Case No. B308417

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION 2

INTUIT INC. and INTUIT CONSUMER GROUP LLC,
Plaintiffs, Appellants, and Petitioners,

v.

9,933 INDIVIDUALS,
Defendants, Appellees, and Respondents.

APPLICATION OF THE CHAMBER OF THE COMMERCE OF THE UNITED STATES OF AMERICA FOR PERMISSION TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF PETITION FOR INJUNCTIVE STAY ORDER PENDING APPEAL OR WRIT OF SUPERSEDEAS AND *AMICUS CURIAE* BRIEF IN SUPPORT OF PETITION

On Appeal from Los Angeles Superior Court, No. 20STCV22761
Hon. Terry A. Green, Dept. 14, tel.: (213) 633-0514

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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. Other than the *amicus curiae* and the named parties, no known person or entity has a financial or other interest in the outcome of this proceeding that the justices should consider in determining whether to disqualify themselves. (Cal. R. Ct. 8.208(e)(2.))

Dated: October 30, 2020

Respectfully submitted.
MAYER BROWN LLP

/s/ *Archis A. Parasharami*
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Attorney for Amicus Curiae

APPLICATION OF THE CHAMBER OF THE COMMERCE OF THE UNITED STATES OF AMERICA FOR PERMISSION TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF PETITION FOR INJUNCTIVE STAY ORDER OR WRIT OF SUPERSEDEAS

To the Honorable Justices of the California Court of Appeal:

The Chamber of Commerce of the United States of America (Chamber) respectfully seeks leave to file a brief as *amicus curiae* in support of the petition for injunctive stay order pending appeal or writ of supersedeas filed by appellants and petitioners Intuit Inc. and Intuit Consumer Group LLC.[1]

The Chamber of Commerce of the United States of America is the world's largest business federation. The Chamber 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. One of the Chamber's functions is to represent the interests of its members

[1] No party or counsel for a party in this matter authored the proposed *amicus* brief in whole or in part or made a monetary contribution intended to fund the preparation or submission of the brief. And no person or entity made a monetary contribution intended to fund the preparation or submission of such brief, other than the *amicus curiae* and its members. (See Cal. Rules of Court, rule 8.520(f)(4).)

in matters before the courts, Congress, and the Executive Branch. To that end, the Chamber regularly files *amicus curiae* briefs in cases that raise issues of concern to the nation's business community, including cases involving the interpretation of the Federal Arbitration Act (the "Act"), 9 U.S.C. §§ 1-16.

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

The Chamber's members and the broader business community have a strong interest in a judicial declaration that the Federal Arbitration Act preempts California's Senate Bill 707, which is therefore unconstitutional under the Supremacy Clause of the Constitution. The Chamber is one of the plaintiffs in a federal-court preemption challenge to a sister anti-arbitration law passed during the same session, Assembly Bill 51. In that case, Chief Judge Mueller of the United States District Court for the Eastern District of California issued a preliminary injunction against California's enforcement of AB 51 as applied to arbitration agreements governed by the Federal Arbitration Act.

(See *Chamber of Commerce v. Becerra* (E.D. Cal. 2020) 438 F. Supp. 3d 1078, *appeal pending*, No. 20-15291 (9th Cir.).)

Unlike AB 51, which the State may enforce, private parties exclusively enforce SB 707. But it too unlawfully singles out arbitration agreements for disfavored treatment by subjecting their drafters to unique and one-sided sanctions if they do not pay arbitration fees in full within 30 days of the due date, regardless of the reason for non-payment or the amount not paid. And the consequent deterrent effect of those sanctions on the use and enforcement of arbitration agreements—an *explicitly stated* purpose of the California Legislature in passing SB 707—plainly stands as an obstacle to the Federal Arbitration Act's pro-arbitration objectives, threatening to deprive businesses, workers, and consumers alike of the benefits of the national policy favoring arbitration. The Chamber therefore has a strong interest in participating in this case and expressing its perspective on why the Federal Arbitration Act preempts SB 707, just as it preempts AB 51.

Finally, this brief is procedurally appropriate. Rule 8.112 of the California Rules of Court governs petitions for writs of supersedeas. Although that rule does not expressly address

amicus briefs or letters in support of a petition for writ of supersedeas, this Court has previously exercised its discretion to accept amicus briefs in this context. (See, e.g., *Leung v. Verdugo Hills Hospital* (2008) 168 Cal.App.4th 205, 211 n.3 [granting request to file amicus brief in support of petition for writ of supersedeas].)

An analogy to petitions for writ of mandate further supports the filing. Rule 8.487 expressly permits the filing of amicus briefs after an appellate court issues an alternative writ or order to show cause. (Cal. Rules of Court, rule 8.487(e)(1).) The Advisory Committee comment to the rule makes clear, however, that amicus submissions are also permissible *before* a court issues an alternative writ or order to show cause:

> These provisions do not alter the court's authority to request or permit the filing of amicus briefs or amicus letters in writ proceedings in circumstances not covered by these subdivisions, such as before the court has determined whether to issue an alternative writ or order to show cause . . . .

Indeed, this Court has stated in a published opinion that the filing of amicus submissions in connection with a writ petition was one factor that the court considered in deciding whether to issue an order to show cause, because it underscored that the matter

presented an issue "of widespread interest." (*Regents of University of California v. Superior Court* (2013) 220 Cal.App.4th 549, 557-558.)

CONCLUSION

The Chamber respectfully request that the Court grant its application to file the *amicus curiae* brief.

Dated: October 30, 2020

Respectfully submitted.

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By: /s/ Archis A. Parasharami
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***AMICUS CURIAE* BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF PETITION FOR INJUNCTIVE STAY ORDER PENDING APPEAL OR FOR WRIT OF SUPERSEDEAS**

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INTRODUCTION AND SUMMARY OF ARGUMENT

Congress enacted the Federal Arbitration Act to "promote arbitration." (*AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 345.) The Act's "'liberal federal policy favoring arbitration agreements'" applies "'notwithstanding any state substantive or procedural policies to the contrary.'" (*Id.* at 346 (quoting *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.* (1983) 460 U.S. 1, 24).)

Nonetheless, the California Legislature and some courts applying California law have sought to restrict arbitration as a matter of state public policy, particularly in the employment and consumer contexts, and the U.S. Supreme Court has repeatedly held that the Federal Arbitration Act preempts those efforts.[1] SB 707, which applies to consumer and workplace arbitration agreements, represents more of the same unlawful treatment of

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[1] See, e.g., *Lamps Plus, Inc. v. Varela* (2019) 139 S. Ct. 1407, 1417-18 [use of California "public policy" rule interpreting ambiguities against the drafter to impose class procedures on the parties where the contract did not expressly authorize class arbitration]; *Concepcion*, 563 U.S. at 352 [California judicial rule declaring class-action waivers unconscionable]; *Preston v. Ferrer* (2008) 552 U.S. 346, 353 [California Labor Code provision requiring an agency to hear certain disputes before arbitration]; *Perry v. Thomas* (1987) 482 U.S. 483, 491 [California Labor Code provision requiring judicial forum for wage collection actions].

arbitration. It violates the Federal Arbitration Act for two independent reasons.

First, by singling out arbitration agreements by name and imposing mandatory and one-sided penalties on the drafters of arbitration agreements that do not apply outside of the arbitration context, SB 707 violates Section 2 of the Federal Arbitration Act, which requires courts and state legislatures to "place arbitration agreements 'on equal footing with all other contracts.'" (*Kindred Nursing Centers Ltd. P'ship v. Clark* (2017) 137 S. Ct. 1421, 1424.) SB 707 treats *any* non-payment of arbitral fees by the drafting party (no matter the amount), regardless of the reasons for non-payment, as a "material breach of the arbitration agreement" that "waives [that party's] right to compel arbitration." (Cal. Civ. Proc. Code § 1281.97(a).) If the non-drafting party elects to proceed in court notwithstanding his or her agreement to arbitrate, SB 707 *mandates* a "sanction against the drafting party" in the form of an order "to pay the reasonable expenses" of the non-drafting party, "including attorney's fees and costs." (*Id.* § 1281.99(a).) And SB 707 further authorizes the court to impose a panoply of non-monetary and potentially case-dispositive sanctions as well, including orders

"prohibiting the drafting party from conducting discovery in court"; "striking out the pleadings or parts of the pleadings of the drafting party"; "rendering a judgment by default against the drafting party"; or "treating the drafting party as in contempt of court." (*Id.* § 1281.99(b).) If the non-drafting party elects arbitration instead, SB 707 mandates that the arbitrator order fee shifting and authorizes the arbitrator to impose numerous other sanctions as well. (*Id.* §§ 1281.97(b)(2), 1281.98(d).)

The differential treatment is clear. SB 707 not only creates a unique rule of contract law that applies solely to arbitration agreements, but also treats such agreements as a specific type of contract from which non-drafting parties need heightened protection in the event of non-performance (however slight or justified). That singling out of arbitration is the very unequal treatment that the Federal Arbitration Act forbids.

Second, and for similar reasons, the Federal Arbitration Act also preempts SB 707 because the California law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," as expressed in the Act. (*Concepcion*, 563 U.S. at 352 (quoting *Hines v. Davidowitz* (1941) 312 U.S. 52, 67).) The stated goal of the California Legislature in

imposing harsh and "unforgiving" sanctions on businesses through SB 707 is to deter businesses from the "liberal use of binding arbitration provisions in contracts." (Assem. Com. on Judiciary, Analysis of Sen. Bill No. 707 (2019-2020 Reg. Sess.) as amended May 20, 2019, p. 10.) That result is antithetical to the longstanding "liberal federal policy favoring arbitration agreements." (*Epic Sys. Corp. v. Lewis* (2018) 138 S. Ct. 1612, 1621 (quoting *Moses H. Cone*, 460 U.S. at 24).)

The anti-arbitration sentiment behind SB 707 not only violates the Federal Arbitration Act, but also is bad policy. SB 707 harms businesses, workers, and consumers by deterring the use of arbitration agreements and thereby preventing them from obtaining the benefits of arbitration secured by the Act.

Finally, as Intuit's petition persuasively details, the constitutionality of SB 707 is ripe for decision. The very purpose of a declaratory judgment action is to adjudicate whether the threatened enforcement of a challenged law is lawful before the enforcement of a law enacted *ultra vires* takes place. The trial court's conclusion that Intuit was required to incur the penalties of noncompliance with SB 707 before challenging the constitutionality of that statute defies that settled principle, and

yields the untenable result that a company must incur the pain of noncompliance with SB 707 before challenging its legality.

ARGUMENT

A. The Federal Arbitration Act Preempts SB 707.

The United States Supreme Court has identified at least two ways in which a state-law rule may run afoul of the Federal Arbitration Act. *First*, any state-law rule that "conflicts with § 2 of the Federal Arbitration Act . . . violates the Supremacy Clause." (*Southland Corp. v. Keating* (1984) 465 U.S. 1, 10; see *Preston*, 552 U.S. at 353 ["The FAA's displacement of conflicting state law is 'now well-established.'"].) Section 2 of the Act specifies that a "written provision in . . . a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation *of any contract*." (9 U.S.C. § 2 (emphasis added).) Under Section 2, "courts must place arbitration agreements on an equal footing with other contracts." (*Concepcion*, 563 U.S. at 339; accord *Lamps Plus*, 139 S. Ct. at 1412.)

Second, the Federal Arbitration Act preempts any state-law rule that "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," as expressed in the Act. (*Concepcion*, 563 U.S. at 352 (quoting *Hines*, 312 U.S. at 67).) Such preempted state laws are void and enforceable.

The Federal Arbitration Act preempts SB 707 for these two reasons—each of which is independently sufficient to render the state statute unconstitutional under the Supremacy Clause.

1. SB 707 violates Section 2 of the Federal Arbitration Act

Under Section 2's "equal footing" principle, the Federal Arbitration Act preempts state-law rules that "single out" arbitration agreements for disfavored treatment. (*Kindred*, 137 S. Ct. at 1428.) Moreover, as Justice Kagan explained for the *Kindred* Court, Section 2 not only prohibits States from discriminating against arbitration on its face, but also prohibits States from achieving the same result "covertly," by "disfavoring contracts that (oh so coincidentally) have the defining features of arbitration agreements." (*Id.* at 1426.) The U.S. Supreme Court recently reiterated that Section 2's "savings clause does not save

defenses that target arbitration either by name or by more subtle methods." (*Epic*, 138 S. Ct. at 1622.)

Here, the preemption analysis is even clearer than in *Kindred* or *Epic*. There is nothing "covert[]" or "subtle" about SB 707: It targets arbitration agreements by name. It therefore more closely resembles the Montana statute that the U.S. Supreme Court held preempted in *Doctor's Associates, Inc. v. Casarotto* (1996) 517 U.S. 681, which required contracts containing an arbitration clause to include a notice of the clause in underlined capital letters on the first page of the contract. (*Id.* at 683.) As Justice Ginsburg explained for the Court, that state statute "directly conflicts with § 2 of the FAA" because it imposes "a special notice requirement not applicable to contracts generally," and instead governs "specifically and solely contracts 'subject to arbitration.'" (*Id.* at 687.)

As Intuit's memorandum in support of the petition points out (at 45-48), Section 2's savings clause does not save SB 707 because SB 707 does not reflect generally applicable contract doctrine, but instead represents a stark departure from ordinary California contract principles.

First, California ordinarily treats "the question of whether a breach of an obligation is a material breach . . . [as] a question of fact." (*Brown v. Grimes* (2011) 192 Cal. App. 4th 265, 277 [collecting cases].) That reflects the common-sense point that the materiality of a breach is a case-specific determination, focusing on "the specific obligations undertaken by" the parties and the nature and "timing of a breach." (*Whitney Inv. Co. v. Westview Dev. Co.* (1969) 273 Cal.App.2d 594, 601-02.) SB 707, by contrast, treats *any* failure by the drafting party to pay arbitration fees in full as a material breach, as a matter of law—regardless of the underlying factual circumstances or whether the amount not paid is nominal or substantial.

Second, California ordinarily treats contracting parties equally in the context of a material breach by the other party: "When a party's failure to perform a contractual obligation constitutes a material breach of the contract, the other party may be discharged from its duty to perform under the contract." (*Brown*, 192 Cal. App. 4th at 277 (citing 1 Witkin, Summary of Cal. Law, Contracts (10th ed. 2005) §§ 813, 814).) SB 707, by contrast, applies only to breaches by the drafting party, and in fact obligates the drafting party to perform under the contract by

paying arbitration fees regardless of whether the consumer or worker breached the contract first. It also applies if the business has a good-faith basis to dispute the arbitrability of the claims asserted against it, so that its non-payment of the arbitration fees associated with those claims would be justified until a court resolves the arbitrability issue.

Third, and relatedly, California ordinarily requires a plaintiff seeking to recover for a breach of contract to demonstrate that he or she has properly performed under the contract. (See 1 Witkin, Summary of Cal. Law, Contracts (11th ed. 2020) § 873 (citing, *inter alia*, *Pry Corp. of Am. v. Leach* (1960) 177 Cal. App. 2d 632, 639).) Yet SB 707 allows even a consumer or worker who has breached an arbitration agreement to demand the drafting party's continued performance in the form of paying arbitration fees—and authorizes sanctions on a business that declines to perform in light of non-performance on the worker's or consumer's part. For example, a consumer who breaches the arbitration agreement by filing a single arbitration claim that purports to be on behalf of hundreds of customers—conduct that is often expressly barred under the governing arbitration provision—could obtain enforcement of the arbitration

agreement, notwithstanding such an express prohibition, if the targeted defendant fails to pay the full arbitration fees for the improper group arbitration.

Moreover, the problems posed by SB 707's departure from ordinary contract principles are real, not hypothetical. A business may have a good-faith basis to challenge either "whether the parties are bound by a given arbitration agreement" or "whether an arbitration clause in a concededly binding contract applies to a particular type of controversy," both which by default are "for a court to decide." (*Howsam v. Dean Witter Reynolds, Inc.* (2002) 537 U.S. 79, 84.) But SB 707 does not permit the business to take the position that such challenges must be resolved by the courts before paying arbitration fees. In addition, a consumer or worker—perhaps at the encouragement of counsel seeking to maximize the imposition of arbitral fees—may fail to comply with an arbitration agreement's standard pre-arbitration notice and dispute resolution procedures designed to encourage the informal and amicable resolution of claims without the need for an adversarial proceeding. Or a consumer or worker may initiate an improper class or representative arbitration—the

types of arbitrations that courts have repeatedly enjoined when they are prohibited by an arbitration agreement.[2]

Yet in all of these scenarios, SB 707 obligates the business to pay the arbitration fees in full, on pain of weighty sanctions, and with no guarantee of recouping the fees that it pays for even illegitimate claims.

In short, because California law would not impose the harsh and one-sided sanctions of SB 707 outside of the arbitration context, SB 707 plainly applies state contract doctrine "in a fashion that disfavors arbitration," and is preempted. (*Concepcion*, 563 U.S. at 341; see also *Kindred*, 137 S. Ct. at 1428.)

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[2] For example, one law firm filed copycat arbitrations on behalf of over 1,000 claimants seeking to block or impose conditions on a merger. Every court to consider the issue held that the arbitrations were improper class or representative arbitrations that violated the arbitration agreement. (See, e.g., *AT&T Mobility LLC v. Princi* (D. Mass. Dec. 2, 2011) 2011 WL 6012945, at *1; *AT&T Mobility LLC v. Bernardi* (N.D. Cal. Oct. 26, 2011) 2011 WL 5079549, at *13; *AT&T Mobility LLC v. Smith* (E.D. Pa. Oct. 7, 2011) 2011 WL 5924460, at *8; *AT&T Mobility LLC v. Gonnello* (S.D.N.Y. Oct. 7, 2011) 2011 WL 4716617, at *4; *AT&T Mobility LLC v. Bushman* (S.D. Fla. Sept. 23, 2011) 2011 WL 5924666, at *2.)

2. SB 707 interferes with the purposes and objectives of the Federal Arbitration Act

Much of the preceding discussion also explains why the Federal Arbitration Act preempts SB 707 for the additional reason that the California law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" expressed in the Act. (*Concepcion*, 563 U.S. at 352 (quoting *Hines*, 312 U.S. at 67).)

Congress enacted the Federal Arbitration Act in 1925 to "reverse the longstanding judicial hostility to arbitration agreements." (*EEOC v. Waffle House, Inc.* (2002) 534 U.S. 279, 289 (quotation marks omitted); see *Allied-Bruce Terminix Cos. v. Dobson* (1995) 513 U.S. 265, 272 [the Act "seeks broadly to overcome judicial hostility to arbitration agreements"].) The Supreme Court's "cases place it beyond dispute that the FAA was designed to promote arbitration" (*Concepcion*, 563 U.S. at 345-46), and that the Act "establishes 'a liberal federal policy favoring arbitration agreements,'" (*Epic*, 138 S. Ct. at 1621 (quoting *Moses H. Cone*, 460 U.S. at 24).)

By imposing unique and weighty penalties on the drafters of arbitration agreements, SB 707 forcefully impedes the Act's

purpose "to promote arbitration." (*Concepcion*, 563 U.S. at 345.) The United States Court of Appeals for the First Circuit has held, for example, that "[a] policy designed to prevent one party from enforcing an arbitration contract or provision by visiting a penalty on that party is, without much question, contrary to the policies of the FAA." (*Securities Indus. Ass'n v. Connolly* (1st Cir. 1989) 883 F.2d 1114, 1122-24 [holding that the Act preempted Massachusetts state-law allowing state officials to revoke the licenses of broker-dealers who required customers to sign pre-dispute arbitration agreements].) And the U.S. Court of Appeals for the Fourth Circuit has expressly endorsed *Connolly*, agreeing that the Act bars state-law rules that "discourage" arbitration, not just those that "prohibit" it outright. (*Saturn Distrib. Corp. v. Williams* (4th Cir. 1990) 905 F.2d 719, 722-24.)

There can be no serious dispute that SB 707 embodies the improper attempt by the California Legislature to discourage businesses from forming and enforcing arbitration agreements with their customers and workers. Indeed, there is no need to speculate about that point, because the California Legislature admitted as much. The Assembly Committee on the Judiciary stated that the statute's "unforgiving" sanctions are "justified" to

make "drafting parties reconsider their liberal use of binding arbitration agreements in contracts." (Analysis of Sen. Bill No. 707, *supra*, at p. 10.) The Committee made plain its dislike of arbitration by characterizing it as a "controversial form of dispute resolution" (*id.*)—which is "far out of step" with Congress's endorsement of arbitration agreements. (*Gilmer v. Interstate/Johnson Lane Corp.* (1991) 500 U.S. 20, 30 (quotation marks omitted).) Courts routinely look to California legislative history of this kind as confirmatory evidence of the effect of the statutory text. (See, e.g., *Gonzales v. CarMax Auto Superstores, LLC* (9th Cir. 2016), 840 F.3d 644, 652 & n.8; *In re Findley* (9th Cir. 2010) 593 F.3d 1048, 1053; *Chamber of Commerce*, 438 F. Supp. 3d at 1097.)

Moreover, as explained above (at 15-20), SB 707 penalizes any business that fails to pay arbitration fees in full, regardless of whether the business has a good-faith basis to challenge the arbitrability of the claims or to challenge whether the consumer or worker has complied with his or her own obligations under the contract. The statute therefore increases the costs to businesses of enforcing arbitration agreements and invites misuse of the arbitration process by enterprising plaintiffs' lawyers who know

that businesses will be on the hook for fees even if the claimant is not actually a customer, is not asserting an arbitrable claim, or has failed to comply with any necessary prerequisites to initiating an arbitration.

As Judge Mueller determined in the context of Assembly Bill 51, this "deterrent effect on [the] use of arbitration agreements" means that the California statute "interferes with the FAA and for this reason as well is preempted." (*Chamber of Commerce*, 438 F. Supp. 3d at 1100.) The same is true of SB 707 here.

B. The Constitutionality Of SB 707 Is Ripe For Decision

Finally, as Intuit's brief details (at 48-52), its preemption challenge to SB 707 is ripe for judicial resolution. For related reasons, this "dispute is sufficiently concrete" and "the withholding of judicial consideration will result in a hardship"—and therefore the case satisfies the two-pronged test for whether a declaratory judgment action is ripe. (*Farm Sanctuary, Inc. v. Dep't of Food & Agriculture* (1998) 63 Cal.App.4th 495, 502.)

Not only is the preemption issue a pure question of law, but there is also no legitimate dispute that the threat of enforcement

under SB 707 will force Intuit and other businesses in California to pay arbitration fees in full under pain of weighty sanctions—even if the arbitration is an improper group arbitration or the business has meritorious objections to the validity of the arbitration proceeding.

As Intuit points out, it was forced by threat of enforcement of SB 707 to pay $3 million in fees even prior to filing this lawsuit, to pay an additional almost $10 million after the trial court's denial of a preliminary injunction, and faces in December the looming threat of approximately $11 million more in fees. It is hard to imagine a more coercive effect or concrete cost of compliance with a statute that Intuit and other businesses have contended is unconstitutional. And therefore businesses like Intuit have a correspondingly concrete interest in removing the sword hanging over their heads.

For that reason alone, the trial court was incorrect in requiring Intuit to incur sanctions under SB 707 before challenging its validity. Indeed, California courts routinely entertain pre-enforcement actions for declaratory relief. (See, e.g., *Communities for a Better Environment v. State Energy Resources Conservation & Development Commission* (2017) 19

Cal.App.5th 725, 738-39; *Baxter Health Care Corp. v. Denton* (2004) 120 Cal.App.4th 333, 362.)

Moreover, any businesses that don't comply with SB 707 on the (well-founded) belief that it is unlawful obviously face irreparable harm as well. They face a "Hobson's choice"; they may either "continually violate" the unlawful legislation and expose themselves to "potentially huge liability" or "violate the law once as a test case and suffer the injury of obeying the law during the pendency of the proceedings." (*Morales v. Trans World Airlines, Inc.* (1992) 504 U.S. 374, 381; see also *Ex Parte Young* (1908) 209 U.S. 123, 145-46 ["officers and employees could not be expected to disobey" state law in order to test its validity].)

In short, because businesses in California must choose between non-compliance with SB 707 and risking sanctions or incurring the pains of compliance by paying non-refundable arbitration fees under protest, a "very real penalty attaches" regardless of how they respond to the statute. (*Am. Trucking Associations, Inc. v. City of Los Angeles* (9th Cir. 2009) 559 F.3d 1046, 1058.) In either case, the irreparable harm is clear, and can be avoided only by a judicial declaration that SB 707 is unlawful.

CONCLUSION

Petitioners' petition for an injunctive stay order or writ of supersedeas should be granted.

Dated: October 30, 2020

Respectfully submitted.

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CERTIFICATE OF WORD COUNT
(California Rule of Court 8.204(c)(1))

According to the word count facility in Microsoft Word 2016, this brief, including footnotes but excluding those portions excludable pursuant to Rule 8.204(c)(3), contains 3,379 words, and therefore complies with the 14,000-word limit contained in Rule 8.204(c)(1).

Dated: October 30, 2020

/s/ Archis A. Parasharami
Archis A. Parasharami

PROOF OF SERVICE

I, Jenny Lee, declare as follows:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is: 350 South Grand Ave., 25th Floor, Los Angeles, California 90071. On October 30, 2020, I served the document(s) described as:

APPLICATION OF THE CHAMBER OF THE COMMERCE OF THE UNITED STATES OF AMERICA FOR PERMISSION TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF PETITION FOR INJUNCTIVE STAY ORDER PENDING APPEAL OR WRIT OF SUPERSEDEAS AND *AMICUS CURIAE* BRIEF IN SUPPORT OF PETITION

☐ By transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

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Respondent	

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

Executed on October 30, 2020, at Los Angeles, California.

/s/ *Jenny Lee*
Jenny Lee