Case No. G064704

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION THREE

DIRK CLINTON et al.,
Plaintiffs and Respondents,

v.

AMAZON LOGISTICS, INC. and AMAZON.COM, INC.,
Defendants and Appellants.

APPLICATION OF THE CHAMBER OF THE COMMERCE OF THE UNITED STATES OF AMERICA, THE RETAIL LITIGATION CENTER, INC., AND CALIFORNIA EMPLOYMENT LAW COUNCIL FOR PERMISSION TO FILE *AMICI CURIAE* BRIEF IN SUPPORT OF DEFENDANTS-APPELLANTS AND REVERSAL

On Appeal from Orange County Superior Court
No. JCCP 5078, Hon. Melissa R. McCormick, Judge Presiding

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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, the Retail Litigation Center, Inc., or California Employment Law Council. Other than *amici 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: June 3, 2025

Respectfully submitted.
MAYER BROWN LLP

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APPLICATION OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, THE RETAIL LITIGATION CENTER, INC., AND CALIFORNIA EMPLOYMENT LAW COUNCIL FOR PERMISSION TO FILE *AMICI CURIAE* BRIEF

To the Honorable Justices of the California Court of Appeal:

The Chamber of Commerce of the United States of America ("Chamber"), the Retail Litigation Center, Inc. ("RLC"), and California Employment Law Council ("CELC") respectfully seek leave to file a brief as *amici curiae* in support of defendants-appellants Amazon Logistics, Inc. and Amazon.com, Inc.[1]

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

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[1] No party or counsel for a party in this matter authored the proposed *amici curiae* 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 *amici curiae*, their members, or their counsel. (*See* Cal. Rules of Court, rule 8.520(f)(4).)

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.

Many of the Chamber's members regularly rely on arbitration agreements in their contractual relationships. Based on the legislative policy choices reflected in the FAA, the Chamber's members have structured millions of contractual relationships around the use of arbitration to resolve disputes.

The RLC is a 501(c)(6) nonprofit trade association that represents national and regional retailers, including many of the country's largest and most innovative retailers, across a breadth of retail verticals. The RLC is the only trade organization solely dedicated to representing the retail industry in the courts. The RLC's members employ millions of people throughout the U.S., provide goods and services to tens of millions more, and account for tens of billions of dollars in annual sales. The RLC offers retail-industry perspectives to courts on important legal issues and highlights the industry-wide consequences of significant cases. Since its founding in 2010, the RLC has filed more than 250 amicus briefs on issues of importance to the retail industry.

Its amicus briefs have been helpful to courts throughout the United States, as evidenced by citation to RLC amicus briefs in numerous precedential opinions. (*See, e.g., South Dakota v. Wayfair, Inc.* (2018) 585 U.S. 162, 184; *Kirtsaeng v. John Wiley & Sons, Inc.* (2013) 568 U.S. 519, 542; *Chewy, Inc. v. U.S. Dep't of Lab.* (11th Cir. 2023) 69 F.4th 773, 777-78; *State v. Welch* (Tenn. 2020) 595 S.W.3d 615, 630.)

CELC is a voluntary, non-profit organization that promotes the common interests of employers and the general public in fostering the development in California of reasonable, equitable, and progressive rules of employment law. CELC's membership includes approximately 70 private-sector employers in the State of California who collectively employ hundreds of thousands of Californians. CELC has participated as *amicus* in many of California's leading employment cases.[2]

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[2] *See, e.g., Estrada v. Royalty Carpet Mills, Inc.* (2024) 15 Cal. 5th 582; *Turrieta v. Lyft, Inc.* (2024) 16 Cal. 5th 664; *Adolph v. Uber Techs., Inc.* (2023) 14 Cal. 5th 1104; *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639; *Donohue v. AMN Servs. LLC* (2021) 11 Cal. 5th 58; *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858; *Vazquez v. Jan-Pro Franchising Int'l, Inc.* (2021) 10 Cal. 5th 994; *Frlekin v. Apple Inc.* (2020) 8 Cal. 5th 1038; *Troester v. Starbucks Corp.* (2018) 5 Cal. 5th 829; *Dynamex Operations W., Inc. v. Superior Ct.* (2018) 4 Cal. 5th 903; *Alvarado v. Dart Container Corp. of Cal.* (2018) 4 Cal. 5th 542.

Amici's members and the broader business community have a strong interest in this case and reversal of the decision below. The trial court's decision holding that the FAA does not apply to Amazon delivery partners whose work takes place solely within a single state and is several steps removed from the actual movement of goods in interstate commerce cannot be squared with the text and structure of the statute or the Supreme Court's recent interpretation of it in *Southwest Airlines Co. v. Saxon* (2022) 596 U.S. 450, and *Bissonnette v. LePage Bakeries Park Street, LLC* (2024) 601 U.S. 246. And the trial court's decision improperly limits the FAA's protections and introduces uncertainty that will engender costly and protracted disputes over the application of the FAA, harming both businesses and workers.

Amici therefore have a strong interest in participating in this case.

CONCLUSION

Amici respectfully request that the Court grant their application to file the proposed *amici curiae* brief.

Dated: June 3, 2025

Respectfully submitted.

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INTEREST OF *AMICI CURIAE*

The Chamber of Commerce of the United States of America ("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.[1]

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.

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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 Retail Litigation Center, Inc. ("RLC") is a 501(c)(6) nonprofit trade association that represents national and regional retailers, including many of the country's largest and most innovative retailers, across a breadth of retail verticals. The RLC is the only trade organization solely dedicated to representing the retail industry in the courts. The RLC's members employ millions of people throughout the U.S., provide goods and services to tens of millions more, and account for tens of billions of dollars in annual sales. The RLC offers retail-industry perspectives to courts on important legal issues and highlights the industry-wide consequences of significant cases. Since its founding in 2010, the RLC has filed more than 250 amicus briefs on issues of importance to the retail industry. Its amicus briefs have been helpful to courts throughout the United States, as evidenced by citation to RLC amicus briefs in numerous precedential opinions. (*See, e.g., South Dakota v. Wayfair, Inc.* (2018) 585 U.S. 162, 184; *Kirtsaeng v. John Wiley & Sons, Inc.* (2013) 568 U.S. 519, 542;

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The trial court's decision holding that the FAA does not apply to Amazon delivery partners whose work takes place solely within a single state and is several steps removed from the actual movement of goods in interstate commerce cannot be squared

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with the text and structure of the statute or the Supreme Court's recent interpretation of it in *Southwest Airlines Co. v. Saxon* (2022) 596 U.S. 450, and *Bissonnette v. LePage Bakeries Park Street, LLC* (2024) 601 U.S. 246. And the trial court's decision improperly limits the FAA's protections and introduces uncertainty that will engender costly and protracted disputes over the application of the FAA, harming both businesses and workers.

Amici curiae therefore have a strong interest in this case and in reversal of the decision below.

INTRODUCTION AND SUMMARY OF ARGUMENT

Congress enacted the Federal Arbitration Act in 1925 "in response to judicial hostility to arbitration." (*Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639, 649.) The Act implements Congress's strong commitment to protecting the enforceability of arbitration agreements.

To that end, Section 2 of the FAA broadly protects arbitration agreements "evidencing a transaction involving commerce." (9 U.S.C. § 2.) The U.S. Supreme Court has held that the phrase "involving commerce" "signals an intent to exercise

Congress' commerce power to the full." (*Allied-Bruce Terminix Cos.* v. *Dobson* (1995) 513 U.S. 265, 277.)

Arbitration opponents increasingly have tried to avoid the FAA's protections by invoking the limited exemption in Section 1, which excludes from the Act's coverage "contracts of employment of seamen, railroad employees, or any *other class of workers engaged in foreign or interstate commerce*." (9 U.S.C. § 1 [emphasis added].)

That is what happened here. Amazon's opening brief explains (at 13-17) that plaintiffs belong to a class of workers—Amazon Delivery Partners—who make entirely local and in-state deliveries, primarily of locally stocked and prepared groceries and other items. Notwithstanding the purely intrastate character of these workers' responsibilities, plaintiffs resisted enforcement of their arbitration agreements by asserting that they are covered by the Section 1 exemption. The trial court agreed, holding that it sufficed that "*Amazon* moves goods" across state lines and that some of the items delivered by Amazon Delivery Partners

previously crossed the California border. (19-AA-4946 [emphasis added].)[3]

The trial court's expansive interpretation of what it means to be "engaged in . . . interstate commerce" cannot be squared with the plain meaning of the statute. More than two decades ago, the Supreme Court instructed that Section 1's exemption must be given a "narrow construction" and "precise reading." (*Circuit City Stores, Inc. v. Adams* (2001) 532 U.S. 105, 118, 119.) In *Saxon*, the Court reaffirmed that Section 1 must be interpreted according to its "contemporary, common meaning" at the time the FAA was enacted in 1925—which included a circumscribed view of what it meant to be "engaged in . . . commerce." (596 U.S. at 455 [quotation marks omitted].) The relevant language in Section 1—"other class of workers engaged in foreign or interstate commerce"—is also cabined by "the application of the maxim *ejusdem generis*" because it is a "residual phrase, following, in the same sentence, explicit

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[3] Because plaintiffs handle goods, this Court does not have occasion in this case to address the issue whether Section 1 includes those who transport passengers and their effects. (*See, e.g.*, *Cunningham v. Lyft, Inc.* (1st Cir. 2021) 17 F.4th 244, 249 [declining to "address this contention" because the Section 1 exemption does not apply to rideshare drivers for other reasons].)

reference to 'seamen' and 'railroad employees.'" (*Circuit City*, 532 U.S. at 114; *see Saxon*, 596 U.S. at 458.)

As the U.S. Supreme Court has twice reiterated in recent years, these interpretive principles make clear that what matters is "the actual *work*" performed by the "class of workers" rather than the origin and movement of the goods. (*Saxon*, 596 U.S. at 456 [emphasis added].) In other words, the statute "focuses on 'the *performance* of work' rather than the industry of the employer." (*Bissonnette*, 601 U.S. at 253 [quoting *Saxon*, 596 U.S. at 456].)

The superior court here failed to focus on the work, instead resting its conclusion on Amazon's overall business and the previous interstate journey of some of the delivered goods. That approach, if upheld, would result in Section 1's residual clause sweeping far beyond workers "*directly involved* in transporting goods across state or international borders." (*Saxon*, 596 U.S. at 457 (emphasis added); *see also*, *e.g.*, *Hamrick v. Partsfleet, LLC* (11th Cir. 2021) 1 F.4th 1337, 1350.) Such an approach would "sweep in numerous categories of workers whose occupations have nothing to do with interstate transport." (*Wallace v.*

Grubhub Holdings, Inc. (7th Cir. 2020) 970 F.3d 798, 802 (Barrett, J.).)

Indeed, the trial court's focus on Amazon's business and the movement of the goods, rather than the work performed, misinterprets Section 1 for the additional reason that the residual clause is limited to classes of workers whose *duties center* on interstate movement. As then-Judge Barrett explained, for a class of workers to perform work analogous to "seamen" and "railroad employees," "interstate movement of goods" must be "a *central part* of the class members' job description." (*Id.* at 801 [emphasis added].) And the Supreme Court agreed in *Saxon* that the word "engaged" in Section 1 "emphasizes the actual work that the members of the class, as a whole, *typically* carry out." 596 U.S. at 456 (emphasis added). That is the standard. Yet here the class of workers does not engage in interstate movement of goods at all, let alone as a typical or central part of their jobs.

The superior court's expansive approach to what counts as being "engaged in foreign or interstate commerce" also threatens to create serious practical problems. If adopted, that approach would generate significant litigation over whether the FAA applies to a broad and indeterminate array of workers far beyond

Amazon Delivery Partners, including those individuals who simply provide local delivery services to local customers of local retailers who happen to have in their local inventory goods that that have traveled interstate. Businesses and workers would face uncertainty over whether the FAA protects their arbitration agreements and delay in referring disputes to arbitration, even if the FAA ultimately does protect those agreements. As a result, wide sectors of the economy could be deprived of the benefits secured by the FAA, including lower costs and greater efficiency. And the increased costs of litigating both the applicability of the Section 1 exemption, and, if necessary, the merits in court would be passed on in the form of decreased payments to workers or increased costs to consumers.

The trial court's order should be reversed.

ARGUMENT

I. The Text And Structure Of The FAA Demonstrate That Plaintiffs Are Not Included Within A "Class Of Workers Engaged In . . . Interstate Commerce."

A. Section 1's Residual Clause Is Limited To Classes Of Workers Directly Involved In Transporting Goods Across State Or International Borders.

1. The FAA's principal substantive provision, Section 2, provides that an arbitration agreement in "a contract evidencing

a transaction *involving commerce* . . . shall be valid, irrevocable, and enforceable." (9 U.S.C. § 2 [emphasis added].) The Supreme Court has instructed that Section 2's "involving commerce" language must be read "expansively" to reach all arbitration agreements within Congress's commerce power. (*Allied-Bruce*, 513 U.S. at 274.)

Section 1, by contrast, creates a very limited exception to Section 2's broad coverage. It provides that the FAA's federal-law protections for arbitration agreements do not apply to "contracts of employment of seamen, railroad employees, or any other class of workers *engaged in* foreign or interstate *commerce*." (9 U.S.C. § 1 [emphasis added].) The Supreme Court has instructed that the Section 1 "engaged in . . . commerce" exemption requires a "narrow construction" and "precise reading." (*Circuit City*, 532 U.S. at 118-19.)

The Supreme Court's recent decisions in *Saxon* and *Bissonnette* reaffirm three interpretive principles that inform the proper "narrow" and "precise reading."

First, the Section 1 exemption must be interpreted based on the "ordinary, contemporary, common meaning" of the statutory text at the time Congress enacted the FAA in 1925. (*Saxon*, 596

U.S. at 455 [quotation marks omitted]); *accord New Prime, Inc. v. Oliveira* (2019) 586 U.S. 105, 113 [also recognizing the "reliance interests in the settled meaning of a statute"].)

Second, the words of the statutes must be interpreted "'in their context.'" (*Saxon*, 596 U.S. at 455 [quoting *Parker Drilling Mgmt. Servs., Ltd. v. Newton* (2019) 587 U.S. 601, 608].)

Third, with respect to Section 1's residual clause in particular, the Court has instructed that under "the *ejusdem generis* canon," the clause should be "'controlled and defined by reference' to the specific classes of 'seamen' and 'railroad employees' that precede it." (*Saxon*, 596 U.S. at 458 [quoting *Circuit City*, 532 U.S. at 115]; *accord Bissonnette*, 601 U.S. at 252-53.) In other words, the residual clause must be construed narrowly to reach only classes of workers that are similar—in terms of their engagement with foreign or interstate commerce—to the enumerated groups of "seamen" and "railroad employees."

Applying these three principles, the Court held that a class of workers must be "typically" and "directly involved in transporting goods across state or international borders" in order to be "engaged in foreign or interstate commerce" within the meaning of Section 1's residual clause. (*Saxon*, 596 U.S. at 456-

57.) "Put another way, transportation workers must be actively engaged in transportation of those goods across borders via the channels of foreign or interstate commerce." (*Id.* at 458 [quotation marks omitted]; *accord Bissonnette*, 601 U.S. at 256.)

2. The class of workers that includes plaintiffs does not satisfy this standard. As Amazon's brief details, these workers make local deliveries entirely within a single state. And unlike the cargo loaders in *Saxon*, these workers are not involved at all in the goods' crossing of state borders, which occurs before the goods come into the workers' hands, separate and apart from the workers' in-state activities. (*Cf. Saxon*, 596 U.S. at 459 (comparing the act of loading cargo to "wharfage," which Section 1 refers to as a "matter[] in foreign commerce") [quoting 9 U.S.C. § 1].)

The trial court's reliance on the fact that Amazon Delivery Partners like plaintiffs deliver some *goods* that originate outside of California to in-state customers cannot be squared with the Supreme Court's repeated recent direction to assess the actual work performed by the class.

That conclusion follows from Section 1's use of the word "workers," which "directs the interpreter's attention to 'the

performance of work.'" (*Saxon*, 596 U.S. at 456 [quoting *New Prime*, 586 U.S. at 116]; *accord Bissonnette*, 601 U.S. at 253.) In addition, "the word 'engaged'" "similarly emphasizes the *actual work* that the members of the class, as a whole, typically carry out." (*Saxon*, 596 U.S. at 456 [emphasis added].)

Moreover, given the Supreme Court's instruction that Section 1 be given a "narrow construction" (*Circuit City*, 532 U.S. at 118), each of Section 1's relevant terms—including "workers," "engaged," and "commerce"—must be interpreted based on their ordinary meanings at the time of the FAA's enactment, rather than any expansive modern conceptions of what qualifies as interstate commerce. (*Saxon*, 596 U.S. at 456 [collecting contemporary dictionary definitions]; *see also*, *e.g.*, Black's Law Dictionary 651 (2d ed. 1910) [defining "interstate commerce" as "commerce between two states," specifically—"traffic, intercourse, commercial trading, or [] transportation" "between or among the several states of the Union, or from or between points in one state and points in another state"]; *Hamrick*, 1 F.4th at 1350 [relying on this contemporary definition of "interstate commerce" to conclude that the class of workers must "actually engage[]" in cross-border transportation].)

Multiple courts, post-*Saxon,* have held that a test that hinges on the origin of the goods transported rather than a test that looks to the work performed by the workers themselves (including the nature of the transaction the workers are completing) has no meaningful limiting principle. These courts have explained that gig drivers performing on-demand pickup and delivery services from local stores to local customers are not exempt under Section 1, notwithstanding that the goods transported previously traveled interstate.[4]

Pre-*Saxon* decisions from other circuits are in accord. In addressing the applicability of Section 1 to "drivers who make local deliveries of goods and materials that have been shipped from out-of-state to a local warehouse," the Eleventh Circuit held that the district court had erred by "focus[ing] on the movement of the goods" rather than whether the class of workers, "in the

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[4] *See, e.g.*, *Shugars v. Walmart Inc.* (N.D. Cal. Mar. 12, 2025) 2025 WL 786348, at *4-5; *Chambers v. Maplebear, Inc.* (S.D.N.Y. 2024) 746 F. Supp. 3d 206, 212-15 (holding that Instacart grocery delivery drivers are not transportation workers engaged in interstate commerce); *Levine v. Maplebear, Inc.* (D. Mass. Mar. 18, 2022) 2022 WL 827290, at *3-4 (same); *Burns v. Maplebear, Inc.* (N.D. Ill. Aug. 7, 2024) 2024 U.S. Dist. LEXIS 1581611, at *11-13 (same); *Young v. Shipt, Inc.* (N.D. Ill. 2021) 563 F. Supp.3d 832, 836-39.

main, actually engages in interstate commerce," meaning the transportation of goods "across state lines." (*Hamrick*, 1 F.4th at 1340, 1346, 1350-52.) It held, contrary to the superior court here, that workers who move goods from one in-state location to another do not fall within the Section 1 exemption just because the goods "had been previously transported interstate." (*Id.* at 1349 [quotation marks omitted].) That is because, "in the text of the exemption, 'engaged in foreign or interstate commerce' modifies 'workers' and not 'goods.'" (*Id.* at 1350.)

Writing for the Seventh Circuit, then-Judge Barrett likewise *rejected* the plaintiffs' argument that the Section 1 "exemption is not so much about what the worker does as about where the goods have been." (*Wallace*, 970 F.3d at 802.) Instead, engaging in foreign or interstate commerce requires "workers [to] be connected not simply to the goods but to the *act of moving those goods across* state or national borders." (*Id.* [emphasis added].) Indeed, focusing on the origin and movement of the goods "would sweep in numerous categories of workers whose occupations have nothing to do with interstate transport—for example, dry cleaners who deliver pressed shirts manufactured in Taiwan and ice cream truck drivers selling treats made with

milk from an out-of-state dairy." (*Id.*) The Seventh Circuit therefore held that local food delivery drivers who deliver meals and packaged items from restaurants to diners are not "engaged in . . . interstate commerce" within the meaning of Section 1 of the FAA, because "the interstate movement of goods" was not "a central part of the job description of the class of workers." (*Id.* at 803.)

3. The trial court relied heavily on the Ninth Circuit's pre-*Saxon* and pre-*Bissonnette* decision holding that contracts of "last leg" delivery drivers performing work for Amazon are exempt from the FAA under Section 1 on the theory the goods are still in interstate commerce until they reach the Amazon customer who ordered them from out of state. (*See Rittmann v. Amazon.com, Inc.* (9th Cir. 2020) 971 F.3d 904; *see also Waithaka v. Amazon.com, Inc.* (1st Cir. 2020) 966 F.3d 10 [reaching similar result].)

Amici curiae maintain that the exemption does not apply to such drivers for the reasons discussed in the Chamber's *amicus* briefs in *Rittmann* and *Waithaka*, including that the drivers' work is too far removed from the transportation of goods across state lines. Indeed, although the Supreme Court had no occasion

to rule on that issue in *Saxon*, it suggested that the applicability of the exemption to such drivers was not "so plain" as its applicability to cargo loaders because last leg delivery drivers "carr[y] out duties further removed from the channels of interstate commerce or the actual crossing of borders." (596 U.S. at 457 n.2.)

But the Court need not disagree with *Rittmann* or *Waithaka* in order to reverse here, because the trial court ignored the record evidence here that distinguishes those cases. As Amazon explains (AOB 25-26, 38-46), the class of workers here does not provide last-mile delivery services as part of a single, unbroken interstate transaction—and therefore they are not "last-leg" or "last-mile" drivers at all. Instead, the workers primarily deliver locally packaged and prepared groceries and other items, and the packages that they do deliver that originated in California overwhelmingly come to rest in California before being picked up by Amazon Delivery Partners like plaintiffs.

Thus, the work performed by the class of workers in this case more closely resembles the "'independent local service'" that courts—including the First and Ninth Circuits—have recognized does *not* trigger Section 1's residual clause. (*Cunningham*, 17

F.4th at 250-51 [quoting *United States v. Yellow Cab Co.* (1947) 332 U.S. 218, 233, *overruled on other grounds by Copperweld Corp. v. Independent Tube Corp.* (1984) 467 U.S. 752]; *accord Immediato v. Postmates, Inc.* (1st Cir. 2022) 54 F.4th 67, 78; *Capriole v. Uber Techs., Inc.* (9th Cir. 2021) 7 F.4th 854, 863-64.)

B. Section 1's Residual Clause Additionally Requires That Direct Involvement In Transporting Goods Across State Or International Borders Is A Central Part Of The Workers' Job Description.

The district court's interpretation of Section 1 was incorrect for another reason: the exemption's residual clause applies only if transportation of goods across state or national borders is *central* to the work performed by the relevant class of workers.

As the Seventh Circuit has explained, Congress viewed seamen and railroad employees as workers "whose occupations [we]re *centered* on the transport of goods in interstate and foreign commerce." (*Wallace*, 970 F.3d at 802 [emphasis added].) Under the residual clause, therefore, a party seeking to avoid the FAA's coverage must also "demonstrate that the interstate movement of goods is a *central part* of the job description of the class of workers to which they belong." (*Id.* at 803 [emphasis added].)

Applying this standard, the First, Third, and Ninth

Circuits have agreed, for example, that rideshare drivers (such as those who use the Uber and Lyft platforms to offer rides) do not fall within the Section 1 exemption because they overwhelmingly provide local, intrastate rides. (*See Singh v. Uber Techs., Inc.* (3d Cir. 2023) 67 F.4th 550, 553; *Cunningham*, 17 F.4th at 252-53; *Capriole*, 7 F.4th at 865-66.) It "cannot even arguably be said" that rideshare drivers (and other local workers) are classes of "workers primarily devoted to the movement of goods and people beyond state boundaries." (*Cunningham*, 17 F.4th at 253.)

Or, as the Ninth Circuit similarly put it, such local workers, even if they occasionally cross state lines, stand in stark "contrast" to "seamen and railroad workers," for whom "the interstate movement of goods and passengers over long distances and across national or state lines is an indelible and 'central part of the job description.'" (*Capriole*, 7 F.4th at 865 [quoting *Wallace*, 970 F.3d at 803]; *see also Saxon*, 596 U.S. at 456 [instructing courts to look at "the actual work that the members of the class, as a whole, *typically* carry out" and noting that Saxon belonged to a class of workers "who physically load and unload cargo on and off airplanes on a *frequent* basis"] [emphasis added].) The Third Circuit made clear that this approach is wholly consistent with

Saxon, explaining that rideshare drivers are not "typically involved with the channels of interstate commerce," as Section 1 requires. (*Singh*, 67 F.4th at 559.)

The class of workers here does not satisfy these standards either. For the reasons above, the class is not "directly involved" or "actively engaged" in cross-border transportation at all. (*Saxon*, 596 U.S. at 456 [quotation marks omitted].) It follows that such transportation cannot be a central part of their job description. For this reason, too, plaintiffs do not belong to a class of workers "engaged in . . . interstate commerce" within the meaning of Section 1.

II. The Superior Court's Erroneous Reading Of Section 1 Harms Businesses And Workers.

The trial court's failure to give Section 1 a proper construction, if adopted, will produce at least two significant practical consequences. First, it will generate time-consuming and costly litigation over the FAA's application—thereby undermining one of Congress's key goals in enacting the FAA. Second, it will deprive businesses and individuals of the benefits of arbitration protected by the FAA.

1. The Supreme Court has long recognized "Congress' clear intent, in the [Federal] Arbitration Act, to move the parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible." (*Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.* (1983) 460 U.S. 1, 22.) Straightforward, easily administrable rules are thus especially important in the context of the FAA. Indeed, the *Circuit City* Court emphasized that Section 1 should not be interpreted in a manner that introduces "considerable complexity and uncertainty . . . , in the process undermining the FAA's proarbitration purposes and 'breeding litigation from a statute that seeks to avoid it.'" (532 U.S. at 123 [quoting *Allied-Bruce*, 513 U.S. at 275].)

Interpreting the residual clause in accordance with its plain meaning—requiring that the class of workers be "typically" and "*directly* involved in transporting goods across state or international borders" (*Saxon*, 596 U.S. at 456 [emphasis added])—produces a simple test that should be easy to apply. It should not be difficult or factually complex in the mine-run of cases to determine whether a class of workers is directly involved in the movement of goods across state lines or national boundaries as a central part of their job. (*Cf. Bissonnette*, 601

U.S. at 254 [noting that a transportation-industry requirement might require "[e]xtensive discovery" or turn on "arcane riddles about the nature of a company's services"].)

By contrast, the decision below, if allowed to stand, would necessitate detailed factual assessments of the goods' origin and movement across state lines, even when the relevant class of workers does not primarily engage in that movement of the goods. Such a standard could invite litigation over the proper FAA classification of numerous workers—for example, delivery drivers from grocery stores, local hardware supply stores, or pharmacies—who are involved in purely local transactions involving goods manufactured or grown out of state. For example, in any given case, a court might have to determine whether a local grocery delivery driver, delivering to a home less than a mile from the store, is spending more time delivering California-grown produce or out-of-state produce in order to ascertain whether she, and the other similarly situated workers in the relevant class of workers, satisfies the Section 1 exemption.

Interpreting Section 1's residual clause to require such an inquiry produces "serious problems of practical application." (*Rittmann*, 971 F.3d at 936 [Bress, J., dissenting].) And

"[u]ndertaking such confounding inquiries in the context of the FAA is particularly undesirable when the result will inevitably mean more complex civil litigation over the availability of a private dispute resolution mechanism that is supposed to itself reduce costs." (*Id.* at 937 [Bress, J., dissenting] [citing *Circuit City*, 532 U.S. at 123; *Allied-Bruce*, 513 U.S. at 275].)

Even if some of the parties' underlying disputes are ultimately compelled to arbitration, the intervening litigation over the FAA's application would severely undermine the FAA's purpose of ensuring speedy and efficient dispute resolution. And this expensive and time-consuming litigation would burden courts as well.

Further compounding the costs and delays associated with resolving the FAA's application under an overly expansive reading of the Section 1 exemption is the risk of court-ordered discovery that threatens to drag on for months. (*See Aleksanian v. Uber Techs., Inc.* (2d Cir. Nov. 14, 2023) 2023 WL 7537627, at *3-4 [remanding for discovery]; *Singh v. Uber Techs. Inc.* (3d Cir. 2019) 939 F.3d 210, 227-28 [same]; *Golightly v. Uber Techs., Inc.* (S.D.N.Y. Aug. 11, 2021) 2021 WL 3539146, at *3-4; *see also Singh v. Uber Techs., Inc.* (D.N.J. 2021) 571 F. Supp. 3d 345, 365-

66 [concluding, over two years after the Third Circuit's initial remand and after months of discovery, that rideshare drivers "are not exempt from the FAA"], *aff'd*, 67 F.4th 550.)

If adopted, the trial court's approach—focused on the ultimate origin of goods—would expand the concept of what it means to be engaged in interstate commerce beyond all recognition and would be very difficult, if not impossible, to reliably administer. By contrast, an analysis that focuses not on the goods themselves, but on the work performed, including whether or not the worker is performing local deliveries in order to complete a local transaction to a local customer, draws a far cleaner and more administrable line—and one that is far more faithful to governing precedent.

2. The trial court's approach, if adopted, also would deprive businesses and individuals of the benefits of arbitration secured by the FAA. Without that uniform federal protection, whether businesses and workers can invoke arbitration agreements will turn on state law and vary state by state. And the overall result will be that more disputes are resolved in court rather than in arbitration, because the FAA's protection against state-law rules that disfavor arbitration will no longer apply.

The Supreme Court has repeatedly recognized the "real benefits" of "enforcement of arbitration provisions" (*Circuit City*, 532 U.S. at 122-23), which include "'lower costs [and] greater efficiency and speed,'" (*Lamps Plus, Inc. v. Varela* (2019) 587 U.S. 176 [quoting *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.* (2010) 559 U.S. 662, 685]; *accord Allied-Bruce*, 513 U.S. at 280 [one of the "advantages" of arbitration is that it is "cheaper and faster than litigation"] [quotation marks omitted]; *14 Penn Plaza LLC v. Pyett* (2009) 556 U.S. 247, 257 ["Parties generally favor arbitration precisely because of the economics of dispute resolution."].)

These advantages extend to agreements between businesses and workers. (*See Circuit City*, 532 U.S. at 123 [rejecting the "supposition that the advantages of the arbitration process somehow disappear when transferred to the employment context"].) The lower costs of arbitration compared to litigation "may be of particular importance in employment litigation, which often involves smaller sums of money than disputes concerning commercial contracts." (*Id.*)

Empirical research confirms those observations. Scholars and researchers agree, for example, that the average employment

dispute is resolved up to twice as quickly in arbitration as in court. (*See* Lewis L. Maltby, *Private Justice: Employment Arbitration and Civil Rights*, 30 Colum. Hum. Rts. L. Rev. 29, 55 (1998) [average resolution time for employment arbitration was 8.6 months—approximately half the average resolution time in court]; *see also*, *e.g.*, Nam D. Pham, Ph.D. & Mary Donovan, *Fairer, Faster, Better III: An Empirical Assessment of Consumer and Employment Arbitration*, NDP Analytics 5-6, 15 (March 2022), https://bit.ly/3yiU23A [reporting that average resolution for arbitration was approximately two months faster than litigation]; Michael Delikat & Morris M. Kleiner, *An Empirical Study of Dispute Resolution Mechanisms: Where Do Plaintiffs Better Vindicate Their Rights?*, 58 Disp. Resol. J. 56, 58 (Nov. 2003–Jan. 2004) [reporting findings that arbitration was 33% faster than analogous litigation]; David Sherwyn, Samuel Estreicher, & Michael Heise, *Assessing the Case for Employment Arbitration: A New Path for Empirical Research*, 57 Stanford L. Rev. 1557, 1573 (2005) [collecting studies reaching similar conclusions].)

Further, "there is no evidence that plaintiffs fare significantly better in litigation." (Sherwyn, *supra*, 57 Stanford L.

Rev. at 1578.) To the contrary, a study released by the Chamber's Institute for Legal Reform found that employees were nearly *four times* more likely to win in arbitration than in court. (Pham, *supra*, at 4-5, 12, 17 [surveying more than 25,000 employment arbitration cases and 260,000 employment litigation cases resolved between 2014 to 2021 and reporting a 37.7% win rate in arbitration versus 10.8% in litigation].)

The same study found that the median monetary award for employees who prevailed in arbitration was over double the award that employees received in cases won in court. (*Id.* at 4-15, 14 [$142,332 in arbitration versus $68,956 in litigation]; *see also* Theodore J. St. Antoine, *Labor and Employment Arbitration Today: Mid-Life Crisis or New Golden Age?*, 32 Ohio St. J. on Disp. Resol. 1, 16 (2017) [arbitration is "favorable to employees as compared with court litigation"].)

Earlier scholarship similarly found a higher employee-win rate in arbitration than in court. (*See* Sherwyn, *supra*, 57 Stanford L. Rev. at 1568-69 [observing that, once dispositive motions are considered, the actual employee-win rate in court is "only 12% [to] 15%"] [citing Maltby, *supra*, 30 Colum. Hum. Rts. L. Rev. at 47] [of dispositive motions granted in court, 98% are

granted for the employer]; Nat'l Workrights Inst., *Employment Arbitration: What Does the Data Show?* (2004), https://bit.ly/3IVddnP [concluding that employees were 19% more likely to win in arbitration than in court].)

Thus, "there is no evidence that plaintiffs fare significantly better in litigation [than in arbitration]." (St. Antoine, *supra*, 32 Ohio St. J. on Disp. Resol. at 16 [quotation marks omitted; alterations in original].) Rather, arbitration is generally "favorable to employees as compared with court litigation." (*Id.*)

In sum, adopting the superior court's overbroad reading of Section 1 would impose real costs on businesses and workers. Not only is litigation more expensive than arbitration for businesses and workers alike, but the uncertainty stemming from the trial court's approach would engender additional expensive disputes over the enforceability of arbitration agreements with workers. And these increased litigation costs would not be borne by businesses alone. Businesses would, in turn, pass on these litigation expenses to consumers (in the form of higher prices) and to workers (in the form of lower compensation).

CONCLUSION

The decision below should be reversed.

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Respectfully Submitted,

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CERTIFICATE OF WORD COUNT
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According to the word count facility in Microsoft Word 365, this brief, including footnotes but excluding those portions excludable pursuant to Rule 8.204(c)(3), contains 5,509 words, and therefore complies with the 14,000-word limit contained in Rule 8.204(c)(1).

Dated: June 3, 2025

/s/ Archis A. Parasharami
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CERTIFICATE OF SERVICE

I, Alec Hemingway, declare as follows: I am over the age of eighteen years, and I am not a party to the action. My business address is: 1999 K Street NW, Washington, D.C. 20006.

On June 3, 2025, I served the foregoing document on the parties stated below, by the following means of service:

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