

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA

RACHEL QUIJADA,

Plaintiff,

v.

EXTRA SPACE MANAGEMENT, INC., et al.

Defendants.

Case No.: 21CV385899

**ORDER CONCERNING  
DEFENDANT'S MOTION TO COMPEL  
ARBITRATION OF PLAINTIFF'S  
INDIVIDUAL PAGA CLAIM AND  
DISMISS NON-INDIVIDUAL PAGA  
CLAIMS**

This is an action under the Private Attorneys General Act ("PAGA") alleging that Defendant Extra Space Management, Inc. failed to provide duty-free meal and rest periods and to pay overtime and premium wages at the correct rate of pay, resulting in a number of wage and hour violations.

Before the Court is Defendant's motion to compel arbitration, based on the United States Supreme Court's recent decision in *Viking River Cruises, Inc. v. Moriana* (2022) \_\_\_ U.S. \_\_\_ [142 S. Ct. 1906, 2022 U.S. LEXIS 2940] (*Viking River*). Plaintiff opposes the motion on several grounds.

The Court issued a tentative ruling on October 12, 2022, and no one contested it at the hearing on October 13. The Court now issues its final order, which GRANTS Defendant's motion in part and DENIES it in part.

1 **I. BACKGROUND**

2 As alleged in the Complaint, Defendant Extra Space Management, Inc. is a Utah  
3 corporation doing business in California providing general contracting services. (Representative  
4 Action Complaint, ¶ 9.) Plaintiff worked for Defendant as a non-exempt Assistant Manager  
5 from February 22, 2021 until April 19, 2021. (*Id.*, ¶ 7.)

6 Plaintiff alleges that Defendant failed to authorize and permit duty-free meal and rest  
7 periods; pay overtime and meal/rest period premium wages at the regular rate of pay; and  
8 provide accurate itemized wage statements to Plaintiff and other aggrieved employees.  
9 (Representative Action Complaint, ¶ 3.) Specifically, because of staffing issues, Defendant  
10 required employees to respond to customer and other work-related issues that caused rest periods  
11 and meal breaks to be missed, taken in an untimely manner, and/or interrupted. (*Id.*, ¶ 18.) And  
12 Defendant failed to include non-discretionary incentive pay, such as “Gift/Awards” and  
13 “Monthly Field Incentives,” in calculating the regular rate of pay used to pay premiums and  
14 overtime. (*Id.*, ¶¶ 19–20.)

15 Based on these allegations, Plaintiff brings this action asserting a single claim for PAGA  
16 penalties.

17 **II. MOTION TO COMPEL ARBITRATION**

18 Defendant moves to compel arbitration based on the Mutual Agreement to Arbitrate  
19 (“Agreement”) attached to the Declaration of Robbie Yoachum, Sr. as Exhibit A/Exhibit 1.  
20 Plaintiff opposes the motion, urging that the Agreement’s representative action waiver is not  
21 enforceable, and even if the Court orders arbitration of the individual component of her PAGA  
22 claim, the representative component of that claim should not be dismissed.

23 **A. Legal Standards**

24 “The FAA [Federal Arbitration Act], which includes both procedural and substantive  
25 provisions, governs [arbitration] agreements involving interstate commerce.” (*Avila v. Southern*  
26 *California Specialty Care, Inc.* (2018) 20 Cal.App.5th 835, 840.) However, “[t]he procedural  
27 aspects of the FAA do not apply in state court absent an express provision in the arbitration  
28 agreement.” (*Ibid.*) Here, the Agreement states that it “enforceable under and subject to the

1 substantive and procedural provisions of the Federal Arbitration Act, 9 U.S.C. §§ 1, *et seq.*” So  
2 both the procedural and substantive aspects of the FAA apply. (See *Victrola 89, LLC v. Jaman*  
3 *Properties 8 LLC* (2020) 46 Cal.App.5th 337, 346 (*Victrola*) [“when an agreement provides that  
4 its ‘enforcement’ shall be governed by the FAA, the FAA governs a party’s motion to compel  
5 arbitration” and other procedural issues].)

6 Under the FAA, the Court must grant a motion to compel arbitration if any suit is brought  
7 upon “any issue referable to arbitration under an agreement for such arbitration” (9 U.S.C. § 3),  
8 subject to “such grounds as exist at law or in equity for the revocation of any contract...”  
9 (9 U.S.C. § 2). The moving party must prove by a preponderance of evidence the existence of  
10 the arbitration agreement and that the dispute is covered by the agreement. (See *Cruise v.*  
11 *Kroger Co.* (2015) 233 Cal.App.4th 390, 396 [under both federal and state law, “the threshold  
12 question presented by a petition to compel arbitration is whether there is an agreement to  
13 arbitrate”]; *Rosenthal v. Great Western Fin’l Securities Corp.* (1996) 14 Cal.4th 394, 413  
14 (*Rosenthal*) [moving party’s burden is a preponderance of evidence].) The burden then shifts to  
15 the resisting party to prove a ground for denial. (*Rosenthal, supra*, 14 Cal.4th at p. 413.)

16 “In determining the rights of parties to enforce an arbitration agreement within  
17 the FAA’s scope, courts apply state contract law while giving due regard to the federal policy  
18 favoring arbitration.” (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US),*  
19 *LLC* (2012) 55 Cal.4th 223, 236.)

20 But the FAA’s policy favoring arbitration ... is merely an acknowledgment of the  
21 FAA’s commitment to overrule the judiciary’s longstanding refusal to enforce  
22 agreements to arbitrate and to place such agreements upon the same footing as  
23 other contracts. Or in another formulation: The policy is to make arbitration  
24 agreements as enforceable as other contracts, but not more so. Accordingly, a  
25 court must hold a party to its arbitration contract just as the court would to any  
26 other kind.

27 (*Morgan v. Sundance, Inc.* (2022) \_\_\_ U.S. \_\_\_ [142 S.Ct. 1708, 1713], internal citations and  
28 quotation marks omitted.)

1           **B.       Existence and Scope of Agreement to Arbitrate**

2           To show that Plaintiff consented to the Agreement, Defendant provides a declaration by  
3 Robbie Yoachum, Sr., its Senior Director of Human Resources. Mr. Yoachum's declaration  
4 establishes that Plaintiff electronically signed the Agreement on February 1, 2021 as part of her  
5 onboarding process—which Plaintiff does not dispute.

6           The Agreement provides that “except as otherwise provided in this Agreement, any and  
7 all disputes, claims or controversies between the parties, including but not limited to any dispute  
8 arising out of or relating to this Agreement, the employment relationship between the parties, or  
9 the formation or termination of the employment relationship, that are not resolved by their  
10 mutual agreement shall be resolved by final and binding arbitration by a neutral arbitrator.”

11          At Section 5, the Agreement sets forth a waiver of representative claims:  
12

13           **THE PARTIES FURTHER AGREE THAT NEITHER PARTY MAY**  
14           **BRING, PURSUE, OR ACT AS A PLAINTIFF OR REPRESENTATIVE IN**  
15           **ANY PURPORTED REPRESENTATIVE PROCEEDING OR ACTION,**  
16           **OR OTHERWISE PARTICIPATE IN ANY SUCH REPRESENTATIVE**  
17           **PROCEEDING OR ACTION OTHER THAN ON AN INDIVIDUAL BASIS**  
18           **EXCEPT TO THE EXTENT THIS PROVISION IS UNENFORCEABLE**  
19           **AS A MATTER OF LAW.**

20  
21           **THE PARTIES AGREE THAT ANY REPRESENTATIVE CLAIMS THAT**  
22           **ARE FOUND NOT SUBJECT TO ARBITRATION UNDER THIS**  
23           **AGREEMENT SHALL BE RESOLVED IN COURT AND ARE STAYED**  
24           **PENDING THE OUTCOME OF THE ARBITRATION. THE PARTIES**  
25           **AGREE THAT A COURT, NOT THE ARBITRATOR, SHALL**  
26           **DETERMINE WHETHER ANY CLAIMS MUST PROCEED ON A**  
27           **CLASS, REPRESENTATIVE, OR COLLECTIVE BASIS.**  
28

1 The severability provision at Section 11 provides:

2 If any provision of this Agreement is determined to be illegal or unenforceable,  
3 such determination shall not affect the balance of this Agreement, which shall  
4 remain in full force and effect and such invalid provision shall be deemed  
5 severable.

6 Plaintiff does not dispute that her PAGA claim is encompassed by the Agreement. But  
7 she urges that the representative action waiver is not enforceable despite *Viking River*.  
8 Therefore, the Court’s first task is to apply *Viking River* to the specific language of the parties’  
9 Agreement here.

10 **C. Impact of *Viking River***

11 1. Viking River

12 The United States Supreme Court granted certiorari in *Viking River* “to decide whether  
13 the [FAA] preempts a rule of California law that invalidates contractual waivers of the right to  
14 assert representative claims under [PAGA].” (*Viking River, supra*, 142 S.Ct. at p. 1913.) That  
15 rule of California law was established by *Iskanian v. CLS Transportation Los Angeles,*  
16 *LLC* (2014) 59 Cal.4th 348 (*Iskanian*).

17 In answering that question, the Supreme Court distinguished between two aspects of  
18 *Iskanian*’s holding:

19 *Iskanian*’s principal rule prohibits waivers of “representative” PAGA claims in  
20 the ... sense [that they are brought by employees acting as agents or proxies of the  
21 State]. That is, it prevents parties from waiving *representative standing* to bring  
22 PAGA claims in a judicial or arbitral forum. But *Iskanian* also adopted a  
23 secondary rule that invalidates agreements to separately arbitrate or litigate  
24 “individual PAGA claims for Labor Code violations that an employee suffered,”  
25 on the theory that resolving victim-specific claims in separate arbitrations does  
26 not serve the deterrent purpose of PAGA. [Citations.]

1 (*Viking River, supra*, 142 S.Ct. at pp. 1916–1917, italics original.) *Viking River* left the first,  
2 “principal” holding of *Iskanian* intact.<sup>1</sup> But it held that “the FAA preempts the rule of *Iskanian*  
3 insofar as it precludes division of PAGA actions into individual and non-individual claims  
4 through an agreement to arbitrate.” (*Id.* at p. 1925.) Critical to the outcome here, *Viking River*  
5 applied the severability provision in the agreement before it to hold that the valid portion of the  
6 waiver must be “enforced in arbitration”:

7       The agreement between Viking and Moriana purported to waive “representative”  
8 PAGA claims. Under *Iskanian*, this provision was invalid if construed as a  
9 wholesale waiver of PAGA claims. And under our holding, that aspect  
10 of *Iskanian* is not preempted by the FAA, so the agreement remains invalid  
11 insofar as it is interpreted in that manner. *But the severability clause in the*  
12 *agreement provides that if the waiver provision is invalid in some respect, any*  
13 *“portion” of the waiver that remains valid must still be “enforced in arbitration.”*  
14 *Based on this clause, Viking was entitled to enforce the agreement insofar as it*  
15 *mandated arbitration of Moriana’s individual PAGA claim.* The lower courts  
16 refused to do so based on the rule that PAGA actions cannot be divided into  
17 individual and non-individual claims. Under our holding, that rule is preempted,  
18 so Viking is entitled to compel arbitration of Moriana’s individual claim.

19 (*Viking River, supra*, 142 S.Ct. at pp. 1924–1925, italics added.)

## 20           2.       Discussion

21       Here, the representative action waiver and associated severability clause in the  
22 Agreement are comparable to the language at issue in *Viking River*—which Plaintiff does not  
23 dispute. Rather, Plaintiff contends that there is no such thing as an “individual” PAGA claim as

---

24  
25 <sup>1</sup> See *Viking River, supra*, 142 S.Ct. at pp. 1921–1922 (disagreeing “that *Iskanian*’s prohibition  
26 on PAGA waivers is inconsistent with the FAA because PAGA creates an intrinsically  
27 representational form of action”; the FAA “do[es] not mandate the enforcement of waivers of  
28 representative capacity as a categorical rule”), p. 1925 (“Under our holding in this case, [non-  
individual PAGA] claims may not be dismissed simply because they are ‘representative.’  
*Iskanian*’s rule remains valid to that extent.”).

1 contemplated by *Viking River* and the Agreement itself. But contrary to Plaintiff's argument,  
2 *Viking River* held that PAGA actions join individual claims between the representative plaintiff  
3 and the employer, which concern the employer's violations as to the representative plaintiff him-  
4 or herself, with claims involving violations against other aggrieved employees. *Viking River*  
5 thus held that there is an individual PAGA claim between the representative plaintiff and the  
6 employer.<sup>2</sup> That claim must be arbitrated here by the terms of the Agreement.

7 Defendant thus is entitled to compel arbitration of Plaintiff's individual PAGA claim.  
8 But the Agreement's purported waiver of representative PAGA claim remains invalid under  
9 *Iskanian*. The question becomes: what to do with the representative claim while the individual  
10 claim is arbitrated? Defendant contends that *Viking River* requires the Court to dismiss the  
11 representative claim, which Plaintiff opposes. Plaintiff urges that the Court should stay the  
12 representative claim pursuant to the Agreement or, alternatively, defer ruling on Defendant's  
13 motion and stay the entire case pending anticipated guidance from the Supreme Court of  
14 California. (See *Adolph v. Uber Technologies, Inc.* (June 16, 2022, No. S274671))

---

15  
16  
17  
18  
19 <sup>2</sup> Indeed, *Viking River* specifically rejected Plaintiff's argument that PAGA claims are not  
20 between the representative plaintiff and the employer. (See *Viking River, supra*, 142 S.Ct. 1906,  
21 1919, fn. 4 ["The *Iskanian* court reasoned that a PAGA action lies outside the FAA's coverage  
22 entirely because §2 is limited to controversies 'arising out of' the contract between the parties, 9  
23 U. S. C. §2 (emphasis added), and a PAGA action 'is not a dispute between an employer and an  
24 employee arising out of their contractual relationship,' but 'a dispute between an employer and  
25 the state.' [Citation.] We reject this argument. Although the terms of §2 limit the FAA's  
26 enforcement mandate to agreements to arbitrate controversies that 'arise out of' the parties'  
contractual relationship, disputes resolved in PAGA actions satisfy this requirement. The  
contractual relationship between the parties is a but-for cause of any justiciable legal controversy  
between the parties under PAGA, and 'arising out of' language normally refers to a causal  
relationship. ..."].)

27 Also, Plaintiff cites contrary discussion in *Gavriiloglou v. Prime Healthcare Management, Inc.*  
28 (Aug. 26, 2022, No. E076832) \_\_\_ Cal.App.5th \_\_\_ [2022 Cal. App. LEXIS 805, at \*12]. But  
this discussion is dicta, and the Court declines to follow it.

1 \_\_\_\_ Cal.5th \_\_\_\_ [2022 Cal. LEXIS 4262] (*Adolph*) [authorizing supplemental briefing in light of  
2 *Viking River*].)<sup>3</sup>

3 3. *Representative PAGA Claim*

4 *Viking River* anticipated the question of what to do with representative PAGA claims  
5 where individual PAGA claims are subject to arbitration. The opinion reiterated that “[u]nder  
6 our holding in this case, [non-individual PAGA] claims may not be dismissed simply because  
7 they are ‘representative.’ *Iskanian*’s rule remains valid to that extent.” (*Viking River, supra*, 142  
8 S.Ct. at pp. 1925.) It went on to opine that

9 as we see it, PAGA provides no mechanism to enable a court to adjudicate  
10 nonindividual [*sic*] PAGA claims once an individual claim has been committed to  
11 a separate proceeding. Under PAGA’s standing requirement, a plaintiff can  
12 maintain non-individual PAGA claims in an action only by virtue of also  
13 maintaining an individual claim in that action. See Cal. Lab. Code Ann.  
14 §§2699(a), (c). When an employee’s own dispute is pared away from a PAGA  
15 action, the employee is no different from a member of the general public, and  
16 PAGA does not allow such persons to maintain suit. See [*Kim v. Reins*  
17 *International California, Inc.* (2020) 9 Cal.5th 73,] 90, 459 P. 3d, at 1133 [(*Kim*)]  
18 (“PAGA’s standing requirement was meant to be a departure from the ‘general  
19 public’ . . . standing originally allowed” under other California statutes). As a  
20 result, Moriana lacks statutory standing to continue to maintain her non-individual  
21 claims in court, and the correct course is to dismiss her remaining claims.

22 (*Viking River, supra*, 142 S.Ct. at pp. 1925.)

23 But as Justice Sotomayor’s<sup>4</sup> and Justice Barrett’s<sup>5</sup> concurring opinions recognize, this  
24 brief discussion of PAGA’s standing requirement is a federal court’s interpretation of California

---

26 <sup>3</sup> The Court GRANTS Plaintiff’s request for judicial notice of the docket and a supplemental  
27 letter brief filed in *Adolph*. (Evid. Code, § 452, subd. (d).)

28 <sup>4</sup> See *Viking River, supra*, 142 S.Ct. at p. 1925 (conc. opn. of Sotomayor, J.) (“[T]he Court  
reasons, based on available guidance from California courts, that Moriana lacks ‘statutory

1 law, and is not binding on this Court. (See *People v. Alorica Inc.* (2022) 77 Cal.App.5th 60, 67,  
2 fn. 2 [“a federal court’s interpretation of California state law is not binding”]; *California Medical*  
3 *Assn. v. Aetna Health of California Inc.* (2021) 63 Cal.App.5th 660, 670 [same].)

4 The Court respectfully disagrees with *Viking River*’s interpretation of PAGA’s standing  
5 requirement. The binding authority of the California Supreme Court in *Kim, supra*, 9 Cal.5th at  
6 p. 80 holds that disposition of individual claims does *not* strip an aggrieved employee of  
7 standing, as the state’s authorized representative, to pursue remedies under PAGA. Given the  
8 holding in *Kim*, Plaintiff does not lack standing to pursue her representative PAGA claim, and  
9 the Court will deny the request to dismiss that claim.

10 The Court believes that it will be most efficient to stay Plaintiff’s representative claim  
11 pending the California Supreme Court’s opinion in *Adolph*, and will do so under its inherent  
12 authority to manage this case.<sup>6</sup> After *Adolph* is decided, the parties shall meet and confer about  
13 whether the representative PAGA claim should be dismissed, stayed pending arbitration of  
14 Plaintiff’s individual PAGA claim, or litigated in tandem with any arbitration. If necessary, the  
15 parties jointly can contact the Court’s complex case coordinator to set a status conference to  
16 discuss post-*Adolph* issues.

17  
18  
19  
20  
21  
22  
23 standing’ under PAGA to litigate her ‘non-individual’ claims separately in state court.  
24 [Citation.] Of course, if this Court’s understanding of state law is wrong, California courts, in an  
appropriate case, will have the last word.”).

25 <sup>5</sup> See *Viking River, supra*, 142 S.Ct. at p. 1926 (conc. opn. of Barrett, J.) (“The discussion in  
26 Parts II and IV of the Court’s opinion is unnecessary to the result, and much of it addresses  
27 disputed state-law questions as well as arguments not pressed or passed upon in this case.”).

28 <sup>6</sup> The Court declines to stay the entire case pending a decision in *Adolph*, since it is clear that the  
individual portion of Plaintiff’s PAGA claim must be arbitrated under *Viking River*. There is no  
reason to delay that process.

1 **III. CONCLUSION**

2 For the reasons discussed above, the Court GRANTS Defendant's motion to compel  
3 arbitration as to the individual component of Plaintiff's PAGA claim. The Court DENIES the  
4 motion insofar as it seeks dismissal of Plaintiff's representative PAGA claim. That claim is  
5 hereby STAYED pending a decision in *Adolph*.

6 **IT IS SO ORDERED.**

7  
8 Date: October 17, 2022

9   
\_\_\_\_\_  
The Honorable Sunil R. Kulkarni  
Judge of the Superior Court