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California Supreme Court holds plaintiffs required to arbitrate individual Private Attorneys General Act ("PAGA") claims maintain standing for representative PAGA claims in court—but representative claims should be stayed pending resolution of individual claims in arbitration

by Jennifer Cotton

The California Supreme Court recently rejected the U.S. Supreme Court's interpretation of standing under the Private Attorneys General Act (PAGA). In *Adolph v. Uber Technologies, Inc.*, 532 P.3d 682 (Cal. 2023), the Court held that if a plaintiff asserts both individual and representative PAGA claims in court and is compelled to arbitrate his individual claims, that plaintiff retains his standing to litigate the representative claims in court. The Court also suggested that while an individual claim is being arbitrated, the representative claim should be stayed.

Plaintiff Erik Adolph was an Uber Eats driver who brought several claims, including under PAGA, against Uber for alleged misclassifications of its drivers as independent contractors instead of employees. *Id.* at 686. Plaintiff had consented to Uber's technology services agreement, which contained an arbitration provision that: (a) required Plaintiff to arbitrate work-related claims on an individual basis; and (b) purported to prohibit Plaintiff from bringing representative actions under PAGA in any forum. *Id.*

Uber moved to compel arbitration of Plaintiff's individual claims, which the trial court granted, after which Plaintiff amended his complaint to assert only the PAGA claim. *Id.* Uber moved to compel arbitration of the issues underlying Plaintiff's ability to bring a PAGA claim (*i.e.*, whether he was an "aggrieved employee" entitled to do so), as well as all issues of enforceability and arbitrability. *Id.* The trial court denied Uber's motion to compel, which Uber appealed. *Id.* at 686–87. The Court of Appeal affirmed, holding that the threshold question of whether Plaintiff could pursue a PAGA claim must be decided by the trial court—not an arbitrator—because of California precedent prohibiting the "splitting" of a PAGA claim between arbitration and court. *Id.* at 687.

Uber appealed again, but before Plaintiff filed an answer, the U.S. Supreme Court decided *Viking River Cruises, Inc. v. Moriana*, 142 S. Ct. 1906, *reh'g denied,* 143 S. Ct. 60, (2022), which held the Federal Arbitration Act preempted California's "anti-splitting" rule for PAGA claims. *See Adolph*, 532 P.3d at 687–89 (citing *Viking River*, 142 S.Ct. at 1923–25). The *Viking River* decision also concluded that when a plaintiff's individual PAGA

claim has been committed to arbitration, that plaintiff loses standing for his representative PAGA claim in court. *Id.* (citing *Viking River*, 142 S.Ct. at 1925).

The California Supreme Court granted review on the PAGA standing issue, explaining that it is "not bound by the high court's interpretation of California law." *Id.* at 687, 689. Uber argued that *Viking River* was correct—that a PAGA plaintiff loses standing for representative PAGA claims when his individual PAGA claim must be arbitrated. *Id.* at 692. The Court disagreed with Uber and held that "where 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." *Id.* at 680.

Uber offered myriad arguments in support of its position, all of which the Court rejected. *Id.* at 692–96. For example, Uber argued that Plaintiff would have no "financial stake" in the outcome of a representative PAGA claim if his individual claim were subject to arbitration. *Id.* at 694. The Court disagreed, explaining that PAGA standing does not require plaintiffs to seek civil penalties for their individual claims in the same forum as their representative claims. *Id.* Regardless, the Court noted, "a PAGA plaintiff compelled to arbitrate individual claims may have a personal stake in the litigation of non-individual claims." *Id.* For example, PAGA provides for attorney's fees and costs, which could assist plaintiffs to "secure representation by enticing attorneys to take cases they might not have if limited to recovering fees and costs for individual claims alone." *Id.* at 694–95.

Uber also argued that Plaintiff would be allowed to "relitigate" the threshold issues underlying Plaintiff's ability to bring a PAGA claim (*i.e.*, whether he is an "aggrieved employee") unless Plaintiff's representative claims were dismissed. *Id.* at 692. Plaintiff argued this was untrue and proposed the following sequence: (1) the trial court stays Plaintiff's representative claims pending outcome of the individual arbitration; and then (2) either party could petition the court to confirm or vacate the arbitrator's award. *Id.* The arbitrator's determination of whether Plaintiff is entitled to bring a PAGA claim would be binding on the court: if Plaintiff is *not* an "aggrieved employee" entitled to bring a PAGA claim, then the court would be required to dismiss his claims for lack of standing; but if the Plaintiff did prevail on his individual PAGA claim, then he could press a representative PAGA claim. *Id.* at 692–93. The Court agreed with Plaintiff and held Uber's concern regarding relitigation was without merit. *Id.* at 693.

The *Adolph* Court thus approved of a sequencing that many courts already utilize where a plaintiff asserts both arbitrable and non-arbitrable claims or issues: the court should stay the non-arbitrable matter while the arbitration goes forward, after which any non-arbitrable claims (such as a PAGA representative claim on behalf of a plaintiff who has prevailed on his individual PAGA claim) could proceed in court. In practice, this ruling likely will provide PAGA claimants who have at least colorable claims with substantial settlement leverage in their individual arbitrations.