Nos. 23-1130 & 23-1132

IN THE

Supreme Court of the United States

UBER TECHNOLOGIES, INC., ET AL.,
Petitioners,

v.

PEOPLE OF THE STATE OF CALIFORNIA, ET AL.,
Respondents.

LYFT, INC.,
Petitioner,

v.

PEOPLE OF THE STATE OF CALIFORNIA, ET AL.,
Respondents.

On Petitions for Writs of Certiorari to the California Court of Appeal

BRIEF OF *AMICUS CURIAE* PROFESSOR GEORGE A. BERMANN IN SUPPORT OF PETITIONERS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

Other Authorities

INTEREST OF AMICUS CURIAE[1]

Amicus curiae George A. Bermann is the Jean Monnet Professor of European Union Law, Walter Gellhorn Professor of Law, and director of the Center for International Commercial and Investment Arbitration at Columbia Law School. He has been a faculty member at Columbia Law School since 1975, and teaches and writes extensively on international arbitration, transnational litigation, European Union law, administrative law, and comparative law. He is an affiliated faculty member of both the MIDS Master's Program in International Dispute Settlement in Geneva and the International Dispute Resolution LLM Program at the School of Law of Sciences Po in Paris.

For more than four decades, Professor Bermann has been an active arbitrator in commercial and investment disputes. He is the Chief Reporter of the American Law Institute's *Restatement of the U.S. Law of International Commercial and Investor-State Arbitration* (Am. Law. Inst. 2024), a project that began in 2007. He is also the co-author of the *UNCITRAL Guide to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards*; chair of the Global Advisory Board of the New York International Arbitration Center; co-editor-in-chief of the *American Review of International Arbitration*; and founding member of the International Chamber of

[1] Pursuant to Rule 37.2, all parties were notified of amicus curiae's intent to submit this brief at least 10 days before it was due. Pursuant to Rule 37.6, counsel for amicus authored this brief. No counsel for a party in this case authored this brief in whole or in part. Only amicus and his counsel contributed monetarily to the preparation and submission of this brief.

Commerce International Court of Arbitration's Governing Body.

Professor Bermann is interested in this case because it raises important questions concerning the relationship between federal and state law in the field of commercial arbitration. While there is a role for state law in this field, the decisions of this Court have established that States may not enact or implement legislation that compromises the substantial federal interest in the enforcement of agreements to arbitrate. There is considerable case law, including from this Court, on the preemptive effect of the Federal Arbitration Act ("FAA") on state law. That case law has been unfailingly sensitive to the importance of the FAA and its priority over state policies that make arbitration agreements and arbitral awards harder to enforce. The decision below directly undermines the FAA and the federal policy in favor of enforcing arbitration agreements and requires this Court's review.

SUMMARY OF ARGUMENT

This Court has repeatedly rejected attempts by state legislatures and state courts to undermine the effectiveness of agreements to arbitrate. The decision of the California Court of Appeal here allows the California Attorney General and other public officials to sidestep and effectively nullify arbitration agreements between ride-sharing companies and their drivers. The decision does so by allowing public officials to pursue representative claims or relief on behalf of the drivers, and against Lyft and Uber, in state court proceedings—even though the drivers agreed to resolve their disputes with Lyft and Uber exclusively through arbitration. This decision violates the FAA and the federal policy protecting arbitration agreements and calls for this Court's review.

I. Congress enacted the FAA in 1925 to protect agreements to arbitrate. Frequently since then, however, States have sought to undermine arbitration agreements by creating new private causes of action and making their courts the sole arbiters of those claims—thereby denying effect to freely entered agreements to arbitrate those claims between private parties. In all such cases, this Court has affirmed the right to arbitrate and has rejected state laws that seek to constrain that right. According to this Court, the FAA embodies a substantive federal policy favoring arbitration that States must respect. For States to declare state-law claims nonarbitrable is to create "'an obstacle to the accomplishment and execution of the full purposes and objectives' of the FAA"—a result that flouts the Constitution's Supremacy Clause. *Lamps Plus, Inc. v. Varela*, 587 U.S. 176, 183 (2019) (quoting *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 352 (2011)).

This Court has reiterated its disapproval of these state-law measures, first stated in *Southland Corp. v. Keating*, 465 U.S. 1, 15–16 (1984), in numerous cases. *See, e.g.*, *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 75 n.4 (2010); *Perry v. Thomas*, 482 U.S. 483, 491 (1987). This trend has not abated with time. In 2022, this Court reversed a decision of the California Court of Appeal that invalidated certain employee arbitration agreements. *See Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639 (2022). Just a few years earlier, this Court warned that courts "must be alert to new devices and formulas" that undercut the federal policy in favor of arbitration. *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 509 (2018).

II. The Court should reinforce that admonition in this case. Here, the attack on agreements to arbitrate

takes a form that this Court has not previously considered. The California law at issue authorizes a state official to bring claims that belong to individuals, as those individuals' "representative," seeking the payment of restitution to those individuals. In the suit below, state officials brought these claims against Lyft and Uber, alleging that the defendants misclassified ride-share and delivery drivers as contractors rather than employees. Each driver had previously agreed to submit these and other claims arising from their relationship with Lyft or Uber to arbitration. There is no dispute that if the drivers had brought on their own behalf the precise claims that the state officials brought, the drivers would have to arbitrate those claims. Even so, the California Court of Appeal ruled that there is "no basis" for compelling arbitration of these claims because the public officials "are not parties to the arbitration agreements." Pet. App. 20a–21a.[2]

III. The California Court of Appeal's ruling is at odds with this Court's precedent and the preemptive nature of the FAA. Federal Courts of Appeals in cases like this one have rejected the reasoning that the California Court of Appeal applied. In *United States v. Bankers Insurance Co.*, the Fourth Circuit rebuffed an attempt by the U.S. Attorney General to avoid arbitration by bringing suit on behalf of federal agencies bound by an arbitration agreement. 245 F.3d 315 (4th Cir. 2001). And in *Olde Discount Corp. v. Tupman*, the Third Circuit ruled that the Delaware Deputy Attorney General could not sue to rescind a contract on behalf of a party bound by an arbitration clause, because

[2] Citations to "Pet. App." refer to the Petition Appendix in No. 23-1132.

allowing a state official to use a "substitute" proceeding to pursue claims that the parties had agreed to arbitrate would "render [the parties'] right to arbitration meaningless," and "must fall before the conflicting right to an arbitral forum granted by the FAA." 1 F.3d 202, 209 (3d Cir. 1993).

There is likewise no doubt that the California Court of Appeal's decision refusing to compel arbitration runs afoul of the FAA. If, as this Court has held, States may not proscribe arbitration when an individual's claim is governed by a valid arbitration agreement, *Southland*, 465 U.S. at 15–16, state officials likewise cannot pursue representative claims and relief in court on the individual's behalf. To allow public officials to sidestep the arbitration agreements here would undermine Congress's purpose in enacting the FAA: to enforce agreements to arbitrate claims between private parties.

IV. The decision below is not an isolated error. Other state appellate courts have issued similar decisions, often mistakenly relying on this Court's decision in *EEOC v. Waffle House, Inc.*, 534 U.S. 279 (2002)—a case involving interpretation of the Americans with Disabilities Act, where federal preemption was not applicable. The California Court of Appeal's decision conflicts with this Court's precedent and has deepened the split between state appellate courts, on the one hand, and the decisions of the Third and Fourth Circuits, on the other. This Court should grant certiorari to resolve that split and bring state law into harmony with the policies and prescriptions of the FAA.

ARGUMENT

I. This Court has Consistently Barred States from Undermining the Federal Arbitration Act.

When Congress enacted the Federal Arbitration Act in 1925, a fundamental purpose was ensuring that agreements to arbitrate commercial disputes arising out of interstate or international transactions would be fully respected by state courts and legislatures. *See Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 505 (2018). Before the FAA, agreements to arbitrate disputes were largely denied enforcement on the ground that they tended to "oust" courts of their jurisdiction. *See generally* Christopher R. Drahozal, *Federal Arbitration Act Preemption*, 79 Ind. L.J. 393 (2004). Congress's primary purpose in enacting the FAA was to override that case law,[3] and that has been the touchstone of this Court's interpretation of the FAA ever since.

This Court has repeatedly rejected attempts by state legislatures and state courts to undermine the effectiveness of agreements to arbitrate. For decades, this Court has stressed that FAA § 2—which, generally, makes arbitration agreements "valid, irrevocable, and enforceable," 9 U.S.C. § 2—represents "a liberal federal policy favoring arbitration agreements, notwithstanding any state substantive or procedural

[3] Senator Walsh, explaining the purpose of the FAA at the 1923 Senate Hearings on the Act, reported that the Act "sought to overcome the rule of equity, that equity will not specifically enforce an[y] arbitration agreement." Sales and Contracts to Sell in Interstate and Foreign Commerce, and Federal Commercial Arbitration: Hearing Before a Subcomm. of the Senate Comm. on the Judiciary, 67th Cong. 6 (1923).

policies to the contrary." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 346 (2011) (citing *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983)). This Court has thus consistently had "a healthy regard" for this federal policy in answering "questions of arbitrability." *Moses H. Cone Mem'l Hosp.*, 460 U.S. at 24.

In the leading case of *Southland Corp. v. Keating*, for instance, this Court observed that "Congress intended to foreclose state legislative attempts to undercut the enforceability of arbitration agreements." 465 U.S. at 15–16. *Southland* established a standard to which this Court has since consistently adhered: the FAA preempts not only state-law measures that directly conflict with the FAA, but also those that single out or discriminate against arbitration or that otherwise "stand as an obstacle to the accomplishment of the FAA's objectives." *Concepcion*, 563 U.S. at 343. Thus, this Court has repeatedly rejected attempts by state legislatures and courts to undermine agreements to arbitrate. *See Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 446 (2006) (state courts may not rely on public policy to avoid arbitration agreements); *Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 67 (2010) (FAA was designed to "place[] arbitration agreements on an equal footing with other contracts" (citing *Buckeye*, 546 U.S. at 443)); *Perry v. Thomas*, 482 U.S. 483, 491 (1987) (states cannot force state-court litigation of claims subject to arbitration); *Lamps Plus, Inc. v. Varela*, 587 U.S. 176, 183 (2019) ("[S]tate law is preempted to the extent it 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives' of the FAA." (quoting *Concepcion*, 563 U.S. at 352)).

The Court has looked no more favorably on decisions by state courts restricting access to arbitration by consenting parties. In *Kindred Nursing Centers Ltd. Partnership v. Clark*, for instance, this Court rejected a Kentucky rule that disfavored arbitration agreements by invalidating such agreements signed on another person's behalf under a power of attorney. 581 U.S. 246, 248 (2017). And in *Concepcion*, this Court rejected a California common-law doctrine that invalidated as unconscionable class arbitration waivers. 563 U.S. at 352. The Court has also struck down state statutes giving state administrative bodies the exclusive authority to adjudicate claims between private parties. For example, in *Preston v. Ferrer*, this Court held that a state cannot force parties that have agreed to arbitrate claims to litigate those claims instead before an administrative tribunal. 552 U.S. 346, 349–50 (2008).

Most recently, in 2022, this Court reversed another decision of the California Court of Appeal that authorized representatives of private parties to bring claims in court that were subject to agreements to arbitrate. *Viking River Cruises, Inc. v. Moriana* concerned a California statute that authorized employees to bring claims on behalf of other employees against their employer in court. 596 U.S. 639, 644 (2022). The California Court of Appeal interpreted that law as allowing such suits even when the employee and employer had agreed to arbitrate the claims. *Id.* at 648. In reversing the California Court of Appeal's judgment, this Court recognized that it has enforced agreements to arbitrate claims brought by a representative on behalf of an absent principal who signed an arbitration agreement, *id.* at 658 (citing *Marmet Health Care Ctr., Inc. v. Brown*, 565 U.S. 530 (2012))—the very situation present here. In reaching its decision,

the Court also rejected the argument that the claims at issue belonged to the State, holding that "regardless of whether a[n] . . . action is in some sense also a dispute between an employer and the State, nothing . . . categorically exempts claims belonging to sovereigns from the scope of [the FAA]." *Id.* at 652 n.4.

II. The Court of Appeal's Decision Violates the FAA and the Federal Policy Protecting Arbitration Agreements and Requires this Court's Review.

A. The Decision Below Expressly Allows Public Officials to Bring Suit in Court on Behalf of Parties Whose Claims Are Subject to Arbitration.

In this case, California state officials sued Lyft and Uber on behalf of ride-share and delivery drivers, alleging that the defendants misclassified those drivers as contractors rather than employees. Pet. App. 2a. The California statute authorizing these claims provides that the drivers themselves may bring the claims or that state officials may "pursue representative claims [and] relief on behalf of" individuals.[4] Cal. Bus. & Prof. Code § 17203. As a remedy for the drivers' claims, the state officials demand that Lyft and Uber pay restitution to the drivers. *See* Pet. App. 2a.

There is no dispute that the drivers had agreed to arbitrate these claims. Pet. App. 6a n.9 ("We will assume for purposes of this opinion that the arbitration agreements bind drivers who entered them."). Indeed,

[4] The state officials also bring other claims, including some that are not "representative" claims under the relevant statutes, such as claims for injunctive relief and civil penalties. Pet. App. 2a. As the California Court of Appeal recognized, Lyft and Uber do not seek to compel arbitration of non-representative claims. *Id.*

in cases where the *drivers* have brought these exact claims on their own behalf in court, courts compelled arbitration. *See, e.g.*, *Rogers v. Lyft, Inc.*, 452 F. Supp. 3d 904, 918, 921 (N.D. Cal. 2020), *aff'd*, 2022 WL 474166 (9th Cir. Feb. 16, 2022). When Lyft and Uber sought to compel arbitration of the "representative" claims brought on behalf of the drivers in *this* case, however, the trial court refused, Pet. App. 30a, and the California Court of Appeal affirmed, Pet. App. 1a. The Court of Appeal reasoned that the public officials "are not parties to the arbitration agreements" and are instead "nonparties to the agreements who are suing in their law enforcement capacities." Pet. App. 20a. As a result, even though the state officials bring claims belonging to the drivers, as "representative[s]" of the drivers, seeking the payment of relief to the drivers, *see* Cal. Bus. & Prof. Code § 17203, the California Court of Appeal ruled that "there is no basis for binding [the officials] to arbitration agreements Uber and Lyft entered with [the] drivers." Pet. App. 8a.

B. Allowing a State Official to Sue as a Representative of Individuals Who Agreed to Assert their Claims Exclusively in Arbitration Runs Afoul of the FAA.

The California Court of Appeal erred. The state officials here assert "representative claims" for restitution, Cal. Bus. & Prof. Code § 17203, on behalf of drivers who, because of their arbitration agreements with Lyft and Uber, are obliged to pursue the claims in an arbitral forum. This case cannot be distinguished from the Court's numerous prior cases rejecting state attempts to undermine arbitration agreements. As in several of those cases, the decision below effectively declares certain claims under state law to be nonarbitrable and consequently allows the claims

to proceed in court notwithstanding agreements to submit the claims exclusively to arbitration. Although some state courts have found similar measures to be compatible with the FAA, the Federal Courts of Appeals that have considered this issue have consistently held to the contrary. This Court should do so too.

1. The California Court of Appeal's Decision Conflicts with the Decisions of Federal Courts of Appeals.

Federal courts have consistently found similar suits by public officials to be incompatible with the FAA. The California Court of Appeal's decision allows public officials to essentially sidestep the drivers' agreement to arbitrate their disputes. The notion that a public official may bring claims in court on behalf of a party that agreed to arbitrate those claims was squarely rejected by the Fourth Circuit in *United States v. Bankers Insurance Co.*, 245 F.3d 315 (4th Cir. 2001). There, the U.S. Attorney General sued on behalf of federal agencies, bringing claims that the agencies had agreed to arbitrate. The Fourth Circuit rejected this attempt to avoid an arbitration agreement, noting that "when a third party sues on a contract, any arbitration provision . . . remains in force," and it would be unjust to allow the Attorney General to bring a claim arising out of the contract "while . . . avoid[ing] the terms of an arbitration provision contained therein." *Id.* at 323.

To the same effect is the Third Circuit's decision in *Olde Discount Corp. v. Tupman*, 1 F.3d 202 (3d Cir. 1993). There, the Delaware Deputy Attorney General sued for rescission of securities transactions between a securities broker and one of its customers. The broker and its customer had agreed to arbitrate any dispute arising from the securities transaction, and the

broker resisted the state action, as Lyft and Uber have done here. The Third Circuit honored the parties' agreement, observing that "[State] proceedings, to the extent they concern claims and liabilities between the [contractual parties], are nothing other than a substitute for the arbitration." *Id.* at 209. The court concluded that the fact that the Delaware Deputy Attorney General was not a party to the arbitration agreement "does not alter [the] result," because allowing a state official to use such a "substitute" proceeding to pursue claims that the parties had agreed to arbitrate would "render [the parties'] right to arbitration meaningless," and "must fall before the conflicting right to an arbitral forum granted by the FAA." *Id.* The situation here is indistinguishable from those in *Olde Discount* and *Bankers Insurance*: here, too, a public official seeks to circumvent the parties' arbitration agreement.

Bankers Insurance and *Olde Discount* echo decisions by other Courts of Appeals requiring arbitration of claims covered by an arbitration agreement, even when such claims are brought by a third party. *See Jock v. Sterling Jewelers Inc.*, 942 F.3d 617, 625 (2d Cir. 2019) (enforcing arbitration agreements signed by absent class members when class representative brought action on their behalf), *cert. denied*, 141 S. Ct. 255 (2020); *Hays & Co. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 885 F.2d 1149, 1153 (3d Cir. 1989) (debtor's claims brought by court-appointed bankruptcy trustee are subject to the debtor's arbitration agreement); *Pritzker v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 7 F.3d 1110, 1122 (3d Cir. 1993) ("[A]rbitration agreements may be upheld against non-parties where the interests of such parties are directly related to, if not congruent with, those of a signatory."); *see also Mandviwala v. Five Star Quality*

Care, Inc., 723 F. App'x 415, 417 (9th Cir. 2018) (forcing arbitration of claims brought in state court because they "could be pursued individually" by a plaintiff).

These cases signal that there is nothing unusual about extending arbitration agreements to nonparties. This Court very recently held, for example, that the FAA "authorize[s] the enforcement of a[n] [arbitration agreement] by a nonsignatory." *GE Energy Power Conversion Fr. SAS, Corp. v. Outokumpu Stainless USA, LLC*, 590 U.S. 432, 436–37 (2020); *see also Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 631 (2009) (nonsignatory to a contract may be bound by it). The *Restatement of the U.S. Law of International Commercial and Investment Arbitration* takes the same view:

> [N]onsignatories may be bound by or entitled to invoke an arbitration agreement to the extent that they may be deemed to have assented to the arbitration agreement under ordinary principles of contract law, as well as other legal doctrines that operate legally to bind parties. In addition to principles of contract law, a range of theories and doctrines exist under which a nonsignatory may be bound by or entitled to invoke an arbitration agreement, including doctrines under equity and that apply to related corporate entities.

Restatement (Third) U.S. Law of Int'l Comm. Arb. § 2.3 cmt. a (Am. Law Inst. 2024). Here, state officials brought claims belonging to individuals, and so they must be bound by the arbitration agreements to which the individuals agreed.

Finally, the state officials' attempt to bring these claims in a state forum also contravenes the teachings of another of this Court's precedents, *Preston v. Ferrer*, 552 U.S. 346 (2008). Under the decision below, a public official might, by "pursu[ing] representative claims or relief," Cal. Bus. & Prof. Code § 17203, and obtaining a final judgment or settlement with the company, eliminate a driver's access to arbitration by creating claim preclusion applicable to the driver's individual claims.[5] In fact, if the officials were to settle a restitution claim against a business, they could in one fell swoop preclude claims held by the very individuals who the state officials purport to represent—potentially divesting thousands of potential claimants of their rights of action. This situation mirrors the one in *Preston*, where this Court struck down a California law that forced disputes subject to an arbitration agreement into a state administrative body for resolution. 552 U.S. at 349. There is no meaningful difference between redirecting a claim to the California Labor Commissioner, as in *Preston*, and allowing a Californian public official to preclusively litigate an individual's claim to judgment in a state court, as here. In both situations, a state law impermissibly diverts claims subject to arbitration into a state forum, with potentially preclusive effects.

2. *Waffle House* Does Not Support the Decision of the Court of Appeal.

The situation here must not be confused with *EEOC v. Waffle House, Inc.*, 534 U.S. 279 (2002)—a

[5] The California Court of Appeal admitted this possibility in its decision, noting that "there could be some future preclusive effect" on claims by individuals but ruling it "need not resolve this point" because the California public officials are not signatories to the relevant arbitration agreements. Pet. App. 18a.

mistake made by the California Court of Appeal, Pet. App. 8a–11a. In *Waffle House*, the EEOC brought a court action against an employer for violations of the Americans with Disabilities Act ("ADA"), seeking backpay, reinstatement, and damages. This Court ruled that the EEOC's suit was compatible with the FAA, despite an arbitration agreement between the employer and its employee, because the EEOC was not asserting the same claim that the employee was required by contract to bring in an arbitral forum. *Id.* at 297–98. This Court stated that the EEOC's claim was not "merely derivative" of a claim by the employee, *id.* at 297, because once a charge is filed with the EEOC, the EEOC is "in command of the process" and has "exclusive jurisdiction": the employee may not bring her own suit without the EEOC's permission, *id.* at 291–92. Here, by contrast, the public officials are acting as "representative[s]" asserting claims that the drivers could independently assert, Cal. Bus. & Prof. Code § 17203, albeit in arbitration. While this Court ruled in *Waffle House* that the EEOC was "not merely a proxy" for the employee, *id.* at 288 (citing *Gen. Tel. Co. of the Nw. v. EEOC*, 446 U.S. 318, 326 (1980)), in this case, the public officials here *are* indeed proxies for the drivers. This case is far more like *Viking River*, where this Court affirmed that "representative actions in which a single agent litigates on behalf of a single principal are part of the basic architecture of much of substantive law," and that "regardless of whether a[n] . . . action is in some sense also a dispute between an employer and the State, nothing . . . categorically exempts claims belonging to sovereigns from the scope of [the FAA]." 595 U.S. at 652 n.4, 657.

More importantly, the EEOC brought its claim in *Waffle House* under the ADA, a federal statute. In this respect, this case is fundamentally different. Here, the

officials are bringing an action under a state, not a federal, statute. Congress is free to modify the FAA's scope or establish exceptions, but state legislatures do not have that privilege. *Waffle House* harmonized two federal statutes. Here, California is preempted from curtailing the reach of the FAA.

3. Upholding the FAA Will Not Prevent State Officials from Using Their Powers to Protect their Citizens.

Protecting drivers' access to arbitration would not "fundamentally undermine" the "important public policies underlying" California labor law, as the California Court of Appeal suggested. Pet. App. 26a. The Court of Appeal acknowledged that Lyft and Uber have never alleged that the arbitration agreements here affect the officials' demands for non-individualized remedies (such as injunctive relief and civil penalties), *see* Pet. App. 4a, and so requiring the individual actions to proceed in arbitration leaves the officials' authority to pursue non-individualized remedies fully intact.

Moreover, employment claims "continue to serve both [their] remedial and deterrent function" when claimants pursue those claims in an arbitral forum. *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 27–28 (1991) (arbitration of Age Discrimination in Employment Act claims was consistent with "further[ing] [the] important social policies" of that Act and the arbitration dispute resolution mechanism "can further broader social purposes" (citing *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 637 (1985))); *Shearson/Am. Exp., Inc. v. McMahon*, 482 U.S. 220, 238, 242 (1987) (Securities Exchange Act and civil RICO claims are arbitrable). Enforcing the arbitration agreements at issue

here would thus fully accord with California's stated employee-protection aim. Because the drivers would be entitled to the same relief (if any) in arbitration as they would have in court, and because the state officials' non-individualized claims may be brought in court, enforcement of the driver's arbitration agreements does not undermine California law.

III. Decisions of other State Courts have Likewise Undermined Arbitration Agreements in Cases Brought by State Officials, Increasing the Prejudice to the FAA.

Unfortunately, appellate courts in several other States, like the California Court of Appeal, have issued decisions permitting state agencies to sidestep agreements to arbitrate. Those States have likewise empowered public officials to bring state actions to prosecute claims as a representative of an individual bound by an arbitration agreement.

One recent such case is *NC Financial Solutions of Utah v. Commonwealth ex rel. Herring*, 854 S.E.2d 642 (Va. 2021), where the Virginia Attorney General sued a lender under the Virginia Consumer Protection Act, seeking restitution for consumers who had agreed to arbitrate disputes with the lender. In that case, the Supreme Court of Virginia ruled that the Attorney General "is not precluded from seeking 'victim-specific' relief, including restitution for individual consumers," because Virginia "is not bound by the arbitration agreements at issue." *Id.* at 461.

In another such case, *People ex rel. Cuomo v. Coventry First LLC*, the New York Attorney General sued a buyer of life insurance policies, alleging that the defendant engaged in bid-rigging that harmed insurance policy owners. 915 N.E.2d 616, 617–18 (N.Y. 2009).

The Attorney General sought recission of the insurance policy purchase agreements, which contained arbitration agreements, and restitution on behalf of the policy sellers. The New York Court of Appeals rejected the defendant's attempt to compel arbitration of the recission and restitution claims brought on behalf of the sellers. The Court of Appeals held that "the arbitration agreement . . . does not bar the Attorney General from pursuing victim-specific judicial relief in his enforcement action," because the Attorney General was not a party to the arbitration agreement. *Id.* at 619–20.

The Massachusetts Supreme Judicial Court reached a similar decision in *Joulé, Inc. v. Simmons*, 944 N.E.2d 143 (Mass. 2011). There, an employee filed a claim with a state agency alleging discrimination. *Id.* at 145. The employer sought to compel arbitration of the claim under an employment agreement's arbitration provision, but the Massachusetts court held that the state agency's "authority to conduct an investigation and adjudication of [the employee's] claim of discrimination was not affected by the [employee's] agreement to arbitrate." *Id.* at 147. The court further noted that "there is no legal bar to having an arbitration and the [state administrative] proceeding continue concurrently, on parallel tracks," *id.* at 152, and that the employee was free to testify or otherwise participate in the state administrative proceeding, *id.* at 98.

So too did courts in Iowa and Minnesota. In *Rent-A-Center v. Iowa Civil Rights Commission*, the Supreme Court of Iowa ruled that the Iowa Civil Rights Commission could bring a claim against an employer and seek "relief specific to" an individual despite an

agreement between the individual and employer to arbitrate such claims. 843 N.W.2d 727, 741 (Iowa 2014). And in *State ex rel. Hatch v. Cross Country Bank, Inc.*, the Minnesota Attorney General sued credit card companies under various state-law causes of action, alleging unfair or deceptive practices and seeking restitution on behalf of consumers who had signed arbitration agreements with the defendants. 703 N.W.2d 562, 566 (Minn. Ct. App. 2005). The defendants sought to compel arbitration of the restitution claims, but the Court of Appeals of Minnesota disagreed, finding that "a party that has not agreed to arbitrate a dispute cannot be required to arbitrate," *id.* at 569, and "[t]he FAA only applies when there is an agreement to arbitrate," *id.* at 571.

Unless this Court intervenes, there will doubtless be many more future examples of state legislatures and courts seeking to undermine the FAA in this manner. This Court should make clear that, just as States may not shield state-law claims from arbitration, they also may not empower public officials to bring damages actions in court as a representative of parties who have agreed to resolve their disputes exclusively through arbitration.

CONCLUSION

The California Court of Appeal's decision should not be allowed to stand. This Court's consistent case law under the FAA requires States to place arbitration agreements on the same footing as other contractual provisions and refrain from adopting measures that conflict with the FAA, discriminate against arbitration, or otherwise "stand as an obstacle to the accomplishment of the FAA's objectives." *Concepcion*, 563 U.S. at 343. If, as this Court has held, parties may

not avoid their obligation to honor their arbitration agreement, public officials should not be allowed to do so on their behalf. Accordingly, this Court should grant the Petition and invalidate the decision of the California Court of Appeal, which harms the FAA and contravenes this Court's jurisprudence.

Respectfully submitted,

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