No. 22-105

In the Supreme Court of the United States

COINBASE, INC., PETITIONER
v.
ABRAHAM BIELSKI, RESPONDENT

COINBASE, INC., PETITIONER
v.
DAVID SUSKI, *ET AL.*, RESPONDENTS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF RETAIL LITIGATION CENTER, INC., AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Under Section 16(a) of the Federal Arbitration Act, when a district court denies a motion to compel arbitration, the party seeking arbitration may file an immediate interlocutory appeal. This Court has held that an appeal "divests the district court of its control over those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982) (per curiam).

The question presented is: Does a non-frivolous appeal of the denial of a motion to compel arbitration oust a district court's jurisdiction to proceed with litigation pending appeal, as the Third, Fourth, Seventh, Tenth, Eleventh, and D.C. Circuits have held, or does the district court retain discretion to proceed with litigation while the appeal is pending, as the Second, Fifth, and Ninth Circuits have held?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

STATUTES AND REGULATION

TABLE OF AUTHORITIES
(continued)

Page(s)

OTHER AUTHORITIES

INTEREST OF AMICUS CURIAE

The Retail Litigation Center, Inc. (RLC) is the only trade association dedicated to representing the retail industry in the courts. In this capacity, the RLC provides courts with the retail industry's perspective on a range of important legal issues affecting its members. Collectively, the RLC's members employ millions of workers nationwide, provide goods and services to tens of millions of consumers, and generate tens of billions of dollars in annual sales. Since its founding in 2010, the RLC has filed more than 200 amicus briefs, and this Court and others have favorably cited its briefs. *See, e.g.*, *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080, 2097 (2018); *Kirtsaeng v. John Wiley & Sons, Inc.*, 568 U.S. 519, 542 (2013).[1]

The RLC and its members have a strong interest in the outcome of this proceeding. Retailers often have arbitration agreements with their consumers, which provide significant benefits to both parties. For example, as discussed below, individual injured consumers are more likely to prevail and obtain higher awards in arbitration as compared to litigation. And as this Court has repeatedly recognized, arbitration is also more streamlined and efficient, and for that reason generally provides lower costs of dispute resolution for everyone involved.

Retailers therefore depend on courts' faithful application of the Federal Arbitration Act ("FAA") as Congress intended to ensure that arbitration agreements are honored. The FAA's right to appeal the

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[1] No counsel for any party authored this brief in whole or in part. No person or entity other than Amicus Curiae or its counsel made a monetary contribution to the brief's preparation or submission.

denial of a motion to compel arbitration immediately is particularly important to ensure that the dispute is proceeding in the proper forum at an early stage, and that consumers and retailers alike receive the benefits that arbitration provides. Unfortunately, the Ninth Circuit's minority rule, which allows litigation on the merits to proceed in the district court while an arbitrability appeal is pending—often for years—yields just the opposite result, and likely encourages increased federal court filings of cases that belong in arbitration. To address these issues and carry out congressional intent, the Court should hold that an appeal from the denial of a motion to compel arbitration automatically divests a district court's jurisdiction to proceed with further litigation until the appeal is resolved.

INTRODUCTION AND SUMMARY OF ARGUMENT

The RLC agrees with Petitioner that, following the purpose and structure of the FAA and this Court's holding in *Griggs v. Provident Consumer Discount Co.*, an appeal from a denial of a motion to compel arbitration "divests the district court of its control" over further proceedings on the merits. 459 U.S. 56, 58 (1982). The right to immediately appeal the threshold question of whether a dispute should proceed in federal court instead of in private arbitration is toothless, if not effectively annulled, unless district court proceedings are automatically stayed pending resolution of the appeal. Brief for Petitioner ("Pet. Br.") 16-18; *see, e.g.*, *Blinco v. Green Tree Servicing, LLC*, 366 F.3d 1249, 1251 (11th Cir. 2004) ("By providing a party who seeks arbitration with swift access to appellate review, Congress acknowledged that one of the principal

benefits of arbitration, avoiding the high costs and time involved in judicial dispute resolution, is lost if the case proceeds in both judicial and arbitral forums.").

In this brief, the RLC focuses not on the underlying merits, but instead explains how the Ninth Circuit's rule is harmful to defendants, injured consumers, and the conservation of limited judicial resources because it contravenes the legislative intent of the FAA "to move the parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 22 (1983).

First, Amicus shows how the benefits of arbitration are needlessly lost under the Ninth Circuit's minority approach. The Ninth Circuit has overturned nearly a *third* of district court denials of motions to compel arbitration since *Britton v. Co-op Banking Group*, 916 F.2d 1405 (9th Cir. 1990). In many of those cases, a discretionary stay pending appeal was denied, meaning that significant judicial and party resources were wasted on matters that never should have been in court in the first place.

Second, Amicus discusses how empirical analysis shows that arbitration is a preferrable method of dispute resolution to litigation not just for defendants, but also for consumers with legitimate claims.

Third, Amicus also shows that the Ninth Circuit's rule is out of step with the law of the states it serves, thus leading to anomalous outcomes and opportunities for forum-shopping. For example, California allows for an immediate appeal from the denial of a motion to compel arbitration, *and* automatically stays further trial court proceedings on the merits pending

appeal, because the appeal divests the trial court of jurisdiction under fundamental principles of appellate jurisdiction. So, as a practical matter, trial court proceedings in Los Angeles Superior Court would be automatically stayed upon the appeal from a denial of a motion to compel arbitration, but if that case was filed in the federal district court across the street, the same appeal would not automatically divest the district court of jurisdiction, and litigation could proceed. Due respect for arbitration agreements—as required by the FAA—should not depend on what side of the street a case is litigated. As it currently stands, although arbitration agreements subject to the FAA are required to be treated equally in state and federal court, the effect of the Ninth Circuit's rule is that such arbitration agreements are respected *less* in federal court in this respect than in state court. This Court should hold that an appeal from the denial of a motion to compel arbitration divests the trial court of jurisdiction to ensure that arbitration agreements are uniformly given the due deference envisioned by Congress.

ARGUMENT

I. Experience Has Shown that the Minority Rule Effectively Nullifies Arbitration Agreements.

Based on precedent and the text of the FAA, this Court has held that courts have "no business weighing the merits of [a] grievance" that "is assigned by contract to an arbitrator." *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S. Ct. 524, 529 (2019) (citation omitted). Yet that is exactly what the minority rule permits—district courts in the Second, Fifth, and

Ninth Circuits are very much open for business to weigh the merits of a grievance subject to arbitration.

The minority rule permits litigation to advance on the merits in the district court while the appellate court determines whether the matter should instead be arbitrated. As Petitioner notes, resolution of the appeal can take *years*—and it is entirely possible for a case to proceed all the way through trial in that time. At a minimum, without an automatic stay of proceedings, the parties are almost certain to engage in the broad discovery permitted by the Federal Rules of Civil Procedure—as the Petitioner and Respondents are here. Pet. Br. 14-15.

Thus, the minority rule not only strips the parties of the benefits of their arbitration agreement, but also wastes scarce judicial resources via motion practice, discovery disputes, and potentially even trial on cases that are ultimately determined to belong in arbitration. *See Blinco*, 366 F.3d at 1251 ("If the court of appeals reverses and orders the dispute arbitrated, then the costs of the litigation in the district court incurred during appellate review have been wasted and the parties must begin again in arbitration.").

That is why Judge Easterbrook noted that "[t]he worst possible outcome would be to litigate the dispute, to have the court of appeals reverse and order the dispute arbitrated, to arbitrate the dispute, and finally to return to court to have the award enforced." *Bradford-Scott Data Corp. v. Physician Comput. Network, Inc.*, 128 F.3d 504, 506 (7th Cir. 1997).

This "worst possible outcome" has been business-as-usual in the Ninth Circuit in the over 30 years since *Britton* was decided. Appendix A lists the results of Amicus' empirical analysis of Ninth Circuit appeals

from denials of motions to compel arbitration from October 11, 1990 to January 10, 2023. The RLC's counsel reviewed each case listed in Appendix A and noted whether the district court's denial was affirmed, reversed, or vacated. Counsel then compared the number of reversed and vacated denials to the total number of appealed denials to obtain a rate of reversal. For the reversed and vacated cases, counsel also noted whether a stay pending appeal was denied, and compared the number of stay denials to the total number of reversed and vacated cases.

Since *Britton*, approximately *one-third* of district court denials of motions to compel arbitration have been overturned on appeal in the Ninth Circuit. *See* Appendix A. As noted by Petitioner, both district courts and the Ninth Circuit regularly decline to issue discretionary stays pending appeal. Pet. Br. 46-49. In fact, a stay pending appeal was denied in nearly 40% of reversed or vacated orders denying motions to compel arbitration. Appendix A. The Ninth Circuit's suggestion in *Britton* that any issues with the district court retaining jurisdiction pending an arbitrability appeal can be addressed via a discretionary stay has thus proven cold comfort to litigants. *See Britton*, 916 F.2d at 1412.

Below, Amicus chronicles examples of the significant and real-world harms the Ninth Circuit's minority approach has visited upon parties and the courts in the years since *Britton*:

- In the putative class action captioned *Geier v. m-Qube Inc.*, the district court had denied defendants' motion for a stay pending appeal in a one-sentence order. Minute Order, No. 2:13-cv-00354 (W.D. Wash. Feb. 13, 2014), ECF No. 48.

After over two years on appeal, the Ninth Circuit reversed the district court's order denying defendants' motion to compel arbitration. *Geier v. m-Qube Inc.*, 824 F.3d 797, 801 (9th Cir. 2016). The parties stipulated to a dismissal with prejudice of plaintiff's claims about a month after the Ninth Circuit's mandate issued in August 2016, after spending years engaged in substantial motion practice and discovery proceedings before the district court. Stipulation of Dismissal, *Geier*, No. 2:13-cv-00354 (W.D. Wash. Feb. 9, 2016), ECF No. 235. While the appeal was pending, defendants answered the complaint and its amendments (No. 2:13-cv-00354 at ECF Nos. 75, 163), and the parties engaged in broad fact and class discovery and briefed (and the district court decided) many substantive motions, including:

- A motion to compel discovery as to class issues, where the district court ordered defendants to produce extensive discovery, including years of records, internal documents and communications about the merits of plaintiff's claims, as well as related documents produced in response to a separate action brought by the Texas Attorney General. (ECF Nos. 53, 67.)
- Several motions to seal confidential materials, which were granted. (ECF Nos. 97, 137, 140, 178, 221.)
- A motion for leave to file a first amended complaint, which was granted. (ECF No. 142.)

- A motion for class certification, which was fully briefed and ultimately stricken when the district court granted plaintiff's subsequent motion to file an amended complaint. (ECF Nos. 82, 142.)
- A renewed motion for class certification, which was ultimately denied. (ECF Nos. 200, 231.)

- In *Cox v. Ocean View Hotel Corp.*, the Ninth Circuit also held that the district court erroneously denied defendant's motion to compel arbitration. 533 F.3d 1114, 1117 (9th Cir. 2008). Appellate proceedings again lasted over two years, and the district court had denied defendant's motion for a stay pending appeal. Order, No. 1:05-cv-00765 (D. Haw. May 24, 2006), ECF No. 49. While the appeal was pending, the defendant answered the complaint and engaged in extensive discovery, including depositions. (ECF Nos. 50, 62, 94.) The defendant even prepared and filed moving papers for a motion for summary judgment. (ECF No. 94.)
- In *Global Security & Communications, Inc. v. AT&T*, the Ninth Circuit again reversed the district court's denial of a motion to compel arbitration. 191 F.3d 460, 1999 WL 513873, at *3 (9th Cir. 1999) (unpublished table decision). The district court declined to stay proceedings pending appeal. Order, No. 2:98-cv-00260 (W.D. Wash. Feb. 25, 1999), ECF No. 63. As the case proceeded in the district court, the parties litigated motions to compel interrogatory responses and document productions, as well as

a motion for summary judgment. (ECF Nos. 66, 82.)

- In *Wolsey, Ltd. v. Foodmaker, Inc.*, the Ninth Circuit reversed the district court's denial of a motion to compel arbitration, 144 F.3d 1205, 1213 (9th Cir. 1998), and the district court proceedings were not stayed pending appeal. Mem. Decision & Order, No. 3:96-cv-00634 (S.D. Cal. Dec. 13, 1996), ECF No. 78. Like the cases discussed above, while the appeal was pending, the parties litigated various discovery disputes which required court intervention, as well as a motion for summary judgment, which was denied. (ECF Nos. 87, 103, 120, 156.) Additionally, just before the Ninth Circuit opinion was published, the parties were deep in trial preparation, and had filed memorandums of contentions of facts and law and several motions in limine. (ECF Nos. 167-169, 181-185.)

In these and many other cases that were not stayed pending appeal, the parties were ordered to engage in broad-ranging federal discovery while the appeal was pending. This "cut[s] against the efficiency and cost-saving purposes of arbitration" and "could alter the nature of the dispute significantly" because if the appellate court ultimately holds "that the claims were indeed subject to mandatory arbitration, the parties will not be able to unring any bell rung by discovery, and they will be forced to endure the consequences of litigation discovery in the arbitration process." *Levin v. Alms & Assocs., Inc.*, 634 F.3d 260, 264-65 (4th Cir. 2011). Counsel's research reveals that litigants in the Ninth Circuit regularly endure these consequences:

- In *Meeks v. Experian Information Services, Inc.*, the Ninth Circuit reversed the district court's denial of a motion to compel arbitration in a putative class action, and remanded with instructions to grant the motion. No. 21-17023, 2022 WL 17958634, at *2 (9th Cir. Dec. 27, 2022). While the appeal was pending, the district court allowed "discovery on the merits as to CACI and Experian" to proceed. Minute Entry, 21-cv-03266 (N.D. Cal. Aug. 11, 2022), ECF No. 103.
- Likewise in *Fernandez v. Bridgecrest Credit Co.*, the Ninth Circuit reversed the district court's denial of a motion to compel arbitration and remanded with instructions to grant the motion. No. 19-56378, 2022 WL 898593, at *1 (9th Cir. Mar. 28, 2022). The district court had denied defendant's motion for a stay pending appeal. Minute Order, No. 5:19-cv-00877 (C.D. Cal. May 4, 2020), ECF No. 28. During the two years that the appeal was pending, defendant answered the complaint and amended complaint (ECF Nos. 30, 49, 68), and litigated discovery disputes. (ECF No. 59.)
- In *Martinez-Gonzalez v. Elkhorn Packing Co.*, another putative class action, the Ninth Circuit reversed the district court's denial of defendants' motion to compel arbitration, finding that the district court "clearly erred." 25 F.4th 613, 628 (9th Cir. 2022). Following remand, the district court ultimately granted defendants' motion to compel arbitration. Order, No. 3:18-cv-05226 (N.D. Cal. Oct. 18, 2022), ECF No. 133. In the years while the appeal was pending,

however, the district court denied in part defendants' motion for a stay, and permitted plaintiff to seek discovery, including depositions. (ECF No. 82.)

- In *Cottrell v. AT&T Inc.*, the Ninth Circuit reversed the district court's denial of a motion to compel arbitration in a putative class action. No. 20-16162, 2021 WL 4963246, at *1 (9th Cir. Oct. 26, 2021). The district court had declined to stay the litigation pending appeal there as well. Order, No. 3:19-cv-07672 (N.D. Cal. June 23, 2020), ECF No. 41. While the appeal was pending, the parties litigated a motion to dismiss as well as a discovery dispute, where plaintiff's counsel accused defendants of "consistent" delay in the discovery process—defendants responded that they had "devoted significant resources" and "a large number of attorneys" to the discovery process. (ECF No. 94, at 1, 4.) The district court granted the plaintiff's discovery motion and adopted plaintiff's proposed expedited discovery schedule. (ECF No. 95.) Upon remand from the Ninth Circuit, the district court compelled the matter to arbitration. (ECF No. 104.)
- Similarly, in *Dekker v. Vivint Solar, Inc.*, the Ninth Circuit ordered the district court to compel arbitration in a putative class action. No. 20-16584, 2021 WL 4958856, at *1 (9th Cir. Oct. 26, 2021). The district court had denied defendants' motion for a stay pending appeal, Order, No. 3:19-cv-07918 (N.D. Cal. Sept. 15, 2020), ECF No. 95, and thus the parties engaged in multiple discovery disputes that

required court intervention, as well as motion practice addressing leave to amend and to file documents under seal. (ECF Nos. 121, 124, 147, 150, 153, 157, 168, 174, 176.)

- In *Cipolla v. Team Enterprises, LLC*, also a putative class action, the Ninth Circuit vacated the district court's order denying a motion to compel arbitration because the arbitration agreement included a delegation clause expressly requiring the arbitrator (not a court) to determine the validity or enforcement of the arbitration agreement. 810 F. App'x 562, 563 (9th Cir. 2020). Defendants' motion for a stay pending appeal was denied in part, and the district court allowed the named plaintiffs to conduct discovery. Order, No. 3:18-cv-06867 (N.D. Cal. June 11, 2019), ECF No. 41, at 4.

As the sampling of cases above shows, the Ninth Circuit's rule has proven to be unworkable. Given the significant rate of reversal on appeal, as well as the considerable proportion of denials of discretionary stays pending appeal, substantial numbers of litigants in the minority circuits are deprived of the benefits of their arbitration agreements, and courts unnecessarily waste judicial resources on litigation that is ultimately determined to belong in private arbitration.

Most circuits have recognized this reality, and have logically followed this Court's holding in *Griggs* to decide that a district court is divested of authority to proceed on the merits when the denial of a motion to compel arbitration is on appeal. This Court should likewise hold that a stay pending appeal is mandatory where a motion to compel arbitration is denied. If the

motion is allegedly frivolous, that can be resolved quickly while the case is on appeal, with the threat of sanctions as a deterrent to such motions.

II. Empirical Data Show that Arbitration Benefits Consumers Who are Actually Injured.

The benefits of arbitration lost under the minority approach are not theoretical. An empirical study published in March 2022—which compared the outcomes of 67,119 arbitration cases from 2014 to 2021 with 261,369 litigation cases from that same period—concluded that, compared to litigation, consumers and employees in arbitration were more likely to prevail, and typically received higher monetary awards when they won. Nam D. Pham, Ph.D. & Mary Donovan, *Fairer, Faster, Better III: An Empirical Assessment of Consumer and Employment Arbitration* 4 (Mar. 2022).

For example, from 2014 to 2021, consumers initiated and prevailed in 41.7% of arbitrations that terminated with an award, while they prevailed in only 29.3% of litigations during this same period. *Id.* And when these consumers won in arbitration, their average and median awards were significantly higher than in litigation: an average of $79,945 ($20,356 median) in arbitration, compared with an average of $71,354 ($6,669 in median) in litigation. *Id.*

Arbitration usually costs less than litigation, too, because arbitration is more efficient. *Id.* at 6. Indeed, this Court has repeatedly recognized that arbitration's "speed and simplicity and inexpensiveness" were the core "virtues Congress originally saw in arbitration." *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1623 (2018); *accord AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 348 (2011) (concluding that the

"principal advantage of arbitration [is] informality"); *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 685 (2010) (noting the tradeoff in forgoing "the procedural rigor and appellate review of the courts in order to realize the benefits of private dispute resolution: lower costs, greater efficiency and speed, and the ability to choose expert adjudicators to resolve specialized disputes"); *14 Penn Plaza LLC v. Pyett*, 556 U.S. 247, 257 (2009) ("Parties generally favor arbitration precisely because of the economics of dispute resolution.").

In short, at least based on these metrics—which should be the most important to any injured plaintiff (as opposed to their lawyer)—arbitration is a superior alternative to litigation to resolve disputes and receive compensation. But that invites the question: if injured parties have the option to resolve their claims in a more favorable arbitral forum, why do so many instead initially file in federal court, often—like Mr. Bielski and Mr. Suski have done here—styling their complaint as a putative class action?

The answer is unsurprising. As Justice Scalia observed over a decade ago, "there is little incentive for lawyers to arbitrate on behalf of individuals when they may do so for a class and reap far higher fees in the process." *Concepcion*, 563 U.S. at 347. This principle is equally applicable to attempted end-runs of arbitration agreements via federal class actions. It is "well known" to plaintiffs' attorneys that class actions "can unfairly 'place pressure on the defendant to settle even unmeritorious claims,'" *Epic Sys.*, 138 S. Ct. at 1632 (quoting *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 445, n.3 (2010) (Ginsburg, J., dissenting)), and class proceedings "greatly

increase[] risks to defendants." *Lamps Plus, Inc. v. Varela*, 139 S. Ct. 1407, 1414 (2019).

Thus, although these cases may eventually be sent to arbitration, the plaintiffs' bar knows that in class proceedings, "the risk of an error will often become unacceptable" and "even a small chance of a devastating loss" inherent in class actions may cause an "in terrorem" pressure to settle independent of the merits. *Concepcion*, 563 U.S. at 350.

Revealing this gambit, sometimes plaintiffs *themselves* move to compel individual arbitration *after losing class certification*—an implicit recognition that they are better off resolving their disputes according to their arbitration agreements for the reasons discussed above. *See, e.g.*, *Biernacki v. Serv. Corp. Int'l*, 533 F. App'x 741, 742 (9th Cir. 2013) (reversing district court's denial of *plaintiffs'* motion to compel arbitration following denial of class certification, and rejecting defendants' argument that they "met their burden to show that they were prejudiced by the time and expense of litigating this case for the past three years" (citation omitted)).

As the following section shows, the Ninth Circuit's minority approach permitting district court litigation to proceed while the appellate court simultaneously decides whether the case can be litigated in court at all exacerbates these issues by rewarding and encouraging the tactical filing of class action lawsuits for claims that should be individually arbitrated.

III. The Minority Rule Creates Perverse Incentives and Avoidable Externalities.

The Ninth Circuit's approach is not just out of step with the majority of other circuits, but also with the majority of states that it serves.

In all states in the Ninth Circuit, an order denying a motion to compel arbitration is immediately appealable. *See* Cal. Civ. Proc. Code § 1294(a); Ariz. Rev. Stat. § 12-2101.01(A)(1); Or. Rev. Stat. § 36.730(1)(a); Nev. Rev. Stat. § 38.247(1)(a); Idaho Code § 7-919(a)(1); Haw. Rev. Stat. § 658A-28(a)(1); Mont. Code § 27-5-324(1)(a); Alaska Stat. § 09.43.160(a)(1); *Hill v. Garda CL Nw., Inc.*, 179 Wash. 2d 47, 54 (2013) ("When the trial court declines to compel arbitration, that decision is immediately appealable, in part because if a trial court does not compel arbitration and there is no immediate right to appeal, the party seeking arbitration must proceed through costly and lengthy litigation before having the opportunity to appeal, by which time such an appeal is too late to be effective." (internal quotation marks and citation omitted)).

And in the Circuit's most populous states with the greatest amount of litigation—California, Washington, Arizona, and Oregon—state law provides that an appeal from the denial of a motion to compel arbitration divests the trial court of jurisdiction and automatically stays all further trial court proceedings on the merits:

California: The California Supreme Court has held that "an appeal from the denial of a motion to compel arbitration automatically stays all further trial court proceedings on the merits," because continued trial court proceedings themselves are "inherently inconsistent with a possible outcome on appeal." *Varian Med. Sys., Inc. v. Delfino*, 35 Cal. 4th 180, 190 (2005).

Washington: In Washington state court, a "trial court lacks authority to engage in further discovery or

pretrial motion practice" upon the appeal from an order denying a motion to compel arbitration. *See Townsend v. Quadrant Corp.*, No. 62700-7-I, 2008 Wash. App. LEXIS 3053, at *2-4 (Ct. App. Dec. 22, 2008); *see also Townsend v. Quadrant Corp.*, 153 Wash. App. 870, 878 (2009) (noting "the trial court lacked authority under RAP 7.2 to engage in further discovery or pretrial motion practice in the suits subject to this appeal"), *aff'd on other grounds*, 173 Wash. 2d 451 (2012).

Arizona: In Arizona, "filing an appeal from an order denying a motion to compel arbitration. . . . divests the trial court of jurisdiction over the case for every purpose except" pursuant to Rule 27(b) of the Arizona Rules of Civil Procedure. *Holm Dev. & Mgmt., Inc. v. Superior Ct.*, 161 Ariz. 376, 377 (Ct. App. 1989). Rule 27(b) "is not a provision that authorizes general discovery," but allows a party to move for leave to conduct a deposition necessary to "perpetuate testimony to prevent a failure or delay of justice" while an appeal is pending. *Id.* at 380.

Oregon: Oregon also expressly limits the jurisdiction of a trial court while an appeal is pending. *See* Or. Rev. Stat. § 19.270. This statute has been applied to automatically stay all further trial court proceedings on the merits while an appeal of a denial of a motion to compel arbitration is pending. *See Assisted Living Concepts, Inc. v. Fellows*, 244 Or. App. 475, 478 (2011) ("[Appellant]'s notice of appeal from the order denying the motion to compel arbitration, filed on January 15, divested the [trial] court of jurisdiction." (citing Or. Rev. Stat. § 19.270)).

Nevada: Although Nevada applies its general discretionary stay factors to an appeal from a denial of a

motion to compel arbitration, the Nevada Supreme Court has explained that "a stay is generally warranted" because "the object of an appeal seeking to compel arbitration will likely be defeated if a stay is denied" due to "arbitration's unique policies and purposes and the interlocutory nature of the appeal." *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 250, 253 (2004) (granting stay). Thus, a stay should issue "absent a strong showing that the appeal lacks merit or that irreparable harm will result if a stay is granted." *Id.* at 250. In other words, "if the appeal appears frivolous or if the appellant apparently filed the stay motion purely for dilatory purposes, the court should deny the stay," but otherwise "a stay should generally be granted." *Id.* at 253. Nevada's rule thus mirrors the majority approach in the federal circuit courts that a district court is divested of jurisdiction by a *non-frivolous* appeal from a denial of a motion to compel arbitration. *See, e.g.*, *Levin*, 634 F.3d at 266 ("We therefore hold that an appeal on the issue of arbitrability automatically divests the district court of jurisdiction over the underlying claims and requires a stay of the action, unless the district court certifies the appeal as frivolous or forfeited.").[2]

These state court decisions holding that a trial court is divested of jurisdiction pending the appeal of a denial of a petition to compel arbitration are premised not on the FAA, but on fundamental principles of appellate jurisdiction. That is, the states generally will not allow a trial court to proceed on the merits of

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[2] Alaska, Hawaii, Idaho, and Montana do not appear to have addressed the stay issue.

matters that may be affected by the appellate court's decision. *See, e.g.*, *Varian*, 35 Cal. 4th at 190 ("[A] proceeding affects the effectiveness of the appeal if the very purpose of the appeal is to avoid the need for that proceeding."). Thus, although arbitration agreements subject to the FAA are required to be treated equally in state and federal court, the Ninth Circuit actually disadvantages arbitration agreements in a way that the state courts within its jurisdiction do not.

This peculiar outcome created by the Ninth Circuit's rule is best illustrated with an example. Imagine a putative class action filed in Los Angeles Superior Court brought against a retailer on behalf of consumers regarding a cosmetic product they purchased on the retailer's website. The plaintiff alleges that although the product performs as expected, plaintiff is personally offended by "oils," and the product is marketed as "oil-free" but the technical characteristics of certain ingredients resemble an "oil." Plaintiff thus alleges violations of California's Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200 et seq.), False Advertising Law (Cal. Bus. & Prof. Code §§ 17500 et seq.), and the Consumer Legal Remedies Act (Cal. Civ. Code §§ 1750 et seq.), seeking statutory damages. Every consumer who purchases a product from the retailer's website agrees to arbitrate claims related to the product on an individual basis.

If the case remained in state court and the Superior Court denied the retailer's petition to compel arbitration, plaintiff's claims would not be allowed to proceed in the trial court pending resolution of the retailer's appeal from that denial, as lower court proceedings would be automatically stayed. *See Varian*, 35 Cal. 4th at 190.

The same would not be true had the putative class representative filed the same case in federal district court under the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d). Under the Ninth Circuit's approach, district court litigation could advance pending resolution of an appeal from the denial of the same motion to compel arbitration. There, the retailer could be subject to burdensome and lopsided discovery, which it could not "unring" and for which it would "be forced to endure the consequences" were the case eventually sent to arbitration. *Levin*, 634 F.3d at 264-65; *see also* U.S. Chamber of Commerce – Inst. for Legal Reform, *Unfair, Inefficient, Unpredictable: Class Action Flaws and the Road to Reform* 25-26 (Aug. 2022) (noting that due to broad permissibility of federal discovery and reluctance to sanction parties for discovery abuses, "plaintiffs' attorneys have every incentive to gain leverage over corporate defendants by demanding excessive, unnecessary discovery and by litigating supposed 'discovery deficiencies,' driving up litigation costs to make settlement a more attractive option"). The examples above bear this out. *Supra* § I.

Given the time typically required to resolve an appeal, the retailer would also likely need to engage in extensive motion practice, starting with the pleadings and potentially continuing all the way through trial. *Id.* This could encompass class certification motions, summary judgment motions, and pre-trial motions, such as motions in limine. *Id.* The retailer may also have to endure the costly expert discovery process, and could even be subject to an entire trial.

As it currently stands, none of this would be available had the case been in state court. This tension between Ninth Circuit and state law only exacerbates the lack of predictability and harm to consumers and

retailers alike, as the absence of consistent rules drives forum-shopping and uncertainty. A clear ruling from this Court that, pursuant to the FAA, an appeal from the denial of a motion to compel arbitration divests the trial court of jurisdiction would resolve this issue. Such a ruling would ensure that arbitration agreements subject to the FAA are uniformly given the due deference envisioned by Congress in both state and federal courts. Until then, the net effect of the conflict here is that more federal class actions on dubious claims subject to arbitration are likely to be filed in an effort to drive high-dollar settlements that primarily benefit plaintiffs' attorneys.

Echoing what Justice Ginsburg asked: "Is this conflict really necessary?" *Shady Grove*, 559 U.S. at 437 (Ginsburg, J., dissenting). It is not. The FAA requires both state and federal courts to afford due respect to arbitration agreements—but that is not what is happening as a practical matter under the Ninth Circuit's approach. As Justice Ginsburg warned, "forum shopping will undoubtedly result if a plaintiff need only file in federal instead of state court to seek a massive monetary award" that is unavailable under state law. *Id.* at 456.

Indeed, the Ninth Circuit's approach encourages such gamesmanship. Given the inherent risks and attendant costs associated with class action proceedings, it is not difficult to imagine enterprising plaintiffs' attorneys exploiting the Ninth Circuit's rule by filing more federal class action lawsuits on arbitrable claims, with little consideration of whether those lawsuits are meritorious or whether any alleged harm is being resolved most efficiently.

As many observers have recognized, the high costs of class proceedings and settlement are ultimately passed on to consumers in the form of higher prices, harming the same people claimed to be protected by the suit. *See, e.g.*, The Perryman Group, *Economic Benefits of Tort Reform*, at 7 (Dec. 2021), https://tinyurl.com/3yvmst7d ("As [tort] reform ameliorates companies' expected liability from [risk-reducing] products, they respond by lowering prices and increasing product offerings for items such as pharmaceuticals, safety equipment, and medical services and devices."); H.R. Rep. No. 115-25, at 4 (2017) ("[U]ltimately these costs are paid by consumers, workers, and investors, throughout the economy–because the diversion of hundreds of millions of dollars away from productive purposes, as well as the time and attention of entrepreneurs, means prices are higher, new products are not brought to market, and new jobs are not created."); *Arbitration Agreements*, 82 Fed. Reg. 33,210, 33,302 (Bureau of Consumer Fin. Prot. July 19, 2017) (CFPB acknowledging "risk that some or potentially even all [class action litigation] costs will be passed through to consumers").

The Court's decision in *TransUnion LLC v. Ramirez* held that class action plaintiffs seeking statutory damages alleging only procedural violations without concrete harm lack Article III standing. *See* 141 S. Ct. 2190, 2213 (2021). Importantly, this may curb some of the externalities described above. However, the procedural posture of the case prevented the Court from reaching the question of whether class standing must be addressed "*before* a court certifies a class." *Id.* at 2208 n.4. *TransUnion* is already being distinguished on this basis, as Ninth Circuit district courts are rejecting standing arguments at the class

certification stage because "[n]othing in *TransUnion* indicates that it changed settled Ninth Circuit law regarding what it is required to demonstrate standing at the class certification stage." *Lauderdale v. NFP Ret., Inc.*, No. SACV 21-301 JVS (KESx), 2022 WL 1599916, at *4 (C.D. Cal. Feb. 16, 2022) (granting class certification).

Thus, this means that "no-injury" classes are still being pursued in federal court, which can create "insurmountable pressure on defendants to settle, whereas individual trials"—or here, arbitrations—"would not." *Castano v. Am. Tobacco Co.*, 84 F.3d 734, 746 (5th Cir. 1996); *Concepcion*, 563 U.S. at 350 ("Faced with even a small chance of a devastating loss, defendants will be pressured into settling questionable claims.").

In *TransUnion* itself, this Court remanded so that the "Ninth Circuit may consider in the first instance whether class certification is appropriate in light of our conclusion about standing." 141 S. Ct. at 2214. The Ninth Circuit then itself remanded the case to the district court, 9 F.4th 1201 (9th Cir. 2021), where the class was not decertified and the parties settled on a class-wide basis. The case settled for $9 million, of which plaintiff's attorneys pocketed *half*: $4.5 million in fees and costs. No. 12-CV-00632-JSC, 2022 WL 17722395, at *1, *12 (N.D. Cal. Dec. 15, 2022).

* * *

As this Court has repeatedly recognized, "Congress's clear intent" in the FAA is "to move the parties to an arbitrable dispute out of court and into arbitration as quickly and easily as possible." *Moses H. Cone*, 460 U.S. at 22. The Ninth Circuit's rule allowing litigation on the merits to proceed while an arbitrability

appeal is pending thus does not show the requisite respect to arbitration agreements under the FAA, and creates incentives to keep clogging courts with questionable class action lawsuits. This does not benefit injured consumers, defendants, or the interests of judicial economy, particularly given that a significant percentage of denials of motions to compel arbitration are ultimately reversed. These reasons are likely why the states that the Ninth Circuit serves disagree with the Ninth Circuit's position, as do the majority of other federal circuits who have considered the issue. The Court should hold that an appeal from the denial of a motion to compel arbitration divests the district court of jurisdiction.

CONCLUSION

The Court should hold that an appeal from the denial of a motion to compel arbitration divests the district court of jurisdiction and automatically stays proceedings in the district court pending appeal.

Respectfully submitted.

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APPENDIX

APPENDIX TABLE OF CONTENTS

Page

APPENDIX A†

Reversal Rate		**Rate of Stay Denials in Reversed and Vacated Cases**	
Reversed and Vacated Denials of Motions to Compel Arbitration	65	Stay Denials	25
Total Appeals from Denials of Motions to Compel Arbitration	193	Total Reversed and Vacated Cases	65
Percentage	**33.7%**	Percentage	**38.5%**

† This Appendix lists the results of the RLC's counsel's research on the outcomes of Ninth Circuit appeals from denials of motions to compel arbitration from October 11, 1990 to January 10, 2023.

The first table lists the results of counsel's research by comparing the number of reversed and vacated denials of motions to compel arbitration with the total number of appeals from denials of motions to compel arbitration. For the reversed and vacated cases, the first table also compares the number of cases where a stay pending appeal was denied to the total number of reversed and vacated denials of motions to compel arbitration.

The second table lists the Ninth Circuit cases included in counsel's research by name, district court docket number, and the outcome on appeal of a district court's denial of a motion to compel arbitration. For the reversed and vacated cases, counsel notes with an asterisk whether a stay pending appeal was denied.

Case Name	**District Court Docket No.**	**Appellate Outcome of Denial of Motion to Compel Arbitration**
Knapke v. PeopleConnect, Inc, No. 21-35690, 38 F.4th 824 (9th Cir. 2022)	2:21-cv-00262-MJP	Vacate/ Remand*
Alvarez v. Sheraton Operating Corporation, No. 21-55562, 2022 WL 67339 (9th Cir. Jan. 06, 2022)	2:20-cv-03608-TJH-JC	Vacate/ Remand
Hansen v. LMB Mortgage Services, Inc., No. 20-15272, 1 F.4th 667 (9th Cir. 2021)	2:19-cv-00179-KJM-DMC	Vacate/ Remand
Cipolla v. Team Enterprises, LLC, No. 19-15964, 810 F. App'x 562, 2020 WL 3446844 (9th Cir. June 24, 2020)	3:18-cv-06867-WHA	Vacate/ Remand*
Delisle v. Speedy Cash, No. 19-55794, 818 F. App'x 608, 2020 WL 3057464 (9th Cir. June 09, 2020)	3:18-cv-02042-GPC-RBB	Vacate/ Remand

Aviles v. Quik Pick Express, LLC, No. 15-56951, 703 F. App'x 631, 2017 WL 5643191 (9th Cir. Nov. 24, 2017)	2:15-cv-05214-MWF-AGR	Vacate/ Remand
Geier v. m-Qube Inc., No. 13-36080, 824 F.3d 797 (9th Cir. 2016)	2:13-cv-00354-TSZ	Vacate/ Remand*
Mortensen v. Bresnan Communications, LLC, No. 11-35823, 722 F.3d 1151 (9th Cir. 2013)	1:10-cv-00013-RFC	Vacate/ Remand
NCR Corp. v. Hayes Children Leasing Co., No. 94-16996, 61 F.3d 911, 1995 WL 433916 (9th Cir. July 24, 1995)	3:93-cv-04412-MMC	Vacate/ Remand
Meeks v. Experian Info. Services, Inc., No. 21-17023, 2022 WL 17958634 (9th Cir. Dec. 27, 2022)	21-cv-03266-VC	Reverse*
Ohring v. UniSea, Inc., No. 21-35591, 2022 WL 1599127 (9th Cir. May 20, 2022)	2:21-cv-00359-TSZ	Reverse
Fernandez v. Bridgecrest Credit Company, LLC., No. 19-56378, 2022 WL 898593	5:19-cv-00877-MWF-SHK	Reverse*

(9th Cir. Mar. 28, 2022)		
Martinez-Gonzalez v. Elkhorn Packing Co. LLC, No. 19-17311, 25 F.4th 613 (9th Cir. 2022)	3:18-cv-05226-EMC	Reverse*
Cottrell v. AT&T Inc., No. 20-16162, 2021 WL 4963246 (9th Cir. Oct. 26, 2021)	3:19-cv-07672-JCS	Reverse*
Dekker v. Vivint Solar, Inc., No. 20-16584, 2021 WL 4958856 (9th Cir. Oct. 26, 2021)	3:19-cv-07918-WHA	Reverse*
Brice v. Sequoia Capital Operations, LLC, No. 19-17477, 859 F. App'x 31, 2021 WL 4220122 (9th Cir. Sep. 16, 2021)	3:19-cv-01481-WHO	Reverse*
Brice v. Haynes Investments, LLC, No. 19-15707, 13 F.4th 823 (9th Cir. 2021)	3:18-cv-01200-WHO	Reverse*
Hodges v. Comcast Cable Communications, LLC, No. 19-16483, 21 F.4th 535 (9th Cir. 2021)	4:18-cv-01829-HSG	Reverse

Zoller v. GCA Advisors, LLC, No. 20-15595, 993 F.3d 1198 (9th Cir. 2021)	4:19-cv-04804-JST	Reverse
Balan v. Tesla, Inc., No. 19-35637, 840 F. App'x 303, 2021 WL 1089430 (9th Cir. Mar. 22, 2021)	2:19-cv-00067-MJP	Reverse
Tice v. Amazon.com, Inc., No. 20-55432, 845 F. App'x 535, 2021 WL 650961 (9th Cir. Feb. 19, 2021)	5:19-cv-01311-SVW-KK	Reverse
Berk v. Coinbase, Inc., No. 19-16594, 840 F. App'x 914, 2020 WL 7658357 (9th Cir. Dec. 23, 2020)	3:18-cv-01364-VC	Reverse
Dohrmann v. Intuit, Inc., No. 20-15466, 823 F. App'x 482, 2020 WL 4601254 (9th Cir. Aug. 11, 2020)	3:19-cv-02546-CRB	Reverse
In re Pacific Fertility Center Litigation, No. 19-15885, 814 F. App'x 206, 2020 WL 2510751 (9th Cir. May 15, 2020)	3:18-cv-01586-JSC	Reverse*

Stiner v. Brookdale Senior Living, Inc., No. 19-15334, 810 F. App'x 531, 2020 WL 1970567 (9th Cir. Apr. 24, 2020)	4:17-cv-03962-HSG	Reverse*
American Trucking and Transportation Insurance Company v. Nelson, No. 18-35414, 771 F. App'x 445, 2019 WL 2359435 (9th Cir. June 04, 2019)	9:16-cv-00160-DLC	Reverse*
O'Connor v. Uber Technologies, Inc., No. 14-16078, 904 F.3d 1087 (9th Cir. 2018)	3:13-cv-03826-EMC, 3:15-cv-00262-EMC, 3:15-cv-03667-EMC, 3:14-cv-05200-EMC, 3:14-cv-05241-EMC, 3:15-cv-03009-EMC	Reverse*

Mandviwala v. Five Star Quality Care, Inc., No. 16-55084, 723 F. App'x 415, 2018 WL 671138 (9th Cir. Feb. 02, 2018)	8:15-cv-01454-VAP-SP	Reverse
Galilea, LLC v. AGCS Marine Insurance Company, No. 16-35474, 879 F.3d 1052 (9th Cir. 2018)	1:15-cv-00084-SPW	Reverse
Valdez v. Terminix International Company Limited Partnership, No. 15-56236, 681 F. App'x 592, 2017 WL 836085 (9th Cir. Mar. 03, 2017)	2:14-cv-09748-DDP-E	Reverse*
Poublon v. C.H. Robinson Company, No. 15-55143, 846 F.3d 1251 (9th Cir. 2017)	2:12-cv-06654-CAS-MAN	Reverse
Mohamed v. Uber Technologies, Inc., No. 15-16178, 848 F.3d 1201 (9th Cir. 2016)	3:14-cv-05200-EMC, 3:14-cv-05241-EMC	Reverse*
Merkin v. Vonage America, Inc., No. 14-55397, 639 F. App'x 481,	2:13-cv-08026-CAS-MRW	Reverse

2016 WL 2343240 (9th Cir. May 04, 2016)		
Ali v. J.P. Morgan Chase Bank, N.A., No. 14-15076, 647 F. App'x 783, 2016 WL 1380922 (9th Cir. Apr. 07, 2016)	3:13-cv-01184-JSW	Reverse
Superior Energy Services, LLC v. Cabinda Gulf Oil Co. Ltd., No. 14-15009, 635 F. App'x 375, 2016 WL 825575 (9th Cir. Mar. 03, 2016)	4:13-cv-02056-PJH	Reverse
Ashbey v. Archstone Property Management, Inc., No. 12-55912, 785 F.3d 1320 (9th Cir. 2015)	8:12-cv-00009-DOC-RNB	Reverse
Davis v. Nordstrom, Inc., No. 12-17403, 755 F.3d 1089 (9th Cir. 2014)	4:11-cv-03956-CW	Reverse
Richards v. Ernst & Young, LLP, No. 11-17530, 744 F.3d 1072 (9th Cir. 2013)	5:05-cv-04867-RMW	Reverse

Lombardi v. DirecTV, Inc., No. 10-56602, 549 F. App'x 617, 2013 WL 6224642 (9th Cir. Dec. 02, 2013)	8:09-ml-02093-AG-AN	Reverse
Ferguson v. Corinthian Colleges, Inc., No. 11-56965, 733 F.3d 928 (9th Cir. 2013)	8:11-cv-00127-DOC-AJW, 8:11-cv-00259-DOC-AJW.	Reverse*
Oracle America, Inc. v. Myriad Group A.G., No. 11-17186, 724 F.3d 1069 (9th Cir. 2013)	4:10-cv-05604-SBA.	Reverse
Biernacki v. Service Corp. Intern., No. 11-17495, 533 F. App'x 741, 2013 WL 3616587 (9th Cir. July 16, 2013)	3:08-cv-01190-SI.	Reverse
Kilgore v. KeyBank, Nat. Ass'n, No. 09-16703, 718 F.3d 1052 (9th Cir. 2013)	3:08-cv-02958-TEH.	Reverse*
McArdle v. AT&T Mobility, LLC, No. 09-17218, 474 F. App'x 515, 2012 WL 2498838	4:09-cv-01117-CW	Reverse*

(9th Cir. June 29, 2012)		
Cherny v. AT&T Mobility LLC, No. 09-56964, 473 F. App'x 793, 2012 WL 2109295 (9th Cir. June 12, 2012)	2:09-cv-03625-GW-AGR	Reverse
Coneff v. AT & T Corp., No. 09-35563, 673 F.3d 1155 (9th Cir. 2012)	2:06-cv-00944-RSM	Reverse
Mastro v. Momot, No. 09-17698, 439 F. App'x 612, 2011 WL 2469548 (9th Cir. June 22, 2011)	2:09-cv-01076-ROS	Reverse
Aceves v. Autonation, Inc., No. 07-55014, 317 F. App'x 665, 2009 WL 605901 (9th Cir. Mar. 05, 2009)	2:06-cv-05806	Reverse*
Ariza v. Autonation, Inc., No. 06-56683, 317 F. App'x 662, 2009 WL 605897 (9th Cir. Mar. 05, 2009)	2:05-cv-06295-ODW-FMO	Reverse*
Cox v. Ocean View Hotel Corp.,	1:05-cv-00765-	Reverse*

No. 06-15903, 533 F.3d 1114 (9th Cir. 2008)	JMS-BMK	
Martin v. TeleTech Holdings, Inc., No. 05-55342, 213 F. App'x 581, 2006 WL 3794324 (9th Cir. Dec. 19, 2006)	2:04-cv-06591-TJH-E	Reverse
Garbayo v. Chrome Data Corp., No. 02-35229, 78 F. App'x 620, 2003 WL 22389450 (9th Cir. Oct. 20, 2003)	3:00-cv-01468-AS	Reverse
Melton v. Philip Morris Inc., No. 01-35883, 71 F. App'x 701, 2003 WL 21774035 (9th Cir. July 30, 2003)	3:01-cv-00093-KI	Reverse
United Communications Hub, Inc. v. Qwest Communications, Inc., No. 01-56742, 46 F. App'x 412, 2002 WL 1963592 (9th Cir. Aug. 23, 2002)	2:01-cv-04371-ABC-SH	Reverse
Leonard ex rel. Leonard v. Equitable Life Assurance Society of U.S., No. 00-56542, 28 F. App'x 686,	2:00-cv-02304-AHM-JWJ	Reverse

2002 WL 54784 (9th Cir. Jan. 14, 2002)		
Fairchild v. National Home Ins. Co., No. 99-16972, 17 F. App'x 631, 2001 WL 985356 (9th Cir. Aug. 28, 2001)	3:99-cv-01921-MHP	Reverse
Global Sec. & Communications, Inc. v. AT&T, No. 98-36061, 191 F.3d 460, 1999 WL 513873 (9th Cir. July 20, 1999)	2:98-cv-00260-RSL	Reverse*
Wolsey, Ltd. v. Foodmaker, Inc., No. 96-56345, 144 F.3d 1205 (9th Cir. 1998)	3:96-cv-00634-E-JFS	Reverse*
Borg-Warner Protective Services Corp. v. Gottlieb, No. 95-56153, 116 F.3d 1485, 1997 WL 349043 (9th Cir. June 25, 1997)	2:95-cv-01709-RAP-SH	Reverse
Orlando Thunder, L.P. v. National Football League, No. 93-15839, 45 F.3d 436, 1994 WL 718903 (9th Cir. Dec. 22, 1994)	3:92-cv-04527-MHP	Reverse

Hurst v. Prudential Securities Inc., No. 93-15148, 21 F.3d 1113, 1994 WL 118097 (9th Cir. Apr. 04, 1994)	3:90-cv-02930-WHO2	Reverse*
Saari v. Smith Barney, Harris Upham & Co., Inc., No. 90-55187, 968 F.2d 877 (9th Cir. 1992)	n/a	Reverse
Mago v. Shearson Lehman Hutton Inc., No. 90-55926, 956 F.2d 932 (9th Cir. 1992)	n/a	Reverse
Republic of Nicaragua v. Standard Fruit Co., No. 88-2585, 937 F.2d 469 (9th Cir. 1991)	n/a	Reverse
Three Valleys Mun. Water Dist. v. E.F. Hutton & Co., Inc., No. 89-55138, 925 F.2d 1136 (9th Cir. 1991)	n/a	Reverse
Matter of Giga Watt, Inc., No. 22-35104, 2022 WL 17883793 (9th Cir. Dec. 23, 2022)	2:21-cv-00159-SAB	Dismiss Appeal

Titus v. BlueChip Financial, No. 18-35940, 786 F. App'x 694, 2019 WL 6464034 (9th Cir. Dec. 02, 2019)	3:18-cv-05373-RJB	Dismiss Appeal
Sussman v. Lenscrafters, No. 98-15156, 185 F.3d 869, 1999 WL 402446 (9th Cir. June 11, 1999)	2:97-cv-01092-LKK	Dismiss Appeal
Johnson v. Walmart Inc., No. 21-16423, 2023 WL 140132 (9th Cir. Jan. 10, 2023)	1:20-cv-01360-DAD-JLT	Affirm
Reichert v. Rapid Investments, Inc., No. 21-35530, 56 F.4th 1220 (9th Cir. 2022)	3:17-cv-05848-BHS	Affirm
Brown v. Stored Value Cards, Inc., No. 21-36031, 2022 WL 17844168 (9th Cir. Dec. 22, 2022)	3:15-cv-01370-MO	Affirm
Wolff v. Tomahawk Manufacturing, No. 22-35145, 2022 WL 17749271 (9th Cir. Dec. 19, 2022)	3:21-cv-00880-SI	Affirm

Suski v. Coinbase, Inc., No. 22-15209, 55 F.4th 1227 (9th Cir. 2022)	3:21-cv-04539-SK	Affirm
Gile v. Dolgen California, LLC, No. 21-56311, 2022 WL 17248087 (9th Cir. Nov. 28, 2022)	5:20-cv-01863-MCS-SP	Affirm
Reyes v. Hearst Communications, Inc., No. 21-16542, 2022 WL 2235793 (9th Cir. June 22, 2022)	4:21-cv-03362-PJH	Affirm
Alire v. Gap, Inc., No. 21-55752, 2022 WL 1537356 (9th Cir. May 16, 2022)	8:20-cv-01203-JWH-DFM	Affirm
Berman v. Freedom Financial Network, LLC, No. 20-16900, 30 F.4th 849 (9th Cir. 2022)	4:18-cv-01060-YGR	Affirm
Callahan v. PeopleConnect, Inc., No. 21-16040, 2022 WL 823594 (9th Cir. Mar. 18, 2022)	3:20-cv-09203-EMC	Affirm
Thrasio, LLC v. Boosted Commerce, Inc.,	2:21-cv-01337-CBM-SK, 2:21-cv-	Affirm

No. 21-55621, 2022 WL 823644 (9th Cir. Mar. 18, 2022)	02422-CBM-SK	
Ellington v. Eclipse Recreational Vehicles, No. 21-55021, 2022 WL 72351 (9th Cir. Jan. 07, 2022)	20CV800-JWH-SP	Affirm
Carmona v. Domino's Pizza, LLC, No. 21-55009, 21 F.4th 627 (9th Cir. 2021)	8:20-cv-01905-JVS-JDE	Affirm
Aliff v. Vervent, Inc., No. 20-56121, 2021 WL 5985584 (9th Cir. Dec. 17, 2021)	3:20-cv-00697-DMS-AHG	Affirm
Yeomans v. World Financial Group Insurance Agency, LLC, No. 20-16937, 2021 WL 5356537 (9th Cir. Nov. 17, 2021)	3:19-cv-00792-EMC	Affirm
Canady v. Bridgecrest Acceptance Corporation, No. 20-15997, 2021 WL 5177735 (9th Cir. Nov. 08, 2021)	2:19-cv-04738-DWL	Affirm
Lim v. TForce Logistics, LLC,	2:19-cv-04390-	Affirm

No. 20-55564, 8 F.4th 992 (9th Cir. 2021)	JAK-AGR	
Setty v. Shrinivas Sugandhalaya LLP, No. 18-35573, 3 F.4th 1166 (9th Cir. 2021)	2:17-cv-01146-RAJ	Affirm
Stafford v. Rite Aid Corporation, No. 20-55333, 998 F.3d 862 (9th Cir. 2021)	3:17-cv-01340-AJB-JLB, 3:18-cv-00152-AJB-JLB	Affirm
Walsh v. Arizona Logistics, Inc., No. 20-15765, 998 F.3d 393 (9th Cir. 2021)	2:16-cv-04499-DLR	Affirm
B.F. v. Amazon.com Inc., No. 20-35359, 858 F. App'x 218, 2021 WL 1593003 (9th Cir. Apr. 23, 2021)	2:19-cv-00910-RAJ-MLP	Affirm
Garcia v. ISS Facility Services, Inc., No. 20-15633, 2021 WL 1202439 (9th Cir. Mar. 30, 2021)	3:19-cv-07807-RS	Affirm
Rivas v. Coverall North America, Inc.,	8:18-cv-01007-JGB-KK	Affirm

No. 20-55140, 842 F. App'x 55, 2021 WL 58144 (9th Cir. Jan. 07, 2021)		
Snarr v. HRB Tax Group, Inc., No. 19-17441, 839 F. App'x 53, 2020 WL 7249334 (9th Cir. Dec. 09, 2020)	3:19-cv-03610-SK	Affirm
Baten v. Michigan Logistics, Inc., No. 19-55865, 830 F. App'x 808, 2020 WL 6075734 (9th Cir. Oct. 15, 2020)	2:18-cv-10229-GW-MRW	Affirm
Revitch v. DIRECTV, LLC, No. 18-16823, 977 F.3d 713 (9th Cir. 2020)	3:18-cv-01127-JCS	Affirm
Namisnak v. Uber Technologies, Inc., No. 18-15860, 971 F.3d 1088 (9th Cir. 2020)	3:17-cv-06124-RS	Affirm
Rittmann v. Amazon.com, Inc., No. 19-35381, 971 F.3d 904 (9th Cir. 2020)	2:16-cv-01554-JCC	Affirm
Oxy-Health, LLC v. H2 Enterprises, Inc., No. 19-55986, 812 F. App'x 660,	2:18-cv-04066-MWF-SS	Affirm

2020 WL 4049013 (9th Cir. July 20, 2020)		
Zweizig v. Rote, No. 18-35991, 818 F. App'x 645, 2020 WL 3259293 (9th Cir. June 16, 2020)	3:15-cv-02401-HZ	Affirm
Roberts v. AT&T Mobility LLC, No. 18-15593, 801 F. App'x 492, 2020 WL 774368 (9th Cir. Feb. 18, 2020)	3:15-cv-03418-EMC	Affirm
Benson v. Double Down Interactive, LLC, No. 18-36015, 798 F. App'x 117, 2020 WL 468422 (9th Cir. Jan. 29, 2020)	2:18-cv-00525-RBL	Affirm
Wilson v. Huuuge, Inc., No. 18-36017, 944 F.3d 1212 (9th Cir. 2019)	3:18-cv-05276-RBL	Affirm
Flores v. Adir International, LLC, No. 18-55959, 788 F. App'x 496, 2019 WL 6877860 (9th Cir. Dec. 17, 2019)	2:15-cv-00076-AB-PLA	Affirm
Velasquez-Reyes v. Samsung Electronics America, Inc., No. 17-56556, 777 F. App'x 241,	5:16-cv-01953-DMG-KK	Affirm

2019 WL 4451085 (9th Cir. Sep. 17, 2019)		
Samsung Electronics America, Inc. v. Ramirez, No. 18-16094, 777 F. App'x 243, 2019 WL 4451096 (9th Cir. Sep. 17, 2019)	1:17-cv-01462-AWI-SAB	Affirm
Nygaard v. Property Damage Appraisers, Inc., No. 18-15055, 779 F. App'x 474, 2019 WL 3717905 (9th Cir. Aug. 07, 2019)	2:16-cv-02184-VC	Affirm
Newirth by and through Newirth v. Aegis Senior Communities, LLC, No. 17-17227, 931 F.3d 935 (9th Cir. 2019)	4:16-cv-03991-JSW	Affirm
Blair v. Rent-A-Center, Inc., No. 17-17221, 928 F.3d 819 (9th Cir. 2019)	3:17-cv-02335-WHA	Affirm
Tillage v. Comcast Corporation, No. 18-15288, 772 F. App'x 569, 2019 WL 2713292 (9th Cir. June 28, 2019)	3:17-cv-06477-VC	Affirm

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(9th Cir. Dec. 12, 2013)		
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