S274671

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

ERIK ADOLPH,
Plaintiff and Respondent,

vs.

UBER TECHNOLOGIES, INC.,
Defendant and Appellant.

AFTER A DECISION BY THE COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIVISION THREE, CASE NOS. G059860 AND G060198; ORANGE COUNTY SUPERIOR COURT, CASE NO. 30-2019-01103801, THE HONORABLE KIRK H. NAKAMURA, JUDGE

AMICUS CURIAE BRIEF OF THE CIVIL JUSTICE ASSOCIATION OF CALIFORNIA IN SUPPORT OF DEFENDANT AND APPELLANT

Benjamin G. Shatz
SBN 160229
MANATT, PHELPS &
PHILLIPS LLP
2049 Century Park East
Suite 1700
Los Angeles, CA 90067
BShatz@manatt.com
Tel: (310) 312-4383

Fred J. Hiestand
SBN 44241
COUNSELOR AT LAW
3418 Third Avenue
Suite 1
Sacramento, CA 95817
fred@fjh-law.com
Tel: (916) 448-5100

Counsel for *Amicus Curiae*

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

Codes and Statutes

Other Authorities

INTRODUCTION

Amicus, the Civil Justice Association of California ("CJAC"), welcomes the opportunity to address the issue this case presents:[1]

> Whether an aggrieved employee who has been compelled to arbitrate claims under the Private Attorneys General Act (PAGA) that are "premised on Labor Code violations actually sustained by" the aggrieved employee (*Viking River Cruises, Inc. v. Moriana* (2022) 142 S.Ct. 1906, 1916; see Lab. Code, §§ 2698, 2699, subd. (a)) maintains statutory standing to pursue "PAGA claims arising out of events involving other employees" (*Viking River*, 142 S.Ct. at 1916) in court or in any other forum the parties agree is suitable.

A. Synonymous Rephrasing of the Issue

The Court's phrasing[2] of this issue is just another way of asking if *Viking River* said what it meant and meant what it said in holding that: (1) the Federal Arbitration Act ("FAA") requires enforcement of contracts calling for arbitration of *individual* PAGA claims, and (2) after such claims are arbitrated, the remaining *non-individual* claims must be dismissed for lack of statutory standing.

---

[1] By separate accompanying application, amicus asks the Court to accept this brief for filing.

[2] The plaintiff here proposed this issue and the Court accepted it with minor modification. (See Plaintiff's Supplemental Letter Brief in this case dated June 29, 2022, p. 2.)

Viking River expressly reverses California's "*Iskanian*" rule that prohibited the arbitral division of "individual" PAGA claims from "non-individual" ones on behalf of "other employees" on the theory that, because PAGA claims by "aggrieved employees" were essentially *qui tam* actions between the State and the defendant employer, they were *unitary and indivisible*. "Simply put, [*Iskanian* held that] a PAGA claim lies *outside the FAA's coverage* because it is not a dispute between an employer and an employee arising out of their contractual relationship. It is instead a dispute between an employer and the state, which alleges directly or through its agents . . . that the employer has violated the Labor Code." (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 386-87 ("*Iskanian*").)

That viewpoint is no longer law because the "premise that PAGA creates a unitary private cause of action is irreconcilable with the structure of the [PAGA] statute and the ordinary legal meaning of the word 'claim.'" (*Viking River*, 142 S.Ct. at 1911.) *Viking River* clarifies that "regardless of whether a PAGA action is in some sense also a dispute between an employer and the State, nothing in the FAA categorically exempts claims belonging to sovereigns from the scope of" the FAA. (*Id.* at 1919, fn. 4.)

Thus, *Viking River* is a "game changer" from *Iskanian*'s formerly "business as usual" way of litigating PAGA claims by mandatorily joining the PAGA employee's individual claim with other employees' non-individual claims in contravention of an agreement to arbitrate the individual claims separately. Unless PAGA is amended by the Legislature to "fix" its unique and unconstitutional mandatory joinder requirement, this Court should accept *Viking*'s elimination of a major impediment to the enforcement of individual arbitration contracts.

B. Interest of Amicus

Founded in 1979, CJAC is a non-profit organization representing businesses, professional associations and financial institutions. Its primary purpose is to educate the public about ways to make our civil liability laws more fair, efficient and certain. Toward this end, CJAC participates in select issues before our co-equal branches of government, especially when raised in cases before the judiciary. These cases have included *Viking River* and others involving the scope and application of PAGA and the FAA. (See, e.g., *Iskanian, supra,* 59 Cal.4th 348; and *Sanchez v. Valencia Holding Co. LLC* (2015) 61 Cal.4th 899.) This case clearly implicates CJAC's primary purpose.

CJAC's members employ tens of thousands of people in California and hundreds of thousands nationally in the manufacture of products and the provision of services. Most of these employers have chosen, as have many employers throughout the country,[3] to resolve disputes with their employees over a broad range of employment matters, including wage and hour issues, through contractual arbitration.

CJAC sets great store in the consistent line of U.S Supreme Court opinions, culminating with *Viking River,* that uphold the FAA's broad preemptive sweep requiring that agreements to decide disputes by arbitration be placed on an "equal footing" with other contracts and enforced accordingly.

C. *Viking River* Provides Needed Relief to Employers from the Vicissitudes of PAGA and *Iskanian*.

PAGA is a statutory endeavor enacted in 2004 to remedy under-enforcement of the Labor Code and to better compensate employees for violations of that Code committed against them by their employers. The Legislature attributed

---

[3] According to one study, approximately 55% of the workforce, or 60 million employees, are covered by employment arbitration agreements. (Alexander J.S. Colvin, *Economic Policy Institute* (Sept. 27, 2017), available at https://www.epi.org/publication/thegrowing-use-of-mandatory-arbitration/.)

this under-enforcement to a lack of resources available to the government agencies responsible for enforcement. Its solution was to out-source enforcement to private individuals affected by their employers' violations.[4]

To accomplish this, PAGA allows "aggrieved employees" to act as "private attorneys general," but only after giving the LWDA the opportunity to prosecute the alleged violations itself. (§§ 2699, subd. (c), 2699.3, subd. (a).)[5] An "aggrieved employee" is an employee against whom at least one alleged Labor Code violation was committed. (§ 2699, subd. (a).) (See discussion *post* at pp. 21-26 for how this provision affects a PAGA plaintiff's standing for prosecuting other employees' claims when an employment agreement requires arbitration of the individual employee's claim.)

Three types of violations can be the subject of a PAGA claim: (1) violations of the Labor Code specifically listed in the statute; (2) violations of health and safety regulations; and (3)

---

[4] This goal has presumably been met: The Labor and Workforce Development Agency (LWDA) has reaped substantial sums from its share of PAGA awards and settlements, rising from nearly $23 million in 2016 to over $88 million in 2019. (Rachel Deutsch, Rey Fuentes, Tia Koonse, *California's Hero Labor Law: The Private Attorneys General Act Fights Wage theft and Recovers Millions from Lawbreaking Corporations*, Feb. 2020, p. 8.)

[5] Unless otherwise indicated, all references to statutory sections are to the California Labor Code.

any other violation of California's labor laws. These violations can arise in any number of ways. If, for instance, an employer fails to pay workers overtime in accordance with wage and hour laws, that may be the basis for a PAGA claim. Here, the commonality of plaintiff Adolph's individual PAGA claim, and that of other employees he seeks to represent, is whether defendant Uber misclassified employees as independent contractors entitling them to PAGA penalties. PAGA penalties are not the exclusive remedy available to employees; they may pursue other remedies, including damages, "either separately or concurrently with an action" for penalties. (§ 2699, subd. (g)(1).)

To give the LWDA the opportunity to prosecute alleged violations, the aggrieved employee must send notice to the LWDA and the employer specifying such violations. (§ 2699.3, subd. (a)(1).) The aggrieved employee is automatically deputized to proceed with its civil suit if (1) the LWDA does not respond (*id.*, subd. (a)(2)(A)); (2) the LWDA responds that it does not intend to investigate (*ibid.*); or (3) the LWDA notifies the employee of its intent to investigate but does not issue a citation within 120 days after its decision to investigate (*id.*, subd. (a)(2)(B)). So deputized, the aggrieved employee wields the power of the state to seek civil penalties

for employers' Labor Code violations without any further involvement by the LWDA.

Notably, aggrieved employees are not limited to suing on violations committed against them. So long as they suffered some violation, they assume standing to recover for any violation committed by their employer. Claims on account of violations suffered by the plaintiff employee are referred to as "individual claims" and those suffered only by the plaintiff's co-workers as "non-individual claims."

PAGA penalties are set at $100 for each aggrieved employee per pay period for the initial violation and $200 for each aggrieved employee per pay period for each subsequent violation. (§ 2699, subd. (f)(2).) Penalties recovered in a PAGA action are shared between the LWDA (75%) and aggrieved employees (25%). (§ 2699, subd. (i).) The successful PAGA plaintiff is also entitled to attorney fees and costs. (§ 2699, subd. (g)(1).)

An aggrieved employee's right to recover for the universe of its employer's Labor Code violations substantially amplifies the risk employers face in a PAGA action. As one plaintiff's law firm informs prospective PAGA clients, "While the penalties seem low, they can accumulate quickly," providing this enticing example:

> A major fast food company tells employees they cannot take a lunch break when the restaurant is busy, a violation of California labor law. One thousand employees are affected, and the practice has gone on for 30 pay periods. The first violation for each employee carries a $100 penalty. The next 29 violations for each employee carry $200 penalties. The company can be assessed $5.9 million in penalties."[6]

Understandably, then, employers have sought to limit their PAGA exposure by contracts with their employees slating "individual" PAGA violations for arbitration, with the "non-individual" PAGA claims going to court.

Since its enactment, PAGA, driven by the magnet of generous court-awarded attorneys' fees for private counsel, has morphed into a burgeoning enterprise. A glimpse into the omnivorous growth of PAGA litigation and some of its anomalous results is evident from reported statistics.[7] From 2010 (the first year statistics were publicly available), for instance, up to early 2021, over 65,000 PAGA notices had been filed with the LWDA and over 9,000 PAGA lawsuits were filed. The average settlement paid by employers to resolve

---

[6] https://www.shouselaw.com/ca/labor/paga-claims/.

[7] Data and its sources referenced in the following paragraph are taken from pages 18-19 of the amicus brief submitted by the Restaurant Law Center in Support of Petitioner in *Viking River*, and can be found on the U.S. Supreme Court's official online docket.

PAGA lawsuits since 2013 is over $1.2 million—exclusive of any attorneys' fees or litigation costs. California employers have paid in total at least $1.4 billion since 2013 on PAGA litigation. If one were to apply the average settlement amount to even half of the PAGA lawsuits filed since 2013, California employers would have paid over $10 billion.

Another review of PAGA case data demonstrates that the law mainly benefits plaintiffs' attorneys over workers.[8] The current average payment that a worker receives from a PAGA case filed in court is $1,200, compared to $5,900 for cases adjudicated by the LWDA. Even though workers are receiving higher awards in state-adjudicated cases, employers are paying out 29% less per award. This is likely because of the high attorney fees in PAGA cases filed in court. Attorneys usually demand a minimum of 33% of the workers' total recovery, or $372,000 on average, no matter how much legal work was actually performed. In addition to receiving lower average recoveries in PAGA cases, workers also wait almost twice as long for their owed wages. The average wait time for a PAGA court case is 18 months, compared to 11 months for the state-decided cases.

---

[8] https://advocacy.calchamber.com/policy/issues/private-attorneys-general-act/.

Attorneys for plaintiffs also benefit because PAGA is often leveraged for high settlement amounts. The attorneys reap a considerable amount of money while the employees and/or the LWDA receive comparatively little. For example, in *Price v. Uber Technologies, Inc.*, the plaintiff's attorneys were awarded $2.325 million, while the average Uber driver was awarded only one dollar and eight cents. (See *California Business & Industrial Alliance v. Becerra*, No. 30-2018-01035180-CU-JR-CXC (Cal. Super. Ct. 2018).) Similarly, Safeway settled a "suitable seating" (Wage Order No. 7-2001) PAGA lawsuit for $12 million, of which the 30,000 employees shared $1.875 million ($62.50 per employee) while the plaintiff attorneys received $4.4 million.[9]

Viking River's approved enforcement of pre-dispute contracts to arbitrate individual PAGA claims now affords much needed relief to employers from *Iskanian*'s compulsory joinder rule, which required individual claims under PAGA to proceed directly with non-individual claims of other employees in court.

---

[9] Bob Egelko, *Union-Backed Law Reaps Payments for California Employees – State Gets a Cut, Too*, *S.F. CHRONICLE*, Feb. 11, 2020.

ARGUMENT

I. *VIKING RIVER* REQUIRES ENFORCEMENT OF AGREEMENTS "AGGRIEVED EMPLOYEES" HAVE WITH THEIR EMPLOYERS TO RESOLVE BY ARBITRATION THEIR "INDIVIDUAL" PAGA CLAIMS OVER LABOR CODE VIOLATIONS.

The arbitration contract here is substantially the same as the one in *Viking River*. In both cases, the parties' contracts bind them to agree to arbitrate any dispute arising out of the employee's employment, and employees to waive the right to bring a "representative PAGA action" in any arbitral proceeding. Here, the contract requires "arbitration of every claim or dispute that lawfully can be arbitrated." It also, similar to the contract in *Viking*, provides that "any representative actions brought under the PAGA must be litigated in a civil court of competent jurisdiction."

The "waiver" provisions of the contracts in both cases are also essentially the same. While, according to *Viking River,* "wholesale waivers" of PAGA representative standing are invalid, the severability clauses in both arbitration agreements permit enforcement of any portion of the waivers that remain valid. So the agreements "still . . . permit arbitration of [plaintiffs'] individual PAGA claims even if wholesale enforcement [is] impossible." (*Viking River*, 142 S.Ct. at 1917.) Moreover, under both agreements the

respective employee plaintiffs had 30 days to "opt-out" of the agreements but chose not to do so (defendant here claims that many employees did in fact "opt out").

Accordingly, *Viking River* instructs that, consistent with the "first principle" of FAA jurisprudence, "arbitration is strictly 'a matter of consent,'" and such agreements must be enforced according to their terms. (142 S.Ct. at 1918.) "[P]arties are generally free to structure their arbitration agreements as they see fit." (*Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford University* (1989) 489 U.S. 468, 479.)

A. *Viking River* Holds that Once a Plaintiff Arbitrates his "Individual" PAGA Claim against the Employer, he No Longer has "Statutory Standing" to Prosecute Representative PAGA Claims against that Employer on Behalf of Other Employees.

Viking River examined with "fresh eyes" PAGA's statutory standing requirement as limned by *Iskanian*, finding "a conflict between California's prohibition on PAGA waivers and the FAA" in PAGA's "built-in mechanism of claim joinder." (142 S.Ct. at 1923.) Understanding why this conflict is problematic requires distinguishing between two kinds of "representative" notions about PAGA actions "connected with . . . *Iskanian*'s

rules governing contractual waiver of PAGA claims." (*Id.* at 1916.)

The first or "principal rule under *Iskanian*" exists to prevent parties from waiving representative standing to bring PAGA claims in a judicial or arbitral forum. (*Id.* at 1917.) That rule requires courts to treat representative action waivers as "invalid insofar as they are construed as a *wholesale waiver* of PAGA standing." (*Ibid.*; italics added.) According to *Viking River*, this is copacetic and must be enforced; it cannot be waived wholesale. CJAC has no disagreement with this proposition.

However, the "secondary representative rule" of *Iskanian* "invalidates agreements to separately arbitrate or litigate 'individual PAGA claims for Labor Code violations that an employee suffered,' on the theory that resolving victim-specific claims in separate arbitrations does not serve the deterrent purpose of PAGA." (*Ibid.*; citations omitted.) This secondary way[10] in which "representative" is used in *Iskanian* permitted courts (until *Viking River)*, to uniformly "reject efforts to split

---

[10] A recent appellate opinion dubs *Iskanian*'s secondary sense of "representative" the "State-must-consent rule," and found its bar against splitting individual from non-individual PAGA claims void under *Viking River*. (*Lewis v. Simplified* (B312871, Dec. 5, 2022) _ Cal.App.5th _ , WL 17414203, *4-*5.)

PAGA claims into individual and representative components."

Most importantly, this secondary sense of "representative" is at odds with the arbitration agreement involved here and in *Viking River,* running headlong into the preemptive revetment of the FAA. "[S]tate law cannot condition the enforceability of an arbitration agreement on the availability of a procedural mechanism that would permit a party to expand the scope of the arbitration by introducing claims that the parties did not jointly agree to arbitrate." (*Viking River*, 142 S.Ct. at 1923.) Conversely, "[a] state rule imposing an expansive rule of joinder in the arbitral context would defeat the ability of parties to control which claims are subject to arbitration" and thereby "permit parties to superadd new claims to the proceeding, regardless of whether the agreement between them committed those claims to arbitration." (*Id.* at 1924.)

The vice of such a compulsory joinder rule, which *Iskanian* required and *Viking River* invalidated under the FAA, is that it "compels parties to 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. Either way, the parties are coerced into giving up a right they enjoy under the FAA." (*Ibid.*; citations to other authorities omitted.)

In sum, *Viking* disapproved this secondary representative rule sanctioned by *Iskanian* that had allowed "aggrieved employees" under PAGA to use the Labor Code violations they personally suffered as a basis to join to the action any claims that could have been raised by the State in an enforcement proceeding. Indeed, *Iskanian* and courts interpreting and applying it deemed it unlawful to split an "aggrieved employee's" individual PAGA claims from the non-individual PAGA claims of other employees. (See, e.g., *Kim v. Reins International Calif., Inc.* (2020) 9 Cal.5th 73.)

Viking River makes clear that this "*prohibition* on *contractual division* of PAGA actions into constituent claims unduly circumscribes the freedom to "determine the issues subject to arbitration" and the "rules by which they will arbitrate." (*Viking River*, 142 S.Ct. at 1923, italics added.) Therefore, it violates the FAA's "most basic corollary of the principle that arbitration is a matter of consent"— that "a party can be forced to arbitrate only those issues it specifically has agreed to submit to arbitration." (*Ibid.*)

Further, the plain language of "PAGA provides *no* mechanism to enable a court to adjudicate non-individual PAGA claims once an individual claim has been committed to a separate proceeding." (*Id.* at 1925, italics added.) That is

because "under PAGA's statutory standing requirement, a plaintiff can maintain non-individual PAGA claims in an action *only* by virtue of also maintaining an individual [PAGA] claim in that action." (*Id.*, italics added; see also Labor Code, §§ 2699, subds. (a) & (c), defining an "aggrieved employee" as "any person who was employed by the alleged violator *and* against whom one or more of the alleged violations was committed" (italics added).) A "violation" is defined as "a failure to comply with *any* requirement of the code." (Lab. Code, § 22, italics added.)

If parties agreed to arbitrate "individual PAGA claims based on personally sustained violations," *Iskanian* nonetheless and impermissibly allowed "the aggrieved employee to abrogate that agreement after the fact and demand either judicial proceedings or an arbitral proceeding that exceeds the scope jointly intended." (142 S.Ct. at 1924.) As a result of this compulsory joinder requirement, plaintiffs like Adolph here and Moriana in *Viking River*, who must now arbitrate their individual PAGA claims, "no longer have statutory standing to maintain non-individual claims in court on behalf of other employees, and the correct course is to dismiss their remaining claims." (*Id.* at 1925). As *Viking River* explains about this process, "[w]hen an employee's own dispute is pared away from a PAGA action, the employee is no

different from a member of the general public, and PAGA does not allow such persons to maintain suit." (*Ibid.*)

B. *Viking River*'s Requirement that Plaintiff's Non-Individual Claim be Dismissed is an Application of Federal Law.

Every court must follow the decisions of the High Court if they are based on federal law. "[T]he 'Supremacy Clause forbids state courts to dissociate themselves from federal law because of disagreement with its content or a refusal to recognize the superior authority of its source.' " (*DIRECTV, Inc. v. Imburgia* (2015) 577 U.S. 47, 53.)

Viking River crafted a federal rule of decision to implement its mandate that the FAA applies to PAGA claims when a valid arbitration agreement exists. This new rule of decision has three aspects: (1) PAGA actions can be divided "into individual and non-individual claims"; (2) individual claims must be compelled to arbitration; and (3) non-individual claims must be dismissed. (*Viking River*, 142 S.Ct. at 1924-1925.) This disposition is an outgrowth of applying the FAA, so it necessarily rests on *federal*—not state—law, and so must be followed by this Court. "When this Court has fulfilled its duty to interpret federal law, a state court may not contradict or fail to implement the rule so

established." (*Marmet Health Care Center, Inc. v. Brown* (2012) 565 U.S. 530, 531.)[11]

When federal interests are at stake, the Supreme Court may fashion federal rules of decision that impact the ultimate resolution of state-law claims. An example of this is *New York Times Co. v. Sullivan* (1964) 376 U.S. 254. That case involved a single state-law claim for libel brought by a public official. The High Court concluded that state law did not adequately safeguard free speech rights in that circumstance. (*Id.* at 264.) The High Court therefore superimposed a new requirement that public officials suing for state-law defamation establish "actual malice"—a requirement it labeled "a federal rule" designed to preserve First Amendment rights when public officials' state-law defamation claims are adjudicated. (*Id.* at

---

[11] The battle over the meaning of *Viking River* is reminiscent of the exchange between two characters in a celebrated fictional tale: " 'The question is,' said Alice, 'whether you can make words mean so many different things.'

" 'The question is,' said Humpty Dumpty, 'which is to be master—that's all.'" (Lewis Carroll, *THE ANNOTATED ALICE: ALICE'S ADVENTURES IN WONDERLAND & THROUGH THE LOOKING GLASS* (Gardner ed. 1960) p. 269.) The question whether *Viking River* is a federal rule of decision about statutory state standing that violates the FAA and is decided by the High Court, or this Court can rule that "standing" is exclusively a state issue which it ultimately decides, has an obvious answer— the final "master" here is the U.S. Supreme Court.

279-280.) The High Court's disposition did not convert the state-law libel claim into a federal claim. And the High Court did not federalize the law of defamation. It simply established, as did *Viking River* with a state law issue at odds with the FAA, a federal rule of decision applicable when a state-law claim is pursued by public officials. Because these rules of decision are *federal*, state courts lack authority to decline to follow them on the ground that states may fashion their own rules governing state-law claims. (See, e.g., *Alim v. Superior Court* (1986) 185 Cal.App.3d 144, 150 [*New York Times* imposed "a federal rule" applicable to public officials pursuing state-law claims for a defamatory falsehood].)

In *Viking River*, plaintiffs pursued a state-law PAGA claim, one for which the High Court determined that California law did not suitably protect arbitration rights under the FAA. Adolph is doing the same here. To ensure compliance with the FAA, the High Court adopted a rule of decision explaining how such claims must be characterized and how they must proceed according to the applicable arbitration contracts—i.e., individual PAGA claims must be arbitrated and non-individual claims must be dismissed. PAGA claims subject to arbitration clauses governed by the FAA do not cease to be California-law claims, just as public officials' libel claims under *New York Times v. Sullivan* do not cease to be state-law claims. But

California courts must nonetheless heed the federal rule of decision for processing such claims to avoid conflict with the FAA.

Not surprisingly, plaintiff here holds a contrary view, asserting that "PAGA standing in state court is exclusively a state-law issue." (RB 28.) But *Viking River* did *not* announce a state law rule. The High Court does not grant certiorari to review state-law issues, which is beyond its jurisdiction. (28 U.S.C. § 1257; see *Butner v. United States* (1979) 440 U.S. 48, 51 ["We did not grant certiorari to decide whether the Court of Appeals correctly applied North Carolina law."].)

This Court should not give credence to the argument that the U.S. Supreme Court disregarded these strictures. *Viking River* simply explains the consequences of applying the FAA to PAGA claims it labeled as "individual" and "non-individual," claims that *Iskanian* incorrectly held were indivisible. The proper method of disposing of these claims that state law does not recognize—claims the High Court fashioned to vindicate arbitral rights protected by the FAA—should not be considered a state-law rule of decision.

Refusing to categorize *Viking River*'s disposition as *federal* in character would ignore how the FAA intersects with state law, committing the same mistake other state courts have made before. (See *Nitro-Lift Technologies, L.L.C. v. Howard* (2012) 568 U.S. 17, 19-21 [reversing the Oklahoma Supreme Court, which had insisted "the underlying contract's validity is purely a matter of state law for state-court determination," and instead applying "the substantive law" of the FAA].)

C. Under State Law, *Viking River* Counts as Controlling Precedent Requiring Dismissal of Plaintiff's Non-Individual Claims.

Even if *Viking River* did not mandate dismissal of plaintiff's non-individual claim as a matter of federal law, state law compels the same result. The United States Supreme Court is, "of course, bound to accept the interpretation of [California] law by the highest court of the State." (*Hortonville Joint School Dist. No. 1 v. Hortonville Educ. Assn.* (1976) 426 U.S. 482, 488.) The High Court did just that here. It accepted and applied both PAGA's plain language and this Court's interpretation of PAGA in *Kim*. *Viking River* cited those authorities and concluded they required the dismissal of plaintiff Moriana's non-individual PAGA claim once she was compelled to arbitrate her individual PAGA claim. (*Viking River*, 142 S.Ct. at 1925.) When Moriana subsequently

petitioned for rehearing, she argued that the U.S. Supreme Court had misconstrued *Kim* (see Respondent's Petition for Rehearing, *Viking River Cruises, Inc. v. Moriana* (U.S., July 6, 2022, No. 20-1573) 2022 WL 2971944, *9), but her petition was denied (*Viking River Cruises, Inc. v. Moriana* (2022) ___ S.Ct. __ [2022 WL 3580311, *1]).

Viking River's disposition is persuasive and entitled to the respect of California courts. (See *People v. Guiton* (1993) 4 Cal.4th 1116, 1126.) This Court should follow *Viking River*'s mandate and dismiss plaintiff's non-individual PAGA claim.

1. Plaintiff lacks statutory standing under PAGA because he is not an "aggrieved employee" absent an individual claim.

Not every person can bring a PAGA action. (*Kim*, 9 Cal.5th at 81.) Only those who satisfy PAGA's statutory standing requirement may do so. (*Ibid.*) Labor Code section 2699, subdivisions (a) and (c) impose this standing requirement. (*Ibid.; Viking River*, 142 S.Ct. at 1914.) As *Kim* explained, PAGA defines standing "in terms of violations, not injury"—a worker's standing to sue hinges on whether "one or more Labor Code violations were committed against" the named plaintiff. (*Kim*, 9 Cal.5th at 84.)

After *Viking River*, however, any alleged Labor Code violations against a named plaintiff are sent to arbitration

when an arbitration agreement governed by the FAA exists. When *Viking River* held that the FAA entitles a defendant "to compel arbitration" of a plaintiff's "individual" PAGA claim, the Supreme Court stressed that this "individual PAGA claim" consisted of all the plaintiff's own "personally sustained violations." (*Viking River*, 142 S.Ct. at 1924-1925.) Based on *Kim*'s interpretation of the term "aggrieved employee," once the plaintiff's individual PAGA claim is compelled to arbitration, the non-individual PAGA claim that remains in court no longer involves any alleged violations against the named plaintiff. It follows that the named plaintiff no longer qualifies as an "aggrieved employee" who can maintain the non-individual claim. (See *id.* at 1925 ["When [a worker's] own dispute is pared away from a PAGA action, [the worker] is no different from a member of the general public, and PAGA does not allow such persons to maintain suit"].)

By analogy, the division of a named plaintiff's individual and non-individual claims amounts to a form of severance that yields two distinct actions in two distinct fora. (See *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 737, fn. 3.) The severance sends the named plaintiff's violations to arbitration, and with them his or her source of statutory standing. Because none of plaintiff Adolph's violations remain in court once his individual claim is severed for arbitration, those

violations cannot supply a basis for standing as to his non-individual PAGA claim. That claim must be dismissed.

A dismissal does not undermine the law enforcement objectives that led the Legislature to enact PAGA. Even if a particular plaintiff's PAGA action is dismissed, the "State remains entitled to recover civil penalties for any Labor Code violations by the employer, subject to the applicable statute of limitations." (*Wesson v. Staples the Office Superstore, LLC* (2021) 68 Cal.App.5th 746, 767, fn. 14, disagreed with on another ground by *Estrada v. Royalty Carpet Mills, Inc.* (2022) 76 Cal.App.5th 685, 710–713, in which review was granted June 22, 2022, S274340.) Moreover, PAGA civil penalties may be sought by a different PAGA proxy (a fellow aggrieved worker) who did not consent to arbitration. (See *Sakkab v. Luxottica Retail North America, Inc.* (9th Cir. 2015) 803 F.3d 425, 449 (dissenting opn. of N.R. Smith, J.) [explaining that "any employee not subject to an arbitration agreement waiving such [representative PAGA] actions is free to bring a PAGA claim," and that nothing prevents the State "from raising the labor violations on its own"].)

2. Plaintiff also cannot satisfy two additional PAGA prerequisites under the statute's text.

In parsing statutes for their meaning, a fair reading requires courts to "lean in favor of a construction which may

make some idle and nugatory." (Thomas M Cooley, *A Treatise on the Constitutional Limitations which Rest upon the Legislative Power of the States of the American Union* (1868).) "[T]he legislator is presumed to, as in fact he does, choose his words deliberately intending that every word shall have a binding effect." (Ernst Freund, *Interpretation of Statutes* (1917) 65 *U. PA. L. REV.* 207, 218.)

a. Importance of the word "and" in the PAGA definition of "aggrieved employee."

PAGA authorizes "a civil action brought by an aggrieved employee on behalf of himself or herself *and* other current or former employees pursuant to the procedures specified in [Labor Code] [s]ection 2699.3." (Lab. Code, § 2699, subd. (a), emphasis added.) The conjunction "and" imposes a distinctive legislative requirement—that no matter the identity of the named plaintiff, the non-individual PAGA claims must be adjudicated together with individual PAGA claims, or not at all. (See *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 756 [workers "must bring the [representative] action on behalf of himself or herself and others"]; see also *Reyes v. Macy's, Inc.* (2011) 202 Cal.App.4th 1119, 1123-1124 ["The PAGA statute does not enable a single aggrieved employee to litigate his or her claims" separately from those of other aggrieved workers, "but requires an

aggrieved employee 'on behalf of herself or himself and other current or former employees' to enforce violations of the Labor Code by their employers."].)

California courts routinely construe the Legislature's use of "and" in this fashion. (See *Kobzoff v. Los Angeles County Harbor/UCLA Medical Center* (1998) 19 Cal.4th 851, 861 [Legislature's use of the word " 'and' " in a statute imparts a conjunctive meaning]; cf. *Menees v. Andrews* (2004) 122 Cal.App.4th 1540, 1546 [where an offer is made in the conjunctive to all of the appellants, the offer was conditioned on the acceptance by all appellants and did not allow each appellant to accept the offer individually].)

Because a PAGA plaintiff in a non-individual action must bring the action "on behalf of himself or herself and other current or former employees," the plaintiff is meant to be "a member of the group being represented." (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 987, fn. 7.) However, once a plaintiff's individual claim is compelled to arbitration, he cannot satisfy this requirement. He is no longer a member of the group represented in the non-individual claim. He is then no different from a member of the general public who would lack standing to litigate that claim. (See *Viking River*,142 S.Ct. at 1925 [noting PAGA's departure from "general public" standing originally available in the Unfair Competition Law].)

In sum, "PAGA provides no mechanism to enable a court to adjudicate non-individual PAGA claims once an individual claim has been committed to a separate proceeding." (*Ibid.*)

b. Importance of the word "commence" and "brought" in PAGA's text.

Moreover, section 2699, subdivision (a), imposes a distinct chronology requirement. A named plaintiff must not only initiate a PAGA claim jointly on behalf of himself and others, but must persist with that marriage of claims throughout the litigation. The statutory word "brought" confirms this point.

"[T]he word 'brought' is the past tense of 'bring.' " (*Curtis v. County of Los Angeles* (1985) 172 Cal.App.3d 1243, 1249.) "'Institute and prosecute' and 'bring suit' are synonymous." (*Ibid.*) The word "prosecute," in turn, is defined as "To follow up; carry on an action or other judicial proceeding" and therefore to "prosecute" an action is not merely to commence it, but includes following it to an ultimate conclusion." (*Ibid.*) Thus, when a statute establishes requirements to "bring" a lawsuit, those requirements must be maintained through *all* stages of the lawsuit—it is not enough to satisfy those requirements at the commencement of the lawsuit. (See *ibid.*; see also *Kobzoff, supra*, 19 Cal.4th at 853 & fn. 1 [citing *Curtis* with approval to hold that, where Code of Civil Procedure

section 1038 required civil actions under the California Tort Claims Act to be "brought" with reasonable cause and in the good faith belief that there was a justifiable controversy, those "good faith" and "reasonable cause" requirements pertain not only to the action's initiation, but also its "*continued maintenance*"].)

Under Labor Code section 2699, subdivision (a), a PAGA action must be "brought by" a plaintiff on behalf of himself or herself and other aggrieved workers. The Legislature's inclusion of the word "brought" signals that a plaintiff must pursue individual and non-individual relief together at every stage of the lawsuit. This is unsurprising: "For a lawsuit properly to be allowed to continue, standing must exist *at all times* until judgment is entered and not just on the date the complaint is filed." (*Californians for Disability Rights v. Mervyn's, LLC* (2006) 39 Cal.4th 223, 232-233; italics added.) Thus, a PAGA plaintiff cannot proceed with a non-individual PAGA claim in court once his or her personal PAGA violations are divorced from the non-individual claim and compelled to individual arbitration because, at that point, the claims are no longer "brought" together.

It will not suffice to argue that the word "bring" refers solely to the point at which a lawsuit is initiated. (See *Curtis*, 172 Cal.App.3d at 1249.) Cases construing the word "brought"

to mean only "commence," and not "maintain" as well, shed no light here. The Legislature has telegraphed a different meaning for PAGA. (See *Arias*, 46 Cal.4th at p. 979 ["A literal construction of an enactment . . . will not control when such a construction would frustrate the manifest purpose of the enactment as a whole"].)

With PAGA the word "brought" does not stand alone. A comparison of neighboring statutory provisions proves the point. The Legislature used the distinct term "commence" in multiple PAGA provisions, but chose not to use it in Labor Code section 2699, subdivision (a). For example, the PAGA procedural provision that governs how and when a private plaintiff may begin a PAGA action is titled: "Requirements for [an] aggrieved employee to *commence* a civil action." (Statutory Heading, 44B West Ann. Lab. Code (2020 ed.) preceding § 2699.3, p. 514, emphasis added.) That section explains: "[a] civil action by an aggrieved employee . . . shall *commence* only after" certain procedural pre-filing prerequisites are met. (Lab. Code, § 2699.3, subd. (a), emphasis added.) If these pre-filing requirements are not met, then the "aggrieved employee may *commence* a civil action pursuant to Section 2699." (*Id.*, subd. (a)(2)(B), emphasis added.)

By using the term "brought" in section 2699, subdivision (a), and the distinct term "commence" in other PAGA

provisions, the Legislature demonstrated that it did not mean for the term "brought" in subdivision (a) to mean only "commence." Instead, the Legislature must have meant to require plaintiffs to maintain all facets of a PAGA action together through all stages of the proceeding. (See *Romano v. Mercury Ins. Co.* (2005) 128 Cal.App.4th 1333, 1343 ["When the Legislature uses different words as part of the same statutory scheme, those words are presumed to have different meanings."].)

3. The Legislature did not intend to confer PAGA standing on workers with no personal, continuing stake in the litigation and are indistinguishable from general members of the public.

The Legislature selected an enforcement scheme in which PAGA claims are brought only by workers who belong to the group represented. (See *Arias*, 46 Cal.4th at 987, fn. 7.) When the Legislature first considered enacting PAGA, "employer groups objected that PAGA would be vulnerable to the same abuses recently exposed under [California's] Unfair Competition Law," which at that time had " 'authorized any person acting for the general public to sue for relief from unfair competition,' " leading to attorneys " 'exploit[ing] th[is] generous standing requirement' " to file " 'shakedown' suits to extort money from small businesses for minor or technical

violations where no client had suffered an actual injury." (*Kim*, 9 Cal.5th at 90.) The Legislature thus enacted PAGA's standing requirement as "a departure from the 'general public' [citation] standing originally allowed under the [Unfair Competition Law]." (*Ibid*.) Against this backdrop, the Legislature cannot have intended to allow a plaintiff to maintain a non-individual PAGA claim once the individual PAGA claim was compelled to arbitration; such a plaintiff "would be no different than a member of the general public." (*Viking River*,142 S.Ct. at 1925.)

The Legislature understandably failed to anticipate *Viking River*'s division of PAGA claims into individual and non-individual components. But courts must apply a statute "as it is written" by the Legislature, " 'not on a different, perhaps broader, version that could have been, or still may be, enacted.' " (*In re Christian S.* (1994) 7 Cal.4th 768, 782, quoting *Waste Management of the Desert, Inc. v. Palm Springs Recycling Center, Inc.* (1994) 7 Cal.4th 478, 490.) Courts cannot "rewrite [a] statute to include that which the Legislature chose to leave out." (*People v. Watie* (2002) 100 Cal.App.4th 866, 885.) In enacting PAGA, the Legislature's purpose was to authorize a single PAGA action "on behalf of all affected employees." (*Kim*, 9 Cal.5th at p. 87.) In short, the Legislature intended for PAGA actions to be maintained as

indivisible claims targeting all Labor Code violations in a single proceeding. (See, e.g., *Provost v. YourMechanic, Inc.* (2020) 55 Cal.App.5th 982, 988 [a PAGA action is a single "indivisible" claim "belong[ing] solely to the state" throughout the proceeding], abrogated by *Viking River*, 142 S.Ct. 1906).) It is unreasonable to believe the Legislature would have authorized a PAGA plaintiff to proceed with a non-individual claim in court once his or her individual claim was compelled to arbitration. Thus, consideration of legislative history and intent also militates in favor of dismissing Adolph's non-individual claim.

4. *Kim* helps, not hurts, Uber's position.

In *Kim*, the plaintiff settled non-PAGA claims but continued to seek PAGA relief. (To use the vernacular of *Viking River*, the plaintiff in *Kim* continued pursuing both individual and non-individual PAGA claims following the settlement of his non-PAGA claims.) The plaintiff claimed his settlement of non-PAGA claims did not impair his standing to bring PAGA claims. This Court agreed that resolving non-PAGA claims (individual Labor Code wage-and-hour claims for damages) did not deprive the plaintiff of statutory standing to pursue a PAGA claim (for civil penalties). The settlement did not change the fact that he was subjected to Labor Code violations and

was therefore an aggrieved employee under PAGA. (See *Kim*, 9 Cal.5th at 83-86.)

Kim does not stand for the proposition that a PAGA plaintiff can continue to maintain a non-individual claim in court once he or she is compelled to arbitrate an individual claim. That is because the plaintiff there did not settle individual PAGA claims. (*Kim*, 9 Cal.5th at 87-88.) A "case is not authority for a proposition not considered therein or an issue not presented by its own particular facts." (*Satten v. Webb* (2002) 99 Cal.App.4th 365, 383.) At all times, the *Kim* plaintiff's individual PAGA claims and non-individual PAGA claims remained tethered together in court—unlike the severance of those claims required by *Viking River*.

Kim's reasoning supports Uber and requires the dismissal of Adolph's non-individual claim now that he must separately arbitrate his individual claim. *Kim* demonstrates that neither PAGA's plain text nor its legislative history authorizes non-individual PAGA claims divorced from litigation over the alleged Labor Code violations suffered personally by the named plaintiff. Indeed, that principle was endorsed by courts well before *Kim*. (E.g., *Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2009) 46 Cal.4th 993, 1004-

1005 [unions lack standing to bring PAGA claims because they are not "employed by" defendants].)

D. No Legal Significance Attaches to Plaintiff's Grievance that *Viking River* Allegedly Decided Issues Neither Briefed Nor Argued.

Plaintiff expresses personal pique that *Viking River* decided issues that were neither briefed or argued. (RB 10, 26.) He neglects to mention his objection was presented and briefed in a subsequent filing with the Court after it decided *Viking River*, but the Court declined to reconsider its opinion.

Assuming his contention is true, however, it is of no legal import. The High Court has long ruled on substantive constitutional issues which neither party raised nor argued at any time. (See, e.g., *Terminiello v. City of Chicago* (1949) 337 U.S. 1; Note, *Scope of Supreme Court Review: The* Terminiello *Case in Focus* (1950) 59 *YALE L. J.* 971, 973 ["In the much publicized case of *Terminiello* . . . the Supreme Court ruled on a substantive constitutional issue which neither party had raised or argued at any time."]; Edward B. Sears, Lujan v. National Wildlife Federation: *Environmental Plaintiffs Are Tripped up on Standing* (1991) 24 *CONN. L. REV.* 293, 296, fn. 18 ["Although ripeness was not addressed by the lower courts, and was not briefed or argued before the Supreme Court, the Court took it upon itself to examine the issue of ripeness."].)

As the Court wrote in *United States National Bank of Oregon v. Independent Insurance Agents of America, Inc.* (1993) 508 U.S. 439, 446-447: "[w]hen an issue or claim is properly before the court, the court is not limited to the particular legal theories advanced by the parties, but rather retains the independent power to identify and apply the proper construction of governing law . . . ." The court noted that prohibiting the appellate court from reframing the issues would allow the parties to force the court to misstate the law by agreeing on the legal issue presented. . . [A] court may consider an issue 'antecedent to . . . and ultimately dispositive of 'the dispute before it, even an issue the parties fail to identify and brief."

Viking River decided issues over the scope and application of the FAA when an arbitration agreement collides with California's PAGA statute. This presented fundamental constitutional issues. "The relative importance to the State of its own law is not material when there is a conflict with a valid federal law, for the Framers of our [federal] Constitution provided [in the supremacy clause] that the federal law must prevail." (*Free v. Bland* (1962) 369 U.S. 663, 666.)

CONCLUSION

Viking River holds that individual PAGA claims must be arbitrated according to the terms of an arbitration agreement, while non-individual claims must be dismissed once the individual claims are compelled to arbitration. This disposition controls the outcome here. This Court should apply *Viking River* by reversing the Court of Appeal and directing that arbitration be compelled of plaintiff's individual PAGA claim and that plaintiff's non-individual PAGA claim be dismissed.

Dated: December 21, 2022

s/ Fred J. Hiestand
CJAC General Counsel

s/ Benjamin G. Shatz
Manatt, Phelps & Phillips, LLP

CERTIFICATE OF WORD COUNT

I certify that the software program used to compose and print this document indicates it contains—exclusive of the caption, tables, certificate and proof of service—7,124 words.

Dated: December 21, 2022

s/ Fred J. Hiestand
CJAC General Counsel

PROOF OF SERVICE

I, David Cooper, am employed in the city and county of Sacramento, State of California. I am over the age of 18 years and not a party to the within action. My business address is 3418 Third Avenue, Suite 1, Sacramento, CA 95817.

On December 21, 2022, I served the foregoing document(s) described as: AMICUS BRIEF OF THE CIVIL JUSTICE ASSOCIATION OF CALIFORNIA IN SUPPORT OF DEFENDANT AND APPELLANT in *Erik Adolph v. Uber Technologies, Inc.*, S274671 on all interested parties in this action electronically as follows:

Aashish Y. Desai
Adrianne De Castro
DESAI LAW FIRM, P.C.
3200 Bristol Ave., Suite 650
Costa Mesa, CA 92626
Attorneys for Plaintiff/Respondent

Michael Rubin
Robin S. Tholin
ALTSHULER BERZON LLP
177 Post Street, Suite 300
San Francisco, California 94108
Attorneys for Plaintiff/Respondent

Andrew P. Lee
Mengfei Sun
GOLDSTEIN, BORGEN,
DARDARIAN & HO
155 Grand Ave., Suite 900
Oakland, CA 94612
Attorneys for Plaintiff/Respondent

Anthony G. Ly
Sophia B. Collins
Andrew M. Spurchise
LITTLER MENDELSON, P.C.
2049 Century Park East, Fifth Floor
Los Angeles, California 90067
Attorneys for Defendant/Appellant

Theane D. Evangelis
Blaine H. Evanson
Bradley J. Hamburger
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, California 90071
Attorneys for Defendant/Appellant

Fourth Appellate District
Division Three
Ronald Reagan State Building
601 W. Santa Ana Blvd.
Santa Ana, CA 92701
Appellate Court

Hon. Kirk Nakamura, Judge
Orange County Superior Court
751 W. Santa Ana Blvd.
Santa Ana, CA 92701
Trial Court via U.S. Mail

[X](VIA E-SERVICE) I electronically served the foregoing documents via the TrueFiling website.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed this 21st day of December 2022 at Sacramento, California.

s/ David Cooper

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **ADOLPH v. UBER TECHNOLOGIES**
Case Number: **S274671**
Lower Court Case Number: **G059860**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **fred@fjh-law.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
APPLICATION	S274671_APP_CIVIL JUSTICE ASSOCIATION OF CALIFORNIA
BRIEF	S274671_ACB_CIVIL JUSTICE ASSOCIATION OF CALIFORNIA

Service Recipients:

Person Served	Email Address	Type	Date / Time
Michael Rubin Altshuler Berzon, LLP 80618	mrubin@altber.com	e-Serve	12/21/2022 4:57:55 PM
Patrick Fuster Gibson, Dunn & Crutcher LLP 326789	PFuster@gibsondunn.com	e-Serve	12/21/2022 4:57:55 PM
Theodore Boutrous Gibson Dunn & Crutcher 132099	tboutrous@gibsondunn.com	e-Serve	12/21/2022 4:57:55 PM
Nicole Welindt Office of the Attorney General 330063	nicole.welindt@doj.ca.gov	e-Serve	12/21/2022 4:57:55 PM
Theane Evangelis Gibson, Dunn & Crutcher, LLP 243570	tevangelis@gibsondunn.com	e-Serve	12/21/2022 4:57:55 PM
Jeffrey Raskin Greines Martin Stein & Richland LLP 223608	jraskin@gmsr.com	e-Serve	12/21/2022 4:57:55 PM
Aileen Mcgrath AKIN GUMP STRAUSS HAUER & FELD LLP 280846	AMcGrath@akingump.com	e-Serve	12/21/2022 4:57:55 PM
Stephen Duvernay Benbrook Law Group, PC 250957	steve@benbrooklawgroup.com	e-Serve	12/21/2022 4:57:55 PM
Michael Rubin Altshuler Berzon, LLP 80618	mrubin@altshulerberzon.com	e-Serve	12/21/2022 4:57:55 PM

Cynthia Rice California Rural Legal Assistance, Inc. 87630	crice@crla.org	e-Serve	12/21/2022 4:57:55 PM
Jamin Soderstrom Soderstrom Law PC 261054	jamin@soderstromlawfirm.com	e-Serve	12/21/2022 4:57:55 PM
Archis Parasharami Mayer Brown LLP 321661	aparasharami@mayerbrown.com	e-Serve	12/21/2022 4:57:55 PM
Jamin Soderstrom Soderstrom Law Firm 261054	diana@soderstromlawfirm.com	e-Serve	12/21/2022 4:57:55 PM
Sophia Behnia Littler Mendelson, P.C. 289318	sbehnia@littler.com	e-Serve	12/21/2022 4:57:55 PM
File Clerk Goldstein,Borgen,Dardarian, Ho	efile@gbdhlegal.com	e-Serve	12/21/2022 4:57:55 PM
Andrew Lee Goldstein, Borgen, Dardarian & Ho 245903	alee@gbdhlegal.com	e-Serve	12/21/2022 4:57:55 PM
Alden Parker Fisher Phillips 196808	aparker@fisherphillips.com	e-Serve	12/21/2022 4:57:55 PM
Andrew Spurchise Littler Mendelson PC 245998	aspurchise@littler.com	e-Serve	12/21/2022 4:57:55 PM
Mengfei Sun Goldstein, Borgen, Dardarian & Ho 328829	msun@gbdhlegal.com	e-Serve	12/21/2022 4:57:55 PM
Aashish Desai Desai Law Firm P.C.	aashish@desai-law.com	e-Serve	12/21/2022 4:57:55 PM
Michael Singer Cohelan Khoury & Singer 115301	msinger@ckslaw.com	e-Serve	12/21/2022 4:57:55 PM
Vernica MelNdez California Rural Legal Assistance Foundation 294106	vmelendez@crlaf.org	e-Serve	12/21/2022 4:57:55 PM
Anthony Ly Littler Mendelson 228883	aly@littler.com	e-Serve	12/21/2022 4:57:55 PM
Lisa Ramon Akin Gump Strauss Hauer & Feld LLP	lramon@akingump.com	e-Serve	12/21/2022 4:57:55 PM
Aashish Desai Desai Law Firm PC 187394	sonia@desai-law.com	e-Serve	12/21/2022 4:57:55 PM
Chris Hsu Greines Martin Stein & Richland LLP	chsu@gmsr.com	e-Serve	12/21/2022 4:57:55 PM
Fred Hiestand Fred J. Hiestand, Counselor at Law 44241	fred@fjh-law.com	e-Serve	12/21/2022 4:57:55 PM

David Borgen Goldstein Borgen Dardarian & Ho 099354	dborgen@gbdhlegal.com	e-Serve	12/21/2022 4:57:55 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

12/21/2022

Date

/s/Fred Hiestand

Signature

Hiestand, Fred (44241)

Last Name, First Name (PNum)

Fred J. Hiestand, Counselor at Law

Law Firm