

Don't Wait for the California Supreme Court's Ruling in 'Adolph' to Settle PAGA Claims

By Monique Ngo-Bonnici

When California's legislature enacted the Private Attorney General Act in 2004, its intent was to bolster the limited resources of the Department of Industrial Relations by empowering workers to prosecute corporate malfeasance. Through individual and representative actions brought on behalf of the state, employees could make companies pay for wage-hour, safety and other workplace violations that harmed California workers.

Recognizing that PAGA claims are different from other types of employment litigation, the state's courts had consistently held them exempt from compulsory arbitration. In the 2014 case *Iskanian v. CLS Transportation Los Angeles*, the California Supreme Court ruled that employers were precluded from enforcing pre-dispute arbitration agreements when the agreement foreclosed plaintiffs' ability to pursue PAGA penalties on behalf of other allegedly aggrieved employees. Although employees could waive their right to participate in a representative action by agreeing to individual arbitration, the court said that waivers of the right to bring a PAGA action on behalf of the state were unenforceable.

That all changed this past June with the U.S. Supreme Court's decision in *Viking River Cruises v. Moriana*. The justices ruled in that case that any plaintiff who has signed a valid agreement to arbitrate workplace grievances must also have individual PAGA claims resolved through arbitration. The court also stated that such a plaintiff thereafter lacks standing to pursue a representative PAGA action in state court, but it welcomed California's highest court to weigh in on this issue.

And California's Supreme Court will do just that this year. In the case *Adolph v. Uber Technologies*, the state court will decide "[w]hether an aggrieved employee who has been compelled to arbitrate claims under [PAGA] that are 'premised on Labor Code violations actually sustained by' the aggrieved employee ... maintains statutory standing to pursue 'PAGA claims arising out of events involving other employees.'"

The plaintiff in *Adolph* is an Uber Eats driver who alleges that Uber misclassified the employment status



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Courtesy photo

for himself and for a large group of similarly situated drivers. He contends that California law vests an aggrieved party who is forced to arbitrate his individual claim with standing to pursue a representative PAGA claim for the benefit of other employees.

If Representative Standing Is Upheld

When it agreed on July 20 to hear *Adolph*, California's highest court likely raised hopes among PAGA plaintiffs that it would override *Viking River* on the issue of representative PAGA actions. Relying on legislative history and prior case law, the court could find that aggrieved parties compelled to arbitrate individual claims nevertheless retain standing

to pursue actions on behalf of other PAGA members in court.

This is not a stretch. In 2020, the same court found in *Kim v. Reins International California* that a plaintiff retained standing to maintain a PAGA claim on behalf of other employees even after his personal claim for damages settled because he continued to be an “aggrieved employee” under the law. PAGA, the court said, does not require an employee to continue to suffer injury in order to have standing.

If the California Supreme Court overturns *Viking River*’s holding regarding standing to bring representative PAGA actions, many plaintiffs currently seeking to resolve their individual claims through mediation may have less incentive to do so. Knowing that a larger claim can be pursued in court, such plaintiffs may view their own claims as trial balloons that could set a precedent for the representative action. In addition, because the uncertainty of standing will no longer be at issue, these same plaintiffs will also be less inclined to resolve their representative claims at the same discount they may be willing to agree to now.

Employer defendants may also be far less inclined to settle individual PAGA claims, because they could ultimately find themselves fighting the same, but larger representative battle, even after a settlement with the individual PAGA plaintiff has been made.

If Representative Standing Is Denied

Employers anticipating the Adolph ruling are no doubt relying on California’s highest court to uphold the entire *Viking River* decision. The best outcome, in their minds, would be a ruling that any employee compelled to arbitrate the individual PAGA claim no longer has standing to maintain the remainder of the PAGA action. Such an outcome would, in effect, provide companies the same protective shield in PAGA actions that the U.S. Supreme Court’s decision in *Epic Systems v. Lewis* gave them in class action cases.

Should the California Supreme Court follow the *Viking River* reasoning, plaintiffs who signed valid arbitration agreements containing a class and representative action waiver will no longer be able to use the threat of a representative action in settlement negotiations. Instead, they will be compelled to focus solely on the merits of their individual claims and will have less leverage to negotiate concessions from their employers.

While it is true that under this scenario companies will have little reason to worry about subsequent group claims when negotiating settlement of individual claims, they may find themselves facing new challenges. Representative PAGA actions will undoubtedly become less common—limited to the rare instances where compulsory arbi-

tration is not part of the employment agreement—but for companies utilizing arbitration agreements with class and representative action waivers, they could still become tied up in endless PAGA litigation. Instead of a single representative PAGA action, they could find themselves facing hundreds or thousands of individual PAGA claims related to the same Labor Code violations.

Until the California Supreme Court decides *Adolph*, it is anybody’s guess how the PAGA litigation landscape will lie. Plaintiffs and defendants involved in PAGA actions should work toward fully resolving those claims at their earliest opportunity, while the possibility of an adverse ruling in *Adolph* for their adversary can still play in their favor during settlement negotiations. Both sides have too much to lose if they delay settling claims while awaiting the California Supreme Court’s decision.

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