

No. _____

IN THE
Supreme Court of the United States

POSTMATES, LLC (F/K/A POSTMATES, INC.),

Applicant,

v.

MELANIE WINNS, ET AL.,

Respondents.

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

THEANE D. EVANGELIS

Counsel of Record

BLAINE H. EVANSON

BRADLEY J. HAMBURGER

DHANANJAY S. MANTHRIPRAGADA

GIBSON, DUNN & CRUTCHER LLP

333 South Grand Avenue

Los Angeles, CA 90071

(213) 229-7000

tevangelis@gibsondunn.com

Counsel for Applicant-Petitioner

CORPORATE DISCLOSURE STATEMENT

According to this Court's Rule 29.6, undersigned counsel states that Postmates, LLC (f/k/a Postmates Inc.) is a wholly owned subsidiary of Uber Technologies, Inc.; and Uber is a publicly held corporation and not a subsidiary of any entity. Based solely on SEC filings regarding beneficial ownership of the stock of Uber, Uber is unaware of any shareholder who beneficially owns more than 10% of Uber's outstanding stock.

To the Honorable Elena Kagan, as Circuit Justice for the Ninth Circuit and the State of California:

Pursuant to this Court’s Rule 13.5, applicant-petitioner Postmates, LLC (“Postmates”) respectfully requests a 60-day extension of time, to and including March 14, 2022, within which to file a petition for a writ of certiorari to the California Court of Appeal.

The California Court of Appeal affirmed the trial court’s judgment denying Postmates’ motion to compel arbitration on July 20, 2021, *Winns v. Postmates Inc.*, 66 Cal. App. 5th 803 (2021) (Attachment A), and the California Supreme Court denied Postmates’ petition for review on October 13, 2021, *Winns v. Postmates Inc.*, No. S270638 (Cal., Oct. 13, 2021) (Attachment B). The time in which to file a petition for a writ of certiorari is currently set to expire on January 11, 2021, and this motion is being filed at least 10 days before the petition is due under Rules 13.5 and 30.2. This Court’s jurisdiction would be invoked under 28 U.S.C. § 1257(a).

BACKGROUND

1. Postmates operates an online and mobile platform that connects consumers with local merchants and, if consumers request delivery, independent couriers to facilitate the purchase, fulfillment, and, when applicable, local delivery of purchased products from merchants to consumers. *See* Attachment A at 1–2.

2. Respondents Melanie Ann Winns, Ralph John Hickey Jr., and Kristie Logan (collectively, “Respondents”) signed up to be couriers and each accepted Postmates’ Fleet Agreement. Attachment A at 2–3.

3. The Fleet Agreement contains a conspicuous “Mutual Arbitration Provision” that is “governed exclusively by the Federal Arbitration Act [‘FAA’].” Attachment A at 2. Couriers may opt out of arbitration by submitting an opt-out notice within 30 days of accepting the Fleet Agreement. *Id.* at 3. But couriers who do not opt out “agree to resolve any disputes” with Postmates “exclusively through final and binding arbitration instead of filing a lawsuit in court.” *Id.* at 2. It is undisputed that Respondents did not opt out of the Mutual Arbitration Provision, despite having had the opportunity to do so. *Id.* at 3.

4. The Mutual Arbitration Provision contains provisions entitled “Class Action Waiver” and “Representative Action Waiver.” *See* Attachment A at 3. Through these provisions, parties who choose not to opt out of arbitration agree to bring all claims against Postmates in individual arbitration, and not to bring a class, collective, or representative action. *Id.* For instance, the Representative Action Waiver states that both parties “waive their right to have any dispute or claim brought, heard or arbitrated as a representative action, or to participate in any representative action, and an arbitrator shall not have any authority to arbitrate a representative action.” *Id.*

5. Although Respondents agreed to resolve all disputes with Postmates in individual arbitration, they filed their operative first amended complaint against Postmates in San Francisco Superior Court in December 2017, seeking civil penalties under the California Labor Code Private Attorneys General Act (“PAGA”) and statutory damages under the California Labor Code on behalf of all couriers who used

the Postmates app to complete deliveries in California. Attachment A at 3–4; Cal. Lab. Code § 2699(a).

6. Postmates moved to compel arbitration of Respondents’ claims, and—as to their PAGA claim specifically—argued that Respondents should be compelled to arbitrate individually under *Epic Systems Corp. v. Lewis*, 138 S. Ct. 1612 (2018). Attachment A at 4. The trial court granted Postmates’ motion in part and compelled Respondents to arbitrate their individual Labor Code claims, but denied Postmates’ motion as to Respondents’ PAGA claim. *Id.* at 4–5. The trial court held that Respondents’ PAGA claim could not be compelled to arbitration under *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348 (2014), in which the California Supreme Court held that arbitration agreements requiring employees to arbitrate disputes with their employers individually rather than bring a PAGA claim in court are void as a matter of public policy. Attachment A at 5. The trial court also held that *Epic Systems* did not abrogate the so-called “*Iskanian* rule.” *Id.*

7. The California Court of Appeal affirmed on July 20, 2021, Attachment A at 15, and the California Supreme Court denied Postmates’ petition for review on October 13, 2021, Attachment B at 1.

8. This case raises an important question whether the *Iskanian* rule is preempted by the FAA. Both the California Supreme Court and Ninth Circuit have endorsed a unique, unwritten, and unprincipled “PAGA exception” to the FAA that directly conflicts with this Court’s command that arbitration agreements providing for individualized proceedings “must be enforced according to their terms.” *Epic Sys.*,

138 S. Ct. at 1620. This Court has recognized the importance of this question, as it recently granted certiorari on this exact question in *Viking River Cruises, Inc. v. Moriana*, No. 20-1573 (U.S., Dec. 15, 2021).

REASONS FOR GRANTING AN EXTENSION OF TIME

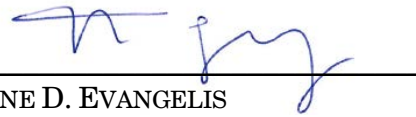
1. While this case worked its way through the California courts, Postmates simultaneously reached a class action and PAGA settlement with Respondents, which is currently pending court approval in *Postmates Classification Cases*, No. CJC-20-005068 (Super. Ct.), in San Francisco Superior Court. The trial court has granted preliminary approval of the settlement, and a final approval hearing is set for January 5, 2022.

2. Because the parties' class action settlement requires court approval and proceedings in this case are not stayed pending determination of that settlement, Postmates has continued to litigate the central issue to this case: whether the trial court erred in denying Postmates' motion to compel arbitration, because *Epic Systems* requires that the parties' arbitration agreement—and the Representative Action Waiver within that agreement—be enforced according to its terms.

3. Postmates intends to seek this Court's review of the California Court of Appeal's decision below if the pending settlement is not finally approved. Postmates therefore seeks a 60-day extension of its current January 11, 2022 deadline to file a petition for a writ of certiorari until March 14, 2022, to allow time for the trial court in *Postmates Classification Cases* to determine whether it will finally approve the pending class action settlement. A 60-day extension may obviate the need for

Postmates to file a petition for a writ of certiorari, and thus save the parties' and Court's resources, if the settlement is finally approved. It would also allow Postmates to reserve its right to file a petition for a writ of certiorari if the settlement is not finally approved.

Respectfully submitted.



THEANE D. EVANGELIS

Counsel of Record

BLAINE H. EVANSON

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DHANANJAY S. MANTHRIPRAGADA

GIBSON, DUNN & CRUTCHER LLP

333 South Grand Avenue

Los Angeles, CA 90071

(213) 229-7000

tevangelis@gibsondunn.com

Counsel for Applicant-Petitioner

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