No. 23-645

IN THE
# Supreme Court of the United States

UBER TECHNOLOGIES, INC., ET AL.,
*Petitioners*,
v.
JOHNATHON GREGG,
*Respondent*.

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

## BRIEF OF EMPLOYERS GROUP AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS


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## INTEREST OF *AMICUS CURIAE*

The Employers Group is the nation's oldest and largest human resources management organization for employers. It represents California employers of all sizes in many different industries, which collectively employ millions of employees. The Employers Group seeks to enhance the predictability and fairness of the laws and decisions regulating employment relationships.[1]

Having participated as an *amicus curiae* in *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639 (2022), *see* Br. of Emp'rs Grp. as *Amicus Curiae* in Support of Pet'r (No. 20-1573), the Employers Group is uniquely positioned to assess both the impact and implications of California's rejection of that decision. *See also* Br. of Emp'rs Grp. as *Amicus Curiae* in Support of Pet'rs, *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612 (2018) (No. 16-285); Br. of Emp'rs Grp. as *Amicus Curiae* in Support of Appellant, *Adolph v. Uber Techs., Inc.*, 532 P.3d 682 (Cal. 2023) (No. S274671). Indeed, the decision below and similar decisions from California courts are just the latest in a long line of California cases flouting the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1, *et seq.*, and this Court's jurisprudence regarding arbitration. *See, e.g.*, *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011); *Preston v. Ferrer*, 552 U.S. 346 (2008). The Employers Group has a

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[1] No counsel for any party authored this brief in whole or in part, and no entity or person other than *amicus* and its counsel made any monetary contribution toward the preparation or submission of this brief. *Amicus* timely notified all parties of its intent to file this brief.

strong interest in ensuring that this Court's arbitration precedents are respected.

## INTRODUCTION AND SUMMARY OF THE ARGUMENT

Congress enacted the FAA in 1925 "to overrule the judiciary's longstanding refusal to enforce agreements to arbitrate." *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 219-20 (1985). The "principal purpose of" the FAA is "ensuring that private arbitration agreements are enforced according to their terms." *Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 478 (1989).

Giving effect to that purpose—and in response to the fact that the "judicial hostility towards arbitration that prompted the FAA" has continued to "manifest[] itself in a great variety of devices and formulas," *Concepcion*, 563 U.S. at 342 (quotations omitted)—this Court has repeatedly invalidated state rules that undermine agreements to arbitrate. Many such rules have emanated from California. This case represents yet another attempt by California to circumvent the FAA and this Court's precedent enforcing it.

Two Terms ago, this Court held in *Viking River* that California law was preempted insofar as it prevented employees from agreeing to arbitrate "individual" claims under the California Labor Code Private Attorneys General Act ("PAGA")—i.e., "claims based on code violations suffered by the plaintiff." 596 U.S. at 649. Under *Viking River*, where an employee and employer agree to arbitrate PAGA claims on an individual basis, the employee's individual PAGA claim must be "pared away" from the remainder of the

"PAGA action" and "committed to a separate proceeding." *Id*. at 663.

Almost immediately after *Viking River* was decided, California courts, including the court below, rejected that rule. California Labor Code § 2699(a) authorizes "an aggrieved employee on behalf of himself or herself and other current or former employees" to assert a claim under PAGA. Section 2699(c), in turn, defines an aggrieved employee as a person "against whom one or more of the alleged [Labor Code] violations was committed." Thus, to assert other employees' Labor Code violations under PAGA, a plaintiff must also assert an individual PAGA claim. In the decision below, the California Court of Appeal held that an employee could use his individual PAGA claim as a toehold to assert other employees' PAGA claims notwithstanding the fact that he agreed to arbitrate his individual claim. Under *Viking River*, that should have been impossible. The arbitrable individual claim should have been "pared away" from the rest of the "PAGA action" and "committed to a separate proceeding." 596 U.S. at 663. And without an individual PAGA claim to litigate in court, Plaintiff should have been left without standing to assert PAGA claims for others.

The Court of Appeal avoided that straightforward result by holding that *Viking River* did not mean what it said. According to the court below, *Viking River* did not hold that plaintiff's "individual claim must be 'severed' from his nonindividual claim." Pet. App. 24a-25a. Thus, the court reasoned, the plaintiff's individual claim could remain in court, while also in arbitra-

tion as a placeholder establishing his standing to litigate other employees' PAGA claims. *Id.* Yet *Viking River* is directly to the contrary. Under *Viking River,* a plaintiff who agreed to arbitrate individually cannot "maintain[] an individual claim in [a PAGA] action" because that claim must be "pared away" from the rest of the action and "committed to a separate proceeding"—in other words, severed. 596 U.S. at 663. This Court should grant certiorari once again to bring California in line with its FAA precedents.

California's decision to thwart *Viking River* has real practical consequences—consequences that *Viking River* should have foreclosed. It is well known that "representative" PAGA claims seeking workforce-wide penalties create a massive "risk of 'in terrorem' settlements." *Concepcion*, 563 U.S. at 350. As the Court observed in *Viking River*, PAGA's penalties are individually "modest; but given PAGA's additive dimension, low-value claims may easily be welded together into high-value suits." 596 U.S. at 647. In the years before *Viking River*, PAGA claims seeking millions of dollars in penalties had skyrocketed, as enterprising plaintiffs (and their counsel) used PAGA actions as a procedural sleight of hand to avoid agreements to arbitrate bilaterally. These lawsuits, like class actions, exerted enormous settlement pressure against businesses large and small—many relying on aggregate penalties for technical Labor Code violations—forcing them to pay up or take a bet-the-business gamble.

And it was not only large employers who were the targets of such threats—small businesses were, too, and it takes much less to exert this sort of settlement

pressure on smaller businesses that simply cannot afford to take that gamble. One California small business owner, for example, was subject to a PAGA suit seeking $30 million in penalties because her business's paychecks listed the date the check was issued, instead of the dates the check covered (i.e., 9/6/16 instead of 9/1/16-9/6/16)—truly a technical violation. Another small business spent over $100,000 in attorney's fees to respond to a letter asserting PAGA violations sent from a law firm that filed over 800 similar claims. Small businesses obviously cannot withstand the sort of pressure imposed by even the threat of these kinds of suits, given the draconian penalties that are possible because of PAGA's scheme for aggregating penalties. *Viking River* should have foreclosed shakedown litigation of this sort. But because California has rejected *Viking River*, it continues unabated. Yet again, this Court's intervention is necessary.

## ARGUMENT

This Court should grant certiorari to resolve a clear conflict between California law and this Court's recent decision in *Viking River*. *Viking River* invalidated under the FAA a California rule prohibiting employees from agreeing to arbitrate individual PAGA claims—i.e., claims for California Labor Code violations they personally suffered. Under *Viking River*, where the parties agree to arbitrate bilaterally, individual PAGA claims must be pared away from non-individual claims and compelled to a separate arbitral proceeding. California has rejected that rule. And not only does California law now conflict with *Viking River*, but it lets in through the back door all the

harms this Court in *Viking River* ushered out the front.

## I. THE DECISION BELOW CONFLICTS WITH *VIKING RIVER*

California has long exhibited an intense hostility to arbitration, and this Court has long rejected California's efforts to evade the strictures of the FAA. *See, e.g.*, *Lamps Plus, Inc. v. Varela*, 139 S. Ct. 1407 (2019); *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612 (2018); *Concepcion*, 563 U.S. at 342; *DIRECTV, Inc. v. Imburgia*, 577 U.S. 47 (2015); *Preston*, 552 U.S. at 346; *Perry v. Thomas*, 482 U.S. 483 (1987); *Southland Corp. v. Keating*, 465 U.S. 1 (1984). In the most recent iteration of this long-running battle about the supremacy of federal law, this Court invalidated a mandatory "claim joinder" rule inconsistent with parties' freedom to determine which claims will—or will not—be subject to arbitration. *Viking River*, 596 U.S. at 660.

In *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348 (2014), the California Supreme Court had held that California law "invalidates agreements to arbitrate only 'individual PAGA claims for Labor Code violations that an employee suffered.'" *Viking River*, 596 U.S. at 659 (quoting *Iskanian*, 59 Cal. 4th at 383). "This prohibition on contractual division of PAGA actions into constituent claims," this Court held in *Viking River*, violated the FAA because it "unduly circumscribe[d] the freedom of parties to determine the issues subject to arbitration and the rules by which they will arbitrate," in contravention of "the fundamental principle that arbitration is a matter of consent." *Id*. at 659-60 (quotations omitted).

Under *Iskanian*, "[t]he only way for parties to agree to arbitrate *one* of an employee's PAGA claims [wa]s to also 'agree' to arbitrate *all other* PAGA claims in the same arbitral proceeding." *Id.* at 661. But the FAA ensures that the "parties … control which claims are subject to arbitration," *id.* at 660, including whether arbitration should encompass asserted statutory violations by all employees (as under *Iskanian*) or just the employee bringing suit (as under *Viking River*).

The Court thus held "that the FAA preempts the rule of *Iskanian* insofar as it precludes division of PAGA actions into individual and non-individual claims through an agreement to arbitrate." *Id.* at 662. Where, as in *Viking River*, the parties agree to arbitrate the employee's PAGA claim individually, that individual claim must be "pared away" from the non-individual PAGA claims (i.e., those asserting Labor Code violations sustained by other employees) and "committed to a separate proceeding," namely, arbitration. *Id.* at 663. Under *Viking River*, a plaintiff is prevented from "maintaining an individual claim [in a PAGA] action" where he or she agreed to arbitrate that individual claim. *Id.*

California decisions, including the decision below, conflict directly with that rule. Contrary to *Viking River*'s mandate that individual PAGA claims be "pared away" from non-individual claims and "committed to a separate proceeding," California courts have held that individual PAGA claims remain in the litigation, tethered to the non-individual PAGA claims as the predicate for statutory standing to assert those non-individual claims.

The decision below is a perfect example. Under PAGA, a plaintiff has standing to litigate a claim, whether individual or non-individual, only by proving that he or she personally is an "aggrieved employee"—i.e., an employee against whom one or more Labor Code violation was committed. *Id.* at 644. Plaintiff agreed to arbitrate his "individual" claim that he was aggrieved by a Labor Code violation. Yet the Court of Appeal nonetheless permitted him to assert *other* employees' PAGA claims on the ground that he maintained an individual claim in litigation, Pet. App. 22a-24a, even though *Viking River* concluded that, by virtue of his arbitration agreement, he was barred from "maintaining an individual claim in that action," 596 U.S. at 663. To avoid this obvious conflict, the Court of Appeal asserted that *Viking River* did not "hold that under the FAA, Gregg's individual claim must be 'severed' from his nonindividual claims." Pet. App. 24a-25a. But that is exactly what this Court said. Where an employee agrees to arbitrate his individual PAGA claim, that claim must be "pared away" from the non-individual claims and "committed to a separate proceeding." 596 U.S. at 663.

The California Supreme Court committed the same error in *Adolph v. Uber Technologies, Inc.*, 532 P.3d 682 (Cal. 2023). *Adolph* held that the plaintiff's individual PAGA claim endowed him with standing to litigate non-individual PAGA claims because the individual PAGA claim "remain[ed] part of the same action," even after it had been compelled to arbitration. *Id.* at 693. But *Viking River* made clear that paring away an individual claim and committing it to a separate arbitral proceeding meant that the plaintiff

could not "maintain[] an individual claim" as part of the non-individual PAGA litigation. 596 U.S. at 663. Contrary to the California Supreme Court's decision, individual and non-individual PAGA claims are not forever fused together; under *Viking River*, they can and must be "divided." *Id*. at 662.

The California Supreme Court believed that its rejection of *Viking River* would not impose practical hardships on the parties because trial courts have discretion to stay litigation pending arbitration and can give preclusive effect to an arbitrator's decision on an individual PAGA claim—if an employee wins in arbitration, he'll be an aggrieved employee with standing to litigate non-individual PAGA claims, and if he loses in arbitration, he won't be. *Adolph*, 532 P.3d at 692. As Uber observes (Pet. 24-25), this discretionary stay-and-preclusion workaround only underscores the problems with California law. These procedures would have been unnecessary had the court simply followed *Viking River*, and a discretionary stay is hardly protective of a federal *right* in any case. But setting these points aside, the court's preclusion solution raises the stakes of individual arbitration far beyond what parties contemplate, in contravention of the FAA's rule that party consent is key. Under California law as it stands now, arbitration of an employee's individual PAGA claim decides not only that claim but also whether collective litigation—often worth tens millions of dollars, *infra* Part II, can proceed. Nominally "individual" arbitration, in other words, is the PAGA equivalent of a class certification proceeding.

It does not matter for preemption purposes that California substantive law permits a plaintiff whose individual PAGA claim has been committed to arbitration to litigate non-individual claims. In fact, that's the preemption problem. As explained, the predicate for standing to assert non-individual PAGA claims under California law is the plaintiff's claim that he or she personally suffered a Labor Code violation—in other words, the plaintiff's individual PAGA claim. Only by maintaining an individual PAGA claim as part of the litigation does a plaintiff have standing to assert non-individual PAGA claims. But *Viking River* says that a plaintiff who agreed to arbitrate bilaterally may not maintain an individual PAGA claim in the court action asserting non-individual claims. In this respect, *Viking River*'s application of the FAA must control.

This Court should grant certiorari to ensure the supremacy of this federal law and because California case law conflicts squarely with "relevant decisions of this Court." S. Ct. R. 10(c). Indeed, the conflict with *Viking River* is so clear that this Court may choose to dispose of California's contrary rule through summary reversal. *See* Pet. 28.

## II. CALIFORNIA'S CIRCUMVENTION OF *VIKING RIVER* REINSTATES ALL THE HARMS THAT DECISION SHOULD HAVE FORECLOSED

Certiorari was warranted in *Viking River* in the absence of a conflict among lower courts given the massive harms that California's anti-arbitration policies imposed on California employers, including *amicus*'s members. Those harms are well documented.

The stakes of non-individual PAGA litigation are tremendous, and PAGA's statutory claim-aggregation procedures invite abuse and coerce exorbitant settlements. *Viking River* should have abated these harms, but California's decision not to follow *Viking River* has reinstated them.

A. Before *Iskanian*, PAGA claims were an afterthought, asserted, if at all, on "the coattails of traditional class claims," because the requirement that plaintiffs turn over 75 percent of their recovery to the State made PAGA less attractive. *See* Robyn Ridler Aoyagi & Christopher J. Pallanch, *The PAGA Problem: The Unsettled State of PAGA Law Isn't Good for Anyone*, 2013-7 Bender's Cal. Lab. & Emp. Bull. 1-2 (2013). But PAGA actions seeking penalties on behalf of other employees skyrocketed in the wake of *Iskanian* as employees (and lawyers) sought to circumvent *Concepcion* and evade their agreements to bilaterally arbitrate PAGA claims. *See, e.g.*, Maureen A. Weston, *The Clash: Squaring Mandatory Arbitration with Administrative Agency and Representative Recourse*, 89 S. Cal. L. Rev. 103, 127-28 (2015) (plaintiffs have turned to PAGA as "a means … to avoid arbitration"); Tim Freudenberger et al., *Trends in PAGA Claims and What It Means for California Employers*, Inside Counsel (Mar. 19, 2015) (in the wake of *Concepcion*, PAGA has become "a particularly attractive vehicle for plaintiffs' attorneys to bring claims against employers that instituted mandatory arbitration agreements"); Erin Coe, *Iskanian Ruling to Unleash Flood of PAGA Claims*, Law360 (June 24, 2014) (similar).

Data on the volume of PAGA litigation proves the point. In 2005, the year after PAGA was enacted, plaintiffs filed 759 PAGA notices—the precursor to litigation required by the statute. *See* Emily Green, *State Law May Serve As Substitute for Employee Class Actions*, Daily J. (Apr. 17, 2014). By 2013, in the aftermath of *Concepcion* but prior to *Iskanian*, that number had already increased to 3,137. *Id.* After *Iskanian*, the number predictably continued to grow. In fiscal years 2018-19 and 2019-20, 5,916 and 6,942 PAGA notices were filed, respectively, with the California Labor and Workforce Development Agency. California Private Attorneys General Act of 2004 at 8, CABIA Found. (Oct. 2021); *see infra* at 16 (post-*Viking River* case count).[2]

B. The danger with PAGA is not just in the volume of litigation but also its stakes. In each PAGA action, the amount of civil penalties available is enormous. If a PAGA plaintiff proves that her employer violated the Labor Code, civil penalties are assessed against the employer in many circumstances in the amount of "one hundred dollars ($100) for each aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation." Cal. Lab. Code § 2699(f)(2). Multiply these penalties by the number of employees, and the amount of PAGA penalties can jump into the millions, even for a small employer, fast.

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[2] https://cabiafoundation.org/app/uploads/2021/11/CABIA_PAGA-Report-2021.pdf.

This concern is not hypothetical. PAGA suits asserting non-individual claims on behalf of other employees often exert "unacceptable" pressure on defendants to settle, due to the "small chance of a devastating loss." *Concepcion*, 563 U.S. at 350; *see also Viking River*, 596 U.S. at 647. Many PAGA settlements and judgments illustrate this point. Examples abound: *Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1145 (9th Cir. 2021) (affirming $24.9 million in PAGA civil penalties, as stated in *Bernstein v. Virgin Am., Inc.*, 2020 WL 10618569, at *2 (N.D. Cal. Jan. 21, 2020)); *Brown v. Wal-Mart Stores, Inc.*, No. 5:09-cv-03339-EJD (N.D. Cal.) (approving $65 million settlement in a PAGA suitable-seating action); *Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334, 348 (2021) (awarding $25 million in PAGA penalties (reversed on appeal)); *Reed v. CVS Pharmacy, Inc.*, 2019 WL 12314054 (Cal. Super. Ct. Oct. 30, 2019) (approving $19.5 million settlement in a PAGA suitable-seating action); *see infra* at 16-17 (post-*Viking River* settlements).

C. The devastating effects of PAGA suits are especially salient for small businesses, because a far smaller litigation risk would be sufficient to coerce defendants into settlement.[3] A few examples illustrate the point: California Assembly Member and small

[3] *See* Michael J. Nader & Zachary V. Zagger, *No COVID-19 Slowdown for California PAGA Filings: The Data Is In*, 12 Nat'l L.R. 198 (2023), https://www.natlawreview.com/article/no-covid-19-slowdown-california-paga-filings-data (noting that although PAGA notice filings increased from fiscal year 2018-19 to 2020-21, the filings against large employers decreased, "suggesting that plaintiffs' counsel are focusing more on small and mid-size companies with their PAGA filings.").

business owner Shannon Grove was subject to a PAGA suit claiming $30 million in penalties, which she ultimately settled for just under half a million dollars. The $30 million price tag came from Grove's purported failure to issue paychecks with inclusive dates—for instance, the paycheck listed the date the check was issued, instead of the dates for the pay period that the check covered (i.e., 9/6/16 instead of 9/1/16-9/6/16). The violation: trivial; potential penalties: massive.[4]

Ken Monroe, the owner of a family-owned business that sells construction equipment, described being subject to a PAGA suit for allowing employees to decide when to take their lunch breaks, instead of adhering to state law requiring that hourly employees be provided a half-hour meal period after five hours of work. "As I learned the hard way," Monroe wrote, "these penalties can add up fast, easily reaching hundreds of thousands of dollars for a small company like ours (and millions for larger businesses)." And "[l]ike virtually all companies that find themselves the target of a PAGA or class-action lawsuit," Monroe's business "negotiated a settlement rather than take the risk of losing in court and facing the onerous maximum penalties prescribed by the law."[5]

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[4] *See* Ken Mashinchi, *Grove and Salas Contend that PAGA Lawsuits Are Killing Kern County Businesses*, ABC 23 News (Sept. 6, 2016), https://www.turnto23.com/news/local-news/grove-and-salas-contend-that-paga-lawsuits-are-killing-kern-county-businesses.

[5] *See* Ken Monroe, *Op-Ed: Frivolous PAGA Lawsuits are Making Some Lawyers Rich, But They Aren't Helping Workers or Employers*, L.A. Times (Dec. 6, 2018), https://www.latimes.com/

Another small business owner had received a letter asserting various PAGA violations from a law firm that filed over 800 similar claims. "They throw those accusations at you and expect you to defend yourself and just bury you in paperwork. We've already spent well north of $100,000 in attorney fees and that doesn't include all the staff time to audit all the payroll records and time sheets," the business owner said.[6]

D. No one benefits from this shakedown litigation—including the state of California. Although, in theory, 75 percent of any recovery in a PAGA action goes to the State, *see* Cal. Lab. Code § 2699(i), plaintiffs' attorneys routinely receive a third of PAGA settlements, and can elect to allocate an even smaller amount as PAGA penalties. Consider, for example, a $10 million settlement in a PAGA case. One might think that the State would recover $7.5 million, but that is hardly how it works in practice. Instead, the plaintiffs' attorneys will immediately take $3.3 million off the top. Of the remaining $6.7 million, attorneys will generally allocate only a small portion, say $500,000, to the PAGA claim, while the rest may be allocated to the class-action settlement for the underlying California Labor Code violations (even if the plaintiffs have signed enforceable class-action waivers). The result of these procedural machinations is

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opinion/op-ed/la-oe-monroe-paga-small-businesses-20181206-story.html.

[6] *See* Ken Monroe, *Another Voice: It's Time to Repeal PAGA Now. The Fate of Small Businesses Hinges On It*, Sacramento Business Journal (Oct. 14, 2021), https://www.bizjournals.com/sacramento/news/2021/10/14/paga-family-business-association.html.

that of a $10 million settlement, the State will receive only a pittance: $375,000. Again, this scenario is not hypothetical; this is exactly how PAGA litigation plays out in real life. *See, e.g.*, *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869, at *2 (N.D. Cal. Oct. 11, 2016) (allocating $20,000 of a $6 million settlement to the PAGA claim); *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 580 (2010) (affirming a settlement allocating $0 of an approximately $9 million settlement to the PAGA claim).

E. *Viking River* should have put an end to this shakedown litigation. *Supra* Part I. But since *Viking River*, the flow of PAGA actions has continued unabated. In the year preceding *Viking River*, plaintiffs filed more than 6,500 PAGA notices. *PAGA Case Search*, Cal. Dep't of Indus. Relations (June 1, 2021 to July 1, 2022).[7] For the same time period following *Viking River*, plaintiffs filed more than 7,000 notices. *Id.* (June 1, 2022 to July 1, 2023). And the California Supreme Court's recent decision in *Adolph* has opened the floodgate, even further. In the roughly half-year since that case was decided, plaintiffs filed more than 4,000 PAGA notices, a nearly 30 percent increase over the same period the year before. *Id.* (July 18, 2023 to Jan. 11, 2024).

Same as before, PAGA is being used to extort settlements from employers large and small for technical (at best) violations of California law. To take one example, consider *Moreno v. M&J Seafood Co.*, 2023 WL 6538411 (Cal. Super. Ct. Aug. 23, 2023). There, the

[7] https://cadir.my.salesforce-sites.com/PagaSearch/.

parties recently settled plaintiffs' California Labor Code claims for $750,410 with just $20,000 allocated to plaintiffs' PAGA claims, and more than $250,000 allocated to class counsel. As mentioned above, *Moreno*'s settlement structure is by no means unique—and it continues to be utilized. *See also*, *e.g.*, *Ramsey v. Packaging Corp. of Am.*, 2023 WL 9116636 (Cal. Super. Ct. Nov. 17, 2023) (nearly $975,000 settlement of Labor Code claims with $80,000 allocated to PAGA claims and $325,000 allocated to class counsel); *Sam v. Concordance Healthcare Sols. LLC*, 2023 WL 6467612 (Cal. Super. Ct. Aug. 4, 2023) ($450,000 settlement of Labor Code claims with $67,500 allocated to PAGA claims and $150,050 allocated to class counsel); *Fox v. Cares Cmty. Health*, 2023 WL 6538410 (Cal. Super. Ct. July 27, 2023) ($770,000 settlement, with $70,000 allocated to PAGA claims and $269,500 allocated to class counsel).

*Viking River* should have brought this type of litigation to an end where the employee agreed to arbitrate bilaterally. But as these and many other cases illustrate, by disregarding *Viking River*, California has undermined the supremacy of federal law, and in the process entrenched these significant harms for its employers.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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