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CLIENT ALERT

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SCOTUS on Viking River Cruises: Employees May Be Compelled to Arbitrate "Individual" PAGA Claims

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Finally, some good news for California employers involving California's Private Attorney General Act of 2004 ("PAGA"). The U.S. Supreme Court's decision in *Viking River Cruises, Inc. v. Angie Moriana* is a huge victory for employers with valid arbitration programs or who wish to implement valid arbitration programs to substantially limit exposure to statutory and civil penalties under PAGA.

On June 15, 2022, the U.S. Supreme Court ruled that Angie Moriana, a former sales representative for Viking River Cruises, Inc., is compelled to arbitrate her "individual" PAGA claims pursuant to the arbitration agreement.

Viking River Cruises, Inc. ("Viking") hired Ms. Moriana as a sales executive. Ms. Moriana executed an arbitration agreement where she agreed to arbitrate any dispute arising out of her employment. The agreement included a "Class Action Waiver," which provided that in any arbitral proceeding, the parties could not bring any dispute as a class, collective or representative PAGA action. The agreement also contained a severability clause which required invalid portions of the waiver to be litigated in court, while valid portions of the waiver would be enforced in arbitration.

After Ms. Moriana's employment terminated, Ms. Moriana filed a PAGA action against Viking asserting Labor Code violations on behalf of herself and other aggrieved Viking employees. Viking moved to compel arbitration of Ms. Moriana's "individual" PAGA claims, which are claims that arose from violations that Ms. Moriana herself suffered and to dismiss other PAGA claims.

The trial court denied the motion. The Court of Appeal affirmed. The U.S. Supreme Court granted writ of certiorari to decide whether the Federal Arbitration Act ("FAA") preempts a rule of California law that invalidates contractual waivers of the right to assert representative claims under California's Labor Code Private Attorneys General Act of 2004 ("PAGA").

The U.S. Supreme Court held that the FAA preempts the rule of *Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal. 4th 348 (2014) that prohibits employees from waiving representative PAGA claims on behalf of other aggrieved employees. However, the U.S. Supreme Court upheld the validity of *Iskanian*'s prohibition on agreements that waive an employee's right to bring claims on behalf of the state.

The U.S. Supreme Court further ruled on Ms. Moriana's non-individual claims, holding that Ms. Moriana lacked standing to maintain her non-individual claims in court, and the correct course is to dismiss her remaining claims.

The *Viking* decision is a victory for employers because it permits employers to implement arbitration programs requiring employees to arbitrate their individual claims, including their individual PAGA claims, and in turn, preclude the employee from suing on behalf of other aggrieved employees. Such a provision in an arbitration program is a powerful tool in limiting an employer's PAGA exposure.

For employers who do not have arbitration programs in place or would like to review their current arbitration programs to limit substantial PAGA exposure, Buchalter's Labor and Employment Group offers an exceptional team of attorneys that can work with your company to draft or revise your current arbitration agreements.

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