No.

IN THE

Supreme Court of the United States

MINISO DEPOT CA, INC., MINISO DEPOT, INC. AND LIN LI,
Petitioners,

v.

YONGTONG LIU,
Respondent.

APPLICATION TO THE HON. ELENA KAGAN FOR A 60-DAY EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL

Pursuant to Supreme Court Rule 13.5, Applicants Miniso Depot CA, Inc., Miniso Depot, Inc. and Lin Li request a 60-day extension of time, to and including May 30, 2025, within which to file a petition for a writ of certiorari.

1. Applicants will seek review of the judgment in *Yongtong Liu v. Miniso Depot CA, Inc.* A copy of the California Supreme Court's order denying Applicants' petition for review, No. S287882 (Cal. Dec. 31, 2024), is attached as Exhibit A. A copy of the California Court of Appeal's opinion and decision, B338090 (Cal. Ct. App. Oct. 7, 2024) is attached as Exhibit B. Unless extended, Applicants' time to seek certiorari in this Court expires March 31, 2025. Applicants are filing this application at least ten days before that date. *See* S. Ct. R. 13.5. This Court's jurisdiction would be invoked under 28 U.S.C. § 1257(a). Counsel for respondent has advised that she objects to any extension request but provided no explanation for why an extension would prejudice her and cannot show prejudice in any event (*see infra* at 6-7).

2. The Federal Arbitration Act (FAA), 9 U.S.C § 1 *et seq.*, has long required courts to enforce parties' arbitration agreements. Under the FAA, "if a dispute presents multiple claims, some arbitrable and some not, the former must be sent to arbitration even if this will lead to piecemeal litigation." *KPMG LLP v. Cocchi*, 565 U.S. 18, 19 (2011) (quoting *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 217 (1985)). This case concerns whether the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 (EFAA) reversed this longstanding rule for lawsuits where the plaintiff alleges "conduct constituting a sexual harassment dispute or sexual assault dispute," even as to claims wholly unrelated to that dispute. 9 U.S.C. § 402(a); Pub. L. No. 117-90, § 2, 136 Stat. 26, 27 (2022).

Respondent Yongtong Liu worked for petitioners Miniso Depot CA, Inc., USA Miniso Depot, Inc., and Lin Li as a human resources professional for approximately two years before resigning in June 2023. Ex. B at 3, 5. At the outset of her employment, respondent signed an agreement that required her to arbitrate claims arising from her employment and specified that any dispute relating to the "interpretation, applicability, validity, or enforceability" of the agreement would be governed by the FAA. *Id.* at 6. Respondent nonetheless filed a complaint against petitioners in state court that raised 15 causes of action, including seven wage-and-hour claims alleging she was misclassified as an exempt employee. *Id.* at 14. Other claims allege discriminatory business practices based on sex, age, and nationality, her complaints about those practices, and adverse employment actions she allegedly experienced as a result. *Id.* 4-5. Separate from these claims, the complaint also includes a sexual

harassment claim and a sexual orientation/gender identity harassment claim in violation of the California Fair Employment and Housing Act (Cal. Gov't Code § 12900 *et seq.*). *Id.* at 5.

The trial court denied petitioners' motion to compel arbitration of respondent's claims. Although the court found the parties had a valid arbitration agreement, it concluded that because respondent had stated a claim for sexual harassment, the EFAA barred compelling arbitration of any of her claims. Ex. B at 8. The California Court of Appeal affirmed. It held that because section 402 of the EFAA allows a plaintiff to void an arbitration agreement with respect to a "case" that "relates to … the sexual harassment dispute," the EFAA "clear[ly]" permitted voiding with respect to an entire "action" even if others claims are wholly unrelated to the sexual harassment dispute. *Id.* at 18. The court acknowledged that its broad holding might raise "question[s]" as to whether a plaintiff could avoid arbitrating "class or … representative claims" that have nothing to do with an individual's own sexual harassment claims in the same lawsuit. *Id.* at 19 n.8; *see also id.* at 18. However, the court believed its interpretation was sensible because it "avoids the potential for inefficiency in having separate proceedings in court and an arbitration forum, and the related additional burden placed on the parties of having to litigate claims in both a court proceeding and an arbitration." *Id.* at 16. The California Supreme Court denied discretionary review. Ex. A.

The California Court of Appeal's expansive arbitration exception follows a long line of "judicial hostility" by California courts that this Court has repeatedly

corrected. *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011). The question presented has exceptional importance, potentially touching thousands of employment-related claims each year. The decision below itself has immediate and widespread consequences, subjecting large swaths of employment-related claims in California to a misguided sea-change in federal arbitration law. *See, e.g.*, Cal. Civil Rights Dept., 2022 Annual Report (June 2024) p. 24, available at https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2024/06/CRD-2022-Annual-Report.pdf (as of Nov. 12, 2024) (reporting more than 7,000 employee sexual harassment allegations in "right-to-sue" complaints filed with the Department in 2022). The California Court of Appeal's interpretation of the EFAA now erroneously requires courts to exempt from arbitration, for example, an employee's wage-and-hour claims (as long as that employee brings an unrelated sexual harassment claim); an employee's breach of contract claim (as long as that employee also brings an unrelated sexual harassment claim); a slip-and-fall negligence claim (as long as the employee tacks on vague allegations of sexual harassment); or sexual harassment claims too old to invoke the EFAA (as long as another, wholly unrelated sexual harassment claim is more recent). These results are contrary to the EFAA's text, purpose, and legislative history, and cannot be justified by concerns about "inefficiency" (*contra* Ex. B at 16): The FAA's "strong federal policy in favor of enforcing arbitration agreements" "'*requires* piecemeal resolution when necessary to give effect to an arbitration agreement.'" *Dean Witter*, 470 U.S. at 217, 221 (emphasis in original) (quoting *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 20 (1983)).

Moreover, the decision below reaches a more radical result than numerous federal and state appellate courts and contributes to a growing conflict in how courts across the country have approached this issue to date. Some courts have applied the EFAA to sexual harassment claims while compelling plaintiffs to arbitrate claims that "do not relate in any way to the sexual harassment dispute" covered by the EFAA. *Mera v. SA Hospitality Group, LLC*, 675 F.Supp.3d 442, 448 (S.D.N.Y. 2023); *see also Silverman v. DiscGenics, Inc.*, No. 22-cv-00354, 2023 WL 2480054, at *2-3 (D. Utah, Mar. 13, 2023) (splitting claims between court proceedings and arbitration based on whether the disputes arose prior to EFAA's effective date). Under these courts' approach, "the EFAA does not permit [plaintiffs] to avoid arbitration of" claims unrelated to sexual harassment "simply by adding … EFAA-protected claims to a single complaint." *O'Sullivan v. Jacaranda Club, LLC*, 224 A.D.3d 629, 630, 206 N.Y.S.3d 562 (App. Div. 2024); *see also Delirium TV, LLC v. Dang*, ___ S.W.3d ___, No. 01-23-00383-cv, 2024 WL 1513878, at *8 (Tex. Ct. App. 2024) (reasoning that *Mera* and this Court's decision in *KPMG* "support[] separation of Dang's wage claims from her tort claims"). Other courts have invalidated an arbitration agreement as to all claims only after determining that every claim factually related to a covered sexual harassment dispute, as distinguished from disputes "unrelated to harassment claims." *Zeng v. Ellenoff Grossman & Schole LLP*, No. 23-cv-10348, 2024 WL 4250387, at *3 (S.D.N.Y., Sept. 19, 2024), *appeal docketed*, No. 24-2557 (2d Cir. Sept. 26, 2024) (holding that claims of "retaliat[ion] … for complaining about sexual harassment," "unlike wage and hour disputes" not raised, "fall under the EFAA"); *see*

also Turner v. Tesla, Inc., 686 F. Supp. 3d 917, 925, 927 (N.D. Cal. 2023) (voiding arbitration agreement as to all claims because "the core of [plaintiff's] case alleges 'conduct constituting a sexual harassment dispute'" and each claim was individually "related" to that dispute]; *Ding v. Structure Therapeutics, Inc.* ___ F.Supp.3d ___, No. 24-cv-01368, 2024 WL 4609593, at *12] (N.D. Cal., Oct. 29, 2024) (holding that agreement was invalid "to the extent the claims relate to the EFAA-covered dispute"). Other courts have taken the extreme approach of the panel below. *See, e.g.*, *Johnson v. Everyrealm, Inc.*, 657 F.Supp.3d 535, 547-548 (S.D.N.Y. 2023).

3. A 60-day extension within which to file a certiorari petition is reasonable and necessary. The request is justified by undersigned counsel's press of business on other pending matters. Among other things, counsel has a brief in opposition to the petition for writ of certiorari in *Stitt v. Fowler*, No. 24-801 (U.S.) due March 31, a reply brief in *Johnson & Johnson v. Fortis Advisors*, No. 490,2024 (Del.) due April 8, opening briefs in *Morris v. Harley-Davidson* and *Sinclair v. Harley-Davidson*, Nos. 24-1854 and 24-1855 (N.Y. App. Div. 4th Dep't) due May 12, a response brief in *Netlist, Inc. v. Samsung, Inc.*, No. 24-2304 (Fed. Cir.) due May 30, and ongoing responsibilities preparing for a number of oral arguments in cases that are expected to be calendared soon, including *Hunt v. PricewaterhouseCoopers LLP*, No. 24-3568 (9th Cir.) and *Guardant Health, Inc. v. University of Washington*, No. 24-1129 (Fed. Cir.). Counsel has also recently been retained in *Propel Fuels, Inc. v. Phillips 66 Company*, No. 22-cv-007197 (Cal. Super. Ct. Alameda Cnty.), with ongoing responsibilities preparing for post-trial motions that are expected to be due sometime in April.

The requested 60-day extension would cause no prejudice to respondent even though she has advised that she objects to any extension. Respondent did not provide an explanation for her objection. Indeed, she would be unable to show prejudice from an extension in any event: Proceedings in the trial court have continued while petitioners have sought review of the trial court's order denying their motion to compel arbitration, and petitioners do not intend to seek a stay of the proceedings while the cert petition is pending. Therefore, respondent's claims will proceed in the trial court regardless of an extension here, which results in no prejudice to her.

Respectfully submitted,

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