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SCOTUS to decide whether FAA preempts California's prohibition on the arbitration of PAGA representative claims

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We have written a number of articles about California's restrictions on arbitration agreements, including California's "*McGill rule*," which provides that arbitration agreements cannot waive claims for "public injunctive relief." *See, e.g., Ninth Circuit reexamines California's McGill rule – which prohibits contractual waivers of "public injunctive relief" – through the lens of federal preemption* (Sep. 27, 2021). On December 15, 2021, the U.S. Supreme Court agreed to review a California state court decision holding the Federal Arbitration Act (FAA) does not preempt California's prohibition on the arbitration of representative claims brought under California's Private Attorneys General Act (PAGA). *See Moriana v. Viking River Cruises, Inc.*, No. B297327, 2020 WL 5584508 (Cal. 2d Dist. Sept. 18, 2020), *review denied*, No. S265257 (Cal. Dec. 9, 2020), *cert. granted*, No. 20-1573, 2021 WL 5911481 (U.S. Dec. 15, 2021).

In its petition for certiorari, Viking River Cruises, Inc., presented one question: "Whether the Federal Arbitration Act requires enforcement of a bilateral arbitration agreement providing that an employee cannot raise representative claims, including under PAGA." Pet. for Writ of Cert., *Viking River Cruises, Inc. v. Moriana*, No. 20-1573, 2021 WL 1944938 (U.S. filed May 10, 2021). Viking asked the Court to resolve the conflict between the U.S. Supreme Court's decision in *Epic Systems Corp v. Lewis*, 138 S. Ct. 1612 (2018), and the California Supreme Court's holding in *Iskanian v. CLS Transportation Los Angeles LLC*, 327 P.3d 129 (Cal. 2014). In *Epic*, the Supreme Court held courts could not refuse to enforce arbitration agreements within the scope of the FAA by applying state rules that prohibit the arbitration of certain representational or collective claims. But in *Iskanian*, the California Supreme Court held unenforceable waivers of PAGA claims in arbitration agreements. We anticipate the U.S. Supreme Court will follow *Epic* and find the *Iskanian* rule preempted by the FAA, thereby spelling the demise of California's "*McGill* rule."