No. 24-1215

In the Supreme Court of the United States

MINISO DEPOT CA, INC., ET AL., *Petitioners,*

v.

YONGTONG LIU, *Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT

BRIEF OF *AMICUS CURIAE* CALIFORNIA EMPLOYMENT LAW COUNSEL IN SUPPORT OF PETITIONERS

PAUL GROSSMAN
Counsel of record
PAUL HASTING LLP
515 South Flowers Street, 25th Floor
Los Angeles, CA 90071
(213) 683-6203
paulgrossman@paulhasting.com

SUSANNAH HOWARD
WILSON SONSINI GOODRICH & ROSATI, PC
650 Page Mill Road
Palo Alto, CA 94304
(650) 493-9300
Susannah.howard@wsgr.com

Counsel for Amicus Curiae

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STATEMENT OF INTEREST OF *AMICUS CURIAE*[1]

The California Employment Law Counsel ("CELC") is a voluntary, nonprofit organization that promotes the common interests of employers and the general public in fostering the development of reasonable, equitable, and progressive employment law in California. CELC's members include approximately 70 private-sector employers in California that collectively employ hundreds of thousands of Californians.

The CELC has repeatedly been granted leave to appear as amicus in important employment cases.[2]

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[1] No counsel for any party authored this brief in whole or in part, and no person other than *amicus*, its members, and its counsel made a financial contribution to the preparation or submission of this brief. All parties received timely notice of intent to file this brief under Rule 37.2.

[2] *See, e.g.*, *Estrada v. Royalty Carpet Mills, Inc.*, 15 Cal. 5th 582 (2024); *Turrieta v. Lyft, Inc.*, 16 Cal. 5th 664 (2024); *Adolph v. Uber Techs., Inc.*, 14 Cal. 5th 1104 (2023); *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639 (2022); *Donohue v. AMN Servs., LLC*, 11 Cal. 5th 58 (2021); *Kim v. Reins International California, Inc.*, 9 Cal. 5th 73 (2020); *Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858 (2021); *Vazquez v. Jan-Pro Franchising Int'l, Inc.*, 10 Cal. 5th 944 (2021); *Oman v. Delta Air Lines, Inc.,* 9 Cal. 5th 762 (2020); *Frlekin v. Apple Inc.*, 8 Cal. 5th 1038 (2020); *Voris v. Lampert*, 7 Cal. 5th 1141 (2019); *ZB, N.A. v. Superior Court,* 8 Cal. 5th 175 (2019); *Troester v. Starbucks Corp*., 5 Cal. 5th 829 (2018); *Dynamex Operations W., Inc. v. Superior Court*, 4 Cal. 5th 903 (2018); *Alvarado v. Dart Container Corp. of California*, 4 Cal. 5th 542 (2018); *Mendoza v. Nordstrom, Inc.*, 2 Cal. 5th 1074 (2017); *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257 (2016); *Johnmohammadi v. Bloomingdale's, Inc.*, 755 F.3d 1072 (9th Cir. 2014); *Harris v. City of Santa Monica*, 56 Cal. 4th 203 (2013); *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004 (2012); *Harris v. Superior Court*, 53 Cal. 4th 170 (2011); *Jones v.*

SUMMARY OF ARGUMENT

Amicus curiae the CELC submits this brief pursuant to Rule 37 of the Rules of the Supreme Court of the United States, in support of Miniso Depot CA Inc.'s ("Miniso's") petition for review.

While Miniso makes a highly persuasive case for review in its petition, amicus writes separately to highlight, as a practical matter, just how severe a blow to arbitration agreements the California Court of Appeal has dealt. Congress had good reason to exempt sexual harassment and sexual assault claims from arbitration where plaintiffs prefer to litigate those claims in court. But the Court of Appeal misinterpreted that exemption as applying to all claims—even those entirely unrelated to sexual harassment or assault—whenever a plaintiff includes a single exempted allegation in their complaint. That expansive interpretation will now require courts to exempt from arbitration, for example, an employee's claims for failure to pay overtime, rest and meal period violations, and failure to reimburse business expenses—so long as the employee includes vague allegations of sexual harassment. That insupportable rewriting of the statute will lead to absurd consequences as obvious as they are disruptive: litigants will simply end-run their arbitration agreements by tacking meritless sexual harassment allegations onto unrelated claims. Dispute resolution will become slower and more expensive. And such an easy path to evade arbitration will inspire forum shopping between state and federal

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Lodge at Torrey Pines P'ship, 42 Cal. 4th 1158 (2008); *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4th 1094 (2007).

courts—a result the Federal Arbitration Act was specifically designed to avoid.

Absent this Court's review, those harms will materialize immediately. This Court should not let such a wholesale revision of settled arbitration principles go forward without its consideration.

ARGUMENT

The California Court of Appeal's decision holds that so long as a complaint contains a single claim relating to a sexual-harassment or sexual-assault dispute, California trial courts must void arbitration agreements as to all claims in that complaint, even those having nothing to do with the sexual harassment or assault dispute. The upshot is that plaintiffs may now exempt an entire case from arbitration—even when the parties have unambiguously agreed to arbitrate—by simply tacking a sexual harassment claim onto a complaint that otherwise has nothing to do with that allegation. This Court should grant review to correct that erroneous decision, which upends the FAA's longstanding protections of parties' agreements to arbitrate—protections that continue to play a critical role in encouraging efficient, private, and cost-effective dispute resolution.

I. Parties Who Agree to Arbitrate Must Be Bound by the Terms of Their Agreement.

When parties agree to arbitrate disputes, the terms of their agreements govern. *See Stolt-Nielsen S.A. v. AnimalFeeds International Corp.*, 559 U.S. 662, 682 (2010) (courts must "give effect to the contractual rights and expectations of the parties") (internal quotations omitted). Those terms are binding. *Hernandez v. Sohnen Enter., Inc.*, 102 Cal. App. 5th 222, 297,

n.6 (2024) ("an arbitration agreement may only be invalidated for the same reasons as other contracts") (internal quotations omitted). Yet by holding that courts may void arbitration agreements whenever a plaintiff appends a single sexual harassment claim to a complaint, the Court of Appeal's decision points litigants to a backdoor way of avoiding arbitration: add a sexual harassment claim, regardless of its merit. Indeed, some brazen plaintiffs have already put this strategy into action, contriving sexual harassment claims after defendants move to compel. *E.g.*, *Yost v. Everrealm, Inc.*, 657 F. Supp. 3d 563, 587 (S.D.N.Y. 2023) ("Only after the Everyrealm defendants moved to compel arbitration based on Yost's arbitration agreement . . . did Yost suggest sexual harassment claims so as to implicate the EFAA.").

The Court of Appeal's decision thus threatens to bury employers—and California courts—in frivolous allegations engineered to avoid arbitration. That not only saddles employers with the burdensome task of defending meritless claims but also renders meaningless parties' agreements to arbitrate—agreements that are supposed to be just as binding as any other contract. *See Hernandez*, 102 Cal. App. 5th at 297, n.6. This result is especially perplexing for employers, including many of amicus' members, who have expressly carved sexual harassment claims from their arbitration agreements to ensure the agreements are enforceable for *other* disputes.[3] The Court of Appeal's

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[3] *See e.g.*, Martinez, Facebook, Airbnb and eBay Join Google in Ending Forced Arbitration for Sexual Harassment Claims, *NBC News* (Nov. 12, 2018), https://www.nbcnews.com/tech/tech-news/facebook-airbnb -ebay-join-google-ending-forced-arbitration-sexual-harassment-n935451; Wakabayashi, Google Ends

decision renders those thoughtful carveouts (which are consistent with the purpose of the EFAA) useless, even though they were knowingly agreed to by both parties to the agreement. This Court's review is thus necessary to prevent litigants from circumventing arbitration agreements by using meritless claims, to restore predispute agreements to binding force, and to guide employers who face uncertainty about the future of those agreements.

II. The Court of Appeal's Erroneous Decision Undermines the Purposes of Arbitration.

If left to stand, the Court of Appeal's decision will make resolving disputes more expensive and time consuming for employers and employees alike. Arbitration provides "efficient, streamlined procedures" and "expeditious results." *Sonic-Calabasas A, Inc. v. Moreno*, 57 Cal. 4th 1109, 1141 (2013); *see AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 348 (2011) (arbitration offers "lower costs, greater efficiency and speed, and the ability to choose expert adjudicators to resolve specialized disputes") (quotations omitted). Indeed, by one estimate, arbitration resolves disputes over a year faster than litigation. *See* The Same Result As In Court, More Efficiently: Comparing Arbitration and Court Litigation Outcomes, *The Metropolitan Corporate Counsel*, July 2006 (median duration of 4.35 months for arbitration versus 19.4 months for litigation); *see also Stolt-Nielsen S.A.*, 559 U.S. at 685

Forced Arbitration for All Employee Disputes, *N.Y. Times* (Feb. 21, 2019), https://www.nytimes.com/2019/02/21/technology/google-forced-arbitration.html; *Bloomberg News*, Wells Fargo Ends Forced Arbitration for Sexual Harassment (Feb. 12, 2020), https://advisorhub.com/wells-fargo-ends-forced-arbitration-for-sexual-harassment/).

(arbitration agreements typically foreclose appellate review). And unlike ordinary court filings, arbitration proceedings are usually confidential—which protects both employers and employees from having to publicly air their grievances. *E.g.*, AAA & ABA, Code of Ethics for Arbitrators in Commercial Disputes, Canon VI(B) (2004) ("the arbitrator should keep confidential all matters relating to the arbitration proceeding"); *accord* AAA Commercial Arbitration Rules R-23 (2009); UNCITRAL, Arbitration Rules art. 21(3) (2010). Amicus' members can attest firsthand to those benefits.

That is why amicus' members also know the grave consequences the Court of Appeal's decision risks. Now, any time an employee pads their otherwise arbitrable suit with a sexual harassment claim, the bargained-for benefits of arbitration will be lost. Cases will take more time to resolve, will cost more money, and will be subject to lengthy appeals.

Those consequences—which amicus' members use predispute arbitration agreements to avoid in the first place—are far worse than whatever inefficiency might stem from resolving arbitrable and nonarbitrable claims in different forums. *Cf. Liu v. Miniso Depot CA, Inc.*, 105 Cal. App. 5th 791, 804 (2024) (warning of "potential for inefficiency in having separate proceedings in court and an arbitration forum"); *but see Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 217 (1985) (district courts must "compel arbitration of pendant arbitrable claims . . . even where the result would be the possibly inefficient maintenance of separate proceedings in different forums"). In truth, however, it is not clear that the Court of Appeal's decision will actually lead to greater efficiency, especially if the sexual harassment allegations in a complaint are not closely

related to the other, arbitrable allegations. Defendants seeking to dismiss meritless sexual harassment claims will almost certainly rely on time-consuming and expensive motion practice to defeat those allegations. If and when those motions are successful, Defendants will then have to move to compel the remaining claims to arbitration—possibly for the second time. And if the initial motion is not successful, the parties will have to participate in fact development before seeking summary judgment—which could very well end in the same place: dismissal of the sexual harassment claim and then another renewed motion to compel arbitration.

III. Conflicting Standards Will Encourage and Reward Forum Shopping.

The Court of Appeal's decision will encourage forum shopping between state and federal courts. Unlike the court below, most federal courts that have considered this issue have held that the EFAA exempts only claims relating to sexual harassment or sexual assault. *See e.g.*, *Mera v. SA Hospitality Grp, LCC*, 675 F. Supp. 3d 442, 448 (S.D.N.Y. 2023) (compelling arbitration of wage-and-hour claims that did "not relate to the sexual harassment dispute"); *Silverman v. DiscGenics, Inc.*, 2023 WL 2480054, at *3 (D. Utah 2023) (similar); *Zeng v. Ellenoff Grossman & Schole LLP*, 2024 WL 4250387, at p. *3 (S.D.N.Y. 2024) (similar). That is true even within California. *E.g.*, *Ding v. Structure Therapeutics, Inc.*, 2024 WL 4609593, at *12 (N.D. Cal. 2024) (compelling arbitration of all claims "relate[d]" to "sexual harassment dispute"); *Turner v. Tesla, Inc.* 686 F.Supp.3d 917, 925 (N.D. Cal. 2023) (similar). In federal court, then, claim splitting is the norm. *See KPMG LLP v. Cocchi*,

565 U.S. 18, 22 (2011) ("when a complaint contains both arbitrable and nonarbitrable claims," the FAA contemplates "separate proceedings in different forums"). Indeed, had the Plaintiff here pursued her claims against Miniso in federal court, the parties would have resolved just two of those claims in court and the other 13 in arbitration.

Litigants who are bound by arbitration agreements but want to avoid arbitration thus have a clear path to do so: tack on a sexual harassment claim and file in state court. Yet that is exactly the sort of forum shopping Congress sought to eliminate by making arbitration agreements equally enforceable in federal and state courts. *See Southland Corp. v. Keating*, 465 U.S. 1, 15-16 (1984) (FAA applies in state courts to discourage forum shopping), *overruled on other grounds by Rodriguez de Quijas v. Shearson/American Exp., Inc.*, 490 U.S. 477 (1989); *see Cruz v. PacifiCare Health Systems, Inc.*, 30 Cal. 4th 303, 312 (203) ("the FAA requires state courts to honor arbitration agreements"). And it is also the sort of problem that warrants this Court's immediate review: the Court of Appeal's decision "encourage[s] forum shopping and create conflicts that only the high court can finally resolve." *Yount v. City of Sacramento*, 43 Cal. 4th 885, 904 (2008) (Werdegar, J., concurring); *see* Sup. Ct. R. 10(c) (Court may grant a petition for a writ of certiorari where "a state court … has decided an important question of federal law that has not been, but should be, settled by this Court").

IV. Resolution of This Issue is Timely and Likely Dispositive in This Case.

Finally, this case presents a timely and well-suited opportunity to address the legal question created by

the EFAA. As discussed above, lower courts remain divided on whether the presence of a single sexual harassment or sexual assault claim renders an entire case—including claims unrelated to sexual harassment or assault—non-arbitrable under the EFAA. This uncertainty is particularly consequential given the widespread use of arbitration agreements in employment relationships and the marked increase in sexual harassment claims brought against employers. *See* EEOC Newsroom, *EEOC Files Three Sexual Harassment Lawsuits,* https://www.eeoc.gov/newsroom/eeoc-files-three-sexual-harassment-lawsuits ("In fiscal year 2023, the EEOC received more than 7,700 charges of sexual harassment in the nation's workplaces, the highest number in 12 years and up nearly 25% from the previous year.").

According to annual data published by the EEOC, sexual harassment charges have steadily increased since 2022, reflecting a growing trend of such claims being brought before the courts. *See generally*, U.S. Equal Employment Opportunity Commission ("EEOC"), *Enforcement and Litigation Statistics*, https://www.eeoc.gov/data/enforcement-and-litigation-statistics-0. Absent clear and binding guidance from the Court, plaintiffs may increasingly assert baseless or defensive sexual harassment claims against employers in an effort to sidestep binding arbitration agreements. This would not only swell the volume of claims reaching state and federal courts but also extend the EFAA well beyond its intended scope.

The EFAA was designed to protect victims of sexual assault and harassment by preserving their right to seek justice in court – not to provide a universal escape hatch from arbitration for any plaintiff who

tacks on a thinly supported harassment claim. If the Court of Appeal's misreading of the statue is allowed to stand, courts will become overwhelmed with cases in which they must distinguish between legitimate claims and those strategically crafted to evade arbitration. Such an outcome would undermine the EFAA's purpose and transform it into a "get out of contracts" free card – an absurd result this Court should reject.

The case at hand is especially well-positioned to resolve this issue, as the extent of the EFAA's scope to bar certain claims from arbitration is likely dispositive here. The majority of Plaintiff's claims do not arise out of or relate to any alleged sexual harassment. Rather, in addition to a discrete claim of sexual harassment, the Plaintiff asserts several separate, garden-variety wage-and-hour claims related to her alleged misclassification as an exempt employee and retaliation claims concerning her refusal to participate in allegedly discriminatory hiring and pay practices. The trial court did not examine whether each claim was sufficiently related to the alleged harassment, and yet compelled all claims to remain in court.

If this Court concludes that the EFAA does not extend to unrelated claims, then the trial court erred in denying Miniso's motion to compel arbitration of the bulk of Plaintiff's claims. The Court should grant review, clarify the scope of the EFAA, and reverse the Court of Appeal's decision.

CONCLUSION

For the foregoing reasons, the Court should grant Miniso's petition for a writ of certiorari.

Respectfully submitted,

PAUL GROSSMAN
Counsel of Record
PAUL HASTING LLP
515 South Flowers Street, 25th Floor
Los Angeles, CA 90071
(213) 683-6203
paulgrossman@paulhasting.com

SUSANNAH HOWARD
WILSON SONSINI GOODRICH & ROSATI, PC
650 Page Mill Road
Palo Alto, CA 94304
(650) 493-9300
Susannah.howard@wsgr.com

COUNSEL FOR AMICUS CURIAE

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