

## THOUGHT LEADERSHIP

LEGAL UPDATES

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## California Supreme Court Keeps Representative PAGA Claims Afloat in State Court

In June 2022, the United States Supreme Court held in *Viking River Cruises v. Moriana*—contrary to California precedent—that the Federal Arbitration Act (FAA) allows PAGA claims to be split into individual and non-individual (representative) claims, and consequently, under a valid enforceable arbitration agreement, employers could compel arbitration of individual PAGA claims. In so holding, the U.S. Supreme Court also found that once individual claims are compelled to arbitration, the remaining non-individual claims should be dismissed for lack of standing. In her concurring opinion, Justice Sotomayor cautioned that if the U.S. Supreme Court’s understanding of California law as to standing was incorrect, the California courts and legislature would have the last word.

In *Adolph v. Uber*, the California Supreme Court accepted Justice Sotomayor’s invitation. In *Adolph*, Uber argued that since *Viking River* permitted the court to compel arbitration of individual claims, the remaining representative non-individual claims should be dismissed for lack of standing. Plaintiff argued that the only requirement for standing under PAGA is that the plaintiff be an “aggrieved employee,” as held by the California Supreme Court in *Kim v. Reins International California, Inc.*, 9 Cal. 5th 73 (2020).

Relying on PAGA’s legislative purpose to enforce the Labor Code, the California Supreme Court disagreed with the U.S. Supreme Court, stating that PAGA only has two requirements for standing: 1) the plaintiff is an employee; and 2) the employee “sustain[ed] a Labor Code violation committed by his or her employer.” The Court held: “[W]here 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.”

### **What this means to you**

Although it is unlikely that this decision will be the last word on this issue, there are immediate implications for representative PAGA claims. Notably, the decision suggests that representative PAGA claims could be stayed pending the outcome of arbitration. If an arbitrator determines that a plaintiff is an aggrieved employee, that determination “would be binding on the court, and [the plaintiff] would continue to have standing to litigate his nonindividual claims.” However, if an arbitrator determines that a plaintiff is not an aggrieved employee, “the court would give effect to that finding, and [the plaintiff] could no longer prosecute his nonindividual claims due to lack of standing.” Employers should consult with counsel to continue navigating the rough seas of PAGA litigation.

### **Contact us**

If you have questions regarding the implications of *Adolph v. Uber* or PAGA more broadly, please contact Tyler M. Paetkau, Zain Zubair, or your Husch Blackwell attorney.