



## ALERTS

### Adolph V. Uber Technologies: What California Employers Need To Know

July 18, 2023

#### Highlights

The plaintiffs do not lose standing when individual California Private Attorneys General Act claims are sent to arbitration

The holding is based on PAGA's language and broad remedial purpose

Look for more “non-individual” PAGA claims to be stayed pending determination in arbitration concerning whether a plaintiff is an “aggrieved employee”

In the long-awaited [Adolph v. Uber Technologies](#) case, the California Supreme Court held that a plaintiff whose individual California Private Attorneys General Act (PAGA) claims are compelled to arbitration is not stripped of standing to litigate non-individual claims in court. The impacts of this decision will be felt immediately across the Golden State.

For the past year, since the U.S. Supreme Court's decision in *Viking River Cruises, Inc. v. Moriana*, California employers have exercised their newly found right to compel arbitration of individual PAGA claims, often seeking to dismiss the remaining non-individual claims (i.e., claims brought on behalf of other allegedly “aggrieved employees”). This decision now

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forecloses that strategy.

In the wake of *Viking River*, uncertainty abounds for California employers with valid arbitration agreements facing claims brought under PAGA. In *Viking River*, the Supreme Court held that, contrary to the California Supreme Court's earlier precedent, the Federal Arbitration Act allowed PAGA claims to be divided into individual and non-individual claims, and employers could compel arbitration of individual PAGA claims, subject to a valid arbitration agreement. While the U.S. Supreme Court found that the remaining non-individual claims should be dismissed for lack of standing, Justice Sonia Sotomayor's concurrence explained that what ultimately happens to the non-individual claims will be a question for the California courts or legislature to answer.

Chaos ensued thereafter. Initially, several California federal district courts followed the reasoning of the *Viking River* majority, dismissing the non-individual claims after individual PAGA claims were compelled to arbitration. However, the momentum did not last. State courts began pushing back, refusing to dismiss the non-individual PAGA claims, often staying such claims pending the outcome of the individual arbitration. Enter *Adolph v. Uber Technologies*.

The defendant in *Adolph* had unsuccessfully attempted to compel arbitration of the PAGA claims (before the *Viking River* decision had been issued), with a California court of appeal affirming the denial in April 2022. In July 2022, shortly after the *Viking River* decision, the California Supreme Court agreed to review the case.

On review before the California Supreme Court, the defendant in *Adolph* broadly argued that, among other things, under *Viking River*, if a plaintiff's individual PAGA claims are sent to arbitration and those claims are resolved, the plaintiff would receive any relief he or she is entitled to, the claims would be extinguished, and he or she would no longer have standing to represent others. Essentially, the plaintiff would no longer have any "skin in the game."

In response, the plaintiff argued that PAGA only requires the worker to be employed by the alleged violator and the worker to be the victim of one or more alleged California Labor Code violations – nothing more. The plaintiff argued that to lose standing would be inconsistent with the legislature's goal to use PAGA to achieve maximum compliance with the California Labor Code.

Relying primarily on the PAGA statute's language, the purpose of the statute, and recent California Supreme Court precedent, the court agreed with the plaintiff, finding that standing was not lost by the plaintiff's individual claims being sent to arbitration. The court explained that "only the fact of a [Labor Code] violation is required to confer standing[.]" the statute does not require the plaintiff to have an unredressed injury. "[A] worker becomes an 'aggrieved employee' with standing to litigate claims on behalf of fellow employees upon sustaining a Labor Code violation committed by his or her employer[.]" and as a result, "[a]rbitrating a PAGA plaintiff's individual claim does not nullify the fact of the violation or extinguish the plaintiff's status as an aggrieved employee," according to the court.

The court went on to explain, "[a] narrower construction of PAGA standing would 'thwart the Legislature's clear intent to deputize employees to

pursue sanctions on the state's behalf.”

Moreover, despite the U.S. Supreme Court’s view that a plaintiff would lose standing after having claims compelled to arbitration, the California Supreme Court stated in no uncertain terms that standing under a California law is the province of a California court and that the U.S. Supreme Court’s determination on this issue was not binding on it.

## Key Takeaways

The question will now become, what happens to non-individual PAGA claims if they are not dismissed for lack of standing? In responding to one of the defendant’s arguments, the California court noted a likely path forward. The defendant argued that, absent dismissal, it would be required to re-litigate whether the plaintiff is an aggrieved employee in court, after arbitration. Here, the court appeared to endorse the plaintiff’s response, which stated that the trial court may stay the non-individual claims pending the outcome of the arbitration, and if the arbitrator found the plaintiff to be an aggrieved employee, then that determination could be confirmed and binding on the trial court. However, if the arbitrator found the plaintiff was not aggrieved, then upon confirmation with the court the plaintiff would lose standing. Regardless of the outcome, the court indicated that the parties could rely upon the decision of the arbitrator and would not need to re-litigate whether the plaintiff was aggrieved.

What is more, the court held that arbitration does not sever individual from non-individual claims in PAGA action. This is important because the California Code of Civil Procedure allows courts to use their discretion in issuing a stay only as to severable proceedings. For proceedings that are not severable, a stay is mandatory. This means that “non-individual” (i.e., representative) PAGA claims should be stayed pending the outcome of individual arbitration.

Look for this approach to become the dominate procedure in cases where an individual PAGA claim is compelled to arbitration.

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