

Ninth Circuit Applies *Adolph*, Vacating Lower Court's Dismissal of Employee's Nonindividual PAGA Claims

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On February 12, 2024, the Ninth Circuit in *Johnson v. Lowe's Home Centers, LLC*, 93 F.4th 459 (9th Cir. 2024) vacated a district court's dismissal of a former employee's nonindividual PAGA claims and remanded the nonindividual claims to allow the district court to apply California law as interpreted in *Adolph v. Uber Techs., Inc.*, 14 Cal. 5th 1104 (2023) ("*Adolph*").

The plaintiff, a former employee of Lowe's Home Centers, LLC, brought putative class claims for alleged violations of the California Labor Code on behalf of herself and other Lowe's employees, as well as a claim under California's Private Attorneys General Act of 2004 ("PAGA"). The plaintiff signed a pre-dispute employment contract that contained an arbitration clause, and the employer filed a motion to compel arbitration of the plaintiff's claims.

On September 21, 2022, the district court sided with the employer, issuing an order compelling arbitration of the plaintiff's individual claims under PAGA, and dismissing the remaining nonindividual PAGA claims. At the time, this was considered a direct application of the United States Supreme Court's June 2022 decision in *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639 (2022) ("*Viking River*"). However, in light of the California Supreme Court's recent decision in *Adolph*, the plaintiff appealed, and the Ninth Circuit granted review.

On appeal, the plaintiff argued that the California Supreme Court decision in *Adolph* corrected *Viking River*'s interpretation of PAGA, holding that a PAGA plaintiff *can* arbitrate their individual PAGA claim while simultaneously maintain their non-individual PAGA claims in court.

The employer took the position that *Adolph* was inconsistent with *Viking River*, arguing that a state court may not interpret state law in such a manner that it conflicts with federal law.

The Ninth Circuit disagreed, holding that while the district court properly compelled the plaintiff to arbitrate her individual PAGA claim, the order with respect to the nonindividual PAGA claims was incorrect. The Ninth Circuit ultimately vacated the dismissal of the plaintiff's nonindividual PAGA claims and remanding to the district court to apply *Adolph*.

In its opinion, the Ninth Circuit cited to Justice Sotomayor's opinion in *Viking River* that "if this Court's understanding of state law is wrong, California courts, in an appropriate case, will have the

last word.” As such, the Ninth Circuit held that nothing in *Adolph* was inconsistent with the federal law articulated in *Viking River*.

This ruling confirms that nonindividual PAGA claims will likely be stayed pending the arbitration of individual PAGA claims, even in federal court.

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