No. 24-1145

In the
Supreme Court of the United States

LIVE NATION ENTERTAINMENT, INC., *ET AL.*,

***Petitioners*,**

v.

SKOT HECKMAN, *ET AL.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF *AMICUS CURIAE* OF CALIFORNIA EMPLOYMENT LAW COUNCIL IN SUPPORT OF PETITIONER

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California Employment Law Council respectfully submits this brief as *amicus curiae* in support of the petitioner.[1]

INTEREST OF *AMICUS CURIAE*

Amicus curiae California Employment Law Council (CELC) files this brief in support of petitioners Live National Entertainment, Inc. and Ticketmaster L.L.C. (collectively hereinafter, "Live Nation"). CELC is a voluntary, nonprofit organization that promotes the common interests of employers and the public in fostering the development in California of reasonable, equitable, and progressive rules of employment law. CELC's membership includes roughly 80 private-sector employers in California who collectively employ more than a half-million Californians. CELC has participated as an *amicus* in many of California's leading employment cases as well as in this Court.

Many members of CELC have arbitration agreements with some or all of their employees. They therefore have a significant stake in the outcome of this case. CELC's experience with and expertise in the practical aspects of employment matters allow it to assist this Court in evaluating the issues here.

Amicus is well-suited to address these considerations and the importance of the issues beyond the immediate concerns of the parties to the

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[1] Pursuant to this Court's Rule 37.6, counsel for *amicus curiae* certifies that no counsel for a party authored this brief in whole or in part, and no person or entity other than *amicus curiae*, their members, or their counsel made a monetary contribution to the preparation or submission of this brief. At least ten days before the brief was due, counsel for *amicus curiae* served notice of the intent to file this brief on counsel for each party.

case. They file this brief to assist the Court in evaluating the real-world consequences of the Ninth Circuit's decision and to underscore that it is critical that the Court grant certiorari.

BACKGROUND

Petitioner Live Nation operates websites through which they sell tickets to entertainment events. The websites' Terms of Use include an agreement providing for arbitration of any dispute relating to the use of the website or ticket purchases. The arbitration agreement provides that the arbitrator has the sole authority to resolve disputes as to the interpretation, applicability, enforceability, or formation of the agreement. Live Nation and respondents agreed that if any term of the arbitration agreement was deemed unlawful or unenforceable, those provisions should be severed and the rest of the agreement enforced.

Respondents purchased tickets on Live Nation's website and subsequently filed an antitrust lawsuit in federal district court. In accordance with the arbitration agreement to which respondents agreed, Live Nation moved to compel arbitration.

The district court denied Live Nation's motion to compel arbitration, concluding that the subject arbitration agreement contained unconscionable provisions. Next, applying a severability analysis under California law applicable only to arbitrations, the district court declined to sever the offending provisions from the remainder of the agreement and instead nullified it *in toto*.

On appeal, the Ninth Circuit upheld the district court's denial of Live Nation's motion to compel, concluding that the Federal Arbitration Act (FAA),

"simply does not apply" to the mass arbitration procedures contained in Live Nation's arbitration agreement, largely because, in its view, they "did not exist" when the FAA was adopted in 1925. Cert. Pet. at 29-30. Further, relying upon the lower court's analysis of severability under state law (the application of which, as explained below, violates the FAA), the Court of Appeals upheld the lower court's finding that several provisions in the arbitration agreement were unconscionable, and despite the express severability clause contained in the agreement, affirmed the lower court's conclusion that these provisions rendered the entire arbitration agreement unenforceable.

Live Nation timely filed a petition for a writ of certiorari in this Court.

SUMMARY OF ARGUMENT

Amicus CELC respectfully requests that this Court grant this petition for writ of certiorari for two reasons:

First, the decision of the Ninth Circuit holding that the FAA does not apply to arbitrations other than the traditional bilateral arbitrations is in direct contravention of the terms of the statute and the scope of its coverage as interpreted by this Court and threatens countless employers with attempted blackmail via mass arbitration demands.

The nationwide mass arbitration problem can best be illustrated by an on-point hypothetical. Assume, as in this case, a business that has individual arbitration agreements with thousands of customers and/or employees. Assume, as in this case, the arbitration claimants have similar or identical

grievances. Enterprising plaintiffs' counsel, barred by the individual arbitration agreements from proceeding in court with a class action, using internet solicitation to locate clients, file thousands of individual demands for arbitration. The arbitration organization, such as the American Arbitration Association (AAA), sends out an initial billing only to the party demanding arbitration. The Rules of the AAA provide that the initial payment must cover administrative charges and an advance against the arbitrator's fees – typically into five figures.

Unless the arbitration agreement contains a provision to protect the arbitration process against this sort of mass arbitration abuse, both the math and the blackmail potential of mass arbitration demands are obvious. $10,000 per arbitration as an initial arbitration fee times 1,000 claimants is ten million dollars ($10,000,000), just to start the arbitration process. This is regardless of the merits or the frequently small amounts actually at issue.

To protect against this abusive blackmail, arbitration agreements frequently contain clauses such as "bellwether" provisions. The protections vary, but typical would be a bellwether provision that only the first ten or so claims proceed to active arbitral litigation. The remaining claims are put on hold. As each of the first ten is resolved, a remaining claim moves to arbitration. No fees are due for other than the first ten arbitrations until additional claims move to active arbitration.

But the Ninth Circuit says arbitral protections against the abusive mass arbitration tactic violate the FAA and void the arbitration agreements. Other

Circuits disagree. This Court's guidance is urgently needed.

Second, review by this Court is necessary because the Ninth Circuit's affirmation of California's arbitration-only severability doctrine, which singles out arbitration agreements for less favorable treatment than other contracts, likewise violates the FAA.

ARGUMENT

I. THE NINTH CIRCUIT'S DECISION IMPROPERLY EXCLUDES ALTERNATIVE ARBITRATION PROCEDURES FROM THE COVERAGE OF THE FAA.

The Federal Arbitration Act, 9 U.S.C. §§ 1–16, "was enacted in 1925 in response to widespread judicial hostility to arbitration agreements." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011). The FAA "declares as a matter of federal law 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.'" *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 483 (1989) (quoting 9 U.S.C. § 2). Accordingly, only generally applicable contract defenses, such as fraud, duress, or unconscionability, can be used to invalidate an arbitration agreement. It is against this backdrop that the Ninth Circuit's conclusion that the FAA was not applicable to multi-party arbitrations or, indeed, anything other than "traditional, bilateral" arbitration common in 1925 when the FAA was adopted, must be measured.

A. Nothing In the Text of the FAA Limits Its Scope to "Bilateral" Arbitration.

The scope of the FAA is exceedingly broad, and this Court has routinely construed the statute to have extensive reach: "[A] broad interpretation of this language is consistent with the Act's basic purpose, while a narrower interpretation would create a new, unfamiliar test that would unnecessarily complicate the law and breed litigation. For these reasons, the Act's scope can be said to have expanded along with the commerce power over the years, even though the Congress that passed the Act in 1925 might well have thought the Commerce Clause did not stretch as far as has turned out to be so." *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 266 (1995) (citing, *inter alia*, *United Mine Workers of Am. v. Coronado Coal Co.,* 259 U.S. 344, 410 (1922); *United Leather Workers' Int'l Union v. Herkert & Meisel Trunk Co.,* 265 U.S. 457, 470 (1924)). And as the Court has previously observed, the FAA's "legislative history, to the extent that it is informative, indicates an expansive congressional intent, and this Court has described the Act's reach expansively as coinciding with that of the Commerce Clause." *Id.* (citing *Southland Corp. v. Keating,* 465 U.S. 1, 14-15 (1984) at 14–15)., 104 S.Ct., at 860.

Section 2 of the FAA is the "primary substantive provision of the Act." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983). It provides in relevant part that "a written provision to settle by arbitration a controversy thereafter arising… 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. Section 2 "reflect[s] both a 'liberal federal policy favoring

arbitration,'" *Concepcion*, 563 U.S. at 339 (citation omitted), and the "'fundamental principle that arbitration is a matter of contract.'" *Id*. (citation omitted). *See also Nitro-Lift Techs., LLC v. Howard*, 568 U.S. 17, 20-21 (2012) (per curiam). "Although § 2's saving clause preserves generally applicable contract defenses, nothing in it suggests an intent to preserve state-law rules that stand as an obstacle to the accomplishment of the FAA's objectives." *Concepcion*, 563 U.S. at 343 (citations omitted).

"The preeminent concern of Congress in passing the Act was to enforce private agreements into which parties had entered,' a concern which 'requires that [courts] rigorously enforce agreements to arbitrate.'" *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 625-26 (1985) (citation omitted). "By its terms … the FAA mandates that district courts shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed." *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985).

As discussed *infra*, the concept of multi-party arbitration was not new in 1925, is not new now, and has been repeatedly held by this Court to be within the scope of the FAA. For exactly this reason, the district court quickly rejected the argument that *Concepcion* is inapplicable because it was a case involving bilateral rather than multi-party or mass arbitrations: "[T]here is no clear indication that once the Supreme Court considers the creation and use of mass arbitrations, it will reconsider its ruling that the FAA prohibits States from conditioning the enforceability of certain arbitration agreements on the availability of class-wide arbitration procedure." Cert. Pet. at 90a. In that light, the Ninth Circuit's

resurrection of the argument as an "alternate and independent ground" on which to uphold the lower court's decision was confounding if not downright baffling. The fact that class-wide arbitration was not prevalent at the time the FAA was adopted has no bearing on the question of whether a multi-party arbitration agreement falls within the broad and expansive scope of section 2 this Court has historically and routinely provided.

This Court has "said on numerous occasions that the central or 'primary' purpose of the FAA is to ensure that 'private agreements to arbitrate are enforced according to their terms.'" *Stolt-Nielson S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 682 (2010) (quoting *Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 479 (1989)). Moreover, in *Concepcion*, it expressly noted that parties may agree to arbitration "envisioned by the FAA" by "agree[ing] to aggregation." 563 U.S. at 351.

In light of these facts, it is telling that of the six courts of appeals to have addressed this question, only the Ninth has adopted so cramped a conclusion and held that anything other than traditional, bilateral arbitration is excluded from FAA coverage. *See Jock v. Sterling Jewelers, Inc.*, 942 F.3d 617, 620 (2d Cir. 2019) (FAA governed arbitrator's determination that subject agreement permitted class-wide arbitration); *Sutter v. Oxford Health Plans LLC*, 675 F.3d 215, 219 (3d Cir. 2012) (same), *aff'd* 569 U.S. 564 (2013); *Sun Coast Res., Inc. v. Conrad*, 956 F.3d 335, 337 (5th Cir. 2020) (same); *Dish Network L.L.C. v. Ray*, 900 F.3d 1240, 1248 (10th Cir. 2018) (same); *S. Communications Servs., Inc. v. Thomas*, 720 F.3d 1352, 1359-60 (11th Cir. 2013) (same). As it affirmed in Sun Coast Resources, petitioners respectfully

submit that this Court should reverse the Ninth Circuit's outlier decision and make plain that the FAA's coverage encompasses many varying forms of arbitration and is not narrowly limited to traditional, bilateral forms of arbitration that existed in 1925.

B. Arbitration In Many Different Forms Pre-Dated Congressional Adoption of the FAA.

Moreover, even if the Ninth Circuit's conclusion that the FAA only extends its coverage to those forms of arbitration that were in existence when it was enacted is correct—which it is not—the court's reasoning is belied by history. Arbitration in numerous forms existed long before Congress adopted the FAA, long before the Founding Fathers formed our nation, and before the ancient Romans erected the Colosseum. The Ninth Circuit's conclusion that arbitration beyond the traditional bilateral model is a novel, modern-day invention and simply did not exist before the enactment of the FAA is an error of fact that leads to an error of law.

"Arbitration is not a modern tool employed to avoid certain disadvantages associated with contemporary litigation; rather, the roots of arbitration can be traced through history to the most primitive societies as a preferred method of dispute resolution." Daniel Centner & Megan Ford, A Brief Primer on the History of Arbitration, Arbitration and the Surety, at 1-2. *See generally* Frank D. Emerson, *History of Arbitration Practice and Law*, 19 Clev. St. L. Rev. 155 (1970) (tracing development of arbitration from biblical roots through modern times and concluding observing "arbitration is today, as it was in yesteryears, a dynamic institution for the peaceful settlement of discord, differences, and disputes.").

Arbitration was common in seventeenth- and eighteenth-century mercantile law, which allowed parties to resolve trade disputes among multiple parties and trade and craft guilds. Sabra A. Jones, Historical Development of Commercial Arbitration in the United States, Minnesota Law Review 2296, at 243. By 1916 there were roughly 3,000 trade associations or "groups of business men" in manufacturing, mining, and mercantile industries, many of which "seeing the practicability of arbitration, made their own rules on arbitration." *Id.* at 248-49.

These arbitral bodies attracted merchants and other businessmen in large part because of their procedural flexibility. They were not bound by local law, but instead, practiced a kind of private international law. *See* Earl Wolaver, *The Historical Background of Commercial Arbitration*, 84 Penn. L. Rev. 133, 145 (1934). They allowed itinerant merchants to recover their debts in a quick, efficient proceeding, not bogged down by differences in local practice and custom. *Id.* at 137. And that proceeding did not always center on a bilateral dispute between two litigants. For example, the English guilds could arbitrate disputes not only between two guild members, but also disputes between members and their various journeymen and apprentices. *See id.* at 134 (citing Ord. Clothworkers, London, 29 Eliz. (1587)). These disputes paralleled and foreshadowed modern labor arbitration, which can likewise settle disputes among multiple parties. *See In re U.S. Postal Serv.*, Case No. Q15C-4Q-J (May 24, 2022) (arbitration award resolving jurisdictional dispute between employer and two competing unions); *Cleveland Wrecking Co. v. Iron Workers Loc. 40*, 136

F.3d 884, 889 (2d Cir. 1997) (interpreting arbitration clause to require arbitration of jurisdictional dispute between employer and multiple unions).

Today, whether arbitration is bilateral or multilateral is a question of private intent. As one commentator observed, prior to this Court's decision in *Green Tree Financial Corporation v. Bazzle*, the weight of authority held that "*absent an express agreement of the parties*, there could be no class or consolidated arbitrations." Kevin M. Kennedy & Bethany Appleby, Green Tree Financial Corp. v. Bazzle: *A New Day for Class Arbitrations*, 23 Fall Franc. L. J. 84, 84 (2003) (emphasis added). In *Bazzle*, the Court examined the question of whether multi-party so-called "class" arbitrations were "consistent with the Federal Arbitration Act." *Green Tree Fin. Corp. v. Bazzle*, 539 U.S. 444, 448 (2003). The Court held that under the FAA, the question of whether a multi-party arbitration was compelled, permitted, or prohibited by the terms of an arbitration agreement covered by the FAA was a question for the arbitrator, not a court, to decide. Moreover, if there was "doubt about the matter" it should be resolved "'in favor of arbitration.'" *Id.* at 452 (citation omitted). The Ninth Circuit's failure to acknowledge this black-letter law should be reversed.

In sum, the Ninth Circuit's blanket rule excluding from FAA coverage anything other than traditional, bilateral arbitration is undone by the statutory text, the purpose of FAA, and the absurd results and unintended consequences which it will entail as a practical matter. Insofar as the brunt of these burdens will be placed solely on the shoulders of countless employers, this Court's review and reversal of the Ninth Circuit's decision is vital.

II. THE NINTH CIRCUIT'S APPLICATION OF CALIFORNIA'S ARBITRATION-ONLY SEVERABILITY DOCTRINE TREATS ARBITRATION AGREEMENTS LESS FAVORABLY THAN OTHER CONTRACTS IN VIOLATION OF THE FAA.

The Court of Appeals likewise erred by affirming the district court's application of California's severability doctrine, which unlawfully discriminates against arbitration agreements by singling them out for disfavored treatment. In doing so, the doctrine violates this Court's well-settled precedent that the FAA preempts—and states may not enforce—rules that treat arbitration agreements less favorably than other contracts. *See Concepcion*, 563 U.S. at 352. Indeed, this Court previously granted certiorari to address the lawfulness of California's arbitration severability doctrine but was denied the opportunity to do so when the case settled before oral argument. *See* Cert. Pet. I, *MHN Gov't Servs., Inc. v. Zaborowski*, 576 U.S. 1095 (2015), *dismissed*, 578 U.S. 917 (2016). *Amicus* respectfully requests that the Court take this opportunity to revisit the important question it previously indicated it wished to decide.

A. Application of California's Severability Doctrine Disfavors Arbitration Agreements in Violation of the FAA.

Live Nation's arbitration agreements contain an express severability clause which provides that in the event any part of the agreement was "determined to be illegal, invalid, or unenforceable," the "remaining parts shall be deemed valid and enforceable." *See* App. 27a (quoting Terms of Use § 19). It likewise contains two alternative methods of arbitrating the

dispute in the event the preferred arbitrator, New Deal, is unable to conduct the arbitration for any reason. *See id.* (quoting Terms of Use § 17). Yet despite these express terms, when the district court determined that some of the terms of the agreement relating to arbitration with New Deal were unconscionable, it failed to simply sever those terms, or compel arbitration via either of the two alternatives (neither of which was challenged by plaintiffs or determined to be unconscionable by the court), relying on the doctrine set forth by the Supreme Court of California in *Armendariz v. Foundation Health Psychare Services, Inc.*, 24 Cal. 4th 83, 6 P.3d 669 (Cal. 2000). The Ninth Circuit then proceeded to affirm the lower court's decision without any meaningful analysis. This was reversible error.

In *Armendariz*, the Supreme Court of California adopted special rules creating additional barriers for severability clauses in arbitration agreements but not in other contracts. Courts applying the *Armendariz* doctrine under California law apply a bright-line rule that discourages severability and instead favors nullification of the agreement in toto. *See* 6. P3d at 669. Only when they analyze arbitration agreements do courts applying *Armendiaz* examine, as the district court did here:

> (1) whether the substantively unconscionable provision relates to the arbitration agreement's chief objective; (2) whether the arbitration agreement contained multiple substantively unconscionable provisions such that it indicates a systematic effort to impose arbitration not simply as an alternative to litigation, but as an inferior forum; and (3) a lack of mutuality that permeated the entire

> agreement." *MacClelland v. Cellco P'Ship*, 609 F. Supp. 3d 1024 1044 (N.D. Ca. 2022) (citing *Armendariz*, 24 Cal. 4th at 124-25). "The overarching inquiry is whether 'the interests of justice… f. [sic] would be furthered' by severance." *Armendariz*, 24 Cal. 4th at 124 (quoting *Beynon v. Garden Grove Med. Grp.*, 100 Cal. App. 3d 698, 713, 161 Cal. Rptr. 146 (Ct. App. 1980)).

Application of this doctrine violates well-settled precedent of this Court. State law rules that purport to apply to contracts generally are preempted by the FAA if they disfavor or place burdens on arbitration agreements that are not applicable to other non-arbitration types of contracts. *Concepcion*, 563 U.S. at 352. They are likewise unenforceable under the FAA if they "have a disproportionate impact on arbitration agreements." *Concepcion*, 563 U.S. at 341. Moreover, when a "generally applicable contract defense," applies as a practical matter "only to arbitration" or otherwise "derive[s] [its] meaning from the fact that an agreement to arbitrate is at issue" those defenses are preempted by the FAA. *Id*. at 1746; *see also, e.g., Marmet Health Care Ctr., Inc. v. Brown*, 565 U.S. 530, 531-34 (2012); *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 67-68 (2010)*; Preston v. Ferrer*, 552 U.S. 346, 356 (2008); *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 443-44 (2006); *Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681, 687-88 & n.3 (1996); *Allied-Bruce Terminix Cos.*, 513 U.S. at 270-71; *Perry v. Thomas*, 482 U.S. 483, 492 n.9 (1987); *Southland Corp. v. Keating*, 465 U.S. 1, 16 & n.11 (1984).

Despite numerous and clear expressions of this fact by this Court, California state courts have long ignored these principles. Indeed, as noted to this

Court as recently as its last term, the Supreme Court of California has gone so far as to stand the "disproportionate impact" principle on its head: "A facially neutral state-law rule," the court has decided, "is *not* preempted simply because its evenhanded application 'would have a disproportionate impact on arbitration agreements.'" Brief *Amicus Curiae* of Washington Legal Foundation, *Comcast Cable Communications, LLC v. Ramsey,* S. Ct. No. 24-365 (Oct. 28, 2024) at 7 (quoting *Sonic-Calabasas A., Inc. v. Moreno*, 311 P.3d 184, 201 (Cal. 2013) (emphasis added) (quoting *Concepcion*, 563 U.S. at 342)). And as petitioners have made clear through compelling objective evidence, under California's severance doctrine, arbitration agreements are 36% more likely to be fully invalidated than non-arbitration contracts, and where the "interest of justice" test is applied four times more likely to be nullified. *See* Cert. Pet. at 31-32 & 102a-128a.

This flies in the face of the "healthy regard for federal policy favoring arbitration" embodied in the FAA. *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 23, 30 (1991). Indeed, *Armendiaz* has long been used to invalidate arbitration agreements, both before and after *Concepcion*, notwithstanding its "dubious validity from a preemption standpoint." E. Gary Spitko, *Federal Arbitration Act Preemption of State Public-Policy-Based Employment Arbitration Doctrine: An Autopsy and an Argument for Federal Agency Oversight,* 20 Harv. Negot. L. Rev. 1, 5 (2015) (footnote omitted).

In this case, the district court concluded that the purportedly unconscionable clauses contained in the Terms "permeate[d] all aspects of the arbitration agreement." Cert. Pet. 93a. The Ninth Circuit, with

no analysis, simply invoked *Armendariz* to ask "whether the interests of justice would be furthered" by severance and summarily affirmed the lower court's flawed conclusion and refusal to honor the express terms of the severability clause as the FAA requires. Cert. Pet. at 28a. By using a state-law standard that unlawfully stacked the deck against arbitration agreements as compared to non-arbitration contracts, the Ninth Circuit committed reversible error. *Amicus* respectfully requests that this Court grant certiorari, as it did in the past, and correct it.

B. This Significance of This Issue Has Only Grown In this Court Since It Last Granted Certiorari.

As noted above, in 2015, this Court granted certiorari to determine whether California's arbitration-only severability doctrine violates the FAA. It was only the settlement of the case raising the issue that prevented the Court from making a determination. In the decade since, the importance of ensuring that arbitration agreements are treated equally to other non-arbitration contracts and not routinely, wrongly, and disproportionately vacated has become dramatically more significant.

The exponential increase in mass arbitrations since the Court's decisions in *Concepcion* and *Epic Systems* is well-documented. *See, e.g.,* J. Maria Glover, *Mass Arbitration*, 74 Stan. L. Rev. 1283, 1345, 1349 (detailing increase in number of mass arbitrations and how "astounding" mass arbitration fees may exert "*in terrorem* settlement pressure") (2022); Andrew Pincus *et al.*, *Mass Arbitration Shakedown: Coercing Unjustified Settlements*, U.S.

Chamber of Commerce Institute for Legal Reform (February 2023) at 18–21 (detailing numerous mass arbitration filings since 2018, including cases were more than 125,000 [sic] demands for individual arbitration were filed). California's severability rule evidences a deep-seated animus toward arbitration, and threatens to invalidate and nullify entire arbitration agreements simply by failing to honor a bargained-for and agreed-upon severability clause.

Indeed, it was precisely in response to this abuse of the arbitral system that petitioners adopted arbitration provisions for adjudicating mass arbitration provisions modeled on the federal multi-district litigation "bellwether" approach and incorporating a fee structure designed to ensure that mass arbitrations are not used as blackmail for baseless settlements. *See* Cert. Pet. at 8–9. In contrast to the findings of the court, new and flexible modes of mass arbitration like the bellwether model features many advantages to both parties to arbitration in terms of encouraging merits-based resolutions and ensuring, more expeditious recoveries for meritorious claims. *See* Pincus at 51-52 (detailing benefits of bellwether approach). The Ninth Circuit's ruling, if upheld, will undo these and countless other efforts to combat the threat of mass arbitral blackmail. This Court should act to ensure that does not occur.

For all of the foregoing reasons *Amicus* CELC respectfully submits that this Court should again grant certiorari as to the question of the continued vitality of *Armendariz* and hold that it is preempted by the FAA under *Concepcion*.

CONCLUSION

The Ninth Circuit's decision creates immediate and direct conflicts with the decisions of all of the circuit courts which have addressed the question at issue by excluding anything from bilateral arbitration from FAA coverage and threatens to nullify countless arbitration agreements that were entered into knowingly and mutually and are lawful and enforceable under the FAA.

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

June 12, 2025 Respectfully submitted,

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