

The PAGA Report Explores the Future of Private Attorney General Litigation in ‘After Viking River Cruises’

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In *Viking River Cruises, Inc. v. Moriana*, Case No. 20-1573, the U.S. Supreme Court granted certiorari to decide whether representative claims under the Private Attorneys General Act (PAGA) may be compelled to individual arbitration. Current California Supreme Court precedent holds that they cannot. *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348 (2014).

In light of the ideological makeup of the current Court, the Court’s prior precedents favoring arbitration, and questions the justices asked at oral argument, the Court is widely expected to abrogate the *Iskanian* rule on the grounds that that the Federal Arbitration Act (FAA) preempts it. (To read a recap of the *Viking River Cruises* oral argument, click [here](#).)

Much ink has been spilled about the *Viking River Cruises* case, but less attention has been paid to what will happen next if *Iskanian* is overruled. One commonly held view is that such a ruling would effectively end PAGA litigation in California. E.g., David G. Savage, *Los Angeles Times*, “Supreme Court weighs employer’s challenge to California labor law” (Mar. 30, 2022). However, this view may not sufficiently acknowledge that plaintiffs will continue to oppose efforts to compel arbitration in current cases, and that the legislature may have strong incentives to amend PAGA to preserve the private attorney general model.

The PAGA Report will dive deeper into the post-*Viking River Cruises* landscape in a two-part series titled “After *Viking River Cruises*.” Part 1 will examine the arguments that may feature prominently in the deluge of motions to compel arbitration that will ensue if *Iskanian* is overturned. Part 2 will examine potential legislative responses to *Viking River Cruises*. [Click here](#) to subscribe to *The PAGA Report* and ensure that you do not miss this important analysis.

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