

No. 21-1121

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In The Supreme Court of the United States

HANDY TECHNOLOGIES, INC.,  
*Petitioner,*

v.

PATRICK POTE,  
*Respondent.*

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**On Petition for Writ of Certiorari to  
the California Court of Appeal  
Second Appellate District, Division Seven**

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**RESPONDENT'S RESPONSE TO PETITION  
FOR A WRIT OF CERTIOARI**

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APRIL 15, 2022

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**QUESTION PRESENTED**

Whether the Federal Arbitration Act requires state courts to enforce a waiver, set forth in an arbitration agreement, of a state statutory right to bring a representative action to collect civil penalties on behalf of the state, in violation of neutral principles of state law prohibiting such a waiver.

## **CORRECTION TO FACTUAL BACKGROUND**

Respondent respectfully clarifies the underlying procedural chronology laid out in the petition. Respondent's October 3, 2018 underlying complaint was for declaratory relief only. His California Private Attorneys General Act (PAGA) claim first appeared in his first amended complaint, which he filed on November 19, 2018. Thus, his PAGA claim was filed in state court only after 65 days had elapsed without action by California's Labor and Workforce Development Agency (LWDA) from his September 14, 2018 PAGA notice, which Petitioner also received. *See* Cal. Lab. Code § 2699.3(a)(2)(A) (requiring 65 days to elapse before filing suit).

The arbitration agreement at issue was executed on October 26, 2018. Compared with the prior executed arbitration agreement, the language shifted from explicitly excluding PAGA actions from arbitration, Pet. App. 5, to excluding only PAGA actions "brought prior to" October 26, Pet. App. 7. Petitioner changed its arbitration language after Petitioner had received the PAGA notice, but before the LWDA had authorized Respondent to file a representative claim in its stead in court.

## **RESPONSE TO THE PETITION**

Petitioner claims that the California Court of Appeal erred in determining that Respondent's right to bring a representative action under PAGA was not

waived in an arbitration agreement, following the California Supreme Court's holding in *Iskanian v. CLS Transportation Los Angeles, LLC*, 327 P.3d 129 (Cal. 2014). This Court granted certiorari in *Viking River Cruises v. Moriana*, No. 20-1573, to answer whether the Federal Arbitration Act preempts state courts from making that same determination. Because the Court's decision in *Viking River Cruises* could affect the Court of Appeal's determination, this petition should be held until the Court's decision and then disposed of as appropriate in light of that decision.

### CONCLUSION

The petition for a writ of certiorari should be held pending this Court's decision in *Viking River Cruises v. Moriana*, and then disposed of accordingly.

Date: April 15, 2022

Respectfully submitted,

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