No. 17-1357

IN THE

Supreme Court of the United States

FIVE STAR SENIOR LIVING INC., *ET AL.*,

Petitioners,

v.

MELINDA MANDVIWALA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Federal Arbitration Act requires enforcement of agreements waiving employees' rights to assert representative claims for civil penalties under California's Private Attorneys General Act (PAGA).

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INTRODUCTION

California's Private Attorneys General Act (PAGA), Cal. Lab. Code §§ 2698 *et seq.*, authorizes employees aggrieved by violations of California's labor laws to bring *qui tam* actions on the state's behalf to recover civil penalties payable mostly to the state and partly to the plaintiffs and other victims. In *Iskanian v. CLS Transportation Los Angeles, LLC*, 327 P.3d 129 (2014), *cert. denied*, 135 S. Ct. 1155 (2015), the California Supreme Court held that an employment agreement may not prospectively waive an employee's entitlement to bring PAGA claims, and that the Federal Arbitration Act (FAA) does not require enforcement of such waivers. In *Sakkab v. Luxottica Retail North America, Inc.*, 803 F.3d 425 (9th Cir. 2015), the Ninth Circuit agreed that the FAA does not preempt *Iskanian*'s holding that the right to bring a PAGA claim is not waivable prospectively. This Court denied certiorari in *Iskanian* and at least six later cases challenging its holding.

In this case, the Ninth Circuit applied *Iskanian* and *Sakkab* in an unpublished decision holding an arbitration agreement unenforceable to the extent it purportedly waived respondent Melinda Mandviwala's right to bring a PAGA representative action for penalties on behalf of the state. The court held the agreement enforceable as to Ms. Mandviwala's individual claims for lost wages and remanded for further proceedings.

Petitioner Five Star Senior Living challenges the court of appeals' ruling, but this case does not present the two questions its petition poses. Both posit that the court of appeals applied a "rule that prohibits the enforcement of arbitration agreements with respect to representative employment claims under PAGA" and ask the Court to decide whether such a rule is

preempted by the FAA. But *Iskanian* did not hold that agreements to arbitrate PAGA representative claims are unenforceable, nor did the Ninth Circuit apply such a rule in *Sakkab* or in this case.

Rather, *Iskanian*, *Sakkab*, and the decision below hold that agreements to *waive altogether* the right to bring PAGA representative claims are unenforceable. Whether an agreement to *arbitrate* a PAGA representative claim is enforceable was not at issue in *Iskanian* or *Sakkab*—nor in this case, where Five Star has conceded that the agreement does not provide for arbitration of such claims. Five Star specifically stated below that it "does not, and has not, advanced the argument that Mandviwala's PAGA claim should proceed on a representative basis in arbitration." App't's Opening Br. 32 n.6 (9th Cir.). That the questions Five Star's petition poses are not properly presented here is reason enough to deny the petition.

The case's procedural posture also makes it particularly unsuitable for review. On remand from the court of appeals' ruling that the arbitration agreement was enforceable as to Ms. Mandviwala's wage claims, the district court stayed further proceedings pending arbitration and ordered Ms. Mandviwala to "submit to arbitration of *her PAGA claims*." Minute Order, Doc. 40, *Mandviwala v. Five Star Quality Care, Inc.*, No. 8:15-cv-01454-VAP-SP (C.D. Cal. April 26, 2018) (emphasis added). Although the order appears inconsistent with the court of appeals' mandate, and its scope is uncertain, it underscores that this case is an inappropriate vehicle for resolving any questions with respect to *Iskanian* because the impact of the court of appeals' decision on what claims are and are not subject to arbitration remains unclear. This Court should not address

an issue of FAA preemption without knowing how deciding that issue would affect the case before it.

In any event, the question whether the FAA preempts the rule applied by the court of appeals—that an employment agreement cannot prospectively waive the right to bring representative PAGA claims—does not merit review now any more than in the many cases where this Court has already declined to review it. There is no split of authority on the issue. Nor do the holdings of the California Supreme Court and the Ninth Circuit that the *Iskanian* rule is not preempted conflict with this Court's rulings. This Court has never held that an arbitration agreement can be used to waive the right to bring a particular claim.

The Court has repeatedly stated that the FAA makes agreements to *arbitrate* enforceable—not that it makes agreements to *waive* claims enforceable. The *Iskanian* rule, as applied in this case, does not provide "that a contract is unenforceable *just because it requires bilateral arbitration*," *Epic Sys. Corp. v. Lewis*, No. 16-285, slip op. at 9 (U.S. May 21, 2018), and thus does not "impermissibly disfavor[] arbitration," *id.*, or otherwise displace "the parties' chosen arbitration procedures," *id.* at 5. Far from disfavoring arbitration, *Iskanian* and *Sakkab* hold only that the FAA does not require enforcement of an employment agreement that prevents an employee from pursuing a PAGA claim for penalties on behalf of the state in any forum. The FAA's purposes neither require nor permit its transformation into a tool for extinguishing state-law liabilities by preempting rights of actions to which defendants object on policy grounds.

STATEMENT

1. PAGA

PAGA provides for enforcement of California's Labor Code by enlisting individual plaintiffs as private attorneys general to recover civil penalties for the state, with a share going to affected employees. Before PAGA's enactment, only the state could obtain such penalties. *See Iskanian*, 327 P.3d at 145–46. PAGA authorizes an "aggrieved employee" to recover penalties for Labor Code violations committed against herself and other employees in a representative civil action. Cal. Lab. Code § 2699(g). Penalties recovered under PAGA "shall be distributed as follows: 75 percent to the Labor and Workforce Development Agency for enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code …; and 25 percent to the aggrieved employees." *Id.* § 2699(i).

"A PAGA representative action is … a type of *qui tam* action." *Iskanian*, 327 P.3d at 148. Because PAGA aims to deter and penalize Labor Code violations rather than compensate individuals, "[t]he government entity on whose behalf the plaintiff files suit is always the real party in interest in the suit." *Id*. Every PAGA claim, whether implicating violations involving one or a thousand employees, is a "representative" claim on the state's behalf. *Id*. at 151.

PAGA actions are commonly maintained by individual plaintiffs. *See Arias v. Super. Ct.*, 209 P.3d 923, 929–34 (Cal. 2009). They require neither class certification nor notice to other employees. *See id*. Other employees are bound by a PAGA adjudication *only* with respect to civil penalties, just as they would be "bound by a judgment in an action brought by the

government." *Id*. at 933. A PAGA judgment's effect rests not on the principles that make class action judgments binding on class members, *see Smith v. Bayer Corp.*, 564 U.S. 299, 312–13 (2011), but on a very different basis: "When a government agency is authorized to bring an action … a person who is not a party but who is represented by the agency is bound by the judgment as though the person were a party." *Arias*, 209 P.3d at 934.

The PAGA right of action reflects the legislature's determination that limitations on the state's enforcement resources render it "in the public interest to allow aggrieved employees, acting as private attorneys general, to recover civil penalties for Labor Code violations, with the understanding that labor law enforcement agencies … retain primacy over private enforcement efforts." *Id.* at 929–30. "In a lawsuit brought under the act, the employee plaintiff represents the same legal right and interest as state labor law enforcement agencies." *Id*. at 933. The action "is a dispute between an employer and the *state*, which alleges directly or through its agents—either the Labor and Workforce Development Agency or aggrieved employees—that the employer has violated the labor code." *Iskanian*, 327 P.3d at 151.

2. *Iskanian*

The plaintiff in *Iskanian* filed both a putative class action and a representative claim under PAGA, based on alleged violations of California wage-and-hour laws. The defendant sought to compel arbitration under an agreement that barred both class actions and representative actions by employees.

The California Supreme Court held the class action ban valid and enforceable. The court concluded that

AT&T Mobility LLC v. Concepcion, 563 U.S. 333 (2011), and *American Express Co. v. Italian Colors Restaurant*, 570 U.S. 228 (2013), required it to overrule its earlier decision in *Gentry v. Super. Ct.*, 165 P.3d 556 (Cal. 2007), which had held class bans in employment arbitration agreements unenforceable in some circumstances. *See Iskanian*, 327 P.3d at 133. The California court also anticipated this Court's ruling in *Epic* that federal labor laws do not preclude enforcement of class-action bans. *See id*. at 141.

All seven justices, however, agreed that the agreement was unenforceable only to the extent it purported to bar the plaintiff from pursuing a PAGA claim in any forum. The court began by holding that employment agreements requiring employees prospectively to waive the right to bring PAGA representative actions are unenforceable under state law. *See id.* at 149. The court then held that the FAA does not require enforcement of such purported waivers. *See id*. at 150–53.

The court's five-justice majority opinion on this point rested in part on the state-law holding that the real party in interest under PAGA is the state, on whose behalf the PAGA plaintiff seeks penalties. As the court observed, a PAGA action is by definition a representative action on the state's behalf. *See id*. at 151. Thus, enforcing an employment agreement banning representative actions would prevent the state from pursuing its claim through the agent authorized by law to represent it: the PAGA plaintiff. Because "a PAGA action is a dispute between an employer and the state Labor and Workforce Development Agency," *id.* at 149, and because the state is not a party to the agreement invoked to bar the claim, the court held that permitting the PAGA action to proceed would not conflict with the

FAA's requirement that private arbitration agreements be enforced as between the parties, *id.* at 151 (citing *EEOC v. Waffle House, Inc.*, 534 U.S. 279 (2002)). Having held that the PAGA claims must be available in "some forum," *id.* at 155, the court remanded for consideration of whether they would be arbitrated or litigated in court.

Justices Chin and Baxter, concurring in the judgment, set forth an alternate basis for the result. Invoking this Court's statements that the FAA does not require enforcement of "'a provision in an arbitration agreement forbidding the assertion of certain statutory rights,'" *id.* at 157 (quoting *Am. Express*, 570 U.S. at 236), they concluded that holding prospective PAGA waivers unenforceable "does not run afoul of the FAA." *Id.*

This Court denied certiorari in *Iskanian*, 135 S. Ct. 1155 (2015), and, soon after, in another case where the California Supreme Court had applied *Iskanian*. *Bridgestone Retail Operations, LLC v. Brown*, 135 S. Ct. 2377 (2015).

3. *Sakkab*

In *Sakkab v. Luxottica Retail North America, Inc.*, the Ninth Circuit agreed with the California Supreme Court that the FAA does not preempt *Iskanian*'s prohibition on waivers of the right to bring PAGA representative claims. 803 F.3d at 429 (M. Smith, J.). The court held that the *Iskanian* rule falls within the FAA's savings clause, which makes agreements to arbitrate enforceable "save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. Applying this Court's teaching that "a state contract defense must be 'generally applicable' to be preserved by § 2's saving clause," 803 F.3d at 432 (quoting

Concepcion, 563 U.S. at 339), the court held that the *Iskanian* rule is "generally applicable" because it "place[s] arbitration agreements on equal footing with non-arbitration agreements." *Id*. *Iskanian*, the court held, bars prospective waiver of PAGA claims, "regardless of whether the waiver appears in an arbitration agreement or a non-arbitration agreement." *Id*.

Sakkab further concluded that *Iskanian* does not conflict with the FAA's purposes. The court recognized that the FAA's purpose is to overcome judicial hostility to arbitration and that it "therefore preempts state laws prohibiting the arbitration of specific types of claims." *Id*. at 434 (citing *Marmet Health Care Ctr., Inc. v. Brown*, 565 U.S. 530 (2012), and *Preston v. Ferrer*, 552 U.S. 346, 356–59 (2008)). *Iskanian*, however, "expresses no preference" as to whether PAGA claims "are litigated or arbitrated." *Id*. *Iskanian* "provides only that representative PAGA claims may not be waived outright" and "does not prohibit the arbitration of any type of claim." *Id.*

Further, *Sakkab* held, *Iskanian* does not "interfere[] with arbitration." *Id*. (quoting *Concepcion*, 563 U.S. at 346). *Iskanian*'s prohibition on PAGA waivers, the court explained, is unlike the rule at issue in *Concepcion*, under which bans on class-action procedures were deemed unconscionable. *Concepcion* held that rule preempted because it "'interefere[d] with fundamental attributes of arbitration,' by imposing formal classwide arbitration procedures on the parties against their will." *Id*. at 435 (quoting *Concepcion*, 563 U.S. at 344). By contrast, "'fundamental[]' differences between PAGA actions and class actions" render *Concepcion*'s concerns inapplicable to the *Iskanian* rule. *Id.* (quoting *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d

1117, 1123 (9th Cir. 2014), *cert. denied*, 135 S. Ct. 870 (2014)).

A class action, *Sakkab* elaborated, is a "procedural device" in which individual claims of multiple plaintiffs are adjudicated together, creating the necessity for formal procedures such as class certification, classwide notice, and opt-out rights, to protect each class member's rights with respect to his individual claim. *Id*. "By contrast, a PAGA action is a statutory action" in which the state, represented by the employee who brings the action "as the proxy or agent of the state's labor law enforcement agencies," litigates one-on-one against the defendant to recover penalties "measured by the number of Labor Code violations committed by the employer." *Id*. (citations omitted). Because the plaintiff is not employing a procedure for aggregating claims belonging to other employees, but is pursuing the state's claims for penalties, "there is no need to protect absent employees' due process rights in PAGA arbitrations," and "PAGA arbitrations therefore do not require the formal procedures of class arbitrations." *Id*. at 436. Thus, "prohibiting waiver of such claims does not diminish parties' freedom to select the arbitration procedures that best suit their needs." *Id*. Enforcing such a waiver would not preserve fundamental attributes of arbitration, but would "effectively … limit the penalties an employee-plaintiff may recover on behalf of the state." *Id*.

Sakkab acknowledged that the liabilities defendants incur for PAGA violations may be large, and that some defendants might hesitate to agree to arbitrate such claims. *Id*. at 437. The court reasoned, however, that "the FAA would not preempt a state statutory cause of action that imposed substantial liability

merely because the action's high stakes would arguably make it poorly suited to arbitration." *Id*. "Nor … would the FAA require courts to enforce a provision limiting a party's liability in such an action, even if that provision appeared in an arbitration agreement." *Id.* (citing *Booker v. Robert Half Int'l, Inc.*, 413 F.3d 77, 83 (D.C. Cir. 2005) (Roberts, J.)). Likewise, the FAA does not preempt a rule prohibiting parties "from opting out of the central feature of the PAGA's private enforcement scheme—the right to act as a private attorney general to recover the full measure of penalties the state could recover." *Id*. at 439.

Finally, the court invoked this Court's instruction that "[i]n all pre-emption cases' we must "start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purposes of Congress." *Id*. (quoting *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996)). Here, the state exercised its "broad authority under [its] police powers to regulate the employment relationship to protect workers within the State," *id*. (quoting *Metro. Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 756 (1985)), by "creating a form of qui tam action" to supplement the state's limited enforcement resources. *Id*. "The FAA," the court concluded, "was not intended to preclude states from authorizing qui tam actions to enforce state law" or to "require courts to enforce agreements that severely limit the right to recover penalties" in such actions. *Id*. at 439–40.

The Ninth Circuit denied rehearing en banc in *Sakkab*, and no judge requested a vote on the petition by the full court. Since *Sakkab*, this Court has denied certiorari in five more cases seeking review of whether the

FAA preempts *Iskanian*: *Prudential Overall Supply v. Betancourt*, 138 S. Ct. 556 (2017); *Bloomingdale's, Inc. v. Tanguilig*, 138 S. Ct. 356 (2017); *Bloomingdale's, Inc. v. Vitolo*, 137 S. Ct. 2267 (2017); *CarMax Auto Superstores Cal., LLC v. Areso*, 136 S. Ct. 689 (2015); *Apple Am. Group, LLC v. Salazar*, 136 S. Ct. 688 (2015).

4. Proceedings in this case

Melinda Mandviwala was employed at one of Five Star's "senior living communities" in California between 2012 and 2014. In July 2015, Ms. Mandviwala filed a PAGA representative action in California state court based on Five Star's failure to pay her and other employees minimum wages and overtime, to provide rest periods and meal breaks, to pay wages promptly upon separation of an employee, and to provide accurate, itemized wage statements—all violations of California's Labor Code.

Five Star removed the action to federal district court based on diversity of citizenship. It then moved to dismiss Ms. Mandviwala's PAGA representative claims and compel arbitration of any individual claims she asserted, based on an arbitration clause in Ms. Mandviwala's employment agreement that requires arbitration "on an individual basis," which Five Stars maintained operated as a waiver of the right to bring representative PAGA claims for penalties on behalf of the state.

Following the court of appeals' decision in *Sakkab*, the district court denied Five Star's motion. The court first rejected Five Star's argument that Maryland law should govern the issue of the enforceability of the ban on representative claims: Applying California choice-of-law principles, the court held that non-waivability of PAGA representative claims is a fundamental policy of

California and that California has a materially greater interest than Maryland in the application of its law to claims involving violation of California labor laws with respect to employees in California. *See* Pet. App. 10a–13a. Having found California law applicable, the district court held that, under *Iskanian*, the agreement could not, as a matter of California law, waive Ms. Manviwala's right to bring PAGA representative claims. Following *Sakkab*, the court held that the FAA does not preempt *Iskanian*'s anti-waiver rule.

Five Star appealed, and the Ninth Circuit, in an unpublished, nonprecedential opinion, affirmed in part, reversed in part, and remanded. On appeal, "Five Star argued that Mandviwala had waived her representative PAGA claims and sought to arbitrate any other claims pursuant to an employment contract containing an arbitration agreement." Pet. App. 2a. The court rejected Five Star's argument that the purported waiver of representative PAGA claims for penalties was enforceable, but it held that Five Star was entitled to an order compelling arbitration of individual claims Ms. Mandviwala asserted for lost wages.

The court first concluded that the district court "did not err in applying California law rather than Maryland law." *Id.* 3a. The court then applied *Iskanian*'s holding that, "[u]nder California law, the waiver of representative PAGA claims in an employment contract is unenforceable." *Id*. The court pointed out that *Sakkab* had already decided that "the Federal Arbitration Act does not preempt *Iskanian*." *Id*. The court further determined that this Court's "subsequent rulings in *DIRECTV, Inc. v. Imburgia*, 136 S. Ct. 463 (2015) and *Kindred Nursing Centers Limited Partnership v. Clark*, 137 S. Ct. 1421 (2017) do not displace *Sakkab,*"

id., because neither decision "announced new law," *id*., and both applied the principles addressed in *Sakkab*.

The court held, however, that insofar as Ms. Mandviwala not only asserted representative PAGA claims for civil penalties on the state's behalf, but also sought recovery of her own unpaid wages under California Labor Code § 558, her claims were subject to arbitration. *Id.* 3a–4a. While noting a conflict among lower California courts about whether such claims are subject to arbitration under an agreement that purports to waive representative claims, the court concluded that the California Supreme Court would likely find the claims outside the scope of the invalid waiver of representative claims and thus subject to arbitration. *See* Pet App. 4a. That view, the court stated, was "more consistent with *Iskanian* and reduces the likelihood that *Iskanian* will create FAA preemption issues." *Id.* 4a–5a.

Accordingly, the court reversed the district court in part and "remand[ed] to the district court to order arbitration of the victim-specific relief sought by Mandviwala." *Id.* 5a. After the court of appeals' mandate issued, the district court entered a minute order on April 26, 2018. The order recited that the court of appeals had "reversed the Court's finding that Plaintiff's claims for unpaid wages under section 558 of the California Labor Code are not subject to arbitration" and "remanded the case, instructing this Court to order arbitration of the victim-specific relief sought by Manviwala." Minute Order, Doc. 40, *Mandviwala v. Five Star Quality Care, Inc.*, No. 8:15-cv-01454-VAP-SP (C.D. Cal.). The order concluded: "Accordingly, the Court now ORDERS Plaintiff to submit to arbitration of her PAGA claims. Further judicial proceedings are hereby STAYED pending the outcome of the arbitration." *Id*.

REASONS FOR DENYING THE WRIT

I. The court of appeals did not apply a rule prohibiting enforcement of arbitration agreements with respect to PAGA representative claims.

Five Star's petition requests that this Court consider two questions, both of which ask whether the FAA preempts "a California rule that prohibits the enforcement of arbitration agreements with respect to representative employment claims under PAGA." Pet. i. The premise of both questions is that the court below applied a rule prohibiting enforcement of agreements to arbitrate PAGA representative claims. But the court of appeals in this case did not apply such a rule: It held that PAGA representative claims may not be prospectively waived under California law; it did not hold that agreements to arbitrate such claims are unenforceable. This case thus does not present the questions that Five Star asks the Court to consider.

Iskanian did not hold that PAGA representative claims are not subject to agreements providing for their arbitration. Rather, it held that "where … an employment agreement compels the waiver of representative claims under the PAGA, it is contrary to public policy and unenforceable," 327 P.3d at 149; that a "rule against PAGA waivers does not frustrate the FAA's objectives," *id*.; and that, therefore, an employment agreement must allow for pursuit of representative PAGA claims in "some forum," *id*. at 155. The decision left open the possibility that that forum could be bilateral arbitration if the parties' arbitration agreement covered PAGA claims. *See id*.

Likewise, *Sakkab* emphasized that "*Iskanian* expresses no preference regarding whether individual

PAGA claims are litigated or arbitrated," but "provides only that representative PAGA claims may not be waived outright." 803 F.3d at 434. "The *Iskanian* rule does not prohibit the arbitration of any type of claim." *Id*. *Sakkab* thus ended with a remand to the district court to determine whether, with the invalid PAGA waiver excised, the arbitration agreement at issue required arbitration of the PAGA representative claims.

Consistent with *Sakkab*, the Ninth Circuit in later decisions has continued to describe and apply *Iskanian* as an anti-waiver rule, not a rule prohibiting arbitration of PAGA representative claims. *See Mohamed v. Uber Techs., Inc.*, 848 F.3d 1201, 1213 (9th Cir. 2016); *see also Poublon v. C.H. Robinson Co.*, 846 F.3d 1251, 1273 (9th Cir. 2017) (holding arbitration agreement enforceable once invalid waiver of PAGA representative claims was severed); *Ridgeway v. Nabors Completion & Prod. Servs. Co.*, __ F. Appx. __, 2018 WL 832864, at *1 (9th Cir. 2018) ("[PAGA] claims are not waivable, but they can be arbitrated."); *Valdez v. Terminix Int'l Co. Ltd. P'ship*, 681 F. Appx. 592, 593–94 (2017) (holding that PAGA representative claims were subject to arbitration under parties' agreement); *Hopkins v. BCI Coca-Cola Bottling Co.*, 640 F. Appx. 672, 673 (9th Cir. 2016) (holding waiver of PAGA claims unenforceable and remanding for determination whether they were subject to arbitration); *Sierra v. Oakley Sales Corp.*, 637 F. Appx. 368, 369 (9th Cir. 2015) (same).[1]

The court of appeals applied the same rule here. After determining that the PAGA representative claims

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[1] Five Star notes dicta in an intermediate California court opinion suggesting that *Iskanian* does not allow agreements to arbitrate PAGA claims, see Pet. 21-22 n.9, but the Ninth Circuit has not taken that view in any of its decisions, including this one.

had not been waived, the court evidently concluded that they were not subject to arbitration because Five Star itself disclaimed any argument that they were arbitrable—not because the court understood the *Iskanian* rule to preclude arbitration of PAGA representative claims. Five Star's appellate brief insisted that the purported waiver of the right to bring PAGA representative claims was enforceable, either because Maryland law applied, App't's Opening Br. 10–16, or because *Sakkab* was wrongly decided, *id*. at 16–30. But Five Star did not argue even in the alternative that representative PAGA claims were subject to arbitration under its agreement. To the contrary, Five Star expressly disclaimed any argument "that Mandviwala's PAGA claim should proceed on a representative basis in arbitration," and stated that, in its view, compelling arbitration of representative claims would conflict with the arbitration agreement. *Id*. at 32 n.6.

This case thus does not present an issue as to preemption of a hypothetical state-law rule that "prohibits the enforcement of arbitration agreements with respect to representative employment claims under PAGA." *Iskanian* did not announce such a rule; the Ninth Circuit did not apply or affirm the validity of such a rule in this case or in the precedential opinion in *Sakkab* on which the court below relied; and Five Star affirmatively waived any argument that an *arbitration* agreement—as opposed to a *waiver* agreement—should be enforced against Ms. Mandviwala's representative PAGA claims. This Court normally confines itself to review of questions framed and proffered by the petitioner. *See Yee v. City of Escondido*, 503 U.S. 519, 535 (1992). Where, as here, the petitioner has

framed questions not genuinely presented by the case, the Court should deny the petition.[2]

II. The current posture of this case makes it unsuitable for review.

Leaving aside that the case does not present the questions Five Star seeks to pose, Five Star's assertion that this case is an "ideal vehicle," Pet. 26, that provides the Court a "clean" opportunity to examine a "decision invalidating Five Star's bilateral arbitration provision," Pet. 27, could hardly be more wrong. In its current procedural posture, the case presents anything but a "clean" issue.

Far from invalidating Five Star's "bilateral arbitration provision," the court of appeals ordered that it be *enforced* as to individual claims asserted by Ms. Mandviwala, specifically including her claims for unpaid wages on behalf of herself. The court held that the agreement's waiver of representative claims for PAGA civil penalties was invalid and that those claims were not subject to arbitration given Five Star's concession that it did not seek arbitration of them. Pet. App. 3a. The court otherwise directed arbitration of Ms. Mandviwala's claims for "victim-specific relief." *Id.* 5a.

On remand, however, the district court entered an order that compels arbitration of Ms. Mandviwala's "PAGA claims" and stays the litigation. The meaning of the order is unclear. It could be read to direct arbitration of all the PAGA claims Ms. Mandviwala asserts, although that view would appear incompatible with the court of appeals' distinction between the PAGA claims and the "victim-specific relief" it found arbitrable (as

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[2] Five Star's first question also wrongly posits that *Iskanian* applies only to arbitration agreements. *See infra*. 22–24.

well as with Five Star's own concession that it did not seek arbitration of representative PAGA claims). Or the order could be read not to refer to PAGA penalty claims, but only to claims for lost wages under California Labor Code § 558, which the court of appeals said should be arbitrated. The latter reading does not, however, explain why the court referred to "PAGA claims" in its ordering language.

A third alternative is that the district court's order could be read to require arbitration of the PAGA claims only to the extent they seek penalties for violations suffered personally by Ms. Mandviwala. Ms. Mandviwala would also regard such a reading as incompatible with the court of appeals' mandate—and with the fact that all PAGA claims for penalties are representative of the state's interest, making any distinction between penalties sought for violations against the plaintiff and for violations against other employees untenable. Nonetheless, if this reading reflects what the district court meant, its action may have, rightly or wrongly, given Five Star what it says it is seeking: an order requiring Ms. Mandviwala to arbitrate her PAGA claims against it "on an individual basis." Pet. 2.

Determining what the district court meant, and whether its order is compatible with the court of appeals' ruling, is likely to require further proceedings before the district court, possibly before an arbitrator and, ultimately, before the court of appeals. Meanwhile, it is unclear what difference, if any, reversal or affirmance of the interlocutory ruling of the court of appeals would make with respect to whether Ms. Mandviwala is required to arbitrate her PAGA claims on an "individual basis." Under such circumstances, intervention by this Court now would be imprudent. The

appropriate course of action would be adherence to the Court's normal practice of not taking up cases in an interlocutory posture. *See Va. Mil. Inst. v. United States*, 508 U.S. 946 (1993) (opinion of Scalia, J., respecting denial of certiorari) ("We generally await final judgment in the lower courts before exercising our certiorari jurisdiction."). That the case's current posture is an order compelling arbitration and staying all other proceedings obviates any suggestion that immediate review is necessary to prevent hardship to Five Star.[3]

III. The question whether the FAA preempts the *Iskanian* rule does not merit review.

A. There is no conflict among lower courts.

Like the petitioners in *Iskanian* and other cases challenging its holding in which this Court has denied certiorari, Five Star can point to no arguable conflict among federal appellate or state supreme courts over whether the FAA mandates enforcement of an agreement to waive PAGA claims. *Iskanian* and *Sakkab* are the only relevant precedents addressing FAA preemption in this unusual state-law context, and their outcomes are in full agreement. This Court's denial of review in *Iskanian* made sense in the absence of any conflict on what was then a question of first impression at the appellate level. In light of the Ninth Circuit's agreement with *Iskanian* in *Sakkab*, the issue is even less worthy of review now, particularly in the context of an unpublished opinion that merely applied *Sakkab*.

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[3] To the extent Five Star may assert that this Court's decision in *Epic* has some bearing on *Iskanian*, the proceedings to come also offer an opportunity for consideration of such arguments, and this Court need not address them before the lower courts have had a chance to consider their impact in this or some other case.

Should other circuits or state supreme courts issue conflicting opinions either in PAGA cases litigated outside California, or in cases arising under similar laws of other states, this Court may in the future find review appropriate.[4] Conversely, if such cases lead to congruent results and reasoning, review will remain unwarranted. Meanwhile, in light of the current agreement at the appellate level over the application of preemption principles to the unusual PAGA right of action, the reasons ordinarily justifying review by this Court are absent. *See* S. Ct. R. 10(b).

B. *Iskanian* is fully consistent with this Court's precedents.

Like the petitioners in *Iskanian* and the other petitions that followed, Five Star seeks review on the theory that *Iskanian* and *Sakkab* conflict with this Court's FAA jurisprudence. Such arguments that lower courts have misapplied this Court's precedents "rarely" justify a grant of certiorari. S. Ct. R. 10. This case is not

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[4] The issue may arise in cases outside the Ninth Circuit because claims governed by California law, including PAGA claims, are litigated in other state and federal courts. *See*, *e.g.*, *Cohen v. UBS Fin. Servs., Inc.*, 799 F.3d 174, 180 (2d Cir. 2015) (not reaching issue because PAGA claims time-barred); *Westerfield v. Wash. Mut. Bank*, 2007 WL 2162989, at *4 (E.D.N.Y. July 26, 2007); *In re Bank of Am. Wage & Hour Employment Litig.*, 286 F.R.D. 572, 587 (D. Kan. 2012); *Zaitzeff v. Peregrine Fin. Group, Inc.*, 2010 WL 438158, at *2–3 (N.D. Ill. Feb. 1, 2010). Private attorney general provisions in laws of other states might raise similar issues. *Cf. Hedeen v. Autos Direct Online, Inc.*, 19 N.E.3d 957, 969 (Ohio Ct. App. 2014) (discussing private attorney general provisions of Ohio's consumer laws); *Zuckman v. Monster Bev. Corp.*, 958 F. Supp. 2d 293 (D.D.C. 2013) (discussing private attorney general provisions of DC's Consumer Protection Procedures Act). Thus, if Five Star's positions had merit, there would be ample opportunities for a conflict in authority to arise.

one of those rare instances. Both *Sakkab* and the majority and concurring decisions in *Iskanian* carefully analyze this Court's decisions. They properly distinguish the Court's holdings that state laws may not prohibit arbitration of particular types of claims, or otherwise discriminate against or evince hostility toward arbitration. As *Sakkab* and *Iskanian* recognize, those decision do not control the issue presented here—whether an arbitration clause can be used to prohibit altogether the assertion of a particular type of claim, and a claim belonging to the state at that.

This Court's more recent decisions applying the FAA principle condemning hostility toward arbitration, including *Epic*, *Kindred*, and *Imburgia*, do not alter that principle's inapplicability to *Iskanian*'s holding that an employee must be allowed to assert a PAGA claim on behalf of the state in some forum. *Iskanian* and *Sakkab* continue to align with this Court's FAA jurisprudence, which fully supports the view that arbitration agreements may not be used to effect outright waivers of the ability to pursue a claim on behalf of the state. Five Star's variations on the arguments made in previous petitions seeking review of the *Iskanian* issue do not demonstrate otherwise.

1. *Iskanian* and *Sakkab* reflect no hostility to arbitration.

Five Star's central argument is that *Iskanian* reflects hostility toward arbitration. Again, however, "[t]he *Iskanian* rule does not prohibit the arbitration of any type of claim." 803 F.3d at 434. It merely provides that an employment agreement cannot prospectively waive an employee's right to bring a PAGA claim "in some forum." *Iskanian*, 327 P.3d at 155; *see also id.* at 159 (Chin, J., concurring). As applied by the Ninth

Circuit, the rule leaves parties "free[] to select informal arbitration procedures" to resolve PAGA claims for penalties on behalf of the state. *Sakkab*, 803 F.3d at 435. The rule comports with the holding of such cases as *Marmet*, 565 U.S. 530, and *Perry v. Thomas*, 482 U.S. 483 (1987), that the FAA preempts a "categorical rule prohibiting arbitration of a particular type of claim." *Marmet*, 565 U.S. at 533.

Moreover, contrary to Five Star's assertion, *Iskanian* does not place arbitration agreements on an "unequal 'footing'" with other contracts, *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 281 (1995), and does not "invalidate arbitration agreements under state laws applicable *only* to arbitration provisions." *Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681, 687 (1996); *see also Perry*, 482 U.S. at 492 n.9. As *Sakkab* correctly recognizes, *Iskanian* provides even-handedly that an employment agreement may not prospectively forbid employees to bring PAGA actions, whether or not the prohibition is in an arbitration clause. 803 F.3d at 432–33; *see Iskanian*, 327 P.3d at 133, 148–49.

That rule does not run afoul of this Court's disapproval of legal rules "'that apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue.'" *Epic*, slip op. at 7 (citation omitted); *accord*, *Kindred*, 137 S. Ct. at 1426; *see also Imburgia*, 136 S. Ct. at 471. *Iskanian* does not "target arbitration either by name or by more subtle methods." *Epic*, slip op. at 7. Rather, it comports with the FAA's "'equal-treatment' rule for arbitration contracts," *id.*, and falls well within the principle that the FAA does not preempt state laws concerning the "enforceability of contracts generally." *Perry*, 482 U.S. at 492 n.9.

Five Star's rejoinder that *Iskanian* discriminates against arbitration agreements because lower California courts have held that PAGA claims can be waived in settlement agreements is untenable. The *Iskanian* rule prohibits *prospective* waivers of the right to bring PAGA claims as a condition of employment, based on the proposition that "it is contrary to public policy for an employment agreement to eliminate this choice altogether by requiring employees to waive the right to bring a PAGA action before any dispute arises." *Iskanian*, 327 P.3d at 149. Post-dispute settlement agreements fall outside the rule and the concerns that animate it. The rule, however, applies even-handedly to all employer-employee agreements that would effect such a prospective waiver, whether they involve arbitration or not.

Moreover, unlike in *Kindred*, where it was difficult to imagine how the state rule at issue could apply to anything but an arbitration agreement, it is not "utterly fanciful" to posit that, if PAGA waivers were permissible, they would appear outside of arbitration clauses. 137 S. Ct. at 1427. It is not only likely, but inevitable, that if employers were given the power to opt out of PAGA liability through employment agreements, they would do so regardless of whether they also wished to require arbitration of other claims. Thus, *Iskanian* does not "rely on the uniqueness of an agreement to arbitrate as [its] basis." *Id.* at 1426 (citation omitted). Allowing employers to use arbitration agreements to extract waivers of PAGA claims that cannot be obtained through other employment agreements would uniquely *favor* arbitration agreements, an outcome the FAA neither requires nor allows.

The *Iskanian* anti-waiver rule, moreover, does not disfavor agreements based on whether they have "the defining features of arbitration agreements." *Kindred*, 137 S. Ct. at 1426. In particular, the rule does not "impermissibly disfavor[] arbitration" by targeting its bilateral nature and rendering a contract "unenforceable *just because it requires bilateral arbitration*." *Epic*, slip op. at 9. Rather, by requiring only that an employee be able to pursue a claim for PAGA penalties on behalf of the state in some forum, *Iskanian*, as applied in the Ninth Circuit under *Sakkab*, allows "employees and employers … to agree that any disputes between them will be resolved through one-on-one arbitration." *Epic*, slip op. at 1; *see Sakkab*, 803 F.3d at 436.

As *Iskanian* explains, "[r]epresentative actions under the PAGA, unlike class action suits for damages, do not displace the bilateral arbitration of private disputes between employers and employees over their respective rights and obligations toward each other." 327 P.3d at 152. Arbitration as to private rights proceeds wholly unaltered by *Iskanian*. The employer must only leave open some forum in which a PAGA *qui tam* plaintiff may pursue the state's claims for penalties. *See id*.

Moreover, if parties agree to arbitrate PAGA representative claims for penalties on behalf of the state, the proceedings will remain bilateral ones between individual plaintiffs (acting as representatives of the state) and defendants. *See Arias*, 209 P.2d at 929–34; *see also Sakkab*, 803 F.3d at 435–39. Although the recovery sought in a PAGA action encompasses "penalties … measured by the number of Labor Code violations committed by the employer," *Sakkab*, 803 F.3d at 435, a PAGA action, whether in litigation or arbitration, remains a one-on-one proceeding between the state,

represented by the plaintiff, and the defendant. *Id*. Thus, *Iskanian* does not improperly target arbitration because it is not premised on objection to individual arbitration agreements that allow assertion of PAGA claims. *See Epic*, slip op. at 7.

In short, *Iskanian* is not "tailor-made to arbitration agreements," *Kindred*, 137 S. Ct. at 1427, but to employment agreements *waiving* particular claims. Such waivers are in no sense a "primary characteristic of an arbitration agreement." *Id.* Indeed, this Court has repeatedly warned against "confus[ing] an agreement to arbitrate … statutory claims with a prospective waiver of the statutory right." *14 Penn Plaza LLC v. Pyett*, 556 U.S. 247, 265 (2009). Prohibiting a prospective waiver of a statutory right of action thus does not disfavor a primary characteristic of *arbitration* or otherwise "interfere with one of arbitration's fundamental attributes." *Epic*, slip op. at 7.

2. *Iskanian* does not impose procedures incompatible with arbitration.

Five Star's secondary argument is that, although *Iskanian* does not facially discriminate against arbitration, it effectively imposes procedures incompatible with arbitration, as did the ban on class-action waivers struck down in *Concepcion*. *Sakkab* thoroughly, and correctly, rejected that argument, and Five Star's disagreement with *Sakkab*'s analysis provides no reason for granting review.

In *Concepcion*, this Court held that California's rule against consumer contracts banning class actions "interfere[d] with fundamental attributes of arbitration and thus create[d] a scheme inconsistent with the FAA," 563 U.S. at 344, because it effectively "allow[ed] any party to a consumer contract to demand" classwide

arbitration. *Id*. at 346. The Court held that classwide arbitration conflicted with the FAA because it fundamentally changed the nature of arbitration, requiring complex, formal procedures attributable to the inclusion of absent class members. *Id*. at 346–51.

As explained above, however, PAGA cases are not class actions, but bilateral proceedings. The due-process protections of class certification, notice, opt-out rights, and other procedures that concerned the Court in *Concepcion*, 563 U.S. at 348–50, are not features of PAGA proceedings. *See Sakkab*, 803 F.3d at 435–36. Thus, *Iskanian*'s anti-waiver rule does not conflict with "*Concepcion*'s essential insight" that "courts may not allow a contract defense to reshape traditional individualized arbitration by mandating classwide arbitration procedures without the parties' consent." *Epic*, slip op. at 8.

Five Star's principal argument is that, because PAGA claims involve large liabilities and complicated facts, arbitrating then will be slower and more complicated than arbitrating simpler claims, and their high stakes may make parties hesitant to agree to arbitrate them. Five Star's argument reduces to the proposition that if a state creates claims of liability that defendants find inconvenient or otherwise undesirable to arbitrate, the FAA entitles defendants to require prospective plaintiffs to waive those claims altogether. Five Star's policy arguments, Pet. 28–29, confirm that its real concern is that PAGA creates the potential for significant liabilities for California employers, and that employers should therefore be able to use the FAA to extinguish those liabilities.

As *Sakkab* pointed out, however, *Concepcion* does not suggest that the FAA's purposes require

transforming it into a vehicle for preempting state-law rights of action that involve large liabilities, are legally or factually complex, or are otherwise unappealing for defendants to arbitrate. And no decision of this Court, or any state supreme court or federal court of appeals, has so held. This Court's decisions prohibit states from mandating procedures incompatible with arbitration, *see Epic*, slip op. at 8, not from creating claims that parties may not want to arbitrate, *see Sakkab*, 803 F.3d at 437–39. Neither the FAA nor this Court's jurisprudence suggests that the interests protected by the FAA include defendants' interests in extinguishing—as opposed to arbitrating—claims against them.

3. This Court's FAA decisions do not require enforcement of agreements that bar assertion of statutory rights.

As the concurring Justices in *Iskanian* pointed out, this Court has never held that the FAA requires enforcement of agreements waiving individuals' rights to assert particular claims. The FAA makes agreements to arbitrate claims enforceable; it does not provide for enforcement of agreements that claims cannot be pursued at all. See 9 U.S.C. § 2. Allowing defendants to excuse themselves from types of liability—e.g., liability for specific kinds of claims, or particular forms of relief allowed by state law—is not the FAA's objective.

This Court's decisions enforcing arbitration agreements thus repeatedly emphasize that arbitration involves choice of forums, not waiver of claims: "By agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than a judicial, forum." *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 628

(1985); *accord Waffle House*, 534 U.S. at 295, n.10; *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 26 (1991); *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 481 (1989); *Shearson/Am. Express, Inc. v. McMahon*, 482 U.S. 220, 229–30 (1987).

An agreement to arbitrate is thus not "a prospective waiver of the substantive right." *Pyett*, 556 U.S. at 265 (2009). Indeed, this Court has agreed that an arbitration clause containing "a prospective waiver of a party's right to pursue statutory remedies" would be "against public policy," *Mitsubishi*, 473 U.S. at 637, n.19—precisely *Iskanian*'s rationale.

In *American Express*, this Court held that a class-action ban in an arbitration agreement was enforceable despite its *practical* effect of making particular claims too costly for the plaintiffs, 570 U.S. at 238–39, but reiterated that the FAA does not require enforcement of arbitration agreements that expressly waive statutory claims and remedies. The Court explained that the principle that an arbitration agreement may not foreclose assertion of particular claims "finds its origin in the desire to prevent 'prospective waiver of a party's *right to pursue* statutory remedies.'" *Id.* at 236 (quoting *Mitsubishi*, 473 U.S. at 637 n.19). The Court added: "That [principle] would certainly cover a provision in an arbitration agreement forbidding the assertion of certain statutory rights." *Id*.

The principle that the FAA does not require enforcement of agreements *forbidding* assertion of claims applies equally to state and federal claims. The Court's decisions, including *American Express*, have repeatedly stated that arbitration clauses may not waive claims, without suggesting that state-law claims differ in this respect. Indeed, in *Preston v. Ferrer*, this Court held

that an arbitration agreement was enforceable in part because the signatory "relinquishe[d] no substantive rights … California law may accord him." 552 U.S. at 359.

The non-waiver principle applies to state-law claims because the FAA makes agreements to *arbitrate* claims enforceable, 9 U.S.C. § 2, but does not authorize enforcement of agreements to *waive* claims regardless of their source. Thus, although federal law may not affirmatively bar the enforcement of a waiver of state-law claims in an arbitration clause, *see Sakkab*, 803 F.3d at 433 n.9, nothing in the FAA requires enforcement of such a waiver. State laws disallowing waivers therefore do not conflict with the FAA.[5]

4. This Court's decisions do not require enforcement of agreements that strip states of police power to authorize enforcement actions on their behalf.

Iskanian held—as a matter of state-law statutory construction—that the state is the "real party in interest" in PAGA actions. 327 P.3d at 151. The lion's share of the recovery goes to the state, which is bound by the outcome. An action for statutory penalties, whether brought by state officers or a PAGA *qui tam* plaintiff, is thus "a dispute between an employer and the *state*," acting "through its agents." *Id*. Enforcing a waiver of PAGA claims in an employment agreement would effectively impose that waiver on a governmental body that is not party to the agreement, preventing the state

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[5] Justice Kagan's dissent in *American Express* states that procedures incompatible with arbitration cannot be imposed on arbitration agreements to make it *practical* to pursue state-law claims, *see* 570 U.S. at 252, but does not suggest that the FAA requires enforcing agreements to *waive* state-law claims.

from asserting its claims through a representative authorized by law.

Five Star contends that *Iskanian* was wrong on this point because the state retains less control over the conduct of PAGA actions than the federal government has over a federal *qui tam* case. Pet. 24. That argument overlooks the central reason that the state is the real party in interest in a PAGA action: An action in which the state is entitled to 75 percent of the recovery is the state's in a very real sense, regardless of the extent to which the state has chosen to exercise control over its prosecution. The state's entitlement to the recovery is far more than a "nominal interest" in the claim. Pet. 22. Rather, the state's dominant interest "reflects a PAGA litigant's substantive role in enforcing our labor laws on behalf of state law enforcement agencies." *Iskanian*, 327 P.3d at 152. It is perfectly coherent, and consistent with the terms and purposes of the FAA, to recognize that an employee must be permitted to bring a PAGA representative claim *in some forum* because the state is not bound to a waiver to which it did not agree. *See Iskanian*, 327 P.3d at 155.

None of this Court's decisions enforcing arbitration agreements suggests that such an agreement can waive the right to bring a claim on behalf of a state. As *Iskanian* correctly stated, this Court's "FAA jurisprudence—with one exception …—consists entirely of disputes involving the parties' *own* rights and obligations, not the rights of a public enforcement agency." 327 P.3d at 150. Moreover, the "one exception," *Waffle House*, "does not support [the] contention that the FAA preempts a PAGA action." *Id*. at 151.

Five Star points out a variety of differences between the EEOC enforcement action in *Waffle House* and a

PAGA claim. Pet. 23. None of those differences affects the fundamental point that a PAGA action advances the state's claim for statutory penalties. Moreover, as in *Waffle House*, "[n]o one asserts that the [State of California] is a party to the contract," or that it agreed to waive its claims, and "[i]t goes without saying that a contract cannot bind a nonparty." 534 U.S. at 294. Just as in *Waffle House*, allowing an arbitration agreement to preclude recovery of penalties for the state would "turn[] what is effectively a forum selection clause into a waiver of a nonparty's statutory remedies." *Id.* at 295. "Nothing in *Waffle House* suggests that the FAA preempts a rule prohibiting the waiver of this kind of *qui tam* action on behalf of the state for such remedies." *Iskanian*, 327 P.3d at 151. Indeed, none of this Court's decisions suggests such preemption.

Nor does *Iskanian* open the door to widespread circumvention of *Concepcion* by allowing states to relabel class actions, which seek aggregate relief on individual rights of action, as actions on behalf of the state merely because they advance its generic interest in enforcing state law. *Iskanian* limited its holding to actions seeking recovery for the state, and explicitly held that it would *not* allow the state to "deputiz[e] employee A to bring a suit for the individual damages claims of employees B, C, and D." 327 P.3d at 152. An action seeking such "victim-specific relief by a party to an arbitration agreement on behalf of other parties to an arbitration agreement would be tantamount to a class action … [and] could not be maintained in the face of a class waiver." *Id.*

Five Star cites articles suggesting that statutes similar to PAGA might be adopted by California and other states for other uses. Pet. 29–30. But it points to no

trend toward adoption of such laws, let alone any statutes that merely relabel private remedies as public ones. The absence of such examples reflects that states consider carefully whether to delegate pursuit of their claims to private parties. *Iskanian*'s holding, limited to instances where states have made that considered choice, threatens no end runs around the FAA.

By contrast, Five Star's position would severely limit the state's ability to pursue its claims. By extracting similar agreements from all its employees, Five Star can, if its preemption argument is accepted, successfully immunize itself from liability under PAGA. Allowing employers to opt out of liability for PAGA penalties would overturn California's legislative judgment that it is "in the public interest to allow aggrieved employees, acting as private attorneys general, to recover civil penalties for Labor Code violations." *Arias*, 209 P.3d at 929. Five Star openly expresses its desire to overturn that judgment, but the FAA provides no basis for doing so.

Holding that a federal statute aimed at enforcing agreements to resolve private disputes preempts a state's ability to assert its claims against those who violate its laws would violate fundamental preemption principles. "[T]he historic police powers of the States" are not preempted "unless that was the clear and manifest purpose of Congress." *Iskanian*, 327 P.3d at 152 (quoting *Arizona v. United States*, 567 U.S. 387, 400 (2012)). Enforcing wage-and-hour laws falls squarely within those police powers, and the structure of a state's law enforcement authority is central to its sovereignty. *Id.* (citing *Metro. Life*, 471 U.S. at 756; *Printz v. United States*, 521 U.S. 898, 928 (1997)).

The FAA's purpose is to render arbitration agreements in contracts affecting commerce enforceable as between contracting parties. It embodies no manifest purpose to interfere with "*the state's* interest in penalizing and deterring employers who violate California's labor laws." *Iskanian*, 327 P.3d at 152. The FAA does not allow parties to contract out of liabilities for penalties imposed by state law, and thus a state's choice to grant citizens non-waivable claims to enforce those liabilities does not conflict with FAA.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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