# 24-2103

## In the United States Court of Appeals
FOR THE SECOND CIRCUIT

NATHANIEL SILVA, on behalf of themselves and all others similarly situated, PHIL ROTHKUGEL, on behalf of themselves and all others similarly situated,

*Plaintiff - Appellants*,

v.

SCHMIDT BAKING DISTRIBUTION, LLC, SCHMIDT BAKING COMPANY, INC.,

*Defendants - Appellees*.

On Appeal from the United States District Court for the District of Connecticut, No. 23-cv-1695, Hon. Michael P. Shea

**BRIEF FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, RETAIL LITIGATION CENTER, AND NATIONAL RETAIL FEDERATION AS AMICI CURIAE IN SUPPORT OF APPELLEES AND AFFIRMANCE**

JONATHAN D. URICK
U.S. CHAMBER LITIGATION CENTER
1615 H Street, NW
Washington, DC 20062
(202) 463-5537

*Counsel for Chamber of Commerce of the United States of America*

MICHAEL E. KENNEALLY
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 739-3000

*Counsel for Amici Curiae*

## CORPORATE DISCLOSURE STATEMENT

In accordance with Federal Rule of Appellate Procedure 26.1, the Chamber of Commerce of the United States of America, Retail Litigation Center, Inc., and National Retail Federation ("amici") state that they have no parent corporation, and no publicly held company has 10% or greater ownership in the amici.

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## INTEREST OF AMICI CURIAE[1]

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 vital concern to the Nation's business community, such as the enforceability of arbitration agreements and the application of the Federal Arbitration Act, 9 U.S.C. § 1 *et seq*. ("FAA").

The **Retail Litigation Center, Inc.** (the "RLC") is a 501(c)(6) non-profit trade association that represents national and regional retailers, including many of the country's largest and most innovative retailers,

[1] No counsel for a party authored this brief in whole or in part, and no party, party's counsel, person, or entity other than amici curiae, their members, or their counsel contributed money intended to fund the preparation or submission of this brief. All parties have consented to the filing of this brief.

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.*, 585 U.S. 162, 184 (2018); *Kirtsaeng v. John Wiley & Sons, Inc.*, 568 U.S. 519, 542 (2013); *Chewy, Inc. v. U.S. Dep't of Lab.*, 69 F.4th 773, 777–78 (11th Cir. 2023); *State v. Welch*, 595 S.W.3d 615, 630 (Tenn. 2020).

Established in 1911, the **National Retail Federation** ("NRF") is the world's largest retail trade association and the voice of retail worldwide. Retail is the largest private-sector employer in the United States. The NRF's membership includes retailers of all sizes, formats, and channels of distribution, spanning all industries that sell goods and services

to consumers. The NRF provides courts with the perspective of the retail industry on important legal issues impacting its members. To ensure that the retail community's position is heard, the NRF often files amicus curiae briefs expressing the views of the retail industry on a variety of topics.

Many of the amici's members and their affiliates regularly incorporate arbitration agreements into their contractual relationships. Arbitration allows contracting parties to resolve their disputes promptly, efficiently, and fairly, while avoiding the costs and delay associated with litigation in court. Arbitration is speedy, inexpensive, and less adversarial than such litigation. Relying on the legislative policy embodied in the FAA and the Supreme Court's consistent affirmation of the protections that the FAA affords to arbitration agreements, the amici's members and their affiliates have structured millions of contractual relationships around the use of arbitration to resolve disputes.

The amici thus have a strong interest in the affirmance of the decision below. The district court correctly construed the FAA's narrow exemption for "contracts of employment of seamen, railroad employees,

or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1. As the district court held, this exemption does not apply to commercial contracts between businesses, which are not contracts of "workers," let alone workers' "contracts of employment." These issues arise with regularity and affect many contractual relationships. Entrepreneurs and business owners often choose to operate through corporations or other business entities like LLCs, for a variety of reasons including payment of taxes, concerns about personal liability, and more. At the same time, many businesses choose to contract only with other business entities. Knowing whether such contracts are covered by the FAA is tremendously important to foster certainty and avoid costly litigation, which, after all, arbitration agreements are formed to avoid. Plaintiffs' position in this case strays from the plain language of the FAA, the consistent interpretation of every circuit to address the issue, and the FAA's purposes as articulated by the Supreme Court. And Plaintiffs' position improperly calls into question arbitration agreements that are fully enforceable under a sound interpretation of the FAA. The Court should reject Plaintiffs' arguments and affirm.

## INTRODUCTION AND SUMMARY OF ARGUMENT

The language, structure, and purpose of the FAA all point to the same conclusion: Commercial contracts between one business and another are not exempt from the FAA under the statute's narrow exemption for employment contracts with certain transportation workers. That is why all three circuits to confront the issue—the Fourth, Sixth, and Ninth Circuits—have rejected the arguments Plaintiffs advance in this Court.

As for statutory text and structure, the FAA confines the exemption to "contracts of employment" of certain types of "workers." As three circuits have concluded, Supreme Court precedent establishes that the phrase "contracts of employment," at least within the FAA's specific statutory context, refers to a contract for the performance of work *by workers*. The phrase does not apply to a contract through which one business agrees to perform services for a second business using unspecified workers chosen, managed, and paid by the first business. And when, as here, the contracting parties are both businesses, their agreement also is not a "contract" of "workers" comparable to contracts of seamen, railroad employees, or other individual workers. The

statutory text and structure thus demonstrate that the exemption applies to certain contracts with natural persons, but not contracts with artificial business entities.

Because text, structure, and precedent resolve the appeal, the Court need not go any further. But if the Court were also to consider how well the parties' competing positions promote the FAA's purposes, Plaintiffs' position would again fall short. Even Plaintiffs concede that commercial contracts with some transportation businesses—like FedEx—do not fall within the exemption. But they offer no workable standard for differentiating those admittedly non-exempt contracts from the contracts that Plaintiffs believe are exempt. Plaintiffs' vague approach would inject significant complexity and uncertainty into threshold determinations of whether a given agreement is exempt from the FAA. But as the Supreme Court emphasized just last year, the FAA calls for predictability, not complexity and uncertainty. *See Bissonnette v. LePage Bakeries Park St., LLC*, 601 U.S. 246, 254 (2024). For this reason, too, the Court should affirm the order of the district court.

## ARGUMENT

### I. The statutory language and structure establish that the Distribution Agreements are not exempt from the FAA.

The FAA "was a response to hostility of American courts to the enforcement of arbitration agreements." *Cir. City Stores, Inc. v. Adams*, 532 U.S. 105, 111 (2001). The statute's primary substantive provision generally makes arbitration agreements equally "valid, irrevocable, and enforceable" as other types of contracts. 9 U.S.C. § 2. Through this provision, "Congress directed courts to abandon their hostility" and "establishe[d] 'a liberal federal policy favoring arbitration agreements.'" *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 505 (2018) (citation omitted).

The Supreme Court has construed 9 U.S.C. § 2 as reflecting "an expansive congressional intent." *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 274 (1995). Congress used broad language to signal its "intent to provide for the enforcement of arbitration agreements within the full reach of the Commerce Clause" and to "exercise Congress' commerce power to the full." *Id.* at 274, 277 (citation omitted).

The statute's broad general scope, however, has a limited exception. In 9 U.S.C. § 1, Congress carved out a specific category of agreements that would otherwise fall within Congress's power to regulate commerce

and thus within the FAA's coverage: "nothing herein contained shall 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.

Recognizing the contrast between this precise language and the expansive language of 9 U.S.C. § 2, the Supreme Court has determined that the FAA's exemption calls for "a narrow construction." *Cir. City*, 532 U.S. at 118. The FAA has broad general coverage, and the exemption is "narrow." *Bissonnette*, 601 U.S. at 256 (citation omitted). To identify the exact boundaries of the FAA's exemption, courts should construe its "language according to its 'ordinary, contemporary, common meaning.'" *Sw. Airlines Co v. Saxon*, 596 U.S. 450, 455 (2022) (citation omitted).

In this case, the exemption's language supports only one conclusion: The Distribution Agreements are not exempt from the FAA.

### A. The exemption extends only to "contracts of employment" of "workers."

The exemption states that "nothing herein contained shall 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. This language establishes three requirements:

1. The agreement must be a "contract of employment";

2. The contract of employment must be "of . . . workers"; and

3. The workers must be seamen, railroad employees, or within another class of workers engaged in foreign or interstate commerce in a similar way.

In this case, the Court can and should confine its attention to the first and second requirements.[2] The contracts Defendants seek to enforce—the Distribution Agreements between Schmidt Baking and Plaintiffs' companies—are not "contracts of employment" as the Supreme Court and circuit courts have construed that term. Nor do the Distribution Agreements qualify as contracts of "workers." Plaintiffs' contrary view contradicts every circuit decision to address these issues.

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[2] The third requirement was not analyzed by the court below and, depending on the facts of this case, may implicate a circuit split. As this Court recently remarked, three circuits hold that delivery drivers who perform the final intrastate leg of an interstate delivery route are within a class of workers engaged in interstate commerce, while at least one circuit holds the opposite. *Bissonnette v. LePage Bakeries Park St., LLC*, 123 F.4th 103, 106 & n.1 (2d Cir. 2024). Given the lack of a district court ruling on this question, the Court should not address it. *See, e.g.*, *Pessin v. JPMorgan Chase U.S. Benefits Exec.*, 112 F.4th 129, 143 (2d Cir. 2024) ("[W]e are 'a court of review, not of first view[.]'" (citation omitted)).

### B. The Distribution Agreements are not "contracts of employment" within the meaning of the FAA.

In *Amos v. Amazon Logistics, Inc.*, 74 F.4th 591 (4th Cir. 2023), the Fourth Circuit explained why a "commercial contract" embodying "a business services deal struck between two corporate entities" is "not a 'contract of employment'" for purposes of the FAA exemption. *Id.* at 593 (citation omitted). The Supreme Court has already interpreted the phrase "contract of employment" and recognized that the phrase "is intended to 'capture any contract for the performance of *work* by *workers*.'" *Amos*, 74 F.4th at 596 (quoting *New Prime Inc. v. Oliveira*, 586 U.S. 105, 116 (2019)). From this starting point, the Fourth Circuit correctly concluded that the phrase does not apply to a commercial contract that calls for transportation services to be performed by a business entity rather than by individual workers. *Id.* Put differently, the phrase does not reach an agreement "for certain business services to be provided by one business to another." *Id.*

Like the contract in *Amos*, the Distribution Agreements here fit that description. They require the "DISTRIBUTOR"—which each contract defines as Plaintiffs' respective business entities, Silva's Baked Goods and Trout Slayers Baked Breads Inc.—to distribute products to

outlets within specific geographic areas. JA92-93, JA101; JA126-27, JA135; JA161-62, JA170. This sort of commercial contract between businesses is not a contract of employment.

In *Amos*, the Fourth Circuit observed that a "contract of employment" will have some of the "hallmarks" of a contract hiring a worker rather than a business. It will "promise work and compensation to an individual" and will likely have "provisions regarding salary, benefits, and leave time." *Id.* Here, too, the Distribution Agreements resemble the *Amos* agreement, not a "contract of employment." The Distribution Agreements do not obligate specific individuals to perform services but instead leave it to "DISTRIBUTOR" to "engage such persons as DISTRIBUTOR deems appropriate to discharge DISTRIBUTOR'S responsibilities hereunder." JA102; JA136; JA171. Nor do the Distribution Agreements say what compensation those individuals should receive. On the contrary, the agreements give each "DISTRIBUTOR" the "exclusive right to select, fix the compensation of, set work hours, work schedules, and vacations for, discharge and otherwise manage, supervise and control all persons engaged by DISTRIBUTOR." JA102; JA136; JA171.

Plaintiffs try to make hay of the provision in the Distribution Agreements that specifies that the companies' agents and employees have no claim or right to benefits or compensation against Schmidt. Pls. Br. 21 (citing JA95). But they get the significance of this provision backwards. Properly understood, this provision confirms that Schmidt is *not* responsible for paying these workers and thus underscores that the contract is not a contract through which Schmidt hired those workers. And the other fact that Plaintiffs highlight—that the contracts address the payment terms between Schmidt and each of Plaintiffs' companies, Pls. Br. 21 (citing JA99-100)—likewise underscores that the Distribution Agreements are commercial contracts between businesses. *See, e.g.*, *Ruiz v. Campbell Soup Co.*, No. 24-cv-1091, 2024 WL 4295273, at *2 (N.D. Cal. Sept. 24, 2024) (finding that similar provisions did not transform a commercial contract into to a contract of employment exempt from the FAA).

Switching gears, Plaintiffs contend that the district court erred in emphasizing that the Distribution Agreements do not contain the "hallmarks" of a contract of employment. Pls. Br. 21-22. But in doing so, the district court hewed close to the Fourth Circuit's analysis in *Amos*. And not just the Fourth Circuit's. Two other circuits have endorsed *Amos*'s

interpretation of the phrase "contracts of employment." First, the Sixth Circuit agrees that a commercial contract is not a contract of employment when it fails to promise work and compensation to individuals and lacks the hallmarks of traditional employment contracts. *Tillman Transp., LLC v. MI Bus. Inc.*, 95 F.4th 1057, 1063 (6th Cir. 2024) (citing *Amos*, 74 F.4th at 596). The Ninth Circuit, too, recognizes that a contract calling for services to be performed by a business entity, which has "exclusive responsibility for [its] Personnel, including exclusive control over compensation, hours, and working conditions," is not a contract of employment. *Fli-Lo Falcon, LLC v. Amazon.com, Inc.*, 97 F.4th 1190, 1197 (9th Cir. 2024). As the district court determined, the same reasoning applies to the Distribution Agreements, which have the same characteristics. JA102; JA136; JA171.

Plaintiffs caricature the reasoning of the court below when they suggest that the district court viewed individual salary and benefit terms as a categorical prerequisite for a "contract of employment." Pls. Br. 21. But in fact, the district court identified numerous provisions that showed that the Distribution Agreements were "agreements between businesses" rather than "contracts between a business and its workers." JA393-94.

Those provisions include the ones giving Plaintiffs' companies the right to operate their business as they choose and giving those companies the responsibility to hire and fire their own employees. JA393.

Because each Distribution Agreement is a commercial contract for business services rather than a "contract for the performance of *work* by *workers*," it is not exempt from the FAA. *Amos*, 74 F.4th at 596 (quoting *New Prime*, 586 U.S. at 116).

### C. The Distribution Agreements are not contracts of workers.

Plaintiffs' theory also fails the second requirement for applying the FAA exemption. Regardless of whether the Distribution Agreements are contracts of employment, they are not "contracts . . . of seamen, railroad employees, or any other class of *workers*." 9 U.S.C. § 1 (emphasis added).

Here, too, the decisions from the Fourth, Sixth, and Ninth Circuits are instructive. They recognize, as the statutory "text . . . makes clear," that the exemption "does not extend to business entities." *Fli-Lo Falcon*, 97 F.4th at 1195. The Supreme Court has told courts to apply the *ejusdem generis* canon of construction when interpreting the phrase "seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." 9 U.S.C. § 1; *see Amos*, 74 F.4th at 596 (citing

*Cir. City*, 532 U.S. at 114-15). Under that canon, the residual clause at the end of the exemption ("any other class of workers") derives meaning from the two specific nouns enumerated before it ("seamen" and "railroad employees"). *Amos*, 74 F.4th at 596. Both those nouns refer to "natural persons—*individual* workers carrying out work." *Id.*; *accord Tillman*, 95 F.4th at 1063. Indeed, dictionary definitions confirm that at the time the FAA was enacted, seamen and railroad employees were understood to be *persons*. *See* HENRY CAMPBELL BLACK, A LAW DICTIONARY 421, 1063 (2d ed. 1910) (defining "seamen" as "[s]ailors; mariners; *persons* whose business is navigating ships" and "employee" as "a *person* employed," usually "in some official employment" (emphases added)).

When the exemption's language is read as a whole and in light of the *ejusdem generis* canon, it cannot be stretched "to cover non-natural persons like the business entities" that are parties to the Distribution Agreements here. *Fli-Lo Falcon*, 97 F.4th at 1195. As the Ninth Circuit aptly expressed the point, "no business entity is similar in nature to the actual human workers enumerated by the text of the transportation worker exemption." *Id.* at 1196.

The Distribution Agreements are between Schmidt and each DISTRIBUTOR. JA121; JA155; JA190. Plaintiffs signed the Distribution Agreements merely to guarantee their *companies*' performance of their *companies*' obligations. JA121; JA155; JA190. And a "[c]ourt cannot reasonably construe [such a] Personal Guaranty to be a contract of employment that governs 'work by workers' because it contemplates only the guarantee of work by a business entity." *Peltier v. Lepage Bakeries Park St. LLC*, No. 24-cv-452, 2025 WL 871603, at *5 (D.R.I. Mar. 20, 2025), *reconsideration denied, motion to certify appeal granted*, 2025 WL 1285992 (D.R.I. May 2, 2025). Because Plaintiffs' companies are not seamen, railroad employees, or any other class of human workers, their contracts with Schmidt are not exempt from the FAA.

**D. Plaintiffs' counterarguments lack merit.**

Plaintiffs fail to rebut these arguments. Their lead response contends that *New Prime* categorized the same type of contract as exempt from the FAA. But numerous courts have rejected this misreading of *New Prime*—and for good reason. *New Prime* never "answered the questions presented here," such as whether "business entities qualify as a

'class of worker'" and whether "commercial contract[s] between two business entities qualify as a 'contract of employment.'" *Fli-Lo Falcon*, 97 F.4th at 1195; *see also Tillman*, 95 F.4th at 1063.

On the contrary, *New Prime* went to the Supreme Court on the premise that the contract at issue there was a contract between a business and an individual worker. As the First Circuit explained, the parties (Mr. Oliveira and New Prime) "treated the contract as one between Oliveira and [New] Prime," and the First Circuit therefore did the same. *Oliveira v. New Prime, Inc.*, 857 F.3d 7, 17 (1st Cir. 2017), *aff'd*, 586 U.S. 105. In both the lower court and on appeal, New Prime argued that Mr. Oliveira and his company, Hallmark Trucking, were "factually one and the same" and "interchangeable." *Id.* at 17 & n.15. The First Circuit even ruled that New Prime had forfeited any argument "that the contract was between Prime and [Oliveira's company] Hallmark." *Id.* at 17 n.15. As a result, the case was "limit[ed]" to "the issue of whether *an agreement between a trucking company and an individual transportation worker* can[] be a 'contract of employment' . . . if the agreement establishes or purports to establish an independent-contractor relationship." *Id.* at 17 (emphasis added). It did not analyze the status of a contract between

businesses. *E.g.*, *Fli-Lo Falcon*, 97 F.4th at 1195; *Tillman*, 95 F.4th at 1062-64.

Similarly unpersuasive is Plaintiffs' reliance on two recent cases from the First and Tenth Circuits. Pls. Br. 24 (citing *Brock v. Flowers Foods, Inc.*, 121 F.4th 753, 758 (10th Cir. 2024), and *Canales v. CK Sales Co., LLC*, 67 F.4th 38, 44 (1st Cir. 2023)). Like *New Prime*, neither case addressed the issues here. Instead, both cases expressly found that the defendants had forfeited or waived the argument that the contracts were not "contracts of employment" because they had been signed by companies. *See Brock*, 121 F.4th at 770; *Canales*, 67 F.4th at 44-45. All three circuits to entertain that argument have answered it the same way. *See Amos*, 74 F.4th at 596; *Tillman*, 95 F.4th at 1062-63; *Fli-Lo Falcon*, 97 F.4th at 1194-98.

Plaintiffs try to cast aside the Fourth, Sixth, and Ninth Circuit decisions because the businesses in those cases were named as plaintiffs. Pls. Br. 24-25. But Plaintiffs ignore that in *Amos*, just as here, the owner of the business was also a named plaintiff, and the Fourth Circuit affirmed the order compelling her individual "employment claims" to arbitration—not just the claims of the business-entity plaintiffs. 74 F.4th at

593-94, 597. Moreover, the Fourth Circuit rejected as "immaterial" the owner's argument that she personally counted as a "'transportation worker' within the meaning of the FAA." *Id.* at 597. Her "status matter[ed] not" because the "exemption applies to contracts entered into *with* transportation workers." *Id.* And yet there, just as here, the agreement was with the owner's company, not with the owner as an individual worker. *Id.*

As *Amos* recognizes, the question under the plain language of the statute is whether the FAA applies to a given *contract*. *See* 9 U.S.C. § 1 ("nothing herein contained shall apply to contracts . . . "); *New Prime*, 586 U.S. at 111-12. By its terms, the statute exempts a category of contracts from the FAA. It does not exempt particular plaintiffs from the FAA. *See Amos*, 74 F.4th at 597. For the reasons already discussed in this brief and in *Amos*, *Tillman*, and *Fli-Lo Falcon*, the Distribution Agreements do not satisfy the requirements for a contract to be exempt from the FAA under 9 U.S.C. § 1. And, tellingly, Plaintiffs do not deny that if their companies filed a lawsuit against Schmidt in the Fourth, Sixth, or Ninth Circuits and tried to avoid arbitration, the companies could not possibly

establish under those circuits' precedent that the Distribution Agreements are exempt from the FAA. That conclusion—that the Distribution Agreements are not exempt from the FAA—suffices to resolve this appeal. Plaintiffs do not appeal the district court's holdings that the arbitration provisions are binding on Plaintiffs as well as their companies, *see* JA400, that the agreements delegate disputes over arbitrability to the arbitrator, *see* JA402, and that the delegation provision is not unconscionable or unenforceable, *see* JA411.[3] Plaintiffs' only live challenge to arbitration is their argument that their contracts are exempt from the FAA, and for the reasons already discussed, that argument fails.

Plaintiffs' contrary interpretation of the statutory language focuses almost entirely on the three words "contracts of employment." They spill

[3] The Court's order granting leave to appeal asks "whether an individual worker falls within the scope of the exemption . . . even if the contract to perform work is signed on behalf of the worker by an LLC incorporated by the worker and not the worker as an individual." Dkt. 19. As discussed above, the proper unit of analysis given the statutory language is the contract itself, not the individual worker, because the statute exempts certain contracts, not workers. And for the reasons identified by the Fourth, Sixth, and Ninth Circuits, the identity of the parties to the contract—whether they are a business or a worker—does make a difference. Contracts with businesses, rather than individual workers, are not contracts "of seamen, railroad employees, or any other class of workers" in the relevant sense.

much ink attempting to establish that in 1925, when the FAA was enacted, the phrase "contract of employment" could sometimes refer to agreements between businesses, not just agreements between a business and an individual worker. *See* Pls. Br. 16-20.

But even assuming that those three words can sometimes encompass contracts between businesses, the argument is unpersuasive because it ignores the phrase's context in the particular statute at issue here. Key to understanding the exemption's proper scope are the other words in 9 U.S.C. § 1, which indicate that the only contracts of employment carved out from the FAA are contracts of employment of workers like seamen, railroad employees, or similar transportation workers—not contracts of employment of businesses. The Supreme Court has emphasized that the exemption's "words 'must be read' and interpreted 'in their context,' not in isolation." *Saxon*, 596 U.S. at 455 (citation omitted). And what's more, the Supreme Court has made clear that the statute's language about the transportation workers sheds light on the meaning of the phrase "contracts of employment" as well. *See New Prime*, 586 U.S. at 116. Plaintiffs' acontextual reading of those three words violates the Supreme Court's direction to read this statutory language holistically.

In sum, Plaintiffs' attack on the decision below finds no support in the statutory language or relevant precedent. It should be rejected.

## II. Plaintiffs' contrary reading undermines the purposes of the FAA.

To resolve this appeal, the Court need go no further than the statutory text and precedent. Courts should not "pave over bumpy statutory texts in the name of more expeditiously advancing a policy goal." *New Prime*, 586 U.S. at 120. But if the Court does consider statutory purpose and policy, they only further discredit Plaintiffs' arguments.

The Supreme Court has explained why Congress included the exemption in the FAA. As noted, Congress's general purpose in passing the FAA in 1925 was "to override the longstanding refusal of courts to enforce arbitration agreements." *Bissonnette*, 601 U.S. at 253. But in 1925, "specific statutory dispute resolution regimes already covered seamen and railroad employees." *Id.* So, according to the Supreme Court, Congress included the exemption "to avoid 'unsett[ling]' those schemes" and to "reserve[] for Congress the decision whether to enact additional 'specific legislation for those engaged in transportation.'" *Id.* (quoting *Cir. City*, 532 U.S. at 121).

As the Ninth Circuit has explained, this account of Congress's purposes highlights the exemption's concern with contracts involving specific workers, not contracts involving businesses. The "exemption was targeted at employment contracts of workers . . . , *not* contracts of business entities." *Fli-Lo Falcon*, 97 F.4th at 1196. Plaintiffs offer no real theory about how their reading of the exemption might further Congress's purpose. At most, they assert that transportation businesses play an important "role in the free flow of goods." Pls. Br. 29 (citation omitted). But this assertion is merely a truism that sheds no light on the intended scope of the exemption. Indeed, Plaintiffs elsewhere acknowledge, by way of example, that FedEx's commercial contracts with its business customers are *not* exempt from the FAA. Pls. Br. 23 n.7. Those contracts obviously play an important "role in the free flow of goods." Plaintiffs thus essentially concede that such a role does not suffice to bring all transportation contracts within the FAA exemption. They therefore have no real rebuttal to the Ninth Circuit's conclusion that the exemption was targeted at specific categories of individual workers, not the transportation industry more broadly. *See Bissonnette*, 601 U.S. at 255.

To make matters worse, Plaintiffs' reading affirmatively thwarts the FAA's purposes. It does so not only by carving out from the FAA's broad scope more contracts than Congress intended, but also by inviting protracted threshold litigation over whether a delivery business is, like FedEx, sufficiently well-established or independent to escape the exemption. Plaintiffs concede that FedEx's transportation contracts are not exempt from the FAA, apparently because FedEx "deliver[s] millions of . . . packages." Pls. Br. 23 n.7. But Plaintiffs offer no administrable test for separating the FedExes of the world from companies like Silva's Baked Goods. The record indicates that Silva's had millions of dollars in sales revenue. JA338, JA340. Plaintiffs never explain why, in their view, such significant revenues are insufficient to keep Silva's within the FAA's coverage.

More importantly, Plaintiffs never explain how looking to the size of the transportation business's activities would comport with the Supreme Court's approach to the exemption. Figuring out whether the FAA governs should be easy and inexpensive. After all, when the FAA applies to an arbitration agreement, the statute is designed to quickly move the dispute from court to arbitration. No interpretation of the exemption

should require "[e]xtensive discovery . . . to explore the internal structure and revenue models of a company" as a prerequisite for deciding whether the agreement is enforceable under the FAA. *Bissonnette*, 601 U.S. at 254. Plaintiffs' effort to draw their own line between different transportation businesses would create unwarranted "complexity and uncertainty" and would inappropriately "breed[] litigation from a statute that seeks to avoid it." *Id.* (quoting *Cir. City*, 532 U.S. at 123).

It is far simpler—in addition to being more faithful to the statutory language—to address these questions by reviewing the face of the contract. It is easy to determine whether the contract is between businesses or between a business and an individual. And it is easy to determine whether the contract calls for the work to be done by particular workers or makes the service-provider business responsible for choosing and supervising the workers. If two businesses reach a contractual arrangement that gives one business discretion on how to perform the services and select the workers who will do so, disregarding that aspect of the parties' agreement when applying the FAA disregards the terms of the substantive deal they struck in addition to creating unpredictability.

In the end, Plaintiffs' policy concerns are not really grounded in the policies of the FAA. They are grounded, at most, in principles of state wage-and-hour laws, which, according to Plaintiffs, sometimes look skeptically on businesses' efforts to limit their contracting to other companies as opposed to individual workers. Pls. Br. 27-28. The decision this Court announces here, however, will not be limited to a narrow category of wage-and-hour disputes in which one party may have arguments that its corporate form should be disregarded when deciding the merits of the claims. The Court's decision will have implications for all arbitration agreements between businesses, whatever the nature of the parties' substantive dispute, and will affect businesses who adopted a corporate form purely for their own purposes.

In all events, however wage-and-hour laws address such questions, the FAA does *not* exhibit skepticism of business-to-business contracting. The FAA permits Schmidt to "contract only with business entities," and "those contracts are not subject to the transportation worker exemption." *Fli-Lo Falcon*, 97 F.4th at 1197.

## CONCLUSION

For all these reasons, the Court should affirm the order granting the motion to compel arbitration.

Dated: May 19, 2025

Respectfully submitted,

/s/ Michael E. Kenneally

JONATHAN D. URICK
U.S. CHAMBER LITIGATION CENTER
1615 H Street, NW
Washington, DC 20062
(202) 463-5537

*Counsel for Chamber of Commerce of the United States of America*

MICHAEL E. KENNEALLY
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
(202) 739-3000

*Counsel for Amici Curiae*

## CERTIFICATE OF COMPLIANCE

1. In accordance with to Federal Rules of Appellate Procedure 29(a)(4)(G) and 32(g)(1), I certify that this brief complies with the type-volume limitation of Second Circuit Rules 29.1(c) and 32.1(a)(4)(A) because, excluding the parts exempted by Federal Rule of Appellate Procedure 32(f), this brief contains 5,158 words.

2. I further certify that this brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionally spaced typeface, Century Schoolbook 14-point font.

Dated: May 19, 2025

/s/ Michael E. Kenneally
MICHAEL E. KENNEALLY