

California Supreme Court to Have ‘Last Word’ on Viking River

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The California Supreme Court will soon hear oral argument on the much-anticipated Adolph (Erik) v. Uber Technologies, Inc., (Uber), accepting Justice Sotomayor’s invitation in Viking River Cruises to have the “last word” on whether an employee forced to arbitrate their individual Private Attorneys General Act (PAGA) claims maintains statutory standing to pursue PAGA claims on a representative basis within the court system, based on violations other employees suffered. See *Viking River Cruises v. Moriana*, 142 S. Ct. 1906, 1925 (2022) (Sotomayor, J. concurring). Oral argument is scheduled for May 9, 2023.

Employers were handed a win in mid-2022 when the U.S. Supreme Court decided in Viking River Cruises that an employee compelled to arbitrate their individual PAGA claims does lose statutory standing to bring a PAGA representative action on behalf of other aggrieved employees. See [June 2022 GT Alert](#). This holding resulted in employee arbitration agreements becoming all the more valuable for California employers, as they can now be used as a first line defense in costly PAGA actions.

Nearly a year after the Supreme Court’s decision, the plaintiff in Uber will try to convince California’s highest court that SCOTUS got it wrong, and that an employee arbitrating their individual PAGA claims does maintain standing to litigate representative PAGA claims on behalf of other aggrieved employees. Notwithstanding Viking River Cruises’ clarity on the issue of representative standing following compelling individual PAGA claims to arbitration, some California courts have declined SCOTUS’s reasoning, creating a divisive split among California courts. This split will be resolved, one way or the other, in Uber.

If the California Supreme Court upholds SCOTUS’s decision in Viking River Cruises, the usefulness of valid employee arbitration agreements as a defense to representative PAGA actions will live on. Upholding Viking River Cruises will prevent potential plaintiffs from weaponizing the threat of a representative PAGA action against employers. A decision that SCOTUS got it wrong in Viking River Cruises will likely result in substantially increased overall costs to employers, who plaintiffs will surely force to litigate and arbitrate the same issues simultaneously in different dispute resolution forums.

It is expected the California Supreme Court will issue a decision no later than August 2023. [Click here to access the Uber oral argument via livestream.](#)

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