No. 20-1573

IN THE

Supreme Court of the United States

VIKING RIVER CRUISES, INC.,
Petitioner,

v.

ANGIE MORIANA,
Respondent.

On Petition for a Writ of Certiorari to the California Court of Appeal

BRIEF OF THE CALIFORNIA NEW CAR DEALERS ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF PETITIONER

ANNA-ROSE MATHIESON
Counsel of Record
JULIA PARTRIDGE
CALIFORNIA APPELLATE LAW GROUP LLP
96 Jessie Street
San Francisco, CA 94105
(415) 649-6700
annarose@calapplaw.com

Counsel for Amicus CNCDA

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES

(continued)

Page

TABLE OF AUTHORITIES

(continued)

Page

TABLE OF AUTHORITIES

(continued)

Page

BRIEF OF THE CALIFORNIA NEW CAR DEALERS ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF PETITIONER

Amicus respectfully submits this brief in support of petitioner Viking River Cruises, Inc.[1]

INTEREST OF AMICUS CURIAE

The California New Car Dealers Association (CNCDA) is the nation's largest state automobile dealer association, representing nearly 1,200 franchised new car and truck dealers throughout California. CNCDA seeks to create a business environment in which new car dealers can thrive, provide the best products and services to consumers, and maintain high employment rates. CNCDA also protects and promotes the interests of franchised new car dealers before government and regulatory agencies. To that end, it represents the views of its members on important issues that arise in public forums, including the courts.

Like many businesses throughout the United States, CNCDA's members enter into contracts with their employees and consumers that adopt the time- and cost-saving options afforded by the Federal Arbitration Act (FAA) to resolve disputes promptly. Judicial decisions that undermine the FAA thwart these

[1] No counsel for any party authored this brief in whole or in part, and no person other than amicus or its counsel have made any monetary contribution intended to fund the preparation or submission of this brief. Amicus notified the parties of its intention to file this brief more than ten days before the due date, and counsel for both parties granted consent to the filing of this brief.

efforts to achieve a swift, economical, and fair outcome when disagreements arise.

The ruling in this case frustrates the purposes of the FAA and singles out arbitration agreements for disfavored treatment. This Court should grant review for the reasons explained below and in the petition.

INTRODUCTION AND SUMMARY OF ARGUMENT

California just won't learn. This Court has repeatedly corrected California's attempts to avoid the Federal Arbitration Act (FAA), reversing decision after decision where California invalidated arbitration agreements based on "important" state policies. *See, e.g.*, *Perry v. Thomas*, 482 U.S. 483, 491 (1987); *Preston v. Ferrer*, 552 U.S. 346, 353 (2008); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 343 (2011). But California keeps trying to find ways around the FAA.

California's latest gambit is to declare that employment claims under California's Private Attorneys General Act (PAGA) can't be waived, because those claims belong to the state and protect important policy interests. But employees control their PAGA suits at every step of the process *except* the choice of whether to consent to an arbitration agreement that includes a waiver of representative actions—the employee can make all other litigation decisions in a PAGA case, including dismissing the suit or settling, with scant input from the state agency. And the public policy claim has little meaning because California says virtually *every* labor-related statute protects important policy interests. PAGA allows employees to sue for almost any violation of California's 800+ page Labor Code, and yet California has declared a strong public interest in every one of these claims sufficient to override the FAA.

These rulings have undermined the FAA in California, allowing an increasing number of plaintiffs to rely on PAGA to avoid arbitration. In the five years after California first announced the no-waiver-for-

PAGA-claims rule in *Iskanian v. CLS Transportation Los Angeles, LLC,* 59 Cal. 4th 348 (2014), the average number of PAGA claims more than doubled compared to the five-year period before *Iskanian*. The total value of PAGA claims went up even more, rising 600% in the five years after *Iskanian*. And these are not just coincidental increases; many plaintiffs who initially asserted only class action claims hastily added PAGA claims after the defendant pointed out they had signed an arbitration agreement waiving all class and representative claims.

The *Iskanian* rule impacts millions of employers and employees. It encourages employees to breach their arbitration agreements. It thwarts the federal policy expressed in the FAA. And it does real injury to companies that seek the benefits of private dispute resolution. This case provides the right opportunity for this Court to review the *Iskanian* rule. This Court should grant the petition for certiorari and require California courts to follow federal law.

ARGUMENT

I. Plaintiffs have been filing PAGA claims in large numbers to avoid the arbitration agreements they signed.

After California passed the Private Attorneys General Act of 2004 (PAGA), Cal. Lab. Code §§ 2698 et seq., employees in California could file suit under PAGA for the violation of nearly any provision of the California Labor Code. *Id.* §§ 22, 2699(a).[2] California

[2] PAGA provides that "any provision of this code that provides for a civil penalty to be assessed and collected by the Labor

businesses paid out about $5 million in PAGA cases each year from 2008 to 2013.[3]

But then in June 2014 the California Supreme Court decided *Iskanian*. That decision reluctantly recognized that California could no longer prohibit employees from agreeing to waive class action rights in arbitration agreements, since a recent decision from this Court had squarely held that rule was preempted by the FAA. *Iskanian*, 59 Cal. 4th at 364 (citing *Concepcion*, 563 U.S. at 352). But the court held that California could still prohibit waivers of PAGA representative actions in arbitration agreements. *Id.* at 360, 382-87.

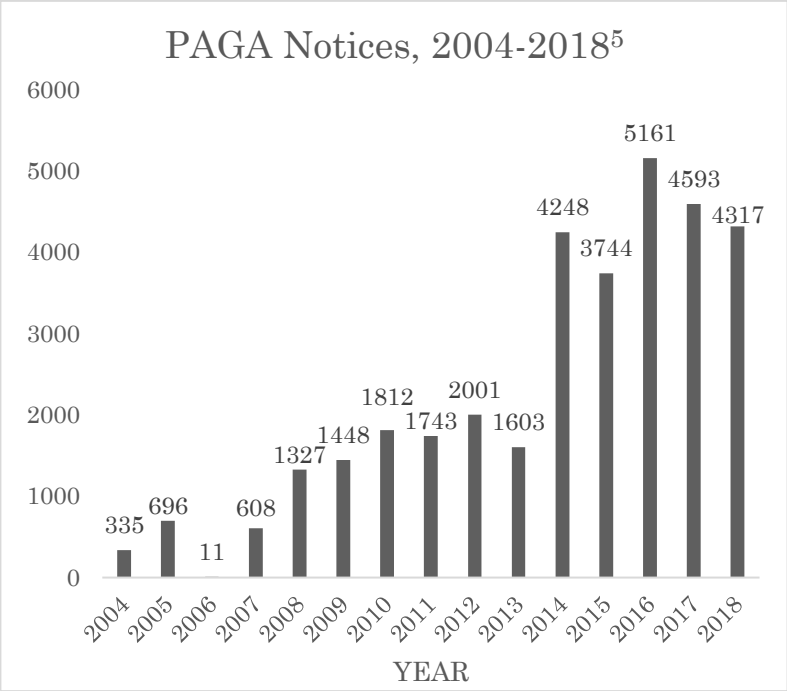
Since the *Iskanian* decision California has seen a dramatic surge in PAGA claims, as strategic plaintiffs seek to avoid the arbitration agreements that they signed.[4] In the five years after *Iskanian*, the average number of PAGA suits was more than *double* the number in the five years before *Iskanian*:

---

and Workforce Development Agency . . . for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees . . . ." Cal. Lab. Code § 2699(a). The code defines a "violation" as "a failure to comply with any requirement of the code." *Id.* § 22.

[3] Ivan Muñoz, *Has PAGA Met Its Final Match?*, 60 Santa Clara L. Rev. 397, 399 n.7, 422 (2020) (using data provided by the California Department of Industrial Relations).

[4] *See* Muñoz, *supra* note 3, at 422 n.202.



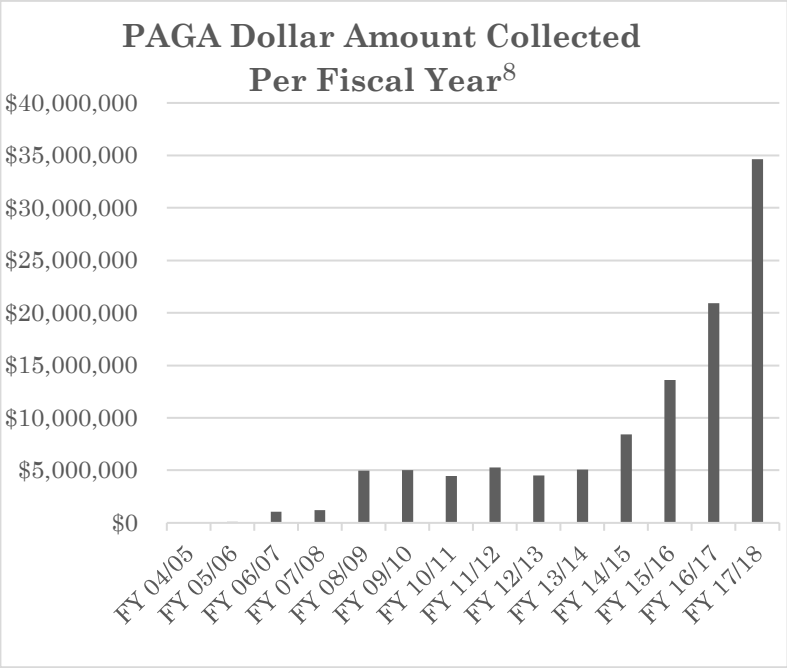
And not only did the sheer number of PAGA suits double after *Iskanian*, but the amount that businesses were forced to pay for PAGA suits *increased by more than 600%* in the five years after *Iskanian*.[6] In fiscal year 2013-2014 PAGA suits collected about $5 million; by fiscal year 2017-2018 that figure was nearly $35 million.[7]

---

[5] Chart adapted from California Business & Industrial Alliance, *PAGA Notices, 2004-2018*, https://www.cabia.org/what-is-paga/ (visited June 12, 2021).

[6] Muñoz, *supra* note 3, at 422.

[7] *Id*.



Given PAGA's broad reach, virtually any employment-related claim can be recharacterized as a PAGA claim, and the statute allows suit for many other technical violations of the Labor Code that wouldn't normally provide a basis for a civil suit. Cal. Lab. Code § 2699(a).[9] And while PAGA doesn't allow the

[8] Chart adapted from Muñoz, *supra* note 3, at 399 n.7, 422 (using data provided by the California Department of Industrial Relations).

[9] These suits are largely being driven by opportunistic plaintiff-side law firms. Twelve law firms have each filed more than 500 PAGA suits, and one law firm filed over 1,000 suits. California Business and Industrial Alliance, *PAGA Lawsuit Data*, https://www.cabia.org/firm/ (visited June 12, 2021). One lawyer

employee to collect the same types of damages as a regular suit or class action, the penalties can be as high or higher, with a statutory $100 penalty per employee per pay period for the first violation and $200 per employee per period for any later violations. Cal. Lab. Code § 2699(f)(2). Plus, of course, attorney's fees. *Id.* § 2699(g)(1).

Countless plaintiffs have strategically added a PAGA claim to avoid arbitration after the defendant invoked the parties' arbitration agreement. The petition provides several examples of this gamesmanship, Pet. 26-27, and there are many more. *E.g.*, *Kelly v. Kiewit Infrastructure W. Co.*, No. CV 18-5807-MWF (AGRx), 2018 WL 6566555, at *1 & Dkt. 19, at 9 (C.D. Cal. Sept. 12, 2018) (plaintiff initially brought putative class action, but after defendant sought to compel arbitration plaintiff amended the complaint to include PAGA claim); *McElhannon v. Carmax Auto Superstores W. Coast, Inc.*, No. 3:19-CV-00586-WHO, 2019 WL 2354879, at *1 (N.D. Cal. June 4, 2019) (after defendants moved to compel arbitration, two plaintiffs filed an amended complaint stating they would "forego their remaining claims in order to pursue only the PAGA claims").

In many other cases, the plaintiffs simply filed a new action seeking relief under PAGA when faced with a motion to compel arbitration. *E.g.*, *Sanchez v. Gruma Corp.*, No. 19-CV-02015-WHO, 2019 WL 2716539, at *1 (N.D. Cal. June 28, 2019) (after motion

---

even has "MR PAGA" license plates on his Rolls Royce. California Business & Industrial Alliance, *In the News Jan. 27, 2020*, https://www.cabia.org/ca-lawyer-flaunts-mr-paga-license-plate/ (visited June 12, 2021).

to compel arbitration of state law employment claims granted, plaintiff filed second suit alleging PAGA claim based on same facts); *Herrera v. CarMax Auto Superstores California, LLC*, No. EDCV-14-776-MWF (VBKx), 2014 WL 12567154, at *1 (C.D. Cal. Aug. 27, 2014) (federal court compelled arbitration and dismissed original suit; two months later plaintiff filed a second action in state court that "makes the same factual allegations as the Complaint in the First Action, but only seeks remedies under" PAGA); *see also Bautista v. Fantasy Activewear, Inc.*, 52 Cal. App. 5th 650, 653 (2020) (defendant moved to compel arbitration, plaintiffs dismissed class action and kept only PAGA claims, and arbitration of those claims was denied).

This strategic use of PAGA to avoid arbitration stems from the California Supreme Court's ill-considered *Iskanian* decision. Plaintiffs and their lawyers can avoid arbitration agreements simply by bringing representative claims instead of class claims. This rule subverts the policies Congress sought to protect in passing the FAA, and as explained below harms individuals and companies throughout the country.

II. These PAGA cases harm individuals and businesses throughout the country.

Not only can any employment claim be repackaged as a PAGA claim, but once plaintiffs assert a single PAGA claim they can assert all other possible PAGA claims against their employer, even if the plaintiffs weren't affected by the other alleged violations at all. *Huff v. Securitas Security Services USA, Inc.*, 23 Cal.

App. 5th 745, 750-51 (2018).[10] And, of course, under *Iskanian* none of these claims can be subject to arbitration.

Small wonder that employees and their attorneys are motivated to file PAGA actions, and small wonder that employers seek to avoid them. From the employer's point of view, there is little distinction between class actions, collective actions, and PAGA actions. All require the employer to engage in costly and complicated litigation. All include the risk of significant liability. All can lead to substantial awards of attorney's fees. And all deprive the employer of the benefit of the arbitration agreement they signed.

The post-*Iskanian* explosion of PAGA claims causes deep harm to companies throughout the nation. The possibility of massive penalties for even inadvertent violations and the cost of defending such actions encourages early resolution, leading to settlement of dubious claims in agreements designed mostly to line the pockets of plaintiffs' attorneys.

In a PAGA claim against Uber, for example, the parties eventually reached a $7.75 million settlement where the plaintiffs' lawyers got $2.3 million and the Uber drivers got $1.08 each.[11] In a PAGA claim

---

[10] Under California's court hierarchy, this decision finding plaintiffs need only have standing for one PAGA claim in order to bring every other possible PAGA claim against their employer binds every trial court in the state. *See Cuccia v. Superior Court*, 153 Cal. App. 4th 347, 353-54 (2007).

[11] *Price v. Uber Technologies, Inc.*, Order Granting Approval of PAGA Settlement and Judgment Thereon, Sup. Ct. Los Angeles Case No. BC554512 (Jan. 31, 2018); Law360, *Calif. Judge*

against Walmart for not providing chairs for its cashiers, the parties settled for $65 million; the plaintiffs' attorneys got $21 million of that, while the employees each received a small sum.[12]

Under the FAA and this Court's precedent, if the parties have agreed that disputes should be resolved through individualized arbitration, then the dispute should be subject to arbitration rather than some other proceeding in a different forum.

III. California's rule barring arbitration waivers for PAGA actions is a transparent attempt to disfavor arbitration.

Congress passed the FAA nearly a hundred years ago "in response to widespread judicial hostility to arbitration agreements." *Concepcion*, 563 U.S. at 339. The Act bars both explicitly disfavoring arbitration, and "covertly accomplish[ing] the same objective," *Kindred Nursing Ctrs. Ltd. P'ship v. Clark*, 137 S. Ct. 1421, 1426 (2017), through "more subtle methods" that "target arbitration," *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1622 (2018).

Despite this Court's repeated instruction, California's courts remain hostile to arbitration. California has tried several avenues for avoiding arbitration agreements, from applying a per se rule barring

---

OKs $7.75M Uber Driver Deal Over Objections, https://www.law360.com/articles/1002461/calif-judge-oks-7-75m-uber-driver-deal-over-objections (visited June 12, 2012).

[12] *Brown v. Wal-Mart Stores, Inc.*, Order and Final Judgment Approving Settlement Between Settlement Class Plaintiffs and Wal-Mart Stores, Inc., N.D. Cal. Case No. 5:09-cv-03339-EJD (Mar. 28, 2019).

arbitration for labor law claims, *Sonic-Calabasas A, Inc. v. Moreno*, 51 Cal. 4th 659, 669 (2011), *cert. granted, judgment vacated,* 565 U.S. 973 (2011), to a souped-up version of the unconscionability doctrine that invalidated most arbitration agreements, *Armendariz v. Foundation Health Psychcare Services, Inc.*, 24 Cal. 4th 83, 100 (2000). For each of these holdings California courts invoked the state's "strong public policy" interest in protecting employees.

This Court has struck down many of those attempts, repeatedly reminding California that states may not apply "rules that stand as an obstacle to the accomplishment of the FAA's objectives." *Concepcion*, 563 U.S. at 343; *see also, e.g.*, *Preston*, 552 U.S. 346, 353; *Perry*, 482 U.S. 483, 491.

But in *Iskanian* the California Supreme Court once again found a reason to circumvent the FAA. The court held that an employee could pursue a representative action against his employer despite having agreed to submit all claims arising out of his employment contract to binding arbitration and waiving all class or representative actions. *Iskanian*, 59 Cal. 4th at 360, 382-87. That decision is flatly wrong.

The plaintiff in *Iskanian* sought to pursue both a class action lawsuit and a representative action under PAGA. The California Supreme Court held that the class action could not go forward but the PAGA claim could, explaining that a waiver of PAGA violated state law and that the FAA does not preempt a rule holding PAGA waivers to be unenforceable. *Id.* at 360, 384.

In reaching this result the court acknowledged that the FAA preempts suits brought by employees who have agreed to arbitrate their disputes, and that

Iskanian was seeking redress for alleged employment violations, but held that a PAGA action is " ' "fundamentally a law enforcement action designed to protect the public and not to benefit private parties." ' " *Id.* at 381. Although anyone may waive the advantage of a law intended solely for his benefit, " ' "a law established for a public reason cannot be contravened by a private agreement." ' " *Id.* at 382-83 (citing Cal. Civ. Code § 3513 and *Armendariz*, 24 Cal.4th at 100). The court then concluded "that California's public policy prohibiting waiver of PAGA claims, whose sole purpose is to vindicate the Labor and Workforce Development Agency's interest in enforcing the Labor Code, does not interfere with the FAA's goal of promoting arbitration as a forum for private dispute resolution." *Id.* at 388-89.

At the outset, the court's insistence that a PAGA action is a dispute between an employer and the state is disingenuous. PAGA by its terms gives *aggrieved employees* the right to bring suit. Cal. Lab. Code § 2699(a). PAGA does not confer that right on the state.

More fundamentally, the state is not involved in making litigation decisions for a PAGA suit after it declines to pursue the alleged violation. Cal. Lab. Code § 2699.3(a). The employee files suit, controls the litigation, and if successful, receives an award of attorney's fees and obtains a benefit for employees that is shared with the state. *Id.* §§ 2699(a), (g)(1), (h)(1). The employee can dismiss the suit or settle it, *id.* § 2699(*l*)—the state receives notice of settlements (*id.* § 2699(*l*)(2)), and can object, but the PAGA statute does not give the state a role in crafting the settlement.

The *Iskanian* court reasoned that the right to bring a PAGA action cannot be waived because *that* right belongs to the state, and the state never agreed to the waiver. *Iskanian,* 59 Cal. 4th at 386-87. But that conclusion is nonsense. For every aspect of a PAGA claim except the waiver, the right is controlled by the employee. But, *for the purpose of an arbitration agreement only*, the right to bring a PAGA claim is controlled by the state. There is no logic to this except that the California Supreme Court believes that the waiver in the arbitration agreement should not be enforced.[13]

The importance of who controls the claim was explained by this Court in *EEOC v. Waffle House, Inc.*, 534 U.S. 279, 291-96 (2002). The issue there was whether the EEOC, which had filed an enforcement action on behalf of an employee, was bound by the employee's arbitration agreement. This Court held that the EEOC was not bound by the agreement, but it explained that it would be different if "the EEOC could prosecute its claim only with [the employee's] consent, or if its prayer for relief could be dictated by [the employee]." *Id*. at 280. Since the EEOC decided to prosecute the claim in its own name and "is in command

[13] Indeed, the California Supreme Court made the heightened scrutiny it applies to arbitration agreements explicit, explaining in an earlier case that "arbitration agreements that encompass unwaivable statutory rights must be subject to particular scrutiny." *Armendariz*, 24 Cal. 4th at 100. But this Court has long made clear that states may not apply the unconscionability doctrine "in a fashion that disfavors arbitration," *Concepcion*, 563 U.S. at 341, nor may states construe an arbitration "agreement in a manner different from that in which it otherwise construes nonarbitration agreements under state law," *Perry*, 482 U.S. at 492 n.9.

of the process," the employee's waiver did not carry over. *Id*. at 291.

No one disputes that, if California decided to sue Viking River Cruises, the state would not be bound by the arbitration waiver that Moriana signed. But the state decided not to sue. Moriana is the only person suing Viking, and she signed an agreement promising to arbitrate any claims arising out of her employment. California cannot now invoke the state's interest in a case it declined to pursue in order to void the arbitration agreement that Moriana signed.

Besides stressing the state's interest in the case, California says it is important as a public policy matter to allow PAGA suits to proceed in court. But California *always* invokes public policy when deciding to ignore arbitration agreements. *See, e.g.*, *Armendariz*, 24 Cal. 4th at 100-01 (holding there was "no question" that the state's Fair Employment and Housing Act is an important public policy statute and so its provisions cannot be waived by arbitration agreements); *Sonic-Calabasas A*, 51 Cal. 4th at 684, 689. When you claim a public policy interest in enforcing the entire labor code, and the major effect of that public policy is to void arbitration agreements, it looks much less like a traditional public policy and more like an anti-arbitration policy.

While California may *wish* to enforce its labor laws through PAGA actions, "[s]tates cannot require a procedure that is inconsistent with the FAA, even if it is desirable for unrelated reasons." *Concepcion*, 563 U.S. at 351. As explained above California's claimed justifications do not hold up, and regardless California's rule barring any waiver of PAGA claims in an

arbitration agreement both directly and indirectly interferes with the FAA.

Most basically, an employee who has agreed to submit claims to individualized arbitration but who instead brings a PAGA action violates the terms of his or her employment agreement. "The 'principal purpose' of the FAA is to 'ensur[e] that private arbitration agreements are enforced according to their terms.' " *Concepcion*, 563 U.S. at 344 (citing *Volt Info. Sciences, Inc. v. Bd. of Trustees of Leland Stanford Junior Univ.,* 489 U.S. 468, 478 (1989)); *Perry*, 482 U.S. at 490.

For this reason, the text of the FAA "reflects the overarching principle that arbitration is a matter of contract. And consistent with that text, courts must 'rigorously enforce' arbitration agreements according to their terms, including terms that 'specify *with whom* [the parties] choose to arbitrate their disputes,' and 'the rules under which that arbitration will be conducted.' " *Am. Exp. Co. v. Italian Colors Rest.*, 570 U.S. 228, 233 (2013) (citations omitted).

Moriana agreed to submit any dispute to binding arbitration and expressly agreed to waive any right to bring a class, collective, representative, or *private attorney general action*. Pet. App. 3, 14. And yet by filing her PAGA action Moriana sought to bring her dispute before a different forum and to transform it from an individualized proceeding into a collective one, violating the terms of the arbitration agreement. Permitting such cases to go forward violates a basic tenet of the FAA.

Allowing an employee to pursue a PAGA action despite a contractual agreement to refrain from

representative actions also undermines the FAA in more subtle ways. As this Court has noted, allowing classwide proceedings "sacrifices the principal advantage of arbitration—its informality—and makes the process slower, more costly, and more likely to generate procedural morass than final judgment." *Concepcion,* 563 U.S. at 348. In traditional bilateral arbitration, " 'parties forgo the procedural rigor and appellate review of the courts in order to realize the benefits of private dispute resolution: lower costs, greater efficiency and speed, and the ability to choose expert adjudicators to resolve specialized disputes.' " *Id*. (quoting *Stolt-Nielsen S.A. v. AnimalFeeds International Corp.*, 559 U.S. 662, 685 (2010)). It is of no matter that California may believe an alternative to arbitration might better protect employee's rights. "States cannot require a procedure that is inconsistent with the FAA, even if it desirable for unrelated reasons." *Id.* at 351.

This Court has also warned that mass actions are likely to discourage arbitration. "[T]here is little incentive for lawyers to arbitrate on behalf of individuals when they may do so for a class and reap far higher fees in the process. And faced with inevitable class arbitration, companies would have less incentive to continue resolving potentially duplicative claims on an individual basis." *Id*. at 348. This problem can prove even more serious when the representative pursues a PAGA claim, which can result in a far greater recovery (at least for the employee's attorney, and sometimes for the employee) than the employee would receive in a private arbitration of the employee's personal claims.

IV. This Court should grant review.

California has a disturbing history of elevating state substantive or procedural policies over those promoted by the FAA. This Court has repeatedly explained to the state's courts that the FAA preempts state laws that void the parties' arbitration agreement despite the state's alleged policy interests. *See, e.g.*, *Preston*, 552 U.S. 346, 359 (California held that FAA does not preempt a state law vesting initial adjudicatory authority on an administrative agency; this Court reversed); *Perry*, 482 U.S. 483, 491 (California concluded the FAA does not preempt California employment law; this Court reversed); *Southland Corp. v. Keating,* 465 U.S. 1, 10 (1984) (California held FAA did not preempt law requiring judicial consideration of tax claims; this Court reversed).

This Court has also repeatedly explained to the state that an agreement to forgo class or collective actions must be honored if it is part of an arbitration provision, irrespective of whether California's courts believe some other way of pursuing the claim is preferable. *See, e.g., Concepcion*, 563 U.S. at 352 (reversing Ninth Circuit decision that applied California Supreme Court ruling holding class arbitration waivers unconscionable); *DIRECTV, Inc. v. Imburgia*, 136 S. Ct. 463, 466 (2015) (reversing California decision finding class arbitration waiver unconscionable even after *Concepcion*).

California continues to ignore this Court's instructions. In *Iskanian,* California has again elevated a state rule over the FAA. But " '[i]t is this Court's responsibility to say what a statute means, and once the Court has spoken, it is the duty of other courts to

respect that understanding of the governing rule of law.' " *Nitro-Lift Techs., L.L.C. v. Howard*, 568 U.S. 17, 21 (2012) (quoting *Rivers v. Roadway Express, Inc.*, 511 U.S. 298, 312 (1994)). As this case demonstrates, California will continue to thumb its nose at the FAA and this Court's decisions unless this Court acts.

As the petition shows, this case is an apt vehicle for review of this issue, and there is no point in waiting further. California will not sort this out itself; the court of appeal and trial court both thought themselves bound by prior California precedent holding PAGA waivers void. Pet. App. 5 & n.1 (holding *Iskanian* "remains good law" and noting California intermediate appellate courts are bound by prior decisions of the California Supreme Court on issues of federal law); Pet. App. 15 (holding that prior appellate decision finding *Iskanian* is still good law "is a published opinion that constitutes binding authority upon this court"). The California Supreme Court can continue to deny petitions raising this issue, as it did in this case. Pet. App. 1. And the Ninth Circuit has jumped on board, agreeing with California that California employees may not agree to bilateral arbitration and give up PAGA rights. *Sakkab v. Luxottica Retail N. Am., Inc.*, 803 F.3d 425, 427 (9th Cir. 2015).

This Court has noted that "State courts rather than federal courts are most frequently called upon to apply the [FAA], including the Act's national policy favoring arbitration. It is a matter of great importance, therefore, that state supreme courts adhere to a correct interpretation of the legislation." *Nitro-Lift Techs.*, 568 U.S. at 17-18. When state courts have

refused to follow these directives, this Court has not hesitated to step in.

The Court should grant certiorari to establish that the FAA preempts a state-created rule holding PAGA waivers in arbitration agreements unenforceable.

CONCLUSION

For all the reasons set out above and in the petition, the Court should grant certiorari and require California to follow federal law.

Respectfully submitted,

ANNA-ROSE MATHIESON
Counsel of Record
JULIA PARTRIDGE
CALIFORNIA APPELLATE LAW GROUP LLP
96 Jessie Street
San Francisco, CA 94105
(415) 649-6700
annarose@calapplaw.com
Attorneys for Amicus California New Car Dealers Association

June 2021