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# Courts Are Overwhelmingly Staying Non-Individual Claims When Compelling Individual PAGA Claims to Arbitration

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As we wrote previously, last summer's blockbuster decision in *Adolph v. Uber Technologies, Inc.*, 14 Cal. 5th 1104 (2023) contained a notable silver lining. In ruling that a Private Attorneys General Act ("PAGA") plaintiff's "non-individual" claims survive in court even after the "individual" claims are compelled to arbitration, the California Supreme Court strongly suggested that the non-individual claims should be stayed until the arbitration is complete. A stay in this context is critical to preserving the bargained-for benefits of arbitration, such as efficiency, lower cost, and streamlined discovery. If the plaintiff loses in arbitration, she is not an aggrieved employee and therefore lacks standing to pursue the court action, so any efforts the parties will have expended litigating in court will have been wasted. The U.S. Supreme Court made similar points in *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023), also decided last summer.

In the six months after the *Adolph* decision, lower courts have overwhelmingly embraced the California Supreme Court's suggestion by staying non-individual claims pending the completion of individual arbitrations. Notably, the Courts of Appeal appear to be unanimous in this respect. Several appellate decisions have affirmatively ordered trial courts to issue stays in this circumstance. *Wing v. Chico Healthcare & Wellness Centre, LP*, 2023 WL 8710138, at *4 (Cal. Ct. App. Dec. 18, 2023) (ordering the trial court to "stay the litigation of [the] non-individual claim until the arbitration is completed"); *accord Moreno v. Unisource Sols., Inc.*, 2023 WL 8441816, at *2 (Cal. Ct. App. Dec. 6, 2023); *Stiger v. Providence St. Joseph Health*, 2023 WL 6936002, at *2 (Cal. Ct. App. Oct. 20, 2023); *Orosco v. Aerotek, Inc.*, 2023 WL 6139399, at *5 (Cal. Ct. App. Sept. 19, 2023).

Others have suggested the trial court should issue a stay when compelling individual arbitration. *Baltazar v. Ace Parking Mgmt., Inc.*, 2023 WL 7034203, at *5 (Cal. Ct. App. Oct. 26, 2023) ("Instead" of dismissal, a trial court "may exercise its discretion to stay the non-individual claims pending the outcome of the arbitration."); *Mondragon v. Santa Ana Healthcare & Wellness Centre, LP*, 2023 WL 6862500, at *7 (Cal. Ct. App. Oct. 18, 2023) (noting Court of Appeal precedent requiring trial court to stay court proceedings where there is "a potential overlap between issues subject to arbitration and those to be decided in court").

While data regarding trial court decisions is more difficult to come by, Proskauer's review of numerous such decisions suggests that most trial courts in PAGA cases are also staying court proceedings until the conclusion of individual arbitrations. The outlier cases insisting that the parties litigate the court action and arbitration in parallel tend to erroneously conclude that because *Adolph* held that individual arbitration does not strip a PAGA plaintiff of standing to litigate non-individual claims, courts are obliged to let the non-individual claims proceed in parallel with the arbitration. However, a plaintiff's *standing* to bring claims means only that the claims cannot be *dismissed*; it does not prevent a stay. Indeed, *Adolph* affirmed that "the court may stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement." *Adolph*, 14 Cal. 5th at 1125 (quotation omitted). In light of the trend that has developed in California courts, employers seeking to enforce arbitration agreements should feel empowered to push for stays of non-individual PAGA claims until individual arbitration is complete. In doing so, employers would be well-advised to distinguish standing issues from the judicial economy considerations that favor staying non-individual claims when the individual claims are compelled to arbitration.

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**Related Professionals**

- **Mark Theodore**
  Partner
- **Jonathan P. Slowik**
  Partner
- **Laura L. Vaughn**

Associate