No. 26-

IN THE

Supreme Court of the United States

ARTURO VELA,

Petitioner,

v.

HARBOR RAIL SERVICES OF CALIFORNIA, INC.,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

DOUGLAS HAN
Counsel of Record
SHUNT TATAVOS-GHARAJEH
TALIA LUX
JUSTICE LAW CORPORATION
751 North Fair Oaks Avenue,
Suite 101
Pasadena, CA 91103
(818) 230-7502
dhan@justicelawcorp.com

Counsel for Petitioner Arturo Vela

121396

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QUESTION PRESENTED

The Federal Arbitration Act ("FAA") provides that the FAA does not apply "to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. In *New Prime v. Oliveira*, this Court considered a contemporaneous definition of "railroad employees" encompassing anyone "engaged in the customary work directly contributory to the operation of the railroads." 586 U.S. 105, 113, 120 (2019). More recently, in *Bissonnette v. LePage Bakeries Park St., LLC*, 601 U.S. 246, 255 (2024), this Court explained that "seamen" and "railroad employees" are classes of workers defined by "what they do, not for whom they do it."

Petitioner Arturo Vela ("Petitioner") performed freight railcar repair and inspection services for one railroad pursuant to his employment with Respondent Harbor Rail Services of California, Inc.'s ("Respondent"). Nevertheless, the California Court of Appeal held Petitioner did not qualify as a "railroad employee" under Section 1 because he lacked a direct contractual relationship with PHL and Respondent was not itself a railroad. The question presented is:

Whether a worker who exclusively performs freight car inspection and repair services for a railroad through a separate employer qualifies as a "railroad employee" under 9 U.S.C. § 1 because his duties constitute customary work directly contributory to railroad operations, or whether the statute requires a direct contractual relationship between the worker and the railroad.

PARTIES

The following individuals or entities are or were parties to the proceedings below:

Arturo Vela was the plaintiff in the superior court, appellant in the California Court of Appeal, and petitioner in the California Supreme Court.

Harbor Rail Services of California, Inc. was the defendant in the superior court, and respondent in both the California Court of Appeal and California Supreme Court.

STATEMENT OF RELATED PROCEEDINGS

This case arises from, and is related to, the following proceedings in the California Superior Court for the County of Los Angeles, the California Court of Appeal, Second District, Division One, and the California Supreme Court:

- *Vela v. Harbor Rail Services of California, Inc.*, Los Angeles County Superior Court Case No. 23STCV24281, order granting motion to compel arbitration and dismissing/striking class claims, filed February 4, 2025.

- *Vela v. Harbor Rail Services of California, Inc.*, California Court of Appeal Case No. B344723, judgment entered May 1, 2026.

- *Vela v. Harbor Rail Services of California, Inc.*, California Supreme Court Case No. S297029, order denying petition for review issued August 12, 2026.

There are no other proceedings in state or federal trial or appellate courts directly related to this case within the meaning of this Court's rule 14.1(b)(iii).

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

PARTIES ii

STATEMENT OF RELATED PROCEEDINGS iii

TABLE OF CONTENTS iv

TABLE OF APPENDICES vi

TABLE OF CITED AUTHORITIES vii

PETITION FOR A WRIT OF CERTIORARI 1

OPINIONS BELOW 1

STATEMENT OF JURISDICTION 1

STATUTORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 2

REASONS FOR GRANTING THE PETITION 6

A. The Court of Appeal's "Railroad Employee" Analysis Improperly Focused on Contractual Privity Over the Actual Work Performed, Contrary to Section 1's Statutory Framework and This Court's Precedent 6

Table of Contents

Page

1. *New Prime* Supports Interpreting "Railroad Employee" Based on the Nature of the Work Performed, Consistent with the Statute's Historical Meaning 7

2. *Bissonnette* Confirms that Section 1 Focuses on the Nature of the Work Performed, Not the Employer's Industry....9

3. The Court of Appeal Conflated the Harbor-PHL Agreement's Evidentiary Purpose with the Separate "Contract of Employment" Inquiry 10

B. This Case Presents an Important and Unresolved Question Concerning the Scope of Section 1's Express "Railroad Employee" Exemption 13

CONCLUSION 14

TABLE OF APPENDICES

Page

APPENDIX A – ORDER OF THE SUPREME COURT OF CALIFORNIA, FILED AUGUST 12, 2026 . . . . . 1a

APPENDIX B – OPINION OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION ONE, FILED MAY 1, 2026 . . . . . 2a

APPENDIX C – RULING OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES, FILED MAY 23, 2024 . . . . . 23a

APPENDIX D – EXCERPTS OF PETITION IN THE SUPREME COURT OF CALIFORNIA, FILED JUNE 10, 2026 . . . . . 38a

APPENDIX E — ORDER OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES, FILED FEBRUARY 4, 2025 . . . . . 60a

TABLE OF CITED AUTHORITIES

Page

Cases

Amos v. Amazon Logistics, Inc.,
74 F.4th 591 (4th Cir. 2023) 12

Bissonnette v. LePage Bakeries Park St., LLC,
601 U.S. 246 (2024). 6, 9, 10, 12, 13

New Prime v. Oliveira,
586 U.S. 105 (2019) 6-9, 12, 13

Pedersen v. Delaware, L. & W. R. Co.,
229 U.S. 146 (1913) 8

Southwest Airlines Co. v. Saxon
596 U.S. 450 (2022). 9, 10, 13

Virginian R. Co. v. System Federation,
300 U.S. 515 (1937) 8

Statutes

9 U.S.C. § 1 . . . . . 2, 5-7, 9-14

28 U.S.C. § 1257(a). 1

Erdman Act, ch. 370, § 1, 30 Stat. 424 (1898). 8

PETITION FOR A WRIT OF CERTIORARI

Petitioner Arturo Vela ("Petitioner") petitions for a writ of certiorari to review the judgment of the California Court of Appeal, Case No. B344723.

OPINIONS BELOW

The California Court of Appeal's opinion of May 1, 2026 (App. 2a) is published at 120 Cal.App.5th 353 (2026). The California Supreme Court's order of August 18, 2026, denying discretionary review is unpublished and is reproduced at App. 1a. The California Superior Court order of February 4, 2025, granting Harbor Rail Services of California, Inc.'s ("Respondent") motion to compel arbitration and dismissing/striking the class claims is unpublished and reproduced at App. 60a.

STATEMENT OF JURISDICTION

The California Court of Appeal issued its published opinion on May 1, 2026, affirming the Superior Court's order dismissing and striking Petitioner's class claims. App. 2a. The Court of Appeal also dismissed Petitioner's appeal from the order compelling arbitration as nonappealable but treated that portion of the appeal as a petition for writ of mandate, which it denied. *Id.* The California Supreme Court denied discretionary review on August 12, 2026. *Id.* at 1a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

STATUTORY PROVISIONS INVOLVED

Section 1 of the Federal Arbitration Act, 9 U.S.C. § 1, provides: "'Maritime transactions', as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction; 'commerce', as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce."

STATEMENT OF THE CASE

Petitioner Arturo Vela ("Petitioner") worked for Respondent Harbor Rail Services of California, Inc. ("Respondent") as a rail freight car repairman at Pacific Harbor Line ("PHL") from approximately May 19, 2021 to October 11, 2021. App, *infra*, 3a, 6a. Petitioner performed inspection and repairs only at PHL during his employment with Respondent. *Id.* at 6a.

When Petitioner was "employed by Harbor Rail, Harbor Rail was under contract as an independent contractor for Pacific Harbor Line ("PHL") to perform

freight inspections and repairs at PHL's train yard[.]" *Id.* Petitioner's job duties included working at a railyard where he would act as a mechanic for the train cars and repaired them following AAR and FRA regulations. *Id.* at 7a, 8a. Petitioner "change[d] trains' wheels and brake pads, disassemble[d] and reassemble[d] train cars, weld[ed] and fabricate[d] metals for the ladders on the trains." *Id.* at 7a.

Pursuant to Respondent's contract with PHL, Respondent's employees were to provide "railcar inspection, maintenance and repair services at PHL's" yard. 1 Clerk's Transcript ("CT") 147-220 at ¶ 7; Exh. 7 ("Service Agreement") at p. 1.

The "Scope of Work" pursuant to the Service Agreement includes railcar repair and maintenance for railroad; "inbound interchange inspection of all railcars arriving at" PHL and a daily inspection report; "interchange and daily inspection of all refrigerator cars" in the PHL service area, including recording temperatures, ensuring proper operation of refrigeration systems; repair of any defects in non-railroad cars identified during the conducted inspections; monthly written reports identifying, in relevant part, "the number of cars that were repaired in place and the number of cars moved to the rip track for repair[.] *Id.* at p. 1-2. If a "non-safety related defect[]" is identified "on loaded cars, such cars shall be spotted at the customer for unloading prior to the performance of repairs by [Respondent's employees]." *Id.* at p. 2. Repairs and services must be performed in accordance with the Federal Railroad Administration ("FRA") and Association of American Railroads ("AAR") rules and

regulations. *Id.* at p. 1. The scope of work outlined in the Service Agreement is considered routine and "[r]outine work not completed during [regular] hours [in one workday] shall be completed the following day." *Id.* at p. 4.

Further, Respondent obtained a license from PHL to use its property to perform its obligations under the Service Agreement. 1 CT 203-212 (Service Agreement, Attachment C). Under the license, in relevant part, Respondent was provided access and use of three tracks and areas adjacent thereto – two tracks are "for the purpose of repairing rail" and one is "for the servicing and repair of refrigerated rail cars or as an overflow location for rail car repairs"[.] *Id.*

Petitioner executed the arbitration agreement at issue on May 10, 2021. App. 4a. Respondent admitted "[t]he new-hire documents produced in [Petitioner]'s personnel file . . . are customary for new hires to sign upon initiating their employment with [Respondent]." 1 CT 173.

On October 5, 2023, Petitioner filed his putative class action complaint against Respondent in the Superior Court of California, County of Los Angeles. App. 4a. On March 6, 2024, Respondent filed a Motion to Compel Arbitration of Petitioner's Individual Claims and to Dismiss/Strike Appellant's Class Action Claims ("Motion"). 1 CT 55-75. On May 10, 2024, Petitioner filed his Opposition to Respondent's Motion[1]. In relevant part, Petitioner argued

1. Despite including Petitioner's Opposition to Respondent's Motion to Compel Arbitration in the Notice Designating Record

is he exempt from the FAA under the railroad employee exemption. App. 7a, 34a.

In advance of the May 23, 2024 hearing, the trial court issued a tentative ruling, ultimately continuing the hearing on the Motion for supplemental evidence and briefing. App. 23a. The trial court ultimately adopted the tentative ruling as the ruling of the court. *Id*.

On February 4, 2025, the trial court issued a Minute Order reflecting the court read the supplemental briefing and heard oral argument and granted Respondent's Motion. App. 60a. On February 13, 2025, Petitioner filed his Notice of Appeal in the California Court of Appeal, Second Appellate District. 2 CT 327-329.

On May 1, 2026, after full briefing and oral argument, the California Court of Appeal, Second Appellate District, Division One, issued its published Opinion, affirming the trial court's order dismissing and striking Petitioner's class claims, and dismissing the order compelling arbitration as a nonappealable order. App. 2a.

On June 10, 2026, Petitioner timely filed a Petition for Review in the Supreme Court of California, raising the applicability of the FAA § 1 exemption to railroad

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on Appeal (*See* 2 CT 330-336), Petitioner's Opposition was not included in the Clerk's Transcript. On August 6, 2025, prior to submitting Petitioner's Opening Brief, Petitioner and Respondent filed a Stipulated Motion to Augment the Record and included the Opposition as Exhibit 1 thereto, Bates Stamped SCT11-SCT28.

employees. App. 38a. The California Supreme Court denied review on August 12, 2026. *Id.* at 1a. This Petition followed.

REASONS FOR GRANTING THE PETITION

This Court should review the California Court of Appeal's opinion to resolve an important question concerning the scope of Section 1 of the FAA and its express exemption for "railroad employees." The California Court of Appeal's decision imposes a direct contractual relationship requirement not found in the statutory text and conflicts with this Court's interpretation of Section 1 in *New Prime, Inc. v. Oliveira*, 586 U.S. 105 (2019) and *Bissonnette v. LePage Bakeries Park St., LLC*, 601 U.S. 246 (2024). The opinion raises an important question concerning whether railroad employee status turns on the nature of the work performed or the identity of the worker's employer, warranting this Court's intervention to clarify the proper application of the FAA's exemption.

A. The Court of Appeal's "Railroad Employee" Analysis Improperly Focused on Contractual Privity Over the Actual Work Performed, Contrary to Section 1's Statutory Framework and This Court's Precedent.

The Court of Appeal treated the absence of a contract between Petitioner and the railroad, PHL, as dispositive of the issue of whether Petitioner was a railroad employee under the meaning of Section 1 of the FAA. The Court of Appeal acknowledged Respondent was Petitioner's employer, Petitioner was not a party to the services agreement between Respondent and PHL, despite

providing repair and inspection services solely to PHL pursuant to this agreement, and Respondent was not itself alleged to be a railroad. The Court of Appeal asked the wrong question. Section 1 presents two distinct inquiries: (1) whether Petitioner's own agreement with Respondent constituted a "contract of employment"; and (2) whether Petitioner's job duties made him a railroad employee under Section 1's intended meaning at the time Congress enacted the FAA.

1. *New Prime* Supports Interpreting "Railroad Employee" Based on the Nature of the Work Performed, Consistent with the Statute's Historical Meaning.

In *New Prime v. Oliveira*, this Court emphasized that Section 1 must be interpreted according to its ordinary meaning at the time of the statute's enactment. 585 U.S. at 113. This Court recognized that the phrase "contract of employment" in 1925 "usually meant nothing more than an agreement to perform work[,]" and did not literally mean a contract between an employer and employee. *Id.* at 114. This interpretation is supported by the statutory language using the term "workers," which emphasizes the nature of the work performed rather than formal employment labels. *Id.* at 116.

New Prime also recognized that "the term 'railroad employees' may have swept more broadly" in 1925 than its modern, formalistic connotation suggests. *Id.* at 119-20. This Court specifically recognized, in 1922, the Railroad Labor Board understood "employee" to mean "anyone 'engaged in the customary work directly contributory to the operation of the railroads.'" *Id.* at

120. This Court also referenced the Erdman Act and found it evidenced "an equally broad understanding of 'railroad employees.'" The Erdman Act of 1898 defined "railroad" as including "all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement or lease[,]" and defined "employees" as including "all persons actually engaged in any capacity in train operation or train service of any description, and notwithstanding that the cars upon or in which they are employed may be held and operated by the carrier under lease or other contract[.]" Erdman Act, ch. 370, § 1, 30 Stat. 424, 424 (1898). This historical evidence cuts against limiting "railroad employees" to workers who signed contracts directly with railroads.

Petitioner provided repair and inspection services solely for PHL in connection with Respondent's contract with the railroad to provide services to PHL. Repairing railroad freight cars does not merely constitute work performed near a railroad. The inspection and repair of freight cars is essential to maintaining the instrumentalities through which rail transportation occurs. This Court has recognized that keeping railroad instrumentalities in repair "is so closely related to [interstate] commerce as to be in practice and legal contemplation a part of it." *Pedersen v. Delaware, L. & W. R. Co.*, 229 U.S. 146, 151 (1913); *see also Virginian R. Co. v. System Federation*, 300 U.S. 515, 555-56 (1937) (finding "back shop" railroad repair work on locomotives and railcars, even on those that are withdrawn from service for extended periods, is sufficiently connected to interstate railroad commerce to be regarded as part of those activities).

Under this historical framework, Petitioner's inspection and repair of railroad freight cars constitutes precisely the type of customary work directly contributory to railroad operations contemplated by the broad understanding of "railroad employees" discussed in *New Prime*. This is further supported by this Court's recognition that railroad repair work remains sufficiently connected to interstate railroad commerce even when railcars are temporarily withdrawn from service. The Court of Appeal needed to examine Petitioner's job duties and determine whether his inspection and repair of freight cars historically constituted the type of work considered under the term "railroad employee" when Congress enacted the FAA. By focusing on the lack of a direct contract between Petitioner and PHL rather than the nature of Petitioner's work, the Court of Appeal disregarded the historical understanding of "railroad employees" under Section 1 discussed in *New Prime*.

2. *Bissonnette* Confirms that Section 1 Focuses on the Nature of the Work Performed, Not the Employer's Industry.

In *Bissonnette v. LePage Bakeries Park St., LLC*, this Court held a transportation worker need not "work for a company in the transportation industry to be exempt under §1 of the FAA." 601 U.S. 246, 252 (2024). This Court reasoned the statutory language focuses on the work performed in lieu of the employer's industry. *Id.*

In *Southwest Airlines Co. v. Saxon*, this Court refused to adopt an industrywide approach to the residual clause of Section 1, rejecting the employee's argument that "seamen" and "railroad employees" are industrywide categories. 596

U.S. 450, 460 (2022). This Court there emphasized that the relevant inquiry focuses on "the actual work that the members of the class, as a whole, typically carry out." *Id.* at 456; *see Bissonnette*, 601 U.S. at 255 ("*Saxon* rejected the proposition that there is an industrywide link between "seamen" and "railroad employees"[] . . . [t]hose classes of workers, as we read the statute then and now, are connected by what they do, not for whom they do it.").

Although *Bissonnette* and *Saxon* addressed the residual clause, this Court's interpretation of Section 1 by reference to its expressly enumerated classes, including "railroad employees," supports the proposition that the nature of the work performed, rather than the industry of the employer, governs the determination of whether an employee qualifies as a "railroad employee" under Section 1.

Under this framework, the Court of Appeal's analysis is improper under binding precedent. Rather than examine Petitioner's actual job duties, the Court of Appeal focused on the absence of a contract between Petitioner and the railroad company as dispositive of whether he qualified as a "railroad employee." This approach erroneously shifts the focus away from the actual work performed toward who employed Petitioner, contrary to this Court's interpretation of Section 1 in *Saxon* and *Bissonnette*.

3. The Court of Appeal Conflated the Harbor-PHL Agreement's Evidentiary Purpose with the Separate "Contract of Employment" Inquiry.

The Court of Appeal explicitly declined to rule whether the arbitration agreement was part of

Petitioner's "contract of employment," yet relied on the lack of a direct contractual relationship between Petitioner and the railroad to hold he was not a "railroad employee." App, 14a-15a. Specifically, the Court of Appeal declined to address whether "the parties' arbitration agreement was part of a 'contract of employment[]' . . . because [Petitioner's] failure to establish he is [] a 'railroad employee' . . . is dispositive." *Id.* at 14a, n. 4. However, the Court of Appeal, in analyzing whether Petitioner was a "railroad employee," based its decision on Petitioner "not hav[ing] a contract with PHL and the contract between PHL and [Respondent] cannot constitute a 'contract of employment' within the meaning of the Section 1 exemption." *Id.* at 15a.

The Court of Appeal correctly recognized the "contract of employment" issue and "railroad employee" issue are distinct questions by choosing not to reach the merits of the former. However, the Court of Appeal effectively merged these distinct questions by using the lack of contract with the railroad company as a dispositive factor in the "railroad employee" analysis. The problem was not the Court of Appeal's decision to leave the "contract of employment" question unresolved, but the court's reliance on contractual privity with PHL to resolve Petitioner's "railroad employee" status.

The Court of Appeal was correct in the limited sense that the agreement between Respondent and PHL, standing alone, was a contract between businesses rather than Petitioner's agreement to perform work. A services agreement between corporate entities is distinguishable from the employment agreements of

the workers who perform the contracted services. *See, e.g., Amos v. Amazon Logistics, Inc.*, 74 F.4th 591, 593 (4th Cir. 2023).

This distinction, however, does not resolve whether the FAA applies to Petitioner's own employment agreement with Respondent. The agreement between PHL and Respondent was relevant because it established the nature of Petitioner's job duties and explained why he performed railroad repair and inspection services for PHL. Petitioner did not need to establish that the services agreement itself constituted a "contract of employment" to demonstrate that his job duties qualified him as a "railroad employee" under Section 1.

The Court of Appeal's approach conflated two distinct inquiries under Section 1: (1) whether Petitioner's arbitration agreement with Respondent was part of his "contract of employment"; and (2) whether Petitioner's actual job duties qualified him as a "railroad employee." *New Prime* addressed the first prong and construed "contract of employment" to encompass agreements for the performance of work without requiring a conventional employer-employee relationship. 586 U.S. at 120. *Bissonnette* emphasized that the second prong focuses on the employee's job duties and not the employer's industry. 601 U.S. at 252.

The Court of Appeal expressly declined to decide the "contract of employment" inquiry yet simultaneously relied on the absence of a contract between Petitioner and PHL to reject his "railroad employee" status. The service agreement between PHL and Respondent was evidence of the nature of Petitioner's railroad duties,

not Petitioner's own contract of employment. By treating the service agreement's failure to constitute a "contract of employment" as dispositive of Petitioner's "railroad employee" status, the Court of Appeal improperly required Petitioner to have a direct contract of employment with PHL. Under *New Prime*, *Saxon*, and *Bissonnette*, the relevant inquiry should have centered on Petitioner's actual job duties and whether his inspection and repair of freight cars constituted customary work directly contributory to railroad operations.

B. This Case Presents an Important and Unresolved Question Concerning the Scope of Section 1's Express "Railroad Employee" Exemption

This case presents an important and unresolved question concerning the scope of the FAA's express "railroad employee" exemption. Although this Court has addressed the meaning of "contract of employment" in *New Prime* and the significance of a worker's actual duties under Section 1 in *Saxon* and *Bissonnette*, it has not squarely addressed whether an individual employed by a separate company who exclusively performs freight railcar repair and inspection services for a railroad qualifies as a "railroad employee" under Section 1.

The Court of Appeal's interpretation has implications beyond only this case. Foremost, the Court of Appeal's opinion is published. Thus, the Court of Appeal's interpretation of Section 1 establishes precedent for California courts addressing whether workers who perform railroad services through third-party employers qualify for the FAA's express "railroad

employee" exemption. Under the Court of Appeal's interpretation, workers customarily engaged in job duties directly contributory to the operation of railroads may nevertheless be excluded from the exemption solely because they lack a direct contractual relationship with the railroad. This would make "railroad employee" status dependent on the existence of a direct contractual agreement with a railroad, rather than the nature of the work performed, contrary to this Court's precedent. Such an interpretation risks excluding workers from the FAA's express exemption despite their performance of duties historically associated with railroad operations. This Court's review is thus warranted to clarify the scope of Section 1's "railroad employee" exemption and resolve whether a direct contractual relationship with a railroad is required under the statute.

CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

Douglas Han
Counsel of Record
Shunt Tatavos-Gharajeh
Talia Lux
Justice Law Corporation
751 North Fair Oaks Avenue,
Suite 101
Pasadena, CA 91103
(818) 230-7502
dhan@justicelawcorp.com

Counsel for Petitioner Arturo Vela

APPENDIX

TABLE OF APPENDICES

Page

APPENDIX A – ORDER OF THE SUPREME COURT OF CALIFORNIA, FILED AUGUST 12, 2026 . . . . . 1a

APPENDIX B – OPINION OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION ONE, FILED MAY 1, 2026 . . . . . 2a

APPENDIX C – RULING OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES, FILED MAY 23, 2024 . . . . . 23a

APPENDIX D – EXCERPTS OF PETITION IN THE SUPREME COURT OF CALIFORNIA, FILED JUNE 10, 2026 . . . . . 38a

APPENDIX E — ORDER OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES, FILED FEBRUARY 4, 2025 . . . . . 60a

APPENDIX A — ORDER OF THE SUPREME COURT OF CALIFORNIA, FILED AUGUST 12, 2026

IN THE SUPREME COURT OF CALIFORNIA

S297029

ARTURO VELA,

Plaintiff and Appellant,

v.

HARBOR RAIL SERVICES OF CALIFORNIA, INC.,

Defendant and Respondent.

Filed August 12, 2026

ORDER

En Banc

Court of Appeal, Second Appellate District, Division One
No. B344723

The petition for review is denied.

/s/ Guerrero
Chief Justice

APPENDIX B — OPINION OF THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION ONE, FILED MAY 1, 2026

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION ONE

B344723
(Los Angeles County Super. Ct. No. 23STCV24281)

ARTURO VELA,

Plaintiff and Appellant,

v.

HARBOR RAIL SERVICES OF CALIFORNIA, INC.,

Defendant and Respondent.

Filed May 1, 2026

OPINION

APPEAL from an order of the Superior Court of Los Angeles County, David S. Cunningham III, Judge. Affirmed in part, dismissed in part, treated in part as a petition for writ of mandate and denied.

Appendix B

INTRODUCTION

The Federal Arbitration Act (FAA; 9 U.S.C. § 1 et seq.)[1] exempts from its application "contracts of employment" of "railroad employees, or any other class of workers engaged in foreign or interstate commerce." (§ 1.) Plaintiff Arturo Vela, who worked for defendant Harbor Rail Services of California, Inc. (Harbor) as a railcar repairman, claims the trial court erred in compelling him to arbitrate claims relating to his employment because he falls within this exemption. Vela also claims that, because the FAA exempts him, the trial court erred in enforcing a waiver of class claims contained in his agreement to arbitrate. Under state law, Vela's waiver is potentially unenforceable. If federal law applies, it preempts such state law and the waiver is enforceable.

We find no error and affirm. The FAA applies to the parties' agreement to arbitrate and does not exempt Vela. Accordingly, the trial court did not err in compelling arbitration. Nor did the trial court err in striking the class claims, as Vela's waiver of those claims is enforceable under federal law.

FACTUAL AND PROCEDURAL BACKGROUND

A. Vela's Employment with Harbor

Harbor hired Vela as a rail freight car repairman on May 19, 2021, and terminated him on October 11, 2021.

1. All unspecified statutory references are to title 9 of the United States Code.

On May 10, 2021, prior to Vela beginning work, he and Harbor executed a mutual agreement to arbitrate. Under the agreement, the parties "agree[d] to the resolution by arbitration of all claims, disputes, and/or controversies (collectively 'claims'), whether or not arising out of [Vela]'s employment or its termination, that [Harbor] may have against [Vela] or that [Vela] may have against [Harbor], its subsidiaries or affiliated entities, or against its employees or agents in their capacity." The agreement also included a "[c]lass and [r]epresentative [a]ction [w]aiver" under which the parties "agree[d to] . . . forego pursuing any covered dispute on a class, collective, or representative basis and . . . not [to] assert class, collective, or representative action claims against the other in arbitration or otherwise," with an exception for "representative actions under the California Private Attorneys General Act or any class, collective, or representative claims that cannot be waived as a matter of law."

B. Vela's Lawsuit

Vela sued Harbor on October 5, 2023, asserting causes of action under the Labor Code for unpaid overtime (*id.*, §§ 510, 1198), unpaid meal period premiums (*id.*, §§ 226.7, 512, subd. (a)), unpaid rest period premiums (*id.*, § 226.7), unpaid minimum wages (*id.*, §§ 1194, 1197), failure to timely pay final wages (*id.*, §§ 201, 202), noncompliant wage statements (*id.*, § 226, subd. (a)), and failure to reimburse business expenses (*id.*, §§ 2800, 2802), and a related claim under the Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.). Vela asserted these claims on his own behalf and also on behalf of a would-be class of

current and former Harbor employees. Vela did not allege any representative claims under the Labor Code Private Attorneys General Act (Lab. Code, § 2698 et seq.).

C. Harbor's Motion to Enforce the Arbitration Agreement

On March 6, 2024, Harbor filed a motion to compel Vela's individual claims to arbitration and to dismiss and strike his class claims. Harbor relied on the "[m]utual [a]greement to [a]rbitrate" which Vela had signed "in connection with his employment."

Harbor contended that the parties' arbitration agreement, including the class action waiver provision, was enforceable under the FAA. Thus, argued Harbor, the court was required to compel Vela's claims to arbitration and to dismiss and strike his class claims. Anticipating Vela's argument that the arbitration agreement fell within the FAA exemption for "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce" (§ 1), Harbor asserted that Vela was not a "railroad employee[ ]" because Harbor was not a railroad company. Harbor further argued that Vela was not in a "class of workers engaged in foreign or interstate commerce" because "[his] work consisted of making repairs to trains that were decommissioned in [a railroad] yard, awaiting inspection and repairs," he did not inspect any locomotives or move, drive, or operate any trains or freight cars, and his work did not involve the "delivery of goods" or "transport[ation of] any goods across state or foreign lines."

Appendix B

In a declaration, Harbor's chief operations officer averred as follows. Harbor conducts "freight car inspections and repairs for a number of railroads." Harbor controls, manages, and oversees the work of its employees, who use Harbor's equipment to perform their work. During Vela's employment, Harbor "was under contract as an independent contractor for Pacific Harbor Line ('PHL') to perform freight car inspections and repairs at PHL's train yard in Wilmington, California. Under [the] contract, . . . PHL's railroad customers, Burlington Northern Santa Fe ('BNSF[']) and Union Pacific ('UP'), would deliver their freight cars using their locomotives to the PHL train yard in Wilmington by stopping them on the interchange track in the yard, disconnecting their locomotives, and leaving the freight cars to sit on the track in the yard, awaiting inspection/repairs." At this point, the freight cars "were withdrawn from service/decommissioned . . . and . . . were not useable until and unless they passed inspection." Harbor "employees then would inspect the freight cars using quality control measures established by Federal Regulations . . . [and] would make [any] necessary repairs." The freight cars were then "released to PHL, and PHL eventually delivered them back to its railroad customers (BNSF or UP) with PHL's locomotive." "[Vela] was hired as and did work for Harbor as a [r]epairman at PHL. [Vela]'s work . . . consisted of performing inspection, repair and rebuilding of the decommissioned freight cars at the PHL train yard in accordance to [*sic*] all A[ssociation of] A[merican] R[ailroads] and F[ederal] R[ailroad] A[dministration] rules."

Vela does not dispute that the FAA (including any applicable exceptions to it) governs the parties' arbitration agreement. In opposing the motion to compel arbitration, Vela contended that the arbitration agreement was exempted from the FAA because he was a "railroad employee" and a "worker[ ] engaged in foreign or interstate commerce" under section 1. Vela submitted a declaration in which he averred that he worked for Harbor as a "[r]ailway [r]epairman" from May 2021 to October 2021; he was paid an hourly rate of $19; he repaired train cars following Association of American Railroads and Federal Railroad Administration regulations and, more specifically, he "change[d] trains' wheels and brake pads, disassemble[d] and reassemble[d] train cars, and . . . weld[ed] and fabricate[d] metals for the ladders on the trains."

Vela argued that if the parties' arbitration agreement was exempted from the FAA, California law would apply in its place. Vela asserted that under California law his class action waiver was unenforceable under the test articulated in *Gentry v. Superior Court* (2007) 42 Cal.4th 443, 64 Cal. Rptr.3d 773, 165 P.3d 556 and further that Labor Code section 229 exempted some of his claims from arbitration.

D. The Trial Court Continues the Hearing to Receive Further Evidence

In May 2024, the trial court issued a tentative ruling which indicated as follows. Harbor had demonstrated the existence of an agreement to arbitrate. The section 1 exemption for the specified "contracts of employment"

did not apply because Vela had failed to show that the parties' arbitration agreement "should be interpreted as part of an employment contract as opposed to a standalone agreement." However, the hearing would be continued to provide Vela "a chance to supplement the record" on whether the arbitration agreement was part of a contract of employment.

The court also tentatively concluded that Vela was not a "railroad employee" within the meaning of the section 1 exemption because Harbor was not a railroad, and Vela could not rely on Harbor's contract with PHL. However, Vela had shown he was a transportation worker because Harbor's "business [wa]s substantially related to the railroad industry" and "[it] hired [Vela] to do inspections and mechanic work on [its] behalf for the railroad clients." Vela's claim that the class action waiver was unenforceable under state law was "premature" and "w[ould] not be ripe unless and until the FAA-exemption issue [wa]s resolved, and only if it [wa]s resolved in [Vela]'s favor," and Vela's argument that the claims subject to Labor Code section 229 should be litigated was "also premature."

After hearing argument, the court modified the tentative ruling in one respect. Whereas the initial tentative ruling indicated Vela had shown he was a transportation worker, the revised tentative ruling stated, "On balance, . . . because this is a fairly novel issue, the [c]ourt is inclined to hold an evidentiary hearing with live testimony. This will help to create a clear picture of

what, exactly, [Vela] did at work for [Harbor]."[2] The final tentative ruling continued the hearing for further evidence not only as to whether Vela had shown the arbitration agreement was part of a "contract of employment" but also as to whether Vela qualified as a transportation worker.

E. The Parties' Supplemental Evidence and the Trial Court's Ruling Granting Harbor's Motion

The parties submitted additional evidence on January 3, 2025. As relevant here, Vela submitted documents from his personnel file maintained by Harbor and an interrogatory response from Harbor indicating those documents, including the arbitration agreement, were "customary for new hires to sign upon initiating their employment with [Harbor]." Both parties submitted a copy of the "service agreement" (capitalization omitted) between Harbor and PHL.

In its supplemental brief, Harbor contended that Vela did not fall within the section 1 exemption because he had failed to show "a contract of employment required by [section 1]" and he "was not a transportation worker because he did not actively or directly move goods in interstate commerce as a repairman."

In his supplemental brief, Vela contended that he had established a "contract of employment" in part

2. Vela's contention that the court found his "burden . . . as to the transportation-worker issue" was "met" is meritless because it relies solely on the tentative ruling and ignores the trial court's later modification to that ruling.

because he was "hired" by and worked for Harbor, and Harbor acknowledged in discovery responses that the arbitration agreement was executed in connection with Vela's employment. Vela also contended he was a "'railroad employee[ ]'" because he "did railroad work." Vela did not address whether he was a "transportation worker."

On February 4, 2025, after hearing argument, the trial court granted Harbor's motion to compel Vela's claims to arbitration and to dismiss and strike his class claims. Vela timely appealed.

DISCUSSION

A. Appellate Jurisdiction

We generally lack jurisdiction to review an order compelling arbitration. (*Elijahjuan v. Superior Court* (2012) 210 Cal.App.4th 15, 19, 147 Cal.Rptr.3d 857.) To establish appealability here, Vela invokes the "'death knell' doctrine," which allows immediate appeals from "orders that effectively terminate class claims but permit individual claims to continue." (*In re Baycol Cases I & II* (2011) 51 Cal.4th 751, 754, 122 Cal.Rptr.3d 153, 248 P.3d 681.) The doctrine is premised on the concern "that an individual plaintiff may lack incentive to pursue his individual claims to judgment, thereby foreclosing any possible appellate review of class issues." (*Id.* at p. 758, 122 Cal.Rptr.3d 153, 248 P.3d 681.) The trial court's order dismissing and striking Vela's class claims "effectively terminate[d Vela's] class claims but permit[ted his]

individual claims to continue" (*id.* at p. 754, 122 Cal. Rptr.3d 153, 248 P.3d 681) and is thus appealable.

But that does not mean the trial court's order compelling arbitration is also appealable. (See *Nixon v. AmeriHome Mortgage Co., LLC* (2021) 67 Cal.App.5th 934, 943, 282 Cal.Rptr.3d 609 [expressing doubts "whether the judicially created death knell exception to the one final judgment rule for an order dismissing class claims extends to make appealable an otherwise nonappealable order compelling arbitration when the two orders are issued simultaneously"].)[3] The *Nixon* court exercised its discretion to treat that portion of the appeal directed at the order compelling arbitration as a petition for writ of mandate and considered the merits of that order. (*Id.* at p. 944, 282 Cal.Rptr.3d 609.) We take the same approach here, as the parties have fully briefed the issues and Harbor does not object to our addressing them. Review of the order compelling arbitration, which is based on the same grounds as the order dismissing and striking the class claims, will not cause any additional delay or subvert the purpose of the arbitration statute. (See *ibid.*)

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3. Vela asserts that we have jurisdiction to review the court's order compelling arbitration under *Franco v. Athens Disposal Co., Inc.* (2009) 171 Cal.App.4th 1277, 90 Cal.Rptr.3d 539. *Franco* is distinguishable because the class action waiver in that case precluded class claims only in arbitration proceedings, and thus the trial court's order compelling arbitration effectively terminated the plaintiff's class claims. (*Id.* at pp. 1284, 1288, 90 Cal.Rptr.3d 539.)

B. Standard of Review

In deciding a motion to compel arbitration, "the trial court sits as a trier of fact, weighing all the affidavits, declarations, and other documentary evidence, as well as oral testimony received at the court's discretion, to reach a final determination." (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 972, 64 Cal.Rptr.2d 843, 938 P.2d 903.) A party opposing a motion to compel arbitration on the ground an exemption applies "bear[s] the burden to demonstrate that the exemption applies." (*Betancourt v. Transportation Brokerage Specialists, Inc.* (2021) 62 Cal.App.5th 552, 559, 276 Cal.Rptr.3d 785.)

We review the trial court's factual findings for substantial evidence. (*Muro v. Cornerstone Staffing Solutions, Inc.* (2018) 20 Cal.App.5th 784, 790, 229 Cal. Rptr.3d 498.) Under the substantial evidence standard, "'we must presume the court found every fact and drew every permissible inference necessary to support its judgment, and defer to its determination of credibility of the witnesses and the weight of the evidence.'" (*Engineers & Architects Assn. v. Community Development Dept.* (1994) 30 Cal.App.4th 644, 653, 35 Cal.Rptr.2d 800.) However, "the application of law to undisputed facts ordinarily presents a legal question that is reviewed de novo." (*Boling v. Public Employment Relations Bd.* (2018) 5 Cal.5th 898, 912, 236 Cal.Rptr.3d 109, 422 P.3d 552.) We also review de novo a trial court order striking class allegations. (*Blakemore v. Superior Court* (2005) 129 Cal. App.4th 36, 53-54, 27 Cal.Rptr.3d 877.) The trial court's order "is presumed correct, and if it is correct on any

theory, it must be affirmed regardless of the trial court's reasoning." (*Muro v. Cornerstone Staffing Solutions, Inc., supra*, at p. 789, 229 Cal.Rptr.3d 498.)

C. The Trial Court Did Not Err in Compelling Vela's Individual Claims to Arbitration

As noted previously, Vela does not dispute the arbitration agreement here is governed by the FAA. Under the FAA, "A written provision in . . . a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract or as otherwise provided in chapter 4." (§ 2.) However, the FAA exempts from its reach "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." (§ 1.) The last category, i.e., "any other class of workers engaged in foreign or interstate commerce," (*ibid.*) is limited to "transportation workers" engaged in foreign or interstate commerce. (*Circuit City Stores, Inc. v. Adams* (2001) 532 U.S. 105, 109, [121 S.Ct. 1302, 149 L.Ed.2d 234].)

Vela contends that the section 1 exemption applies, so that enforceability of the parties' arbitration agreement is ultimately subject to California law instead of the FAA. If California law applies, then Labor Code section 229 would render the arbitration agreement unenforceable as to Vela's claims for unpaid wages. Conversely, if

the arbitration agreement is ultimately subject to the FAA, then Labor Code section 229 would be preempted. (*Garrido v. Air Liquide Industrial U.S. LP* (2015) 241 Cal.App.4th 833, 844-845, 194 Cal.Rptr.3d 297 ["The FAA preempts Lab[.] Code[, §] 229, requiring enforcement of an arbitration agreement"].)

The section 1 exemption applies if Vela is either a "railroad employee[ ]" or a transportation worker. As we explain, he is neither.[4]

1. Vela is Not a Railroad Employee

Vela does not claim that Harbor is a "railroad" or that he is a "railroad employee" by virtue of his employment by Harbor.[5] Instead, he contends he was a "railroad employee" because he provided train repair services to

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4. The parties also dispute whether Vela established that the parties' arbitration agreement was part of a "contract of employment." We need not address this issue because Vela's failure to establish he is either a "railroad employee" or transportation worker is dispositive.

5. As the United States Supreme Court has explained, "When the FAA was adopted, . . . grievance procedures existed for railroad employees under federal law [citation] and the passage of a more comprehensive statute providing for the mediation and arbitration of railroad labor disputes was imminent [citation]. It is reasonable to assume that Congress excluded . . . 'railroad employees' from the FAA for the simple reason that it did not wish to unsettle established or developing statutory dispute resolution schemes covering specific workers." (*Circuit City Stores, Inc. v. Adams, supra*, 532 U.S. at p. 121, 121 S.Ct. 1302.)

PHL under the contract between that entity and Harbor. Even if we assume a repair and inspection company like PHL is a "railroad," this theory fails because Vela did not have any contract with PHL and the contract between PHL and Harbor cannot constitute a "contract of employment" within the meaning of the section 1 exemption. (*Fli-Lo Falcon, LLC v. Amazon.com, Inc.* (9th Cir. 2024) 97 F.4th 1190, 1196-1197 ["for a contract to *be* a contract of employment covered by § 1, it must have a *qualifying worker* as one of the parties"]; *Amos v. Amazon Logistics, Inc.* (4th Cir. 2023) 74 F.4th 591, 596 [agreement was not a "contract of employment" within the meaning of § 1 because it "d[id] not promise work and compensation to an individual employee, and it contain[ed] none of the hallmarks of a traditional employment contract, such as provisions regarding salary, benefits, and leave time," and "provide[d] instead for certain business services to be provided by one business to another"].)

New Prime Inc. v. Oliveira (2019) 586 U.S. 105, [139 S.Ct. 532, 202 L.Ed.2d 536], upon which Vela relies, is inapposite. In *New Prime,* the United States Supreme Court addressed whether "contracts of employment" as used in section 1 "refers only to contracts that reflect an employer-employee relationship" or "*also* encompasses contracts that require an independent contractor to perform work," and concluded that section 1 includes both types of relationships. (*New Prime Inc. v. Oliveira, supra*, at pp. 113, 116, 139 S.Ct. 532.) Thus, under *New Prime* Vela's agreement with Harbor could qualify as a "contract of employment" whether Vela was a traditional employee or an independent contractor, but nothing in *New Prime*

supports the proposition that the contract between Harbor and PHL could be a "contract of employment" under section 1. Nor does *New Prime* support the proposition that Vela qualified as a "railroad employee."[6]

Vela also relies on the definition of an "'employee'" of a "'carrier,'" i.e., a railroad, used in the Railway Labor Act of 1926 (45 U.S.C. § 151 et seq.) which Congress enacted a year after the FAA. The Railway Labor Act of 1926 defined "'employee'" to include "every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Surface Transportation Board." (45 U.S.C. § 151.) Even if we assume Congress intended this same definition of "railroad employee" to apply to another title elsewhere in the United States Code (namely section 1), Vela does not qualify as being "in the service of" PHL. It is undisputed he had no direct employment relationship with PHL and there is no evidence that PHL had or exercised any authority to supervise or direct his work. To the contrary,

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6. The plaintiff in *New Prime* contended the section 1 exemption applied because he "qualifie[d] as a 'worker[ ] engaged in . . . interstate commerce,'" not because he was a "railroad employee." (*New Prime Inc. v. Oliveira, supra*, 586 U.S. at p. 113, 139 S.Ct. 532.) Although the high court suggested that the term "'railroad employee[ ]'" could encompass an individual working as an independent contractor for a railroad company (*id.* at pp. 120-121, 139 S.Ct. 532), Vela does not contend that he had any agreement with PHL, either as an employee or an independent contractor.

Harbor's chief operations officer declared that Harbor "completely control[s], manage[s] . . . and oversee[s]" its employees. In addition, Harbor's agreement with PHL provided that Harbor was "an independent contractor with the sole right to supervise, manage, operate, control and direct the performance of its obligations under this [a]greement."

2. Vela Was Not a Transportation Worker

Courts employ a two-step framework to analyze whether an individual is a transportation worker exempt from the FAA under section 1. (*Southwest Airlines Co. v. Saxon* (2022) 596 U.S. 450, 455, [142 S.Ct. 1783, 213 L.Ed.2d 27] (*Saxon*).) The first step is to "defin[e] the relevant 'class of workers' to which [the individual] belongs." (*Ibid.*) This determination is based on "the actual work that the members of the class, as a whole, typically carry out." (*Id.* at p. 456, 142 S.Ct. 1783.) The second step is to "determine whether that class of workers is 'engaged in foreign or interstate commerce.'" (*Id.* at p. 455, 142 S.Ct. 1783.)

Saxon held that "any class of workers directly involved in transporting goods across state or international borders falls within [section] 1's exemption." (*Saxon, supra*, 596 U.S. at pp. 456, 457, 142 S.Ct. 1783 [finding the "class of workers who physically load and unload cargo on and off airplanes on a frequent basis" to be such a class (fn. omitted)].) The answer is not "so plain" "when the class of workers carries out duties further removed from the channels of interstate commerce or the actual crossing

of borders." (*Id.* at p. 457, 142 S.Ct. 1783, fn. 2.) In such cases, to fit within the exemption, "[the] worker must at least play a direct and 'necessary role in the free flow of goods' across borders," or, "[p]ut another way, . . . must be actively 'engaged in transportation' of those goods across borders via the channels of foreign or interstate commerce." (*Id.* at p. 458, 142 S.Ct. 1783.) "*Saxon*'s bottom line is that to qualify as a transportation worker, an employee's relationship to the movement of goods must be sufficiently close enough to conclude that his work plays a tangible and meaningful role in their *progress* through the channels of interstate commerce." (*Ortiz v. Randstad Inhouse Services, LLC* (9th Cir. 2024) 95 F.4th 1152, 1160, italics added.)

In *Lopez v. Aircraft Service International, Inc.* (9th Cir. 2024) 107 F.4th 1096, the Ninth Circuit held "that a fuel technician who places fuel in an airplane used for foreign and interstate commerce is a transportation worker engaged in commerce because a fuel technician 'play[s] a direct and necessary role in the free flow of goods across borders.'" (*Id.* at p. 1101.) The court reasoned that refueling an airplane was "a vital component of its ability to engage in the interstate and foreign transportation of goods" and was thus "'so closely related to interstate and foreign commerce as to be in practical effect part of it.'" (*Ibid.*)

We distill from *Saxon, Ortiz,* and *Lopez* that to be a transportation worker a person must play some role in the actual transportation of goods, and Vela has not adduced evidence of such involvement. Here, "the actual work" that

workers in Vela's class "typically carr[ied] out" (*Saxon, supra*, 596 U.S. at p. 456, 142 S.Ct. 1783) was inspecting and repairing rail freight cars which had been temporarily taken out of service and delivered to PHL's yard for the purpose of inspection. This type of work is too far removed from the actual process of transporting goods to "play a direct and 'necessary role in the free flow of goods' across borders" or constitute "active[ ] 'engage[ment] in transportation,'" so as to qualify Vela as an exempt transportation worker. (*Id.* at p. 458, 142 S.Ct. 1783.) It was only after Vela and his coworkers completed their tasks that the freight cars were returned to actual service and again were actively engaged in transportation. (E.g., *Holley-Gallegly v. TA Operating, LLC* (C.D.Cal., Sept. 16, 2022, No. EDCV 22-593 JGB), 2022 WL 9959778 [truck mechanic who serviced trucks that hauled goods across state lines was not a transportation worker under *Saxon* because his connection to interstate commerce was too attenuated], vacated on other grounds in *Holley-Gallegly v. TA Operating, LLC* (9th Cir. 2023) 74 F.4th 997, 999.)

Vela relies on *Western Dairy Transport, LLC v. Vasquez* (Tex.App. 2014) 457 S.W.3d 458, where a Texas appellate court held that an interstate trucking company mechanic qualified as a transportation worker under section 1. The court applied "a nonexclusive eight-part test"[7] (*Western Dairy Transport, LLC v. Vasquez, supra*,

7. The court described the eight factors to be considered as "(1) whether the employee works in the transportation industry; (2) whether the employee is directly responsible for transporting goods in interstate commerce; (3) whether the employee handles goods that travel interstate; (4) whether the employee supervises employees who are themselves transportation workers, such as

at p. 465) articulated by *Lenz v. Yellow Transp., Inc.* (8th Cir. 2005) 431 F.3d 348, 352, and concluded that the plaintiff mechanic was a transportation worker under section 1 because it found four of the factors "weigh[ed] heavily in favor" of that conclusion. (*Western Dairy Transport, LLC v. Vasquez*, at p. 466.) We do not find the court's analysis to be persuasive because it predates *Saxon*, and the four factors upon which it relied are no longer relevant under *Saxon*. The first factor, "whether the employee works in the transportation industry" is not relevant because *Saxon* directs that we focus instead on the "actual work" performed by the employee. (*Saxon, supra*, 596 U.S. at p. 456, 142 S.Ct. 1783; see also *Bissonnette v. LePage Bakeries Park St., LLC* (2024) 601 U.S. 246, 256, [144 S.Ct. 905, 218 L.Ed.2d 204] ["A transportation worker need not work in the transportation industry to fall within the exemption from the FAA provided by § 1 of the Act"].) The other three factors, "which consider[ed] the importance of trucks and truck mechanics to [the employer's] overall business" (*Western Dairy Transport, LLC v. Vasquez*, *supra*, at p. 466) focus on the employer's business as opposed to the employee's actual work as required under *Saxon*.

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truck drivers; (5) whether like seamen or railroad employees, the employee is within a class of employees for which special arbitration already existed when Congress enacted the FAA; (6) whether the vehicle itself is vital to the commercial enterprise of the employer; (7) whether a strike by the employee would disrupt interstate commerce; and (8) the nexus that exists between the employee's job duties and the vehicle the employee uses in carrying out his duties." (*Western Dairy Transport, LLC v. Vasquez, supra*, 457 S.W.3d at pp. 465-466.)

Vela relies on other cases applying the section 1 exemption but they are all distinguishable because they involved workers who played some role in the actual transportation of goods. (*Betancourt v. Transportation Brokerage Specialists, Inc., supra*, 62 Cal.App.5th at p. 554, 276 Cal.Rptr.3d 785 [package delivery driver]; *Nieto v. Fresno Beverage Co., Inc.* (2019) 33 Cal.App.5th 274, 281, 245 Cal.Rptr.3d 69 [delivery truck driver]; *Palcko v. Airborne Express, Inc.* (3d. Cir. 2004) 372 F.3d 588, 593 [employee who performed "direct supervision of package shipments"].) Furthermore, Vela's contention that his case is similar to *Betancourt* and *Nieto* because "[his] rail car repairs were a 'phase' of a continuous movement of interstate goods to their destinations" lacks support in the record. Although the contract between Harbor and PHL contemplated the possibility that some cars left for inspection might have goods in them, there is no evidence that this actually occurred or that Vela and his fellow class of workers ever, much less typically, inspected or repaired freight cars which were still carrying goods.

Lastly, Vela cites cases outside of the FAA context which he contends "held railroad repairmen are engaged in interstate commerce." None of these cases involves a worker who repaired trains, much less one who repaired rail freight cars while they were out of service. Furthermore, none of the cases applies the test articulated in *Saxon.*

D. The Trial Court Did Not Err in Dismissing and Striking Vela's Class Claims

Because the FAA applies and Vela does not fall within the exemption set forth in section 1, the trial court did not

err in dismissing and striking Vela's class claims. (See *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 359, 173 Cal.Rptr.3d 289, 327 P.3d 129 [FAA preempts California law holding that class action waivers of the type at issue here are unenforceable].)

DISPOSITION

The order dismissing and striking Vela's class claims is affirmed. The appeal of the order compelling arbitration is dismissed as a nonappealable order. Deeming that portion of the appeal as a petition for writ of mandate, the petition is denied. Harbor is awarded its costs on appeal.

CERTIFIED FOR PUBLICATION

/s/ Weingart
Weingart, J.

We concur:

/s/ Bendix
Bendix, Acting P. J.

/s/ M. Kim
M. Kim, J.

APPENDIX C — RULING OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES, FILED MAY 23, 2024

Vela (23STCV24281)

~~Tentative~~ Ruling Re: Motion to Compel Arbitration

Date:	5/23/24
Time:	11:00 am
Moving Party:	Harbor Rail Services of California, Inc. ("Defendant" or "Harbor Rail")
Opposing Party:	Arturo Vela ("Plaintiff")
Department:	Department: 11
Judge:	Judge: David S. Cunningham III

~~TENTATIVE~~ RULING

The hearing on Defendant's motion to compel arbitration is continued for supplemental evidence and briefing as to the employment-contract issue.

The Court will hold an evidentiary hearing with live testimony as to the transportation-worker issue.

BACKGROUND

Harbor Rail is a company that performs inspections and repairs for railroad clients. Plaintiff used to work for Harbor Rail as a mechanic. He contends Harbor Rail subjected him and other current and former employees to numerous wage-and-hour violations.

Here, Harbor Rail moves to compel arbitration. The main issue is whether the Federal Arbitration Act ("FAA") or the California Arbitration Act ("CAA") applies.

DISCUSSION

Existence and Assent

"[W]hen a petition to compel arbitration is filed and accompanied by prima facie evidence of a written agreement to arbitrate the controversy, the court itself must determine whether the agreement exists and, if any defense to its enforcement is raised, whether it is enforceable." (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Ca1.4th 394, 413.)

"Under 'both federal and state law, the threshold question . . . *is whether there is an agreement to arbitrate*.'" (*Cruise v. Kroger Co.* (2015) 233 Cal.App.4th 390, 396, emphasis in original.)

The burden of proof rests with the petitioner. (See *Rosenthal,* supra, 14 Cal.4th at 413 [requiring the petitioner to prove the existence of the agreement "by a preponderance of the evidence"].) To meet the burden, "the provisions of the written agreement and the paragraph that provides for arbitration . . . must be stated verbatim or a copy must be physically or electronically attached to the petition and incorporated by reference." (Cal. Rules of Court, rule 3.1330; see also *Condee v. Longwood Management Corp.* (2001) 88 Cal.App.4th 215, 218 [same].)

"Competent evidence is required to establish both the existence of the arbitration agreement and any ground for denial." (Knight, et al., Cal. Practice Guide: Alternative Dispute Resolution (The Rutter Group December 2023 Update) ¶ 5:321.) "The verified petition (and attached copy of the agreement) normally proves the existence of the arbitration agreement. Affidavits or declarations may be necessary when factual issues are tendered." (Ibid.)

Defendant's arbitration agreement is attached to declaration of Defendant's chief operations officer, Thomas Broderick, at exhibit 2. The agreement states:

> **MUTUAL AGREEMENT TO ARBITRATE**
>
> Agreement to Arbitrate Claims. Harbor Rail Services of California, Inc. and Coast Truck Centers, and all of their related entities and subsidiaries (hereinafter "Company") and I (hereinafter "Employee") voluntarily agree to the resolution by arbitration of all claims, disputes, and/or controversies (collectively "claims"), whether or not arising out of Employee's employment or its termination, that Company may have against Employee or that Employee may have against Company, its subsidiaries or affiliated entities, or against its employees or agents in their capacity. The claims covered by this Arbitration Agreement include, but are not limited to, claims for wages or other compensation due; claims for breach of any contract or covenant (express or

implied); tort claims; claims for discrimination or harassment, including, but not limited to, any federal or state civil rights laws, ordinances, regulations or orders, based on charges of discrimination or harassment on account of race, color, religion, sex, sexual orientation, age, citizenship, national origin, mental or physical disability, medical condition, genetic predisposition, marital status, pregnancy or any other discrimination prohibited by such laws, ordinances, regulations or orders; claims for benefits (except where an employee benefit or retirement plan specifies that its claims procedures shall culminate in an arbitration procedure different from this), and claims for violation of any federal, state, or other governmental law, statute, regulation or ordinance, except claims excluded below.

Mediation. The Company and Employee agree that they shall first attempt to resolve their differences by voluntary, non-binding, mediation. The mediator shall be selected as follows: The parties shall first attempt to select a mediator by mutual agreement. If the parties cannot mutually agree, each party must nominate a single potential mediator (a "Nominee"), and the Nominees shall jointly select some other person to be the mediator. The mediator, and each Nominee (if applicable), shall be either (a) a retired judge who presided in the jurisdiction where the mediation will be

held, or (ii) an attorney licensed to practice law in the state where the mediation will take place. Each party in such mediation shall bear his or her own costs and attorneys' fees incurred in connection with the mediation, provided, however, that the Company will pay the costs of the mediation process, including payment of the fees of the mediator. Neither party may initiate any arbitration or legal action prior to the conclusion of the mediation. The location of the mediation shall be in the city where Employee works or last worked for the Company.

Class and Representative Action Waiver. Except as otherwise required under applicable law, Employee and Company expressly intend and agree that each will also forego pursuing any covered dispute on a class, collective, or representative basis and will not assert class, collective, or representative action claims against the other in arbitration or otherwise. Nor will class or collective action procedures apply pursuant to this Agreement. Employee and Company shall only submit their own, individual claims in arbitration, and shall be entitled to seek dismissal of any such class, collective, or representative claims and otherwise assert this Agreement as a defense in any proceeding. The Company and Employee further agree that any question regarding class or collective arbitrability shall be decided by a court of law and not an arbitrator.

This waiver does not apply to representative actions under the California Private Attorneys General Act or any class, collective, or representative claims that cannot be waived as a matter of law.

Claims Not Covered by the Agreement. Claims that Employee may have for workers' compensation or for unemployment compensation benefits, or that Company or Employee may have for injunctive relief are not covered by this Agreement. If either Company or Employee have more than one claim against the other, one or more of which is not covered by this Agreement, such claims shall be determined separately in the appropriate forum for resolution of those claims. Nothing in this Agreement shall preclude the parties from agreeing to resolve claims not covered by this Agreement pursuant to the provisions of this Agreement. This Agreement does not cover and is inapplicable to claims which have been filed as civil lawsuits in any court prior to the execution of this Agreement.

Required Notice of Claims. All statutory claims for or related to employment discrimination or harassment must be filed with the California Department of Fair Employment and Housing and/or the federal Equal Employment Opportunity Commission within the time limits set forth by applicable state and federal law,

prior to being submitted to arbitration, or such claims are waived. If Employee or Company does not make a written request for arbitration within the limitations period applicable to a claim under applicable federal or state law, the party has waived its right to raise that claim, in any forum, arising out of that issue or dispute. Written notice of a claim against Company, its subsidiaries, affiliated entities, officers, directors, employees or agents shall be sent to the then-current Company agent located at [insert contact information]. Written notice of a claim against Employee shall be sent to Employee.

Arbitration Procedure. Company and Employee agree that, except as provided in this Agreement, any arbitration shall be in accordance with the [FAA], 9 U.S.C. § 1, et seq., in conformity with the procedures of the [CAA], California Code of Civil Procedure § 1280, et seq. Employee shall initiate the arbitration process by the delivery of a demand for arbitration on the then-current Company representative located at [insert contact information], via certified mail return receipt and within the time limits which would apply to the filing of a civil complaint in court. Company shall initiate the arbitration process by the delivery of a demand for arbitration on Employee via certified mail return receipt and within the time limits which would apply to the filing of a civil complaint in court. A late request will be void.

Appendix C

Selection of Arbitrator. The Arbitrator shall be selected as follows: The parties shall first attempt to select a neutral arbitrator by mutual agreement. If the Parties cannot mutually agree, each Arbitration Agreement Party must nominate a single potential arbitrator (a "Nominee"), and the Nominees shall jointly select some other person to be the Arbitrator. The Arbitrator, and each Nominee (if applicable), shall be either (a) a retired judge who presided in the jurisdiction where the arbitration will be held, or (ii) an attorney licensed to practice law in the state where the arbitration is convened.

Governing Law. The Arbitrator shall apply the substantive law (and the law of remedies, if applicable) of California, or federal law, or both, as applicable to the claim(s) asserted. The Arbitrator shall have the authority to award all remedies and relief that would otherwise have been available if the claim had been brought by way of a civil complaint in court. The arbitration shall be final and binding upon the parties. The Arbitrator should utilize the Federal Rules of Evidence as a guide to the admissibility of evidence. The parties retain the right to conduct a reasonable amount of discovery guided by the Federal Rules of Civil Procedure, and the Arbitrator shall have the power to decide any discovery disputes between the parties. Either party, upon request at the close of hearing, shall be given leave to file a post-hearing brief. The

time for filing such a brief shall be set by the Arbitrator.

Location of Arbitration. The parties agree that any arbitration shall take place in the State of California in the county in which Employee works or worked for Company, unless such venue is inconvenient to the majority of witnesses expected to be necessary to the case or unless the parties agree to some other locale.

Arbitration Award. Within ninety (90) days following the hearing and the submission of the matter to the Arbitrator, the Arbitrator shall issue a written opinion and award which shall be signed and dated. The Arbitrator's award shall include factual findings and the reasons upon which the award is based. Either party may bring an action in any court of competent jurisdiction to compel arbitration under this Agreement and to enforce an arbitration award.

Arbitration Fees and Costs. The cost of the Arbitrator and other incidental costs of arbitration shall be borne by Company. The parties shall each bear their own costs for legal representation in any arbitration proceeding, provided, however, that the Arbitrator shall have the authority to require either party to pay the fee for the other party's representation during the arbitration, as is otherwise permitted under federal or state law, as part of any remedy that may be ordered.

Appendix C

Requirements for Modification or Revocation. The Agreement to arbitrate shall survive the termination of Employee's employment. It can only be revoked or modified by a writing signed by the parties that specifically states an intent to revoke or modify this Arbitration Agreement.

Sole and Entire Agreement. This is the complete Agreement of the parties on the subject of arbitration of disputes, except for any arbitration agreement in connection with any retirement or benefit plan. This Arbitration Agreement supersedes any prior or contemporaneous oral or written understanding on the subject. No party is relying on any representations, oral or written, on the subject of the effect, enforceability or meaning of this Arbitration Agreement, except as specifically set forth in this. Arbitration Agreement.

Construction. If any provision of this Agreement is adjudged to be void or otherwise unenforceable, in whole or in part, such adjudication shall not affect the validity of the remainder of the Agreement.

Not an Employment Agreement. This Arbitration Agreement is not, and shall not be construed to create, any contract of employment, express or implied. Nor does this Agreement in any way alter the "at-will" status of Employee's employment.

Appendix C

Voluntary Agreement. Employee acknowledge that Employee have carefully read this Arbitration Agreement, that Employee understand its terms, that all understandings and agreements between Company and Employee relating to the subjects covered in the Agreement are contained in it, and that Employee have entered into the Agreement voluntarily and not in reliance on any promises or representations by Company other than those contained in this Agreement.

EMPLOYEE UNDERSTAND THAT BY SIGNING THIS AGREEMENT, COMPANY AND EMPLOYEE HAVE BOTH WAIVED THEIR RIGHT TO A JURY TRIAL AND THEIR RIGHT TO APPEAL WITH RESPECT TO ALL CLAIMS COVERED BY THIS AGREEMENT. Employee initials: _____

EMPLOYEE FURTHER ACKNOWLEDGES THAT EMPLOYEE HAS BEEN GIVEN THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH EMPLOYEE'S PRIVATE LEGAL COUNSEL AND HAS AVAILED HIMSELF OR HERSELF OF THAT OPPORTUNITY TO THE EXTENT EMPLOYEE WISHES TO DO SO.

(Broderick Decl., Ex. 2, pp. 1-3, emphasis in original.)

Plaintiff signed the agreement on May 10, 2021. (See id. at Ex. 2, p. 3; see also Lux Decl., 1; Opposition, p. 2.)

Assent is uncontested.

The Court finds that these terms and facts suffice to establish an agreement to arbitrate.

FAA

Defendant's agreement provides that "any arbitration" conducted pursuant to the agreement "shall be" governed by the FAA. (Broderick Decl., Ex. 2, p. 2.)

Despite this language, Plaintiff contends the Court should find the FAA inapplicable — and apply the CAA instead — based on an exception. He claims the FAA does not apply to railroad employees and transportation workers. He asserts that Defendant employed him as a railroad employee or transportation worker and that his work duties "played a necessary role in the free flow of goods in interstate commerce." (Opposition, pp. 3-7.)

Defendant claims the exception is unsatisfied because Defendant's railroad clients never employed Plaintiff, and he never worked as a railroad employee or transportation worker. (See Motion, pp. 8-11; see also Reply, pp. 2-3.)

Section 1 of the FAA "exempts . . . 'contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce[]'"—i.e., transportation workers—"from the statute's ambit[.]"

(*Southwest Airlines Co. v. Saxon* (2022) 596 U.S. 450, 454 ("*Southwest*").) "The party opposing arbitration bears the burden of demonstrating that the exemption applies." *(Performance Team Freight Systems, Inc. v. Aleman* (2015) 241 Cal.App.4th 1233, 1241.)

The Court finds that Plaintiff fails to meet his burden. To establish the exemption, Plaintiff must show that Defendant's agreement is "both a 'contract of employment' and one entered into with a 'worker' of the type described in" section 1. *(Amos v. Amazon Logistics, Inc.* (4th Cir. 2023) 74 F.4th 591, 596.) However, Defendant's agreement states that it "is not, and shall not be construed to create, any contract of employment, express or implied." (Broderick Decl., Ex. 2, p. 3, emphasis added.) It is the only contractual document in the record. Indeed, there is no employment contract attached to Plaintiff's two pieces of evidence, nor is one discussed. (See Vela Dec., ¶¶ 1-6; see also Lux Decl., ¶¶ 1-4.) On the current record, Plaintiff fails to show that Defendant's agreement should be interpreted as part of an employment contract as opposed to a standalone agreement.

The Court intends to continue the hearing to give Plaintiff a chance to supplement the record and to allow the parties to brief this issue.

The next question is whether Plaintiff qualified as a railroad employee. The answer appears to be no. Defendant employed Plaintiff; the railroad clients did not. (See Vela Decl., ¶ 2; see also Broderick Decl., ¶¶ 2-3, 5-6.) He cannot rely on the independent-contractor contract

between Defendant and Pacific Harbor Line to prove his alleged railroad-employee status. (See *Amos,* supra, 74 F.4th at 596.)

The last question is whether Plaintiff qualified as a transportation worker. This is a closer call. "'Transportation workers' are those workers 'engaged in the movement of goods in interstate commerce" (Knight, supra, at ¶ 5:58 [citing *Southwest,* supra, 596 U.S. 450]), but a qualification exists. "[T]he more related to the transportation industry an enterprise is, the less necessary it becomes for the employee to be directly transporting goods." (*Garrido v. Air Liquide Industrial U.S. LP* (2015) 241 Cal.App.4th 833, 840.) Defendant's business is substantially related to the railroad industry. (See, e.g., Broderick Decl., ¶¶ 4-5.) Defendant hired Plaintiff to do inspections and mechanic work on Defendant's behalf for the railroad clients. (See id. at ¶ 6.) On balance, though, because this is a fairly novel issue, the Court is inclined to hold an evidentiary hearing with live testimony. This will help to create a clear picture of what, exactly, Plaintiff did at work for Defendant.

In summary, the Court:

* continues the matter for supplemental evidence and briefing as to the employment-contract issue;

* finds Plaintiff's burden unmet as to the railroad-employee issue; and

* continues the matter to hold an evidentiary hearing as to the transportation-worker issue.

Class Waiver

Plaintiff claims the agreement's class waiver is unenforceable under *Gentry v. Superior Court* (2007) 42 Ca1.4th 459. (See Opposition, pp. 7-11.)

This issue is premature. It will not be ripe unless and until the FAA-exemption issue is resolved, and only if it is resolved in Plaintiff's favor.

Stay of Arbitrable Claims

Plaintiff asks the Court to litigate the nonarbitrable claims first and to stay arbitration of the arbitrable claims. (See id. at pp. 11-13.)

This issue is also premature.

/s/ David S. Cunningham III
David S. Cunningham III

APPENDIX D — EXCERPTS OF PETITION IN THE SUPREME COURT OF CALIFORNIA, FILED JUNE 10, 2026

IN THE SUPREME COURT OF CALIFORNIA

Case No. S297029

ARTURO VELA,

Petitioner,

v.

HARBOR RAIL SERVICES OF CALIFORNIA, INC.,

Respondent,

Filed June 10, 2026

PETITION FOR REVIEW

From an Opinion of the Court of Appeal of
the State of California, Second Appellate District,
Division One, B344723
From the Superior Court of the State of California,
County of Los Angeles, Case No. 23STCV24281,
Hon. David S. Cunningham III

* * *

Appendix D

I. ISSUES PRESENTED FOR REVIEW

1. Is the absence of a contract between a worker and a railroad company dispositive of the issue of whether the worker is a "railroad employee" under 9 U.S.C. § 1 where the worker undisputedly performed repair and inspection services to one railroad as part of his job duties?

2. Are the "railroad employee" and "contract of employment" requirements under 9 U.S.C. § 1 distinct threshold questions, and may a court rely on the absence of a direct employment contract with a railroad company to negate "railroad employee" status, while explicitly declining to decide the "contract of employment" issue?

3. May a court disregard evidence of a service agreement outlining the work performed by the worker's class on the grounds that the service agreement itself is not the worker's contract of employment when determining whether a worker is a "railroad employee" or belongs to a "class of workers engaged in foreign or interstate commerce" under 9 U.S.C. § 1?

4. Do railcar inspectors and repairmen who inspect and repair freight railcars used in interstate commerce constitute a class of workers engaged in interstate commerce within the meaning of 9 U.S.C. § 1?

II. REASONS FOR GRANTING REVIEW

This Petition for Review, brought by Petitioner Arturo Vela ("Petitioner"), provides the California Supreme Court

an opportunity to review the Court of Appeal's adoption of a rule regarding the Section 1 exemption of the Federal Arbitration Act (FAA) that conflicts with the United States Supreme Court's interpretation of the exemption. The Court of Appeal explicitly declined to rule on the question of whether the arbitration agreement at issue is part of Petitioner's "contract of employment," yet found Petitioner failed to meet his burden that he is a "railroad employee" due to his purported lack of a contract with the railroad company for whom he provided inspection and repair services. In doing so, the appellate court wrote in a contractual requirement into the distinct "railroad employee" inquiry while expressly declining to rule on the "contract of employment" question.

This is error and directly contravenes United States Supreme Court precedent. In *Southwest Airlines Co. v. Saxon* (2022) 596 U.S. 450, 460, the United States Supreme Court refused to adopt an industrywide approach to the residual clause of Section 1, rejecting the employee's argument that "seamen" and "railroad employees" are industrywide categories. The United States Supreme Court, in interpreting how to analyze the residual clause, frequently looks to cases interpreting the "seamen" or "railroad employees" portion of the statute and congressional intent. *See, e.g., Id.* at 458 (citing *Circuit City Stores v. Adams* (2001) 532 U.S. 105, 115) ("the phrase 'class of workers engaged in . . . commerce' should be 'controlled and defined by reference' to the specific classes of 'seamen' and 'railroad employees' that precede it"); *see also Bissonnette v. LePage Bakeries Park St., LLC* (2024) 601 U.S. 246, 255. In other words, the analysis for whether

one is a transportation worker or a "railroad employee" under Section 1 raises the same questions. Indeed, the United States Supreme Court has emphasized the analysis for whether an individual is a "railroad employee" under Section 1, or otherwise is encompassed under the residual clause, is based on "the actual work that the members of the class, as a whole, typically carry out." *Saxon,* 596 U.S. at 456; *see Bissonnette,* 601 U.S. at 255 *("Saxon* rejected the proposition that there is an industrywide link between "seamen" and "railroad employees"[] . . . [t]hose classes of workers, as we read the statute then and now, are connected by what they do, not for whom they do it.").

Under this framework, the Court of Appeal's analysis is improper under binding United States Supreme Court precedent. Rather than examining the job duties performed by Petitioner and the class of workers to which he belongs, the Court of Appeal focused on the absence of a contract between Petitioner and the railroad company as dispositive of whether he qualified as a "railroad employee." This conclusion erroneously shifts the focus away from the actual work performed toward who employed Petitioner, which the United States Supreme Court rejected in *Saxon* and *Bissonnette,* holding explicitly in *Bissonnette,* transportation workers and railroad employees are defined "by what they do, not for whom they do it." 601 U.S. at 255.

The Court of Appeal's opinion also presents an important legal question regarding the proper framework for analyzing Section 1 of the FAA. The Court of Appeal's opinion creates confusion and uncertainty regarding the

relationship between the "contract of employment" and "railroad employee" requirements under Section 1. The Court of Appeal explicitly declined to rule whether the arbitration agreement was part of Petitioner's "contract of employment," yet relied on the lack of a direct contractual relationship between Petitioner and the railroad to hold he was not a "railroad employee." The Court of Appeal correctly recognized the "contract of employment" issue and "railroad employee" issue are distinct questions by choosing not to reach the merits of the former, yet effectively merged them by using the lack of contract as a dispositive factor in the "railroad employee" analysis. This creates substantial uncertainty as to whether courts may defeat "railroad employee" status due to a lack of contract with a railroad company while expressly declining to decide the separate "contract of employment" issue.

This uncertainty created by the Court of Appeal's opinion is significant in light of the United States Supreme Court's decision in *New Prime Inc. v. Oliveira* (2019) 586 U.S. 105. In *New Prime,* the Court outlined Section 1 of the FAA presents a threshold question that courts must resolve before compelling arbitration under the FAA—"a court must first know whether the contract itself falls within or beyond the boundaries of §§ 1 and 2." *Id.* at 111. One of the relevant threshold inquiries is whether the arbitration agreement at issue falls under the purview of the FAA exemption by constituting a "contract of employment." *Id.* at 113. Here, the appellate court declined to decide this inquiry but simultaneously relied on the lack of a contract between Petitioner and the railroad to reject

"railroad employee" status, departing from the statutory framework analysis outlined in *New Prime.*

Additionally. the Court of Appeal disregarded a service agreement between Petitioner's employer, Harbor Rail Services of California, Inc. ("Respondent") and the railroad company for whom Petitioner, and the class of workers in which he belongs, provided services, despite Petitioner using the service agreement as evidence of his *job duties* to establish whether he is a "railroad employee" or transportation worker. Foremost, the service agreement was not offered as evidence of Petitioner's "contract of employment," but rather offered as evidence of the inspection and repair services Petitioner and the class of workers performed on railcars used in interstate commerce. More specifically, the service agreement was offered to outline the class of workers' job duties and whether they constitute being "engaged in foreign or interstate commerce."

Under *Saxon,* the relevant inquiry focuses on "the actual work that the members of the class, as a whole, typically carry out." 596 U.S. at 456. A transportation worker "must at least play a direct and necessary role in the free flow of goods across borders." *Id.* at 458 (internal quotations and citation omitted). The service agreement was directly relevant to the inquiry in *Saxon* as it described the work performed by the class of workers to which Petitioner belongs. By disregarding the service agreement because it was not Petitioner's employment contract, the Court of Appeal conflated the transportation worker and "contract of employment" inquiries and

excluded probative evidence relevant to the inquiry on whether the class of workers is engaged in foreign or interstate commerce.

Review is also warranted to determine whether railcar inspectors and repairmen who inspect and repair freight railcars used in interstate transportation constitute a class of workers engaged in interstate commerce under 9 U.S.C. § 1. Railcars must be inspected and repaired in accordance with the federal safety regulations in order for the goods thereon to continue their journey to their destinations. As a result, railcar repairmen who perform these inspections and repairs are integral to, and directly affect, the movement of goods in interstate commerce. Whether this class of workers plays a "direct and necessary role in the free flow of goods across borders" under *Saxon* is an important question in the determination of the Section 1 exemption. 596 U.S. at 458.

Review under Rule of Court 8.500(b)(1) is urgently needed to resolve these multiple conflicts with United States Supreme Court precedent and to settle important questions regarding the proper interpretation and application of 9 U.S.C. § 1. The Court of Appeal's opinion departs from the framework mandated by *New Prime, Saxon,* and *Bissonnette,* and this Court's intervention is necessary to ensure proper and uniform application of federal law throughout California.

Appendix D

III. STATEMENT OF THE CASE

Petitioner Arturo Vela ("Petitioner") worked for Respondent Harbor Rail Services of California, Inc. ("Respondent") as a Repairman at Pacific Harbor Line ("PHL") from approximately May 19, 2021 to October 11, 2021, when he was terminated by Respondent. I Clerk's Transcript ("CT") 67-68 at ¶¶ 2, 6. Respondent handles "freight car inspections and repairs for a number of railroads." *Id.* at ¶ 4. However, Petitioner performed inspection and repairs only at PHL during his employment with Respondent. *Id.* at ¶ 6; *see also* 1 CT 70.

When Petitioner was "employed by Harbor Rail, Harbor Rail was under contract as an independent contractor for Pacific Harbor Line ("PHL") to perform freight inspections and repairs at PHL's train yard[.]" 1 CT 67-68 ¶ 5. Petitioner's "job duties included working at a railyard where [he] would act as a mechanic for the train cars and repaired them following AAR and FRA regulations." 1 CT 119-122 at ¶ 2. Respondent "had a bungalow-type office that [it] would rent right alongside train tracks and [Appellant] would work on those train tracks." *Id.* Petitioner "change[d] trains' wheels and brake pads, disassemble[d] and reassemble[d] train cars, and would weld and

* * *

The Court of Appeal's decision became final on May 31, 2026 and ten (10) days after is June 10, 2026.

IV. ARGUMENT

A. THE COURT OF APPEAL'S RULING DIRECTLY CONFLICTS WITH FEDERAL PRECEDENT ESTABLISHING THE "CONTRACT OF EMPLOYMENT" INQUIRY AND "RAILROAD EMPLOYEE" OR RESIDUAL CLAUSE INQUIRY ARE DISTINCT THRESHOLD QUESTIONS.

The Court of Appeal's decision directly conflicts with U.S. Supreme Court precedent analyzing the Federal Arbitration Act ("FAA")'s exemption clause, codified in 9 U.S.C. § 1.

Under the FAA, "[a] written provision in any . . . contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract . . . 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. However, the FAA provides an exemption for "seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1.

The Court of Appeal declined to address the issue of whether "the parties' arbitration agreement was part of a 'contract of employment[]' . . . because [Petitioner's] failure to establish he is either a 'railroad employee' or transportation worker is dispositive." *Vela v. Harbor Rail Services of California, Inc.* (2026) 120 Cal.App.5th 353, 363 n. 4. However, the Court of Appeal, in analyzing

whether Petitioner was a "railroad employee," based its decision on Petitioner "not hav[ing] a contract with PHL and the contract between PHL and [Respondent] cannot constitute a 'contract of employment' within the meaning of the Section 1 exemption." *Id.* at 363-64. In other words, the Court of Appeal determined Petitioner was not a "railroad employee" due to the lack of a "contract of employment" between him and PHL—the sole railroad for which it is undisputed Petitioner provided repair services to under his employment with Respondent. In doing so, the appellate court wrote in a contractual-employment requirement into the distinct "railroad employee" inquiry while expressly declining to rule on the "contract of employment" question. This is error and directly contravenes United States Supreme Court precedent.

1. The Issue of Whether Someone is a Railroad Employee or Transportation Worker Under Section 1 of the FAA is Based on the Class of Workers' Job Duties, Not the Industry His or Her Employer is In.

In *Southwest Airlines Co. v. Saxon* (2022) 596 U.S. 450, 460, the United States Supreme Court refused to adopt an industrywide approach to the residual clause of Section 1, rejecting the employee's argument that "seamen" and "railroad employees" are industrywide categories. The United States Supreme Court, in interpreting how to analyze the residual clause, frequently looks to cases interpreting the "seamen" or "railroad employees" portion

of the statute and congressional intent. *See, e.g., Id.* at 458 (citing *Circuit City Stores v. Adams* (2001) 532 U.S. 105, 115) ("the phrase 'class of workers engaged in . . . commerce' should be 'controlled and defined by reference' to the specific classes of 'seamen' and 'railroad employees' that precede it"); *see also Bissonnette v. LePage Bakeries Park St., LLC* (2024) 601 U.S. 246, 255. In other words, the analysis for whether one is a transportation worker or a "railroad employee" under Section 1 raises the same questions.

Indeed, the United States Supreme Court has emphasized the analysis for whether an individual is a "railroad employee" under Section 1, or otherwise is encompassed under the residual clause, is based on "the actual work that the members of the class, as a whole, typically carry out." *Saxon,* 596 U.S. at 456; *see Bissonnette,* 601 U.S. at 255 *("Saxon* rejected the proposition that there is an industrywide link between "seamen" and "railroad employees"[] . . . [t]hose classes of workers, as we read the statute then and now, are connected by what they do, not for whom they do it.").

Under this framework, the Court of Appeal's analysis is improper under binding United States Supreme Court precedent. Rather than examining the job duties performed by Petitioner and the class of workers to which he belongs, the Court of Appeal focused on the absence of a contract between Petitioner and the railroad company as dispositive of whether he qualified as a "railroad employee." This conclusion erroneously shifts the focus away from the actual work performed toward who

employed Petitioner, which the United States Supreme Court rejected in *Saxon* and *Bissonnette,* holding explicitly in *Bissonnette,* transportation workers and railroad employees are defined "by what they do, not for whom they do it." 601 U.S. at 255.

2. The Contract of Employment Issue is Distinct from the Railroad Employee or Transportation Worker Inquiry and Asks Whether the Arbitration Agreement at Issue is Part of the Employee's Contract of Employment.

The Court of Appeal explicitly declined to rule whether the arbitration agreement was part of Petitioner's "contract of employment," yet relied on the lack of a direct contractual relationship between Petitioner and the railroad to hold he was not a "railroad employee." 120 Cal.App.5th at 363-64. The Court of Appeal correctly recognized the "contract of employment" issue and "railroad employee" issue are distinct questions by choosing not to reach the merits of the former yet effectively merged them by using the lack of contract as a dispositive factor in the "railroad employee" analysis. Further departing from the text of 9 U.S.C. § 1, the Court of Appeal did not *only* require a contract of employment, the Court of Appeal required a contract of employment with a railroad.

Foremost, nothing in the plain language of the statute imposes such a requirement. Congress exempts "contracts of employment ***of*** seamen, railroad employees, or any

other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1 (emphasis added). The use of the word "of" in lieu of "with" signifies congressional intent that the statute does not apply only to direct contractual relationships with a railroad company (or transportation company).

In *New Prime Inc. v. Oliveira,* the United States Supreme Court recognized the inquiry of what constitutes a "contract of employment" under the FAA exemption is a distinct issue from the inquiry of whether a worker is engaged in foreign or interstate commerce, a railroad employee, or a seamen. (2019) 586 U.S. 105, 112-13. Indeed, this is made clear in looking at the plain language of the statute, as noted above. The Court in *New Prime* outlined Section 1 of the FAA presents a threshold question that courts must resolve before compelling arbitration under the FAA— "a court must first know whether the contract itself falls within or beyond the boundaries of §§ 1 and 2." *Id.* at 111. One of the relevant threshold inquiries is whether the arbitration agreement at issue falls under the purview of the FAA exemption by constituting a "contract of employment." *Id.* at 113.

The Court emphasized the phrase "contract of employment" in 1925 did not literally mean a contract between an employer and employee and "usually meant nothing more than an agreement to perform work." *Id.* at 114. Even dictionaries a century ago treated the word "employment" as a synonym for "work." *Id.* n. 1 (citing Black's Law Dictionary 422 (2d ed. 1910) ['an engagement or rendering services' for oneself to another]"). This

interpretation is supposed by the statutory language using the term "workers" in lieu of "employees," indicating a broader scope. *Id.* at 116.

Here, the appellate court declined to decide the "contract of employment" inquiry but simultaneously relied on the lack of a contract between Petitioner and the railroad to reject "railroad employee" status. In doing so, the Court of Appeal departed from the statutory framework analysis outlined in *New Prime* by declining to decide the separate "contract of employment" question. Nothing in Section 1, *New Prime, Saxon,* or *Bissonette* allows courts to include "contract of employment" considerations into the "railroad employee" analysis while expressly declining to adjudicate the "contract of employment" issue itself.

Further, the "contract of employment" inquiry asks whether the arbitration agreement at issue is, or is part of, a contract of employment. *See, e.g., Gilmer v. Interstate/ Johnson Lane Corp.* (1991) 500 U.S. 20, 25 n. 2 ("it would be inappropriate to address the scope of the § 1 exclusion because the arbitration clause being enforced here is not contained in a contract of employment."). Stated differently, under *Gilmer,* the crux of the "contract of employment" inquiry is whether the arbitration clause being enforced is contained in a contract of employment.

B. THE COURT OF APPEAL IMPROPERLY DISREGARDED EVIDENCE OF THE WORK PERFORMED BY THE CLASS OF WORKERS TO WHICH PETITIONER BELONGS AND MISAPPLIED THE SECTION 1 TRANSPORTATION WORKER ANALYSIS.

The United States Supreme Court has emphasized that the Section 1 residual clause inquiry "begin[s] by defining the relevant 'class of workers' to which [the worker] belongs. Then, we determine whether that class of workers is 'engaged in foreign or interstate commerce.' *Southwest Airlines Co. v. Saxon,* 596 U.S. at 455.

"[A]s used in the FAA, the word 'workers' directs the interpreter's attention to 'the *performance* of work' and the word 'engaged'— meaning occupied, employed, or involved— similarly emphasizes the actual work that the members of the class, as a whole, typically carry out." *Lopez v. Aircraft Serv. Intl* (9th Cir. 2024) 107 F. 4th 1096, 1099 (internal quotations and citation omitted). Thus, a determination as to the "class of workers" inquiry is dependent on the job duties of the plaintiff worker and other workers similarly situated.

Appendix D

1. The Service Agreement Was Probative Evidence of Whether the Class of Workers Was Engaged in Foreign or Interstate Commerce.

The Court of Appeal correctly recognized the "class of workers" here typically carried out inspection and repair work for rail freight cars. 120 Cal.App.5th at 366. However, the Court of Appeal failed to apply the second step of the analysis in a manner consistent with *Saxon*— once the "class of workers" is determined, it must be determined whether said class of workers is engaged in interstate commerce to fall under the FAA's exemption.

When interpreting the FAA, the Court should look to the meaning of its terms at the time of the Act's adoption in 1925. *New Prime, Inc. v. Oliveria,* 586 U.S. at 110. "Section 2 of the FAA, . . . makes the law applicable to contracts evidencing a transaction involving interstate commerce, which language reflects that Congress intended the law's coverage to extend to the full reach of its commerce clause power." *Nieto v. Fresno Beverage Co., Inc.* (2019) 33 Cal. App.Sth 274, 279 (citing *Allied-Bruce Terminix Cos. v. Dobson* (1995) 513 U.S. 265, 277). At the time of the FAA's enactment, "[c]ommerce with foreign countries and among the states" was defined as "intercourse and traffic, including . . . navigation and the transportation and transit of persons and property." *McCall v. California* (1890) 136 U.S. 104, 108. The Commerce Clause itself covers three categories— the channels of interstate commerce, the instrumentalities of interstate commerce, and activities having a substantial relation to interstate commerce.

United States v. Lopez (1995) 514 U.S. 549, 558-59. *Accord Nieto v. Fresno Beverage Co., Inc.* 33 Cal.App.Sth at 282-83 (quoting *Siller v. L&F Distributors, Ltd.* (5th Cir. 1997) 109 F. 3d 765) ("'Interstate commerce' includes not only goods that travel across state lines but also 'the intrastate transport of goods in the flow of interstate commerce.'").

Channels of interstate commerce are "the interstate transportation routes through which persons and goods move." *United States v. Morrison* (2000) 529 U.S. 598, 613 n. 5. "Instrumentalities of interstate commerce include 'persons or things in interstate commerce, even though the threat may come only from intrastate activities.'" *Fejes v. FAA* (9th Cir. 2024) 98 F. 4th 1156, 1160 (quoting *United States v. Lopez* (1995) 514 U.S. 549, 558). Channels include railroads. *Fejes v. FAA,* 98 F. 4th at 1160. Instrumentalities include trains. *Id.*

The FAA exemption including "any other class of workers engaged in foreign or interstate commerce" has been interpreted to include transportation workers. *Circuit City Stores, Inc. v. Adams,* 532 U.S. at 119, 121; *see also Performance Team Freight Systems, Inc. v. Aleman* (2015) 241 Cal.App.4th 1233, 1240 ("'any other class of workers engaged in foreign or interstate commerce' has been defined to mean 'transportation workers'"). An employer need not be in the transportation industry for an employee to be considered a "transportation worker." *Bissonnette,* 601 U.S. at 252. While the clearest example of a plaintiff falling under the FAA exemption "is where the plaintiff directly transports goods in interstate," it is not a requirement to transport goods across state lines.

Garrido v. Air Liquide Indus. US. LP (2015) 241 Cal. App.4th 833, 840; *see also Rittman v. Amazon.com, Inc.* (9th Cir. 2020) 971 F. 3d 904, 915 (transportation workers need not cross state lines to be considered "engaged in the movement of goods in interstate commerce."); *accord Saxon,* 596 U.S. at 462-63.

Petitioner relied on the service agreement between Respondent and PHL as evidence of the work performed by the class of workers to which he belongs[4]. Petitioner did *not* rely on the service agreement as evidence of his "contract of employment" with Respondent. Regardless, the Court of Appeal held,

> [a]lthough the contract between [Respondent] and PHL contemplated the possibility that some cars left for inspection might have goods in them, there is no evidence that this actually occurred or that [Petitioner] and his fellow class of workers ever, much less typically, inspected or repaired freight cars which were still carrying goods.

Id. at 367.

The Court of Appeal's conclusion discounted the evidence Petitioner offered to establish the nature of the

4. Of note, Petitioner also relied on other evidence to establish the freight railcars he worked on were carrying goods, including his Declaration, the Declaration of Thomas Broderick, the discovery responses admitted into evidence, and Respondent's website.

work performed by the relevant class of workers to which he belongs. The service agreement explicitly contemplated Respondent's employees would perform inbound interchange inspections of all railcars arriving at PHL, inspect and service refrigerated railcars, identify and repair defects in railcars, communicate with interchange carriers regarding malfunctioning equipment, and repair loaded railcars in accordance with FRA and AAR regulations. This evidence is probative in determining "the actual work that the members of the class, as a whole, typically carry out." *Saxon,* 596 U.S. at 456. Again, the service agreement identified the job duties Respondent's employees were performing for the railroad, and the role the job duties played in interstate commerce.

Further, the Court of Appeal's analysis effectively required Petitioner to prove the contents of each individual railcar inspected. Neither *Saxon, Bissonnette,* or other United States Supreme Court decisions impose such a requirement on Section 1. By discrediting the service agreement because it did not establish goods were present in each railcar inspected and repaired, the Court of Appeal departed from *Saxon's* instruction to focus on the work "typically" performed by the class of workers.

2. Railcar Repairmen Who Inspect and Repair Freight Railcars Used in Interstate Transportation Constitute a Class of Workers Engaged in Foreign or Interstate Commerce.

The United States Supreme Court in *Saxon* contemplated that an employee who "play[s] a directly and necessary role in the free flow of goods across borders[,]" despite not actually moving goods, can be a "transportation worker" for purposes of the exemption. 596 U.S. at 458. Railcar repairmen satisfy this standard.

Channels of interstate commerce are "the interstate transportation routes through which persons and goods move." *United States v. Morrison* (2000) 529 U.S. 598, 613 n. 5. "Instrumentalities of interstate commerce include 'persons or things in interstate commerce, even though the threat may come only from intrastate activities.'" *Fejes v. FAA* (9th Cir. 2024) 98 F. 4th 1156, 1160 (quoting *United States v. Lopez* (1995) 514 U.S. 549, 558). Channels include railroads. *Fejes v. FAA,* 98 F. 4th at 1160. Instrumentalities include trains. *Id.* In other words, freight railcars are instrumentalities of interstate commerce.

The transportation of goods via railroad depends on the railcars remaining safe and operable. To briefly reiterate, the class of workers at issue here were responsible for performing inbound interchange inspections of all railcars arriving at PHL, inspecting and servicing refrigerated railcars, identifying and repairing defects in railcars, communicating with interchange carriers regarding

malfunctioning equipment, and repairing loaded railcars in accordance with FRA and AAR regulations. These duties are crucial to interstate transportation as they are a necessary phase of the continuous movement of goods in interstate commerce. Without inspection and repair, the railcars may be removed from service entirely and unable to continue transporting goods to their destinations.

The mere fact that a railcar may be temporarily taken out of service, as the Court of Appeal recognized, for the purpose of repair and inspection does not terminate the interstate journey. As the service agreement contemplates, routine work typically is completed within a single workday. The temporary pause for a shipment for the purpose of inspection or repair does not alter the interstate character any more than a brief stop for loading or unloading, or refueling.

The Court of Appeal disregarded Petitioner's reliance on *Nieto v. Fresno Beverage Co., Inc.,* 33 Cal.App.5th 274 and *Betancourt v. Transp. Brokerage Specialists, Inc.* (2021) 62 Cal.App.5th 552 outlining these principles, finding the cases to be distinguishable because those workers "played some role in the actual transportation of goods." 120 Cal.App.5th at 367. However, *Saxon* does not require the worker to personally transport goods. *Saxon* only requires that the worker play a "direct and necessary role in the free flow of goods across borders." 596 U.S. at 458. Whether railcar repairmen who perform functions essential to the continued movement of goods in interstate commerce satisfy that standard presents an important question warranting this Court's review.

V. CONCLUSION

For the foregoing reasons, Petitioner requests that this Court grant plenary review of the Court of Appeal's decision.

Dated: June 10, 2026

Respectfully submitted,

JUSTICE LAW CORPORATION

By: */s/ Talia Lux*
Douglas Han
Christopher Petersen
Talia Lux
Attorneys for Petitioner
Arturo Vela

APPENDIX E — ORDER OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES, FILED FEBRUARY 4, 2025

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES
Civil Division

23STCV24281

ARTURO VELA

vs.

HARBOR RAIL SERVICES OF CALIFORNIA, INC.

Filed February 4, 2025

ORDER

Judge: Honorable David S. Cunningham III
Judicial Assistant: T. Lewis
Courtroom Assistant: A. Soni
CSR: None
ERM: None
Deputy Sheriff: None

NATURE OF PROCEEDINGS: Further Status Conference Re: Ruling on Supplemental Briefing

The matter is called for hearing.

The Court has read and considered the supplemental briefing.

Appendix E

The Court hears oral argument.

After reading and considering all moving documents, hearing arguments, and conferring with counsel for plaintiff and defendant, the Court rules as follows:

The Motion to Compel Arbitration, Stay Action, and Dismiss/Strike Class Action Claims filed by Harbor Rail Services of California, Inc. on 03/06/2024 is Granted.

A Post-Arbitration Status Conference is scheduled for 02/04/26 at 09:00 AM in Department 11 at Spring Street Courthouse.

The parties are to file a five (5) page Joint Post-Arbitration Status Conference Statement five (5) court days prior to the above scheduled status conference.

Notice is deemed waived.