No. 22-1237

IN THE

Supreme Court of the United States

RYAN DALY, ET AL.,
Petitioners,

ALEXIS CHECHOWITZ, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE MASSACHUSETTS APPEALS COURT

BRIEF IN OPPOSITION BY RESPONDENTS AUTOFAIR, INC.; HAVERHILL FORD, LLC; AND HAVERHILL SUBARU, LLC

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BATEMAN & SLADE, INC. STONEHAM, MASSACHUSETTS

QUESTION PRESENTED

Whether the Massachusetts Appeals Court erred in finding that the Superior Court for Middlesex County Massachusetts did not abuse its discretion in granting final approval to the proposed class action settlement in this matter.

RULE 29.6 STATEMENT

Autofair, Inc. is a Delaware corporation and has no parent corporation and that no publicly held corporation owns 10% or more of its stock. Haverhill Ford, LLC is a Delaware limited liability company, whose sole manager is Autofair, Inc. Haverhill Subaru, LLC is a Delaware limited liability company, whose sole manager is Autofair, Inc.

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INTRODUCTION

Petitioners seek to overturn the approval of a state court class action settlement based on the sole argument that, because they were parties to arbitration agreements with their employer, it was repugnant to the Federal Arbitration Act ("FAA") for their claims to be ***settled*** as part of a class action in Massachusetts Superior Court.

However, the Appeals Court's decision (the "AC Decision") was not grounded in the FAA. Rather, the Appeals Court merely deferred to the arbitrators' interpretation of the arbitration agreements at issue. Specifically, the Appeals Court found that: (1) the Petitioners' arbitration agreements reserved the issue of arbitrability to the Petitioners' arbitrators; and (2) these arbitrators had each already interpreted these agreements to allow the Petitioners' claims to be settled as part of the class action. For this reason, each arbitrator had stayed the arbitration proceedings during the pendency of the settlement approval proceedings in state court. *See* AC Decision, Petitioner's Brf., Appx. C, pp. 6-7 ("The arbitrators plainly interpreted the arbitration agreement to give them the power to stay the arbitrations pending that settlement."). The Appeals Court recognized that courts have extremely limited ability to overturn an arbitrator's interpretation of an arbitration agreement. *Id.* p. 7 ("We defer to the arbitrators' interpretation of the arbitration agreement.") (citations omitted). Thus, the impact of the Appeals Court's decision is limited to the four individual

Petitioners and has no relevance beyond this particular set of facts.[1]

Moreover, the FAA does not apply to the Petitioners' arbitration agreements. The agreements contain a clear, explicit, and valid clause applying the Massachusetts Arbitration Act, as opposed to the FAA, to these agreements. And two of the arbitrators specifically held that the FAA did not apply to the agreements. This is an issue of contractual interpretation reserved to the arbitrators, which the Appeals Court had no ability to overturn even if so inclined. Since the FAA does not apply to the agreements, Petitioners' central argument is irrelevant, and indeed this Court lacks jurisdiction over this dispute.

In addition, though the Appeals Court did not need to reach this issue, even if the FAA applied to these arbitration agreements, there is no bar to the ***settlement*** of claims subject to arbitration agreements in court. Petitioners cite precedent for the proposition that arbitration agreements must be enforced according to their terms. But none of these cases addressed whether claims otherwise subject to arbitration could be resolved as part of a class action settlement. Moreover, unlike in the cases cited by Petitioners, the Petitioners' claims have already been to arbitration and the arbitrators interpreted the arbitration agreements to allow for the settlement of these claims in court. The arbitrators' decisions were based on well-settled case law that arbitration is a matter of contract, and arbitration, like any other

[1] At no point in the proceedings below, or in their Petition, have the Petitioners ever addressed the standard for overturning the ruling of an arbitrator.

contractual right, can be superseded by either an individual or class settlement.

For all of these reasons, and as explained in more detail below, the petition for certiorari should be denied.

STATEMENT OF THE CASE

The underlying action was filed on May 22, 2018, by Alexis Chechowitz, a former sales employee, against Autofair, Inc. and others on behalf of Massachusetts sales associates and service advisors, alleging that under Massachusetts state law, the defendants had not issued correct overtime and other premium pay to commissioned employees.

The parties initially agreed to stay proceedings pending decisions by Massachusetts appellate courts in two cases impacting the claims raised by the plaintiff: *Laurita Sullivan, et al. v. Sleepy's LLC*, et al., C.A. No. 17-120009-RGS (D. Mass. June 6, 2018) (questions certified to the Supreme Judicial Court), and *Cerulo, et al. v. Herbert G. Chambers, et al.*, C.A. No. 1681CV03749 (which was on appeal to the Massachusetts Appeals Court). The parties' joint motion to stay was granted on August 28, 2018.

On May 8, 2019, the Massachusetts Supreme Judicial Court issued its decision in *Sleepy's,* 482 Mass. 227, 228 (2019), resolving one of the issues impacting this matter. The parties then continued to wait for a decision in the *Cerulo* matter, but that case settled in August 2019 prior to a decision. Accordingly, the parties in the underlying *Chechowitz* case agreed to discuss a class wide settlement and began exchanging information in preparation for a class mediation in early 2020.

In August 2019, a number of the purported class members contacted counsel for *Chechowitz* and reported that they had been contacted by the law firm of Richardson & Cumbo, counsel for the Petitioners, about the same claims. Plaintiffs' counsel informed Petitioners' counsel of the existence of the *Chechowitz* class action (though they were almost certainly aware of it) and that the parties were discussing mediation on a class-wide basis.

Instead of seeking to intervene or file individual arbitrations, the Petitioners filed a copycat class action in Essex County Massachusetts Superior Court on October 25, 2019, eighteen (18) months after *Chechowitz* was filed, and nearly two months after learning the parties in *Chechowitz* were going to be discussing a class settlement that would resolve their claims. The case was captioned *Ryan Daly, David Thomas, Paul Silva, Eliezer Ramos, Francisco Cuesta and Diane Ingram, et al. v. Autofair, Inc., et al.*, No. 1977CV1476 (Essex Sup. Ct.). Subsequently, on November 20, 2019, the Petitioners initiated individual proceedings with the American Arbitration Association, seeking mediation followed by arbitration with respect to the same claims raised in the *Chechowitz* and *Daly* class actions.

On December 6, 2019, as a courtesy, Respondent Autofair's counsel reached out to Respondents' counsel to inform them once again that the parties in *Chechowitz* were negotiating a class wide settlement, which encompassed their claims. Autofair's counsel suggested that to avoid wasting time or money, individual proceedings for these individuals were not in anyone's interest. Petitioners responded that regardless of any class settlement, they believed they had the right to pursue individual

arbitrations and were planning to do so. However, Petitioners took no further action for several months.

A mediation was held in the underlying *Chechowitz* matter on February 21, 2020 with the Hon. Peter M. Lauriat (Ret.) at JAMS in Boston. The parties were unable to reach a class wide settlement at the mediation, but continued to communicate, exchange information, and discuss a potential settlement throughout 2020. Petitioners were fully aware that these discussions were ongoing.

The Petitioners finally filed their separate demands for arbitration with the AAA on April 1, 2020. The arbitrations proceeded, and the parties engaged in discovery and motion practice, with the Petitioners on notice that this matter could settle on a class basis at any time. Settlement negotiations between the parties in *Chechowitz* finally concluded in December 2020, and the parties executed a class wide settlement agreement on January 2, 2021, which was submitted to the Middlesex Superior Court for approval. Autofair informed the Petitioners the same day, January 2, 2021, that the parties had reached a proposed settlement. *Id.*

The Autofair Defendants then filed appropriate motions in each of the Petitioners' arbitrations to stay proceedings during the duration of the *Chechowitz* settlement approval process, because the claims of the Petitioners would be released pursuant to the class settlement if it were approved by the Superior Court.

In opposing the motions to stay, Petitioners argued, just as they do in their Petition, that because they had arbitration agreements with Autofair, their claims could not, as a matter of law, be settled as part of a state court class action. After reviewing the

arbitration agreements, the parties' briefing, relevant case law, and in one case hearing oral argument, all four of the arbitrators presiding over Petitioners' individual arbitrations stayed the proceedings pending the settlement approval process in *Chechowitz*. Each of these arbitrators rejected Petitioners' argument that the existence of their arbitration agreements precluded settlement of their claims as part of the *Chechowitz* class. *See* Pet. Appx. J, App. p. 48a, Ingram Order dated Feb. 5, 2021 (staying case and holding: "Courts have consistently ruled that class action settlements supersede a class member's ability to arbitrate claims released as part of that settlement."); Pet. Appx. I, App. p. 39a, Silva Order dated Feb. 8, 2021 ("[I]t is well-established law that parties to an otherwise enforceable arbitration agreement can settle their claims in court when they do not opt out of a class wide settlement, even if their failure to opt out was unintentional."); Thomas Order dated Jan. 27, 2021 ("If Claimant is part of the Chechowitz class settlement, then he has settled all of his wage claims via the settlement in that matter (assuming that the settlement is approved by the Superior Court) . . . The issue of Claimant being part of the Chechowitz class of plaintiffs who settled their claims is better heard by the Superior Court which can decide whether or not Claimant is part of the class or is not part of that class.")[2]; Pet. Appx. G, App. pp. 29a-30a, Daly Order dated Feb. 8, 2021 (finding that Daly

[2] Petitioners have provided with their petition an apparent transcription of Arbitrator Hawks-Ladd's decision in the Thomas matter, but that transcript contains errors. One error is the omission of the paragraph containing some of the quoted language above. A true and correct copy of Arbitrator Hawks-Ladd's Order is provided herewith.

was within the class definition and that he would be bound by the release if the settlement were approved, and granting stay).

With their arbitrations stayed, Petitioners then served a motion to intervene in the *Chechowitz* class action on February 17, 2021, as well as a motion to compel arbitration, and to stay all settlement approval proceedings. Petitioners again argued that their claims could not be resolved in a class settlement because they were party to arbitration agreements. *Id.* After a hearing, a Superior Court Judge issued an Order dated May 21, 2021, denying the motion to intervene. Pet. Appx. A, App. pp. 2a-3a. The Judge noted that although the Petitioners were aware of class settlement negotiations in this case since August 2019, they did not take action to protect their alleged rights at that time by way of intervention or otherwise. He held that Petitioners should not be permitted to intervene and stay the lawsuit at such a late stage, especially when doing so would be unfair to Plaintiff, Autofair, and hundreds of other class members who would be prejudiced by the late intervention and stay. *Id.* He also noted that the mere fact that the Objector's lawyers would be positioned for larger fees if they could complete their clients' arbitrations was not a relevant factor for consideration. *Id.* Accordingly, the Judge denied both intervention as of right and permissive intervention. *Id.* Petitioners ***did not*** appeal this ruling.[3]

[3] Petitioners filed a notice of appeal with respect to the denial of the motion to intervene on May 28, 2021, but never docketed that appeal. On August 9, 2021 the Appeals Court issued a Notice that Petitioners did not timely docket the appeal of the order on their motion to intervene and therefore that appeal would not proceed unless Petitioners moved the Appeals

On June 1, 2021, Petitioners then filed a separate action in the United States District Court for the District of Massachusetts, seeking a declaratory judgment that their claims could not be settled as part of this action, raising the exact same arguments that had been previously rejected by the four arbitrators and the Superior Court Judge who denied the motion to intervene. The case was captioned *Daly et al. v. Autofair Inc. et al.*, No. 21-10911-RGS (D. Mass.). Also on June 1, 2021, the Middlesex Superior Court granted the Parties' motion for preliminary approval of settlement, and set a hearing for final approval.

On August 6, 2021, in the *Daly* action in federal court, Petitioners filed an "emergency" motion for preliminary injunction, asking the federal district court to stay further settlement approval proceedings in *Chechowitz* "until Petitioners' separate, individual arbitrations are fully resolved," and further asked the district court to "enjoin[] the Superior Court from granting final approval of the proposed class action settlement." The basis for this motion was again the argument that pursuant to the FAA, Petitioners' claims could not be settled as part of the class.

On September 14, 2021, the district court denied that motion. Petitioners attempt to disingenuously gloss over that opinion as being based solely on a lack of jurisdiction under the Anti-Injunction Act. *See* Pet. p. 16. But the Court explicitly held that the arbitrators had resolved the ultimate issue:

> Moreover, the arbitrators in petitioners' cases have ruled on the matter. *See*

Court to allow a late appeal. They did not do so, and did not raise the intervention ruling in their state court appeal.

Hoffman Decl., Ex. C, Thomas Order dated Jan. 27, 2021 ("If Claimant is part of the Chechowitz class settlement, then he has settled all of his wage claims via the settlement in that matter (assuming that the settlement is approved by the Superior Court). . . . The issue of Claimant being part of the Chechowitz class of plaintiffs who settled their claims is better heard by the Superior Court which can decide whether or not Claimant is part of the class or is not part of that class."); Ex. D, Silva Order dated Feb. 8, 2021 (finding that FAA did not apply due to choice of law clause, and stating "it is well-established law that parties to an otherwise enforceable arbitration agreement can settle their claims in court when they do not opt out of a class wide settlement, even if their failure to opt out was unintentional."); Ex. E, Ingram Order dated Feb. 5, 2021 (staying case and observing that: "Courts have consistently ruled that class action settlements supersede a class member's ability to arbitrate claims released as part of that settlement."); Ex. F, Daly Order dated Feb. 8, 2021 (granting stay and reasoning that if the Chechowitz settlement were approved, Claimant would be bound by the release). ***While petitioners may believe that these rulings are in error, this court "cannot pass on an arbitrator's***

> ***alleged errors of law and, absent fraud, we have no business overruling an arbitrator because we give a contract a different interpretation."***

Daly v. Autofair Inc., No. 21-10911-RGS, 2021 U.S. Dist. LEXIS 174040, at *8-9 (D. Mass. Sep. 14, 2021) (citations omitted) (emphasis added) (Pet. Appx. E, App. pp. 24a-25a). After the denial of a motion for reconsideration, the Petitioners then appealed the denial of the motion for preliminary injunction to the First Circuit Court of Appeals. *Daly, et al v. Autofair, Inc., et al.*, No. 21-1797.

On November 23, 2021, the Massachusetts Superior Court held the hearing on final approval of the class settlement. Three days later, Petitioners filed an "Emergency Motion to Stay" the Court's decision on final approval. In doing so, Petitioners explicitly asked the Court to stay ***all*** settlement approval proceedings (necessarily delaying any relief to the class) until the First Circuit Court of Appeals ruled on their pending appeal. The Emergency Motion to Stay was denied on December 8, 2021. On December 14, 2021, the Superior Court issued its Order granting final approval to the settlement in *Chechowitz*. Pet. Appx. B. The Petitioners then filed a Notice of Appeal of that decision to the Massachusetts Appeals Court.

Subsequently, on January 4, 2022, the First Circuit held oral argument on the Petitioners' appeal of the District Court's denial of their motion for a preliminary injunction. The Court signaled quite clearly that it did not see any merit in Petitioners' position that the FAA prevented settlement of their

claims in this case, and furthermore asked the parties to submit briefing on the issue of whether the appeal was now moot given that the Superior Court had granted final approval to the settlement. Rather than submit that briefing, on January 18, 2022 the Petitioners chose to voluntarily dismiss their appeal, and the Petitioners then voluntarily dismissed the underlying *Daly* federal court action on March 11, 2022.

The Petitioners' state court appeal of the approval of the class settlement was then briefed and argued. On January 18, 2023, the Massachusetts Appeals Court issued its decision, affirming the Superior Court's approval of the settlement. The decision of the Appeals Court did not break any new ground, create any new law, or decide the issues of federal law that Petitioners address in their Petition. The Appeals Court's decision was grounded in well-settled case law holding that a court may not overturn an arbitrator's reasonable interpretation of an arbitration agreement. The Appeals Court simply found that the four arbitrators had already interpreted the arbitration agreements to allow the Petitioners' claims to be settled as part of the *Chechowitz* class action.

> When the arbitrators stayed the four arbitration proceedings with each of the Petitioners, they clearly contemplated that the class action in Superior Court might resolve the Petitioners' claims, making further arbitration proceedings unnecessary. The arbitrators plainly interpreted the arbitration agreement to give them the power to stay the arbitrations pending that settlement.

> We defer to the arbitrators' interpretation of the arbitration agreement.

See AC Decision pp. 6-7 (citing *Marie v. Allied Home Mtge. Corp.*, 402 F.3d 1, 10 (1st Cir. 2005) (although court decides threshold question of validity of arbitration clause, other claims, "even some 'gateway questions' that might dispose of the entire claim, are presumptively left to the arbitrator"); *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 569 (2013) (arbitrator's decision construing contract "must stand, regardless of a court's view of its (de)merits"); *Massachusetts Highway Dep't v. American Fed'n of State, County & Mun. Employees, Council 93*, 420 Mass. 13, 15, 648 N.E.2d 430 (1995) ("absent fraud, we have no business overruling an arbitrator because we give a contract a different interpretation" [citation omitted]).

The Appeals Court also found that the Petitioners' appeal of the class settlement approval was "frivolous," and as a result awarded Defendants double their costs. *Id.* pp. 7-8.

Subsequently, pursuant to M.R.A.P. 27.1, Petitioners sought Further Appellate Review ("FAR") of the Appeals Court's decision in the Massachusetts Supreme Judicial Court. That application was denied on March 22, 2023.

Subsequently, the arbitrator in the Daly arbitration dismissed Mr. Daly's arbitration with prejudice due to the resolution of these claims in state court.[4] Petitioners' Petition for Certiorari followed.

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[4] The arbitrator stated that "[s]hould the Claimant petition the United States Supreme Court to grant certiorari,

REASONS FOR DENYING THE PETITION

I. Jurisdiction Is Lacking In This Court Because The Appeals Court Did Not Decide An Issue Of Federal Law, And The Arbitration Agreements At Issue Are Not Subject To The Federal Arbitration Act.

This Court has jurisdiction over final judgments issued by the highest court of a state only where a question of federal law is at issue. *See* 28 USCS § 1257. Petitioners claim jurisdiction on this basis. With respect to the standard for granting certiorari, citing Supreme Court Rule 10(c), Appellants argue that certiorari should be allowed because the Massachusetts Appeals Court (as affirmed by the Massachusetts SJC), "decided an important federal question in a way that conflicts with relevant decisions of this Court."

However, the Massachusetts Appeals Court (as affirmed by the Massachusetts Supreme Judicial Court), was not based on an interpretation of the FAA or any other federal law. Rather, as explained above, the AC Decision was a deferral to the arbitrators' interpretation of the arbitration agreements.

Furthermore, though the Court need not reach this issue, the arbitration agreements signed by Petitioners -- just like the agreement signed by the Plaintiff in *Chechowitz*, are not governed by the FAA. Each contains the following provision:

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and then the United States Supreme Court grants that petition, and then overturns the MA SJC decision, and then the MA Superior Court ultimately determines that the Claimant is not properly part of the class in the Chechowitz matter, then the Claimant can seek to reopen this matter at that time. Until that occurs, this matter is dismissed with prejudice."

> 11. Governing Law: The ***Massachusetts Arbitration Act shall govern the interpretation, enforcement, and proceedings*** (except as otherwise outlined in the applicable American Arbitration Rules) pursuant to this Agreement. To the extent that the Massachusetts Arbitration Act is not applicable, then the Federal Arbitration Act, 9 U.S.C. §§ 1, et seq. will apply.[5] In all other respects, Massachusetts Law will govern all disputes in this Agreement.

See Pet. Appx. E, pp. App. 23a. Thus, the FAA would apply only to the extent the Massachusetts Arbitration Act is ***not*** applicable. Petitioners have identified no exception to the Massachusetts Arbitration Act that would apply to this matter, nor could they. Indeed, arbitrator Roth, who presided over Petitioner Silva's arbitration, expressly held that the Massachusetts Arbitration Act, and not the FAA, governed the agreement. Pet. Appx. I App. pp. 38a-39a. and n.4 ("Citing [Lamps Plus] . . . Silva argues that . . . his claims cannot be resolved in a class action. The parties' [arbitration agreement] in this case, however, provides for the application of Massachusetts Arbitration Act . . ."). Likewise, in Petitioner Ingram's arbitration, the arbitrator determined that the agreement was governed by Massachusetts law as opposed to the Federal Arbitration Act. *See* Pet. Appx. J, App. p. 45a ("The Arbitration Agreement is governed by Massachusetts

[5] The Massachusetts Arbitration Act excludes from its coverage "collective bargaining agreements to arbitrate." Mass. Ann. Laws ch. 251, § 1.

law."). There is no basis to overturn these rulings, nor do Petitioners even attempt to argue otherwise. *See Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 569 (2013) ("Because the parties 'bargained for the arbitrator's construction of their agreement,' an arbitral decision 'even arguably construing or applying the contract' must stand, regardless of a court's view of its (de)merits.") (citations omitted).

A clause specifying that state arbitration law governs an agreement is valid and enforceable. This Court has held that parties may opt out of the FAA and may specify that state arbitration law applies to the agreement, even where the FAA would otherwise apply. *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University*, 489 U.S. 468, 476-79 (1989); *Martis v. Dish Network Serv., L.L.C.*, 597 F. App'x 301, 303-04 (6th Cir. 2015) ("Although the FAA generally preempts inconsistent state laws and governs all aspects of arbitrations concerning "transaction[s] involving commerce," parties may agree to abide by state rules of arbitration, and "enforcing those rules according to the terms of the agreement is fully consistent with the goals of the FAA." The central inquiry in this choice-of-law determination is whether the parties unambiguously intended to displace the FAA with state rules of arbitration.") (citations omitted).[6]

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[6] *See also Cooper v. WestEnd Capital Mgmt., LLC*, 832 F.3d 534, 544 (5th Cir. 2016) ("T]his Court permits arbitration under non-FAA rules if a contract expressly references state arbitration law . . . ."); *Dewan v. Walia*, 544 F. App'x 240, 245 (4th Cir. 2013) (while a general choice of law provision is insufficient, a clear expression of intent to invoke state ***arbitration*** law would be sufficient to displace the FAA's application to an agreement); *Edstrom Indus. v. Companion Life Ins. Co.*, 516 F.3d 546, 549 (7th Cir. 2008) ("the Supreme Court

Because the FAA does not apply to these agreements, Petitioners' preemption argument lacks any footing. *Lamps Plus v. Varela*, 139 S. Ct. 1407 (2019) and other related cases were dependent on the applicability of the FAA. In *Lamps Plus*, this Court held that, when an arbitration agreement is governed by the FAA, class proceedings may not be forced on a defendant who did not explicitly agree to them. *Id.* at 1419. *Lamps Plus* further held that where the FAA applies to an agreement, it preempts any state law or policy to the contrary, including state policies favoring class actions. *Id.* at 1417-1418 ("[C]lass arbitration, to the extent it is manufactured by [state law] rather than consen[t], is inconsistent with the FAA."). *Lamps Plus*, however, was entirely dependent on the applicability of the FAA. 139 S. Ct. at 1412 ("We now consider whether the FAA similarly bars an order requiring class arbitration when an agreement is not silent, but rather "ambiguous" about the availability of such arbitration."). Where the FAA does not apply to an arbitration agreement, neither does *Lamps Plus. See, e.g., Waithaka v. Amazon.com, Inc.*, 966 F.3d 10, 33 (1st Cir. 2020) ("Notwithstanding the Supreme Court's view that such state policies must give way when the FAA governs a dispute, the policies remain intact where, as here, the FAA does not preempt state law.") (citation omitted).

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has held that parties can opt out of the federal act, provided the state arbitration statute does not contain provisions that would undermine the federal act's aim of facilitating the resolution of disputes involving maritime or interstate commerce by arbitration.") (citing *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University*, 489 U.S. 468, 476-79 (1989)).

Petitioners rely upon, and quote heavily from, a motion to compel arbitration which Autofair ***never filed in Court***. *E.g.* Pet. pp. 5-7. This motion was merely served on Plaintiffs pursuant to Mass. Sup. Ct. R. 9A, but was withdrawn and never filed.[7] Further, any legal argument in that withdrawn motion would not trump the language in a clear and unambiguous contract. Moreover, as explained above, several months after that motion was served and withdrawn, Arbitrator Roth, in the Silva arbitration, interpreted the agreement to be governed by the Massachusetts Arbitration Act.

II. The Appeals Court Applied The Correct Standard Of Review.

Petitioners are appealing from the approval of a class action settlement pursuant to Mass. R. Civ. P. 23. In Massachusetts state courts, the approval of a class action settlement is reversed only upon a "clear showing that the trial court was guilty of an abuse of discretion." *Sniffin v. Prudential Ins. Co.*, 395 Mass. 415, 421 (1985) (citing *Greenspun v. Bogan*, 492 F.2d 375, 379 (1st Cir. 1974)). An appellate court examines the reasonableness of the settlement "under the totality of the circumstances." *Id.* at 425 (citing *Grunin v. International House of Pancakes, supra* at 124). As the SJC explained:

> Courts of appeals view the facts in the light most favorable to the settlement. . . . In addition, they do not focus on

[7] Massachusetts Superior Court Rule 9A requires that motions be served on opposing counsel before they are filed, and that after an opposition is received, the moving party has the option to file the motion with the Court or to withdraw the motion. Mass. Sup. Ct. R. 9A(b)(2)(ii).

> individual components of settlements, but rather view them in their entirety in evaluating their fairness. . . . Such deference is due the judgment of the district judge because of his familiarity with the litigants, the history of the litigation and the merits of the substantive claims asserted. . . . [T]he essence of a settlement is compromise . . . Because settlement of a class action, like settlement of any litigation, is basically a bargained exchange between the litigants, the judiciary's role is properly limited to the minimum necessary to protect the interests of the class and the public. Judges should not substitute their own judgment as to optimal settlement terms for the judgment of the litigants and their counsel.

Sniffin, 395 Mass. at 297-98. Although the SJC has held that the existence of any objection is "a factor in our inquiry, we will not reverse if we conclude that the judge did not abuse his discretion in determining that the settlement is in the ***best interests of the class as a whole***. *Sniffin*, 395 Mass. at 300 (citing *Laskey v. International Union*, 638 F.2d 954, 957 (6th Cir. 1981)).

While this is, again, purely an issue of state procedural law, the Appeals Court therefore applied the correct standard of review to the proceeding at hand. Notably, Petitioners did not appeal the denial of their motion to intervene or the denial of their motion to compel arbitration, in which case a different standard may have applied.

III. The Arbitrators Addressed And Rejected Petitioners' Central Argument And The Appeals Court Correctly Deferred To Them.

A Court has very limited ability to review or overturn findings of law or fact by an arbitrator. *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 569, 133 S. Ct. 2064, 2068 (2013) ("an arbitral decision 'even arguably construing or applying the contract' must stand, regardless of a court's view of its (de)merits."). "[C]ourts "do not sit to hear claims of factual or legal error by an arbitrator[,] as an appellate court does in reviewing decisions of lower courts." *Coastal Oil v. Teamsters Local 25*, 134 F.3d 466, 469 (1st Cir. 1998) (quoting *United Paperworkers Int'l Union v. Misco*, 484 U.S. 29, 38 (1987)).

Petitioners attempt, as they did below, to make an end run around this standard by implying that the arbitrators did no more than defer the decision to the Superior Court. But the arbitration agreements at issue reserve the question of arbitrability (i.e. whether or not a particular issue must be decided in arbitration or by the Court), to the *arbitrator*. Pet. Appx. C, App. pp. 13a ("AutoFair and I agree to submit to binding arbitration any dispute concerning the arbitrability of any controversy or claim."). It was therefore solely within the arbitrators' purview to interpret those agreements and to make the determination that Petitioners' claims could be settled in court.[8]

[8] Thus, the arbitrators did not have the ability to punt the arbitrability issue to the Court even if they had intended to do so.

Moreover, it could not be more obvious from reading the arbitrators' decisions that they did much more than defer the issue to the state court. In each arbitration, over each Petitioner's vigorous opposition, after review of the arbitration agreements and the same arguments raised here, the arbitrator rejected the position that the existence of their arbitration agreements precluded settlement of their claims as part of the *Chechowitz* class.

For example, in Petitioner Ingram's arbitration, the arbitrator first determined that the agreement was governed by Massachusetts law as opposed to the Federal Arbitration Act. *See* Pet. Appx. J, App. p. 45a ("The Arbitration Agreement is governed by Massachusetts law."). Further, the arbitrator addressed the FAA issue head-on. In response to Ingram's argument that her claims could not be settled via *Chechowitz*, he stated: "This is a question of jurisdiction – are claims encompassed by a valid arbitration agreement subject to release in a class action settlement purporting to resolve those same claims." *Id.* p. 48a. After reviewing the parties' extensive briefing (including a reply and sur-reply brief), the arbitrator found that the answer to that question was a resounding "Yes." *Id.* ("Courts have consistently ruled that class action settlements supersede a class member's ability to arbitrate claims released as part of that settlement.") (citing, *inter alia Burgess v. Citigroup, Inc.*, 624 F. Appx. 6, 9 (2d Cir. 2015). *See also id.* p. 49a ("the prevailing authority cited above makes clear that a class action settlement may serve to supersede a party's contractual right to have claims arbitrated."). He further found that Ingram's exclusivity argument was undercut by her own actions in filing a copycat class action in state

court encompassing the same claims at issue in the arbitration. *Id.* ("Claimant offers no explanation as to how, as argued here, the Arbitration Agreement mandates that her claims only be addressed in arbitration while at the same time proceeding with those claims in the *Daly* action."). This arbitrator also noted that the arbitration agreement itself provided that the exclusivity provision was not absolute, and that Ingram's claims ***could*** be resolved in court where the parties are "compelled by a court to do so," evidently referring to the *Chechowitz* court's potential approval of the class settlement. *Id.* p. 49a. The arbitrator therefore stayed proceedings and suggested two instances in which the arbitration might be allowed to continue: (1) should the court "reject the class action settlement;" or (2) "otherwise exempt Claimant from it based on her motion to intervene." *Id.* p. 51a. Neither came to pass. The Massachusetts State Courts found the settlement to be fair, reasonable, and adequate, and Ingram's motion to intervene in *Chechowitz* was denied, *a decision which Ingram did not appeal.*

The arbitrator in Petitioner Silva's arbitration also recognized that the agreement provided for application of the Massachusetts Arbitration Act, as opposed to the FAA, thereby disposing of the preemption argument upon which Petitioners rely. *See* Pet. Appx. I, App. p. 39a. This decision found, furthermore, that "[I]t is well-established law that parties to an otherwise enforceable arbitration agreement can settle their claims in court when they do not opt out of a class wide settlement, even if their failure to opt out was unintentional." *Id.* (citations omitted). It further noted that Silva did not deny that he fell within the definition of the *Chechowitz* class,

and that his own actions in filing a copycat class action in Superior Court undermined his argument that his claims could only be resolved in arbitration. *Id.* p. 37a n.1; p. 41a n.5.

In Petitioner Thomas's arbitration, the arbitrator held: "If Claimant is part of the *Chechowitz* class settlement, then he has settled all of his wage claims via the settlement in that matter (assuming that the settlement is approved by the Superior Court) . . . The issue of Claimant being part of the *Chechowitz* class of plaintiffs who settled their claims is better heard by the Superior Court which can decide whether or not Claimant is part of the class or is not part of that class." *See* Pet. Appx. H, App. pp. 33a. The only remaining issue then, was whether Thomas was a member of the class, which Thomas *conceded* when he moved to intervene and when he submitted an objection to the settlement.

Likewise, in Petitioner Daly's arbitration, the arbitrator, after hearing all of the same arguments raised here, found that Daly was within the class definition and that he would be bound by the release if the settlement were approved, unless the class definition were modified to exclude him.[9] *See* Pet. Appx. G, App. pp. 29a-30a. He further noted that Daly had already moved to intervene in the *Chechowitz*

[9] The only way the class definition could have been modified is by agreement of the parties, as the Superior Court and Appeals Court lacked the authority to rewrite the class definition. *See Walsh v. Telesector Res. Grp.*, 40 Mass. App. Ct. 227, 233-34, 662 N.E.2d 1043, 1047 (1996) ("[T]he power to approve or reject a settlement negotiated by the parties before trial does not authorize the court to require the parties to accept a settlement to which they have not agreed.") (quoting *Evans v. Jeff D.*, 475 U.S. 717, 726-727 (1986)).

matter, and that in doing so he had raised the same objections he made in opposing the motion to stay. *Id.* As the Appeals Court noted, the Superior Court denied that motion to intervene, and the Petitioners did not appeal it.

Thus, all four arbitrators interpreted the arbitration agreements to allow the Petitioners' claims to be resolved in the *Chechowitz* class action, and the Appeals Court was correct to defer to their findings. Indeed, it can hardly be said that the AC Decision was "hostile" to arbitration, as Petitioners claim, when it merely approved a class settlement that the four presiding arbitrators expressly recognized the Court could approve.

IV. Even if the Arbitrators' Rulings Could Be Challenged, Their Interpretation of the Arbitration Agreements Was Correct.

To whatever extent the Court reaches the issue, the arbitrators' interpretation of the agreements, and their decision that the Petitioners' claims could be resolved in the *Chechowitz* class action, was correct. As an initial matter, the language in these agreements regarding exclusivity is not absolute. They state that covered claims should be resolved in arbitration, "except where compelled by court or a government agency as allowable under Massachusetts law." This language was called out by the arbitrator in Ms. Ingram's arbitration, when he granted a stay pending settlement approval proceedings in this matter. Pet. Appx. J, App. p. 49a. ("The Arbitration Agreement indeed provides that neither party may initiate an action in court; however, it excepts from that restriction any

circumstances where the parties are 'compelled by [a] court' to do so.").

But even absent such language, it is well-settled that parties to an arbitration agreement ***can*** settle their claims in court, even if one of the releasing parties is a member of a class settlement. Arbitration is a matter of contract, and the FAA's policy favoring arbitration merely means that agreements to arbitrate stand on the same footing as other contracts. *Morgan v. Sundance, Inc.*, 142 S. Ct. 1708, 1713 (2022); *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 526 (2019). Put differently, the policy is to make "arbitration agreements as enforceable as other contracts, but not more so." *Morgan,* 142 S. Ct. at 1713 (citing *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 404, n.12, (1967)). Thus, this Court has held, "a court must hold a party to its arbitration contract just as the court would to any other kind. But a court may not devise novel rules to favor arbitration over litigation." *Id.* (citing *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 218-221 (1985)).

It necessarily follows that, like any other contract, an agreement to arbitrate can be modified or superseded by a subsequent contract, such as a class action settlement agreement:

> Just as a right to arbitrate is created by contract, so it may be abolished by contract. The plaintiff class in this case not only released other claims but also surrendered any entitlement to arbitration its members formerly possessed.

In re VMS Ltd. P'ship Sec. Litig., 26 F.3d 50, 51 (7th Cir. 1994). Accordingly, once claims are released pursuant to a class action settlement, they can no longer be pursued in arbitration. *Id.* (affirming district court's injunction of arbitration brought by a class member whose claims had been released pursuant to a class settlement).

Likewise, in *In re Citigroup Inc. Sec. Litig.*, No. 09-Md-2070 (SHS), 2014 U.S. Dist. LEXIS 99923, at *27 (S.D.N.Y. July 21, 2014), the court rejected the same argument. The plaintiffs argued that a class settlement could not preclude their arbitration "because they had previously entered employment-related agreements that provided for arbitration as their ***exclusive recourse*** for dispute resolution." *Id.* The court dismissed this argument as "bootless" because "[i]t is settled law that class membership can release all claims, including arbitration claims, notwithstanding a class member's earlier arbitration agreement." *Id.* (citation omitted) ("As members of the settlement class, claimants entered a new agreement with Citigroup—the Settlement Agreement—thereby displacing their arbitration agreements. The arbitration agreements do not alter the Court's conclusion that claimants are bound by the settlement's release."); *see also Burgess v. Citigroup Inc.*, 624 F. App'x 6, 9 (2d Cir. 2015) ("class action settlement superseded any prior existing agreement" that arbitration would be "exclusive forum for all employment-related disputes to arbitrate claims arising out of the Appellants' employment."); *In re Lehman Bros. Secs. & Erisa Litig.*, 2012 U.S. Dist. LEXIS 90796, *54 (S.D.N.Y. June 29, 2012) (enjoining arbitration and stating "where a previously-existing agreement to arbitrate has been superseded by a

release contained in a [class] settlement agreement, the claims within the release are no longer "covered by a valid and binding arbitration agreement."); *Anderson v. Beland (In re Am. Express Fin. Advisors Sec. Litig.)*, 672 F.3d 113, 133 (2d Cir. 2011) ("the Class Settlement extinguished not only the ability of Class Members to bring Released Claims against Ameriprise as a matter of substance, but also the Class Members' right to arbitrate those claims").

Petitioners argue at length that courts confronted with enforceable arbitration agreements must compel the parties to arbitrate their claims. But the Petitioners ignore the fact that unlike the cases they cite, ***their claims have already been to arbitration***. In addition, none of the cases cited by Petitioners address the question of whether claims otherwise subject to arbitration can be settled in Court.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

AUTOFAIR, INC.;
HAVERHILL FORD, LLC;
AND HAVERHILL SUBARU, LLC
Defendants-Appellees

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Dated: July 24, 2023

EXHIBIT 1

AMERICAN ARBITRATION ASSOCIATION

DAVID C. THOMAS,
Claimant,
v.

AUTOFAIR, INC., HAVERHILL FORD, LLC, HAVERHILL SUBARU, LLC, H. ANDREW CREWS, and DAVID HAMEL,
Respondents.

Case No. 01-20-0003-9695

January 27, 2021

RULING ON RESPONDENTS' MOTION TO STAY PROCEEDINGS DUE TO POTENTIAL CLASS ACTION SETTLEMENT

DISCUSSION OF CLAIMS AND ARGUMENTS

Respondents have moved to stay this Arbitration pending approval of the class action settlement in *Alexis Chechowitz v. Autofair, Inc.*, C.A. No. 1881CV01492 (Middlesex Superior Court). Respondents argues that the *Chechowitz* litigation is now settled and awaiting approval of the settlement by the Massachusetts Superior Court. Respondents also argue that the settlement agreement executed in the *Chechowitz* class action matter resolved all claims relating to the settlement class which includes "all Sales Associates and Service Advisors paid on a commission basis who worked at an Autofair branded automotive dealership in

> Massachusetts..." Respondents argue that the Claimant in this arbitration matter is a member of the *Chechowitz* class. Respondents also argue that all respondents named in this arbitration would be subject to the release of claims if the Superior Court approves the *Chechowitz* class settlement, and that Claimant's arbitration claim would therefore be disposed of through that class settlement.

Claimant argues that the parties are subject to a valid and enforceable arbitration agreement that mandates that Claimant's claims for unpaid wages to be resolved solely in arbitration.[1] Claimant argues that this arbitration matter should proceed notwithstanding the *Chechowitz* class settlement.

Respondents have provided evidence that Claimant is part of the *Chechowitz* class settlement; Claimant has not provided any evidence to refute that

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[1] Claimant appears to have also filed a lawsuit in the Massachusetts Superior Court that was apparently filed after the *Chechowitz* class action was filed. Claimant does not mention in his submission the fact that there is a separate Massachusetts Superior Court lawsuit; however the Respondents reference that lawsuit in their submission. I do not have sufficient facts or evidence before me as to whether that individual lawsuit was stayed or dismissed in order for Claimant to pursue this arbitration -- at least the parties have not provided me with any evidence that the lawsuit has been dismissed or stayed in favor of arbitration. I also cannot decipher the impact of that lawsuit on the *Chechowitz* class action, since neither party raised the issue. For purposes of deciding this motion, I therefore assume that the individual action (whether or not it was stayed or dismissed) is not relevant to deciding this motion since neither party focused on that issue, and, in any event, if the *Chechowitz* class action settlement is approved, and it includes the Claimant, then that would likely dispose of the Claimant's individual lawsuit as well as this arbitration.

claim. If Claimant is part of the *Chechowitz* class settlement, then he has settled all of his wage claims via the settlement in that matter (assuming that the settlement is approved by the Superior Court).

RULING

Respondents' Motion to Stay this Arbitration is hereby granted. The issue of Claimant being part of the *Chechowitz* class of plaintiffs who settled their claims is better heard by the Superior Court which can decide whether or not Claimant is part of the class or is not part of that class. Granting the Respondents' Motion to Stay will avoid the potentiality of multiple litigations on the same matter going on at the same time in different forums. Claimant may raise any concerns that the proposed class action settlement in *Chechowitz* does not adequately protect his interests by objecting to that settlement in the Massachusetts Superior Court.

If the Superior Court holds that Claimant is not part of the *Chechowitz* class settlement and therefore this arbitration claim is not subject to the settlement agreement in *Chechowitz*, then this Stay may be lifted and this matter can be heard at that time. If the Massachusetts Superior Court agrees with Claimant's arguments in that regard, then the Claimant's counsel shall provide this Arbitrator with a copy of the Court's decision and request to reopen this matter to proceed with the Arbitration (a new date for Respondents' response to Claimant's Motion for Summary Judgment shall be ordered at that time).

If the Massachusetts Superior Court decides that the Claimant is properly part of the class in the *Chechowitz* class action matter, and therefore bound

by the class settlement of that matter, then the Respondents' counsel shall so inform this Arbitrator and request that this matter be dismissed with prejudice.

The parties are ordered to report to this Arbitrator, with a copy of the Massachusetts Superior Court's decision on any objection that Claimant makes to being included in the *Chechowitz* class settlement, within thirty (30) days of the Court's decision being rendered. If there is any appeal of the Superior Court's decision, then that too shall be reported and, if appropriate based on the matters that are appealed, then this Stay may continue until all appeals are exhausted, subject to any parties' motion to lift this Stay at that time, for good cause shown.

So ordered this 26th day of January 2021.

By: /s/ Joshua A. Hawks-Ladds
Joshua A. Hawks-Ladds
Arbitrator

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