

US Supreme Court Overrules Key Holding of *Iskanian* Regarding Arbitrability of PAGA Claims

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Key Points

- On June 15, 2022, in *Viking River Cruises, Inc. v. Moriana*, the U.S. Supreme Court held that the Federal Arbitration Act preempts a California state law rule holding that PAGA claims cannot be compelled to individual arbitration. PAGA permits private plaintiffs to sue their employers on behalf of the state of California and collect civil penalties for Labor Code violations committed against themselves and other aggrieved employees.
- Explaining that PAGA allows aggregation of both the named plaintiff's claims and the claims of other employees, *Viking River Cruises* distinguished between the "individual" and "non-individual" claims brought in a PAGA action. It held that the "individual" claim may be compelled to arbitration, but left in place the state law rule against compelled arbitration of the "non-individual" claims.
- The Court also held that under its reading of state law, the "non-individual" claims cannot proceed in court if the individual claims have been compelled to arbitration. Concurring opinions regarding the majority's application of state law and the potential for legislative responses suggest that litigation over arbitration issues in PAGA cases may continue.

On June 15, 2022, the U.S. Supreme Court issued its much-anticipated decision in *Viking River Cruises, Inc. v. Moriana*, Case No. 20-1573. At issue was a rule announced by the California Supreme Court in *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348 (2014), declaring that arbitration agreements purporting to waive the right to bring a Private Attorneys General Act (PAGA) claim on behalf of others are unenforceable under California law.

Moriana had signed an agreement "to arbitrate any dispute arising out of her employment," which included a provision "that in any arbitral proceeding, the parties could not bring any dispute as a class, collective, or representative PAGA action." Slip op. at 5. However, after leaving her employment with Viking River Cruises, Moriana filed a PAGA action in state court, seeking statutory penalties on behalf of all California employees. When Viking River Cruises moved to compel arbitration, the trial court applied the *Iskanian* rule and denied the motion, and the Court of Appeal affirmed. The

Contact Information

If you have any questions concerning this alert, please contact:

Gregory W. Knopp

Partner
gknopp@akingump.com
Los Angeles
+1 310.552.6436

Donna M. Mezias

Partner
dmezias@akingump.com
San Francisco
+1 415.765.9575

Aileen M. McGrath

Senior Counsel
amcgrath@akingump.com
San Francisco
+1 415.765.9553

Jonathan P. Slowik

Counsel
jpslowik@akingump.com
Los Angeles
+1 310.728.3327

U.S. Supreme Court granted certiorari after the California Supreme Court denied review.

Viking River Cruises argued that the *Iskanian* rule is preempted by the Federal Arbitration Act (FAA). In a fractured and ideologically scrambled decision, the Court (with Justice Alito writing for the majority) agreed that a key holding of *Iskanian* was preempted, ruling that Moriana's individual claim should be compelled to arbitration, and her claims on behalf of other employees should be dismissed.

In what may come as a surprise to some observers, the majority rejected both parties' characterizations of PAGA. Viking River Cruises had compared PAGA actions to class and collective actions, citing several Supreme Court precedents holding that class and collective action waivers are enforceable under the FAA. The Court disagreed, concluding that much of the procedural complexity of a class or collective action is absent in a PAGA case. Slip op. at 13-14. But the Court also rejected Moriana's argument that PAGA created a single substantive "claim" that could not be waived under state law. Instead, the Court reasoned that a PAGA action like Moriana's "does not constitute 'a single claim' in even the broadest possible sense[.]" Slip op. at 12. Rather, the Court concluded PAGA creates a procedural mechanism for a plaintiff to join the claims of many employees and pursue penalties for those alleged violations on the state's behalf.

The ability under PAGA to join many employees' claims in a single representative proceeding was central to the Court's decision. An 8-1 majority held that a conflict exists between the FAA and *Iskanian*'s rule prohibiting parties from contracting around this joinder device. As the Court explained, "[i]f the parties agree to arbitrate 'individual' PAGA claims based on personally sustained violations, *Iskanian* allows the aggrieved employee to abrogate that agreement after the fact and demand either judicial proceedings or an arbitral proceeding that exceeds the scope jointly intended by the parties." Slip op. at 19. "As a result, *Iskanian*'s indivisibility rule effectively coerces parties to opt for a judicial forum rather than forgoing the procedural rigor and appellate review of the courts in order to realize the benefits of private dispute resolution." *Id.* at 20 (quotation omitted). Therefore, "the FAA preempts the rule of *Iskanian* insofar as it precludes division of PAGA actions into individual and non-individual claims through an agreement to arbitrate." Slip op. at 20.

Having concluded that *Iskanian* was preempted, the Court held that Viking River Cruises was "entitled to compel arbitration of Moriana's individual claim." Slip op. at 21. It further explained that because PAGA's standing provision requires that the named plaintiff be an "aggrieved employee" herself, Moriana could not continue to litigate her non-individual claims in court, so after compelling her individual claims to arbitration, "the correct course is to dismiss her remaining claims." *Id.*

Two concurring opinions focused on the majority's application of state law. Justice Sotomayor, who joined the Court's opinion in full, wrote separately to state her view that California courts or the state legislature may "have the last word" regarding whether dismissal is required when individual PAGA claims are compelled to arbitration. Slip op. at 1 (Sotomayor, J., concurring).¹ Justice Barrett (joined by Justice Kavanaugh and Chief Justice Roberts) concurred in part, agreeing that "PAGA's procedure is akin to other aggregation devices that cannot be imposed on a party to an arbitration agreement" but stating that she would not have addressed state law questions. Slip op. at 1 (Barrett, J., concurring).²

In sum, *Viking River Cruises* permits employers in PAGA cases to seek to enforce their arbitration agreements on an individual basis. However, the unusual lineup in the case and the Court's decision to rely heavily on its understanding of state law and the potential for legislative responses could suggest that litigation about arbitration in the PAGA context will continue.

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¹ Indeed, State Senator Dave Cortese announced the same day that he was already "prepared to author legislation to respond."

² Justice Thomas filed a dissent, reiterating his view that the FAA does not apply to state court proceedings.

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