

No. A174376

**IN THE COURT OF APPEAL  
OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT, DIVISION 5**

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**UBER TECHNOLOGIES, INC.,**  
*Defendant and Appellant,*

*v.*

**DOVE A. BOGGUESS, a California resident, and DOUGLAS  
JOHN MARRONE, a California resident, on behalf of the  
California public,**  
*Plaintiffs and Respondents.*

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On Appeal from the Superior Court of California  
County of San Francisco  
Hon. Jeffrey S. Ross | Case No. CGC-24-620811

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**APPLICATION OF THE CHAMBER OF COMMERCE OF  
THE UNITED STATES OF AMERICA FOR PERMISSION  
TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF  
DEFENDANT-APPELLANT UBER TECHNOLOGIES,  
INC. AND REVERSAL; AMICUS CURIAE BRIEF**

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**APPLICATION OF THE CHAMBER OF COMMERCE OF  
THE UNITED STATES OF AMERICA FOR PERMISSION  
TO FILE AMICUS CURIAE BRIEF**

The Chamber of Commerce of the United States of America (“Chamber”) respectfully seeks leave to file a brief as *amicus curiae* in support of Defendant–Appellant Uber Technologies, Inc.

The Chamber is the world’s largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country.

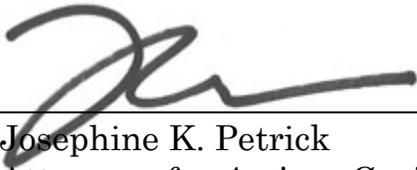
An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of vital concern to the nation’s business community.

The Chamber’s members and the broader business community have a strong interest in this appeal, concerning the enforceability of arbitration agreements under the Federal Arbitration Act and the scope of “public injunctive relief” as a defense to arbitrability. (See *McGill v. Citibank, N.A.* (2017) 2 Cal.5th 945.)

The Chamber requests that the Court grant its application to file the proposed *amicus curiae* brief.

Dated: March 23, 2026

Respectfully submitted,  
The Norton Law Firm PC

By:   
Josephine K. Petrick  
Attorneys for *Amicus Curiae*

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**AMICUS CURIAE BRIEF**  
**CERTIFICATE OF INTERESTED PERSONS**

The undersigned hereby certifies that no known persons or entities have an ownership interest of 10 percent or more in the Chamber of Commerce of the United States of America. Other than *Amicus Curiae* and the named parties, no known person or entity has a financial or other interest in the outcome of this proceeding that the justices should consider in determining whether to disqualify themselves. (Cal. R. Ct. 8.208(e)(2).)

Dated: March 23, 2026

Respectfully submitted,  
The Norton Law Firm PC

By: \_\_\_\_\_



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## INTEREST OF AMICUS CURIAE

The Chamber of Commerce of the United States of America (the “Chamber”) is the world’s largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million 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 vital concern to the nation’s business community, including cases involving the interpretation of the Federal Arbitration Act (“FAA”), 9 U.S.C. §§ 1–16, and state-law rules relating to the formation and enforceability of arbitration agreements.

Many of the Chamber’s members regularly rely on arbitration agreements, structuring millions of contractual relationships around the use of arbitration. Arbitration allows them to resolve disputes promptly and efficiently while both sides avoid the costs associated with traditional litigation. Arbitration is speedy, fair, inexpensive, and less adversarial than litigation in court.

The Chamber’s members and the broader business community have a strong interest in this case and in the proper scope of the rule in *McGill v. Citibank, N.A.* (2017) 2 Cal.5th 945. Under that rule, arbitration provisions may not foreclose

individuals from seeking what the Court terms “public injunctions” under certain California statutes. But the California Supreme Court was careful to distinguish between public and private injunctive relief, explaining that an injunction that primarily benefits an individual plaintiff or similarly situated individuals is private, not public. (See *id.* at p. 955.)

The trial court’s refusal to compel arbitration in this case—where the injunctive relief sought would primarily benefit Uber users—eviscerates that line. The trial court’s refusal to require Plaintiffs to arbitrate their admittedly arbitrable claims for monetary relief compounds the problem. The ruling effectively nullifies the entire agreement, defeating the mutual benefits arbitration provides to both businesses and consumers.

Both rulings threaten the enforceability of arbitration agreements throughout California. If allowed to stand, the trial court’s approach would permit plaintiffs to evade arbitration simply by requesting injunctive relief under the Unfair Competition Law (UCL) or False Advertising Law (FAL)—regardless of whether that relief would actually benefit the public. And the trial court’s refusal to compel Plaintiffs to arbitrate the arbitrable components of their claims—based on a single allegedly unenforceable provision—effectively voids the entire arbitration agreement, contrary to *McGill, Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104, and the FAA’s mandate that courts enforce arbitration agreements to their fullest extent.

The Chamber therefore has a strong interest in this case and in reversal of the decision below.<sup>1</sup>

## INTRODUCTION AND SUMMARY OF ARGUMENT

In *McGill v. Citibank, N.A.* (2017) 2 Cal.5th 945, the Court held that the right to seek “public injunctive relief” under the UCL and FAL cannot be waived, including through an arbitration agreement. But the Court clarified that “[r]elief that has the primary purpose or effect of redressing or preventing injury to an individual plaintiff—or to a group of individuals similarly situated to the plaintiff—does not constitute public injunctive relief.” (*Id.* at p. 955.) Disgorgement and restitution under the same statutes are private, not public injunctive relief, and may be arbitrated. (*Id.* at p. 951, fn. 1.) Such monetary remedies must be arbitrated even if plaintiffs may pursue any public injunction in court. (*Id.* at p. 966; *Broughton v. Cigna Healthplans of California* (1999) 21 Cal.4th 1066, 1088.)

The trial court’s order departed from this framework in two respects. First, the court treated all injunctive relief under the UCL and FAL as categorically public, disregarding *McGill*’s requirement that the court examine the nature of the relief actually sought—here, an injunction affecting prices that are not broadcast to the public but generated dynamically when an Uber

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<sup>1</sup> No party or counsel for a party authored this *amicus* brief in whole or in part and no person or entity made a monetary contribution intended to fund the preparation or submission of such brief, aside from *Amicus Curiae*, its members, or its counsel. (See Cal. Rules of Court, rule 8.200(c).)

user requests a specific ride. Second, the court refused to sever Plaintiffs’ admittedly arbitrable requests for restitution and disgorgement from their request for public injunctive relief, contrary to California Supreme Court precedent and the FAA’s mandate of piecemeal resolution when necessary to give effect to arbitration agreements.

If allowed to stand, this approach would permit any UCL or FAL plaintiff to defeat arbitration and class action waivers simply by requesting an injunction. The Chamber’s members—businesses that have structured millions of contractual relationships around arbitration—have a strong interest in preventing that result. The Chamber respectfully urges this Court to reverse.

## ARGUMENT

**I. Plaintiffs’ requested injunction restricting in-app pricing generated dynamically and shown only to individual users is not public injunctive relief within the meaning of *McGill*.**

**A. Any injunction affecting prices generated for individual ride requests is private.**

In *McGill*, the Court held that nonwaivable “public injunctive relief” must have “the primary purpose and effect of prohibiting unlawful acts that threaten future injury to the general public.” (2 Cal.5th at p. 955.) “Relief that has the primary purpose or effect of redressing or preventing injury to an individual plaintiff—or to a group of individuals similarly situated to the plaintiff—does not constitute public injunctive relief.” (*Ibid.*)

Courts apply the *McGill* test by looking at *whom* the relief actually benefits. For example, in *Kramer v. Coinbase, Inc.* (2024) 105 Cal.App.5th 741, Division Three of this Court distinguished between injunctions targeting “conduct directed solely at existing customers who were similarly situated to the plaintiffs”—which are private—and injunctions targeting “conduct directed at potential customers or the general public”—which it held are public. (*Id.* at p. 751.) The court held that the defendant’s advertising fell on the public side of that line because the company promoted “information on its website and in online, television, and newspaper advertisements”—*i.e.*, media accessible to anyone, not just account holders. (*Id.* at pp. 749–750; see also *Ramsey v. Comcast Cable Communications, LLC* (2023) 99 Cal.App.5th 197 [similar].)

In *Khan v. Coinbase, Inc.* (2025) 115 Cal.App.5th 518, Division Three reaffirmed *Kramer*’s framework, holding that relief qualifies as public when a company’s platform is accessible to “any member of the public” and the challenged conduct reaches beyond a closed group of existing users. (*Id.* at pp. 529–532.)

Although *Kramer* and *Khan* held the plaintiffs there sought public-injunctive relief, both opinions discussed with approval authorities holding that injunctions directed primarily at existing customers who were similarly situated to the plaintiffs are private. (See *Khan, supra*, 115 Cal.App.5th at p. 532, citing, *inter alia*, *Woody v. Coinbase Global, Inc.* (N.D. Cal., Oct. 17, 2023, No. 23-cv-00190-JD) 2023 WL 6882750, at p. \*4 [injunction barring allegedly false advertising practices about platform’s

compatibility with particular cryptocurrency was private injunctive relief as it would primarily affect existing Coinbase customers], rev'd in part on other grounds (9th Cir. Oct. 21, 2024, No. 23-3584) 2024 WL 4532909; *Kramer, supra*, 105 Cal.App.5th at pp. 750–753, fn. 6 [same], citing *Woody, supra*, 2023 WL 6882750, *Cottrell v. AT&T Inc.* (9th Cir., Oct. 26, 2021, No. 20-16162) 2021 WL 4963246, *Stout v. Grubhub Inc.* (N.D. Cal., Dec. 3, 2021, No. 21-CV-04745-EMC) 2021 WL 5758889, and *Croucier v. Credit One Bank, N.A.* (S.D. Cal., Jun. 11, 2018, No. 18CV20-MMA (JMA)) 2018 WL 2836889.)

In *Kramer*, the court of appeal approved *Cottrell's* reasoning that the plaintiff there sought private injunctive relief because an injunction against AT&T for charging customers for unauthorized accounts and services primarily benefited AT&T customers. (*Kramer, supra*, 105 Cal.App.5th at p. 751.) And as the court explained in *Kramer*, “the claims in *Cottrell* and *Croucier* addressed conduct directed solely at existing customers who were similarly situated to the plaintiffs, not conduct directed at potential customers or the general public.” (*Ibid.*)

Similarly, the plaintiff in *Stout* accused Grubhub of misleading individuals into signing up for Grubhub+ by promising unlimited free delivery but then adding a “driver benefits” surcharge to every order. Among other things, the plaintiff sought to enjoin Grubhub “from charging the CA Driver Benefits Fee on Grubhub+ subscribers.” (*Stout, supra*, 2021 WL 5758889, at p. \*1.) As the *Kramer* court explained, this was private injunctive relief “because it [wa]s primarily designed to

benefit Grubhub+ subscribers only, even if the public may incidentally benefit.” (*Kramer, supra*, 105 Cal.App.5th at p. 753, quoting *Stout*, at p. \*7.)

And in *Woody*, the plaintiffs brought claims under the UCL, FAL, and Consumer Legal Remedies Act (CLRA) alleging that Coinbase made false promises in “numerous public media” about delivering cryptocurrency airdrops, inducing members of the public to purchase cryptocurrency on Coinbase’s platform. (*Woody, supra*, 2023 WL 6882750, at p. \*1; see *Woody v. Coinbase Global, Inc.* (N.D. Cal., Apr. 6, 2023, No. 3:23-cv-00190-JD) 2023 WL 6476303, ¶¶ 7–8, 10 (“*Woody FAC*”).) The plaintiffs expressly sought “public injunctive relief.” (*Woody FAC*, ¶¶ 11, 159.) Yet the court held they sought private relief because the injunction “would primarily affect Coinbase customers.” (*Woody, supra*, at p. \*4.)

Consistent with the authorities discussed in *Kramer* and *Khan*, courts regularly hold that injunctions primarily benefiting a company’s existing customers constitute private relief, even when the general public could potentially view the allegedly false advertising. (See, e.g., *Halwajian v. LaserAway, LLC* (C.D. Cal. 2025) 782 F.Supp.3d 876, 882 [injunction seeking to stop deceptive pricing disclosures to customers who signed credit agreements was private relief, not public, despite allegations of false advertising]; *Greco v. BMW of North Am., LLC* (C.D. Cal., Oct. 31, 2024, No. 2:24-CV-03244-JLS-MAA) 2024 WL 5472695, at pp. \*1, \*6 [false advertising claim seeking to enjoin deceptive lease practices was private relief where injunction would benefit

current and future lessees, not the general public]; *America Chung Nam, LLC v. Mitsui O.S.K. Lines, Ltd.* (C.D. Cal., Dec. 19, 2023, No. 2:23-cv-07676-SB-JPR) 2023 WL 8845213, at p. \*7 [false advertising injunction against shipping company benefiting discrete class of customers was private relief]; *Wright v. Sirius XM Radio, Inc.* (C.D. Cal., June 1, 2017, No. SACV 16-01688 JVS (JCGx)) 2017 WL 4676580, at p. \*9 [same]; *Torres v. Veros Credit LLC* (C.D. Cal., July 13, 2023, No. 8:23-cv-00688-DOC-DFM) 2023 WL 5505887, at p. \*5 [“Plaintiff seems to argue that so long as the relief sought affects some ‘members of the public,’ it qualifies as public injunctive relief. Not so.”]; see also *Scally v. PetSmart LLC* (N.D. Cal., Jan. 2, 2024, No. 4:22-cv-06210-YGR) 2024 WL 37222, at p. \*2 [false advertising injunction affecting only subset of prospective employees was private relief]; see also *Hodges v. Comcast Cable Communications, LLC* (9th Cir. 2021) 21 F.4th 535, 548–549 [subscriber-specific data-privacy injunction was private relief where it would benefit only a discrete class of similarly situated persons and would require individualized inquiry into each subscriber’s consent], criticized in *Ramsey, supra*, 99 Cal.App.5th at pp. 210–212 and *Vaughn v. Tesla, Inc.* (2023) 87 Cal.App.5th 208, 231, fn. 16, but applied in *Khan, supra*, 115 Cal.App.5th at pp. 533–535 [finding requested relief was public even under *Hodges*’ narrower standard].)

Here, unlike in *Kramer* and *Khan*, Uber’s upfront prices do not exist on any public-facing website. They are generated dynamically, at the moment an existing user—who has already downloaded the app, created an account, and logged in—requests

a ride by entering a specific pickup and destination. (AA12–17, AA64 ¶ 5.) Each price varies in real time based on individualized factors such as trip distance, ride type, and supply-and-demand conditions. (AA12–17, AA64.) No prospective user browsing Uber’s public website can view these prices; they exist only within the authenticated app experience. As Uber’s Terms confirm, its “services are only open to registered users of the services and not to the general public.” (AA150.)

*Khan, supra*, 115 Cal.App.5th 518, rested on two features absent here. First, the *Khan* court emphasized that “any member of the public may access and elect to use Coinbase’s online platform,” comparing account creation to “driving to, parking at, and walking into a brick-and-mortar store.” (*Id.* at p. 529.) Uber’s upfront pricing is not a storefront. A user must register, log in, and authenticate before seeing any pricing at all—a threshold that alone is sufficient to distinguish this from the allegedly public-facing conduct in *Khan*. But the distinction runs deeper still: even after login, no price exists until the user enters a specific pickup location and destination and receives an individualized quote based on real-time conditions. (AA12–17, AA64.) There is no price to see until that sequence is complete. That the pricing is not merely behind a login but dynamically generated for each user’s individual ride only confirms that the relief sought here is private, not public.

Second, *Khan* claimed that the allegedly deceptive prices appeared on Coinbase’s public-facing website, accessible to anyone without a login. (Respondent’s Brief, *Khan v. Coinbase*,

*Inc.* (Cal. Ct. App. Mar. 20, 2025, No. A172063), 2025 WL 985836, at p. \*12.) Uber’s upfront prices appear nowhere outside its authenticated app. The conduct *Khan* found public facing simply does not exist here.

Although Plaintiffs allege that Uber’s website advertises that dynamic in-app prices are the price riders will pay at the end of the ride (RB at p. 23, citing AA7 ¶ 1), Plaintiffs’ complaint does not seek to enjoin any statements on its website (see AA28 ¶¶ 2–3). That is unsurprising: as Plaintiffs concede, the same website discloses that “the Upfront Price Uber shows consumers is merely an ‘estimate’—not the price the consumer will actually pay.” (AA11 ¶ 27.) Instead, Plaintiffs pray for an injunction preventing Uber from “advertising **prices** that are lower than the prices consumers will actually pay.” (AA28 ¶¶ 2–3, emphasis added.) Those “prices” are shown only in the app—dynamically based on various factors—after riders have logged in and requested a ride by entering their current location and destination. (AA4 ¶ 18, AA12–14.)

The injunction Plaintiffs seek—an order prohibiting Uber from “advertising prices that are lower than the prices consumers will actually pay” (AA28 ¶ 2)—would primarily benefit users who accepted a price customized to their proposed trip and ultimately paid more than the original estimate. That is the textbook definition of “a group of individuals similarly situated to the plaintiff”—not the general public. (*McGill, supra*, 2 Cal.5th at p. 955; see *Woody, supra*, 2023 WL 6882750, at p. \*4; *Cottrell, supra*, 2021 WL 4963246; *Stout, supra*, 2021 WL 5758889, at pp.

\*1, \*7; *Croucier, supra*, 2018 WL 2836889; *Halwajian, supra*, 782 F.Supp.3d at p. 882; *Greco, supra*, 2024 WL 5472695, at pp. \*1, \*6; *America Chung Nam, supra*, 2023 WL 8845213, at p. \*7; *Wright, supra*, 2017 WL 4676580, at p. \*9; *Torres, supra*, 2023 WL 5505887, at p. \*5; *Scally, supra*, 2024 WL 37222, at p. \*2.)<sup>2</sup>

The Court should reverse and hold that Plaintiffs must arbitrate their claims.

**B. This Court should construe *McGill* narrowly to avoid FAA preemption concerns.**

The FAA “protect[s] pretty absolutely” parties’ ability to agree to “individualized” arbitration and preempts “new devices and formulas” that disfavor arbitration. (*Epic Systems Corp. v. Lewis* (2018) 584 U.S. 497, 506, 509.) The “individualized” nature of arbitration is one of its “fundamental attributes,” and “Congress has instructed federal courts to enforce arbitration agreements according to their terms—including terms providing for individualized proceedings.” (*Id.* at pp. 502, 508.) Consequently, an “argument that a contract is unenforceable just because it requires bilateral arbitration” “is one that impermissibly disfavors arbitration.” (*Id.* at pp. 509–510.)

A court may invalidate an arbitration agreement subject to the FAA based on “generally applicable contract defenses” but not

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<sup>2</sup> Because review is de novo, this Court need not defer to the trial court’s contrary conclusion. (See *Kramer, supra*, 105 Cal.App.5th at p. 746 [denial of petition to compel arbitration based on *McGill* rule reviewed de novo]; *Khan, supra*, 115 Cal.App.5th at p. 525 [same].)

on legal rules that “apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue.” (*Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639, 649–650, citing *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 339; see 9 U.S.C. § 2.) Further, “nothing in [FAA § 2] suggests an intent to preserve state-law rules that stand as an obstacle to the accomplishment of the FAA’s objectives.” (*Concepcion*, at p. 343; see *Lamps Plus, Inc. v. Varela* (2019) 587 U.S. 176, 183 “[S]tate law is preempted to the extent it ‘stands as an obstacle to the accomplishment and execution of the full purposes and objectives’ of the FAA[.]”.)

Here, the trial court reasoned that Plaintiffs seek public-injunctive relief because “the consumer protection statutes plaintiffs invoke, by their very nature, exist to protect the public.” (AA273:14–15.) But that reasoning collapses the distinction *McGill* drew between relief that “by and large benefit[s] the general public” and relief that benefits only “a group of individuals similarly situated to the plaintiff.” (*McGill, supra*, 2 Cal.5th at p. 955.) Under *McGill*, whether relief is public turns not on the nature of the statute, but on the nature of the requested relief and the identity of its primary beneficiaries. (*Id.* at pp. 956–958.)

In effect, the trial court’s decision transforms *McGill* into an impermissibly arbitration-specific rule categorically prohibiting the arbitration of certain claims. That transformation is fatal under the FAA. A defense qualifies under the saving clause only if it applies to “any contract”; a rule that “derive[s]

[its] meaning from the fact that an agreement to arbitrate is at issue” does not. (*Concepcion, supra*, 563 U.S. at p. 339; *Epic Systems, supra*, 584 U.S. at p. 509.) “When state law prohibits outright the arbitration of a particular type of claim, the analysis is straightforward: The conflicting rule is displaced by the FAA.” (*Marmet Health Care Center, Inc. v. Brown* (2012) 565 U.S. 530, 533, quoting *Concepcion*, at p. 341.)

Applying *Marmet* and *Concepcion*, the Ninth Circuit held that the FAA preempts the same categorical approach that the trial court took here. (See *Ferguson v. Corinthian Colleges, Inc.* (9th Cir. 2013) 733 F.3d 928, 934.) In *Ferguson*, the court held the *Broughton–Cruz* rule—*McGill*’s predecessor—is “clearly irreconcilable” with *Concepcion* and *Marmet* because it “prohibit[ed] outright” arbitration of claims for public injunctive relief under the UCL and FAL. (*Ibid.*)

More recently, the Ninth Circuit warned that an expansive reading of *McGill* that extends to relief “fundamentally incompatible with the sort of simplified procedures the FAA protects” would “flout Supreme Court authority” and, like its predecessor *Broughton–Cruz* rule, be preempted. (*Hodges, supra*, 21 F.4th at p. 548.)

This Court need not resolve whether the trial court’s categorical approach would be preempted by the FAA. It is enough that the Ninth Circuit’s decisions raise serious doubt. “[I]n the preemption context, [California courts] adhere to ‘the rule that courts should, if reasonably possible, construe a statute ‘in a manner that avoids any doubt about its [constitutional]

validity.” (*Hohenshelt v. Superior Court (Golden State Foods Corp.)* (2025) 18 Cal.5th 310, 331, quoting *Kleffman v. Vonage Holdings Corp.* (2010) 49 Cal.4th 334, 346.) This principle of constitutional avoidance applies with full force here, where the Ninth Circuit has expressly warned that an “expansive reading of *McGill*” extending to relief “fundamentally incompatible with the sort of simplified procedures the FAA protects” would “flout Supreme Court authority” and be preempted. (*Hodges, supra*, 21 F.4th at p. 548.)

Courts have held that *McGill* survived preemption precisely because both the California Supreme Court and the Ninth Circuit read it narrowly. (See *Blair v. Rent-A-Center, Inc.* (9th Cir. 2019) 928 F.3d 819, 827 [distinguishing *McGill* from *Broughton–Cruz* because *McGill* “shows no hostility to, and does not prohibit, the arbitration of public injunctions”]; see also *McBurnie v. RAC Acceptance East, LLC* (9th Cir. 2024) 95 F.4th 1188, 1193 [adhering to *Blair* following *Viking River*].) The constitutional-avoidance doctrine counsels this Court to maintain that narrow reading. The nature of the requested relief—not the nature of the statute—determines whether injunctive relief is public.

**II. Any nonarbitrable component of Plaintiffs’ claims must be bifurcated from Plaintiffs’ arbitrable claims for restitution and disgorgement.**

**A. California law mandates severance of any unenforceable contract provisions where, as here, the agreement’s core purpose remains lawful.**

Courts must preserve and enforce any severable, lawful portion of a contract rather than void the entire agreement. (Civ. Code, § 1599 [“Where a contract has several distinct objects, of which one at least is lawful, and one at least is unlawful ... the contract is void as to the latter and valid as to the rest”]; see *Birbrower, Montalbano, Condon & Frank v. Superior Court (Esq Business Services, Inc.)* (1998) 17 Cal.4th 119, 138, 140, as modified (Feb. 25, 1998) [section 1599 of the Civil Code requires courts to sever illegal portions of a contract from the rest of the agreement “to the extent it is possible”], citing *Keene v. Harling* (1964) 61 Cal.2d 318, 320 [“When the transaction is of such a nature that the good part of the consideration can be separated from that which is bad, the Courts will make the distinction, for the ... law ... [divides] according to common reason; and having made that void that is against law, lets the rest stand...”].)

The core object of an arbitration agreement—providing parties a speedy and efficient means of dispute resolution—is lawful. (See *Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 9 [“the Legislature has expressed a ‘strong public policy in favor of arbitration as a speedy and relatively inexpensive means of dispute resolution.’ [Citations.] Consequently, courts will “indulge every intendment to give effect to such proceedings.”

[Citations.]”).) Thus, Civil Code section 1599 requires courts to enforce arbitration agreements to the maximum extent possible, severing any unenforceable provisions. (See *Birbrower, Montalbano, Condon & Frank, supra*, 17 Cal.4th at p. 140.)

Here, the language of the contract confirms that the arbitrable and nonarbitrable relief Plaintiffs seek must proceed separately. It provides:

If any portion of this Arbitration Agreement is found to be unenforceable or unlawful for any reason, (i) the unenforceable or unlawful provision shall be severed from these Terms; (ii) severance of the unenforceable or unlawful provision shall have no impact whatsoever on the remainder of the Arbitration Agreement or the parties’ ability to compel arbitration of any remaining claims on an individual basis pursuant to the Arbitration Agreement; and (iii) to the extent that any claims must therefore proceed on a class, collective, consolidated, or representative basis, such claims must be litigated in a civil court of competent jurisdiction and not in arbitration, and the parties agree that litigation of those claims shall be stayed pending the outcome of any individual claims in arbitration.

(AA150.)

Under both the agreement’s plain terms and Civil Code section 1599, any provision unenforceable under *McGill* must be severed and the remainder enforced. (See *Birbrower, Montalbano, Condon & Frank, supra*, 17 Cal.4th at p. 140; *Keene, supra*, 61 Cal.2d at p. 320.)

The trial court declined to sever the arbitrable and nonarbitrable components of Plaintiffs’ complaint, reasoning that the severability clause refers to “claims,” not “remedies.” (AA275.)

But this reading overlooks that the term “claim” is commonly understood as including, or even as a synonym for, the term “remedy.” (See, e.g., *Claim* (noun), Black’s Law Dictionary (12th ed. 2024), sense 3 [“A demand for money, property, or a legal remedy to which one asserts a right; esp., the part of a complaint in a civil action specifying what relief the plaintiff asks for.”]; *id.* sense 2 [“The assertion of an existing right; any right to payment or to an equitable remedy...”]; *id.* sense 4 [“An interest or remedy recognized at law ....”]; see also Civ. Code, § 1644 [“The words of a contract are to be understood in their ordinary and popular sense, rather than according to their strict legal meaning; unless used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter must be followed.”].)

The trial court’s reading also overlooks that courts—including the California Supreme Court and the First District—refer to requests for public injunctive relief as “claims.” (See, e.g., *McGill, supra*, 2 Cal.5th at p. 953 [“*Broughton and Cruz ... together established the following rule: Agreements to arbitrate **claims for public injunctive relief** under the CLRA, the UCL, or the false advertising law are not enforceable in California.*”], emphasis added; *California Medical Assn. v. Aetna Health of California Inc.* (2023) 14 Cal.5th 1075, 1092, fn. 6 [distinguishing UCL “**claim[s] for public injunctive relief**” from UCL “**claim[s] seeking ‘disgorgement and/or restitution**”]; accord, e.g., *Khan, supra*, 115 Cal.App.5th at pp. 524–525, 528–529, 535; *Kramer, supra*, 105 Cal.App.5th at p. 754.) Courts also refer to

UCL/FAL public injunctive relief “claims” as separate and distinct from disgorgement and restitution “claims” arising from the same statutes. (*California Medical Assn.*, at p. 1092, fn. 6; *Clifford v. Quest Software Inc.* (2019) 38 Cal.App.5th 745, 750.) The agreement uses the term “claims” in this common sense. (See Civ. Code, § 1644.)

The decisions in *Jack v. Ring LLC* (2023) 91 Cal.App.5th 1186 and *Blair v. Rent-A-Center, Inc.* (9th Cir. 2019) 928 F.3d 819 do not support the result the trial court reached here. First, the clauses in those cases provided for severance of “a particular claim for relief.” (*Jack*, at p. 1209; *Blair*, at p. 831.) Uber’s agreement, by contrast, severs allegedly unenforceable “provisions,” not claims. (AA150, § 2(a)(3)(i).) It then expressly preserves “the parties’ ability to compel arbitration of any remaining claims on an individual basis.” (*Id.* § 2(a)(3)(ii).) And it provides that any claims proceeding on a collective or representative basis “shall be stayed pending the outcome of any individual claims in arbitration.” (*Id.* § 2(a)(3)(iii).) Where the clauses in *Jack* and *Blair* were designed to carve claims out of arbitration, Uber’s clause is designed to preserve arbitration to the maximum extent possible. Under *Lamps Plus*, that pro-arbitration purpose must be given effect. (587 U.S. at pp. 186–188.)

*Jack* and *Blair* also did not have the benefit of the California Supreme Court’s July 2023 decision in *Adolph v. Uber Technologies, Inc.*, *supra*, 14 Cal.5th 1104. As explained below (§ II.C), *Adolph* confirmed that the FAA requires “piecemeal

resolution” of “arbitrable and inarbitrable remedies derived from the same statutory claim.” (*Id.* at p. 1125, quoting *McGill, supra*, 2 Cal.5th at p. 966.) To manage bifurcated proceedings, *Adolph* endorsed the California Arbitration Act’s stay mechanism. (*Ibid.*, citing Civ. Proc. Code, § 1281.4.) For example, the court may stay the litigation pending arbitration, and once the arbitrator resolves the merits of Plaintiffs’ individual monetary claims, the matter returns to court to resolve any remaining nonarbitrable issues. (See *id.* at pp. 1123–1124.)

Further, although *Jack* and *Blair* acknowledged that courts routinely use the word “claims” to refer to requests for public injunctive relief, they interpreted ambiguous severability language against arbitration. (See *Jack, supra*, 91 Cal.App.5th at p. 1209; *Blair, supra*, 928 F.3d at p. 831.) That approach cannot survive *Lamps Plus*, which directs courts to resolve ambiguities “in favor of arbitration” as a matter of federal arbitration law. (*Lamps Plus, supra*, 587 U.S. at p. 189; accord *Sandquist v. Lebo Automotive, Inc.* (2016) 1 Cal.5th 233, 255; *Cronus Investments, Inc. v. Concierge Services* (2005) 35 Cal.4th 376, 386.) It also violates Civil Code section 1599’s directive to preserve as much as possible of a lawful contract while severing any unenforceable components. (See *Birbrower, Montalbano, Condon & Frank, supra*, 17 Cal.4th at p. 140; *Keene, supra*, 61 Cal.2d at p. 320.)

An artificial distinction between “claims” and “remedies” departs from the parties’ reasonable expectations and common usage. The trial court’s ruling, if adopted, would adversely affect

arbitration agreements on which countless businesses rely to resolve disputes fairly and efficiently. This Court should reverse.

**B. The FAA and California Supreme Court precedent require private monetary remedies to be arbitrated while any public injunctive relief proceeds in court.**

The *McGill* rule affects only one narrow remedy: public injunctive relief. The Court expressly distinguished restitution and disgorgement from public injunctive relief, noting that these monetary remedies “*do not constitute public injunctive relief.*” (*McGill, supra*, 2 Cal.5th at p. 951, fn. 1, emphasis added; accord *California Medical Assn., supra*, 14 Cal.5th at p. 1092, fn. 6 [“distinguish[ing] a claim for public injunctive relief from a claim seeking ‘disgorgement and/or restitution on behalf of persons other than or in addition to the plaintiff.’”], quoting *McGill*, at pp. 960–961; accord *Cruz v. PacifiCare Health Systems, Inc.* (2003) 30 Cal.4th 303, 318, 320 [UCL claims for restitution “are fully arbitrable”]; *Broughton, supra*, 21 Cal.4th at p. 1088 [same].)

The FAA and California Supreme Court precedent require “piecemeal litigation of ‘arbitrable and inarbitrable remedies derived from the same statutory claim.’” (*McGill, supra*, 2 Cal.5th at p. 966, quoting *Broughton, supra*, 21 Cal.4th at p. 1088; accord *Adolph, supra*, 14 Cal.5th at p. 1125.) As the *Broughton* Court held, “United States Supreme Court case law makes clear that when a suit contains both arbitrable and inarbitrable claims, the arbitrable claims should be severed from those that are inarbitrable and sent to arbitration.” (*Ibid.*, citing *Dean Witter*

*Reynolds, Inc. v. Byrd* (1985) 470 U.S. 213, 221 (“*Byrd*”).)

Although *Byrd* concerned distinct arbitrable and nonarbitrable “claims,” the *Broughton* Court extended its reasoning to “**arbitrable and inarbitrable remedies derived from the same statutory claim.**” (*Ibid.*, emphasis added.)

“Given the strong policy in both federal and state law for arbitrating private disputes,” the Court held that plaintiffs’ public injunctive relief action “**alone** should be decided in a judicial forum,” and that their claim for damages under the same statute “**should be resolved ... in arbitration.**” (*Ibid.*, emphases added; see also *Clifford, supra*, 38 Cal.App.5th at p. 750 [when a “plaintiff’s UCL cause of action includes both arbitrable and inarbitrable claims, such as a request for restitution and a request for public injunctive relief, the trial court must sever the cause of action, order the arbitrable portion to arbitration, and stay the inarbitrable portion.”]; *Adolph, supra*, 14 Cal.5th at p. 1125 [section 1281.4 of the Code of Civil Procedure contemplates bifurcating “arbitrable and nonarbitrable components” so they proceed on parallel tracks in arbitration and in court]; *Cruz, supra*, 30 Cal.4th at p. 320 [similar].)

Thus, severing Plaintiffs’ request for public injunctive relief and their request for disgorgement and restitution is not only the right result based on the language of the agreement and Civil Code section 1599—it is required to preserve the parties’ federally protected arbitration rights.

**C. The U.S. Supreme Court and California Supreme Court’s recent PAGA decisions confirm that individual and representative remedies must be split between arbitration and court to preserve federal arbitration rights.**

In *Viking River Cruises*, the U.S. Supreme Court held that “the FAA preempts [California law] insofar as it precludes division of PAGA actions into individual and non-individual claims through an agreement to arbitrate.” (596 U.S. at p. 663.) Thus, PAGA claims must be split into individual and non-individual components, with individual claims compelled to arbitration. (*Id.* at pp. 659–662.)

The California Supreme Court in *Adolph* reiterated that “the FAA requires piecemeal resolution of related disputes in different forums when necessary to give effect to an arbitration agreement”—a principle that “*extends to ‘piecemeal litigation of ‘arbitrable and inarbitrable remedies derived from the same statutory claim.’*” (14 Cal.5th at p. 1125, emphasis added, quoting *McGill, supra*, 2 Cal.5th at p. 966.) And in *Gregg v. Uber Technologies, Inc.* (2023) 89 Cal.App.5th 786, rev. disp., No. S279722 (Sept. 13, 2023), the court applied *Viking River* to compel arbitration of individual PAGA claims while preserving the plaintiff’s right to pursue non-individual claims in court. (*Id.* at pp. 798–801.)

These authorities are directly analogous here. Under both PAGA and *McGill*, a plaintiff may seek relief extending beyond the individual’s private interest—penalties on behalf of the State and other employees in PAGA; injunctive relief for the benefit of the general public under *McGill*. Both preserve a narrow category

of relief that cannot be waived while permitting arbitration of everything else. The Ninth Circuit accordingly treats public injunctive relief under *McGill* as functionally equivalent to the representative PAGA claims that may be exempted from arbitration. (*McBurnie, supra*, 95 F.4th at p. 1193.)<sup>3</sup>

Like individual and representative PAGA claims, private monetary and public injunctive relief claims under the UCL and FAL must be split between arbitral and judicial fora. *Adolph* held that the representative component of a PAGA claim can be bifurcated from its individual component, with the latter proceeding in arbitration, even though they arise from the same underlying statutory violation. (*Adolph, supra*, 14 Cal.5th at p. 1125.) *McGill*, too, recognized that restitution and disgorgement under the UCL “do not constitute public injunctive relief” (*McGill, supra*, 2 Cal.5th at p. 951, fn. 1)—they are private monetary remedies redressing individual injury, while public injunctive relief benefits the public. Because Plaintiffs’ claims “include[ ] arbitrable and nonarbitrable components,” the

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<sup>3</sup> In a distinct context, *McGill* held that claims for public injunctive relief are not “representative” actions within the meaning of Business and Professions Code sections 17203 and 17535, because plaintiffs meeting the statutory standing requirements bring suit “on his or her own behalf, not on behalf of the general public,” so they need not comply with the class representative requirements of section 382 of the Code of Civil Procedure. (*McGill, supra*, 2 Cal.5th at pp. 959–960.) *McBurnie* used “representative” in a different sense: *McGill*’s antiwaiver rule protects relief benefiting nonparties, and in that functional sense is “representative.” (See *McBurnie, supra*, 95 F.4th at p. 1193.)

arbitrable components must be arbitrated even though the “arbitrable and inarbitrable remedies derive[ ] from the same statutory claim.” (*Adolph*, at p. 1125, quoting *McGill*, at p. 966.)

Whether viewed through the lens of Civil Code section 1599, *Broughton*’s and *McGill*’s remedy-bifurcation rule, or *Viking River*’s and *Adolph*’s requirement to split individual and representative claims, the result is the same: the court must enforce an arbitration agreement to the fullest lawful extent, refusing arbitration only as to components that a generally applicable contract defense renders unenforceable. Declining to sever effectively nullifies entire agreements based on a single invalid provision—depriving both businesses and consumers of the efficient dispute resolution that they bargained for, and that the FAA was enacted to protect.

**III. Expanding *McGill* would deprive an increasing number of litigants of the benefits of arbitration and exacerbate California’s court capacity crisis.**

Arbitration provides businesses and consumers alike with a faster, simpler, and less expensive means of resolving disputes than litigation. Studies show that consumer claimants in arbitration obtain outcomes comparable to or better than those who proceed in court—and obtain them far more quickly.<sup>4</sup> These

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<sup>4</sup> See Matt Webb, *Arbitration: Better for Claimants, Worse for Lawyers*, Institute for Legal Reform (Sept. 16, 2025); Nam D. Pham & Mary Donovan, *Fairer, Faster, Better III: An Empirical Assessment of Consumer and Employment Arbitration*, Institute for Legal Reform (March 8, 2022), available at <https://instituteforlegalreform.com/research/update-an-empirical->

benefits are particularly important in California, where courts face a backlog of over one million civil cases, chronic underfunding, and a severe court reporter shortage.<sup>5</sup> Every case

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assessment-of-consumer-employment-cases-in-arbitration-litigation; Christopher R. Drahozal & Samantha Zyontz, *An Empirical Study of AAA Consumer Arbitrations*, 25 Ohio St. J. on Disp. Resol. 843 (2010); cf. Consumer Financial Protection Bureau, *Arbitration Study: Report to Congress* (March 2015), [https://files.consumerfinance.gov/f/201503\\_cfpb\\_arbitration-study-report-to-congress-2015.pdf](https://files.consumerfinance.gov/f/201503_cfpb_arbitration-study-report-to-congress-2015.pdf) (finding that 87% of resolved class actions resulted in no benefit to class members, and in the rare cases they did, the average settlement payment was no better than \$32.35 per class member, but attorneys' fees averaged \$1 million per case).

<sup>5</sup> E.g., Sharon Bernstein, *California Courts Are Underfunded, Leading to Delays in Cases, Chief Justice Says*, Sacramento Bee, Jan. 17, 2025, <https://www.sacbee.com/news/politics-government/capitol-alert/article298667898.html>; Ellie K. Vilendrer, *The Sooner the Better*, L.A. Lawyer, at 20–21, Sept. 2024, <https://signatureresolution.com/wp-content/uploads/2024/10/Elle-Article-10-16-24.pdf> (California courts face a severe backlog crisis, with over a million civil cases added to the backlog in the previous five years); Ellie K. Vilendrer, *The case for Early Dispute Resolution to fast-track justice*, Daily Journal, Nov. 5, 2024, <https://www.dailyjournal.com/article/381664-the-case-for-early-dispute-resolution-to-fast-track-justice>; S. Gibson *et al.*, *Caseload Detail – Total Civil, Court Statistics Project*, Oct. 2024, [www.courtstatistics.org](http://www.courtstatistics.org); L.A. Superior Court, *News Release, Superior Court of Los Angeles County to Reduce Staff Positions in Response to Significant State Budget Cuts Which Will Result in a Reduction in Services*, July 1, 2024, <https://www.lacourt.org/newsmedia/uploads/14202471102334NR07-01-2024-COURTTOREDUCESTAFFANDELIMINATEVACANTPOSITIONS.pdf>; Maura Dolan, *California Chief Justice Warns of Civil Rights Crisis from Court Cuts*, L.A. Times, March 17, 2014,

that could have been arbitrated but instead proceeds in court contributes to this backlog—delaying not only the parties to that case, but also litigants in cases that cannot be arbitrated, including criminal defendants, civil rights plaintiffs, and personal injury victims who never signed an arbitration agreement.

Yet the empirical record shows that *McGill*'s primary function in practice has not been securing public injunctions. Of hundreds of cases invoking *McGill* and its predecessors, research reveals only a single instance in which a court ordered public injunctive relief to a private plaintiff under the UCL, FAL, or CLRA. (See *Loy v. Kenney* (2022) 85 Cal.App.5th 403, 413 [injunction against unlicensed dog breeder].) The overwhelming majority of *McGill* citations involve litigants invoking the rule to oppose arbitration. Whatever *McGill*'s original purpose, expanding the rule further would compound this imbalance—enabling more plaintiffs to evade arbitration while delivering virtually no public injunctive relief in return.

Further, private plaintiffs are not crucial to enforcing the UCL and FAL for the benefit of the public at large. The Attorney General and local prosecutors can and do enforce both laws, including by seeking injunctive relief and civil penalties. (Cal. Bus. & Prof. Code, §§ 17204, 17206, 17535; see, e.g., *People v.*

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<https://www.latimes.com/local/la-me-chief-justice-20140318-story.html>; California Access to Justice Commission, *Issue Paper: Access to the Record of California Trial Court Proceedings*, 2024, <https://bit.ly/CAJC-record-access> (over one million superior court hearings occur every year without verbatim records of what transpired).

*Maplebear Inc.* (2022) 81 Cal.App.5th 923, 928 [the San Diego City Attorney obtained public injunction against Instacart for employee misclassification].) Thus, expanding *McGill* is unnecessary to protect California consumers from unlawful business practices—public enforcement already serves that function.

The Court should decline to expand *McGill* and instead reverse, allowing California businesses and consumers to continue reaping the benefits of arbitration.

**CONCLUSION**

*Amicus Curiae* the U.S. Chamber of Commerce respectfully submits that the Court should reverse the order denying the motion to compel arbitration.

Dated: March 23, 2026

Respectfully submitted,

The Norton Law Firm PC

By: \_\_\_\_\_



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Document received by the CA 1st District Court of Appeal.

**CERTIFICATION OF WORD COUNT**

This brief contains 5,928 words as counted by the Microsoft Word program used to generate it.

Dated: March 23, 2026



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Josephine K. Petrick

## PROOF OF SERVICE

I am employed in the County of Alameda, State of California. I am over the age of 18 and not a party to the within action; my business address is 300 Frank H. Ogawa Plaza, Suite 450, Oakland, CA 94612.

On March 23, 2026, I hereby certify that I electronically served the foregoing **APPLICATION OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA FOR PERMISSION TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF DEFENDANT-APPELLANT UBER TECHNOLOGIES, INC. AND REVERSAL; AMICUS CURIAE BRIEF** through the Court's electronic filing system, TrueFiling. I certify that all participants in the case who are registered TrueFiling users and appear on its electronic service list will be served pursuant to California Rules of Court, rule 8.70. Electronic service is complete at the time of transmission:

\*\*\* SEE ATTACHED ELECTRONIC SERVICE LIST \*\*\*

Executed on March 23, 2026 at Oakland, California. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.



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