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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, CALIFORNIA CHAMBER OF COMMERCE, NATIONAL RETAIL FEDERATION, CALIFORNIA RETAILERS ASSOCIATION, NATIONAL ASSOCIATION OF SECURITY COMPANIES, HOME CARE ASSOCIATION OF AMERICA, and CALIFORNIA ASSOCIATION FOR HEALTH SERVICES AT HOME,

Plaintiffs,

v.

XAVIER BECERRA, in his official capacity as the Attorney General of the State of California, LILIA GARCIA BROWER, in her official capacity as the Labor Commissioner of the State of California, JULIE A. SU, in her official capacity as the Secretary of the California Labor and Workforce Development Agency, and KEVIN KISH, in his official capacity as Director of the Department of Fair Employment and Housing of the State of California,

Defendants.

Case No. 2:19-cv-02456-KJM-DB

PLAINTIFFS' SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION FOR A PRELIMINARY INJUNCTION

Date: January 10, 2020
Time: 10:00 a.m.
Courtroom: 3, 15th Floor

Hon. Kimberly J. Mueller

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INTRODUCTION

Defendants raise two jurisdictional challenges, but neither holds water.

First, Defendants argue that there is no federal subject matter jurisdiction. That is plainly wrong: The complaint expressly invokes the power of federal courts of equity to enjoin unlawful actions by state officials. Compl. ¶¶ 105-109. The Supreme Court has recognized this basis for federal subject-matter jurisdiction repeatedly, including where (as here) the state action is alleged to be preempted by federal law. *See, e.g.*, *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015); *Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 645-46 (2002) (preemption); *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 381 (1992) (same); *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 96 n.14 (1983) (same); *Ex parte Young*, 209 U.S. 123 (1908). And nothing in the Federal Arbitration Act, 9 U.S.C. §§ 1-16, limits the scope of this Court's equitable powers. Indeed, another court in this District relied on this body of authority in enjoining a California law that restricted access to arbitration in the nursing home context on the ground that it interfered with "federal rights created under the FAA." *Valley View Health Care, Inc. v. Chapman*, 992 F. Supp. 2d 1016, 1031 (E.D. Cal. 2014).

This Court independently has jurisdiction under 28 U.S.C. § 1331 to entertain Plaintiffs' cause of action under Section 1983, because the FAA confers a federal right to enter into arbitration agreements on the same terms as other contracts, and AB 51 infringes on that right by imposing criminal and civil penalties on businesses that enter into workplace contracts that include arbitration as a condition of employment. The State argues that the FAA creates a federal right that applies only after an arbitration agreement is formed. That interpretation of the FAA is squarely foreclosed by *Kindred Nursing Centers Limited Partnership v. Clark*, 137 S. Ct. 1421 (2017). It is "beyond dispute" that Section 2 of "the FAA was designed to promote arbitration," *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 345 (2011); that design would be meaningless if States could impose criminal and civil sanctions against the formation of arbitration agreements. Section 2 may not be interpreted so that it is "helpless to prevent even the most blatant discrimination against arbitration" of this kind. *Kindred*, 137 S. Ct. at 1429.

Second, Defendants challenge Plaintiffs' Article III standing by asserting that Plaintiffs

have not come forward with sufficient evidence at this stage that any of their members enter into workplace contracts that include arbitration as a condition of employment. That challenge is impossible to square with the California Legislature's own finding that "*67.4% of all California employers mandate arbitration of employment disputes*." California AB 51 (Employment Discrimination: enforcement), 2019-2020 Reg. Sess., Senate Rules Committee Analysis 5 (as amended March 26, 2019) (Third Reading – Prepared on September 1, 2019), available at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200AB51.

Furthermore, Ninth Circuit precedent establishes that, so long as "it is relatively clear" that "one or more members" of an association "have been or will be adversely affected by a defendant's action," there is "no purpose to be served by requiring an organization to identify by name the member or members injured." *Nat'l Council of La Raza v. Cegavske*, 800 F.3d 1032, 1041 (9th Cir. 2015). Under that standard, the Declaration of Brian Maas alone establishes standing. But Plaintiffs have submitted additional declarations that reinforce their standing. As those declarations make clear, Plaintiffs have members who include an agreement to arbitrate as one of the many conditions on the offer of employment—just like the amount of compensation, the duties of the working relationship, and the benefits provided to the worker. These members will not hire new workers (or will decline to retain existing workers presented with new agreements) who refuse to agree to arbitration, just as they will not hire or retain anyone who refuses to agree to the other conditions of the working relationship. The declarations further confirm that some members intend to continue entering into agreements with their workers that include arbitration as a condition or the working relationship (or on an opt-out basis, which AB 51 treats as mandatory), based on the belief that AB 51 is preempted by federal law, while others have made or intend to make changes to their contracting processes in an effort to comply with AB 51, incurring administrative and other costs that they would not have otherwise incurred. Either way, the members would suffer irreparable harm if AB 51 is not enjoined. *See Am. Trucking Ass'ns, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1058 (9th Cir. 2009).

Third, on the question of severability, the parties agree that any injunction should preclude enforcement of AB 51 only in connection with arbitration agreements governed by the

FAA. The sole area of disagreement is whether the injunction should encompass Section 432.6(b), which prohibits declining to hire applicants for work or terminating existing workers for refusing to agree to arbitration as a condition of employment. The answer is yes, both because Section 432.6(b) overlaps with Section 432.6(a) and because its restrictions on making arbitration a term of a *continued* employment relationship are preempted just as much as Section 432.6(a)'s restrictions on making arbitration a term of a *new* employment relationship. Plaintiffs have submitted a proposed order that reflects the precise scope of the requested injunction.

ARGUMENT

A. This Court Has Subject-Matter Jurisdiction Over Plaintiffs' Claims.

This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 over each of Plaintiffs' two causes of action. First, Plaintiffs rely on settled authority regarding the equitable powers of federal courts, which place it "beyond dispute that federal courts have jurisdiction over suits to enjoin state officials from interfering with federal rights." *Shaw*, 463 U.S. at 96 n.14 (citing *Ex parte Young*, 209 U.S. at 160-62). Second, Plaintiffs and their members have an enforceable federal right under the FAA to form arbitration agreements in the same manner as they enter into other types of contracts, and Plaintiffs are entitled to enforce that right under 42 U.S.C. § 1983.

1. Plaintiffs Assert A Cognizable Claim In Equity.

a. "The ability to sue to enjoin unconstitutional actions by state and federal officers is the creation of courts of equity, and reflects a long history of judicial review of illegal executive action, tracing back to England." *Armstrong*, 575 U.S. at 327. The Supreme Court has "long recognized" that, "if an individual claims federal law immunizes him from state regulation, the court may issue an injunction upon finding the state regulatory actions preempted." *Id.* at 326 (citing *Ex parte Young*, 209 U.S. at 155-56). And it is equally clear that the *Ex parte Young* doctrine is itself a source of federal subject matter jurisdiction under 28 U.S.C. § 1331: "A plaintiff who seeks injunctive relief from state regulation, on the ground that such regulation is pre-empted by a federal statute which, by virtue of the Supremacy Clause of the Constitution, must prevail, thus presents a federal question which the federal courts have jurisdiction under 28 U.S.C. § 1331 to resolve." *Shaw*, 463 U.S. at 96 n.14.

Shaw is directly on point. The Supreme Court held that the federal courts had jurisdiction to hear a claim that New York state statutes were preempted by the federal Employee Retirement Income Security Act of 1974—and affirmed in part an injunction against enforcing the state laws. *Id.* at 92-93 & n.9. Similarly, in *Morales*, the Court held that *Ex parte* "*Young* establishes that injunctive relief was available" to prevent state attorneys general from enforcing state deceptive practices laws against advertising protected by the federal Airline Deregulation Act. 504 U.S. at 381. And in *Verizon Maryland*, when a local exchange carrier sought injunctive relief against a State public utilities commission for issuing an order that was allegedly preempted by the federal Telecommunications Act of 1996, the Court expressed "no doubt that federal courts have jurisdiction under § 1331 to entertain such a suit." 535 U.S. at 642. Tellingly, the State's brief does not mention *Shaw*, *Morales*, or *Verizon Maryland*—or even *Ex parte Young*.

Consistent with this uniform Supreme Court authority, one court in this District has held that it had jurisdiction to hear a claim seeking to enjoin California officials from enforcing a state law that the FAA allegedly preempted. *Valley View*, 992 F. Supp. 2d at 1032. In *Valley View*, a trade association and several skilled nursing facilities sued to enjoin the director of the California Department of Public Health from enforcing provisions that would have voided agreements waiving the right to sue under the California Patient's Bill of Rights and required arbitration clauses both to be "in a form separate from the rest of the admission contract" and to "clearly indicate that agreement to arbitration is not a precondition for medical treatment or for admission." *Id.* at 1027. Citing *Shaw* and *Ex parte Young*, the court held that it had jurisdiction to hear the plaintiffs' "challenge [to] the Department's interference of federal rights created under the FAA." *Id.* at 1031. The same is true here.

b. Defendants recognize this Court's equitable powers, but argue that this is not "'a proper case' for the Court to exercise its equitable discretion." Supp. Br. 4-5 (quoting *Armstrong*, 575 U.S. at 327). They are wrong.

To begin with, Defendants' observation that neither the FAA nor the Supremacy Clause confers subject matter jurisdiction (Supp. Br. 2, 4) is a red herring, because those are not the

asserted bases for jurisdiction here. Instead, Plaintiffs rely on this Court's equitable power under *Armstrong* and *Ex parte Young* and 28 U.S.C. § 1331. As Judge O'Neill put it in rejecting the virtually identical argument advanced in *Valley View*, "[t]his Court does not view plaintiffs to use the FAA or Supremacy Clause as the toe hold for subject matter jurisdiction. * * * [P]laintiffs challenge the Department's interference of federal rights created under the FAA and which conflict with state law. Such an attempt to enforce federal rights *opens this Court's doors to plaintiffs*." 992 F. Supp. 2d at 1031 (emphasis added). Indeed, with rare exceptions not relevant here, federal courts have an "unflagging" obligation to exercise the jurisdiction Congress granted them. *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 77 (2013).

The question under *Armstrong* is not whether the federal law at issue provides a private cause of action or confers subject matter jurisdiction on its own, but rather whether Congress has constrained "[t]he power of federal courts of equity to enjoin unlawful executive action" through "express and implied statutory limitations." 575 U.S. at 327. Defendants' failure to acknowledge the relevant standard speaks volumes, because nothing in the FAA imposes "limitations" on federal courts' equitable powers to enjoin unlawful executive action.

The Court in *Armstrong* held that the provision of the Medicaid Act at issue demonstrated an intent to preclude traditional equitable relief from courts for two reasons, neither of which are present here. First, the provision was "judicially unadministrable" because it required State Medicaid plans to set reimbursement rates at levels that both "'may be necessary to safeguard against unnecessary utilization of such care'" and "'are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area.'" 575 U.S. at 323, 328 (quoting 42 U.S.C. § 1396a(a)(30)(A)). As the Court elaborated, "[i]t is difficult to imagine a requirement broader and less specific" than the mandate to "provide for payments that are 'consistent with efficiency, economy, and quality of care,' all the while 'safeguard[ing] against unnecessary utilization of * * * care and services.'" *Id.* at 328 (alterations in original). The Court concluded that "[t]he sheer complexity associated with enforcing § 30(A), coupled with the express provision of an administrative remedy, * * * shows that the Medicaid Act precludes

private enforcement of § 30(A) in the courts." *Id.* at 329.

In contrast, courts routinely can and do enforce the provisions of the FAA, including Section 2. The Supreme Court has never suggested that courts are unable to administer the standards under the FAA. To the contrary, the Court has repeatedly interpreted and applied the FAA. *See, e.g.*, *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1621-23 (2018); *Southland Corp. v. Keating*, 465 U.S. 1, 11-16 (1984).

Second, Congress conferred exclusive enforcement of the "judgment-laden standard" at issue in *Armstrong* on the Secretary of Health and Human Services by expressly providing for an administrative rather than judicial remedy. *Id.* at 328.[1] Yet no federal agency is tasked with administering the FAA.

Defendants invoke Sections 3 and 4 of the FAA, which establish procedures for parties to an arbitration agreement to seek enforcement of that agreement in court, but those provisions support, rather than refute, the availability of equitable judicial relief to enforce plaintiffs' federal rights under the FAA. Defendants suggest (Supp. Br. 4) that Sections 3 and 4 implicitly cabin this Court's authority to enforce the substantive rights created by Section 2 of the FAA. But Section 2 and its equal-footing principle apply not only to the enforcement of arbitration agreements once formed, but also to laws involving the *formation* of arbitration agreements. *Kindred*, 137 S. Ct. at 1427-28. Consistent with that distinction, and anticipating *Kindred*, Judge O'Neill rejected California's contention that "FAA rights 'are conferred and limited to only contracting parties who have an existing dispute involving an arbitration contract governed by the FAA.'" *Valley View*, 992 F. Supp. 2d at 1031.

Finally, Defendants rehash their false dichotomy between regulating "employer

[1] The other cases Defendants cite (at Supp. Br. 4) share similar distinctions. In *Seminole Tribe of Florida*, 517 U.S. 44 (1996), Congress enacted an "intricate scheme" for enforcing the Indian Gaming Regulatory Act against States that would impose liability "that is significantly more limited than would be the liability imposed upon the state officer under *Ex parte Young*," demonstrating that Congress "had no wish to create the latter." *Id.* at 75-76. And in both *Smith v. Hickenlooper*, 2016 WL 759163, at *1 (D. Colo. Feb. 26, 2016) and *Friends of East Hampton Airport, Inc. v. Town of East Hampton*, 2015 WL 3936346, at *9 (E.D.N.Y. June 26, 2015), *aff'd in part and vacated in part on other grounds*, 841 F.3d 133 (2d Cir. 2016), Congress delegated enforcement of the laws at issue *exclusively* to federal officers—the Attorney General and the Secretary of Transportation, respectively.

behavior" and the formation of arbitration agreements. Supp. Br. 4-5. Plaintiffs have refuted this point, explaining that interpreting the FAA to permit a State to impose criminal sanctions on the making of an arbitration agreement would "make it trivially easy for States to undermine the Act—indeed, to wholly defeat it." *Kindred*, 137 S. Ct. at 1428; *see* Mot. 12; Reply 5-6.

Plaintiffs further explained that the Supreme Court has rejected California's similar attempts at too-clever-by-half line-drawing outside of the arbitration context. Reply 6 (discussing *Nat'l Meat Ass'n v. Harris*, 565 U.S. 452 (2012)). And Defendants are not helped by the fact that AB 51 forges a "new path," Supp. Br. 5 (citing Tr. 36:7-8), by criminalizing the act of entering into an arbitration agreement rather than refusing to enforce such an agreement once formed. That "new path" shows only that States have never before been so brazen as to attempt to circumvent FAA preemption by imposing criminal and civil sanctions for entering (or trying to enter) into arbitration agreements in the first place. As the Supreme Court has warned, just as "antagonism toward arbitration before the Arbitration Act's enactment 'manifested itself in a great variety of devices and formulas declaring arbitration against public policy,'" courts "must be alert to new devices and formulas that would achieve much the same result today." *Epic*, 138 S. Ct. at 1623 (quoting *Concepcion*, 563 U.S. at 342). AB 51 is just such a device.

2. Plaintiffs Can Enforce The Federal Rights Conferred By The FAA Under Section 1983.

In the alternative, Plaintiffs may enforce their and their members' rights under Section 1983. "Section 1983 imposes liability on anyone, who under color of state law, deprives a person 'of any rights, privileges, or immunities secured by the Constitution and laws.'" *Blessing v. Firestone*, 520 U.S. 329, 340 (1997). The Supreme Court has recognized that Section 1983 "safeguards certain rights conferred by federal statutes," *id.*, and has "set forth a three-factor test to guide this inquiry: (1) whether Congress intended the provision in question to benefit the plaintiff; (2) whether the plaintiff has demonstrated that the asserted right 'is not so vague and amorphous that its enforcement would strain judicial competence'; and (3) whether the provision giving rise to the right is 'couched in mandatory, rather than precatory, terms.'" *Price v. City of Stockton*, 390 F.3d 1105, 1109 (9th Cir. 2004) (quoting *Blessing*, 520 U.S. at 340-41). Section 2

of the FAA satisfies all three factors.

First, the "text and structure of the statute" demonstrate the requisite "focus on individual entitlement to benefits rather than the aggregate or systemwide policies and practices of a regulated entity." *Price*, 390 F.3d at 1109-10 (citing *Gonzaga Univ. v. Doe*, 536 U.S. 273, 285 (2002)) (quotation marks omitted). Section 2 of the FAA protects each party that enters into an arbitration agreement covered by the statute by mandating that the agreement "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. And as Defendants point out (Supp. Br. 3), Sections 3 and 4 of the FAA provide specific procedural mechanisms for parties to stay litigation and compel arbitration in order to give effect to their arbitration agreements—making crystal clear that the provisions of the FAA are intended to benefit those parties.

Defendants again insist that Section 2 of the FAA confers a right only once an "actual [arbitration] agreement" comes into being (Supp. Br. 2; *see also id.* at 4), but *Kindred* squarely forecloses that flawed dichotomy between the formation of arbitration agreements and their enforcement (*see* Mot. 12; Reply 5-6). If—as established law provides—a State cannot declare employment-related claims "off limits" to arbitration (*Epic*, 138 S. Ct. at 1623), it cannot secure the same result by declaring form employment arbitration agreements categorically unlawful. Accordingly, Section 2 protects the right to enter into arbitration agreements under the same rules as other contract terms, not just to enforce arbitration agreements once made.

The second and third factors of the *Blessing* framework are easily satisfied. There is nothing "vague and amorphous" about the FAA's protection of arbitration agreements that "would strain judicial competence." *Blessing*, 520 U.S. at 340. On the contrary, cases interpreting and applying Section 2 are legion. *See, e.g.*, Mot. 10 & n.2 (collecting Supreme Court cases holding that state laws disfavoring arbitration are preempted under Section 2). And Section 2 is undeniably "couched in mandatory, rather than precatory, terms." *Blessing*, 520 U.S. at 341; *see also, e.g.*, *Henry A. v. Willden*, 678 F.3d 991, 1006-07 (9th Cir. 2012) (section of the Child Welfare Act created right enforceable under Section 1983 when it "expresses a clear mandate by using the term 'shall'").

Finally, for the same reasons that nothing in the FAA diminishes this Court's equitable powers under *Ex parte Young*, nothing in the FAA "specifically foreclose[s] a remedy under § 1983" either. *Blessing*, 520 U.S. at 341; *see* pages 5-7, *supra*.

B. Plaintiffs Have Established Standing.

It is well settled that an association may seek declaratory, injunctive or other form of prospective relief on behalf of its members. *See Hunt v. Wash. Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977). "An association has standing to bring suit on behalf of its members when its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Friends of the Earth, Inc. v. Laidlaw Envt'l Servs.*, 528 U.S. 167, 181 (2000) (citation omitted).

Defendants challenge only the first of these points, but Plaintiffs have demonstrated at this stage that their members would have standing in their own right for the same reasons that they have demonstrated irreparable harm without an injunction under the second *Winter* factor. *See* Mot. 13-17; Reply 7-9; *see also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) ("[E]ach element [of standing] must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation."). And Plaintiffs need only show that a single *one* of their members would have standing to sue in its own right. *See Fleck & Assocs., Inc. v. City of Phoenix*, 417 F.3d 1100, 1105-06 (9th Cir. 2006).

Defendants' objection to standing boils down to the argument that Plaintiffs have not "presented an actual policy or practice that violates AB 51" and cannot "establish an imminent threat of harm from AB 51" unless they do. Supp. Br. 6-9. That objection misstates both the evidentiary record and the law.

To begin with, Defendants defy the legislative history of AB 51 (and common sense) when they assert that there is no evidence that employers in California enter into agreements with workers that require arbitration as a condition of employment. The Legislature enacted AB 51 precisely *because* businesses and workers in California were entering into arbitration

agreements on that basis. The Senate's analysis accompanying AB 51 stated that "67.4%" of all California employers "mandate arbitration of employment disputes." Senate Rules Committee Analysis, *supra*, at 5 (emphasis omitted). And AB 51's sponsor, Assemblywoman Gonzalez, similarly "estimated the new law will affect more than 67 percent of California workplaces." Mallory Moench, *California has a new law against mandatory arbitration—but it doesn't cover everyone*, San Francisco Chronicle (Oct. 11, 2019). As this Court rhetorically observed at the hearing, "I can't ignore that legislative history, can I?" Tr. 14:5-6.

Moreover, the Declaration of Brian Maas, president of the California New Car Dealers Association (CNCDA), a member of plaintiff California Chamber of Commerce, demonstrates that at least one of Plaintiffs' members has standing. As Defendants acknowledge, CNCDA *itself* includes an arbitration provision "as part of its employee handbook" that "each employee is required to sign." Supp. Br. 7 (quoting Maas Decl. ¶ 8). Defendants' speculation that "required" might not mean what it says is unfounded; in all events, Mr. Maas has confirmed that CNCDA includes arbitration as a condition of employment. Supp. Decl. of Brian Maas ¶ 6 & Ex. A (copy of CNCDA's arbitration agreement); *see also* Maas Decl. ¶ 22 ("In the absence of AB 51, CNCDA and its members would continue to rely on arbitration agreements as part of their overall employment agreements.").

Mr. Maas's declaration also states that "[a]lmost all" of CNCDA's members "enter into arbitration agreements with their workers as a condition of employment or allow workers to opt out of arbitration by taking some affirmative step." Maas Decl. ¶ 21. Defendants insist that Mr. Maas is required to identify by name a "single company," but that is not necessary. CNCDA is itself a business, is itself subject to AB 51, and is a member of one of the Plaintiffs. Plaintiffs have identified CNCDA by name, and that is enough to satisfy Defendants' demand.

But in any event, Defendants are wrong on the law. Controlling Ninth Circuit precedent does not require Plaintiffs, which collectively represent tens of thousands of employers in California, from naming particular companies. As the Ninth Circuit has put it in holding that two NAACP chapters could establish standing on behalf of their members without specifically identifying those chapters' members, "[w]here it is relatively clear, rather than merely

speculative, that one or more members have been or will be adversely affected by a defendant's action, and where the defendant need not know the identity of a particular member to understand and respond to an organization's claim of injury, we see no purpose to be served by requiring an organization to identify by name the member or members injured." *Nat'l Council of La Raza*, 800 F.3d at 1041.

Just last week, a district court held, based on *La Raza*, that an association had standing to obtain a preliminary injunction based on "predominantly legal claims" against the California Attorney General "without the identification of a particular * * * member." *Cal. Trucking Ass'n v. Becerra*, 2020 WL 248993, at *5 (S.D. Cal. Jan. 16, 2020). The same is true here.

Nevertheless, to avoid any doubt, Plaintiffs have submitted additional declarations with this brief confirming that they have members with significant numbers of employees in California (and that are representative of numerous other companies in the same situation) that face the harms posed by AB 51. Supp. Maas Decl.; Decls. of Glenn Spencer, Jennifer Barrera, Stephanie Martz, Rachel Michelin, Steve Amitay, Dean Chalios, and Vicki Hoak. In particular:

- Plaintiffs have members that are currently entering into agreements with their workers that include arbitration as a condition of the working relationship or on an opt-out basis. Supp. Maas Decl. ¶¶ 6, 12(a); Spencer Decl. ¶ 5; Barrera Decl. ¶ 5(a); Martz Decl. ¶¶ 2-4; Michelin Decl. ¶¶ 2-3; Amitay Decl. ¶¶ 2-3; Chalios Decl. ¶ 2; Hoak Decl. ¶ 2. In other words, these members will not hire anyone who refuses to agree to arbitration (except for someone who opts out in accordance with any opt-out process in the arbitration agreement), just as they will not hire anyone who refuses to agree to the other conditions of the working relationship. *E.g.*, Supp. Maas Decl. ¶¶ 6-7; Spencer Decl. ¶ 5; Martz Decl. ¶ 3; Michelin Decl. ¶ 3; Amitay Decl. ¶ 3.
- These members would be subject to enforcement actions under AB 51 if they continue (unless the law is enjoined) to include such arbitration provisions in agreements with new employees or include new or revised arbitration provisions in new agreements with existing employees or refuse to hire or retain new employees who do not agree to such provisions. *E.g.*, Supp. Maas Decl. ¶¶ 6, 12(b); Spencer

Decl. ¶ 6; Barrera Decl. ¶ 5(b).

- Many of the Plaintiffs' members, notwithstanding AB 51, are continuing to enter into agreements with their workers that include arbitration as a condition of the working relationship or on an opt-out basis, based on this Court's Temporary Restraining Order and the belief that the statute is preempted by federal law, but they are greatly concerned about the potential adverse consequences to their businesses from state civil and criminal enforcement action. *E.g.*, Spencer Decl. ¶ 7; Martz Decl. ¶ 6; Michelin Decl. ¶ 5; Amitay Decl. ¶ 5; Chalios Decl. ¶ 5; Hoak Decl. ¶ 5.
- Finally, other members of the Plaintiffs have made or intend to make changes to their contracting processes to comply with AB 51 and avoid the risk of criminal and civil penalties under the statute in the event that state enforcement of AB 51 is not enjoined. *E.g.*, Supp. Maas Decl. ¶ 12(d). These members have incurred or will incur administrative costs *that they would not have otherwise incurred* in changing their employment contracts to eliminate arbitration as a condition of the working relationship (*id.*)), contradicting Defendants' speculation (Supp. Br. 8) that companies face no incremental costs from complying with the preempted provisions of AB 51.

Defendants further miss the mark in trying to downplay the "credible threat" that AB 51 will be invoked against Plaintiffs' members. Supp. Br. 9. Tellingly, Defendants have refused to disclaim either their ability or their intent to seek criminal and civil penalties for violations of the statute. *See* Tr. 34:4-5 (acknowledging that "criminal penalties are available" to the State).

Indeed, Defendants refused to do so even on a temporary basis. *See* Reply Decl. of Donald M. Falk, Dkt. No. 18-1, ¶¶ 5-18. That itself establishes standing. *See Valley View*, 992 F. Supp. 2d at 1032-33 (citing, *inter alia*, *Mobil Oil Corp. v. Att'y Gen.*, 940 F.2d 73, 76 (4th Cir. 1991) (plaintiff has standing where "the Attorney General has not * * * disclaimed any intention of exercising her enforcement authority); *KVUE, Inc. v. Moore*, 709 F.2d 922, 930 (5th Cir. 1983) (same where "[t]he state has not disavowed enforcement"), *aff'd*, 465 U.S. 1092 (1984)).

On the contrary, every indication is that Defendants will actively enforce AB 51. The complaint here points out that both the Department of Fair Employment and Housing and the

Labor Commissioner robustly enforce California's labor laws; DFEH recorded over 43,000 filed cases in 2010 alone (the most recent year available). *See* Compl. ¶¶ 81-82. The threat of criminal and civil enforcement is "real and immediate, not conjectural or hypothetical." *City of Los Angeles v. Lyons*, 461 U.S. 95, 101-02 (1983).[2]

Finally, Defendants simply ignore the Ninth Circuit's holding that forcing businesses to choose between risking enforcement actions or complying with an invalid law subjects them to "a very real penalty" regardless of their choice. *Am. Trucking Ass'ns*, 559 F.3d at 1058 (cited at Mot. 16; Reply 9); *see also* Spencer Decl. ¶ 8. Those harms confer Article III standing to seek injunctive relief and can be avoided only if enforcement of AB 51 is preliminarily enjoined.

C. All Agree That The Injunction Should Be Limited To Application Of AB 51 To Arbitration Agreements Governed By The FAA.

Finally, on the issue of severability, Plaintiffs have requested an injunction against enforcement of AB 51 only with respect to arbitration agreements governed by the FAA. Defendants agree with that limitation. *See* Supp. Br. 9-11.[3] The parties appear to disagree only on the severability of Section 432.6(b): Defendants maintain that it can be severed in its entirety (*id.* at 11), but in fact Section 432.6(b) is preempted to the same extent as Section 432.6(a).

AB 51 has two main substantive prohibitions, Section 432.6(a) and Section 432.6(b), which are written in parallel terms. They provide in full:

> **Section 432.6(a)** A person shall not, as a condition of employment, continued employment, or the receipt of any employment-related benefit, require any applicant for employment or any employee to waive any right, forum, or procedure for a violation of any provision of the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code) or this code, including the right to file and pursue a civil action or a complaint with, or otherwise notify, any state agency, other public prosecutor, law enforcement agency, or any court or other governmental entity of any alleged violation.

[2] The threat of criminal and civil penalties suffices to establish injury, but enforcement of AB 51 also can result in collateral harms. For example, California may deny professional licenses to individuals or entities "convicted of a crime." Cal. Bus. & Prof. Code § 480.

[3] Defendants assert that "[m]ore than 1.16 million transportation workers in California are not covered as a result of the FAA exemption under 9 U.S.C. § 1." Supp. Br. 10 n.3. The scope of the Section 1 exemption is not at issue here, but Defendants are vastly inflating the number of workers who fall within it. *See, e.g.*, Dkt. No. 80, at 8-15, *Heller v. Rasier, LLC*, No. 17-cv-8545 (C.D. Cal. Jan. 7, 2020) (granting a motion to compel arbitration by Uber and concluding that the plaintiff driver on Uber's platform "does not fit within the residual clause of the Section 1 exemption as a 'transportation worker' who is 'engaged in interstate commerce'").

> **Section 432.6(b)** An employer shall not threaten, retaliate or discriminate against, or terminate any applicant for employment or any employee because of the refusal to consent to the waiver of any right, forum, or procedure for a violation of the California Fair Employment and Housing Act or this code, including the right to file and pursue a civil action or a complaint with, or otherwise notify, any state agency, other public prosecutor, law enforcement agency, or any court or other governmental entity of any alleged violation.

In addition, Section 432.6(c) specifies that the use of an opt-out provision is deemed a "condition of employment" and therefore prohibited. Accordingly, consistent with this Court's statement at the hearing that " (a) and (c) need to be read together," Tr. 23:12-13, all agree that if Section 432.6(a) is enjoined, Section 432.6(c) must be enjoined as well. *See* Supp. Br. 10-11.

Defendants are wrong in asserting that "Section 432.6(b) stands independently on its own," even if Sections 432.6(a) and (c) are enjoined as preempted. Supp. Br. 11.

Portions of Section 432.6(b) have a practical effect virtually identical to the preempted portions of Section 432.6(a). For example, Section 432.6(b)'s prohibition on "retaliat[ing]" against or "terminat[ing]" any "applicant for employment" who is unwilling to agree to arbitration is just another way of saying that an employer may not include arbitration as one among many standard contract terms offered on a non-negotiable basis "as a condition of employment" under Section 432.6(a). The same is true of Section 432.6(b)'s prohibition on terminating existing employees who decline to agree to arbitration; that is no different than Section 432.6(a)'s prohibition on including arbitration as a condition "of continued employment." In either scenario, Sections 432.6(a) and (b) prohibit mirror images of the same methods of contract formation.

Moreover, Section 432.6(b) applies to an "applicant for employment," not only to "a long-term employee," as Defendants suggest. Supp. Br. 11. But even as applied to existing employees, Section 432.6(b) is preempted. Just as the State may not prohibit businesses from including arbitration among the contract terms presented as conditions of employment to new employees, the State may not prohibit businesses from discharging existing employees who refuse to agree to such provisions in revised agreements. For example, subject only to general principles of unconscionability or duress, a business may require an existing employee to accept different compensation, benefits, or work responsibilities as a condition of continued

employment. Under the FAA, a business has the federal right to include arbitration among the terms offered on the same basis—a right that Section 432.6(b) squarely impedes.

Finally, although Defendants do not raise the point in their brief, Plaintiffs want to make clear that they are *not* challenging Defendants' ability to enforce the language in Sections 432.6(a) and (b) that are based on waivers of the right to "*notify* any state agency, other public prosecutor, law enforcement agency, or any court or other governmental entity of any alleged violation" (emphasis added). Unlike the waiver of the right to go to court or to pursue a civil action in court or with an agency, waiver of the right to notify law enforcement officials of alleged misconduct is not a fundamental characteristic of arbitration agreements. On the contrary, the Supreme Court has long recognized that employees may notify enforcement authorities of alleged violations of law, and those authorities may, if the law allows, pursue remedies for the alleged violation on their own behalf. *See EEOC v. Waffle House, Inc.*, 534 U.S. 279, 290-96 (2002).

Accordingly, Plaintiffs seek a preliminary injunction (1) prohibiting Defendants from enforcing Sections 432.6 (a), (b), and (c) of the California Labor Code where the alleged "waiver of any right, forum, or procedure" is the entry into an arbitration agreement covered by the FAA; and (2) prohibiting Defendants from enforcing Section 12953 of the California Government Code where the alleged violation of "Section 432.6 of the Labor Code" is entering into an arbitration agreement covered by the FAA.[4]

CONCLUSION

The Court should enter a preliminary injunction, in the form of the proposed order accompanying this brief, prohibiting Defendants from enforcing certain provisions of AB 51 as applied to arbitration agreements protected by the FAA.

Dated: January 24, 2020

Respectfully submitted,

By: */s/ Donald M. Falk*
Donald M. Falk (SBN 150256)

[4] AB 51 adds Section 12953 to the California Government Code, which makes it "an unlawful employment practice for an employer to violate Section 432.6 of the Labor Code."

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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA and CALIFORNIA CHAMBER OF COMMERCE,

Plaintiffs,

v.

XAVIER BECERRA, in his official capacity as the Attorney General of the State of California, LILIA GARCIA BROWER, in her official capacity as the Labor Commissioner of the State of California, JULIE A. SU, in her official capacity as the Secretary of the California Labor and Workforce Development Agency, and KEVIN KISH, in his official capacity as Director of the California Department of Fair Employment and Housing of the State of California,

Defendants.

Case No. 2:19-cv-02456-KJM-DB

SUPPLEMENTAL DECLARATION OF BRIAN MAAS IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

Date: January 10, 2020
Time: 10:00 a.m.
Courtroom: 3, 15th Floor

Hon. Kimberly J. Mueller

I, Brian Maas, hereby declare that:

1. I submit this supplemental declaration in support of Plaintiffs' Motion for Preliminary Injunction. I previously submitted a declaration in this litigation. I have personal knowledge of the statements in this declaration and, if called as a witness, I could and would testify to their truth.

2. I am the President of the California New Car Dealers Association (CNCDA), a 501(c)(6) nonprofit corporation based in Sacramento, California. I have been an active member of the California bar since 1988.

3. CNCDA is a member of the California Chamber of Commerce, one of the plaintiffs in this matter.

4. CNCDA is the largest state automobile dealer association, representing more than 1,200 franchised new car and truck dealers throughout California. CNCDA members are primarily engaged in the retail sale and lease of new vehicles, and also engage in automotive service, repair, and part sales.

5. The core mission of CNCDA is to support and assist new car and truck dealers in California in addressing economic and regulatory compliance issues relating to their businesses. CNCDA focuses on protecting and promoting the interests of franchised new car dealers in advocacy before all state government and regulatory agencies on issues that include labor and employment, franchise laws, taxation, and environmental and safety regulation.

6. CNCDA has approximately 12 employees. CNCDA includes an arbitration agreement as part of its employee handbook, which each employee is required to sign to confirm the handbook's status as an agreement with CNCDA. Entering into that agreement, including the arbitration provision, is a condition of initial or continued employment with CNCDA. Those who do not sign the agreement will not be hired. Existing employees who do not sign a revised version of the handbook will be discharged. A true and correct copy of the cover and the "Employee Acknowledgement and Agreement" from the current employee handbook is attached as Exhibit A.

7. CNCDA uses an employment application form that includes a similar arbitration

provision. An applicant must sign the application, specifically including the arbitration agreement, as a condition of having the application considered. A true and correct copy of the employment application form is attached as Exhibit B.

8. CNCDA makes the same application form available to its members, many of whom use the form and thus make agreeing to arbitration a condition of having the application considered.

9. CNCDA also makes available to its members a form containing an at-will employment agreement and an arbitration agreement. A true and correct copy of the current version of that document is attached as Exhibit C. Many members use this form and make agreeing to arbitration a condition of employment.

10. If enforcement of AB 51 is not enjoined, CNCDA will not include an arbitration clause in the 2020 revision of its handbook or in any revisions of form contracts, because the risk of criminal prosecution and civil penalties is too severe.

11. Many member dealers also incorporate CNCDA's standalone arbitration agreement into their employment agreements.

12. I have personally engaged in direct communications about AB 51 with at least 25 of CNCDA's members with significant numbers of employees in California. Those communications reveal that:

a. Most of these members enter into agreements with their workers that include arbitration as a condition of the working relationship or on an opt-out basis. In other words, these members make agreeing to arbitration one of many conditions on the offer of employment, including the amount of wages, the duties of the working relationship, and the benefits provided to the worker. These members will not hire anyone who refuses to agree to arbitration (subject to any opt-out process in the arbitration agreement), just as they will not hire anyone who refuses to agree to the other conditions of the working relationship.

b. Many have expressed concerns that, if they continued to include such arbitration provisions in agreements with new employees or include new or revised arbitration provisions in new agreements with existing employees—and refuse to hire or retain new employees who do not agree to such provisions—they could be subject to enforcement actions

under AB 51 by the California Attorney General and other State officials and agencies;

c. All have expressed substantial concerns about the criminal and civil penalties imposed by AB 51;

d. Most, if not all, instead have made or intend to make changes to their contracting processes in an effort to comply with AB 51 and avoid the risk of criminal and civil penalties under the statute in the event that state enforcement of AB 51 is not enjoined. All of these members have incurred or will incur administrative costs that they would not have otherwise incurred in changing their employment contracts to eliminate arbitration as a condition of the working relationship.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 23rd day of January 2020, at Sacramento, California.

Brian Maas

EXHIBIT A

California New Car Dealers Association and Related Companies

Employee Handbook

EMPLOYEE ACKNOWLEDGMENT AND AGREEMENT

This will acknowledge that I have received my copy of the Employee Handbook and that I will familiarize myself with its contents.

I understand that this handbook represents the current policies, regulations, and benefits and that any and all policies or practices can be changed at any time by the Company. The Company retains the right to add, change or delete wages, benefits, policies and all other working conditions at any time (except the policy of "at-will employment" and Arbitration Agreement, which may not be changed, altered, revised or modified without a writing signed by the President of the Company).

I also acknowledge that the Company utilizes a system of alternative dispute resolution which involves binding arbitration to resolve all disputes which may arise out of the employment context. Because of the mutual benefits (such as reduced expense and increased efficiency) which private binding arbitration can provide both the Company and myself, I and the Company both agree that any claim, dispute, and/or controversy that either party may have against one another (including, but not limited to, any claims of discrimination and harassment, whether they be based on the California Fair Employment and Housing Act, Title VII of the Civil Rights Act of 1964, as amended, as well as all other applicable state or federal laws or regulations) which would otherwise require or allow resort to any court or other governmental dispute resolution forum between myself and the Company (or its owners, directors, officers, managers, employees, agents, and parties affiliated with its employee benefit and health plans) arising from, related to, or having any relationship or connection whatsoever with my seeking employment with, employment by, or other association with the Company, whether based on tort, contract, statutory, or equitable law, or otherwise, (with the sole exception of claims arising under the National Labor Relations Act which are brought before the National Labor Relations Board, claims for medical and disability benefits under the California Workers' Compensation Act, and Employment Development Department claims) shall be submitted to and determined exclusively by binding arbitration. In order to provide for the efficient and timely adjudication of claims, the arbitrator is prohibited from consolidating the claims of others into one proceeding. This means that an arbitrator will hear only my individual claims and does not have the authority to fashion a proceeding as a class or collective action or to award relief to a group of employees in one proceeding. Thus, the Company has the right to defeat any attempt by me to file or join other employees in a class, collective, representative, or joint action lawsuit or arbitration (collectively "class claims"). I and the Company both agree that any challenge to the prohibition against consolidating the claims of others into a single proceeding, whether as a class, a representative action or otherwise, is a gateway issue and shall be determined by the Superior Court; and any substantive claims shall not be decided by the arbitrator until after the gateway determination is made by the Court. I further understand that I will not be disciplined, discharged, or otherwise retaliated against for exercising my rights under Section 7 of the National Labor Relations Act, including but not limited to challenging the limitation on a class, collective, representative, or joint action. I understand and agree that nothing in this agreement shall be construed so as to preclude me from filing any administrative charge with, or from participating in any investigation of a charge conducted by, any government agency such as the

Department of Fair Employment and Housing and/or the Equal Employment Opportunity Commission; however, after I exhaust such administrative process/investigation, I understand and agree that I must pursue any such claims through this binding arbitration procedure. I acknowledge that the Company's business and the nature of my employment in that business affect interstate commerce. I agree that the arbitration and this Agreement shall be controlled by the Federal Arbitration Act, in conformity with the procedures of the California Arbitration Act (Cal. Code Civ. Proc. sec 1280 et seq., including section 1283.05 and all of the Act's other mandatory and permissive rights to discovery). However, in addition to requirements imposed by law, any arbitrator herein shall be a retired California Superior Court Judge and shall be subject to disqualification on the same grounds as would apply to a judge of such court. To the extent applicable in civil actions in California courts, the following shall apply and be observed: all rules of pleading (including the right of demurrer), all rules of evidence, all rights to resolution of the dispute by means of motions for summary judgment, judgment on the pleadings, and judgment under Code of Civil Procedure Section 631.8. Resolution of the dispute shall be based solely upon the law governing the claims and defenses pleaded, and the arbitrator may not invoke any basis (including, but not limited to, notions of "just cause") other than such controlling law. The arbitrator shall have the immunity of a judicial officer from civil liability when acting in the capacity of an arbitrator, which immunity supplements any other existing immunity. Likewise, all communications during or in connection with the arbitration proceedings are privileged in accordance with Cal. Civil Code Section 47(b). As reasonably required to allow full use and benefit of this Agreement's modifications to the Act's procedures, the arbitrator shall extend the times set by the Act for the giving of notices and setting of hearings. Awards shall include the arbitrator's written reasoned opinion. If CCP § 1284.2 conflicts with other substantive statutory provisions or controlling case law, the allocation of costs and arbitrator fees shall be governed by said statutory provisions or controlling case law instead of CCP § 1284.2. **Both the Company and I agree that any arbitration proceeding must move forward under the Federal Arbitration Act (9 U.S.C. §§ 3-4) even though the claims may also involve or relate to parties who are not parties to the arbitration agreement and/or claims that are not subject to arbitration: thus, the court may not refuse to enforce this arbitration agreement and may not stay the arbitration proceeding despite the provisions of California Code of Civil Procedure § 1281.2(c). I UNDERSTAND BY AGREEING TO THIS BINDING ARBITRATION PROVISION, BOTH I AND THE COMPANY GIVE UP OUR RIGHTS TO TRIAL BY JURY.**

I further understand that nothing in the Employee Handbook creates, or is intended to create, a promise or representation of continued employment and that my employment, position and compensation all are at-will, and may be changed or terminated at the will of the Company or I, with or without cause or notice.

This is the entire Agreement between the Company and I regarding dispute resolution, the length of my employment, and the reasons for termination of employment, and this Agreement supersedes any and all prior agreements regarding these issues to the extent that they differ from the foregoing. It is further agreed and understood that any agreement contrary to the foregoing must be entered into, in writing, by the President of the Company. No supervisor or representative of the Company, other than its President, has any authority to enter into any agreement for employment for any specified period of time or make any agreement contrary to the foregoing. Oral representations made before or after I am hired do not alter this Agreement.

If any term or provision, or portion of this Agreement, is declared void or unenforceable, it shall be severed and the remainder of this Agreement shall be enforceable.

MY SIGNATURE BELOW ATTESTS TO THE FACT THAT I HAVE READ, UNDERSTAND, AND AGREE TO BE LEGALLY BOUND TO ALL OF THE ABOVE TERMS.

DO NOT SIGN UNTIL YOU HAVE READ THE ABOVE ACKNOWLEDGMENT AND AGREEMENT.

Print Full Name: _____

Signature: _____

Date: _____

[RETAIN IN EMPLOYEE PERSONNEL FILE]

EXHIBIT B

APPLICATION FOR EMPLOYMENT

Company name		Date	
Company address			

Applicant's name	Last	First	Middle (not initial only)	
Position applying for		Full-Time ☐ Part-Time ☐	Expected Earnings	$ ☐ Hr. ☐ Mo. ☐ Yr.

List any other names (such as former names, aliases and nicknames) that you have used since high school to enable us to verify your work and education record

Last Name	First Name	Middle Name (not initial only)	Last Name	First Name	Middle Name (not initial only)

Home Address	Street				
City	State	ZIP	Since	Home Phone	Message/Mobile Phone
Email Address					

Prior places of residence (list all during the past seven years)

City	State	From month/yr	To month/yr	City	State	From month/yr	To month/yr
City	State	From month/yr	To month/yr	City	State	From month/yr	To month/yr

Can you accept a position immediately?	Yes ☐ No ☐	If not, how soon?	
If hired, can you furnish proof that you are at least 18 years of age?	Yes ☐ No ☐	If hired, are you authorized to work in the United States?	Yes ☐ No ☐

Do you have friends or relatives working here? If yes, please identify below:		Yes ☐ No ☐	
Name of friend or relative working here	Relationship	Name of friend or relative working here	Relationship

If a drivers license is required for the position for which you are applying, do you have a valid drivers license?		Yes ☐ No ☐
State	Expiration Date	

Have you been convicted of, or pleaded no contest to a traffic violation of any kind within the last FIVE years? If yes, please give date and details below (do not list information to juvenile offenses, such as convictions, arrest, detention and/or court dispositions as a juvenile; also, do not list any felonies and/or misdemeanors and limit your responses to traffic infractions):	Yes ☐ No ☐

EDUCATION	Elementary School	High School	College/University	Graduate/Professional
School name				
Years completed				
Diploma/Degree				
Describe Course of study or major				
Describe Specialized Training, Skills and Extra-Curricular Activities				

RECORD OF PREVIOUS EMPLOYMENT:

Have you worked for this Company or any other affiliate of this Company before? If Yes, please include below.	Yes ☐ No ☐

List the names of your previous employers in chronological order with present or last employer listed first. Be sure to account for all periods of time including military service and any period of unemployment. **If self-employed, list firm's name and business references.**

Present or Latest Employer	Employed	Your Title or Position	Name of Last Supervisor
Name	From (mo/yr)		
Telephone		Reason for Leaving	
Address	To (mo/yr)		

Present or Latest Employer	Employed	Your Title or Position	Name of Last Supervisor
Name	From (mo/yr)		
Telephone		Reason for Leaving	
Address	To (mo/yr)		

Present or Latest Employer	Employed	Your Title or Position	Name of Last Supervisor
Name	From (mo/yr)		
Telephone		Reason for Leaving	
Address	To (mo/yr)		

Present or Latest Employer	Employed	Your Title or Position	Name of Last Supervisor
Name	From (mo/yr)		
Telephone		Reason for Leaving	
Address	To (mo/yr)		

Present or Latest Employer	Employed	Your Title or Position	Name of Last Supervisor
Name	From (mo/yr)		
Telephone		Reason for Leaving	
Address	To (mo/yr)		

Present or Latest Employer	Employed	Your Title or Position	Name of Last Supervisor
Name	From (mo/yr)		
Telephone		Reason for Leaving	
Address	To (mo/yr)		

Present or Latest Employer	Employed	Your Title or Position	Name of Last Supervisor
Name	From (mo/yr)		
Telephone		Reason for Leaving	
Address	To (mo/yr)		

Have you ever been terminated or asked to resign from any job?	Yes ❐ No ❐	If yes, explain circumstances:

Please explain fully any gaps in your employment history (DO NOT LIST ANY CRIMINAL HISTORY OR MEDICAL INFORMAITON SUCH AS DISABILITY, ILLNESS OR PREGNANCY IN RESPONE TO THIS QUESTIONS):

If laid off, give reason:

May we contact your current employer?	Yes ❐ No ❐	If no, please explain:

CHARACTER REFERENCES:

Please list persons who know you well - not previous employers or relatives

Name	Occupation	Address (Street, City and State)	Telephone number	Years known

REMARKS AND SPECIAL QUALIFICATIONS:

Please include computer systems and programs with which you are familiar

This application will be considered active for a maximum of thirty (30) days. If you wish to be considered for employment after that time, you must reapply. Please read and sign on the next page.

APPLICANT STATEMENT AND AGREEMENT

In the event of my employment to a position in this Company, I will comply with all rules and regulations of this Company. I understand that the Company reserves the right to require me to submit to a test for the presence of drugs in my system prior to employment and at any time during my employment, to the extent permitted by law. I also understand that any offer of employment may be contingent upon the passing of a physical examination. Further, I understand that at any time after I am hired, the Company may require me to submit to an alcohol test, to the extent permitted by law. I consent to the disclosure of the results of any physical examination and tests results to the Company. I also understand that I may be required to take other tests such as personality and honesty tests prior to employment and during my employment. I understand that should I decline to sign this consent or decline to take any of the above tests, my application for employment may be rejected or my employment may be terminated. I understand that bonding may be a condition of hire. If it is, I will be so advised either before or after hiring and a bond application will have to be completed. hereby authorize the Company with which I have applied for employment to share my Application for Employment with other affiliated companies/employers, and hereby agree that all terms, conditions and/or agreements contained in this Applicant's Statement and Agreement, or any other documents pertaining to my application for employment, shall be enforceable by me and by such other companies/employers (including their managers, employees and agents), even though I have not signed a separate Applicant's Statement and Agreement for those other companies/employers.

By signing below, I acknowledge that the Company may contact my previous employers and I authorize those employers to disclose to the Company all records and information pertinent to my employment with them. In addition to authorizing the release of any information regarding my employment, I hereby fully waive any rights or claims I have or may have against my former employers, their agents, employees and representatives, as well as other individuals who release information to the Company, and release them from any and all liability, claims, or damages that may directly or indirectly result from the use, disclosure, or release of any such information by any person or party, whether such information is favorable or unfavorable to me. I authorize the persons named herein as personal references to provide the Company with any pertinent information they may have regarding myself. I further understand that as a condition of employment, I may be required to complete additional documentation which would permit the Company and its designated investigative Consumer Reporting Agency to conduct an investigation of my background, which may include inquiry into my past employment, education, and activities, including, but not limited to, credit, criminal background information and driving record.

☒ I do not wish to receive a copy of the Investigative Consumer (background) Report at no cost, if the Company collects, assembles, evaluates, compiles, reports, transmits, transfers, or communicates information on my character, general reputation, personnel characteristics, or mode of living, for employment purposes, which are matters of public record, and does not use the services of an investigative consumer reporting agency.

I also acknowledge that the Company utilizes a system of alternative dispute resolution which involves binding arbitration to resolve all disputes which may arise out of the employment context. Because of the mutual benefits (such as possible reduced expense and possible increased efficiency) which private binding arbitration can provide both the Company and myself, I and the Company both agree that any claim, dispute, and/or controversy that either party may have against one another (including, but not limited to, any claims of discrimination and harassment, whether they be based on the California Fair Employment and Housing Act, Title VII of the Civil Rights Act of 1964, as amended, as well as all other applicable state or federal laws or regulations) which would otherwise require or allow resort to any court or other governmental dispute resolution forum between myself and the Company (or its owners, directors, officers, managers, employees, agents, and parties affiliated with its employee benefit and health plans) arising from, related to, or having any relationship or connection whatsoever with my seeking employment with, employment by, or other association with the Company, whether based on tort, contract, statutory, or equitable law, or otherwise, (with the sole exception of claims arising under the National Labor Relations Act which are brought before the National Labor Relations Board, claims for medical and disability benefits under the California Workers' Compensation Act, claims for public injunctive relief, and Employment Development Department claims) shall be submitted to and determined exclusively by binding arbitration. In order to provide for the efficient and timely adjudication of claims, the arbitrator is prohibited from consolidating the claims of others into one proceeding. This means that an arbitrator will hear only my individual claims and does not have the authority to fashion a proceeding as a class or collective action or to award relief to a group of employees in one proceeding. Thus, the Company has the right to defeat any attempt by me to file or join other employees in a class, collective or joint action lawsuit or arbitration (collectively "class claims"). I and the Company both agree that any challenge to the prohibition against consolidating the claims of others into a single proceeding, whether as a class, a representative action or otherwise, is a gateway issue and shall be determined by the Superior Court; and any substantive claims shall not be decided by the arbitrator until after the gateway determination is made by the Court. I further understand that I will not be disciplined, discharged, or otherwise retaliated against for exercising my rights under Section 7 of the National Labor Relations Act, including but not limited to challenging the limitation on a class, collective, or joint action. I understand and agree that nothing in this agreement shall be construed so as to preclude me from filing any administrative charge with, or from participating in any investigation of a charge conducted by, any government agency such as the Department of Fair Employment and Housing and/or the Equal Employment Opportunity Commission; however, after I exhaust such administrative process/investigation, I understand and agree that I must pursue any such claims through this binding arbitration procedure. I acknowledge that the Company's business and the nature of my employment in that business affect interstate commerce. I agree that the arbitration and this Agreement shall be controlled by the Federal Arbitration Act, in conformity with the procedures of the California Arbitration Act (Cal. Code Civ. Proc. sec 1280 et seq., including section 1283.05 and all of the Act's other mandatory and permissive rights to discovery). However, in addition to requirements imposed by law, any arbitrator herein shall be a retired California Superior Court Judge and shall be subject to disqualification on the same grounds as would apply to a judge of such court. To the extent applicable in civil actions in California courts, the following shall apply and be observed: all rules of pleading (including the right of demurrer), all rules of evidence, all rights to resolution of the dispute by means of motions for summary judgment, judgment on the pleadings, and judgment under Code of Civil Procedure Section 631.8. Resolution of the dispute shall be based solely upon the law governing the claims and defenses pleaded, and the arbitrator may not invoke any basis (including, but not limited to, notions of "just cause") other than such controlling law. The arbitrator shall have the immunity of a judicial officer from civil liability when acting in the capacity of an arbitrator, which immunity supplements any other existing immunity. Likewise, all communications during or in connection with the arbitration proceedings are privileged in accordance with Cal. Civil Code Section 47(b). As reasonably required to allow full use and benefit of this Agreement's modifications to the Act's procedures, the arbitrator shall extend the times set by the Act for the giving of notices and setting of hearings. Awards shall include the arbitrator's written reasoned opinion. If CCP § 1284.2 conflicts with other substantive statutory provisions or controlling case law, the allocation of costs and arbitrator fees shall be governed by said statutory provisons or controlling case law instead of CCP § 1284.2. Both the Company and I agree that any arbitration proceeding must move forward under the Federal Arbitration Act (9 U.S.C. §§ 3-4) even though the claims may also involve or relate to parties who are not parties to the arbitration agreement and/or claims that are not subject to arbitration, thus, the court may not refuse to enforce this arbitration agreement and may not stay the arbitration proceeding despite the provisions of California Code of Civil Procedure § 1281.2(c). I UNDERSTAND BY AGREEING TO THIS BINDING ARBITRATION PROVISION, BOTH I AND THE COMPANY GIVE UP OUR RIGHTS TO TRIAL BY JURY.

I hereby state that all the information that I provided on this application or any other documents filled out in connection with my employment, and true and correct. I have withheld nothing that would, if disclosed, affect this application unfavorably. I understand that if I am employed and any such information is later found to be false or incomplete in any respect, I may be discharged from employment.

I agree as follows: My employment and compensation are terminable at will, are for no definite period, and my employment and compensation may be terminated by the Company (employer) at any time and for any reason whatsoever, with or without good cause at the option of either the Company or myself. Consequently, all terms and conditions of my employment, with the exception of the arbitration agreement, may be changed or withdrawn at Company's unrestricted option at any time, with or without good cause. No implied, oral or written agreements contrary to the express language of this agreement are valid unless they are in writing and signed by the President of the Company (or majority owner or owners if Company is not a corporation). No supervisor or representative of the Company, other than the President of the Company (or major owner or owners if Company is not a corporation), has any authority to make any agreements contrary to the foregoing. This agreement is the entire agreement between the Company and the employee regarding the rights of the Company or employee to terminate employment with or without good cause and this agreement takes the place of all prior and contemporaneous agreements, representations, and understandings of the employee and the Company.

Should any term or provision, or portion thereof, be declared void or unenforceable it shall be severed and the remainder of this agreement shall be enforced.

If you have any questions regarding this statement, please ask a Company representative before signing. I hereby acknowledge that I have read the above statements and understand the same.

DO NOT SIGN UNTIL YOU HAVE READ THE ABOVE STATEMENT & AGREEMENT

I hereby certify that this application was previously submitted by me online and that the information is accurate.

Applicant Signature

Date

DECLARACIÓN Y ACUERDO DEL SOLICITANTE

En caso de que se me empleara para ocupar un cargo en esta Compañia, cumpliré con todos los reglamentos y reglas de la misma. Comprendo que, antes de emplearme y en cualquier momento durante mi empleo. La Compañia se reserva el derecho de exigirme que me someta a un análisis para detectar la presencia de drogas en mi organismo, dentro de lo permitido por la ley. Comprendo también que cualquier oferta de empleo puede depender del hecho que yo pase un examen médico. Además, comprendo que en cualquier momento después de que se me emplea, la Compañia podria exigirme que me someta a un análisis de presencia de alcohol, dentro de lo permitido por la ley. Estoy de acuerdo con que se divulgue a la Compañia los resultados de los exámenes fisicos y análisis correspondientes. Comprendo asimismo que, antes de emplearme y durante mi empleo, se me podria exigir que tome otras pruebas tales como pruebas de la personalidad y honestidad. Comprendo que si me rehuso a firmar este consentimiento o a someterme a cualquier de los exámenes, análisis o pruebas antes mencionados, se podria rechazar mi solicitud de empleo o se podria despedir del mismo. Comprendo que una fianza podriá ser una condición de empleo. Si lo es, se me informará, que sea antes o después de emplearme y se tendrá que lienár una solicitud de fianza. Autorizo, por medio de mi firma abajo, que la compañia, con cual he solicitado el empleo, puede compartir mi Solicitud of Empleo con otras compañias/empleadores afiliadas y convengo por medio de este acuerdo que todos los términos, condiciones y/o acuerdos contenidos en esta Declaración y Acuerdo de Solicitante, o cualquieres otros documentos en cuanto a mi solicitud de empleo, serán ejecutorios por mi y por la otras compañias/empleadores (y sus gerentes, empleados y agentes), aun que no he firmado una Declaración y Acuerdo de Solicitante separado para esas otras compañias/empleadores.

Por mi firma abajo, comprendo que la Compañia podría comunicarse con mis empleadores anteriores y autorizo a dichos empleadores a divulgar a la Compañia todos los expedientes e información pertinente a mi empleo con ellos. Además de autorizar la entrega de cualquier información relativa a mi empleo, por el presente renuncio totalmente a cualquier derecho o reclamo que tenga o pueda tener contra mis empleadores anteriores, sus agentes, empleados y representantes, asi como otras personas que divulguen información a la Compañia y los libero de toda y cualquier responsabilidad, reclamo o daños que puedan ser consecuencia directa o indirecta del uso, divulgación o entrega de dicha información por cualquier persona o parte, ya sea que dicha información sea a mi favor o en contra mia. Autorizo a las personas nombradas en el presente como referencias personales a que proporcionen a la Compañia cualquier información pertinente que tengan respecto a mi persona. Tambien comprendo que, como condición de empleo, es posible que tendré que lienar otra documentación para que la Compañia y su agente investigativo de consumidor podría investigar mi historia, que incluye mi empleo, educacion y actividades, incluyendo mi expediente de credito, expediente criminal y mi expediente de manejo.

☒ No quiero una copia de mi expediente investigativo de consumidor sin costo a mi, si es que la Compañia investiga, reporta, collecta, evalua o communica informacion acerca de mi historia, que incluye mi empleo, educacion y actividades, incluyendo mi expediente de credito, expediente criminal y mi expediente de manejo, aun que la Compañia no usa el servicio de un agente investigativo de consumidor.

Entiendo que la Compañia fomenta un sistema alternativo para la resolución de disputas, lo cual incluye arbitraje obligatorio para resolver todas las disputas que se surgen en relación con mi empleo. Porque el arbitraje da muchos beneficios (tal como menos costos y mas eficaz), Yo y la Compañia aceptamos voluntariamente que cualquier reclamo, disputa o controversia (incluyendo, pero no limitarse a, cualquier queja de hostigamiento y/o discriminación, que sean basadas en el Fair Employment and Housing Act de California, Título VII del Decreto de Derechos Civiles de 1964, como enmendado, tal como otras leyes aplicables del estado o federales) que de otra forma requeriría o permitiria recurrir a cualquier tribunal u otro foro gubernamental para la soĺución de disputas entre mi persona y la Compañía (o sus propietarios, directores, funcionarios, oficiales, gerentes, empleados, agentes y personas o compañías afiliadas con sus planes de beneficios y médicos para empleados) que surjan de, se relacionen con, o tengan cualquier relación o conexión, sea con el hecho que yo busque empleo con, ser empleado por u otra relación con la Compañía, que se base en leyes sobre agravios, contratos, estatutarias o equitables u otras (a excepción de reclamos que se basen en el National Labor Relations Act en frente del National Labor Relations Board, reclamos par recibir beneficios médicos o por disabilidad bajo el California Workers Compensation Act, reclamos de mandato injuntivo public, y reclamos en el Employment Development Department), será presentado ante y determinado exclusivamente por arbitraje legalmente oblígatorio. Con el propósito a cumplir, en una manera oportuna y eficiente, la adjudicación de los reclamos, el árbitro está prohibido consolidar las reclamos o demandas de otras personas en un procedimiento solo. Esto significa que un árbitro decidirá sólo mis reclamos/demandas individuos y no el árbitro no tiene la autoridad para crear un procedimiento como una clase o de la acción colectiva, a ordenar recompensa a un grupo de empleados o otras personas en un procedimiento solo. Así, la Compañía tiene el derecho para derrotar cualquier intento de unirme a otras personas/empleados en una clase, una demanda colectiva o conjunta para el arbitraje (colectivamente "demandas de clase"). Yo y la Compañía estamos de acuerdo que cualquier desafío a la prohibición de consolidar las reclamaciones de los demás en un solo procedimiento, ya sea como una clase, una acción representativa o de lo contrario, es un asunto de primeros pasos y se determinará por el Corte Superior de California; y las reclamaciones sustantivas no serán decididas por el árbitro hasta después de la determinación de este asunto de primeros pasos este decidida por el Corte Superior. Yo entiendo que yo no puedo ser disciplinado, descargado o si no tomó represalias contra para ejercer mis derechos en la Sección 7 de la “National Labor Relations Act”, incluyendo, pero no limitado, a desafiar la limitación en una acción colectiva o conjunta de demandas. También comprendo y estoy de acuerdo de que nada en este acuerdo se me prohibe hacer una demanda administrativa con el “Department of Fair Employment and Housing” y/o el “Equal Employment Opportunity Commission”; aunque. después de terminar el proceso de investigación/proceso administrativo, entiendo y acepto que, tengo que presentar tales reclamos al arbitraje legalmente obligatorio. Estoy de acuerdo de que el negocio de la Compañía y la índole de mi empleo en ese negocio sobre Arbitrajes afecta el comercio. Acepto que el arbitraje y este Acuerdo serán controlado por el Decreto Federal sobre Arbitrajes, de acuerdo con los procedimientos de Decreto sobre Arbitrajes de California (Código de Procedimiento Civil de California, sección 1280 et seq., sobre procedimientos, incluyendo la sección 1283.05 y todas los demás derechos obligatorios y permisivos de descubrimiento que se encuentran en el Decreto); a condición de que, además de los requisitos exigidos por la ley, cualquier árbitro sea un Juez jubilado de la Corte Superior de California y será sometido a descalificación tal como un Juez del mismo Corte. Tal como sea aplicable que se rige en una demanda civil en los tribunales de California, lo siguiente se aplicará y se observará: todas los reglamentos sobre alegatos (incluyendo el derecho de excepción preventativa); todos los reglamentos de constancia; todos los reglamentos con respecto a una moción para desechar una demanda, una moción por un juicio sobre los alegatos, una moción por un juicio sumario (total o parcial); y/o, una moción por un juicio de acuerdo con Sección 631.8 del Código de Procedimiento Civil. La resolución de la disputa se basará únicamente en las leyes que gobiernen los reclamos alegados y las defensas, y que el árbitro no pueda invocar ninguna base que no sea la que controla dicha ley (incluyendo pero sin limitarse a nociones de “causa justificada”). El árbitro tendrá la inmunidad de un juez de responsabilidad civil cuando se acta en la capacidad de un árbitro. Esta inmunidad supersede otras formas de inmunidad. Asimismo, todas comunicaciones durante los procedimientos de arbitraje son privilegiados en acuerdo con el Código Civil de California, Sección 47(b). Como sea razonablemento necesarío para permitir uso y beneficio total de las modificaciones de este acuerdo, el árbitro se extenderá los limites de tiempo que se enuncian en el Decreto con respecto a dar noticias y fijar cualquier audición arbitral. Las adjudicaciones se incluirá una decisión escrita que se expone sus razones por la misma. Si hay un conflicto entre la Sección 1284.2 del Código de Procedimiento Civil y cualquier otra ley o decisión del tribunal, el costo del arbitraje y el árbitro se controla por dicha ley o decisión del tribunal en vez de la Sección 1284.2. La Compañía y Yo convenimos que cualquier procedimiento del arbitraje debe moverse adelante bajo el Acto Federal del Arbitraje (9 U.S.C. §§ 3-4) aunque las demandas pueden también implicar o relacionarse con los partidos que no son los partidos al acuerdo y/o a las demandas de arbitraje que no están conforme al arbitraje: así, la corte no puede rechazar este acuerdo de arbitraje, no puede permanecer el arbitraje, y tiene que proceder a pesar de las provisiones del Código Civil de California § 1281.2(c). Comprendo que al aceptar este acuerdo respecto al arbitraje legalmente obligatorio, tanto YO COMO LA COMPAÑIA RENUNCIAMOS A NUESTROS DERECHOS DE SOMETERNOS A JUICIO POR JURADOS.

Por el presente declaro que toda la información que yo he suministrado en esta solicitud o cualquier otro documento presentado en relación con mi empleo, y durante cualquier entrevista es verdadera y correcta. No he retenido nada que podria, si fuera revelado, afectar esta solicitud en forma desfavorable. Comprendo que si se me emplea y, más adelante se descubre que cualquier parte de dicha información es falsa en cualquier respecto, se me puede despedir.

Estoy de acuerdo con lo siguiente: mi empleo y remuneración pueden terminarse a voluntad, son por un plazo indefinido, y la Compañía (empleador) puede dar por terminados mi empleo, remuneración, u otros términos y/o condiciones de empleo (con excepción del acuerdo arbitraje) en cualquier momento y por cualquier motivo, con o sin motivo suficiente a opción de la Compañía o mia. Ningún acuerdo implícito, oral o escrito que contradiga el lenguaje expreso de este acuerdo es válido a menos que sea por escrito y firmadp por el Presidente de la Compañía (o el propietario mayoritario a propietarios mayoritarios si la Compañía no es una sociedad anónima). Ningún supervisor ni representante de la Compañía que no sea el Presidente de la misma (o el propietario mayoritario o propiertarios mayoritarios si la Compañía no es una sociedad anónima) tiene autoridad para firmar un acuerdo que contradiga lo antedicho. Este acuerdo es el acuerdo total entre la Compañía y yo respecto al derecho de la Compañía, o el mió para terminar el empleo con o sin motivo suficiente, y este acuerdo toma el lugar de todas los acuerdos, representaciones y entendimientos anteriores y contemporáneos entre la Compañía y yo.

Si es que un término o una provisión, o una porción del mismo, se declare inválido o que no se pueda ser impuesto, lo mismo será cortado y lo demás de este acuerdo será válido y impuesto.

Si tiene alguna pregunta acerca de esta declaración, sirvase hacerla a un representante de la Compañia antes de firmar el documento. Por el resente atesto que he leido la declaración anterior y que comprendo su contenido.

NO FIRME EL DOUMENTO ANTES DE LEER LA DECLARACION Y ACUERDO ANTERIOR.

Por el presente Yo certifico que esta Solicutud fue presentado por mi en antes en forma electrónica y la información presentada es verdadera.

Firma del candidate	Fecha

EXHIBIT C

Instructions: Have employee sign and date and then place in personnel file.

AGREEMENTS

Between California New Car Dealer Association "Company"

and _____ "Employee"

At Will Employment Agreement

I agree as follows: My employment and compensation is terminable at-will, is for no definite period, and my employment and compensation may be terminated by the Company (employer) at any time and for any reason whatsoever, with or without good cause at the option of either the Company or myself. Consequently, all terms and conditions of my employment may be changed or withdrawn at Company's unrestricted option at any time, with or without good cause. No implied, oral, or written agreements contrary to the express language of this agreement are valid unless they are in writing and signed by the President of the Company (or majority owner or owners if Company is not a corporation). No supervisor or representative of the Company, other than the Owner of the Company, has any authority to make any agreements contrary to the foregoing. This agreement is the entire agreement between the Company and the employee regarding the rights of the Company or employee to terminate employment with or without good cause, and this agreement takes the place of all prior and contemporaneous agreements, representations, and understandings of the employee and the Company.

_____ _____

Signature - Date

Binding Arbitration Agreement

I also acknowledge that the Company utilizes a system of alternative dispute resolution which involves binding arbitration to resolve all disputes which may arise out of the employment context. Because of the mutual benefits (such as reduced expense and increased efficiency) which private binding arbitration can provide both the Company and myself, I and the Company both agree that any claim, dispute, and/or controversy that either party may have against one another (including, but not limited to, any claims of discrimination and harassment, whether they be based on the California Fair Employment and Housing Act, Title VII of the Civil Rights Act of 1964, as amended, as well as all other applicable state or federal laws or regulations) which would otherwise require or allow resort to any court or other governmental dispute resolution forum between myself and the Company (or its owners, directors, officers, managers, employees, agents, and parties affiliated with its employee benefit and health plans) arising from, related to, or having any relationship or connection whatsoever with my seeking employment with, employment by, or other association with the Company, whether based on tort, contract, statutory, or equitable law, or otherwise, (with the sole exception of claims arising under the National Labor Relations Act which are brought before the National Labor Relations Board, claims for medical and disability benefits under the California Workers' Compensation Act, and Employment Development Department claims) shall be submitted

to and determined exclusively by binding arbitration. I understand and agree that nothing in this agreement shall be construed so as to preclude me from filing any administrative charge with, or from participating in any investigation of a charge conducted by, any government agency such as the Department of Fair Employment and Housing and/or the Equal Employment Opportunity Commission; however, after I exhaust such administrative process/investigation, I understand and agree that I must pursue any such claims through this binding arbitration procedure. I acknowledge that the Company's business and the nature of my employment in that business affect interstate commerce. I agree that the arbitration and this Agreement shall be controlled by the Federal Arbitration Act, in conformity with the procedures of the California Arbitration Act (Cal. Code Civ. Proc. sec 1280 et seq., including section 1283.05 and all of the Act's other mandatory and permissive rights to discovery). However, in addition to requirements imposed by law, any arbitrator herein shall be a retired California Superior Court Judge and shall be subject to disqualification on the same grounds as would apply to a judge of such court. To the extent applicable in civil actions in California courts, the following shall apply and be observed: all rules of pleading (including the right of demurrer), all rules of evidence, all rights to resolution of the dispute by means of motions for summary judgment, judgment on the pleadings, and judgment under Code of Civil Procedure Section 631.8. Resolution of the dispute shall be based solely upon the law governing the claims and defenses pleaded, and the arbitrator may not invoke any basis (including, but not limited to, notions of "just cause") other than such controlling law. The arbitrator shall have the immunity of a judicial officer from civil liability when acting in the capacity of an arbitrator, which immunity supplements any other existing immunity. Likewise, all communications during or in connection with the arbitration proceedings are privileged in accordance with Cal. Civil Code Section 47(b). As reasonably required to allow full use and benefit of this Agreement's modifications to the Act's procedures, the arbitrator shall extend the times set by the Act for the giving of notices and setting of hearings. Awards shall include the arbitrator's written reasoned opinion. If CCP § 1284.2 conflicts with other substantive statutory provisions or controlling case law, the allocation of costs and arbitrator fees shall be governed by said statutory provisions or controlling case law instead of CCP § 1284.2. Both the Company and I agree that any arbitration proceeding must move forward under the Federal Arbitration Act (9 U.S.C. §§ 3-4) even though the claims may also involve or relate to parties who are not parties to the arbitration agreement and/or claims that are not subject to arbitration: thus, the court may not refuse to enforce this arbitration agreement and may not stay the arbitration proceeding despite the provisions of California Code of Civil Procedure § 1281.2(c). **I UNDERSTAND BY AGREEING TO THIS BINDING ARBITRATION PROVISION, BOTH I AND THE COMPANY GIVE UP OUR RIGHTS TO TRIAL BY JURY.**

Signature - _____ Date _____

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Attorneys for Plaintiffs National Retail Federation, California Retailers Association National Association of Security Companies, Home Care Association of America, and California Association for Health Services at Home

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA and CALIFORNIA CHAMBER OF COMMERCE,

Plaintiffs,

v.

XAVIER BECERRA, in his official capacity as the Attorney General of the State of California, LILIA GARCIA BROWER, in her official capacity as the Labor Commissioner of the State of California, JULIE A. SU, in her official capacity as the Secretary of the California Labor and Workforce Development Agency, and KEVIN KISH, in his official capacity as Director of the California Department of Fair Employment and Housing of the State of California,

Defendants.

Case No. 2:19-cv-02456-KJM-DB

DECLARATION OF GLENN SPENCER IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

Date: January 10, 2020
Time: 10:00 a.m.
Courtroom: 3, 15th Floor

Hon. Kimberly J. Mueller

I, Glenn Spencer, hereby declare:

1. I submit this declaration in support of Plaintiffs' Motion for Preliminary Injunction. I have personal knowledge of the statements in this declaration and, if called as a witness, I could and would testify to their truth.

2. I am the Senior Vice President of the Employment Policy Division at the Chamber of Commerce of the United States of America (the "Chamber"), one of the Plaintiffs in this matter. In that capacity, I lead the Chamber's work on all aspects of employment policy, including state labor and employment policy.

3. The Chamber is the world's largest business federation, representing approximately 300,000 direct members and indirectly representing an underlying membership of more than three million U.S. businesses and professional organizations of every size and in every economic sector and geographic region of the country. The Chamber has tens of thousands of members that have employees in California. Many of these members—both businesses and organizations alike—require their employees to agree to arbitrate disputes arising from the employment relationship. The Chamber routinely advocates in federal and state courts on matters of federal arbitration law, including by the filing of lawsuits challenging anti-business laws and regulatory actions that restrict businesses from entering into and enforcing arbitration agreements protected by federal law.

4. The Chamber's mission is to advocate for policies that help businesses grow and create jobs in their communities, including in California. As part of advancing that mission, the Chamber seeks to preserve the ability of its members, and the business community more broadly, to enter into arbitration agreements with their workers to resolve workplace-related disputes.

5. There are many members of the Chamber that have employees in California that enter into agreements with their workers that include arbitration as a condition of the working relationship or on an opt-out basis. In other words, these members make agreeing to arbitration one of many conditions on the offer of employment, including the amount of wages, the duties of the working relationship, and the benefits provided to the worker. These members will not hire anyone who refuses to agree to arbitration (subject to any opt-out process in the arbitration

agreement), just as they will not hire anyone who refuses to agree to the other conditions of the working relationship.

6. If those members continue to include such arbitration provisions in agreements with new employees or include new or revised arbitration provisions in new agreements with existing employees—and refuse to hire or retain employees who do not agree to such provisions—they could be subject to enforcement actions under AB 51 by the California Attorney General and other State officials and agencies, including criminal and civil penalties imposed by AB 51.

7. In the wake of the Temporary Restraining Order issued by the District Court on the basis that AB 51 is preempted as applied to arbitration agreements covered by the Federal Arbitration Act, those members of the Chamber that already use arbitration have continued to enter into agreements with their workers that include arbitration as a condition of the working relationship or on an opt-out basis. I am not aware of any Chamber members that previously made an agreement to arbitrate employment disputes a condition of the employment relationship that have changed their practices since the District Court entered its Temporary Restraining Order on December 30, 2019.

8. If AB 51 does not continue to be enjoined as applied to arbitration agreements, then members of the Chamber that require employees in California to arbitrate disputes arising from the employment relationship will incur unrecoverable costs to comply with AB 51. They will either have to make changes to their contracting processes in an effort to comply with AB 51, which will include administrative and labor costs to change employment agreements, employee handbooks and policies, and other changes to practices and processes to eliminate arbitration as a condition of the working relationship; or they will face criminal and civil penalties if they do not eliminate arbitration as a requirement of the employment relationship. And they will face significant legal costs either from coming into compliance with AB 51 and, thus, subjecting themselves to greater litigation costs in federal or state court instead of arbitrating disputes, or from continuing their current employment practices, thus subjecting themselves to civil and criminal enforcement actions.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 24 day of January, 2020, at Washington, D.C.

Glenn Spencer

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Attorneys for Plaintiffs National Retail Federation, California Retailers Association National Association of Security Companies Home Care Association of America, and California Association for Health Services at Home

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA and CALIFORNIA CHAMBER OF COMMERCE,

Plaintiffs,

v.

XAVIER BECERRA, in his official capacity as the Attorney General of the State of California, LILIA GARCIA BROWER, in her official capacity as the Labor Commissioner of the State of California, JULIE A. SU, in her official capacity as the Secretary of the California Labor and Workforce Development Agency, and KEVIN KISH, in his official capacity as Director of the California Department of Fair Employment and Housing of the State of California,

Defendants.

Case No. 2:19-cv-02456-KJM-DB

DECLARATION OF JENNIFER BARRERA IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

Date: January 10, 2020
Time: 10:00 a.m.
Courtroom: 3, 15th Floor

Hon. Kimberly J. Mueller

I, Jennifer Barrera, hereby declare:

1. I submit this declaration in support of Plaintiffs' Motion for Preliminary Injunction. I have personal knowledge of the statements in this declaration and, if called as a witness, I could and would testify to their truth.

2. I am the Executive Vice President for the California Chamber of Commerce ("CalChamber"), one of the Plaintiffs in this matter. In that capacity, I regularly interact with CalChamber members on policy issues pending before the Legislature as well as legislation that has been signed into law.

3. CalChamber is a not-for-profit organization that seeks to transform California's business landscape through advocacy. Its members consist of more than 14,000 California private-sector employers, who together employ more than one-fourth of the private sector workforce in California. On behalf of its members, CalChamber advocates on behalf of California businesses before the California Legislature and California state and federal courts for pro-business measures that will foster economic growth.

4. CalChamber's mission is to enhance the California economy and make California a better place to live, work and do business. As part of advancing that mission, CalChamber seeks to preserve the ability of its members, and the business community more broadly, to enter into arbitration agreements with their workers to resolve workplace-related disputes.

5. I have personally engaged in direct communications about AB 51 with several CalChamber members with significant numbers of employees in California. Those communications reveal that:

a. All these members utilize employment arbitration agreements and believe that they will be impacted if AB 51 goes into effect because they treat arbitration as one of many conditions of employment.

b. All of these members have expressed concerns that, if they continue to include such arbitration provisions in agreements with new employees or include new or revised arbitration provisions in new agreements with existing employees, they could be subject to enforcement actions under AB 51 by the California Attorney General and other State officials and

agencies even though the members believe that AB 51 is preempted by federal law;

c. All of these members also expressed substantial concerns about the choices they would have to make if AB 51 goes into effect, such as whether to change their employment practices and form employment agreements, or to risk the criminal and civil penalties imposed by AB 51 by continuing to treat arbitration as a condition of employment.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 24 day of January, 2020, at Sacramento, California.

Jennifer Barrera

MAYER BROWN LLP

Donald M. Falk (SBN 150256)
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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, ET AL,

Plaintiffs,

v.

XAVIER BECERRA, ET AL,

Defendants.

Case No. 2:19-cv-02456-KJM-DB

DECLARATION OF STEPHANIE A. MARTZ IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

I, Stephanie A. Martz, hereby declare as follows based upon personal knowledge:

1. I am the Chief Administrative Officer, Senior Vice President, and General Counsel of the National Retail Federation (NRF), one of the co-plaintiffs in this case. NRF is the world's largest retail trade association, representing all aspects of the retail industry. NRF's membership includes discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants, and Internet retailers. Retail is the nation's largest private sector employer, supporting one in four U.S. jobs—42 million working Americans and contributing $2.6 trillion to annual GDP.

2. Many NRF members are either headquartered or doing business in California, and they regularly rely on arbitration as a condition of employment or require workers who do not wish to arbitrate potential disputes to affirmatively opt out of arbitration. It is our understanding that both types of policies are made unlawful by AB 51, in a manner inconsistent with and preempted by the Federal Arbitration Act, ("FAA"), 9 U.S.C. § 1.

3. More specifically, under the arbitration policies referred to above, numerous NRF members in California have communicated to me that they regularly refuse to hire or instead terminate employees who refuse to enter into arbitration agreements. Some members have communicated to me that their policies allow employees to affirmatively opt out of arbitration as a condition of hiring or in order to avoid termination of employment.

4. I have personally reviewed samples of the arbitration policies currently in use by our California member companies and have confirmed that they either condition employment on the employees' acceptance of arbitration of all employment-related claims or that they allow employees to opt out of the arbitration requirement by taking specific steps.

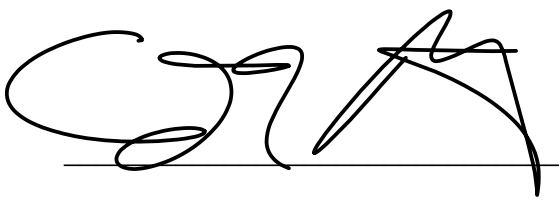
5. NRF's members do not typically employ transportation workers who are exempt from FAA coverage under 9 U.S.C. § 1 (exempting contracts of employment of "seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce."). As a result, the employees of NRF's members who are subject to the arbitration policies described above, and the arbitration agreements resulting from such policies, are covered by the FAA.

6. NRF's California members have communicated to me that they are continuing to apply their above-described arbitration policies in the hiring and contract extension process, based upon the temporary injunction now in place. Absent further injunctive relief against AB 51, however, NRF members who continue to impose their arbitration policies in California will face irreparable harm, including imminent, credible threats of both criminal prosecution and civil penalties under the plain language of AB 51, even though their policies fall squarely within the protections of the FAA as repeatedly interpreted by the Supreme Court.

7. NRF is bringing this action in its representative capacity on behalf of its California members who are threatened with injury directly attributable to AB 51. Individual member participation is unnecessary for such associational standing, and this action falls squarely within the mission and purpose of NRF to advance the interests of the industry as a whole and to protect its members from unlawful state statutes.

8. NRF is also bringing this action in its own behalf because the association itself is injured by the diversion of association resources caused directly by AB 51. Such diversion consists of the need to pay legal fees and devote lobbying time and resources to protecting the retail industry from the unlawful provisions of AB 51. The association has further been compelled to spend time and resources counseling its members on the harms threatened by AB 51 and the impact of the new law on arbitration policies. The impact of AB 51 on NRF's limited resources is not speculative; it has already happened. NRF therefore has standing to bring this action on its own behalf as well as on behalf of its individual members.

I swear under penalties of perjury that the foregoing statements are true.



_____ __1-23-2020_____

Stephanie A. Martz Date

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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, ET AL,

Plaintiffs,

v.

XAVIER BECERRA, ET AL,

Defendants.

Case No. 2:19-cv-02456-KJM-DB

DECLARATION OF RACHEL MICHELIN IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

I, Rachel Michelin, hereby declare as follows based upon personal knowledge:

1. I am President and CEO of the California Retailers Association (CRA). The CRA works on behalf of California's retail industry, which currently operates over 418,840 retail establishments with a gross domestic product of $330 billion annually and employs more than 3 million people – one fourth of California's total employment. CRA is the only statewide trade association representing all segments of the retail industry,

2. Virtually all CRA members are either headquartered or do business in California, and they regularly rely on arbitration as a condition of employment or require workers who do not wish to arbitrate potential disputes to affirmatively opt out of arbitration. It is our understanding that both types of policies are made unlawful by AB 51, in a manner inconsistent with and preempted by the Federal Arbitration Act, ("FAA"), 9 U.S.C. § 1.

3. More specifically, under the arbitration policies referred to above, many CRA members regularly refuse to hire or terminate employees who refuse to enter into arbitration agreements, though some members' policies allow employees to affirmatively opt out of arbitration as a condition of hiring or in order to avoid termination of employment. I have personally confirmed the existence and continuing nature of such policies among CRA members employing workers in California.

4. The employees of CRA members who are subject to the arbitration policies described above, and the arbitration agreements resulting from such policies, are covered by the FAA. CRA's members do not typically employ transportation workers who are exempt from FAA coverage under 9 U.S.C. § 1 (exempting contracts of employment of "seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.").

5. Numerous CRA members have communicated to me that they are continuing to apply their above-described arbitration policies in the hiring and contract extension process, based upon the temporary injunction now in place. Absent further injunctive relief against AB 51, however, CRA members who continue to impose their arbitration policies in California will face irreparable harm, including imminent, credible threats of both criminal prosecution and civil penalties under the plain language of AB 51, even though their policies fall squarely within the protections of the FAA as repeatedly interpreted by the Supreme Court.

6. CRA is bringing this action in its representative capacity on behalf of its California members who are threatened with injury directly attributable to AB 51. Individual member participation is unnecessary for such associational standing, and this action falls squarely within the mission and purpose of CRA to advance the interests of the industry as a whole and to protect its members from unlawful state statutes.

7. CRA is also bringing this action in its own behalf because the association itself is injured by the diversion of association resources caused directly by AB 51. Such diversion consists of the need to pay legal fees and devote time and resources to protecting the retail industry from the unlawful provisions of AB 51. The association has further been compelled to spend time and resources counseling its members on the harms threatened by AB 51 and the impact of the new law on arbitration policies. The impact of AB 51 on CRA's limited resources is not speculative; it has already happened. CRA therefore has standing to bring this action on its own behalf as well as on behalf of its individual members.

I swear under penalties of perjury that the foregoing statements are true.

Rachel Michelin

1/23/2020

Date

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CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, ET AL,

Plaintiffs,

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XAVIER BECERRA, ET AL,

Defendants.

Case No. 2:19-cv-02456-KJM-DB

DECLARATION OF STEVE AMITAY IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

I, Steve Amitay, hereby declare as follows based upon personal knowledge:

1. I am the Executive Director of the National Association of Security Companies (NASCO), one of the co-plaintiffs in this case. NASCO is the nation's largest contract security association, representing private security companies employing more than 450,000 of the nation's most highly trained security officers servicing the public and private sector throughout the United States. NASCO monitors and participates in activities affecting private security companies and officers servicing the public and private sectors throughout the United States, including California.

2. A significant number of NASCO's members are either headquartered or doing business in California, and they regularly rely on policies currently in place that mandate arbitration as a condition of employment and/or require workers who do not wish to arbitrate potential disputes to affirmatively opt out of arbitration. It is our understanding that both types of policies are made unlawful by AB 51, in a manner inconsistent with and preempted by the Federal Arbitration Act, ("FAA"), 9 U.S.C. § 1.

3. More specifically, under the arbitration policies referred to above, NASCO members in California regularly refuse to hire or terminate employees who refuse to enter into arbitration agreements, though some members' policies allow employees to affirmatively opt out of arbitration as a condition of hiring or in order to avoid termination of employment. I have personally confirmed the existence and continuing nature of such policies among NASCO members employing security officers in California.

4. The employees of NASCO members who are subject to the arbitration policies described above, and the arbitration agreements resulting from such policies, are covered by the FAA. NASCO's members do not typically employ transportation workers who are exempt from FAA coverage under 9 U.S.C. § 1 (exempting contracts of employment of "seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.").

5. NASCO's California members have communicated to me that they are continuing to apply their above-described arbitration policies in the hiring and contract extension process, based upon the temporary injunction now in place. Absent further injunctive relief against AB 51, however, NASCO members who continue to impose their arbitration policies in California will face irreparable harm, including imminent, credible threats of both criminal prosecution and civil penalties under the plain language of AB 51, even though their policies fall squarely within the protections of the FAA as repeatedly interpreted by the Supreme Court.

6. NASCO is bringing this action in its representative capacity on behalf of its California members who are threatened with injury directly attributable to AB 51. Individual member participation is unnecessary for such associational standing, and this action falls squarely within the mission and purpose of NASCO to advance the interests of the industry as a whole and to protect its members from unlawful state statutes.

7. NASCO is also bringing this action in its own behalf because the association itself is injured by the diversion of association resources caused directly by AB 51. Such diversion consists of the need to pay legal fees and devote time and resources to protecting the security industry from the unlawful provisions of AB 51. The association has further been compelled to spend time and resources counseling its members on the harms threatened by AB 51 and the impact of the new law on arbitration policies. The impact of AB 51 on NASCO's limited resources is not speculative; it has already happened. NASCO therefore has standing to bring this action on its own behalf as well as on behalf of its individual members.

I swear under penalties of perjury that the foregoing statements are true.

Steve Amitay

1/23/20

Steve Amitay

Date

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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, ET AL,

Plaintiffs,

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Defendants.

Case No. 2:19-cv-02456-KJM-DB

DECLARATION OF DEAN CHALIOS IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

I, Dean Chalios, hereby declare as follows based upon personal knowledge:

1. I am President and CEO of the California Association for Health Services at Home (CAHSAH). CAHSAH is a California non-profit mutual benefit corporation whose mission is to promote quality home care and enhance the effectiveness of its members. CAHSAH comprises and represents hundreds of members located throughout the State, as well as dozens of affiliates providing health and supportive services and products in the home.

2. Virtually all of CAHSAH's members are either headquartered or do business in California, and they regularly rely on arbitration as a condition of employment or require workers who do not wish to arbitrate potential disputes to affirmatively opt out of arbitration. It is our understanding that both types of policies are made unlawful by AB 51, in a manner inconsistent with and preempted by the Federal Arbitration Act, ("FAA"), 9 U.S.C. § 1.

3. Given the prohibitive cost of litigation in California and the ongoing difficulty in hiring caregivers in our state's current labor market, enforcement of the provisions of AB 51 disallowing our members from requiring arbitration as a means of dispute resolution will have a significant negative impact on CAHSAH members providing home and hospice care to tens of thousands of California residents daily.

4. The employees of CAHSAH members who are subject to the arbitration policies described above, and the arbitration agreements resulting from such policies, are covered by the FAA. CAHSAH's members do not typically employ transportation workers who are exempt from FAA coverage under 9 U.S.C. § 1 (exempting contracts of employment of "seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.").

5. Numerous CAHSAH members have communicated to me that they are continuing to apply their above-described arbitration policies in the hiring and contract extension process, based upon the temporary injunction now in place. Absent further injunctive relief against AB 51, however, CAHSAH members who continue to impose their arbitration policies in California will face irreparable harm, including imminent, credible threats of both criminal prosecution and civil penalties under the plain language of AB 51, even though their policies fall squarely within the protections of the FAA as repeatedly interpreted by the Supreme Court.

6. CAHSAH is bringing this action in its representative capacity on behalf of its California members who are threatened with injury directly attributable to AB 51. Individual member participation is unnecessary for such associational standing, and this action falls squarely within the mission and purpose of CAHSAH to advance the interests of the industry as a whole and to protect its members from unlawful state statutes.

7. CAHSAH is also bringing this action in its own behalf because the association itself is injured by the diversion of association resources caused directly by AB 51. Such diversion consists of the need to pay legal fees and devote time and resources to protecting the home care industry from the unlawful provisions of AB 51. The association has further been compelled to spend time and resources counseling its members on the harms threatened by AB 51 and the impact of the new law on arbitration policies. The impact of AB 51 on CAHSAH's limited resources is not speculative; it has already happened. CAHSAH therefore has standing to bring this action on its own behalf as well as on behalf of its individual members.

I swear under penalties of perjury that the foregoing statements are true.

1/24/20

Dean Chalios Date

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Plaintiffs,

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Defendants.

Case No. 2:19-cv-02456-KJM-DB

DECLARATION OF VICKI HOAK IN SUPPORT OF PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

I, Vicki Hoak, hereby declare as follows based upon personal knowledge:

1. I am Executive Director of the Home Care Association of America (HCAOA). HCAOA is the home care industry's leading trade association – currently representing nearly 3,000 companies that employ more than 500,000 caregivers across the United States, many of whom are based in California. HCAOA protects industry interests, promotes industry values, tackles barriers to growth and takes on industry-wide issues. HCAOA is a champion and advocate for its members, for caregivers, and for seniors in California and across America.

2. Many HCAOA members are either headquartered or do business in California, and they regularly rely on arbitration as a condition of employment or require workers who do not wish to arbitrate potential disputes to affirmatively opt out of arbitration. It is our understanding that both types of policies are made unlawful by AB 51, in a manner inconsistent with and preempted by the Federal Arbitration Act, ("FAA"), 9 U.S.C. § 1.

3. Given the prohibitive cost of litigation in California and the ongoing difficulty in hiring caregivers in the state's current labor market, enforcement of the provisions of AB 51 disallowing our California members from requiring arbitration as a means of dispute resolution will have a significant negative impact on HCAOA members providing home and hospice care to tens of thousands of California residents daily.

4. The employees of HCAOA members who are subject to the arbitration policies described above, and the arbitration agreements resulting from such policies, are covered by the FAA. HCAOA's members do not typically employ transportation workers who are exempt from FAA coverage under 9 U.S.C. § 1 (exempting contracts of employment of "seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.").

5. HCAOA members have communicated to me that they are continuing to apply their above-described arbitration policies in the hiring and contract extension process, based upon the temporary injunction now in place. Absent further injunctive relief against AB 51, however, HCAOA members who continue to impose their arbitration policies in California will face irreparable harm, including imminent, credible threats of both criminal prosecution and civil penalties under the plain language of AB 51, even though their policies fall squarely within the protections of the FAA as repeatedly interpreted by the Supreme Court.

6. HCAOA is bringing this action in its representative capacity on behalf of its California members who are threatened with injury directly attributable to AB 51. Individual member participation is unnecessary for such associational standing, and this action falls squarely within the mission and purpose of HCAOA to advance the interests of the industry as a whole and to protect its members from unlawful state statutes.

7. HCAOA is also bringing this action in its own behalf because the association itself is injured by the diversion of association resources caused directly by AB 51. Such diversion consists of the need to pay legal fees and devote time and resources to protecting the home care industry from the unlawful provisions of AB 51. The association has further been compelled to spend time and resources counseling its members on the harms threatened by AB 51 and the impact of the new law on arbitration policies. The impact of AB 51 on HCAOA's limited resources is not speculative; it has already happened. HCAOA therefore has standing to bring this action on its own behalf as well as on behalf of its individual members.

I swear under penalties of perjury that the foregoing statements are true.

Vicki Hoak

1/24/20

Vicki Hoak

Date

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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, CALIFORNIA CHAMBER OF COMMERCE, NATIONAL RETAIL FEDERATION, CALIFORNIA RETAILERS ASSOCIATION, NATIONAL ASSOCIATION OF SECURITY COMPANIES, HOME CARE ASSOCIATION OF AMERICA, and CALIFORNIA ASSOCIATION FOR HEALTH SERVICES AT HOME,

Plaintiffs,

v.

XAVIER BECERRA, in his official capacity as the Attorney General of the State of California, LILIA GARCIA BROWER, in her official capacity as the Labor Commissioner of the State of California, JULIE A. SU, in her official capacity as the Secretary of the California Labor and Workforce Development Agency, and KEVIN KISH, in his official capacity as Director of the Department of Fair Employment and Housing of the State of California.

Defendants.

Case No. 2:19-cv-02456-KJM-DB

REVISED [PROPOSED] ORDER REGARDING PRELIMINARY INJUNCTION

Date: January 10, 2020
Time: 10:00 a.m.
Courtroom: 3, 15th Floor

Hon. Kimberly J. Mueller

Plaintiffs' motion for a preliminary injunction came for hearing on January 10, 2020. All appearances for the parties were noted on the record.

Upon reading and considering the motion, the supplemental briefing, the supporting documents, the evidence presented in support therefore, and the oral argument of counsel, the Court finds that Plaintiffs have carried their burden of demonstrating that they are likely to succeed on the merits, that they would be irreparably harmed in the absence of injunctive relief, that the equities weigh in favor of granting the requested preliminary injunction, and that the injunction would not be against the public interest.

Accordingly, IT IS HEREBY ORDERED that Plaintiffs' motion for a preliminary injunction is GRANTED.

The Court orders as follows:

1. Defendant Xavier Becerra, in his official capacity as the Attorney General of the State of California, Lilia Garcia Brower, in her official capacity as the Labor Commissioner of the State of California, Julia A. Su, in her official capacity as the Secretary of the California Labor and Workforce Development Agency, and Kevin Kish, in his official capacity as Director of the California Department of Fair Employment and Housing are:

a. Enjoined from enforcing Sections 432.6(a), (b), and (c) of the California Labor Code where the alleged "waiver of any right, forum, or procedure" is the entry into an arbitration agreement covered by the Federal Arbitration Act, 9 U.S.C. §§ 1-16 ("FAA"); and

b. Enjoined from enforcing Section 12953 of the California Government Code where the alleged violation of "Section 432.6 of the Labor Code" is entering into an arbitration agreement covered by the FAA.

2. There is no realistic likelihood of harm to Defendants from temporarily enjoining enforcement of AB 51, so no security bond is required.

IT IS SO ORDERED.

Dated: _____

_____
Hon. Kimberly J. Mueller
U.S. District Court Judge