

No. _____

IN THE
Supreme Court of the United States

UBER TECHNOLOGIES, INC. AND RASIER-CA, LLC,
Petitioners,

v.

JONATHON GREGG,
Respondent.

**On Petition for a Writ of Certiorari
to the California Court of Appeal**

PETITION FOR A WRIT OF CERTIORARI

SOPHIA BEHNIA
LITTLER MENDELSON, P.C.
333 Bush Street
34th Floor
San Francisco, CA 94104
415.433.1940
sbehnia@littler.com

ANDREW SPURCHASE
LITTLER MENDELSON, P.C.
900 Third Avenue
New York, NY 10022
212.583.2684
aspurchase@littler.com

Counsel for Petitioners

THEANE D. EVANGELIS
Counsel of Record
BLAINE H. EVANSON
BRADLEY J. HAMBURGER
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
213.229.7000
tevangelis@gibsondunn.com

September 21, 2021

QUESTION PRESENTED

The Federal Arbitration Act (“FAA”) provides that arbitration agreements “shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2. In *Epic Systems Corp. v. Lewis*, 138 S. Ct. 1612 (2018), this Court held that the FAA “protect[s]” individual arbitration agreements “pretty absolutely,” and requires courts “to enforce, not override, the terms of [an] arbitration agreement[]” “providing for individualized proceedings.” *Id.* at 1619, 1621, 1623.

Courts in California have created a broad but unwritten exception to the FAA’s otherwise “emphatic directions.” *Epic Sys.*, 138 S. Ct. at 1621. According to the California Supreme Court, claims arising under the California Labor Code Private Attorneys General Act (“PAGA”)—which threaten employers with massive penalties for even trivial legal violations—are wholly exempt from the FAA, and agreements calling for individual arbitration are therefore unenforceable as to PAGA claims. See *Iskanian v. CLS Transp. L.A., LLC*, 59 Cal. 4th 348, 360 (2014). The Ninth Circuit upheld this conclusion in *Sakkab v. Luxottica Retail North America, Inc.*, 803 F.3d 425 (9th Cir. 2015). And both courts have declined to reassess this conclusion after *Epic Systems*.

The question presented is:

Whether agreements calling for individual arbitration are enforceable under the Federal Arbitration Act with respect to claims asserted under the California Labor Code Private Attorneys General Act.

**PARTIES TO THE PROCEEDING AND
CORPORATE DISCLOSURE STATEMENT**

The caption contains the names of all the parties to the proceedings below.

Pursuant to this Court's Rule 29.6, undersigned counsel state that Uber Technologies, Inc. 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. Rasier-CA, LLC is a wholly-owned subsidiary of Uber.

STATEMENT OF RELATED PROCEEDINGS

This case arises from and is related to the following proceedings in the California Superior Court for the County of Los Angeles, the California Court of Appeal, and the California Supreme Court:

- *Gregg v. Uber Technologies, Inc.*, No. BC719085 (Cal. Super. Ct.), order issued Dec. 5, 2019;
- *Gregg v. Uber Technologies, Inc.*, No. B302925 (Cal. Ct. App.), opinion issued Apr. 21, 2021;
- *Gregg v. Uber Technologies, Inc.*, No. S269000 (Cal.), petition for review denied June 30, 2021.

There are no other proceedings in state or federal trial or appellate courts directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

TABLE OF CONTENTS

	<u>Page</u>
QUESTION PRESENTED.....	i
PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT	ii
STATEMENT OF RELATED PROCEEDINGS.....	iii
OPINIONS BELOW	5
JURISDICTION	5
STATUTORY PROVISIONS INVOLVED	5
STATEMENT OF THE CASE	6
A. Legal Background.....	6
B. Factual and Procedural History	14
REASONS FOR GRANTING THE PETITION	16
A. The Decision Below Conflicts with This Court’s Decisions Interpreting the FAA	17
B. The <i>Iskanian</i> Rule Will Remain the Law in California Absent This Court’s Intervention	20
C. Whether PAGA Claims Are Beyond the Scope of the FAA Is an Important and Recurring Issue	24
CONCLUSION	26

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.