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WLF Urges Supreme Court to Provide FAA Guidance to California Courts

(*Viking River Cruises, Inc. v. Moriana*)

“Unless the Supreme Court intervenes yet again, California’s ongoing hostility to arbitration will continue.”

—Cory Andrews, WLF General Counsel & Vice President of Litigation

WASHINGTON, DC—Washington Legal Foundation (WLF) today filed an *amicus curiae* brief asking the U.S. Supreme Court to review a California Court of Appeal ruling that is inconsistent with the Federal Arbitration Act (FAA). WLF’s brief was prepared with the *pro bono* assistance of Peder Batalden, Felix Shafer, and John Querio of Horvitz & Levy LLP.

The FAA establishes a federal policy favoring arbitration. To operate properly, however, the FAA must apply consistently nationwide. The California courts have repeatedly created inconsistency. This case is the latest in a long line of decisions from California refusing to follow the FAA’s directive that arbitration contracts be enforced as written.

Here the California Court of Appeal declined to enforce a representative-action waiver in the parties’ arbitration agreement based on the California Supreme Court’s decision in *Iskanian v. CLS Transportation Los Angeles*. In *Iskanian*, the court held that claims under California’s Private Attorneys General Act (PAGA) are not subject to the FAA because they are considered *qui tam* actions in which individual workers pursue public (not private) claims for relief, so courts need not enforce PAGA representative-action waivers.

In its brief, WLF argues that Supreme Court review is needed to ensure uniform application of the FAA nationwide so that arbitration achieves its basic aims: resolving disputes efficiently, predictably, individually, and cost-effectively. The decision below thwarts these goals. The petition thus offers the Court an ideal opportunity to clarify that public and *qui tam* claims do not occupy a unique FAA-free zone, as the *Iskanian* court supposed.

Celebrating its 44th year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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