

No. 25-1408

**In the
Supreme Court of the United States**

GOLDMAN SACHS BANK USA, d/b/a Marcus by
Goldman Sachs,
Petitioner,

v.

RHEA ANN BROWN; GREGORY KEVIN MAZE,
Respondents.

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

**PETITIONER'S RESPONSE TO
RESPONDENTS' SUPPLEMENTAL BRIEF**

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Respondents' supplemental brief is yet another effort to manufacture a vehicle problem where none exists.

1. Respondents argue (at 1) that the bankruptcy court's September 10 dismissal of their complaint without prejudice makes this case unsuitable for review because further litigation will proceed on an amended complaint. Not so.

The bankruptcy court dismissed the complaint because—after more than two years of litigation—respondents still had not adequately pleaded actual damages. Op. 7-27, *Brown v. Goldman Sachs Bank USA*, Adv. Proc. No. 24-7009 (Bankr. W.D. Va. Sept. 10, 2026), ECF No. 62. GS Bank welcomes that ruling, which confirms the weakness of respondents' claims. But the ruling does nothing to resolve the forum dispute presented here. Respondents make clear (at 1-2) that they will amend and continue pressing the same Section 362(k) claims the Fourth Circuit held need not be arbitrated. If and when they lose (again) in bankruptcy court, they will presumably appeal to the district court and, if necessary, to the court of appeals. The Fourth Circuit's flawed arbitration ruling thus threatens still more rounds of briefing and decisions, potentially spanning months or years.

Avoiding that prolonged judicial process is one of the key reasons parties adopt arbitration agreements in the first place—and why enforcing such agreements is so important. The FAA accordingly directs courts to move arbitrable disputes “out of court and into arbitration as quickly and easily as possible.” *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 22 (1983). The prospect of still more litigation thus strengthens, rather than weakens, the

case for review. If respondents' claims proceed, they should proceed in arbitration as the parties agreed.

2. Respondents devote much of their supplemental brief (at 1-2) to rearguing whether the original complaint asserted an independent claim under Section 105(a). It didn't—but this issue is a sideshow that doesn't bear on certiorari in any event.

As GS Bank explained, respondents never brought a freestanding contempt proceeding under Section 105(a). Reply.Br.10. Instead, they brought a putative nationwide class action asserting a single cause of action under Section 362(k). CA4 Appendix (JA) 27 (¶ 71).

Respondents rely (at 2) on two snippets from the complaint: one paragraph citing Section 105 among several sources of remedial authority, and a lone reference to “contempt” in the prayer for relief. Neither establishes an independent Section 105 claim. The Section 105 reference appears within the complaint's sole cause of action under *Section 362*. JA27 (¶ 71). And the word “contempt” appears only in the prayer for relief alongside an array of requested remedies. JA30. No count alleges contempt or pleads any distinct Section 105 theory.

More fundamentally, contempt was unavailable in this putative class adversary proceeding to begin with. As GS Bank explained, contempt under Section 105 must be sought by motion in the underlying bankruptcy case. Reply.Br.9; *see, e.g., Green Point Credit, LLC v. McLean (In re McLean)*, 794 F.3d 1313, 1326 (11th Cir. 2015); *Shockley v. Moellmer (In re Davis)*, 2026 WL 927645, at *3 (Bankr. S.D. Ohio Mar. 30, 2026). Respondents now dispute that rule, but ignore their own concessions below: Under the

majority rule, Section 105(a) contempt is “limited to the cases before the court where the matter is raised” and cannot supply the nationwide class relief (or punitive damages) they seek here. MTD Hr’g 10, 13, Adv. Proc. No. 24-7009 (Aug. 13, 2026)¹; *see also, e.g.*, Appellees.Br.58, *Goldman Sachs Bank USA v. Brown*, No. 24-cv-490 (W.D. Va. Nov. 22, 2024), Dkt. No. 23 (noting circuit court “trends” holding that bankruptcy court would “lack authority to impose sanctions under § 105(a) for conduct outside of the Court’s jurisdiction,” citing *PHH Mortg. Corp. v. Sensenich (In re Gravel)*, 6 F.4th 503 (2d Cir. 2021), *cert. denied*, 142 S. Ct. 2829 (2022); *Crocker v. Navient Sols., LLC (In re Crocker)*, 941 F.3d 206, 208 (5th Cir. 2019)); *see also* MTD Hr’g 10 (noting that Congress created the Section 362(k) private right of action because “contempt remedies were overly limited”).

Those limitations on contempt are precisely why respondents pursued nationwide class relief through *Section 362(k)*’s private cause of action, instead of through a contempt motion. They’re also why respondents are wrong to pretend that Section 362(k) and contempt are somehow interchangeable substitutes. Reply.Br.11.

Ultimately, Section 105(a) is a red herring that should not obscure the need for review on the Section 362(k) issue. The question presented is whether respondents’ *Section 362(k) claims* must be arbitrated. Even if respondents amend to add a standalone contempt theory under Section 105—and then somehow overcome the procedural and

¹ GS Bank possesses a certified reporters’ transcript of the motion-to-dismiss hearing and can provide it to the Court at its request.

substantive obstacles to sustaining it—their Section 362(k) claims would remain in court under the Fourth Circuit’s flawed no-arbitration rule. The judgment below therefore continues to bar GS Bank from enforcing its arbitration agreements as to those claims, and the conflict with *MBNA America Bank, N.A. v. Hill*, 436 F.3d 104 (2d Cir. 2006), remains unresolved.

CONCLUSION

The petition should be granted.

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