

No. 23A-\_\_\_\_\_

IN THE  
*Supreme Court of the United States*

---

UBER TECHNOLOGIES, INC.,

*Applicant,*

*v.*

ERIK ADOLPH,

*Respondent.*

---

APPLICATION FOR AN EXTENSION OF TIME  
WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI  
TO THE CALIFORNIA COURT OF APPEAL

---

SOPHIA B. COLLINS  
ANDREW M. SPURCHISE  
LITTLER MENDELSON, P.C.  
900 Third Avenue  
New York, NY 10022

JOSEPH E. BARAKAT  
GIBSON, DUNN & CRUTCHER LLP  
2001 Ross Avenue, Suite 2100  
Dallas, TX 75201

THEANE D. EVANGELIS  
*Counsel of Record*  
BLAINE H. EVANSON  
BRADLEY J. HAMBURGER  
ALEXANDER N. HARRIS  
PATRICK J. FUSTER  
GIBSON, DUNN & CRUTCHER LLP  
333 South Grand Avenue  
Los Angeles, CA 90071  
(213) 229-7000  
tevangelis@gibsondunn.com

*Counsel for Applicant Uber Technologies, Inc.*

TO THE HONORABLE ELENA KAGAN, JUSTICE OF THE UNITED STATES AND  
CIRCUIT JUSTICE FOR THE NINTH CIRCUIT:

Under this Court’s Rule 13.5, applicant Uber Technologies, Inc., respectfully requests a 60-day extension of time, to and including July 12, 2024, within which to file a petition for a writ of certiorari to review the judgment of the California Court of Appeal.\* The California Supreme Court issued an opinion in this case on July 17, 2023, but remanded to the Court of Appeal for further proceedings. App., *infra*, 11a. On remand, the California Court of Appeal entered a final judgment on October 31, 2023. *Id.* at 40a. The California Supreme Court denied applicant’s timely petition for review on February 14, 2024. *Id.* at 48a. Unless extended, the time within which to file a petition for a writ of certiorari will expire on May 13, 2024. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1257. Counsel for respondent Erik Adolph does not oppose this request.

1. This case presents an important question concerning the Federal Arbitration Act (FAA). In *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639 (2022), this Court held that the FAA preempts California law “insofar as it precludes division of” actions brought under the California Labor Code Private Attorneys General Act (PAGA) “into individual and non-individual claims through an agreement to arbitrate.” *Id.* at 662. This Court explained that the individual PAGA claim must be severed from the non-individual claims and “committed to a separate proceeding” for arbitration. *Id.* at 663. Here, however, the California Supreme Court held that PAGA

---

\* Under this Court’s Rule 29.6, applicant Uber Technologies, Inc. states that it is not publicly traded and has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

claims constitute “a single action” in which the individual PAGA claim compelled to arbitration remains in court for the purpose of allowing a plaintiff to establish statutory standing to pursue the non-individual claims. App., *infra*, 23a-24a; see also *Johnson v. Lowe’s Home Centers, LLC*, 93 F.4th 459, 465 (9th Cir. 2024) (rejecting same preemption defense and endorsing this narrow interpretation of *Viking River*).

a. Applicant is a technology company that developed the smartphone application known as the “Eats App,” which connects local merchants, consumers, and independent delivery drivers to facilitate the purchase and delivery of food and drink. App., *infra*, 3a. Respondent is a driver who signed up to use the Eats App in March 2019 and agreed to an arbitration provision. *Ibid*.

b. Despite agreeing to arbitrate disputes with applicant on an individualized basis, respondent brought (as relevant) a putative PAGA action that sought civil penalties on the theory that applicant allegedly misclassified drivers as independent contractors. App., *infra*, 3a-4a. Applicant moved to compel arbitration as to respondent’s alleged status as an “aggrieved employee” with standing to pursue a PAGA claim. *Id.* at 4a. The trial court denied that motion. *Ibid*.

c. Affirming, the California Court of Appeal held that the PAGA claim was not subject to arbitration because “it was brought on behalf of the state, which [wa]s not a signatory to the” Agreement. App., *infra*, 4a-5a. The court also reasoned that a PAGA action “cannot be split into individual arbitrable and representative nonarbitrable components.” *Id.* at 6a.

d. While applicant’s petition for review was pending in the California Supreme Court, this Court held in *Viking River* that the FAA preempts the *Iskanian*

anti-severability rule for PAGA actions. 596 U.S. at 662. This Court explained that PAGA’s “built-in mechanism of claim joinder,” which “allows plaintiffs to unite a massive number of claims in a single package suit,” conflicted with the FAA to the extent it coerces parties to forgo arbitration or else relinquish their right under the FAA to decide “which claims are subject to arbitration.” *Id.* at 659, 661-662. When the parties agree to arbitrate the individual component of a PAGA action, the individual claim must be “pared away” and “committed to a separate proceeding,” even if the result is that the plaintiff no longer has statutory standing to maintain the non-individual claims in court. *Id.* at 663.

e. The California Supreme Court granted applicant’s petition, limited to the question whether a PAGA plaintiff maintains standing to pursue non-individual PAGA claims once her individual claim has been compelled to arbitration. App., *infra*, 13a-14a. After acknowledging that a PAGA plaintiff maintains standing only by virtue of maintaining her own dispute in a single action, *id.* at 24a, the court held that the individual claim, even after being nominally compelled to arbitration, remains “part of the same action” with the non-individual claims in court, *id.* at 29a. The court also rejected applicants’ argument that the FAA and *Viking River* preempt its interpretation of PAGA. In the court’s view, PAGA would not conflict with the parties’ rights under the FAA if the trial court were to “exercise its discretion to stay the non-individual claims pending the outcome of arbitration” and then borrow that outcome to determine PAGA standing in court for the non-individual claims. *Id.* at 28a. The court remanded for further proceedings “regarding the proper interpretation of the [parties’] arbitration agreement.” *Id.* at 36a.

f. On remand, the California Court of Appeal held that respondent agreed to arbitrate his individual PAGA claim but, per the California Supreme Court’s decision, retained standing under PAGA to pursue non-individual PAGA claims in court. App., *infra*, 44a–45a.

g. The California Supreme Court denied applicant’s petition for review on February 14, 2024.

2. The California Court of Appeal’s decision conflicts with the FAA and *Viking River*. In line with the California Supreme Court’s interlocutory decision, the Court of Appeal nominally compelled the individual PAGA claim to arbitration but then allowed respondent to rely on that arbitrable claim for purposes of proving statutory standing for the non-individual claims in court. That reasoning defies *Viking River*’s central federal holding that the FAA requires an individual PAGA claim to be “pared away” and “committed to a separate proceeding” when parties have agreed to arbitrate only individualized issues. 596 U.S. at 663. Neither of the California Supreme Court’s two reasons for discounting *Viking River* hold up to scrutiny.

First, the court suggested that the trial court could prevent relitigation of arbitrable issues by staying court proceedings pending arbitration. App., *infra*, 27a–28a. But the court left applicant’s federal rights at the mercy of the trial courts’ “exercise [of] their discretion.” *Id.* at 28a. And the embrace of the potential for a stay only confirms the underlying preemption problem because, if the California courts had fully compelled the individual PAGA claim to arbitration, then a stay of the non-individual claims pending arbitration would not have been necessary.

Second, the California Supreme Court expanded the scope and stakes of the arbitration to which the parties agreed. *Viking River* made clear that PAGA’s mandatory joinder rule interfered with the FAA by “coerc[ing] parties into withholding PAGA claims from arbitration” because the “absence of ‘multilayered review’ in arbitral proceedings” makes them “poorly suited to the higher stakes’ of massive-scale disputes of this kind.” 596 U.S. at 661-662. And the preclusion rule adopted in this case likewise transforms a low-stakes arbitration of an individual PAGA claim into a high-stakes contest over standing for non-individual PAGA claims. Whether through joinder on the front end or preclusion on the back end, a party must effectively tie the non-individual (non-arbitrable) claims to the outcome of the individual (arbitrable) claim and thereby imposes the same dilemma on the parties: “either go along with an arbitration in which the range of issues under consideration is determined by coercion rather than consent, or else forgo arbitration altogether.” *Id.* at 661.

3. Counsel for applicant has had significant professional responsibilities in other time-sensitive matters shortly before the May 13, 2024 deadline, including preparing for and presenting oral argument in *Grants Pass v. Johnson*, No. 23-175 (U.S.), on April 22, 2024. Counsel also will be in trial beginning May 13, 2024, until June 6, 2024, in *Campbell v. Uber Technologies, Inc.*, No. 2084CV01519-BLS1 (Mass. Super. Ct.). Additional time is necessary to permit counsel to prepare and file a petition that would be helpful to the Court.

4. Counsel for respondent does not oppose the requested extension.

Accordingly, applicant respectfully requests that its time to file a petition for a writ of certiorari be extended by 60 days, to and including July 12, 2024.

Respectfully submitted.

SOPHIA B. COLLINS  
ANDREW M. SPURCHISE  
LITTLER MENDELSON, P.C.  
900 Third Avenue  
New York, NY 10022

JOSEPH E. BARAKAT  
GIBSON, DUNN & CRUTCHER LLP  
2001 Ross Avenue, Suite 2100  
Dallas, TX 75201

/s/ Theane D. Evangelis  
THEANE D. EVANGELIS  
*Counsel of Record*  
BLAINE H. EVANSON  
BRADLEY J. HAMBURGER  
ALEXANDER N. HARRIS  
PATRICK J. FUSTER  
GIBSON, DUNN & CRUTCHER LLP  
333 South Grand Avenue  
Los Angeles, CA 90071  
(213) 229-7000  
tevangelis@gibsondunn.com

*Counsel for Applicant Uber Technologies, Inc.*

April 30, 2024