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S279969

SUPREME COURT OF THE STATE OF CALIFORNIA

FORD MOTOR WARRANTY CASES

MARTHA OCHOA, et al.,
Plaintiffs and Respondents,

v.

FORD MOTOR CO.,
Defendant and Appellant.

After a Decision by the Court of Appeal, Second Appellate District Division Eight, B312261
Los Angeles Superior Court Case JCCP No. 4856
Hon. Amy Hogue

APPLICATION OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND ALLIANCE FOR AUTOMOTIVE INNOVATION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE IN SUPPORT OF DEFENDANT AND APPELLANT and BRIEF OF AMICI CURIAE IN SUPPORT OF DEFENDANT AND APPELLANT

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APPLICATION OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND ALLIANCE FOR AUTOMOTIVE INNOVATION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE IN SUPPORT OF DEFENDANTS AND APPELLANTS

The Chamber of Commerce of the United States of America 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 concern to the nation's business community, including questions regarding arbitration agreements. (*E.g.*, *Zhang v. Superior Court*, review granted Feb. 15, 2023, S277736; *Ramirez v. Charter Communications, Inc.*, review granted June 1, 2022, S273802; *Bielski v. Coinbase, Inc.* (9th Cir. 2023) 87 F.4th 1003; *Caremark, LLC v. Chickasaw Nation* (9th Cir. 2022) 43 F.4th 1021; *Henry Schein, Inc. v. Archer & White Sales, Inc.* (2019) 586 U.S. 63; *Rent-A-Center, West, Inc. v. Jackson* (2010) 561 U.S. 63.)

Formed in 2020, the Alliance for Automotive Innovation ("Auto Innovators") is a collective organization representing the voice of the automotive industry. Focused on creating a safe and transformative path for sustainable industry growth, Auto Innovators represents the manufacturers producing nearly 98 percent of cars and light trucks sold in the U.S. Auto Innovators

is directly involved in regulatory and policy matters affecting the light-duty vehicle market across the country. Members include motor vehicle manufacturers, original equipment suppliers, as well as technology and other automotive-related companies. As manufacturers of automobiles, Auto Innovators' members have an interest in laws governing warranties, contracts, and the sale of vehicles.

Many members of the *amici* and the broader business community have found that arbitration allows them to resolve disputes promptly and efficiently while avoiding the costs associated with traditional litigation in court. Accordingly, these businesses routinely include arbitration provisions as standard features of their business contracts. Based on the legislative policy reflected in the Federal Arbitration Act ("FAA") and the United States Supreme Court's consistent endorsement of arbitration for the past half-century, *amici*'s members have structured millions of contractual relationships around arbitration agreements.

Most fundamental to *amici*, their members, and to American businesses generally, is the freedom to contract, coupled with the necessary understanding that contract rights will be enforced according to settled expectations, which allows each party to enjoy the benefits of their bargain while being held to its terms. *Amici* thus have a strong interest in this case and in reversal of the order below.

No party or counsel for a party authored this brief in whole or in part. No person or entity other than *amici*, their members,

or their 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, subd. (f)(4).)

CONCLUSION

The Court should grant this application and permit *amici* to file the attached *amici curiae* brief.

Dated: May 6, 2024

Respectfully submitted.

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INTRODUCTION AND SUMMARY OF ARGUMENT

This case presents a scenario common to complex commercial relationships as well as the consumer setting here. A plaintiff's relationship with a defendant results from the plaintiff's contract with a third party, the performance of which triggers both contract and tort duties from the defendant to the plaintiff. That contract calls for arbitration of disputes arising from or relating to it. Yet the plaintiff refuse to arbitrate on the ground that claims against the nonsignatory defendant do not fall within the arbitration provision.

This brief addresses five issues that should guide the Court's disposition of this case.

First, the Court should reject the plaintiffs' effort to separate their purchases of Ford vehicles from the contracts setting out the terms of those purchases. Under long-standing precedent from this Court and many other courts, a sale is necessarily a contract. And the sale in this case is inseparable from the contract and its arbitration clause. That contract is what brought Plaintiffs' relationship with Ford into being, including the contractual warranty obligations underlying the plaintiffs' claims.

Second, Civil Code section 3521—one "who takes the benefit must bear the burden"—and related equitable principles provide ample basis to hold plaintiffs to their agreement to arbitrate even though the party invoking arbitration is a nonsignatory. The plaintiffs' causes of action against Ford all trace back to the contract of sale and would not exist without it.

The plaintiffs invoke the benefits of that contract and should be held to its burdens as well.

Third, the Court should be mindful of the effects its decision here may have on other similar contractual relationships that arise in the commercial context. For a variety of reasons, commercial expectations may accord with permitting nonsignatories to enforce written arbitration agreements. The Court's decision should not disrupt commercial relationships.

Fourth, requiring signatories to arbitrate claims against nonsignatories that are intertwined with the contract calling for arbitration will prevent or discourage gamesmanship in the litigation process. In many settings, plaintiffs have omitted or even dismissed a key defendant in efforts to avoid what should be a broader obligation to arbitrate. A rule that brings appropriate nonsignatories within the scope of the obligation to arbitrate will prevent manipulation of this kind.

Finally, the Court should resolve the issues here bearing in mind the demonstrated mutual benefits of arbitration to consumers, employees, and businesses. Arbitration should not be treated as a disfavored stepchild of litigation, not only because of the contrary policies of the Federal Arbitration Act, but because arbitration has concrete benefits for those who participate in it.

ARGUMENT

A. Any Sale Is Necessarily A Contract.

The plaintiffs try to drive a wedge between the sale of the automobiles at issue here—which triggered Ford's contractual obligations under its warranty—and the contract of sale that documented the transaction. But there can be no daylight between the contract and the sale because any sale by definition is a contract.

Although it may be possible to purchase a Ford vehicle without entering into the particular written contract that the plaintiffs here signed, that is not what the plaintiffs did. They chose to accomplish the sale using a written contract. The sale contract—without which there is no sale—triggers the contractual warranty obligations of the manufacturer, as does any retail sale. And it is the sale, necessary to the plaintiffs' possession and use of Ford vehicles, that brings into being any tort duties owed by Ford to the plaintiffs.

As this Court observed more than a century ago, "There can be no sale at all without an agreement, express or implied, to pay." (*Van Allen v. Francis* (1899) 123 Cal. 474, 480.) An "agreement," of course, is a contract. And this Court left no doubt about the identity between sale and contract. "A sale is a contract by which, for a pecuniary consideration, called a price, one transfers to another an interest in property." (*Id.* at p. 479.) The word, "[s]ale," the Court continued, "'means *at all times* a contract between parties to give and to pass rights of property for money, which the buyer pays or promises to pay the seller for the

thing bought and sold.'" (*Ibid.* [emphasis added] [quoting *Williamson v. Berry* (1850) 49 U.S. (8 How.) 495, 544].)

As the quotation from *Williamson* indicates, the identity between sale and contract is a bedrock principle of American law. Although the principle is so obvious as to scarcely need mentioning, courts from coast to coast have explicitly ruled that a sale is a contract.[1]

As one state high court put it, "A sale necessarily implies a contract and a promise of the purchaser to pay." (*Tuggle v. Belcher* (W.Va. 1927) 139 S.E. 653, 653, *overruled in part on other grounds*, *West Virginia v. Bragg* (W.Va. 1955) 87 S.E.2d 689, 692.) There is no way to separate the one from the other.

Relatedly, Ford's warranty is a contract that came into being immediately upon the sale of each vehicle. As Ford ably explains (OBM, pp. 41–45; RBM, pp. 21–23), the warranty relationship is inarguably contractual. Again, authority in other states is in accord.

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[1] *E.g., Apple v. Henry* (Mont. 1923) 213 P. 444, 445; *Edwards v. Cottrell* (Iowa 1876) 43 Iowa 194, 204; *Mensinger v. Steiner-Medinger Co.* (Neb. 1903) 94 N.W. 633, 635 (per curiam); *Park Station Ltd. P'ship v. Bosse* (Md. 2003) 835 A.2d 646, 650–51; *Noble v. Ft. Smith Wholesale Grocery Co.* (Okla. 1911) 127 P. 14, 18; *Capps v. Mines Service, Inc.* (Or. 1944) 152 P.2d 414, 416; *Bauer v. Hill* (Pa. 1920) 110 A. 346, 347; *Koehler v. St. Mary's Brewing Co.* (Pa. 1919) 77 A. 1016, 1018 [citing *Williamson, supra,* 49 U.S. at p. 544; 2 Bouvier's Law Dict. (Rawle's Revision) p. 943; 24 Am. & Eng. Ency. of Law (2d ed.) p. 1022; and older Pennsylvania authority]; *Montgomery Bros. v. Hall* (Tex. Civ. App. 1923) 253 S.W. 670, 672; *Hardy v. Potter* (Wyo. 1951) 236 P.2d 525, 530 [citing *Williamson*, *supra*, 49 U.S. at p. 544].

As one court explained, a manufacturer binds "itself directly" with a purchaser "by offering an express warranty on the parts and workmanship of" the product. (*Great American Ins. Co. v. Paty's, Inc.* (Mich. Ct. App. 1986) 397 N.W.2d 853, 856.) "The warranty was obviously offered in an effort to induce the sale to buyers …, and the costs associated with the warranty were presumably built into the price …." (*Ibid.*) The buyer can "insist[] upon his rights under the warranty directly against the [manufacturer] and could have enforced those rights under the law." (*Ibid.*) "Under such circumstances, … a 'contractual relationship' exist[s] directly between [the buyer] and the [manufacturer]." (*Ibid.*; see also, *e.g.*, *Thiedemann v. Mercedes-Benz USA, LLC* (N.J. 2005) 872 A.2d 783, 794–95 ["warranty program was part of plaintiffs' bargain"]; *Ventura v. Ford Motor Corp*. (N.J. Super. Ct. App. Div. 1981) 433 A.2d 801, 811–12 [manufacturer's "warranty creates a direct contractual obligation to the buyer"]; *Murphy v. Mallard Coach Co.* (N.Y. App. Div. 1992) 582 N.Y.S.2d 528, 531 [manufacturer's warranty is "part of the basis of the bargain"].)

The upshot is that Ford has a contractual warranty obligation that arises from and depends on the sale of Ford vehicles to retail purchasers. Without the sale contract, Ford would have no warranty obligation at all. In this light, it is entirely fair and in accord with equitable principles to hold the plaintiffs to the contract that creates and defines their relationship with Ford.

B. Civil Code, § 3521 and Other Equitable Principles Support Holding Plaintiffs to Their Agreement to Arbitrate.

The form of equitable estoppel that the plaintiffs try to paint as a federal intrusion is rooted in, and justified by, the settled principles of equity expressed in the Civil Code maxim that one "who takes the benefit must bear the burden." (Civ. Code, § 3521.)[2] That maxim fits here.

Indeed, one of the earlier California courts to articulate standards for equitable estoppel in the arbitration setting started from a fundamental principle of equity: "Equitable estoppel

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[2] As Ford explains, the plaintiffs forfeited their argument that equitable estoppel can apply only under a four-factor test. (See RBM, pp. 39–40.) Were the Court to entertain any arguments not preserved below, it should resolve a more fundamental question that is apparent on the face of the arbitration agreement: The U.S. Supreme Court has made clear that "parties may delegate threshold arbitrability questions to the arbitrator, so long as the parties' agreement does so by 'clear and unmistakable' evidence." (*Henry Schein, Inc. v. Archer & White Sales, Inc.*, (2019) 586 U.S. 63, 69 [citing *First Options of Chicago, Inc. v. Kaplan* (1995) 514 U.S. 938, 944].) The contract here clearly and unmistakably delegates to the arbitrator "the interpretation and scope of this Arbitration Provision, and the arbitrability of the claims or dispute." (C.A. slip opn., p. 4.) Multiple federal courts of appeals have held that similar delegations of arbitrability encompass the question whether a nonsignatory may enforce the arbitration agreement. (See, *e.g.*, *Swiger v. Rosette* (6th Cir. 2021) 989 F.3d 501, 506–07; *Brittania-U Nigeria, Ltd. v. Chevron USA, Inc.* (5th Cir. 2017) 866 F.3d 709, 715; *Eckert/Wordell Architects, Inc. v. FJM Props. of Wilmar, LLC* (8th Cir. 2014) 756 F.3d 1098, 1100; *Apollo Computer, Inc. v. Berg* (1st Cir. 1989) 886 F.2d 469, 473–74. That threshold issue logically precedes the forfeited question that the plaintiffs' brief raises.

precludes a party from asserting rights he otherwise would have had against another when his own conduct renders assertion of those rights contrary to equity." (*Metalclad Corp. v. Ventana Environmental Organizational P'ship* (2003) 109 Cal.App.4th 1705, 1713 [quotation marks and citation omitted]; see also *Comer v. Micor, Inc.* (9th Cir. 2006) 436 F.3d 1098, 1101.) This mooring in common and settled principles of equity makes clear that the rule at issue is not arbitration-specific, contrary to the plaintiffs' contention.

As this Court put it long ago, "'A party cannot apply to his own use that part of the transaction which may bring to him a benefit, and repudiate the other, which may not be to his interest to fulfill.'" (*Peers v. McLaughlin* (1891) 88 Cal. 294, 299 [quoting *Heath v. West* (1853) 28 N.H. 101, 108].) As Ford has documented (OBM, pp. 21–23; RBM, pp. 14–16), the application of this principle to arbitration clauses is now well-established in California law.[3] The panels of the Court of Appeal whose conflicting decisions gave rise to the grant of review here did not disagree on the basic outlines of the legal analysis, but differed only on its application in the common setting of this case. The governing equitable principles support permitting nonsignatories to enforce contractual arbitration provisions against signatories if

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[3] One commentator has suggested that basic principles of good faith underlie the principal doctrines permitting nonsignatories to enforce (or be bound by) arbitration agreements, and that an analysis of good faith would be useful in future adjudication of nonsignatories' rights. (Aubrey L. Thomas, Comment, *Nonsignatories in Arbitration: A Good-Faith Analysis* (2010) 14 Lewis & Clark L.Rev. 953.)

the contracts are sufficiently intertwined with the claims asserted in the case.[4]

The sale contract here provided the plaintiffs with contractual benefits from Ford. Take away the sale contract, and there is no sale, no warranty obligation, and no other duty flowing from Ford to these plaintiffs.[5] The plaintiffs here are "asserting rights that [they] would not have but for the PSA, but refusing to honor [their] agreement to arbitrate disputes over those rights." (*Meyer v. WMCO-GP, LLC* (Tex. 2006) 211 S.W.3d 302, 308.) They should be held to their agreement to arbitrate.

This result is fair for an additional reason. The arbitration agreement directly called out a "relationship with third parties who did not sign this contract." (C.A. slip opn., p. 4.) That explicit reference appears to satisfy this Court's neutral, non-arbitration-specific test for when a third-party beneficiary can enforce a contract. (See *Goonewardene v. ADP, LLC* (2019) 6 Cal.5th 817, 830.) The third party, Ford, "would in fact benefit

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[4] Consistent with the rooting of these doctrines in state law, the law of different states varies with respect to the ability of a nonsignatory to bind a signatory to arbitrate under an agreement with another. (*E.g.*, *Noye v. Johnson & Johnson Servs., Inc.* (3d Cir. 2019) 765 Fed. Appx. 742, 746–47 [noting differences between Pennsylvania and Michigan state law].)

[5] To the extent that the doctrine is limited to situations where there is an "agency or similar relationship between the nonsignatory and one of the parties" (*NORCAL Mutual Ins. Co. v. Newton* (2000) 84 Cal.App.4th 64, 76), that aspect is also satisfied here. Although the Court of Appeal did not address this factor, in some respects the relationship between a manufacturer and a dealer is "similar" to agency, as the dealer has the power to bind Ford to warranty obligations by entering into contracts of sale with purchasers.

from the contract." (*Ibid.*) The explicit language suggests that "a motivating purpose of the contracting parties was to provide a benefit to the third party." (*Ibid.*) And the language further makes clear that permitting Ford to enforce that agreement would be "consistent with the objectives of the contract and the reasonable expectations of the contracting parties." (*Ibid.*)

C. Commercial Expectations May Require Permitting Nonsignatories to Enforce Agreements to Arbitrate

Although the present case arises in the consumer context, the Court should consider the potential effects of its decision on commercial contracts. In that setting as in this one, the Court of course should focus on the written arbitration agreement in determining the intent of the parties with respect to which issues and parties should be subject to arbitration.

The agreement here expresses clear intent to cover any claim that "arises out of or relates to" the "purchase, or condition of this vehicle," and explicitly encompasses "any resulting transaction or relationship (including any such relationship with third parties who did not sign this contract)." (C.A. slip opn., p. 4.) The Court of Appeal found this forthright expression insufficiently targeted toward nonsignatories to cover the claims here.

But a more detailed expression of intent to cover nonsignatories is neither required nor practicable in the context of many commercial transactions. Routine and ordinary business practices are often informal. (See 2 Ian R. MacNeil et al., Federal Arbitration Law (1999) Agreements, Awards, and Remedies Under the Federal Arbitration Act § 17.7.3, at 17:92 [noting that

informal requirements of the FAA reflect informal nature of routine business practices].) Where a court believes that the agreement's terms do not expressly state whether a signatory may be compelled to arbitrate with a nonsignatory, ordinary principles of contract and agency law should be applied.

That the obligations of a written contract may extend beyond the identified parties is nothing new. On the contrary, "hundreds of years of common law" decisions recognize that "nonparties" may enforce or be bound by contracts. (*Comer, supra,* 436 F.3d at p. 1104 n.10.) As this Court has recognized, "virtually all American courts applying common law contract principles have recognized that it is appropriate *under some circumstances* to permit an individual or entity that is not a party to a contract to bring an action to enforce the contract." (*Goonewardene*, *supra*, 6 Cal.5th at p. 828.)

"[T]raditional principles of state law allow a contract to be enforced by or against nonparties to the contract through assumption, piercing the corporate veil, alter ego, incorporation by reference, third party beneficiary theories, waiver, and estoppel." (21 Williston on Contracts (4th ed. 2024) § 57:19.) These principles apply in the arbitration context. (See *Arthur Andersen LLP v. Carlisle* (2009) 556 U.S. 624, 631.) "Thus, a nonsignatory may acquire rights under or be bound by an arbitration agreement if so dictated by the ordinary principles of contract and agency." (Williston, *supra*, § 57:19 [footnotes omitted].) Courts have long "recognize[d] that the variety of ways in which a party" who didn't sign a contract "may become bound

by a written arbitration provision is limited only by generally operative principles of contract law." (*Fisser v. International Bank* (2d Cir. 1960) 282 F.2d 231, 233.)

Courts often use "a similar legal framework" to consider "a nonsignatory attempting to bind a signatory to an arbitration agreement" and "a signatory attempting to bind a nonsignatory." (Williston, *supra*, § 57:19.) But it may make a difference whether a nonsignatory is trying to bind a signatory who agreed to arbitrate, or a signatory is trying to bind a nonsignatory. For example, a third-party beneficiary may have the power to sue under a contract, but cannot be bound to a contract it did not assent to. (See, *e.g.*, *Comer*, *supra*, 436 F.3d at p. 1102.)

These generally accepted principles inform the understanding of contracting parties in complex commercial relationships involving multiple parties with interconnected roles. In our view, those principles generally would lead to the conclusion that the arbitration agreement covers related claims involving nonsignatories whose relationships with signatories arise out of or relate to the agreement.

There are many commercial settings in which nonsignatories might have the right to enforce an arbitration agreement. For example, two parties might enter a primary contract that anticipates the use of nonsignatory subcontractors, insurance or performance-bond providers, or other entities providing services related to the primary contract. (See, *e.g.*, *American Bureau of Shipping v. Tencara Shipyard S.P.A.* (2d Cir. 1999) 170 F.3d 349, 353.) In that situation, the nonsignatories

may be bound by, or entitled to enforce, the terms of the primary contract under ordinary principles of agency or contract law.

Additional examples include nonsignatory agreements that incorporate by reference the primary contract (see, *e.g.*, *Bartley, Inc. v. Jefferson Parish School Board* (La. 1974) 302 So.2d 280, 281), or include indemnification requirements between the signatory and nonsignatories (*In re NBR Antitrust Litig.* (3d Cir. 2006) 207 Fed. Appx. 166). Still other examples include a loan servicer who was not a party to the original loan agreement (see *Sherer v. Green Tree Servicing LLC* (5th Cir. 2008) 548 F.3d 379, 380, 383 [enforcing arbitration clause that encompassed "relationships which result from this Agreement"]), or an undisclosed principal, who may enforce a contract made for its benefit by an agent (see *Interbras Cayman Co. v. Orient Victory Shipping Co., S.A.* (2d Cir. 1981) 663 F.2d 4, 6).

This Court's decision should take into account the potential effects on a variety of typical commercial undertakings that reflect settled expectations where an arbitration clause that broadly covers any related disputes is contained in a primary contract. (See *Goonewardene*, *supra*, 6 Cal.5th at p. 831 [noting importance of the "reasonable expectations of the contracting parties" to third-party beneficiary analysis].) The parties are free to expressly narrow the scope of their agreement by excluding nonsignatories from arbitration, even where ordinary contract principles might provide otherwise. But keeping the focus on the written arbitration agreement, while applying ordinary principles of law and equity generally applicable to all contracts, would

assure that arbitration agreements, like other contracts, will be enforced according to settled expectations.

D. Equitably Requiring Signatories to Arbitrate Intertwined Claims Against Nonsignatories Prevents Manipulation and Gamesmanship.

Sound policy supports the enforcement of arbitration agreements to encompass signatories' intertwined claims against nonsignatories. One additional benefit of applying equitable principles in that context is preventing gamesmanship by plaintiffs who seek to obscure their contractual relationships in order to avoid fulfilling their agreement to arbitrate.

In many cases, plaintiffs who have warranty or product-liability claims against a retail seller with whom they have an agreement to arbitrate omit those claims and instead file claims only against nonsignatory third parties. In the automotive industry, these nonsignatory targets may include not only the manufacturer, but also dealers who provided service on a vehicle but did not sell it. Another tactic is to name but then dismiss the party in privity, who otherwise would serve as the anchor for any motion to compel arbitration among all parties.

In some cases, "a signatory non-defendant is charged with interdependent and concerted misconduct with a non-signatory defendant. In such instances, that signatory, in essence, becomes a party, with resulting loss, *inter alia*, of time and money because of its required participation in the proceeding." (*Grigson v. Creative Artists Agency L.L.C.* (5th Cir. 2000) 210 F.3d 524, 528.) As the Fifth Circuit observed, in such cases "the plaintiff is seeking to avoid [the arbitration] agreement by bringing the

action against a non-signatory charged with acting in concert with that non-defendant signatory." (*Ibid.*)

Grigson illustrates the problem. The trustee for the owner of a movie sued the distributor and producers but dismissed the case when the distributor sought to enforce the distribution agreement's arbitration clause. (*Id.* at p. 526.) The owner (then joined by the producers) sued one of the movie's stars and his talent agency, claiming tortious interference with the distribution agreement. (*Ibid.*)

In another example, a former insurance agent who had an arbitration agreement with his former employer sued two nonsignatories—the company that had purchased the stock of the insurance company, and the agent who had been hired in his stead—without suing the company itself. (See *In re Vesta Ins. Group, Inc.* (Tex. 2006) 192 S.W.3d 759, 761.) In yet another, a disappointed prospective buyer of an auto dealership had an arbitration provision in his purchase agreement. (See *Meyer*, *supra,* 211 S.W.3d at pp. 304–05.) When the manufacturer exercised its right of first refusal, bought the dealership, and sold it to another, the thwarted buyer sued the manufacturer and the successful buyer, but not the original seller. (*Id.* at p. 305.)

In all these cases, the arbitration agreement was enforced against the signatory who had crafted an action to evade the obligation to arbitrate. As another court explained, "a signatory plaintiff should not be allowed to sue to essentially enforce its rights under a contract and, at the same time, evade an arbitration agreement in the contract, simply by naming as

defendants parties who were not signatories to the contract." (*Allscripts Healthcare Sols., Inc. v. Pain Clinic of Nw. Fla., Inc.* (Fla. Dist. Ct. App. 2014) 158 So.3d 644, 646.) The same equitable principles should govern here.

E. Enforcing Arbitration Agreements Mutually Benefits Consumers, Employees, and Businesses.

The Court should ensure that its jurisprudence related to arbitration agreements permits broad access to arbitration for the employees, consumers, and businesses who mutually benefit from arbitration's "lower costs, greater efficiency and speed," as well as "the ability to choose expert adjudicators to resolve specialized disputes," that distinguish arbitration from litigation in court. (*Lamps Plus Inc. v. Varela* (2019) 587 U.S. 176, 185 [cleaned up].)

For many consumers whose claims would not make litigation in court economical, "it looks like arbitration—or nothing." (Theodore J. St. Antoine, *Mandatory Arbitration: Why It's Better Than It Looks* (2008) 41 U. Mich. J.L. Reform 783, 792.) "[T]he informality of arbitral proceedings" not only "reduc[es] the cost" but also "increas[es] the speed of dispute resolution." (*AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 345.) Although some courts seem to suspect that all arbitration agreements are one-sided contracts that routinely disadvantage consumers and employees, data do not support that apprehension. To the contrary, "the speed, informality, and lower costs of arbitration provide real advantages" for both sides "over litigating in court." (*Johnmohammadi v. Bloomingdale's, Inc.* (9th Cir. 2014) 755 F.3d 1072, 1076.)

A recent study based on data collected from the federal PACER system and the two largest arbitration service providers in the country—the American Arbitration Association and Judicial Arbitration and Mediation Services—highlights the benefits of arbitration for all parties. (Nam D. Pham & Mary Donovan for U.S. Chamber of Commerce Inst. for Legal Reform, *Fairer, Faster, Better III: An Empirical Assessment of Consumer & Employment Arbitration* (Mar. 2022) pp. 5, 15, available at https://tinyurl.com/m9wfhhsz. The authors found that employees and consumers who pursued claims in arbitration won more often, more quickly, with higher monetary awards.

Between 2014 and 2021, consumers who initiated arbitration won nearly 42% of their cases, compared to 29% in litigation. (*Id.* at p. 12.) Employees initiating arbitration won nearly 38% of their cases, but prevailed in fewer than 11% of cases initiated in court during the same period. (*Ibid.*) Consumers and employees also received more money in arbitration than in litigation. On average, consumers won $79,945 in successful arbitrations, while those litigating in federal court averaged $71,354. (*Id.* at pp. 13–14.) Employees who pursued arbitration obtained $444,134, while those who pursued litigation obtained an average of $407,678. (*Id.* at p. 14.) The gap between median awards was more pronounced: $20,356 in arbitration as opposed to $6,669 in litigation for consumers,

and $142,334 in arbitration as against only $68,956 in litigation for employees. (*Ibid.*)[6]

And these favorable results came more quickly in arbitration than in court. Consumers obtained their awards after an average of 321 days in arbitration as opposed to 439 days in federal court, while employees prevailed after an average of 659 days in arbitration compared to 715 days in federal litigation. (See *id*. at p. 15.) Another study found that arbitrations take, on average, less than 11 months to decide, versus an average of 26.6 months to reach a verdict in state-court jury-trial cases. (Andrea Cann Chandrasekher & David Horton, *Arbitration Nation: Data from Four Providers* (2019) 107 Cal. L. Rev. 1, 51.) If protracted proceedings tend to benefit defendants, the relative speed of the arbitration process benefits employees.

The efficiency of arbitration is even more pronounced when compared to the pace of litigation in the California court system, which moves more slowly than the national average. The most recent data available indicates that it can take more than two years to resolve a civil case in the Superior Courts, and nearly 1,000 additional days to complete an appeal. (See Jud. Council of Cal., Court Statistics Report (2024), Statewide Caseload Trends

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[6] Earlier studies showed similar results. (See, *e.g.*, Lewis L. Maltby, *Private Justice: Employment Arbitration and Civil Rights* (1998) 30 Colum. Human Rts. L. Rev. 29, 46; Michael Delikat & Morris M. Kleiner, *An Empirical Study of Dispute Resolution Mechanisms: Where Do Plaintiffs Better Vindicate Their Rights?* (Nov. 2003–Jan. 2004) 58 Disp. Res. J. 56, 58).

2013–2014 Through 2022–2023, pp. 36, 50, available at https://tinyurl.com/bdzyduu8.)

And arbitration has broader, tangible benefits. Arbitration lowers businesses' dispute-resolution costs by, among other things, reducing the time and expense of discovery, and limiting appellate review. (Stephen J. Ware, *Paying the Price of Process: Judicial Regulation of Consumer Arbitration Agreements* (2001) 2001 J. Disp. Res. 89, 90–91.) Lowering businesses' "dispute-resolution costs" results in "wage increase[s]" for employees. (Stephen J. Ware, *The Case for Enforcing Adhesive Arbitration Agreements—With Particular Consideration of Class Actions and Arbitration Fees* (2006) 5 J. Am. Arb. 251, 254–56.) And "whatever lowers costs to businesses tends over time to lower prices to consumers." (*Id.* at p. 255; accord *Metro E. Ctr. for Conditioning & Health v. Qwest Commc'ns Int'l* (7th Cir. 2002) 294 F.3d 924, 927.)

These mutual benefits provide ample public-policy reasons to avoid narrowing the scope of disputes submitted to arbitration.

CONCLUSION

The order of the Court of Appeal should be reversed.

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CERTIFICATION OF COMPLIANCE

In compliance with California Rules of Court, Rule 8.520(c), I hereby certify that this Brief of Amici Curiae contains 4,539 words, including footnotes but excluding the items referenced in California Rules of Court, Rule 8.520(c)(3), as calculated by the word processing software used to prepare this Brief of Amici Curiae.

Dated: May 6, 2024

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CERTIFICATE OF ELECTRONIC SERVICE

I am over the age of 18 and not a party to this action. My business address is Four Embarcadero Center, Suite 1400, San Francisco, CA 94111. On May 6, 2024, I electronically served the above

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United States of America and Alliance of Automotive Innovation
for Leave to File Brief As Amici Curiae In Support of
Defendants and Appellants and Brief of Amici Curiae
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

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