20-1573 VIKING RIVER CRUISES, INC. V. MORIANA

DECISION BELOW: 2020 WL 5584508

LOWER COURT CASE NUMBER: B297327

QUESTION PRESENTED:

In *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011), and *Epic Systems Corp. v. Lewis*, 138 S.Ct. 1612 (2018), this Court held that when parties agree to resolve their disputes by individualized arbitration, those agreements are fully enforceable under the Federal Arbitration Act ("FAA"). Courts are not free to disregard or "reshape traditional individualized arbitration" by applying rules that demand collective or representational adjudication of certain claims. *Epic*, 138 S.Ct. at 1623. The FAA allows the parties not only to choose arbitration but to retain the benefits of arbitration by maintaining its traditional, bilateral form. While California courts follow *Concepcion* and *Epic* when a party to an individualized arbitration agreement tries to assert class-action claims, they refuse to do so when a party to such an agreement asserts representative claims under the California Private Attorneys General Act ("PAGA"), which—like a class action—allows aggrieved employees to seek monetary awards on a representative basis on behalf of other employees. *See Iskanian v. CLS Transp. Los Angeles, LLC*, 327 P.3d 129 (Cal. 2014). As a result, *Concepcion* and *Epic* have not caused bilateral arbitration to flourish in California, as this Court intended, but have merely caused FAA-defying representational litigation to shift form.

The question presented is:

Whether the Federal Arbitration Act requires enforcement of a bilateral arbitration agreement providing that an employee cannot raise representative claims, including under PAGA.

CERT. GRANTED 12/15/2021