

IN THE SUPREME COURT OF THE UNITED STATES

No. 19-963

HENRY SCHEIN, INC., PETITIONER

v.

ARCHER AND WHITE SALES, INC.

MOTION FOR LEAVE TO FILE THE JOINT APPENDIX PARTIALLY UNDER SEAL

Pursuant to Rule 21 of this Court, petitioner respectfully moves for leave to file the parties' joint appendix partially under seal. Respondent consents to this motion.

1. This case arises from a lawsuit filed by respondent in 2012 against petitioner and other defendants in the United States District Court for the Eastern District of Texas. Defendants moved to compel arbitration of respondent's claims. The district court and the court of appeals denied defendants' motions to compel on the ground that defendants' claim for arbitrability was "wholly groundless." This court granted certiorari and vacated the court of appeals' judgment, holding that the "wholly groundless" doctrine contravenes the Federal Arbitration Act. See 139 S. Ct. 524 (2019).

On remand, the court of appeals held that it, and not an arbitrator, had to decide the question of arbitrability, notwithstanding the delegation of questions of arbitrability to the arbitrator in the arbitration agreement at issue. The court of

appeals reached that conclusion because the arbitration agreement includes a carve-out provision that exempts certain actions and claims from arbitration. Petitioner contends that the Arbitration Act prohibits a court from interpreting such a carve-out provision to require a court to decide arbitrability when the parties have otherwise clearly and unmistakably delegated questions of arbitrability to the arbitrator.

The record in this case includes the second amended complaint filed by respondent. Previously, the second amended complaint was maintained entirely under seal in the district court, the court of appeals, and this Court. After the court of appeals' decision on remand from this Court, however, a redacted version of the second amended complaint was filed publicly on the district court's docket. See D. Ct. Dkt. 508.

2. In conjunction with the filing of petitioner's brief, petitioner has filed a joint appendix that includes the second amended complaint. Because the second amended complaint is currently maintained partially under seal in the district court, petitioner moves for leave to file the joint appendix partially under seal in this Court. Petitioner is simultaneously filing a proposed public version of the joint appendix, which includes proposed redactions corresponding to the material that remains under seal in the district court.

Respectfully submitted.

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