PAGA actions into *individual* and *non-individual* claims through an agreement to arbitrate.” The Supreme Court thus reversed and remanded the case back to the trial court to dismiss the representative PAGA action.

What this means moving forward is that when a plaintiff’s *individual* claim is sent to arbitration, that plaintiff no longer has standing to assert representative *non-individual* PAGA claims in court.

In light of *Viking River*, properly drafted arbitration agreements that include a PAGA waiver are vital for California employers to limit exposure on potential representative claims. Thus, employers should promptly update existing agreements to include a PAGA waiver/proper language, as well as implement new arbitration agreements where none currently exist to benefit from this ruling. Now that the *Viking River* decision is final, California employers need to be on the lookout for the Ninth Circuit decision in *U.S. Chamber of Commerce v. Bonta*, which will decide whether or not employers are banned from using mandatory arbitration agreements with their employees.

Pearlman, Brown & Wax, LLP will continue to monitor developments regarding *Viking River* and PAGA. For questions regarding PAGA generally, the *Viking River* decision, or if you need assistance with drafting compliant arbitration agreements following *Viking River*, please contact the firm’s Employment Law department for guidance.