No. 24-1230

IN THE
Supreme Court of the United States

COINBASE, INC. AND COINBASE GLOBAL, INC.,
Petitioners,
v.
DARREN KRAMER, MANISH AGGARWAL, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the California Court of Appeal, First Appellate District

BRIEF FOR *AMICUS CURIAE* RETAIL LITIGATION CENTER INC. IN SUPPORT OF PETITIONERS

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INTERESTS OF AMICUS CURIAE[1]

The Retail Litigation Center, Inc. (RLC) represents national and regional retailers, including many of the country's largest and most innovative retailers, across a breadth of retail verticals. The RLC's members employ millions of people throughout the United States, provide goods and services to tens of millions more, and account for tens of billions of dollars in annual sales. The RLC offers courts retail-industry perspectives on important legal issues and highlights the industry-wide consequences of significant cases. Since its founding in 2010, the RLC has filed more than 250 amicus briefs on issues of importance to the retail industry, some of which have been relied on by this Court. *See South Dakota* v. *Wayfair*, 585 U.S. 162, 184 (2018) (citing the RLC's brief); *Kirtsaeng* v. *John Wiley & Sons, Inc.*, 568 U.S. 519, 542 (2013) (same).

The RLC has a particular interest in this Petition because many of the association's members use arbitration to resolve disputes with employees and customers on an individual basis. The RLC's members know from firsthand experience that arbitration's streamlined procedures contrast sharply with

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[1] Pursuant to Rule 37.6, no counsel for any party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. While employed at a different law firm, counsel for *amicus curiae* briefly represented Petitioners in the lower courts, but counsel no longer represents Petitioners in this matter. No person other than *amicus curiae* or its counsel made a monetary contribution to the preparation or submission of this brief. Pursuant to Supreme Court Rule 37.2, counsel of record for all parties have received timely notice of *amicus curiae's* intent to file a brief in support of the Petition.

complex class actions, which can last for years and result in enormous legal fees that benefit no one but plaintiffs' counsel.

This Court has repeatedly confirmed that the Federal Arbitration Act (FAA) secures the right to contract for individual arbitration. In the case below and others like it, however, California courts have sought to circumvent this Court's precedent and undermine the federal arbitration framework that Congress enacted. The RLC's members—many of whom operate in California—bear the brunt of those efforts, and the RLC urges this Court to grant the Petition.

INTRODUCTION AND SUMMARY OF ARGUMENT

Congress enacted the FAA in 1925 to combat "widespread judicial hostility to arbitration." *AT&T Mobility LLC* v. *Concepcion*, 563 U.S. 333, 339 (2011). The FAA requires courts to enforce arbitration agreements according to their terms. The Act reflects the legislature's judgment that arbitration offers considerable advantages over traditional litigation. Arbitration's informal procedures facilitate efficient and inexpensive dispute resolution, which research shows benefits plaintiffs and defendants alike.

But as the decision below demonstrates, the judicial hostility to arbitration that prompted Congress to enact the FAA in 1925 remains alive and well a century later. In the last two decades, this Court has confronted and rejected multiple state laws and procedures "that target arbitration either by name or by more subtle methods." *Epic Sys. Corp.* v. *Lewis*, 584 U.S. 497, 508 (2018) (quotation marks omitted). The Court has been especially attentive to state laws that

permit plaintiffs who agreed to arbitrate claims on an individual basis to nevertheless aggregate and litigate claims other than their own. Because it increases the stakes and complexity of the dispute resolution process, claim aggregation "interferes with" the "fundamental attributes of arbitration," "creates a scheme inconsistent with the FAA," and is thus preempted by federal law. *Concepcion*, 563 U.S. at 344.

One state in particular—California—is a repeat offender: On multiple occasions, this Court has invalidated rules that permitted California plaintiffs to aggregate claims or otherwise attempt to bring class-wide proceedings. *See Viking River Cruises, Inc.* v. *Moriana*, 596 U.S. 639 (2022); *Lamps Plus, Inc.* v. *Varela*, 587 U.S. 176 (2019); *DIRECTV, Inc.* v. *Imburgia*, 577 U.S. 47, 52 (2015); *Concepcion*, 563 U.S. at 339; *Stolt-Nielsen S.A.* v. *AnimalFeeds Int'l Corp.*, 559 U.S. 662, 685 (2010). This Petition presents the latest iteration of the problem, and this Court's intervention is urgently needed.

Petitioners seek review of the *McGill* rule. Named for the decision in which it was announced—*McGill* v. *Citibank, N.A.*, 2 Cal. 5th 945 (2017)—the *McGill* rule provides that, as a matter of California law, parties may not waive via contract their right to seek "public injunctive relief." *See id.* at 956. Public injunctive relief is essentially class-wide equitable relief—but even broader. When a plaintiff seeks public injunctive relief, she does not seek injunctive relief as a *representative* of a class of similarly situated plaintiffs; she instead seeks injunctive relief, at least nominally, on behalf of "the general public" at large. *McGill*, 2 Cal. 5th at 633 (quotation marks omitted).

At its core, public injunctive relief presents the same

concerns as other forbidden aggregation devices. Because it is inconsistent with the fundamental attributes of arbitration, public injunctive relief is therefore preempted by the FAA. When litigating a public injunction, a plaintiff advances not only her own individual claim, but also seeks sweeping relief beyond the scope of the dispute between the parties. This massively transforms the stakes and the complexity of the proceedings, making them an impossible fit with arbitration.

The *McGill* rule facilitates gamesmanship by plaintiffs, who can seek to leverage their public injunctive relief claim—which can pose a tremendous risk to business even with a low chance of success—to force companies to settle otherwise unmeritorious individual claims. Moreover, because public injunctive relief, as defined by California courts, does not technically count as the "pursuit of representative * * * relief," *McGill*, 2 Cal. 5th at 959, companies cannot even rely on claim preclusion to stem the tide of successive suits by similar plaintiffs. Instead, plaintiffs' lawyers—who stand to receive considerable fees if they prevail—can repeatedly bring public injunctive relief claims until they secure a favorable ruling or a company settles.

The California Court of Appeal and the Ninth Circuit are split over whether the FAA preempts the *McGill* rule. *See* Pet. 14-18. California courts have interpreted the *McGill* rule broadly to encompass virtually any claim for equitable relief in garden-variety consumer suits. The California Court of Appeal has consistently held that this broad application of the *McGill* rule is not preempted by the FAA, and the California Supreme Court has refused to intervene and

enforce the FAA. *See, e.g.*, *Ramsey* v. *Comcast Cable Commc'ns, LLC*, 317 Cal. Rptr. 3d 561, 573 (Ct. App. 2023), *review denied* (May 1, 2024), *cert. denied*, 145 S. Ct. 1050 (2025).

In contrast, the Ninth Circuit has explained that "the broader version of the *McGill* rule" "*is* preempted by the FAA." *Hodges* v. *Comcast Cable Commc'ns, LLC*, 21 F.4th 535, 547 (9th Cir. 2021) (emphasis added). According to the Ninth Circuit, the FAA preempts the *McGill* rule if an injunction seeks to benefit "a particular class of persons," and if an injunction requires "consider[ing] the individual claims of any non-party." *Id.* at 542.

This sharp split between these two courts that routinely apply the FAA to California law is deeply problematic. In cases like this one, whether the FAA preempts California law—and thus whether parties can vindicate their right to arbitrate—turns on whether the suit is brought in state or federal court. The proceedings below underscore how creative plaintiffs exploit the split to evade the FAA. The plaintiffs originally filed suit in federal district court and included a claim for injunctive relief. The federal court enforced the FAA and compelled arbitration pursuant to a binding arbitration agreement. Pet. 10. While still litigating the first case, the plaintiffs separately filed suit in California state court, but now purported to seek public injunctive relief. After Petitioner removed that action to federal court, the plaintiffs dismissed the second suit. Pet. 11. Then the plaintiffs refiled a *third* lawsuit, this time the state court complaint joined an additional California plaintiff to prevent removal. *Id.* In contrast to the federal court, the California courts refused to compel arbitration.

This Court should take this case and reject California's latest anti-arbitration ploy. The split is clear, acknowledged, and persistent. Pet. 22. Meanwhile, the deeply troubling facts of this case—in which a federal court compelled arbitration and plaintiffs successfully resisted arbitration by refiling in state court—make this Petition an ideal vehicle. The Court should not permit the split to fester any longer. It should grant review and reverse.

ARGUMENT

I. THE *MCGILL* RULE UNDERMINES THE BENEFITS OF ARBITRATION.

A. "The FAA was enacted in response to judicial hostility to arbitration." *Viking River Cruises, Inc.*, 596 U.S. at 649. The Act established a "liberal" policy favoring arbitration that requires arbitration agreements to be enforced "according to their terms" and placed on equal footing with other contracts. *Epic Sys. Corp.*, 584 U.S. at 505-506 (quotation marks omitted). In Congress's view, arbitration had "more to offer" than critics of the process realized—from "quicker, more informal, and often cheaper resolutions for everyone involved," *id.* at 505, to "less intrusive discovery," *Coinbase, Inc.* v. *Bielski*, 599 U.S. 736, 743 (2023), and confidential proceedings, *Stolt-Nielsen*, 559 U.S. at 686. The Act's "overarching purpose" is to honor the terms of parties' arbitration agreements and "facilitate streamlined proceedings." *Concepcion*, 563 U.S. at 344.

Real world evidence demonstrates that arbitration benefits both plaintiffs and defendants alike. In the typical class or aggregate action, plaintiffs may wait "months, if not years" for proceedings to run their

course, only to claim "a few dollars" at the end—*after* plaintiffs' lawyers take a hefty fee. *Id.* at 352 (quotation marks omitted). By contrast, arbitrations are efficient and informal, meaning plaintiffs can even represent themselves if they choose.

One study found that consumer plaintiffs who initiate cases were more likely to prevail in arbitration (41.7%) than in litigation (29.3%). *See* Nam D. Pham & Mary Donovan, *Fairer, Faster, Better III: An Empirical Assessment of Consumer and Employment Arbitration* 4 (March 2022), available at https://perma.cc/2N22-DU6R. The same study found that the timeline of proceedings in those arbitrations was more than 100 days shorter on average than in litigation, and awards were $8,000 larger. *Id.*

Similarly, employees who arbitrate with their employers fare better than employees who sue in court. Those who proceed in arbitration prevail more frequently, win larger awards, and receive their awards more quickly compared to employees who litigate. *Id.*; *see also* Andrea Cann Chandrasekher & David Horton, *Arbitration Nation: Data from Four Providers*, 107 Cal. L. Rev. 1, 51 (2019) (noting that in "sharp contrast" to employment litigation, which can last two-to-three years on average, compared to arbitrations which took fewer than eleven months).

Defendants receive myriad benefits, too. Individualized arbitration reduces the need for expansive discovery and decreases costs for all involved. Arbitration also provides predictability in timing, location, experience of the adjudicator, and claim administration. The lower stakes similarly reduce the cost of potential error, which allows parties to "forgo the

procedural rigor and appellate review of the courts." *Stolt-Nielsen*, 559 U.S. at 685.

B. This Court has recognized that certain kinds of procedures—such as class actions—are fundamentally incompatible with the informal nature of arbitration. In protecting the right to opt into arbitration, the FAA protects the right to opt out of those procedures. As a result, over the past decade, this Court has repeatedly held that "aggregation devices"—chiefly, but not always, devices that force defendants to enter into a class-wide proceeding—"cannot be imposed on a party to an arbitration agreement." *Viking River*, 596 U.S. at 664 (Barrett, J., concurring).

For example, this Court in *Viking River* struck down a California judge-made rule prohibiting waiver of representative Private Attorneys General Act claims. *Id.* at 661-62. The rule, this Court explained, would require either "judicial proceedings or an arbitral proceeding that exceed[ed] the scope jointly intended by the parties." *Id.* at 661. Similarly, *Lamps Plus* addressed a Ninth Circuit decision that applied California contract law principles and construed an ambiguous arbitration clause "against the drafter" and in favor of class arbitration. 587 U.S. at 180. This Court explained that even general canons of contract interpretation could not "reshape traditional individualized arbitration" "without the parties' consent." *Id.* at 187.

C. The *McGill* rule is yet another state procedural rule that seeks to aggregate claims and circumvent the FAA's protections for individualized arbitration.

From the standpoint of FAA preemption, the pursuit of public injunctive relief is really no different than the pursuit of a class action. At its core, a claim for

public injunctive relief is a claim for class-wide relief and then some. The "class" is the public at large. Just as the FAA protects the right of parties to opt into informal arbitration and out of complex class-actions, *see, e.g.*, *Concepcion*, 563 U.S. at 348, parties may opt-into arbitration and must therefore be able to waive the right to seek public injunctive relief.

Just as with class actions, the complexity inherent in public injunctive relief is incompatible with arbitration. *Id.* As the California Supreme Court has itself recognized, administering a public injunction—which governs the defendant's conduct against the world, potentially perpetually into the future—entails a degree of "complexity" far beyond "the resolution of private disputes." *Broughton* v. *Cigna Healthplans of California*, 21 Cal. 4th 1066, 1081 (1999). Just consider the facts of this case. The plaintiffs seek a public injunction that would govern how Coinbase communicates with *all* its current and *future* customers. Pet. 22. If the plaintiffs prevail, an adjudicator would need to scrutinize Coinbase's communications with "innumerable persons" across countless different media, possibly for years to come. *Hodges*, 21 F.4th at 547. That degree of complexity may lie within the competency of some courts (although even that may be a stretch), but it will certainly exceed what is expected of the typical arbitration.

The *McGill* rule—which prevents plaintiffs from ever agreeing to forgo public injunctive relief ex ante—thus places defendants in an impossible bind. Defendants must either forgo arbitration altogether. Or defendants may pursue arbitration, but only with the poison pill of public injunctive relief before an arbitrator ill-equipped to handle high stakes

proceedings. The FAA preempts states laws that force defendants into that dilemma.

D. The history of the *McGill* rule underscores that California courts crafted the rule to undermine arbitration.

Prior to *McGill*, California courts operated under what was known as the *Broughton-Cruz* rule. The *Broughton-Cruz* rule specifically targeted arbitration agreements by name and stated that "[a]greements to arbitrate [certain] claims for public injunctive relief" were unenforceable *because* claims for public injunctive relief were fundamentally incompatible with arbitration. *McGill*, 2 Cal. 5th at 953; *accord Broughton*, 21 Cal. 4th at 1083; *Cruz* v. *PacifiCare Health Sys., Inc.*, 30 Cal. 4th 303, 316 (2003) (noting the "inherent conflict between arbitration and the underlying purpose of [the public] injunctive relief remedy" available under certain consumer statutes (internal quotation marks omitted)).

But *Broughton-Cruz* had an obvious flaw: It "prohibit[ed] outright the arbitration of a particular type of claim," and was therefore preempted by the FAA. *Ferguson* v*. Corinthian Colleges, Inc.*, 733 F.3d 928, 934 (9th Cir. 2013) (quoting *Concepcion*, 563 U.S. at 341). After the Ninth Circuit held that the FAA preempted the *Broughton-Cruz* rule, the California Supreme Court crafted a workaround in *McGill* by dressing up the *Broughton-Cruz* rule in more neutral language. *McGill* disavowed prior decisions of the California Supreme Court that had found public injunctive relief "inherently conflicts" with arbitration (although it clearly does, for the reasons outlined above). *See Broughton*, 21 Cal. 4th at 1083; *Cruz*, 30 Cal. 4th at 313. And citing a long-dormant statutory

maxim, the California Supreme Court reframed *Broughton-Cruz* as a rule against "waivers" of public injunctive relief "in any forum" in predispute arbitration agreements. *See McGill*, 2 Cal. 5th at 953. In other words, *Broughton-Cruz* had mandated that claims for public injunctive relief proceed in court because they were incompatible with arbitration. After *McGill*, parties nominally have a choice about whether to litigate or arbitrate the claim for public injunctive relief. But given the fact that public injunctive relief remains incompatible with arbitration, *see supra* p. 9, that is no real choice at all.

This Court should reject the California Supreme Court's effort to evade the FAA by disguising a rule designed to undermine arbitration as a doctrine that nominally applies to all contracts. Indeed, this Court did just that in *Concepcion* when it rejected the California Supreme Court's *Discover Bank* rule. Like the *McGill* rule, the *Discover Bank* rule held that "class action waivers" in any contract were unconscionable and thus unenforceable. *Concepcion*, 563 U.S. at 338. This Court rejected the notion that the rule's supposed "general[] applicabil[ity]" immunized it from scrutiny. *Id.* at 344, 348. Instead, this Court explained that the FAA preempts "state-law rules that stand as an obstacle to the accomplishment of the FAA's objectives." *Id.* at 343. A rule that forces parties to arbitrate claims in the aggregate conflicts with the Act regardless of its packaging.

E. Today, plaintiffs' lawyers routinely wield *McGill* as a tactic to undermine binding arbitration agreements. Indeed, because public injunctive relief should benefit only the "diffuse" public at large, *Hodges*, 21 F.4th at 542, plaintiffs with garden-variety consumer

claims like Respondents here have no reason to bring a public injunctive relief claim *other* than to circumvent arbitration.

Some plaintiffs tack on public injunctive relief claims to discourage defendants from compelling arbitration altogether. Others assert claims in two fora, using the threat of public injunctive relief in court to cudgel business into settling claims in arbitration.

Still other plaintiffs use public injunctive relief to avoid removal to federal court under the Class Action Fairness Act (CAFA). CAFA generally permits defendants to remove class-wide claims, which may include claims for injunctive relief, where the parties are minimally diverse and the amount in controversy exceeds $5 million. 28 U.S.C. §§ 1332(d), 1453(b). To avoid CAFA, plaintiffs try to plead a single broad request for injunctive relief—essentially asserting the same class-wide claim on a non-representative basis.

Plaintiffs' lawyers stand to receive enormous attorneys' fees if they secure a public injunction, regardless of whether they prevail in securing damages for their actual client. *See* Cal. Civ. Code § 1780(e). The stakes for companies, meanwhile, are also extremely high. Public injunctions can require defendants to fundamentally alter their business practices and can result in relief that is even broader than the relief available in a class action. *See McGill*, 2 Cal. 5th at 955.

Worse still, companies have no recourse to arrest the flood of public injunctive relief suits. Class actions—notwithstanding their burdensome procedures—are regulated by established rules and at least offer the possibility of a global resolution that binds all absent parties. *Taylor* v. *Sturgell*, 553 U.S. 880, 894 (2008). Claims for public injunctive relief are unlimited by

comparison. *McGill* held that those claims, despite seeking relief *for the general public*, do not "constitute the 'pursuit' of 'representative claims or relief on behalf of others,' " meaning plaintiffs need not comply with the rules or statutory limits on representative suits. 2 Cal. 5th at 959-960 (cleaned up) (quoting Cal. Bus. & Prof. Code, §§ 17203, 17535). Public injunctive relief, in other words, is simply a pleading game unaffected by claim preclusion or any other typical limit on representative relief.

* * *

In short, claims for public injunctive relief present the same concerns that has led this Court to reject other similar anti-arbitration devices. Arbitration is "poorly suited to the higher stakes" of relief targeted at the public as a whole. *See Viking River*, 596 U.S. at 662 (quotation marks omitted). The "absence of multilayered review" vastly increases the risk of error. *See Concepcion*, 563 U.S. at 350. And the sweeping scope of the relief raises the same specter of "in terrorem settlements" that the Court has cited repeatedly in rejecting rules that disfavor arbitration. *See id.*; *Viking River Cruises, Inc.*, 596 U.S. at 662 (same); *Bielski*, 599 U.S. at 743 (explaining that the "potential for coercion is especially pronounced" in aggregate proceedings like class actions) *cf. Stolt-Nielsen*, 559 U.S. at 686 (noting the "commercial stakes" of aggregate arbitration proceedings). The *McGill* rule thus coerces parties to forgo "the benefits of private dispute resolution." *See Stolt-Nielsen*, 559 U.S. at 685. The Court should step in and put the *McGill* rule to rest, just as it has policed against other similar anti-arbitration devices in the past.

II. CALIFORNIA COURTS HAVE A LONG HISTORY OF EVADING THE FAA.

California has a long history of developing anti-arbitration jurisprudence designed to circumvent the FAA. Over a decade ago in *Concepcion*, Justice Scalia noted that California courts were far more likely to invalidate an arbitration agreement than any other type of contract. *Concepcion*, 564 U.S. at 342 (citing Stephen A. Broome, *An Unconscionable Application of the Unconscionability Doctrine: How the California Courts Are Circumventing the Federal Arbitration Act*, 3 Hastings Bus. L.J. 39, 54, 66 (2006); *see also* Broome, *supra*, at 40 ("[U]nconscionability challenges before the California appellate courts succeed with far greater frequency when the contractual provision at issue is an arbitration agreement.").

It is thus no surprise that a disproportionate share of this Court's arbitration cases come from California state courts or involve California law. *See, e.g.*, *Viking River Cruises, Inc.*, 596 U.S. 639 (overturning the *Iskanian* rule); *Lamps Plus, Inc.* 587 U.S. at 188 (California doctrine construing contractual ambiguities to defeat arbitration); *Concepcion*, 563 U.S. at 339 (invalidating *Discover Bank* rule); *Perry* v. *Thomas*, 482 U.S. 483, 488 (1987) (California Labor Code provision displacing arbitration). These decisions include not just novel legal doctrines, but efforts by California courts to defy this Court's precedent. Take *DIRECTV, Inc.* v. *Imburgia*, 577 U.S. 47 (2015). There, on the heels of *Concepcion*, the California Court of Appeal deployed a convoluted theory that a choice of law provision in a contract resurrected the very rule that this Court invalidated in *Concepcion*. *Id.* at 51-52. Or consider *Preston* v. *Ferrer*, 552 U.S. 346 (2008), which

addressed the Court of Appeal's declaration that this Court's decision in *Buckeye* was "inapposite" based on spurious factual distinctions far afield from this Court's core holding. *Id.* at 351, 354. This Court's decisions in *Imburgia* and *Preston* snuffed out those gambits, but the fact that this Court has had to do so repeatedly is cold comfort to parties regularly seeking to enforce arbitration agreements before hostile California courts.

The *McGill* rule is the latest iteration in this long line of California anti-arbitration devices. *McGill* simply recast the explicitly anti-arbitration *Broughton-Cruz* rule as a general contract defense. *See supra* pp. 10-11. But much like California courts' application of the doctrine of unconscionability prior to *Concepcion*, the *McGill* rule operates to uniquely disfavor arbitration.

Consider the fact-pattern of a typical case involving the *McGill* rule. Pre-dispute, parties bargain for individualized arbitration and agree to standard language waiving aggregate proceedings, tracking this Court's caselaw. *See, e.g.*, *Jack* v. *Ring LLC*, 91 Cal. App. 5th 1186, 1204 (2023) (agreeing to arbitrate "on an individual basis and not in a class, representative or private attorney general action" with awards "on an individual basis" (quotation marks omitted)). A dispute arises and plaintiffs refuse to arbitrate. California courts then apply *McGill* to conclude that the language to which the parties agreed prohibits "awards of public injunctive relief in arbitration" and is therefore unenforceable, even in cases involving garden-variety consumer claims. *Id.* at 1205. That is precisely the kind of judicial hostility to arbitration that the

FAA was designed to prevent, and the kind of defiance of this Court's jurisprudence that warrants review.

It is imperative that the Court intervene. The California Supreme Court has declined to review the rule despite being asked to do so many times, and the California Courts of Appeal have created an open split with the Ninth Circuit regarding the scope of the *McGill* rule and whether it is preempted by the FAA. *Compare Ramsey*, 317 Cal. Rptr. 3d at 569 ("We thus decline to follow *Hodges*."), *with Hodges*, 21 F.4th at 544 (declining to follow California courts); *see also* Pet. 16-18 (discussing *Ramsey* and *Hodges*). As a result, the same parties in California, with identical arbitration agreements will be able to have those agreements enforced in federal court but not in state court—frustrating the FAA's goal of consistently enforcing such agreements by their terms.

Indeed, this case is an especially good vehicle because its procedural history so clearly highlights the concerning potential for gamesmanship. The plaintiffs initially sued in federal court, *which compelled arbitration*. Pet. 10. In an effort to avoid federal court, the plaintiffs also brought an action in California state court, but dismissed that case after Petitioners' successful removal of the case to federal court. *Id.* at 11. This Petition arises from the plaintiffs' third lawsuit, in which plaintiffs joined a California plaintiff to defeat removal and in which the state courts declined to compel arbitration. *Id.* The Petition is also a good vehicle because the stakes and complexity of public injunction relief that plaintiffs seek is clearly incompatible with arbitration: If plaintiffs succeed, they will receive an order that will govern Petitioners' communications with all its current and future

customers. *See* Pet. 19-20. That is the stuff of litigation, not arbitration.

Finally, it bears emphasis: The California Supreme Court denied review in this case—as it has consistently done whenever defendants seek to challenge the *McGill* rule—making it clear that court will not enforce the FAA, and the problem will not be resolved until this Court intervenes. Pet. 20. The Court should not allow the split to fester any longer. It should grant the Petition and reverse.

CONCLUSION

For the foregoing reasons and those in the Petition, the Petition should be granted.

Respectfully submitted,

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