# 19-648

## U.S. Court of Appeals for the Second Circuit

IN RE: NYREE BELTON,
*Debtor*.
**************

NYREE BELTON,
*Plaintiff-Appellee*,
v.
GE CAPITAL RETAIL BANK,
*Defendant-Appellant*.

On Appeal from the United States District Court for the Southern District of New York, No. 15-CV-1934, before the Honorable Vincent L. Briccetti

**BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANT-APPELLANT GE CAPITAL RETAIL BANK**

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## CORPORATE DISCLOSURE STATEMENT

The Chamber of Commerce of the United States of America is a nonprofit corporation organized under the laws of the District of Columbia. It has no parent corporation. Consequently, no publicly held corporation owns ten percent or more of its stock.

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## INTEREST OF THE *AMICUS CURIAE*

The Chamber of Commerce of the United States of America (the "Chamber") is the world's largest business federation, representing 300,000 direct members and indirectly representing an underlying membership of more than three million businesses and professional organizations of every size and in every economic sector and geographic region of the country.[1] The Chamber regularly files *amicus* briefs in cases that raise issues of concern to the nation's business community, including cases involving the enforceability of arbitration agreements. *See*, *e.g.*, *Lamps Plus, Inc. v. Varela*, 139 S. Ct. 1407 (2019); *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612 (2018); *DIRECTV, Inc. v. Imburgia*, 136 S. Ct. 463 (2015); *Am. Express Co. v. Italian Colors Rest.*, 570 U.S. 228 (2013); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011); *Patterson v. Raymours Furniture Co.*, 659 F. App'x 40 (2d Cir. 2016). The Chamber has a strong interest in this case because many of its members rely on arbitration as a fast, efficient and less expensive forum to resolve disputes with consumers and others. The continued availability of these benefits of arbitration

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[1] In accordance with Federal Rule of Appellate Procedure 29(a)(4)(E) and Local Rule 29.1(b), the Chamber affirms that no counsel for a party authored this brief in whole or in part and that no person other than the *amicus*, its members, or its counsel made a monetary contribution intended to fund its preparation or submission.

depends on the courts' faithful enforcement of arbitration agreements and consistent application of the fundamental principles of the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.* ("FAA" or the "Act").

## INTRODUCTION AND SUMMARY OF ARGUMENT

Believing itself to be bound by this Court's decision in *In re Anderson*, 884 F.3d 382 (2d Cir. 2018), the district court vacated its prior order compelling arbitration in this case and ruled that Ms. Belton's putative class claim for violations of discharge orders in bankruptcy cases is non-arbitrable. This Court, however, is not so bound, because the Supreme Court's intervening decision in *Epic Systems Corp. v. Lewis*, 138 S. Ct. 1612 (2018), casts serious doubt on *Anderson*'s continued validity. *Epic*—the Supreme Court's most detailed discussion to date of when another federal statute supersedes the FAA—admonishes that the mere judicial belief that arbitration is inconsistent with the protections afforded by another statute is no substitute for a clear congressional command overriding the FAA.

*Epic* establishes that it is not enough to say, as this Court did in *Anderson*, that there is an "inherent conflict" between the FAA and the Bankruptcy Code's discharge provision. Because the plain language of the Code does not contain a "clear and manifest congressional command" that

claims for violating discharge injunctions are non-arbitrable (*Epic*, 138 S. Ct. at 1624), this Court must "read Congress's statutes to work in harmony" (*id*. at 1632) by enforcing Ms. Belton's arbitration provision even as to such claims.

Even if *Epic* allows courts *some* room to roam beyond statutory language when determining whether there is a "clear and manifest congressional command" to displace the FAA, *Anderson* goes far beyond that modicum of flexibility. "Respect for Congress as drafter counsels against too easily finding irreconcilable conflicts in its work." *Epic*, 138 S. Ct. at 1624. For a conflict not discernible in the statutory text to be truly "irreconcilable," it must be *impossible*—not merely impractical or less desirable—for an arbitrator to resolve the dispute in question. As with "all the statutes in all" of the Supreme Court's many cases on this topic (*id*. at 1628), that "demanding standard[]" (*id*. at 1624) is not satisfied here.

*Anderson* did not address whether an irreconcilable conflict existed. Moreover, the *Anderson* Court's rationales for finding an "inherent" conflict sufficient to displace the FAA boiled down to the "central[ity]" of the "fresh start provided by discharge," bankruptcy courts' "unique expertise in interpreting [their] own injunctions," and the Court's

perception that "the bankruptcy court alone has the power to enforce the discharge injunction." 884 F.3d at 390-91. The first two of these rationales are inadequate on their face to establish a truly irreconcilable conflict. That bankruptcy courts might have unique expertise in a "central[ly]" important part of the bankruptcy process does not mean that arbitrators are unable to perform that function. And even if the *Anderson* Court were right that only the issuing bankruptcy court, via contempt sanctions, may enforce an injunction (a dubious proposition), Ms. Belton's putative class claim is *not* a traditional claim for contempt: It is a *statutory* claim seeking compensatory and punitive damages for appellant's alleged violation of discharge orders. It is not *impossible* for an arbitrator to entertain such a claim. On the contrary, arbitrators routinely adjudicate federal statutory claims. *Anderson* thus cannot survive the Supreme Court's decision in *Epic*.

## ARGUMENT

Under the FAA, courts must enforce agreements to arbitrate according to their terms unless Congress clearly commands in another federal statute that the FAA's mandate does not apply. The Bankruptcy Code does not satisfy that test. As a result, the parties' arbitration agreement should be enforced.

### A. The FAA Mandates That Courts Enforce Agreements To Arbitrate Statutory Claims Unless There Is A Clear Congressional Command To The Contrary.

As the Supreme Court repeatedly has made clear, the FAA requires courts to enforce arbitration agreements according to their terms, "even when the claims at issue are federal statutory claims." *CompuCredit Corp. v. Greenwood*, 565 U.S. 95, 98 (2012); *see also Epic*, 138 S. Ct. at 1619 ("Congress has instructed federal courts to enforce arbitration agreements according to their terms"). Of course, that mandate may be "overridden by a contrary congressional command." *CompuCredit*, 565 U.S. at 98 (internal quotation marks omitted). But a party contending that a later-enacted statute displaced the FAA "faces a stout uphill climb." *Epic*, 138 S. Ct. at 1624. The party must show "a clearly expressed congressional intention that such a result should follow." *Id.* (internal quotation marks omitted).

That burden is a demonstrably "heavy" one. *Epic*, 138 S. Ct. at 1624. "In many cases over many years," the Supreme Court "has heard and rejected efforts to conjure conflicts between the [FAA] and other federal statutes" under this test. *Id.* at 1627. "In fact, [the] Court has rejected every such effort to date (save one temporary exception since overruled), with statutes ranging from the Sherman and Clayton Acts to the Age

Discrimination in Employment Act, the Credit Repair Organizations Act, the Securities Act of 1933, the Securities Exchange Act of 1934, and the Racketeer Influenced and Corrupt Organizations Act." *Id.* (citing *Am. Exp. Co. v. Italian Colors Rest.*, 570 U.S. 228 (2013) (in turn citing *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985) (Sherman and Clayton Acts); *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991) (Age Discrimination in Employment Act); *CompuCredit*, *supra* (Credit Repair Organizations Act); *Rodriguez de Quijas v. Shearson/Am. Exp., Inc.*, 490 U.S. 477 (1989) (Securities Act of 1933); *Shearson/Am. Exp., Inc. v. McMahon*, 482 U.S. 220 (1987) (Securities Act of 1934 and RICO).[2]

The Court extended and fortified this line of decisions last year, holding in *Epic* that the National Labor Relations Act ("NLRA") does not supersede the FAA. The question presented in *Epic* and two other cases

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[2] So clear was the message sent by this unbroken line of cases that in still another case, the plaintiff implicitly *conceded* that the Truth in Lending Act does not "evince[] an intention to preclude a waiver of judicial remedies." *Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79, 90 (2000). In addition, "[e]very circuit to consider the question has held that the [Fair Labor Standards Act] allows agreements for individualized arbitration" (*Epic*, 138 S. Ct. at 1626 (internal quotation marks omitted)), and the same is true of the Uniformed Services Employment and Reemployment Rights Act (*see, e.g.*, *Ziober v. BLB Res., Inc.*, 839 F.3d 814, 821 (9th Cir. 2016) (joining Fifth and Sixth Circuits)).

with which it was consolidated was whether the provisions of the NLRA protecting covered employees' right to engage in "concerted activity" preclude enforcement of agreements to arbitrate employment disputes on a bilateral basis. The employees in these cases contended both that the text and legislative history of the NLRA precluded arbitration *and* that requiring bilateral arbitration according to the terms of their agreements would inherently conflict with the "underlying purpose of the NLRA." Br. of Respondent in No. 16-285 at 48, *Epic*, 2017 WL 3475520 (U.S. Aug. 9, 2017); *see also* Br. of Respondents in No. 16-300 at 14-15, 20, *Ernst & Young LLP v. Morris*, 2017 WL 3499245 (U.S. Aug. 9, 2017).

In its most thorough discussion of the "congressional command" exception to date, the Supreme Court strongly suggested that the only true basis for finding a congressional command to displace the FAA is an express statement in the language of the statute. The Court held that in order to displace the FAA, Congress must make its intention to do so "clear and manifest." *Epic*, 138 S. Ct. at 1624 (internal quotation marks omitted). The Court also explained that in assessing arguments that another statute supersedes the FAA, the Court "come[s] armed with a strong presumption" that "Congress will specifically address preexisting law," such as the FAA, "when it wishes to suspend its normal operations in

a later statute." *Id.* (brackets and internal quotation marks omitted). And it emphasized that "the absence of any specific statutory discussion of arbitration . . . is an important and telling clue that Congress has not displaced the [FAA]." *Id.* at 1627.

The Court explained that the requirement that Congress make its intention to displace the FAA clear reflects "[r]espect for Congress as drafter." 138 S. Ct. at 1624. Congress, the Court reasoned, should not lightly be deemed to have drafted two statutes that inherently—and incurably—conflict. Moreover, the Court admonished, "[a]llowing judges to pick and choose between statutes" that they perceive to be in conflict "risks transforming them from expounders of what the law *is* into policymakers choosing what the law *should be*." *Id.* Thus, courts should "aim[] for harmony over conflict" and find the FAA to be displaced only when there is "a clearly *expressed* congressional intention that such a result should follow." *Id.* (internal quotation marks omitted; emphasis added). Punctuating that observation with the rhetorical equivalent of an exclamation point, the Court added that "it's the job of Congress by legislation, not this Court by supposition, both to write the laws and to repeal them." *Id.*

Applying these "demanding standards" (*id.*), the Court held that the NLRA's provisions protecting employees' right to engage in "concerted activity" did not supply the necessary clear congressional command. The Court emphasized that the NLRA's text "does not express approval or disapproval of arbitration," "does not mention class or collective action procedures," and "does not even hint at a wish to displace the Arbitration Act." *Id.* Indeed, the Court noted, the NLRA's provisions referring to "concerted activity" no more clearly spoke to the question of arbitration than the language that the Court had found insufficient in cases such as *Italian Colors*, *Gilmer*, and *CompuCredit*. "If all the statutes in all those cases did not provide a congressional command sufficient to displace the Arbitration Act," the Court reasoned, "we cannot imagine how we might hold that the NLRA alone and for the first time does so today." *Id.* at 1628.

The dissenters in *Epic* would have read the NLRA's language regarding "concerted activity" broadly, to protect a right to participate in class actions (and thus to preclude agreements to arbitrate on an individual basis). *Epic*, 138 S. Ct. at 1636-37 (Ginsburg, J., dissenting). But the majority rejected this "vast construction" of the statutory language, explaining that statutory words must be read in context—and

when a statute fails to mention arbitration or collective litigation procedures specifically, that context weighs against finding a "congressional command" to displace the FAA. *Id.* at 1631 (majority op.).

*Epic* leaves no doubt that a "clear and manifest congressional command" to override the FAA must be discernible from the plain language of the statute with which the FAA ostensibly conflicts. The Court's requirement of "a clearly expressed congressional intention that such a result should follow" demonstrates that the Court no longer considers an "inherent" conflict with the policy of another statute to be relevant to the analysis (if it ever did).[3]

Reinforcing that conclusion, the Court in *Epic* specifically contrasted the NLRA with statutes in which Congress *has* overridden the FAA—each one using unmistakably clear statutory language to do so. 138 S. Ct. at 1626. For example, 7 U.S.C. § 26(n)(2) provides that "[n]o pre-dispute arbitration agreement shall be enforceable, if the agreement requires arbitration of a dispute arising under this section," and 15 U.S.C. § 1226(a)(2) provides that "[n]otwithstanding any other provision of law,

[3] Although the Court indicated in *dictum* in *McMahon* that the requisite congressional command could take the form of an "inherent conflict between arbitration and the [other] statute's underlying purposes" (482 U.S. at 227), it has never actually found such a conflict.

whenever a motor vehicle franchise contract provides for the use of arbitration to resolve a controversy arising out of or relating to such contract, arbitration may be used to settle such controversy only if after such controversy arises all parties to such controversy consent in writing to use arbitration to settle such controversy." When a statute contains "nothing like" these clear statements in its text (*Epic*, 138 S. Ct. at 1626), "[r]espect for Congress as drafter" dictates that it may not be held to displace the FAA (*id*. at 1624).

### B. The Bankruptcy Code Does Not Contain A Clear Congressional Command To Make Discharge-Violation Claims Non-Arbitrable.

The Bankruptcy Code nowhere says that claims for violating a discharge order are non-arbitrable or must be resolved in a judicial forum, which amounts to the same thing. Yet Congress easily could have included such language when it provided for a statutory discharge injunction in 1970 (*see* Pub. L. No. 91-467, § 3, 84 Stat. 990, 991 (1970)) had it wanted to accomplish that result. As in *Epic*, that alone should be dispositive of whether the Bankruptcy Code contains a clear and manifest command to override the FAA, given the "strong presumption" that "Congress will specifically address preexisting law," such as the FAA,

"when it wishes to suspend its normal operations in a later statute." *Epic*, 138 S. Ct. at 1624 (brackets and internal quotation marks omitted).

The district court nonetheless felt itself bound by *Anderson* to hold that there is an "inherent" conflict between the FAA and the Bankruptcy Code that precluded it from enforcing Ms. Belton's agreement to arbitrate her dispute with GE Capital. SA 63. But *this* Court clearly is not so bound: "[I]f 'there has been an intervening Supreme Court decision that casts doubt on [the Court's] controlling precedent,' one panel of this Court may overrule a prior decision of another panel." *In re Zarnel*, 619 F.3d 156, 168 (2d Cir. 2010) (quoting *Gelman v. Ashcroft,* 372 F.3d 495, 499 (2d Cir. 2004)); *see also Lotes Co. v. Hon Hai Precision Indus. Co.*, 753 F.3d 395, 405 (2d Cir. 2014) (same); *United States v. Gill*, 748 F.3d 491, 502 n.8 (2d Cir. 2014) (same). That is so regardless of whether the intervening decision "address[es] the precise issue decided by the [prior] panel." *Zarnel*, 619 F.3d at 168. The Court can, and should, conclude that *Anderson* is no longer good law in light of *Epic*.

**1. The Supreme Court's decision in *Epic* precludes *Anderson*'s reliance solely on a perceived conflict between arbitration and the Bankruptcy Code**

*Anderson*'s holding that the FAA could be displaced solely on the basis of an "inherent conflict" between the FAA and the Bankruptcy Code

(884 F.3d at 386) has been superseded by *Epic*. As discussed above, the Supreme Court gave no indication that an ostensible conflict that is indiscernible from the statutory text could supply the necessary "clear and manifest" congressional intention to override the FAA. To the contrary, it focused solely on the language of the NLRA. In short, *Anderson*'s exclusive reliance on an ostensible "inherent conflict" between arbitration and the purposes of the Bankruptcy Code—without identifying a single provision in the Code that deems claims for violations of discharge orders to be non-arbitrable or mandates a judicial forum for such claims—is far out of step with *Epic*.

Indeed, one bankruptcy court recently distinguished *Anderson* on precisely this basis. *In re Trevino*, 599 B.R. 526 (Bankr. S.D. Tex. 2019). The debtors in that case brought claims for violation of their discharge. In response to the defendant's motion to compel arbitration, the plaintiffs argued (citing *Anderson*) that their claims were not arbitrable because arbitration would conflict with the purposes of the Bankruptcy Code. *Id.* at 549. The court disagreed, explaining that after *Epic*, "a party must do more than simply show that referring a matter to arbitration would conflict with the purposes of the Bankruptcy Code"; a party's burden is to demonstrate "a *clear* and *manifest* expression of congressional intention

that" the FAA be displaced. *Id.*; *see also Adell v. Cellco P'ship*, 2019 WL 1040754, at *4 (N.D. Ohio Mar. 5, 2019) (rejecting argument that arbitration conflicts with the purposes of the Class Action Fairness Act and reasoning that "if Congress had wanted to override the FAA and ban arbitration class action waivers, it could have done so manifestly and expressly" in the statute). *Trevino*'s conclusion that *Anderson*'s exclusive reliance on statutory purpose is not viable after *Epic* was correct. *Anderson* should accordingly be overruled.

#### 2. Even if it were permissible to invoke an ostensible inherent conflict not discernible in the statutory text post-*Epic*, there is no "irreconcilable" conflict between arbitration and the Bankruptcy Code

Even if *Epic* did not foreclose relying on an "inherent" conflict that is not discernible from the statutory text, *Epic* would unquestionably require, at minimum, that any such conflict be "clear" and truly "irreconcilable." *Epic*, 138 S. Ct. at 1624 (internal quotation marks omitted). Indeed, there would be no point to having embraced such a strict standard for determining whether statutory language evinces an intent to override the FAA if the "inherent conflict" aspect of the inquiry were any less stringent.

Just as the NLRA and FAA could "easily [be] read" to "work in harmony" in *Epic* (138 S. Ct. at 1632), so too here the Bankruptcy Code

and FAA can readily be harmonized by holding that claims for violating discharge injunctions are arbitrable. And as in *Epic*, "that is where [the Court's] duty lies." *Id*.

The *Anderson* panel identified three bases for its conclusion that arbitration of claims for violation of a discharge would inherently conflict with the purposes of the Bankruptcy Code: (1) the importance of the discharge injunction to bankruptcy's goal of "providing debtors a fresh financial start"; (2) the bankruptcy court's supposed "unique expertise" in interpreting its own injunction; and (3) the fact that only bankruptcy courts may enforce discharge injunctions. *Anderson*, 884 F.3d at 390-91. But none of these bases satisfies the "contrary congressional command" test as articulated in *Epic.*

To begin with, the goal of giving debtors a fresh start has little relevance when, as in this case, a debtor is bringing an affirmative claim against a creditor. The point of such a claim is to recover damages for the debtor—not to defend the debtor against collection of a debt. In any event, *Anderson*'s emphasis on the importance of the discharge to a creditor's fresh start relies on an implicit assumption that adjudication in arbitration, rather than in a bankruptcy court, will lead to underenforcement of discharge injunctions—either because arbitrators

will be biased against debtors or because arbitration proceedings will not allow debtors to enforce their rights meaningfully. That assumption is wrong. Arbitrators are perfectly capable of determining whether a creditor's actions (or, as here, lack thereof) run afoul of a discharge injunction. As the Supreme Court has explained, there is no basis for presuming "that the parties and arbitral body conducting a proceeding will be unable or unwilling to retain competent, conscientious, and impartial arbitrators." *Mitsubishi*, 473 U.S. at 634. Nor is there any "reason to assume at the outset of the dispute that . . . arbitration will not provide an adequate mechanism" for vindicating statutory rights. *Id*. at 636. That is just as true—if not even more true—of claims regarding a single act (or failure to act) deemed to violate a discharge injunction as it is of complex antitrust claims.

As with the assumptions that "arbitration lacks the certainty of a suit at law under the [Securities] Act to enforce the buyer's rights" and that arbitrators cannot adequately "protect buyers of securities," the notion that an arbitrator cannot adequately protect a creditor's right to a fresh start is "pervaded by . . . the old judicial hostility to arbitration." *Rodriguez de Quijas*, 490 U.S. at 480 (internal quotation marks and brackets omitted). "Once the outmoded presumption of disfavoring

arbitration proceedings is set to one side" (*id.* at 481), it should be clear that there is no basis on which to conclude that arbitration is an inadequate forum in which to obtain redress for the violation of a discharge order. And even if there were some reason to think that arbitration might be less effective than bankruptcy court proceedings at enforcing discharge injunctions, that is not sufficient to show an "irreconcilable" conflict with the Bankruptcy Code's purposes, as *Epic* requires.

*Anderson*'s rationale that bankruptcy courts have "a unique expertise in interpreting [their] own injunctions" (884 F.3d at 390) is likewise insufficient to show an "irreconcilable" conflict between arbitration and the Bankruptcy Code. A bankruptcy discharge injunction is not a case-specific injunction crafted by a court to fit particular circumstances. On the contrary, discharge injunctions arise by operation of law, and the scope of the injunction is dictated by the Code. *See* 11 U.S.C. § 524. A discharge order simply "reiterate[s]" the terms of the statute, and does not vary from case to case. *See, e.g.*, *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1800 (2019) (explaining that discharge orders generally "go[] no further than the statute"); *In re Latanowich*, 207 B.R. 326, 334 (Bankr. D. Mass. 1997) (explaining that a discharge order only

"reiterate[s]" the statutory injunction under Section 524(a)(2)). Indeed, bankruptcy courts are *required* by rule to use, "without alteration" (Fed. R. Bankr. P. 9009(a)), a bare-bones form order to grant discharges. *See* Official Form 318, http://www.uscourts.gov/file/18783/download. Given that discharge orders are generally boilerplate, routine orders, bankruptcy courts have no "unique" competence to interpret them.

Moreover, even if discharge orders really were bespoke products of individual bankruptcy courts, that does not mean that arbitrators would be *incompetent* to interpret such orders. Arbitrators routinely interpret writings by others, particularly in contractual disputes. That a bankruptcy court may arguably enjoy an institutional advantage in interpreting a discharge order does not mean that there is an "irreconcilable conflict" between arbitration and the policies underlying Section 524.

Finally, the *Anderson* panel suggested that violations of discharge injunctions are "enforceable only by the bankruptcy court and only by a contempt citation." 884 F.3d at 391. But that is incorrect—other courts enforce discharge injunctions all the time, by rejecting attempts by creditors to collect on discharged debts. And even if contempt proceedings in bankruptcy court *were* the sole means of enforcing discharges, Ms.

Belton's case could not proceed, because she is not bringing a traditional claim for contempt (*e.g.*, by arguing that appellant improperly subjected her to a collection action in another forum). Rather, she seeks to litigate, in the first instance, an affirmative claim that appellant's passive conduct violated Section 524. JA 40. That is in essence a *statutory* claim, not an equitable contempt claim—as evidenced by Ms. Belton's demands for "compensatory and punitive damages" (JA 41) and *a jury trial* (JA 42). Such a claim is not within the exclusive competence of the bankruptcy court. State courts often adjudicate Section 524 claims under their concurrent jurisdiction. *See, e.g.*, *Laurich-Trost v. Wabnitz*, 2003 WL 22805159, at * 2 (Ohio Ct. App. Nov. 25, 2003) (holding that trial court order granting set-off against appellant violated Section 524 because the judgment against appellant had been discharged in bankruptcy); *Ramdharry v. Gurer*, 1995 WL 41353, at *2 (Conn. Super. Ct. Jan. 25, 1995) (holding that judgment against defendant was "null and void" as "violative of 11 U.S.C. § 524"); *Brown v. Nat'l City Bank*, 457 N.E.2d 957, 961 (Ohio Mun. Ct. 1983) (holding that employer and bank violated Section 524 by deducting funds from employee's paycheck based on a discharged debt). And as the bankruptcy court observed in *Trevino*, arbitrators are also perfectly capable of adjudicating such claims, given

that "other forms of complex cases"—such as antitrust cases—"have readily been sent to arbitration." 599 B.R. at 548.

In sum, none of *Anderson*'s rationales comes close to demonstrating the kind of "irreconcilable conflict" between arbitration and the policies of Section 524 that is necessary to presume a congressional command to override the FAA under the Supreme Court's and this Court's precedents. Accordingly, *Epic* mandates that this Court abrogate *Anderson* and reverse the district court's order.

## CONCLUSION

This Court should reverse and remand with instructions to enter an order compelling arbitration and staying the bankruptcy proceeding.

July 8, 2019

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), the undersigned counsel for the *amicus* certifies that this brief:

(i) complies with the type-volume limitation of Rule 29(a)(5) because it contains 4,216 words, including footnotes and excluding the parts of the brief exempted by Rule 32(f); and

(ii) complies with the typeface requirements of Rule 32(a)(5) and the type style requirements of Rule 32(a)(6) because it has been prepared using Microsoft Office Word 2007 and is set in Century Schoolbook font in a size equivalent to 14 points or larger.

July 8, 2019 /s/ *Evan M. Tager*

## CERTIFICATE OF FILING AND SERVICE

I hereby certify that, on July 8, 2019, the foregoing brief was filed with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system. I further certify that all participants in this case are registered CM/ECF users and that service will be accomplished via CM/ECF.

July 8, 2019 /s/ *Evan M. Tager*