No. S287893

IN THE SUPREME COURT OF CALIFORNIA

KENNETH W. LATHROP, et al.,
Plaintiffs and Appellants,

v.

THOR MOTOR COACH, INC., et al.,
Defendants and Respondents.

After a Decision of the Court of Appeal, Second Appellate District, Division Seven, Case No. B331970

After an Appeal from the Superior Court for the State of California, County of Los Angeles, Case No. 22NWCV01494, Hon. John A. Torribio

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APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF DEFENDANTS AND RESPONDENTS THOR MOTOR COACH, INC., ET AL.

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APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

Amicus Curiae the Chamber of Commerce of the United States of America (the "Chamber") applies under California Rules of Court, rule 8.520(f)(1) for leave to file the attached amicus curiae brief in support of Defendants and Respondents Thor Motor Coach, Inc., Mike Thompson Recreational Vehicles d/b/a Mike Thompson RV 3, and U.S. Bank National Association. "Amicus curiae presentations assist the court by broadening its perspective on the issues raised by the parties." (*Bily v. Arthur Young & Co.* (1992) 3 Cal.4th 370, 405, fn. 14.)

The Chamber of Commerce is the world's largest business organization. As the nation's leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community. (See, e.g., *EpicentRx, Inc. v. Superior Court (EpiRx, L.P.)* (2025) 18 Cal.5th 58; *Lockton Cos., LLC v. Superior Court (Giblin)* (Ct. App., May 8, 2023, No. B328408), review granted Dec. 13, 2023, S282136; *Lee v. Fisher* (9th Cir. 2023) 70 F.4th 1129; *Handoush v. Lease Finance Group, LLC* (Cal. June 30, 2020, No. S259523).)

The Chamber's members rely on forum-selection clauses to promote predictability and uniformity and to control the litigation costs that can lead to higher prices for consumers. The

Chamber thus has a strong interest in the enforcement of these clauses according to their terms and in the preservation of the comity principles that sustain them. The proposed amicus brief explains such clauses' practical importance to businesses operating across state lines, the commercial disruption the decision below would cause, and the benefits enforcement brings to businesses and consumers. It also situates the questions presented within the federal and California law favoring comity among sister States and enforcement of contractual dispute-resolution provisions.

No party or counsel for a party authored this brief in whole or in part. No person or entity other than the Chamber, its members, or its counsel in this matter has made any monetary contributions intended to fund the preparation or submission of this brief. (See Cal. Rules of Court, rule 8.520(f)(4).)

CONCLUSION

The Chamber respectfully asks the Court to grant this application and permit it to file the attached amicus curiae brief.

Dated: July 27, 2026

Respectfully submitted,

THE NORTON LAW FIRM PC

/s/ Josephine K. Petrick

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AMICUS CURIAE BRIEF

INTRODUCTION

This case concerns the enforceability of forum-selection clauses—ordinary terms in contracts that govern modern commerce. The Court of Appeal held that a party seeking to enforce such a clause must prove, in advance and forum by forum, that the chosen court will honor every unwaivable California right at stake. That rule inverts the settled allocation of the burden of proof, assumes sister-state hostility contrary to the comity doctrine, and threatens to make California the default forum for nationwide litigation against any company doing business here.

The consequences are far-reaching. Forum-selection clauses routinely appear in a substantial share of the commercial and consumer agreements that structure the software, travel, financial-service, and consumer-product sectors. A rule that makes their enforceability turn on case-by-case, forum-by-forum judicial assessment would unsettle millions of contracts, splinter the interpretation of nationwide agreements into an unpredictable patchwork of conflicting rulings, raise the cost of doing business across state lines, and mire the courts in threshold litigation over where each dispute may proceed. That delay and expense would ultimately be reflected in the prices consumers pay. The Court should reverse and enforce the standard forum-selection clause in Thor Motor Coach's nationwide warranty.

DISCUSSION

I. Forum-selection clauses are routine contractual terms, and California has long favored their enforcement.

"Forum selection clauses serve vital commercial purposes and should generally be enforced." (*EpicentRx, Inc. v. Superior Court (EpiRx, L.P.)* (2025) 18 Cal.5th 58, 67.) That rule has informed California contract law for half a century (*Smith, Valentino & Smith, Inc. v. Superior Court (Life Assurance Co. of Pennsylvania)* (1976) 17 Cal.3d 491, 495–496), and it reflects the State's strong policy of enforcing contracts according to their terms (Civ. Code, § 1636). The countervailing power to void a bargain on public-policy grounds is narrow: it may be exercised only in cases free from doubt, and any advantage to the public must be " 'certain and substantial, not theoretical or problematical.' " (*EpicentRx*, at p. 76.)

Enforcement of forum-selection clauses "has the salutary effect of dispelling any confusion about where suits arising from the contract must be brought and defended, sparing litigants the time and expense of pretrial motions to determine the correct forum and conserving judicial resources that otherwise would be devoted to deciding those motions." (*Carnival Cruise Lines, Inc. v. Shute* (1991) 499 U.S. 585, 593–594; see also *Stewart Organization, Inc. v. Ricoh Corp.* (1988) 487 U.S. 22, 33 (conc. opn. of Kennedy, J.); *Drulias v. 1st Century Bancshares, Inc.* (2018) 30 Cal.App.5th 696, 709.) Such certainty and efficiency make forum-selection clauses an " 'indispensable element' " of national and international commerce. (*EpicentRx*, *supra*, 18

Cal.5th at p. 76, quoting *M/S Bremen v. Zapata Off-Shore Co.* (1972) 407 U.S. 1, 13; accord *Alexander v. Superior Court (The Brix Group, Inc.)* (2003) 114 Cal.App.4th 723, 731; see also *Scherk v. Alberto–Culver Co.* (1974) 417 U.S. 506, 516 [forum-selection clauses are "an almost indispensable precondition to achieving the orderliness and predictability essential to any international business transaction"].)

Courts have long applied a presumption of enforcement of such forum-selection clauses, even in the case of standardized "form contract[s]," which are the ordinary vehicle of modern consumer commerce. (*Carnival Cruise Lines*, *supra*, 499 U.S. at p. 593.) Requiring every term to be negotiated from scratch would raise the cost of every transaction; the routine use of form terms is part of what makes mass-market goods and services affordable. (See *id.* at pp. 593–594; Rest.2d Contracts, § 211.) Nor are such contracts coercive merely because the terms are standardized or the counterparty is larger. (Cf. *Sanchez v. Valencia Holding Co., LLC* (2015) 61 Cal.4th 899, 910–911, 915; *Baltazar v. Forever 21, Inc.* (2016) 62 Cal.4th 1237, 1244–1245.) Consumers remain free to decline the bargain and purchase from a competitor. Applying the doctrine of unconscionability to such ordinary transactions "is a bad use of a good law." (*Diaz v. Thor Motor Coach, Inc.* (2026) 118 Cal.App.5th 589, 601 (dis. opn. of Wiley, J.), review granted May 13, 2026, S295851.) And it diminishes the value of contractual provisions that have become the ordinary architecture of mass commerce. (See *ibid.*)

II. Enforcing forum-selection clauses lowers litigation costs and, in competitive markets, the prices consumers pay.

Refusing to enforce a forum-selection clause strips a dispute-resolution bargain of its principal economic function: consolidating substantially similar disputes in a single, predictable forum rather than forcing a business that operates across state lines to defend similar claims wherever an individual plaintiff elects to sue. An agreed forum reduces uncertainty for consumers and businesses, avoids threshold litigation over venue, and conserves both private and judicial resources. (See *Carnival Cruise Lines*, *supra*, 499 U.S. at pp. 593–594; *Drulias*, *supra*, 30 Cal.App.5th at p. 709.)

Orderly, consistent interpretation of uniform contract terms serves consumers and courts, not only the businesses that use them. That a chosen court may occasionally be required to apply another State's substantive law to a particular claim does not diminish this benefit. Channeling into a single court the related disputes that arise under one agreement produces a coherent and predictable course of decision—the kind of certainty that often lets the parties resolve their disagreements, or avoid them altogether, without resort to suit.

These efficiencies do not accrue to businesses alone. Litigation cost is a real business input, and in competitive markets reductions in that cost are passed through to consumers as lower prices. As the United States Supreme Court reasoned, "passengers who purchase tickets containing a forum clause . . . benefit in the form of reduced fares reflecting the savings that the cruise line enjoys by limiting the fora in which it may be sued." (*Carnival Cruise Lines*, *supra*, 499 U.S. at p. 594, citing *Northwestern Nat. Ins. Co. v. Donovan* (7th Cir. 1990) 916 F.2d 372, 378 (*Donovan*) ["We may assume, since the market in surety bonds is a competitive one, that the cost savings that accrue to Northwestern from contractual terms that facilitate the enforcement of one of its bonds will be passed on, in part anyway, to the purchaser of those bonds . . . in the form of a lower premium."].)

The cost of litigating over venue adds to the cost of providing the product or service and may ultimately be borne by consumers through some combination of higher prices, reduced services, lower investment, or diminished competition. (See *Carnival Cruise Lines*, *supra*, 499 U.S. at p. 594; *Donovan*, *supra*, 916 F.2d at p. 378; Jason S. Johnston, *The Return of Bargain: An Economic Theory of How Standard-Form Contracts Enable Cooperative Negotiation Between Businesses and Consumers* (2006) 104 Mich. L.Rev. 857, 863–864.) In keeping with *Carnival Cruise* and *Donovan*, many courts have recognized that enforcement of forum-selection clauses allows companies to save money on litigation expenses that they can then pass on to consumers. (*Bulldog, Inc. v. Starr Surplus Lines Ins. Co.* (E.D.La., Oct. 10, 2023, No. 23-3152) 2023 WL 11987097, p. *5; *Wong v. Partygaming Ltd.* (N.D.Ohio, Sept. 30, 2008, No. 1:06-CV-02376) 2008 WL 4449436, p. *4, aff'd (6th Cir. 2009) 589 F.3d 821; *Wells v. Wheeler RV Las Vegas LLC* (D.Nev., Feb. 4, 2008, No. 2:07-cv-1053-RLH-PAL) 2008 WL 11506799, p. *3;

Youngblood v. JTH Tax Servs., Inc. (W.D.Tex., July 17, 2006, No. SA: 06-CA-380-XR) 2006 WL 1984656, p. *5; *Abramson v. Am. Online, Inc.* (N.D.Tex. 2005) 393 F.Supp.2d 438, 442; *Paster v. Putney Student Travel, Inc.* (C.D.Cal., June 9, 1999, No. CV 99-2062 RSWL) 1999 WL 1074120, p. *2, fn. 8; cf. *Lee v. Fisher* (9th Cir. 2023) 70 F.4th 1129, 1137 [noting the "modern corporate trend" of including forum-selection clauses in bylaws to avoid "multiforum litigation [that] could impose high costs and hurt investors"]; *Gen. Eng'g Corp. v. Martin Marietta Alumina, Inc.* (3d Cir. 1986) 783 F.2d 352, 360 [noting that companies include the risk of litigation "in the price of their services"].)

Reducing unnecessary litigation costs is thus of a piece with broader efforts to improve consumer affordability. Sustainable price relief comes from expanding supply and removing unnecessary costs—including the litigation costs that competitive markets ultimately pass through to consumers. (Neil Bradley, *A Blueprint for Affordability Solutions: Why expanding supply and reducing unnecessary costs is the key to affordability* (Feb. 20, 2026), https://www.uschamber.com/economy/back-to-basics-the-economics-behind-lower-prices; see Lucian Bebchuk & Richard Posner, *One-Sided Contracts in Competitive Consumer Markets* (2006) 104 Mich. L.Rev. 827, 833 [modeling how competitive market pressures force firms to pass litigation cost savings on to consumers in the form of a lower purchase price]; McKnight *et al.*, *Tort Costs in America—Commercial Auto: An Analysis of the Economic Impact of Commercial Automobile Tort Cases* (Oct. 2025), https://instituteforlegalreform.com/wpcontent/uploads/2025/10/Commercial-Auto-Costs-Report-DIGITAL-FINAL.pdf [drawing empirical connection between automobile litigation costs and rising consumer costs].) An agreed forum reduces avoidable dispute-resolution costs, and consumers stand to benefit when those costs are not multiplied across jurisdictions.[1]

The benefits of forum-selection clauses are particularly important to small businesses, which have a vital interest in "keep[ing] the cost of potential disputes at a minimum," including by limiting the fora in which they must litigate disputes and by "bring[ing] a lawsuit or defend[ing themselves] as close to home as possible." (Trippe S. Fried, *Maintaining the Home Court Advantage: Forum Shopping and the Small Business Client* (2005) 6 Tenn. J. Bus. L. 419, 419.) These clauses are especially critical when small businesses attempt to grow and diversify by

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[1] A leading critic of consumer forum clauses acknowledges that such clauses "reduce[ ] uncertainty and the risk of litigation over the proper forum for suit should unforeseen problems develop" and that "the costs of litigating in the forum are allocated in advance and this allocation may be reflected in the contract price." (Lee Goldman, *My Way and the Highway: The Law and Economics of Choice of Forum Clauses in Consumer Form Contracts* (1992) 86 Nw. U. L.Rev. 700, 700–701.) Even so, Professor Goldman and similar commentators have *assumed* that forum-selection clauses decrease welfare even when enforcement lowers the posted price. (See, e.g., *id.* at pp. 719, 722.) But the pass-through of litigation savings to consumers is empirically documented. (See, e.g., Bradley, *supra*; McKnight, *supra*; see also Florencia Marotta–Wurgler, *"Unfair" Dispute Resolution Clauses: Much Ado About Nothing?*, in Boilerplate: Foundations of Market Contracts (Omri Ben–Shahar, ed., Cambridge U. Press, 2007) [finding little empirical evidence that sellers strategically deploy dispute-resolution clauses to disadvantage buyers].)

expanding the geographical scope of their operations. Without the ability to control their litigation costs by limiting the fora in which litigation can take place, small businesses might be reluctant to undertake such expansion.

Enforcement thus serves more than the convenience of the contracting company. It vindicates the parties' allocation of litigation risk, promotes predictable commercial relationships, conserves judicial and private resources, and protects the economic efficiencies that ultimately benefit consumers in the broader market.

III. A rule hostile to forum-selection clauses would unsettle millions of contracts and disrupt commerce across many industries.

Forum-selection clauses are pervasive. Thousands—perhaps tens or even hundreds of thousands—of businesses operating in California have entered into contracts with forum-selection clauses specifying a non-California venue for disputes. A study of more than 500,000 contracts filed with the Securities and Exchange Commission between 2000 and 2016 found that roughly 30 percent contained a forum-selection clause, with substantially higher rates documented in several important categories of commercial contracts. (John F. Coyle & Katherine C. Richardson, *Enforcing Outbound Forum Selection Clauses in State Court* (2021) 96 Ind. L.J. 1089, 1092; see Theodore Eisenberg & Geoffrey Miller, *The Flight to New York: An Empirical Study of Choice of Law and Choice of Forum Clauses in Publicly-Held Companies' Contracts* (2009) 30 Cardozo L.Rev. 1475, 1475 [finding that, in a set of 2,882 contracts contained as exhibits in Form 8-K filings over a six-month period in 2002, 39% included forum-selection clauses]; Theodore Eisenberg & Geoffrey Miller, *Ex Ante Choices of Law and Forum: An Empirical Analysis of Corporate Merger Agreements* (2006) 59 Vand. L.Rev. 1975, 1981 [concluding that 53% of M&A agreements contained as exhibits to Form 8-K filings between January 1 and July 31, 2002 included forum-selection clauses]; Matthew D. Cain & Stephen M. Davidoff, *Delaware's Competitive Reach* (2012) 9 J. Empirical Legal Stud. 92, 94, 106 [finding that 86.5% of a set of 1,020 M&A agreements between 2004 and 2008 included forum-selection clauses]; W. Mark C. Weidemaier, *Customized Procedure in Theory and Reality* (2015) 72 Wash. & Lee L.Rev. 1865, 1905–1907, 1917 [concluding that 39.7% of 402 material contracts attached as exhibits to SEC filings between January 1, 2000 and December 31, 2012, contained forum-selection clauses]; John F. Coyle & Christopher R. Drahozal, *An Empirical Study of Dispute Resolution Clauses in International Supply Contracts* (2019) 52 Vand. J. Transnat'l L. 323, 326–328 [finding that 36% of 157 international supply contracts between January 1, 2011 and December 31, 2015 included forum-selection clauses]; see also *id.* at pp. 374–375 [collecting empirical literature on forum-selection clauses]; John C. Coates IV, *Why Have M&A Contracts Grown? Evidence from Twenty Years of Deals*, Working Paper, Oct. 26, 2016, at pp. 12, 22, 51, Table 5 [finding that 100% of sampled M&A agreements from 2014 included forum-selection clauses, up from 21% twenty years earlier], https://fnce.wharton.upenn.edu/wpcontent/uploads/2016/11/Coates_Paper.pdf; Marotta–Wurgler, *supra*, Table 4.1 [finding that choice-of-forum clauses appeared in 28% of a sample of 597 end-user software license agreements for products sold online, and in 42% on a seller-revenue-weighted basis intended to approximate market exposure].) Such clauses are staples of the software, travel, financial-service, and consumer-product sectors, among many other industries that rely on uniformity and predictability.

A rule that makes enforceability turn on case-by-case, forum-by-forum judicial assessment injects uncertainty into all such contracts. Without a dependable forum-selection clause, a company selling the same product nationwide would have to defend similar claims in many jurisdictions, with burdensome motion practice to decide the proper forum and persistent uncertainty about which forum will hear which claims. (See *Lee*, *supra*, 70 F.4th at p. 1137 [multiforum litigation "could impose high costs and hurt investors"]; *Boilermakers Local 154 Retirement Fund v. Chevron Corp.* (Del.Ch. 2013) 73 A.3d 934, 953 ["[T]he boards of Chevron and FedEx have the statutory authority to adopt a bylaw to protect against what they claim is a threat to their corporations and stockholders, the potential for duplicative lawsuits in multiple jurisdictions over single events."]; *Brodsky v. Match.com LLC* (S.D.N.Y., Oct. 28, 2009, No. 09 CIV. 5328 (NRB)) 2009 WL 3490277, p. *4 [similar, consumer-facing website].)

Forum-selection clauses are particularly important to national manufacturers and assemblers like Thor Motor Coach. A company that builds its product in one State and distributes that product through a network of independent dealers cannot know, when the product leaves the assembly line, whether it will be sold in California, Florida, Texas, or beyond. A uniform nationwide warranty paired with a forum-selection clause that channels warranty claims into a single, consistent forum is a sensible response.

Indeed, federal law envisions uniform national warranties. The Magnuson–Moss Warranty Act (15 U.S.C. § 2301 et seq.) and its implementing regulations require a nationally distributed written warranty to state that the buyer "may also have other rights which vary from state to state" (16 C.F.R. § 701.3(a)(9)), confirming that Congress and the Federal Trade Commission expect uniform warranties to operate against a backdrop of varying state law. The decision below treats an ordinary uniform warranty as suspect merely because it designates a non-California forum, penalizing the very standardization that federal law endorses. This Court should reject that approach and recognize that California law, like federal law, favors uniform national warranties.

IV. The decision below inverts the ordinary burden of proof and rests on an assumption that comity forbids—that a sister State will not faithfully apply California law.

Once the proponent of a contract establishes its existence, the party resisting enforcement bears the burden of proving any defense. (Evid. Code, § 500; *Rosenthal v. Great Western Financial Securities Corp.* (1996) 14 Cal.4th 394, 413.) That is the rule for both public-policy and unconscionability defenses. (See, e.g., *EpicentRx*, *supra*, 18 Cal.5th at p. 76 [public policy]; *Stephens v. So. Pac. Co.* (1895) 109 Cal. 86, 90 [same]; *OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 126 [unconscionability].) Requiring the proponent of a forum-selection clause to prove the clause reasonable—and only in cases involving unwaivable statutory rights—is anomalous, and the line of authority on which the Court of Appeal relied departs from the ordinary rule without adequate justification.

The inversion also imposes an impossible burden. To require the proponent of a forum-selection clause to prove, in advance, how the courts of another State will treat a claim not yet filed is to demand a crystal-ball guarantee of future judicial behavior. No litigant can carry that burden, and a rule that conditions enforcement on carrying it would effectively void every out-of-state forum-selection clause in a consumer contract—precisely the result the ordinary allocation of proof is designed to prevent.

The premise of the decision below is that the chosen forum may fail to honor California law. But California does not treat the courts of its sister States as suspect. To the contrary, this State's comity doctrine presumes that a sister State court will apply California law faithfully and competently when called upon to do so. (*Wong v. Tenneco, Inc.* (1985) 39 Cal.3d 126, 134 [comity requires California courts to "respect" other States and to presume the forum State "will generally apply the substantive law of a foreign sovereign to causes of action which arise there"];

accord *Kim v. Airstream, Inc.* (2025) 113 Cal.App.5th 201, 223–224; *TSMC N. Am. v. Semiconductor Mfg. Internat. Corp.* (2008) 161 Cal.App.4th 581, 595 [similar].)

That presumption is not mere courtesy. It reflects the constitutional premise that this nation "was and is a union of States, equal in power, dignity and authority" (*Shelby County v. Holder* (2013) 570 U.S. 529, 544), and the reciprocity on which California itself depends when its citizens and its law appear in the courts of other States.

The decision below turns the comity presumption on its head. By requiring the party seeking enforcement to prove, in advance, that the selected forum would honor every unwaivable California right, the Court of Appeal treated a sister State's courts as presumptively unable or unwilling to apply California law unless the proponent proved otherwise. That is precisely the " 'provincial attitude regarding the fairness of other tribunals' " that this Court and the United States Supreme Court have long disclaimed. (*Smith, Valentino & Smith*, *supra*, 17 Cal.3d at p. 495, quoting *Bremen*, *supra*, 407 U.S. at p. 12.) A rule that presumes hostility and demands that it be disproved is inimical to these well-established comity principles.

The presumption of comity across the country is forum-agnostic. It does not matter whether the parties chose California, Indiana, Ohio, or Texas. The Chamber's members contract nationwide, and their agreements designate the courts of many States. A rule that conditions enforcement on the proponent's assembling a forum-specific record—a catalog of decisions showing that the chosen State's courts have faithfully applied California law in analogous cases—would make the enforceability of an ordinary contract term contingent on the very litigation the clause was meant to avoid. It would also substitute judicial speculation for the respect sister courts are owed. Whether the courts of any particular State have already applied the Song–Beverly Act is therefore illustrative at most, not the ground on which enforcement should turn. Whatever the selected forum State, the presumption runs the same way and the party resisting enforcement, not the party invoking the bargain, must overcome it.

The comity concerns are especially acute here because the defendants have removed doubt about the governing law. The defendants here stipulated that, if the case proceeds in the designated forum, the substantive protections of the Song–Beverly Act and the Consumer Legal Remedies Act will apply. The dispute is therefore about the forum, not about which State's substantive law governs or whether California's unwaivable protections survive—by the defendants' own concession, they do. That the concession postdates contract formation does not diminish its force: the question is whether enforcing the forum clause would diminish unwaivable rights going forward, and the stipulation provides it will not. The Court can rule narrowly, holding that where a defendant concedes the application of California's unwaivable protections in the chosen forum and the plaintiff fails to demonstrate that the forum court is likely to disregard that stipulation, the plaintiff has no public-policy basis to avoid the bargained-for forum, and comity requires that the clause be enforced.

None of this leaves a California court powerless to protect a right that is genuinely threatened. But the showing required to defeat a forum-selection clause to which the parties assented must be “certain and substantial, not theoretical or problematical,” and the public policy invoked must “clearly outweigh[ ]” the strong interest in enforcement. (*EpicentRx*, *supra*, 18 Cal.5th at p. 76.) A party does not satisfy that standard with speculation that the forum might misclassify those rights or apply them imperfectly. The Court of Appeal accepted precisely such speculation here, and in doing so relieved the objecting party of the burden this Court’s precedents require it to carry.

When a court refuses to enforce a forum-selection clause on the assumption that the chosen forum cannot be trusted, it rewards the plaintiff who files in breach of the clause. As the United States Supreme Court has warned, a plaintiff who “files suit in violation of a forum-selection clause” should not be permitted to reap “state-law advantages” through such “gamesmanship.” (*Atlantic Marine Constr. Co. v. U.S. Dist. Court for Western Dist. of Texas* (2013) 571 U.S. 49, 65; cf. *Nedlloyd Lines B.V. v. Superior Court (Seawinds Ltd.)* (1992) 3 Cal.4th 459, 471 [allowing a party to invoke California law despite a contrary choice-of-law clause “would undermine California’s policy of respecting the choices made by parties to voluntarily negotiated agreements”].)

A rule that voids forum-selection clauses whenever a plaintiff invokes an unwaivable California right would reward artful pleading calculated to evade such clauses. A plaintiff from any State could append a California statutory theory, assert that the selected forum might not preserve the asserted right, and thereby require a California court to litigate the dispute, whether or not California law ultimately applies. The allegation itself could thus secure a California forum for disputes that the parties agreed to litigate elsewhere, making this State "a magnet" (*EpicentRx*, *supra*, 18 Cal.5th at p. 81) for out-of-state disputes (cf., e.g., *Kramer v. Coinbase, Inc.* (2024) 105 Cal.App.5th 741, 744–745, & fn. 2 [in action seeking unwaivable public injunctive relief, three out of four of the plaintiffs were non-California residents, yet asserted violations of California consumer statutes]).

Comity counsels confidence, not suspicion. California asks the courts of other States to trust its judges with their law. It cannot refuse to trust their judges with its own.

CONCLUSION

The Court should reverse and direct the superior court's order to be reinstated. A party seeking to enforce a forum-selection clause need not prove that the selected court will protect unwaivable California rights; comity presumes that it will, and the party resisting enforcement bears the burden of overcoming that presumption with concrete evidence. Enforcing forum-selection clauses according to their terms vindicates California's strong policy favoring freedom of contract, reduces the cost of commerce for businesses and consumers, and accords the courts of California's sister States the respect that comity requires.

Dated: July 27, 2026

Respectfully submitted,

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/s/ Josephine K. Petrick

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CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to rule 8.520(c) of the California Rules of Court, the enclosed brief is produced using 13-point Century Schoolbook font and contains 4,349 words, including footnotes. Counsel relies on the word count of the computer program used to prepare this brief.

Dated: July 27, 2026

/s/ Josephine K. Petrick
Josephine K. Petrick

CERTIFICATE OF SERVICE

I, Celeste Peifer, am employed in the City of Oakland California, am over 18 years of age, and am not a party to this action. My business address is 300 Frank H. Ogawa Plaza, Suite 450, Oakland, CA 94612. I hereby certify that on July 27, 2026, I caused the following documents:

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF DEFENDANTS AND RESPONDENTS THOR MOTOR COACH, INC., ET AL.

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

Executed on July 27, 2026 at Oakland, California.

Celeste Peifer

Celeste Peifer