

No. 21-1444

In The
Supreme Court of the United States

-----◆-----
Dolgen California, LLC,
Petitioner

v.

Tricia Galarasa,
Respondent

-----◆-----
On Petition For A Writ Of Certiorari
To The California Court of Appeals

-----◆-----
RESPONDENT'S BRIEF IN RESPONSE

-----◆-----
GLENN DANAS
Counsel of Record
CLARKSON LAW FIRM, P.C.
22525 Pacific Coast Highway
Malibu, CA 90265
Telephone: (213) 788-4050
Facsimile: (213) 788-4070
gdanas@clarksonlawfirm.com

MATTHEW BAINER
THE BAINER LAW FIRM
1999 Harrison St., Suite 1800
Oakland, CA 94612
Telephone: (510) 922-1802
mbainer@bainerlawfirm.com

Counsel for Respondent

QUESTION PRESENTED

Does the FAA require enforcement of an arbitration agreement providing that an employee cannot assert representative claims, including under PAGA, in any forum?¹

¹ Dollar General's framing of the question presented did not include "in any forum," but because this is the upshot of enforcement of Dollar General's arbitration provision, it is more accurate to provide that additional detail.

TABLE OF CONTENTS

	PAGE
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iii
RESPONSE TO THE PETITION	1
CONCLUSION	2

TABLE OF AUTHORITIES

PAGE(S)

Cases

Iskanian v. CLS Transportation Los Angeles, LLC,
327 P.3d 129 (Cal. 2014)1

Viking River Cruises v. Moriana,
No. 20-1573 (U.S. Jun. 15, 2022)1, 2

RESPONSE TO THE PETITION

Dollar General's petition raises the same question on which this Court granted certiorari on December 15, 2021, in *Viking River Cruises v. Moriana*, No. 20-1573, and which this Court decided in an opinion issued on June 15, 2022. Specifically, both cases present the question whether the Federal Arbitration Act (FAA) preempts the California Supreme Court's holding in *Iskanian v. CLS Transportation Los Angeles, LLC*, 327 P.3d 129 (Cal. 2014), that the right to bring a representative action under California's Private Attorneys General Act, or PAGA, cannot be waived by a private agreement, including an arbitration agreement.

Because Dollar General's attempt to enforce its arbitration provision's complete waiver of the right to bring a PAGA representative action was barred by *Iskanian*, both the state trial court and the California Court of Appeal held the provision unenforceable and rejected Dollar General's argument that subsequent decisions of this Court have effectively overruled *Iskanian*. The California Supreme Court denied review.

Dollar General's petition presents one issue only: whether the *Iskanian* rule is preempted by the FAA. This Court issued a decision last month on that issue in *Viking River Cruises*. The Court's normal practice in such circumstances is to hold other petitions presenting the same issue pending its decision in the case in which it granted certiorari, and it should follow that practice here. The petition presents no other issues and would add nothing to the Court's consideration of the question presented in *Viking River Cruises*. If the Court were to grant the Respondent's Petition for Rehearing in *Viking River*

Cruises (filed July 1, 2022), the Court should continue to hold Dollar General's petition until the Court renders a final decision in *Viking River Cruises*.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should either be denied or held pending this Court's final decision in *Viking River Cruises, Inc. v. Moriana*, No. 20-1573.

Dated: July 15, 2022

Respectfully submitted,

/s/ Glenn Danas

GLENN DANAS

Counsel of Record

CLARKSON LAW FIRM, P.C.

22525 Pacific Coast Highway

Malibu, CA 90265

Telephone: (213) 788-4050

Facsimile: (213) 788-4070

gdanas@clarksonlawfirm.com

MATTHEW BAINER

THE BAINER LAW FIRM

1999 Harrison St., Suite 1800

Oakland, CA 94612

Telephone: (510) 922-1802

mbainer@bainerlawfirm.com

Counsel for Respondent