Case No. S279969

IN THE CALIFORNIA SUPREME COURT

MARTHA OCHOA, MICHELE SALCIDO, MATTHEW DAVIDSON-CODJOE, ROCHELLE PEREZ, ADRIANA PEREZ, and ALFREDO BRITO,
Plaintiffs-Respondents,

v.

FORD MOTOR COMPANY,
Defendant-Petitioner.

FORD MOTOR WARRANTY CASES

After a decision from the Court of Appeal,
Second Appellate District, Case No. B312261

Appeal from the Superior Court of California, County of Los Angeles
JCCP No. 4866 (The Honorable Amy Hogue)

ANSWER TO AMICUS CURIAE BRIEFS

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INTRODUCTION

The amicus briefs in this case only confirm that Ford may not compel arbitration. As twelve amici in support of the car buyers explain, equitable estoppel has long been understood to require detrimental reliance. Indeed, that is the point: It protects parties who reasonably rely on others' representations. But Ford cannot satisfy this requirement. So before this Court, the manufacturer and its amici have switched gears. Although the only argument Ford ever made below was based on equitable estoppel, Ford and its amici now rest their argument on a jurisprudential maxim: "He who takes the benefit must bear the burden." (Civ. Code, § 3521.)

But Ford's own amici—the Chamber of Commerce and a manufacturers' trade group—make clear why this maxim does not apply here: A manufacturer's warranty is not a "benefit" of the plaintiffs' contracts with their car dealerships. It is, as Ford's amici say, a benefit conveyed "directly" from the manufacturer to the consumer. (Chamber Amicus Br. 15.)

And if that weren't enough, the "burden" of the plaintiffs' contracts with their dealerships does not include arbitrating with Ford. Those contracts require only that the plaintiffs arbitrate with their car dealerships. That, too, is sufficient to defeat Ford and its amici's benefit-burden argument. Thus, this Court need not make any pronouncements about warranty law to resolve this case. Even if the Court were to adopt Ford and its amici's newfound benefit-burden theory, arbitrating with Ford is simply not a burden of any contract in this case. And so even on Ford and its amici's own argument, there is no basis for Ford to compel arbitration here.

ARGUMENT

I. The amicus briefs confirm that there is no justification for allowing car manufacturers to compel consumers to arbitrate when they have not agreed to do so.

1. As the car buyers' amici explain (at 14), the "sine qua non" of equitable estoppel is—and always has been—detrimental reliance. The whole point of the doctrine is to protect parties that reasonably rely on others' representations. (Berkeley Amicus Br. 11–12, 14–20.)[1] To demonstrate reliance, Ford would have to argue that in purchasing a car from a retailer, a consumer somehow represents to Ford that the consumer will arbitrate with the manufacturer—and that Ford was then misled by this representation into issuing warranties. Of course, it has not made this argument. Nor have its amici. They can't. The plaintiffs' contracts with their car dealerships represent only that they will arbitrate with those dealerships. (Answering Br. 23.)[2]

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[1] Cites to Berkeley Amicus Br. are to the amicus brief filed in support of the car buyers. And cites to Chamber Amicus Br. are to the brief filed in support of Ford.

[2] Ford's amici argue that we forfeited the argument that the ordinary equitable estoppel standard applies here. (Chamber Br. 16 n.2; see also Reply Br. 39–40.) But we made this argument in the Court of Appeal, and Ford did not argue there that it was forfeited. (See Respondents' Answering Br., Case No. B312261 (June 10, 2022), at pp. 44–48; Ford Reply Br., Case No. B312261 (Sept. 6, 2022), at pp. 9–13.) The U.S. Supreme Court decided *Morgan v. Sundance, Inc.* (2022) 596 U.S. 411 after the trial court's decision in this case, and so the first time the plaintiffs could argue that *Morgan* requires the application of the ordinary equitable estoppel standard was on appeal. Before the Court of Appeal, Ford did not argue that the issue was forfeited or that the record was insufficient to respond to it. It simply argued that it could satisfy the standard. (Ford Reply Br., Case No. B312261 (Sept. 6, 2022), at pp. 9–13.) Ford therefore forfeited any forfeiture argument it might have had. (*Romero v. Shih* (2024) 15 Cal.5th 680, 704 [a petitioner's objection not raised in the Court of Appeal is "forfeited"]; Cal. Rules of Court, 8.500(c)(1) ["[T]he Supreme Court

2. Because Ford cannot satisfy the ordinary equitable estoppel standard, its amici join in asking this Court to adopt an arbitration-specific rule. Ford's amici assert (at 17–18) that whether a nonsignatory may enforce an arbitration clause depends on how intertwined the plaintiff's claims are with the contract containing that arbitration clause. But like Ford, its amici cannot identify even a single example in which a court has ever applied this standard outside the context of arbitration.[3]

If this Court were to adopt that standard, therefore, it would run afoul of the Federal Arbitration Act, which prohibits the imposition of arbitration-specific rules. (See *Morgan v. Sundance, Inc.* (2022) 596 U.S. 411, 418; *Arthur Andersen LLP v. Carlisle* (2009) 556 U.S. 624, 631 [whether a nonsignatory may enforce an arbitration clause must be governed by " '*traditional* principles' of state law"], italics added.) As the U.S. Supreme Court recently explained, this prohibition is not limited to rules that disfavor arbitration. (*Morgan*, *supra*, at p. 417.) Whether the goal is to favor arbitration or disfavor it, courts may not invent "bespoke rule[s] … for arbitration." (*Ibid.*) Rather, "arbitration contracts" must be treated "like all others"— subject to the same "ordinary" rules that govern any other contract term. (*Id.* at p. 418.)

In accordance with this mandate, jurisdictions across the country that had previously adopted arbitration-specific equitable estoppel rules—on the misguided view that doing so best effectuates the Federal Arbitration Act—are revisiting their precedent. (See Berkeley Amicus Br. 29 [citing

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normally will not consider an issue that the petitioner failed to timely raise in the Court of Appeal."].)

[3] Nor can Ford's amici explain how this intertwining standard could possibly be satisfied here when the plaintiffs' claims would be exactly the same even if their contracts with their dealerships had entirely different terms—or did not exist at all. (See Answering Br. 35.)

several examples].) This Court, too, should confirm that the same " 'traditional principles' of state law" that govern equitable estoppel in every other context apply to arbitration. (*Arthur Andersen*, *supra*, 556 U.S. at p. 631.)

3. In an effort to save its arbitration-specific rule, Ford's amici—like Ford itself—try to anchor it in a general maxim of jurisprudence: "[O]ne 'who takes the benefit must bear the burden.' " (Chamber Amicus Br. 16, quoting Civ. Code, § 3521.) But contrary to the amici's contention, this maxim does not "justif[y]" forcing consumers to arbitrate with Ford even though they never agreed to do so. (*Ibid.*)

The benefit-burden maxim merely expresses the obvious point that if a benefit is promised in exchange for an obligation, you cannot take the benefit but forego the obligation. Take, for example, *Peers v. McLaughlin* (1891) 88 Cal. 294, which Ford's amici cite (at 17) to demonstrate this point. There, a landowner sold property to a father and his children. (*Id.* at p. 296.) Although the family could not immediately pay the full price, the landowner agreed to convey the property anyway, subject to a lien in the amount of the remaining debt. (*Ibid.*) Because the lien was a condition of conveying the property, this Court held that the children could not take the property but disavow the lien. (*Id.* at p. 298.)

Here, there's no dispute that Ford did not condition its warranty on consumers agreeing to binding arbitration. (Answering Br. 22.) To the contrary, Ford concedes that it issues a warranty to every new car buyer that purchases a car from Ford or from a local retailer, regardless of whether they have agreed to arbitrate. (Reply Br. 22 n.7.) Thus, unlike in *Peers*, Ford's benefit was provided free of the obligation it now seeks to impose. Neither Ford nor its amici cite—and we have not found—a single case in which a court has held that after a party has accepted a benefit that appeared to be freely offered, the offeror can then belatedly spring on the recipient a previously undisclosed obligation. With good reason: If a benefit

is freely offered, it would be inequitable to belatedly impose an obligation after the benefit had already been accepted. The law, therefore, does not permit attempts to do so. (See *Zottman v. City & Cnty. of San Francisco* (1862) 20 Cal. 96, 107; *Melchior v. New Line Prods., Inc.* (2003) 106 Cal.App.4th 779, 790 [rule that "voluntary acceptance of the benefit of a transaction is equivalent to consent to all [its] obligations" depends on knowledge of those obligations]; Civ. Code, § 1589 [same]; 14A Cal.Jur.3d Contracts § 336 [principle does not apply where acceptance of benefits and obligations does not "influence[ ] the conduct of the other party"].)

Echoing Ford's own argument, the manufacturer's amici try to solve this problem (at 18) by invoking the plaintiffs' financing contracts with their local car dealerships. The argument depends on two premises: (1) that Ford's warranty is somehow a contractual "benefit" of the dealerships' financing contracts, and (2) that arbitrating with Ford is a "burden" of those contracts. Neither is true.

Ford's warranty is not a contractual "benefit" of the dealerships' financing agreements. As our answering brief explains, these contracts set forth the dealerships' and car buyers' obligations to each other—Ford is not a party. (Answering Br. 22–23.) In fact, the contracts are form contracts, used regardless of what company manufactured the car being sold and whether that manufacturer provides a warranty. (*Id.* at p. 34.) They do not purport to impose any obligation on Ford. A manufacturer's warranty cannot possibly be a contractual benefit of a contract that does not require the manufacturer to offer a warranty. Indeed, Ford's amici make clear that Ford's duty to comply with its warranty stems from its own choice to issue one (and the Song-Beverly Act), not from whatever contract a car buyer might enter with their dealership. As they explain, a manufacturer's warranty is a benefit to which "a manufacturer binds 'itself *directly*' with a purchaser." (Chamber Amicus Br. 15, italics added [citing several cases].)

Ford's amici argue (at 18) that if the plaintiffs had not purchased a car from their dealerships, Ford would not have given them a warranty, and the Song-Beverly Act would not require Ford to provide them restitution. But that is not "the sense in which the word 'benefit' is used" in the benefit-burden maxim. (*Stone v. Owens* (1894) 105 Cal. 292, 297–298.) The amici's argument conflates a contractual benefit with but-for causation. (See *DMS Servs., LLC v. Superior Ct.* (2012) 205 Cal.App.4th 1346, 1356–1357.) Not every benefit a party receives that, in some sense, rests on the existence of a contract is a benefit *of that contract* that requires the party to fulfill the contract's obligations. (See, e.g., *Stone*, *supra*, at pp. 1356–1357; *Recorded Picture Co. v. Nelson Ent., Inc.* (1997) 53 Cal.App.4th 350, 362.) Contractual benefits are benefits provided by the terms of the contract itself; they are the "specific contractual obligation[s]" the other contracting party agrees to undertake. (*Innovative Bus. P'ships, Inc. v. Inland Counties Reg'l Ctr., Inc.* (2011) 194 Cal.App.4th 623, 63; see *Stone*, *supra*, at pp. 1356–1357; *Los Angeles Equestrian Ctr., Inc. v. City of Los Angeles* (1993) 17 Cal.App.4th 432, 447.)[4] Ford's warranty is not a benefit of the plaintiffs' dealership financing contracts. It is, as Ford's amici themselves emphasize, a benefit Ford itself provided "directly."

But even if that weren't the case, Ford still could not compel arbitration here. A party that accepts the benefits of a contract need only "accept the burdens of *that* contract." (*Recorded Picture*, *supra*, 53 Cal.App.4th at p. 362, italics added.) And arbitrating with Ford is not a "burden" of the plaintiffs' financing contracts with their dealerships. Again, Ford is not a

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[4] See also Civ. Code, § 1595 ["The object of a contract is the thing which it is agreed, on the part of the party receiving the consideration, to do or not to do."]; *Elijahjuan v. Superior Ct.* (2012) 210 Cal.App.4th 15, 21 [holding that statutory Labor Code claims do not "arise out of the [employment] contract"]; *Narayan v. EGL, Inc.* (9th Cir. 2010) 616 F.3d 895, 899 [same]; *Avidity Partners, LLC v. State of Cal.* (2013) 221 Cal.App.4th 1180, 1206 [explaining that the "benefits" of a contract are "the performance of the other party's obligations under the contract"].

party to the dealership financing contracts, and the contracts do not promise anything to Ford. Indeed, the contracts explicitly limit the requirement to arbitrate to the car buyer and the dealer. (Answering Br. 22–23.) To fulfill the arbitration-related "burden" of their contracts, therefore, the plaintiffs need only arbitrate any claims they have against their car dealers. They need not arbitrate with Ford.

In arguing otherwise, Ford's amici (at 19) "confuse the nature of the claims covered by the arbitration clause with the question of who can compel arbitration." (*Ngo v. BMW of N. Am., LLC* (9th Cir. 2022) 23 F.4th 942, 948.) The dealerships' arbitration clause specifies that if a car buyer's dispute with their dealership arises from the car buyer's relationship with third parties, that dispute must still be arbitrated. (See Opn. 10.) But that requirement—like the arbitration clause itself—applies only to disputes with the dealer. (See *id.* at pp. 10–11.) The arbitration clause does not impose any obligation on the car buyer to arbitrate any disputes with Ford. (*Ibid.*; see *Yeh v. Superior Ct. of Contra Costa Cnty.* (2023) 95 Cal.App.5th 264, 278 ["[T]his language does not show 'consent by the purchaser to arbitrate claims with third party nonsignatories. Rather, we read it as a further delineation of the *subject matter* of claims the purchasers and dealers agreed to arbitrate.' "]; *Kielar v. Superior Ct.* (2023) 94 Cal.App.5th 614; *Montemayor v. Ford Motor Co.* (2023) 92 Cal.App.5th 958, 971; see also *White v. Sunoco, Inc.* (3d Cir. 2017) 870 F.3d 257, 267 [rejecting similar effort to conflate the nature of the claims covered by the arbitration clause with who can compel arbitration]; *Lawson v. Life of the S. Ins. Co.* (11th Cir. 2011) 648 F.3d 1166, 1171–72 [same].)[5]

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[5] Ford's amici suggest (at 22) that third parties should be permitted to enforce arbitration clauses unless the contracting parties "expressly narrow the scope of their agreement by excluding nonsignatories from arbitration." That's gets the law exactly backwards. Ordinarily, third parties may not enforce a contractual provision unless (1) the provision benefits the third party; (2) the contracting parties' "motivating purpose" was to bestow that

Again, the purpose of the benefit-burden maxim is that a party that accepts the benefits of a contract must also accept its obligations. Neither Ford nor its amici offer any authority for the proposition that it can be used to impose additional obligations that are nowhere to be found in the contract whose benefits are being accepted.

II. Ford's amici's policy arguments are meritless and, in any event, cannot supersede the Federal Arbitration Act.

1. Falling back, Ford's amici argue that it would be good policy to allow Ford to compel the plaintiffs to arbitrate—and, more generally, to adopt a looser standard for allowing nonsignatories to compel arbitration than ordinarily applies to third-party contract enforcement. But this Court may not substitute the policy preferences of car manufacturers for the commands of the Federal Arbitration Act. The Federal Arbitration Act mandates that arbitration is "a matter of consent, not coercion." (*Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.* (1989) 489 U.S. 468, 479.) The parties to an arbitration clause "may specify" not only which disputes they would like to arbitrate but "*with whom* they choose to arbitrate [those] disputes." (*Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.* (2010) 559 U.S. 662, 683.) And the Federal Arbitration Act does not permit courts to invent special arbitration-preferring doctrines to override that choice. (See *ibid.*; *Morgan*, *supra*, 596 U.S. at p. 418.)

In any event, the policy concerns expressed by Ford's amici are misplaced. The amici purport to worry about gamesmanship. But existing doctrine already addresses that concern—without forcing parties to

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benefit on the third party; and (3) permitting the third party to enforce the provision accords with the reasonable expectations of the contracting parties. (See *Goonewardene v. ADP, LLC* (2019) 6 Cal.5th 817, 830.) To the extent Ford's amici ask this Court to loosen the requirements for arbitration clauses, its request again runs afoul of the Federal Arbitration Act's requirement that arbitration clauses be treated no differently than any other contract.

arbitrate when they did not agree to do so. Judicial estoppel, for example, bars parties from taking inconsistent positions on a motion to compel arbitration and the merits: If a plaintiff defeats a motion to compel arbitration by arguing that the defendant has no right to enforce the arbitration clause because it is not a party to the contract, the plaintiff would be judicially estopped from later arguing that the defendant is a party to the contract for purposes of the merits. (See Answering Br. 17.)

Ford's amici complain (at 23) that parties may choose to sue only those defendants with whom they have not agreed to arbitrate. But that's not gamesmanship. Plaintiffs cannot recover from defendants they don't sue. (*Hernandez v. Meridian Mgmt. Servs., LLC* (2023) 87 Cal.App.5th 1214, 1219.) So a plaintiff that chooses not to sue a company because it has an arbitration clause is not "hav[ing] it both ways." (*Ibid.*) And a company that has no arbitration agreement with the plaintiff has no right to compel arbitration, even if the plaintiff agreed to arbitrate with someone else. There's nothing "unfair," therefore, about a plaintiff exercising their right to sue that company in court. (*Ibid.*)

Ford's amici argue (at 25–28) that arbitration is beneficial for consumers and companies. Whether that's true is a hotly debated issue. (See, e.g., Katherine V.W. Stone & Alexander J.S. Colvin, *The Arbitration Epidemic: Mandatory Arbitration Deprives Workers and Consumers of their Rights* (2015) Economic Policy Institute 1, 3, https://perma.cc/86SW-6N7N ["On average, employees and consumers win less often and receive much lower damages in arbitration than they do in court."]; Lauren Guth Barnes, *How Mandatory Arbitration Agreements and Class Action Waivers Undermine Consumer Rights and Why We Need Congress to Act* (2015) 9 Harv. L. & Pol'y Rev. 329, 340 [discussing evidence from the Consumer Financial Protection Bureau demonstrating that consumers are less able to bring claims in arbitration, and "[w]hen they do use arbitration, consumers are both far less likely to

win their claims and awarded a fraction of what companies receive when they win"].) But either way, nobody is asking this Court to bar consumers from agreeing to arbitrate. The question here is whether this Court should force parties that did *not* agree to arbitrate to do so anyway. The Federal Arbitration Act answers that question: No.

2. The consequences of adopting Ford and its amici's broad view of the benefit-burden maxim would stretch far beyond this case. Nothing limits its argument to cars. And nothing limits—or, under the Federal Arbitration Act, may limit—it to arbitration. According to Ford and its amici, any time a consumer buys any product from any retailer, the manufacturer's warranty is a benefit of whatever contract the consumer may have entered with the retailer. And so, on Ford and its amici's view, the manufacturer can take advantage of any provisions in that contract—apparently, even if, as here, those provisions expressly apply only to the retailer. That would wreak havoc on consumers' and retailers' ability to contract. And it would allow manufacturers to enforce all sorts of contract provisions that were never intended for their benefit. No court has ever endorsed this view. This Court should not be the first.

CONCLUSION

This Court should affirm the denial of Ford's motion to compel arbitration.

June 17, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the requirements of California Rule of Court 8.204 because it contains 3,274 words, excluding the parts exempted by rule 8.520(c)(3). The brief complies with the requirements of California Rule of Court 8.204(b) because it is proportionately spaced in Baskerville 14-point type.

/s/ Jennifer D. Bennett
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Dated: June 17, 2024

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STATE OF CALIFORNIA
Supreme Court of California

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Supreme Court of California

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