NO. _____

In the Supreme Court of the United States

VITAMIN SHOPPE INDUSTRIES LLC,

Petitioner,

v.

JESSICA REYES WHITT,
ON BEHALF OF THE STATE OF CALIFORNIA
AND AGGRIEVED EMPLOYEES, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the Superior Court of California, County of Alameda

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the trial court's failure to stay a representative Private Attorneys General Act claim pending arbitration of the Plaintiff's individual PAGA claim deny the Parties the benefits of the Federal Arbitration Act ("FAA") in contravention of the FAA?

PARTIES TO THE PROCEEDINGS

Petitioner and Petitioner-Defendant below

- Vitamin Shoppe Industries, LLC

Respondent and Respondent-Plaintiff, Real Party in Interest below

- Jessica Reyes Whitt, on Behalf of the State of California and Aggrieved Employees

Respondent and Respondent below

- Superior Court of California, County of Alameda

RULE 29.6 DISCLOSURE STATEMENT

Vitamin Shoppe Industries LLC is a sole member LLC with the sole member being Valor Acquisition, LLC. Valor Acquisition, LLC, is member managed by Franchise Group Newco V, LLC. Franchise Group Newco V, LLC, is member managed by Franchise Group Intermediate V, LLC. Franchise Group Intermediate V, LLC, is member managed by Franchise Group Intermediate Holdco, LLC. Franchise Group Intermediate Holdco, LLC, is member managed by Franchise Group New Holdco, LLC. Franchise Group New Holdco, LLC, is member managed by Franchise Group, Inc. Franchise Group, Inc. is a wholly owned subsidiary of Freedom VCM, Inc. No publicly held company owns 10% or more of the above entities.

PROCEEDINGS BELOW

Reyes Whitt v. Vitamin Shoppe Industries, LLC, No. 23CV025341 (Superior Court of California for Alameda County), order denying stay issued October 26, 2023.

Vitamin Shoppe Industries, LLC v. Superior Court of Alameda County, No. A168457 (California Court of Appeal, First Appellate District), order denying writ of mandate and stay issued Nov. 28, 2023.

Vitamin Shoppe Industries, LLC v. Superior Court of Alameda County, No. S283015 (Supreme Court of California), order denying petition for review issued Feb. 14, 2024.

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PETITION FOR A WRIT OF CERTIORARI

Vitamin Shoppe Industries, LLC, respectfully petitions for a writ of certiorari to review the judgment of the Superior Court of California, County of Alameda, subsequently affirmed by the California Court of Appeals, First Appellate District.

OPINIONS BELOW

The order of the Superior Court of California, Alameda County, denying an order for a stay is included at App.3. The order of the California Court of Appeals, First Appellate District, denying a writ of mandate and stay, is included at App.2a. The orders and opinions of the lower courts here are unreported.

JURISDICTION

The decision of the Supreme Court of California denying a petition for review was entered on February 14, 2024. This Court's jurisdiction rests on 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Art. III, § 2, cl. 1.

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

9 U.S.C. § 2. FAA, Section 2:

> A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

INTRODUCTION

The Federal Arbitration Act ("FAA") states that arbitration agreements are "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." (*Ferguson v. Corinthian Colleges, Inc.*, 733 F.3d 928, 936 (9th Cir. 2013) (quoting 9 U.S.C. § 2).) The FAA reflects an "emphatic federal policy" in favor of arbitration. (*Id.*, citing *Marmet Health Care Ctr., Inc. v. Brown*, ___ U.S. ___, 132 S.Ct. 1201, 1203, 182 L.Ed.2d 42 (2012) (per curiam) (citation omitted).) "Its purpose is to 'ensur[e] that private arbitration agreements are enforced.'" (*Id.*, citing *Mortensen v. Bresnan Commc'ns, LLC*, 722 F.3d 1151, 1159 (9th Cir.2013) (quoting *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 343, 131 S.Ct. 1740, 1748, 179 L.Ed.2d 742 (2011)).

In *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639, 662, 142 S.Ct. 1906, 213 L.Ed.2d 179 (2022), this Court ruled that the FAA preempts the California rule that had previously precluded the arbitration of individual Private Attorneys General Act ("PAGA") claims, clarifying that PAGA claims can be severed into individual and representative components and "Viking is entitled to compel arbitration of [the plaintiff's] individual claim." *Id.* at 662. This Court further held that "[w]hen an action includes arbitrable and nonarbitrable components, the resulting bifurcated proceedings are not severed from one another; rather, the court may 'stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement.'" *Id.*, at 693-694 (citing 9 U.S.C. § 3).

Under the FAA, a stay of the remaining non-arbitrable litigation is mandatory. 9 U.S.C. § 3 (court "shall on application of one of the parties stay the trial . . . until such arbitration" is complete); *see also Wagner v. Stratton Oakmont, Inc.*, 83 F.3d 1046, 1048 (9th Cir. 1996) ("Federal Arbitration Act requires a court to stay an action whenever the parties to the action have agreed in writing to submit their claims to arbitration"); *Anderson v. Pitney Bowes, Inc.*, 2005 WL 1048700, at *6 (N.D. Cal. 2005) (the FAA's "stay provision is mandatory").

In the instant case, Petitioner contends that the Alameda County Superior Court failed to stay a representative Private Attorneys General Act claim pending arbitration of the Plaintiff's individual PAGA claim deny the Parties the benefits of the Federal Arbitration Act ("FAA") in contravention of the FAA.

STATEMENT OF THE CASE

A. The Parties' Arbitration Agreement

Plaintiff Jessica Reyes Whitt was employed by Vitamin Shoppe and electronically signed a valid Arbitration Agreement pursuant to her employment. Under the arbitration provision, the Agreement plainly describes the arbitration process and provides that "[the Agreement] is a mutual agreement to arbitrate Covered Claims . . . pursuant to the Federal Arbitration Act, 9 U.S.C. Section 1–14" and that "no covered claim may be initiated or maintained on a class, collective or representative basis either in court or under these rules, including in arbitration."

B. Procedural History

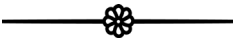
Plaintiff filed representative action lawsuit on May 22, 2023, pursuant to PAGA, based on alleged violations of the Labor Code. The Complaint asserted claims for: (1) failure to compensate Plaintiff and Aggrieved Employees for all hours worked; (2) failure to pay Plaintiff and Aggrieved Employees minimum wage for all hours worked; (3) failure to pay Plaintiff and Aggrieved Employees overtime wages; (4) failure to authorize and permit Plaintiff and Aggrieved Employees to take meal periods to which they are entitled by law, and failure to pay premium compensation for missed meal periods; (5) failure to authorize and permit Plaintiff and Aggrieved Employees to take rest periods to which they are entitled by law, and failure to pay premium compensation for missed rest periods; (6) failure to provide Plaintiff and Aggrieved Employees true and accurate itemized wage statements; (7) failure to reimburse Plaintiff and Aggrieved Employees for necessary business expenses; and (8) failure to timely pay Aggrieved Employees full wages during employment and upon separation from.

On June 7, 2023, Petitioner filed a Motion to Compel Arbitration before the Trial Court, requesting a dismissal of Plaintiff's representative PAGA claims, or in the alternative a stay of the trial proceedings pending arbitration of Plaintiff's individual claims. On June 16, 2023, Plaintiff initiated her individual arbitration against Petitioner. On August 3, 2023, the Trial Court issued an order granting Petitioner's Motion to Compel Arbitration, in part, as to Plaintiff's individual PAGA claims but denying the motion as to Plaintiff's representative claims. On October 26, 2023, the Trial Court also denied Petitioner's request to stay

the trial proceedings, thereby allowing Plaintiff's representative PAGA claims to proceed simultaneously with the arbitration of Plaintiff's individual PAGA claims.

On November 28, 2023, the California Court of Appeal for the First Appellate District denied Petitioner's Petition for Writ of Mandate and request for immediate stay.

On February 14, 2023, the Supreme Court of California denied Petitioner's Petition for Review.



REASONS FOR GRANTING THE PETITION

I. The California Court of Appeals' Refusal to Stay Litigation of Plaintiff's Representative PAGA Claims Pending Arbitration of Plaintiff's Overlapping Individual Claims Warrants Review

A. The Decision Below Contravenes the FAA and Deprives Petitioner of the Benefit of the Arbitration Agreement Entered Into by the Parties

Petitioner seeks review of a California state ruling preventing Petitioner from realizing the benefit of its arbitration agreement under the Federal Arbitration Act ("FAA"). The lower court required Petitioner to simultaneously litigate Plaintiffs' representative PAGA claims while arbitrating Plaintiffs' corresponding individual PAGA claims, even though the matters substantially overlap. If the representative claims resolve first, there will be nothing left for

Petitioner to arbitrate, and the purpose of the FAA will be frustrated.

The Federal Arbitration Act ("FAA") states that arbitration agreements are "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract," 9 U.S.C. § 2, and reflects an "emphatic federal policy" in favor of arbitration. *Ferguson v. Corinthian Colleges, Inc.*, 733 F.3d 928, 936 (9th Cir. 2013) (citing *Marmet Health Care Ctr., Inc. v. Brown*, 565 U.S. 530, 132 S.Ct. 1201, 1203, 182 L.Ed.2d 42 (2012) (per curiam) (citation omitted). "It 'requires courts to enforce the bargain of the parties to arbitrate'" *Marmet Health Care Ctr.*, 565 U.S. at 532–33 (quoting *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 217, 105 S.Ct. 1238, 84 L.Ed.2d 158 (1985)), and "[i]ts purpose is to 'ensur[e] that private arbitration agreements are enforced.'" *Ferguson*, 733 F.3d at 928 (citing *Mortensen v. Bresnan Commc'ns, LLC*, 722 F.3d 1151, 1159 (9th Cir.2013) (quoting *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 131 S.Ct. 1740, 1748, 179 L.Ed.2d 742 (2011)).

In *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639, 662, 142 S.Ct. 1906, 213 L.Ed.2d 179 (2022), this Court ruled that the FAA preempts the *Iskanian* rule that had precluded the arbitration of individual PAGA claims. Before *Viking River Cruises*, California law held that PAGA claims were not divisible into representative and individual components and, thus, a Plaintiff could not be required to seek individual relief under PAGA claims through arbitration. Because representative PAGA claims are unwaivable pursuant to public policy, the impact of their indivisibility was that PAGA claims could only proceed in court. *See Iskanian*

v. CLS Transportation Los Angeles, LLC (2014) 59 Cal.4th 348, 383; *Kim v. Reins Int'l Calif., Inc.*, 9 Cal. 5th 73 at 88 (2020) (noting that California courts have uniformly "rejected efforts to split PAGA claims into individual and representative components"); *see also Viking River Cruises*, 596 U.S. at 648-649. This Court abrogated the *Iskanian* rule and held that by requiring an employer to choose between arbitrating all of the alleged aggrieved employees' PAGA claims or none of them, California's "indivisibility" rule was coercive and preempted by the FAA. *Id.* at 661-662. Therefore, *Viking River Cruises* clarified that PAGA claims can be severed into individual and representative components and "Viking is entitled to compel arbitration of [the plaintiff's] individual claim." *Id.* at 662. This Court further held that "[w]hen an action includes arbitrable and nonarbitrable components, the resulting bifurcated proceedings are not severed from one another; rather, the court may 'stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement.'" *Id.*, at 693-694 (citing 9 U.S.C. § 3).

Subsequently, the California Supreme Court in *Adolph*, 14 Cal.5th 1104, reasoned that:

> Nothing in PAGA or any other relevant statute suggests that arbitrating individual claims effects a severance. When a case includes arbitrable and nonarbitrable issues, the issues may be adjudicated in different forums while remaining part of the same action. Code of Civil Procedure section 1281.4 states that upon ordering arbitration of "a controversy which is an issue involved in an action," the court "shall, upon motion of a party to such

> action or proceeding, stay the action." It further provides that "[i]f the issue which is the controversy subject to arbitration is severable, the stay may be with respect to that issue only." Section 1281.4 does not contemplate that the compelled arbitration of an issue in controversy in the action is a separate action. The statute makes clear that the cause remains one action, parts of which may be stayed pending completion of the arbitration.

Id., at 1124-1125 (emphasis supplied).

For this reason, the *Adolph* court contemplated that a plaintiff's individual claims would proceed first in arbitration when it specifically rejected Uber's argument that its ruling on standing would allow duplicative litigation, stating:

> Uber makes no convincing argument why this manner of proceeding [arbitration of individual claims while the representative claims are stayed] would be impractical or would require relitigating Adolph's status as an aggrieved employee in the context of his non-individual claims, and we see no basis for Uber's concern. In any event, *Viking River* makes clear that in cases where the FAA applies, no such relitigation may occur.
>
> If the arbitrator determines that [the plaintiff] is not an aggrieved employee and the court confirms that determination and reduces it to a final judgment, the court would give effect to that finding, and [the plaintiff] could no longer prosecute [her] non-individual claims due to lack of standing.

Id., at 1123-1124 (citing *Rocha v. U-Haul Co. of California* (2023) 88 Cal.App.5th 65, 76–82, 304 Cal.Rptr.3d 587).

In conflict with these rulings, the Alameda Superior Court denied the stay of the representative PAGA action pending disposition of individual claims, depriving the employer of the benefit of arbitration under the FAA and undermining the very purpose of the FAA. Federal law and policy favor arbitration because it allows for efficient and expeditious resolution of disputes. Indeed, "[t]he FAA's overarching purpose is to ensure the enforcement of arbitration agreements according to their terms so as to facilitate informal, streamlined proceedings." *Concepcion*, 563 U.S. 333 at 344. (Emphasis added). If, however, a trial court allows a representative action to proceed while an individual arbitration with overlapping issues is pending, the arbitration is no longer efficient or expeditious, instead forcing the parties to double their resources and efforts in two simultaneous proceedings. Employers will be disincentivized to enter into arbitration agreements where they know the very same claims will be litigated at the same time, defeating the whole purpose of the FAA. *See id.*, at 351 ("States cannot require a procedure that is inconsistent with the FAA, even if it is desirable for unrelated reasons"). Even worse, knowing the arbitration agreement requires employers to essentially fight the same battle on two fronts allows employees to weaponize their arbitration agreements in order to further pressure employers into settling meritless cases. *Viking River* made clear that such a result cannot obtain. *See Viking River*, 596 U.S. at 663 ("*Iskanian's* indivisibility rule effectively coerces parties to opt for a judicial forum rather than

'forgo[ing] the procedural rigor and appellate review of the courts in order to realize the benefits of private dispute resolution.' [citing *Stolt-Nielsen S.A. v. Animal Feeds Int'l Corp.*, 559 U.S. 662, 685, 130 S.Ct. 1758 (2010) and *Concepcion*, 563 U.S. at 350–351]. This result is incompatible with the FAA.").

The doctrine of collateral estoppel prevents issues of ultimate fact from being relitigated between the same parties in a future action if those issues have been determined in a valid and final judgment. *Ashe v. Swenson*, 397 U.S. 436, 443, 90 S.Ct. 1189, 25 L.Ed.2d 469 (1970); RESTATEMENT (SECOND) OF JUDGMENTS § 27 (1982) ("When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between parties, whether on the same or a different claim.") (cited in *Grogan v. Garner*, 498 U.S. 279, 284, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991)). Collateral estoppel applies where: the parties in both actions are identical to or in privity with each other; the judgment in the prior action was rendered by a court of competent jurisdiction; the prior action concluded with a final judgment on the merits; and the same claim or cause of action was involved in both actions. *N.Y. Life Ins. Co. v. Gillispie*, 203 F.3d 384, 387 (5th Cir. 2000) (quoting *United States v. Shanbaum*, 10 F.3d 305, 310 (5th Cir. 1994)).

Courts also have held that arbitrators are required to give collateral estoppel effect to prior judicial rulings. *See Telephone Workers Union of New Jersey v. New Jersey Bell Tel. Co.*, 584 F.2d 31 (3d Cir. 1978) (holding that an arbitration tribunal was collaterally estopped from relitigating issues decided by the district

court's consent decree); *John Hancock Mut. Life Ins. Co. v. Olick*, 151 F.3d 132, 139 (3d Cir. 1998) (adopting a narrow exception to the general rule favoring arbitration when a party claims that arbitration should be precluded as a result of collateral estoppel based upon a prior federal judgment).

The lower court's decision requiring Petitioner to simultaneously litigate Plaintiffs' representative PAGA claims while arbitrating Plaintiffs' overlapping indi vidual PAGA claims robs Petitioner of the benefit of the Parties' arbitration agreement. Should the action in court proceed to decision before the arbitration hearing is complete, the court action will collaterally estop the claims in arbitration. This renders the FAA toothless and denies the effect of the contractual agreement to arbitrate. Petitioner will be left with nothing to arbitrate, and the purpose of the FAA will be frustrated.

Forcing employers to litigate and arbitrate the very same claims simultaneously impermissibly hampers the parties' rights under the FAA. Thus, the issue of whether a stay of a plaintiff's representative PAGA action is necessary pending arbitration is an important legal issue impacting the thousands of PAGA cases filed every year. Indeed, PAGA lawsuits have increased more than 1,000 percent since the law took effect in 2004 and the number of filings continue to grow. The data for PAGA notices filed with the California Labor and Workforce Development Agency show more than 2,000 more PAGA notices were filed in 2023 compared to 2022. The Court should grant this petition to prevent needless obstruction of the FAA's purposes and objectives and ensure the enforcement of the parties' private arbitration agreement.

B. The Lower Court's Ruling Misinterprets the State and Federal Statutory Requirements to Stay the Litigation

A representative PAGA claim that proceeds in litigation necessarily must resolve the question of whether the plaintiff was "aggrieved," meaning whether she suffered any Labor Code violations, in order to determine whether she has standing to pursue her claims. This is precisely the same issue that must be arbitrated. Notwithstanding the likelihood of inconsistent rulings in two different venues and a waste of judicial and party resources, a plaintiff's representative claim must be stayed because duplicative rulings on the same issues are improper relitigation and contrary to this Court's and the California Supreme Court's rulings.

Moreover, a stay of a plaintiff's representative claims is necessary in order to preserve the jurisdiction of the arbitrator where the parties have agreed to arbitrate the issue of whether the plaintiffs are individually aggrieved. By declining to stay the representative matter courts improperly usurp the jurisdiction of the arbitrator and essentially nullify the parties' valid agreement to arbitrate that central issue.

Such a decision is also in conflict with both federal and state statutory requirements. Under the FAA, a stay of the remaining non-arbitrable litigation is mandatory. 9 U.S.C. § 3 (court "shall on application of one of the parties stay the trial . . . until such arbitration" is complete); *see also Wagner v. Stratton Oakmont, Inc.*, 83 F.3d 1046, 1048 (9th Cir. 1996) ("Federal Arbitration Act requires a court to stay an action whenever the parties to the action have agreed in writing to submit their claims to arbitration");

Anderson v. Pitney Bowes, Inc., 2005 WL 1048700, at *6 (N.D. Cal. 2005) (the FAA's "stay provision is mandatory"). Code of Civil Procedure section 1281.4 also provides for a stay where the court has ordered arbitration until the arbitration is completed, preventing a party from litigating claims that it agreed to arbitrate. *Leenay v. Superior Court*, 81 Cal. App. 5th 553, 563 (2022) (the court "shall" stay the action where the arbitration involves a question that arises in the pending court action); *see Federal Ins. Co. v. Superior Court* (1988) 60 Cal.App.4th 1370, 1374-1375; *MKJA, Inc. v. 123 Fit Franchising, LLC* (2011) 191 Cal.App.4th 643, 660.

Generally, a court's power to stay proceedings is incidental to its inherent power to control the disposition of its cases in the interests of efficiency and fairness to the court, counsel, and litigants. *Landis v. N. Am. Co.*, 299 U.S. 248, 254–55 (1936). A stay may be granted pending the outcome of other legal proceedings related to the case in the interests of judicial economy. *Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863–64 (9th Cir. 1979) (emphasis added). Discretion to stay a case is appropriately exercised when the resolution of another matter will have a direct impact on the issues before the court, thereby substantially simplifying the issues presented. *Mediterranean Enters., Inc. v. Ssangyong Corp.*, 708 F.2d 1458, 1465 (9th Cir. 1983).

However, Section 3 of the FAA "requires courts to stay litigation of arbitral claims pending arbitration of those claims 'in accordance with the terms of the agreement'" *Concepcion*, 563 U.S. at 344 (emphasis added). California Code of Civil Procedure section 1281.4 also provides "that if (1) a court has ordered

arbitration of a question arising between parties to an agreement, and (2) the same question arises between those parties in a pending action, then (3) the court 'shall' stay the action (or enter a stay with respect to the arbitrable issue, if the issue is severable)." *Leenay v. Superior Court* (2022) 81Cal.App.5th 553, 563 (emphasis added).

Some courts addressing the stay of representative claims pending the arbitration of individual claims post-*Adolph* have recognized that a stay of the representative claims is necessary, and indeed the proper course of action, until the arbitrator has made a determination regarding the individual claim. (*See, e.g., Colores v. Ray Moles Farms, Inc.* 2023 WL 6215789, at *3 (E.D. Cal. Sept. 25, 2023) (stating "the proper course of action, as the *Adolph* decision itself indicated, will be to stay this matter until the arbitration concludes, at which time the parties can return to this [c]ourt to address any res judicata impact of the arbitrator's decision") (emphasis added); *Bustos v. Stations Serv., Inc.* 2023 Cal. Super. LEXIS 96072 (Orange County, Sherman, Nov. 17, 2023) (staying representative claims noting that "plaintiff's PAGA claims are based on at least some of the same labor law violations she asserts individually and in the class action suit, and which will be arbitrated. As a result, the group PAGA claim must be stayed. It is also in the interests of comity and the conservation of judicial resources to avoid potential conflicting rulings and stay the arbitration, eliminating the risk of inconsistent decisions between the arbitration proceedings and the court proceedings."). Other courts, such as Alameda County Superior, the First Appellate District, and the California Supreme Court in both the *Whitt*

and *Rincon* matters, have declined to implement a stay despite the overlapping issues and the plain language of Section 1281.4. *See also Martin v. Apt. Mgmt. Consultants, L.L.C.* 2023 Cal. Super. LEXIS 93636 (Los Angeles County, Watkins, Nov. 14, 2023) ("staying of the non-individual PAGA claims also goes against the reasons for the Legislature's enactment of PAGA—widespread Labor Code violations and significant underenforcement. In order to fulfill the policy reasons in enacting PAGA, the Court finds that a stay of the non-individual PAGA claims to be unwarranted.")).

In *Walters v. Sensient Nat. Ingredients LLC*, No. F085824, 2024 WL 302376, at *6 (Cal. Ct. App. Jan. 26, 2024), the California Court of Appeal recognized that "since *Viking River* was decided, decisions of the Courts of Appeal have differed on whether to direct the trial court to stay the court proceedings on the non-individual claims or remand the issue of a stay to the trial court. (Cf. *Gregg v. Uber Technologies, Inc.*, (2023) 89 Cal.App.5th 786, 807 [trial court directed to stay the non-individual claims until completion of arbitration] with *Barrera v. Apple American Group LLC* (2023) 95 Cal.App.5th 63, 95 [trial court to determine on remand whether to stay the non-individual PAGA claims]; *Nickson v. Shemran, Inc.* (2023) 90 Cal.App.5th 121, 135 [management of litigation during pendency of arbitration left to trial court's discretion]; *Seifu v. Lyft, Inc.* (2023) 89 Cal.App.5th 1129, 1142 [remand for trial court to determine in first instance whether a stay of the non-individual PAGA claims is warranted]. Other appellate decisions have not addressed the issue of a stay, which leaves the question to be raised and resolved on remand. (*E.g.*,

Galarsa v. Dolgen California, LLC (2023) 88 Cal.App. 5th 639, 655.)"

The lack of uniform application and confusion regarding a necessary stay of litigation during the pendency of arbitration undermines the purpose of the FAA and conflicts with this Court's ruling in *Viking River Cruises*. The Court should grant this petition and settle the conflict.

CONCLUSION

This Court should grant this petition.

Respectfully submitted,

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May 14, 2024