No. 23-769

IN THE

Supreme Court of the United States

LYFT, INC.,

Petitioner,

v.

MILLION SEIFU,

Respondent.

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

BRIEF OF WASHINGTON LEGAL FOUNDATION AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Whether the Federal Arbitration Act requires arbitrable individual PAGA claims to be severed completely from non-individual PAGA claims.

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INTEREST OF AMICUS CURIAE*

Washington Legal Foundation is a nonprofit, public-interest law firm and policy center with supporters nationwide. WLF promotes free enterprise, individual rights, limited government, and the rule of law. It often appears as amicus urging the Court to stop California courts from ignoring the Federal Arbitration Act. *See, e.g.*, *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639 (2022); *DIRECTV, Inc. v. Imburgia*, 577 U.S. 47 (2015).

INTRODUCTION

The Supremacy Clause is not hard to comprehend. The Constitution, treaties, and laws of the United States are "the supreme Law of the Land * * * any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, cl. 2. In other words, when state and federal law conflict, federal law prevails.

California, however, thinks it is special. It continually enforces laws that conflict with the Constitution or are preempted by federal laws. Even when this Court has repeatedly explained why California cannot enforce laws in a particular area, the State barges ahead and tries to find creative ways to circumvent those rulings. The goal is simple. If it can find enough ways to ignore this Court's decisions, California expects that some of those attempts will

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* No party's counsel authored any part of this brief. No person or entity, other than Washington Legal Foundation and its counsel, paid for the brief's preparation or submission. All parties were timely notified of WLF's intent to file this brief.

avoid the Court's review. In short, the State has taken a shotgun approach to avoiding federal preemption.

The FAA has drawn particular scorn from California politicians and judges. If it were up to them, all arbitration agreements between workers and businesses would be unenforceable. But because the FAA provides that arbitration agreements must be enforced like any other contract, denizens of Sacramento continue to search for ways around this federal-law requirement.

Just two terms ago, this Court rejected California's attempt to circumvent the FAA by using the State's Private Attorneys General Act. The Court held that plaintiffs could not escape the FAA's requirements by cloaking themselves in PAGA's veil. The Supreme Court of California and California Court of Appeal, however, have tried to find another way around the FAA's mandate.

This Court cannot allow California to openly flout this Court's decisions. Even the dissenting justice in *Viking River* should reject California's attempt to ignore binding precedent from this Court. *See DIRECTV,* 577 U.S. at 53 (state courts are bound by this Court's interpretation of federal law); *Elmendorf v. Taylor*, 23 U.S. 152, 160 (1825) (same). Thus, this Court should grant the petition and remind California's appellate courts that they cannot blithely ignore this Court's decisions.

STATEMENT

Lyft and Uber are ubiquitous in American society. Lyft's smartphone application connects

drivers with individuals needing a ride. Pet. App. 6. Drivers wishing to participate in this matching must agree to arbitrate all disputes they have with Lyft "on an individual basis, not as a plaintiff or class member in any class, group, representative action, or proceeding." *Id.* The arbitration clause does not apply if the drivers opt out of the arbitration provision. *See* Pet. App. 7.

If this is not explicit enough, the parties' contract specifically bars drivers from "bring[ing] a representative action on behalf of others under the Private Attorneys General Act of 2004 (PAGA), California Labor Code § 2698 et seq., in any court or in arbitration." Pet. App. 7. Million Seifu agreed to this provision and did not opt out of the arbitration provision in the parties' contract. *See id.* Still, he sued Lyft under PAGA claiming that Lyft violated California law by misclassifying drivers as independent contractors. Pet. App. 7-8.

Because Seifu breached the contract, Lyft sought to compel arbitration under the FAA. Pet. App. 8, 26. Blatantly ignoring this Court's binding precedent, the trial court denied the motion because of the Supreme Court of California's decision in *Iskanian v. CLS Transp. L.A., LLC*, 327 P.3d 129 (Cal. 2014). Pet. App. 8. The Court of Appeal affirmed that order, Pet. App. 23, 27-31, and the Supreme Court of California let that decision stand.

This Court then granted certiorari, vacated the Court of Appeal's judgment, and remanded for proceedings consistent with *Viking River*. *See Lyft, Inc. v. Seifu*, 142 S. Ct. 2860, 2860 (2022) (per curiam). (The lack of a dissent from this order suggests that

even the dissenting justice in *Viking River* conceded that it controlled the outcome here.)

On remand, the California Court of Appeal did not take that command seriously. Although it held that Seifu must arbitrate his individual claim, Pet. App. 5, 13-14, it also held that he could proceed with his representative claim. Pet. App. 5, 14-20. The Supreme Court of California declined to review the decision after it reached the same conclusion in *Adolph v. Uber Techs., Inc.*, 532 P.3d 682 (Cal. 2023). *See* Pet. App. 1-2. Lyft now seeks review of the decision ignoring *Viking River*.

SUMMARY OF ARGUMENT

I. For decades, courts in California (both state and federal) have battled this Court over arbitration. California courts do not want to enforce the FAA, while this Court gives effect to the statute's language and the Supremacy Clause. The decision here is one of the most brazen examples of California's determination to skirt the FAA; if California courts ignore this Court's precedent enough, they think that some of those decisions will evade review. This Court should disabuse California courts of this belief and grant the petition.

II.A. The Court of Appeal did not hide its animosity towards this Court's *Viking River* decision. Claiming that it was not bound by *Viking River*—even after this Court vacated the prior decision and remanded for proceedings consistent with *Viking River*—the court applied the same rule that this Court rejected.

The Court of Appeal's decision prevents parties from enforcing their arbitration agreements. At least four times, however, this Court has held that sometimes claims must be severed to comply with the FAA and the parties' arbitration agreement. But the Court of Appeal refused to apply that well-settled law here, holding instead that there is no need to sever and thereby dismiss the representative claims.

B. If the Court of Appeal's decision was isolated, it may not warrant this Court's review. But after it issued the decision here, the Supreme Court of California reached the same result in a similar case and cited the Court of Appeal's decision with approval. True, the Supreme Court of California tried to assuage any preemption fears by coming up with a new procedure for PAGA suits. But that procedure only highlights the preemption problems. Under that procedure, companies must either give up their right to appeal in representative actions or litigate individual actions in court. Either way, the parties' arbitration clause is not given effect. So the time is now to grant review and remind California courts that they too must follow this Court's opinions.

ARGUMENT

I. REVIEW IS NEEDED BECAUSE CALIFORNIA COURTS REFUSE TO ENFORCE THE FEDERAL ARBITRATION ACT.

The Court of Appeal's decision flouted this Court's preemption precedent. The Supreme Court of California later blessed this lawless action by reaching the same result in another case. If this Court wants state courts to faithfully apply its decisions, it

should grant the petition and once again remind California courts that they are not the final arbiters of federal law.

The list of areas where California courts refuse to properly apply this Court's decisions is long. Arbitration, however, is particularly despised by California jurists. The FAA provides that a contractual arbitration clause is "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. This "broad principle of enforc[ing]" arbitration provisions "withdraws the power of the states to require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration." *Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681, 684 (1996) (cleaned up).

California refuses to follow the FAA's simple command. It continues to build barriers to companies' enforcing arbitration agreements. In *DIRECTV*, the Court reversed a California Court of Appeal decision holding a class-arbitration waiver unenforceable under state law. The Court held that the FAA preempted California's class-arbitration bar. *DIRECTV*, 577 U.S. at 58 (citation omitted).

As the Court explained, the California Court of Appeal's "view that state law retains independent force even after it has been authoritatively invalidated by this Court" is wrong. *DIRECTV*, 577 U.S. at 57. Rather, state courts must follow this Court's commands. Yet here the Court of Appeal made a similar mistake by failing to give effect to the Court's *Viking River* decision.

The Court of Appeal's decision in *DIRECTV* followed the Supreme Court of California's decision in *Discover Bank v. Superior Ct. of L.A. Cnty.*, 113 P.3d 1100 (Cal. 2005). There, the court held that the FAA did not preempt a California law barring class-arbitration waivers. *Id.* at 1110-17. The decision stood for six years until this Court abrogated it in *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011).

As the Court explained when abrogating *Discover Bank*, the supposedly general nature of a state law cannot save one "that stand[s] as an obstacle to the accomplishment of the FAA's objectives." *AT&T*, 563 U.S. at 343 (citations omitted). Otherwise, that loophole would destroy the FAA. *See id.* (citing *Am. Tel. & Tel. Co. v. Cen. Off. Tel., Inc.*, 524 U.S. 214, 227-28 (1998)). Yet that is what the Court of Appeal's decision does here. It destroys the FAA's goal of making arbitration provisions enforceable—even in States that wish not to enforce them.

Regrettably, filing in California federal courts does not solve the problem. In *Lamps Plus, Inc. v. Varela*, 139 S. Ct. 1407 (2019), this Court reversed the Ninth Circuit's decision circumventing the FAA. There, the Ninth Circuit found ambiguity in an arbitration provision. Applying California's rule of interpreting contracts against the drafter, the Ninth Circuit held that the ambiguity allowed for class arbitration.

Reversing the Ninth Circuit, the Court explained that "requiring class arbitration on the basis of a doctrine that does not help to determine the meaning that the two parties gave to the words" was "inconsistent with the foundational FAA principle

that arbitration is a matter of consent." *Lamps Plus*, 139 S. Ct. at 1418 (cleaned up). In other words, the Ninth Circuit tried to apply a general rule of California contract interpretation while ignoring the FAA's preemption provision. That it could not do.

This Court's FAA case law therefore does not protect California litigants. They are unsure whether courts will enforce their arbitration agreements as written. Rather, they must constantly worry that they gave up something in return for an arbitration clause only to have that arbitration clause ignored by a California court. This Court should stop the madness and grant the petition to make an example of the Court of Appeals's decision here.

II. REVIEW IS NEEDED BECAUSE CALIFORNIA COURTS ARE OPENLY DEFYING THIS COURT'S *VIKING RIVER* DECISION.

A. The Court of Appeal's Decision Directly Conflicts With *Viking River*.

The Court of Appeal's decision here continues this trend of California courts' refusing to properly apply the FAA. Here, however, they have chosen not to even pretend that they are complying with this Court's decision. Rather, they held that this Court's decision in *Viking River* was based on an incorrect prediction about what California law is. Nothing could be further from the truth. *Viking River* was a decision applying the FAA and the Supremacy Clause. This Court's interpretation of those federal laws binds state courts. California's refusal to follow that binding precedent cries out for review.

Viking River's holding was unambiguous and every 1L can understand it. When the parties' arbitration agreement bars class-wide and representative actions, individual PAGA claims must be severed from other PAGA claims (which are then dismissed), while the individual claims are sent to arbitration. This holding overturned precedent that previously said that PAGA "contain[s] what is effectively a rule of claim joinder" that "allow[s] a party to unite multiple claims against an opposing party in a single action." *Viking Rive*r, 596 U.S. at 646. This California-specific rule was announced for only one reason—it gave California courts the ability to ignore the FAA. Because "California law prohibit[ed] division of a PAGA action into constituent claims," plaintiffs could choose to litigate all the claims—even those expressly covered by the parties' arbitration provision. *See id.* at 649.

This Court rejected this California rule aimed at circumventing the FAA. *Viking River* held that the FAA requires California to allow "division of PAGA actions into individual and non-individual claims through an agreement to arbitrate." 596 U.S. at 662. This is because California's rule barring "contractual division of PAGA actions into constituent claims unduly circumscribe[d] the freedom of parties to determine the issues subject to arbitration and the rules by which they will arbitrate, and d[id] so in a way that violate[d] the fundamental principle that arbitration is a matter of consent." *Id.* at 659 (cleaned up).

Refusing to divide PAGA claims was not the only problem with California's attempt at avoiding the FAA. This Court has held that "a party may not

be compelled under the FAA to submit to class arbitration unless there is a contractual basis for concluding that the party *agreed* to do so." *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 684 (2010). But under the California rule, there was no way to sever the individual claims from the representative claims. So even if the plaintiff agreed to arbitration, it forced the defendant to defend against representative claims in an arbitration proceeding. As shown by the arbitration clause here, many defendants do not want to engage in representative arbitration. This is because the lack of meaningful appellate review makes arbitration "poorly suited to the higher stakes of massive-scale disputes." *Viking River* 596 U.S. at 662 (citation omitted).

Given this practice of requiring parties to abide by an all-or-nothing rule, parties withheld all "PAGA claims from arbitration." *Viking River*, 596 U.S. at 641. This, of course, meant that many companies gave something up in return for nothing. A company may agree to pay an independent contractor more money if that independent contractor agrees to arbitrate claims against the company solely on an individual basis. But if the company cannot enforce that arbitration provision without also allowing for representative proceedings to move forward, the company is paying the independent contractor more without receiving anything in return. And moving forward, the company will just pay her less.

Viking River prevents California courts from picking the issues that can be arbitrated. Under this Court's decision, the FAA requires PAGA actions to be bifurcated when the parties have agreed to

arbitrate claims individually. *See Viking River*, 596 U.S. at 663. The individual claims can then be arbitrated per the parties' agreement and the representative claims must be dismissed because the named representative can no longer maintain the claims.

Viking River flows naturally from this Court's precedent guarding the ability of parties to decide which disputes to arbitrate. For example, in *First Options of Chi., Inc. v. Kaplan*, this Court held that "a party can be forced to arbitrate only those issues it specifically has agreed to submit to arbitration." 514 U.S. 938, 945 (1995). A party cannot be forced to arbitrate claims if the arbitration agreement does not cover those claims. At the same time, a party cannot be forced to litigate a claim in court if the arbitration agreement requires the named plaintiff to proceed in arbitration.

California courts detest this rule and try to allow individuals to have their cake and eat it too. When individuals sue and the arbitration agreement covers the claim, California courts try to give individuals the right to proceed in court. That is what happened when this case was first before the Court. And that is why the Court vacated the Court of Appeal's decision and remanded for further proceedings.

Viking River broke no new ground in requiring the complete severance of claims to enforce the FAA's mandate of respecting parties' rights under arbitration agreements. In fact, it was at least the fourth time that the Court ordered such severance to comply with the FAA and the parties' contracts.

Forty years ago, in *Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, the petitioner argued that district courts should wait to compel arbitration until after resolution of state-court actions covering disputes between the parties that were not governed by arbitration agreements. *See* 460 U.S. 1, 19-20 (1983). This Court rejected that argument and affirmed the lower court's order compelling arbitration. Although resolving "related disputes in different forums" would "require[] piecemeal resolution," such bifurcation is required "when necessary to give effect to an arbitration agreement." *Id.* at 20. In *Moses H. Cone*, that meant that the "two disputes w[ould] be resolved separately—one in arbitration, and the other (if at all) in state-court litigation." *Id.* (emphasis removed).

Just two years later, the Court was presented with a similar scenario in *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213 (1985). There, one party sought to compel arbitration of state-law claims but not of related federal claims. *Id.* at 215. Reversing the Ninth Circuit's decision declining to compel arbitration, this Court held that courts must bifurcate claims "even where the result would be the possibly inefficient maintenance of separate proceedings in different forums." *Id.* at 217. The Court viewed the case as controlled by *Moses H. Cone*. *See id.* at 220-21. Again, when the parties agree to arbitrate some claims and not others, the FAA requires that state (and federal) courts give effect to that choice.

The rule requiring claims to be severed to give effect to parties' arbitration agreements is so well settled that this Court summarily vacated a state court decision that refused to do so. In *KPMG LLP v.*

Cocchi, a state court declined to compel arbitration because some claims were not arbitrable. 565 U.S. 18, 20 (2011) (per curiam). Finding that this error was grievous, the Court granted certiorari and sent the case back for further proceedings because the FAA sometimes requires "separate proceedings in different forums.'" *Id.* at 22 (cleaned up).

That complete severance here would require the dismissal of the representative PAGA claims, *see Viking River*, 596 U.S. at 662-63, is immaterial. As *Viking River* emphasizes, allowing California courts to enforce PAGA's "built-in mechanism of claim joinder" to protect PAGA claims from the consequences of arbitration agreements "is incompatible with the FAA." *Id.* at 659-62.

Here, the California courts' decisions are worse than *KPMG*. There, the Florida courts declined to apply 30-year-old law. Here, the California courts are not applying a one-year-old precedent. And they are refusing to do so despite this Court's vacating their prior decisions in the same litigation and remanding for further proceedings consistent with *Viking River*. This textbook example of state courts' ignoring this Court's binding judgment invites this Court's review—either full or summary.

The California Court of Appeal held that the FAA does not require completely splitting the arbitrable individual PAGA claim in Seifu's suit from the non-individual PAGA claim, which would also require dismissing the non-individual PAGA claim. It asserted that it was "not bound by" this court's decision in "*Viking River*." Pet. App. 5. It is hard to imagine a more flagrant rebuke of this Court than for

an intermediate state appellate court to say it is not bound by this Court's pronouncement on federal law. Yet that is exactly what happened here. This Court should grant the petition to remind the California Court of Appeal that it is not the final arbiter of the FAA or the United States Constitution.

Again, *Viking River* held that the FAA and the Supremacy Clause require that claims be completely severed if the parties' arbitration agreement covers some claims but not others. This is not a prediction of California law that California state courts can ignore. Rather, it is an interpretation of federal law that every court in this country must follow and apply, even though it requires dismissal of the non-individual PAGA claim. This Court's decision vacating the Court of Appeal's earlier decision in this case and remanding for further proceedings highlights this fact. But just as the Florida courts did in *KPMG*, the California courts are ignoring this Court's holding. This Court should grant the petition to ensure that other state courts don't feel emboldened to also ignore *Viking River*.

The Court of Appeal also took away the parties' ability to decide which claims could and could not be arbitrated. But in *Viking River* this Court held that parties have the right to "determine the issues subject to arbitration." 596 U.S. at 659 (cleaned up). State courts cannot bypass this rule by permitting plaintiffs to both arbitrate and litigate their claims. *See id.* at 660. The FAA thus requires that state courts sever entirely individual PAGA claims from non-individual PAGA claims and dismiss the non-individual claims. *Id.* at 663. The Court of Appeal's refusal to follow *Viking River* on remand deserves this Court's review.

B. The Supreme Court of California's *Adolph* Decision Conflicts With *Viking River*.

There is no reason to wait for further percolation of the issue presented in lower courts. The Supreme Court of California has already issued a definitive ruling that makes the very errors that the Court of Appeal made here. Trying to save the non-individual PAGA claims from dismissal as required by the FAA, *Adolph* held that individual and non-individual PAGA claims "remai[n] part of the same action." 532 P.3d at 693. This tracks the Court of Appeal's decision here. *See* Pet. App. 19. That is no surprise because *Adolph* cited with approval the Court of Appeal's opinion here. 532 P.3d at 691. So like the Court of Appeal's decision here, *Adolph*—which binds all California state courts—refused to follow *Viking River*.

Adolph errs in elevating state-law considerations above the FAA and the Supremacy Clause. The Supreme Court of California held that "[n]othing in PAGA * * * suggests that arbitrating individual claims effects a severance" but that a procedural rule "makes clear that the cause remains one action." *Adolph*, 532 P.3d at 693. In other words, it does not matter whether some claims are arbitrable and others are not under the parties' arbitration agreement. According to *Adolph*, California state law controls, and all the claims are part of the same action no matter what.

Still, credit is due to the Supreme Court of California for at least pretending to care about the preemption problems its *Adolph* decision creates. The

court held that superior courts "may exercise [their] discretion [under California law] to stay the non-individual claims pending the outcome of the arbitration." *Adolph*, 532 P.3d at 692. Under this process, "[i]f the arbitrator determines that [the plaintiff] is an aggrieved employee in the process of adjudicating his individual PAGA claim, that determination * * * would be binding on the [superior] court, and [the plaintiff] would continue to have standing to litigate his non-individual claims." *Id.* (citation omitted). The opposite would also be true. If the arbitrator found for the employer, the superior court would give effect to that determination by dismissing the representative claims. *Id.* at 692-93.

But this procedure solves nothing. It only highlights California courts' FAA violations. If California courts complied with this Court's *Viking River* decision, a stay would be unnecessary, since *Viking River* expressly requires the dismissal of the representative PAGA claim to implement the FAA's mandate. 596 U.S. at 662-63. California courts' procedural rule circumventing *Viking River*'s dismissal rule—which this Court adopted to ensure the FAA properly protects parties' arbitration rights as to PAGA claims—is preempted by the FAA.

The Supreme Court of California's proposed solution also faces other problems. The FAA preempts state laws that change arbitration's stakes. *See AT&T*, 563 U.S. at 350. *Adolph* violates this rule because it requires that courts use arbitration findings on the individual claims when determining the viability of representative claims. So rather than resolving only individual claims, arbitration becomes the playing field for both the individual and

representative claims. Again, many parties do not want to arbitrate representative claims because there is no chance at meaningful appellate review. Although arbitration works well for individual claims, some companies have decided that the advantages of arbitration are outweighed by the risks of not having an appellate forum to litigation issues.

So under California law—both before and after this Court's *Viking River* decision—parties cannot agree to have only individual claims go to arbitration. Rather, they face a choice between having all the claims decided by an arbitrator or having to litigate all the claims in court. This violates the FAA and the Supremacy Clause because it deprives parties of their right to decide the scope of arbitration. Thus, the Supreme Court of California's "solution" in *Adolph* is merely an attempt at tricking this Court into not reviewing that incorrect decision.

Respondent will likely argue that the Court of Appeal here and the Supreme Court of California in *Adolph* were just correcting an incorrect prediction of California law by this Court. *See* Pet. App. 5; *Adolph*, 532 P.3d at 689-90. And it is true that state courts of last resort are "the final arbiter of what is state law." *West v. Am. Tel. & Tel. Co.*, 311 U.S. 223, 236 (1940). But this Court has the final say on issues of federal law. *See Cooper v. Aaron*, 358 U.S. 1, 18 (1958). This means that no matter what California law says, the Court of Appeal and Supreme Court of California had to follow *Viking River*'s holding about what the FAA requires.

California courts, however, knew better. As they have done repeatedly, they searched for a way

around this Court's holding. They came up with a rule that essentially reimposed the anti-severability rule that this Court held was preempted in *Viking River*. They lacked the power to create this workaround. Even if *Viking River* "seriously impair[s] the state's ability to collect and distribute civil penalties under" PAGA, *Adolph*, 532 P.3d at 694, the correct response is to ask Congress to amend the FAA. Imagine if Southern States were allowed to create workarounds to this Court's civil-rights decisions in the 1960s. No one would question the need for this Court to grant certiorari to reinforce the supremacy of federal law. That is exactly what the Court should do here. It should grant the petition and remind California courts that they are not the final arbiters of federal law.

CONCLUSION

This Court should grant the petition.

Respectfully submitted,

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