IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

No. S284498

DANA HOHENSHELT et al.,

Plaintiff and Petitioner

v.

GOLDEN STATE FOODS CORP.,

Defendant and Real Party in Interest.

On Petition for Review from the Court of Appeal, Second Appelate District, Division Eight, Case No. B327524

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND BRIEF OF *CONSUMER ATTORNEYS OF CALIFORNIA* SUPPORTING PETITIONERS

David Mara (230498)
MARA LAW FIRM, PC
2650 Camino Del Rio North, Suite 302
San Diego, CA 92108
Telephone: (619) 234-2833
Facsimile: (619) 234-4048
dmara@maralawfirm.com

Counsel for Amicus Curiae Consumer Attorneys of California

TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS 6

I. APPLICATION TO FILE 7

II. AMICUS CURIAE BRIEF 9

A. SB 707 was Enacted to Prevent Employer's from Needlessly Stalling Arbitration Proceedings 9

B. Preemption is Inappropriate: SB 707 Does Not Obstruct but Rather Promotes and Protects the FAA's Purpose 12

i. The History and Goals of the FAA Demonstrates why California Courts have Routinely Found SB 707 Consistent with its Purpose 12

ii. Golden State's Arguments for Preemption are Unsubstantiated 18

C. The CAA and SB 707 Apply to This Proceeding 21

III. CONCLUSION 23

CERTIFICATE OF COMPLIANCE 24

TABLE OF AUTHORITIES

Cases

Agerkop v. Sisyphian (C.D. Cal. Apr. 13, 2021) 2021 U.S. Dist. LEXIS 93905 *1 16

AT&T Mobility LLC v. Concepcion, 563 U. S. 333, 344-45 (2011) 12

Chamber of Commerce of the United States v. Bonta (9th Cir. 2023) 62 F.4th 473 12

Colon-Perez v. Security Industry Specialists, Inc. (2025) 2025 Cal. App. LEXIS 40 *1 16

Connerly v. State Personnel Bd. (2006) 37 Cal.4th 1169, 1177 7

Costa v. Melikov (Oct. 21, 2022) 2022 U.S. Dist. LEXIS 198692 *1 17

Cronus Invs. Inc. v. Concierge Servs. (2005) 35 Cal.4th 376 20, 21

De Leon v. Juanita's Foods (2022) 85 Cal. App. 5th 740 ... 9, 16, 21

Dean Witter Reynolds, Inc. v. Byrd, 470 U.S. 213, 221 (1985)..... 12

Doctor's Assocs. v. Casarotto, 517 U.S. 681 (1996) 18

Doe v. Superior Court (2023) 95 Cal. App. 5th 346 10

Epic Sys. Corp. v. Lewis 584 U.S. 497, 505-06 (2018) 12, 13

Espinoza v. Superior Court (2022) 83 Cal.App.5th 761 ... 16, 20, 21

Gallo v. Wood Ranch USA (2022) 81 Cal.App.5th 621 ..... passim

Hernandez v. Restoration Hardware, Inc. (2018) 4 Cal.5th 260.... 6

Hernandez v. Sohnen Enterprises, Inc. (2024) Cal. App. 5th 222 21

Hohenshelt v. Superior Court (2024) 99 Cal. App. 5th 1319..... 10

Iskanian v. CLS Transportation Los Angeles LLC (2018) 59 Cal.4th 348 7

Johnson v. West Suburban Bank (2000) 225 F.3d 366..... 13

Keeton v. Tesla (2024) 103 Cal. App. 5th 26 ..... 15, 20
Kindred Nursing Centers L.P. v. Clark, 581 U.S. 246 (2017) 12
Lamps Plus, Inc. v. Varela, 587 U.S. 176 (2019) 12, 13, 14
Medtronic, Inc. v. Lohr, 518 U.S. 470, 485 (1996) 12
Morgan v. Sundance, Inc., 596 U.S. 411 (2022) 12, 17
Noel v. Thrifty Payless, Inc. (2019) 7 Cal.5th 955 6
Nyerges v. Pac. Sunwear of Cal (C.D. Cal. July 6, 2022) 2022 U.S. Dist. LEXIS 245785 *1 16
O'Dell v. Aya Healthcare, Inc. (S.D. Cal. Oct. 15, 2024) 2024 U.S. Dist. LEXIS 188558 *1 17
Postmates v. 10,356 Individuals (C.D. Cal. Jan. 19, 2021) 2021 U.S. Dist. LEXIS 28554 *1 ..... 16, 21
Preston v. Ferrer, 552 U.S. 346 (2011) 13
Quach v. California Commerce Club, Inc. (2024) 16 Cal. 5th 562 20
Rosenthal v. Great Western Fin. Securities (1996) 14 Cal.4th 394 11
Suarez v. Superior Court (2024) 99 Cal.App.5th 32 16
T.H. v. Novartis Pharmaceuticals Corp. (2017) 4 Cal.5th 145 6
Volt Info. Sciences v. Leland Stanford Jr. U., 489 U.S. 468, 477 (1989) 11, 18

Statutes

Cal. Code Civ. Proc. § 1281.98 ..... 9, 10
Cal. Code Civ. Proc. Code § 1281.97 9
Cal. Code Civ. Proc. Sections 1281.97-1281.99 8
Cal. Rule of Court 8.520 ..... 7, 8, 24

Other Authorities

H.R. Rep. No. 68-96 ..... 12, 17
S. Rep. No. 68-536 13
Sen. Judiciary Com., Analysis for SB 707 (Wieckowski, 2019) version as of Apr. 11, 2019 9
Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Sen. Bill No. 707 (2019–2020 Reg. Sess.) as amended Apr. 30, 2019 ..... 9, 13, 14, 19

CERTIFICATE OF INTERESTED PERSONS

Consumer Attorneys of California certifies that it is a non-profit organization with no shareholders. Amicus curiae and its counsel certify that they know of no other entity or person that has a financial or other interest in the outcome of the proceeding that amicus curiae and its counsel reasonably believe the Justices of this Court should consider in determining whether to disqualify themselves under canon 3E of the Code of Judicial Ethics.

Dated: February 7, 2025

MARA LAW FIRM, PC

David Mara

I. APPLICATION TO FILE

TO THE HONORABLE PATRICIA GUERRERO, CHIEF JUSTICE AND ASSOCIATE JUSTICES

Consumer Attorneys of California (CAOC) respectfully seeks permission to file the accompanying brief as amicus curiae in support of Plaintiffs and Petitioners Dana Hohenshelt et al. Cal. Rule of Court 8.520(f).

Founded in 1962, CAOC is a voluntary non-profit membership organization consisting of over 6,000 consumer attorneys statewide. CAOC has taken a leading role in advancing and protecting the rights of consumers, employees, and injured victims in both the courts and the Legislature. CAOC has participated as amicus curiae in precedent-setting decisions shaping California law. *See, e.g.*, *Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955; *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260; *T.H. v. Novartis Pharmaceuticals Corp.* (2017) 4 Cal.5th 145. Specifically, CAOC addressed various issues concerning, as here, the scope of California arbitration rules and statutes and their interplay with federal rules and statutes. *See Iskanian v. CLS Transportation Los Angeles LLC* (2018) 59 Cal.4th 348.

CAOC is familiar with the case and the parties' arguments. CAOC seeks to assist the Court "by broadening its perspective" on the issues presented. *Connerly v. State Personnel Bd.* (2006) 37 Cal.4th 1169, 1177 (citation omitted.)

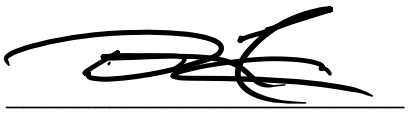
No party or its counsel authored any part of CAOC's amicus curiae brief and, except for CAOC and its counsel, no one made a

monetary or other contribution to fund its preparation or submission. Cal. Rule of Court 8.520(f)(4).

The proposed brief follows.

Dated: February 7, 2025

MARA LAW FIRM, PC



David Mara

II. AMICUS CURIAE BRIEF

The Court of Appeal properly granted Petitioner-Plaintiff's ("Hohenshelt") petition for writ of mandate, permitting Hohenshelt to withdraw from arbitration and proceed in court due to Defendant and Real Party in Interest's ("Golden State") material breach under SB 707. Golden State's preemption arguments ignore the history and purpose of the Federal Arbitration Act ("FAA") and have been soundly dismissed by a chorus of decisions throughout California courts. Similarly, Golden State's claim that the California Arbitration Act ("CAA"), and therefore, SB 707, do not apply to this matter is equally unavailing; the arbitration agreement at issue contains no language to suggest the CAA is inapplicable. This Court is respectfully asked to affirm the Court of Appeal's decision.

A. SB 707 was Enacted to Prevent Employer's from Needlessly Stalling Arbitration Proceedings

In 2019, the California Legislature amended the CAA and enacted SB 707 (Cal. Code Civ. Proc. Sections 1281.97-1281.99)[1] aiming to solve the procedural limbo and delay that consumers and employees face when they are forced to arbitrate a dispute but the initiating business or employer nonetheless "'stalls or obstructs the arbitration proceeding by refusing to pay the required fees.'" *De Leon v. Juanita's Foods* (2022) 85 Cal. App. 5th 740, 750, 752 (quoting *Gallo v. Wood Ranch USA* (2022) 81 Cal.App.5th 621,634).

[1] Hereinafter, SB 707 refers to Cal. Code Civ. Proc. Sections 1281.97-1281.99.

Prior to the enactment of SB 707, employers were routinely refusing to pay fees to initiate or continue arbitration despite requiring arbitration as a condition of employment. (Sen. Judiciary Com., Analysis for SB 707 (Wieckowski, 2019) version as of Apr. 11, 2019, p. 6-8). As a result, thousands of employees were effectively left without any ability to assert their legal rights. *Id.*

Thus, the California Legislature adopted SB 707 to prevent employers from obstructing with arbitration and the purposes of the FAA: "[Sections 1281.97-1281.99] are intended to stop behavior that would undermine the intent of Congress, this measure should not frustrate the purposes of the FAA." (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Sen. Bill No. 707 (2019–2020 Reg. Sess.) as amended Apr. 30, 2019, p. 4.) Moreover, the Legislature recognized the importance of maintaining arbitration as a fast and efficient forum in upholding the FAA and Congress's intent. *Id.*

In the context of employer mandated arbitration, SB 707 is clear, when the arbitrator issues invoices for initiation or continuation fees, the drafting party must pay those fees "within 30 days after the due date." Cal. Code Civ. Proc. Code §§ 1281.97(a)(1), 1281.98(a)(1). An employer "materially breaches the arbitration agreement and is in default" by failing to pay the fees within the thirty-day grace period. *Id.*

Here, Golden State failed to pay continuation fees within thirty days of the invoice and thus Section 1281.98 applies. Upon material breach, under Section 1281.98(b) the employee can (1) petition the court to compel payment by the employer; (2) pay the

employer's fees and recover payment after conclusion of arbitration; (3) proceed with arbitration if the arbitrator agrees to continue; and (4) withdraw to the claim to a court of appropriate jurisdiction.[2] Section 1281.98 presents a strictly enforced, bright-line rule; if an employer fails to pay fees to continue arbitration within 30 days, it loses its right to compel arbitration. *Doe v. Superior Court* (2023) 95 Cal. App. 5th 346, 358-60.

Given Golden State's failure to timely pay continuation fees, Hohenshelt brought the claim in court. Following California precedent, the Court of Appeal determined that Golden State materially breached by failing to timely pay, that Section 1281.98 was not preempted by the FAA, and thus that Hohenshelt could properly bring the action in court. *Hohenshelt v. Superior Court* (2024) 99 Cal. App. 5th 1319.

Golden State requested petition for review with this Court. Golden State asserts that SB 707 is preempted by the FAA. In the alternative, Golden State argues, for the first time, that the CAA and subsequently Section 1281.98 do not apply. In order to ensure arbitration agreements are enforced according to their terms, this Court is respectfully asked to uphold the Court of Appeal's decision in its entirety.

[2] For material breach, section 1281.97(b) similarly allows an employee to withdraw the claim to an appropriate court or compel arbitration where the drafting party shall pay the reasonable attorney's fees and costs related to arbitration.

B. Preemption is Inappropriate: SB 707 Does Not Obstruct but Rather Promotes and Protects the FAA's Purpose

Golden State purports the FAA preempts SB 707, but Golden State's argument is unsupported by legal precedent. SB 707 in no way deters the enforcement of valid arbitration agreements. Rather, SB 707 upholds the goals of the FAA and deters employers from delaying arbitration and otherwise obstructing the FAA. Further, the California Courts of Appeal have dealt with this argument on numerous occasions and have consistently found no preemption.

i. The History and Goals of the FAA Demonstrates why California Courts have Routinely Found SB 707 Consistent with its Purpose

The FAA does not contain an express or field preemptive provision. *Volt Info. Sciences v. Leland Stanford Jr. U.*, 489 U.S. 468, 477 (1989) ("*Volt*"). Thus, SB 707 can *only* be preempted if it conflicts or obstructs with the FAA's purpose. *See Rosenthal v. Great Western Fin. Securities* (1996) 14 Cal.4th 394, 408. The obstacle preemption analysis looks at Congress's intended effects for the FAA given "[t]he purpose of Congress is the ultimate touchstone in every pre-emption case." *Chamber of Commerce of the United States v. Bonta* (9th Cir. 2023) 62 F.4th 473, 482 (citing *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996)).

The FAA has two intended goals: (1) enforcing private arbitration agreements according to their terms and (2) upholding

arbitration's efficient and speedy dispute resolution. *See e.g., Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 221 (1985) ("*Dean Witter*"); *AT&T Mobility LLC v. Concepcion*, 563 U. S. 333, 344-45 (2011) ("*Concepcion*"); *Epic Sys. Corp. v. Lewis* 584 U.S. 497, 505-06 (2018) ("*Epic*"); *Lamps Plus, Inc. v. Varela*, 587 U.S. 176, 184-85 (2019) ("*Lamps*").

The first goal focuses on merely making arbitration agreements as enforceable as other contracts. Prior to the FAA, there was judicial hostility toward arbitration agreements as courts often refused to enforce them. *E.g., Dean Witter, supra,* 470 U.S. at 219–220; *Volt*, *supra*, 489 U.S. at 474. Thus, the FAA intended to place arbitration agreements on equal footing with other contracts and make them just as enforceable, but not more so. *E.g., Morgan v. Sundance,* Inc., 596 U.S. 411, 418 (2022); *Kindred Nursing Centers L.P. v. Clark,* 581 U.S. 246, 248 (2017).

The House Report accompanying the FAA makes Congress's intent explicitly clear: "Arbitration agreements are purely matters of contract, and *the effect of the bill is simply to make the contracting party live up to his agreement*." H.R. Rep. No. 68-96, at 1 (emphasis added).

Fundamental to this first goal is that arbitration, like any other contract, "is strictly a matter of consent" and "not coercion." *Lamps*, *supra*, 587 U.S. at 184. Therefore, it is critical that courts and arbitrators analyze what was mutually agreed upon in order to "give effect to the intent of the parties." *Id.*

The second goal ensures that arbitration maintains its primary benefit, namely its speed and efficiency. The Supreme Court has routinely noted that the FAA's "plain meaning" and the "unmistakably clear congressional purpose" reflect the importance of arbitration procedures being speedy and offering quicker, cost-efficient resolutions. *See e.g., Epic, supra,* 584 U.S. at 505-06; *Preston v. Ferrer*, 552 U.S. 346, 357-58 (2011) ("A prime objective of an agreement to arbitrate is to achieve 'streamlined proceedings and expeditious results'"). Further, a Senate Judiciary Committee Report supporting the FAA's adoption noted that the appeal of foregoing a traditional judicial forum in favor of arbitration was arbitration's speed and lower costs. *Johnson v. West Suburban Bank* (2000) 225 F.3d 366, 376 (citing S. Rep. No. 68-536, at 3).

SB 707 in no way interferes with the FAA and its goals. To the contrary, SB 707 preserves Congress's intentions for the FAA by preventing employers from needlessly delaying the arbitration proceedings it agreed to and required as a condition for employment.

Again, SB 707 was intentionally drafted with the purposes of the FAA in mind: "[Sections 1281.97-1281.99] are intended to stop behavior that would undermine the intent of Congress, this measure should not frustrate the purposes of the FAA." (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Sen. Bill No. 707 (2019–2020 Reg. Sess.) as amended Apr. 30, 2019, p. 4.)

SB 707 upholds the goals of the FAA by ensuring employers live up to the arbitration terms they agreed to and by facilitating a fast and efficient forum. The parties agreed to actually arbitrate the dispute; the parties did not agree to "let it die on the vine and languish in limbo while the party who demanded arbitration thereafter stalls it by not paying the necessary costs in a timely fashion." *Gallo*, *supra*, 81 Cal. App. 5th at 642. Moreover, SB 707 "reflects the reality that an employee or consumer would never *want* to stall their own claim in arbitration (by not paying the dues) because doing so would afford them no relief." *Id.* Thus, SB 707 reaffirms the fundamental objective of the FAA, that arbitration is first and foremost a matter of consent and honoring the intent of the parties. *See Lamps*, *supra*, 587 U.S. at 184.

Moreover, the Legislature specifically designed SB 707 to safeguard arbitration as a fast and efficient forum by moving parties "into arbitration as quickly and as easily as possible." (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Sen. Bill No. 707 (2019–2020 Reg. Sess.) as amended Apr. 30, 2019, p. 4.) Notably, the trade off in choosing arbitration and foregoing a traditional judicial forum is in large part due to arbitration's speed and efficiency. SB 707 ensures parties actually arbitrate the dispute in a timely manner by providing reasonable deadlines and prohibiting the drafting party from delaying and sabotaging the arbitration proceedings. *See Gallo*, *supra*, 81 Cal. App. 5th at 642. The procedures in SB 707 put "a business's feet to the fire to pay on time *facilitat[ing]* the resolution of disputes with alacrity." *Id.* at 645.

Without SB 707, "[e]mployees and consumers were facing either the complete denial of any relief or delays in obtaining relief by virtue of the 'perverse incentive' companies and businesses had to push claims into arbitration and then to refuse to pay the resulting arbitration fees." *Gallo*, *supra*, 81 Cal. App. 5th at 644. SB 707 provides a clear and strict 30-day time frame for payment and makes missing this window a material breach. These procedures remove any incentive to stall proceedings and ensure that employers live up to their agreements to arbitrate. *Id.* If an employer does impermissibly stall proceedings, SB 707 ensures that employees have an adequate remedy and are able to actually vindicate their rights. Thus, SB 707 places these arbitration agreements on equal footing as other contracts, ensures a speedy and efficient forum, and prohibits bad-faith actors from derailing the arbitration proceedings they mandated.

Simply put, SB 707 promotes the objectives of the FAA and prevents employers from obstructing arbitration proceedings. Therefore, preemption is inappropriate.

California Courts of Appeal have dealt with FAA preemption on numerous occasions and have routinely come to the same conclusion; that SB 707 is a friend to arbitration and in no way serves as an obstacle to the FAA's objectives. *See Gallo, supra*, 81 Cal. App. 5th at 641 (Second District); *Keeton v. Tesla* (2024) 103 Cal. App. 5th 26, 37-38 (First District); *Suarez v. Superior Court* (2024) 99 Cal.App.5th 32, 41-42 (Fourth District); *Espinoza v. Superior Court* (2022) 83 Cal.App.5th 761, 783-84 (Second District); *De Leon v. Juanita's Foods* (2022) 85 Cal.App.5th 740,

753-54 (Second District); *Colon-Perez v. Security Industry Specialists, Inc.* (2025) 2025 Cal. App. LEXIS 40 *1, *2 (First District) (certified for partial publication).

California district courts have also routinely found no preemption. The district court in *Nyerges v. Pac. Sunwear of Cal* (C.D. Cal. July 6, 2022) 2022 U.S. Dist. LEXIS 245785 *1 notes:

> [SB 707] fills an important gap that the FAA does not address, setting clear deadlines for fee payments necessary [for] arbitration. Those deadlines and the clear consequences for failing to meet them ensure that a party with superior bargaining power will only demand arbitration as a means to efficiently resolve a dispute, an intention consistent with the FAA

Id. at *5.

Likewise, the court in *Postmates v. 10,356 Individuals* (C.D. Cal. Jan. 19, 2021) 2021 U.S. Dist. LEXIS 28554 *1, rejected defendant's obstacle preemption argument and found instead that "SB 707 *removes* obstacles to the arbitration process[.]" *Id.* at *26-*27.

Further, in *Agerkop v. Sisyphian* (C.D. Cal. Apr. 13, 2021) 2021 U.S. Dist. LEXIS 93905 *1, the court stated SB 707 is "consistent with the purpose of the FAA for efficient and expeditious resolution of claims by dis-incentivizing employers from delaying adjudication in arbitration by refusing to pay required arbitration fees." *Id.* at *12; *see also Costa v. Melikov* (Oct. 21, 2022) 2022 U.S. Dist. LEXIS 198692 *1, *12 (agreeing with the "thorough and sound reasoning" in *Agerkop* and *Postmates* in finding no obstacle preemption); *O'Dell v. Aya Healthcare, Inc.*

(S.D. Cal. Oct. 15, 2024) 2024 U.S. Dist. LEXIS 188558 *1, *10 (same).

The Court of Appeal's holding in the present case adheres to the near uniform reasoning of, and the conclusions reached by, these preceding California Court of Appeal and district court decisions. SB 707 does not impede on the goals of the FAA but protects them.

ii. Golden State's Arguments for Preemption are Unsubstantiated

Golden State's primary argument is that SB 707 does not treat arbitration agreements equally to other contracts and is thus preempted by the FAA. Golden State notes that SB 707 singles out arbitration and defines material breach. It argues SB 707 places arbitration on a different plane than other contracts considering its arbitration specific definition makes any delay longer than thirty days after the due date a material breach.

Golden State's argument misses the mark entirely and misinterprets the intention behind the equal footing principle. Again, the only basis for preemption is if SB 707 obstructs the goals of the FAA. The FAA was simply intended to make arbitration agreements as enforceable as other contracts (not more so) and to make a contracting party live up to their agreement to arbitrate. *Morgan v. Sundance,* Inc., 596 U.S. 411, 418 (2022); H.R. Rep. No. 68-96, at 1. Contrary to what Golden State implies, the equal footing principle does not stand for the idea that arbitration

agreements must have the exact same procedures as other contracts.

Rather, preemption is not proper simply because a state law is arbitration specific or provides arbitration specific procedures. *See e.g., Gallo*, *supra*, 81 Cal. App. 5th at 637-38. In actuality, "there is no federal policy favoring arbitration under a certain set of procedural rules." *Id.*; *Volt, supra*, 489 U.S. at 476. Thus, state laws, such as the CAA, governing the conduct and "efficient order of proceedings" of arbitration are permissible. *See Doctor's Assocs. v. Casarotto*, 517 U.S. 681, 688 (1996). Notably, the Court of Appeal in *Gallo*, has already determined that SB 707 merely sets forth an efficient order of proceedings under the CAA making it "functionally indistinguishable from the other provisions of the CAA[.]" *Gallo*, *supra*, 81 Cal. App. 5th at 641-42. California Courts of Appeal and district courts have routinely come to the same conclusion as *Gallo*; that SB 707 simply honors the intent of the parties by ensuring arbitration remains an efficient and speedy forum.[3] This does not violate the goals of the FAA but preserves them.

Moreover, "[a]t its core, [SB 707] implements the usual rule that a material breach of contract may provide a ground for

[3] California Courts of Appeal and district courts have consistently upheld SB 707 because it simply determines the order of proceedings and preserves arbitration as a speedy forum. *See Keeton v. Tesla* (2024) 103 Cal. App. 5th 26, 37-38 (First District); *Suarez v. Superior Court* (2024) 99 Cal.App.5th 32, 41-42 (Fourth District); *Espinoza v. Superior Court* (2022) 83 Cal.App.5th 761, 783-84 (Second District); *De Leon v. Juanita's Foods* (2022) 85 Cal.App.5th 740, 753-54 (Second District); *see also Nyerges v. Pac. Sunwear of Cal* (C.D. Cal. July 6, 2022) 2022 U.S. Dist. LEXIS 245785 *1, *5; *Postmates v. 10,356 Individuals* (C.D. Cal. Jan. 19, 2021) 2021 U.S. Dist. LEXIS 28554 *1, *22, *26; *Agerkop v. Sisyphian* (C.D. Cal. Apr. 13, 2021) 2021 U.S. Dist. LEXIS 93905 at *11-13

rescinding the contract . . . ." *Gallo*, *supra*, 81 Cal. App. 5th at 644. The fact that material breach is defined for employee or consumer mandated arbitration does not suggest SB 707 treats arbitration unfavorably and thus unequally from other contracts. Rather, the California Legislature had good reason for defining untimely payment as material breach given the important differences in the context of employer and consumer mandated arbitration and the need to uphold the intent of the FAA. *Id.;* Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Sen. Bill No. 707 (2019–2020 Reg. Sess.) as amended Apr. 30, 2019, p. 4.

Again, "[e]mployees and consumers were facing either the complete denial of any relief or delays in obtaining relief by virtue of the 'perverse incentive' companies and businesses had to push claims into arbitration and then to refuse to pay the resulting arbitration fees." *Gallo*, *supra*, 81 Cal. App. 5th at 644. In other words, employers were acting contradictory to the ideals of the FAA and not living up to their agreement to arbitrate the dispute speedily and efficiently. As discussed, the speed and efficiency of arbitration is the key benefit and the distinct selling point to arbitration. As such, no employee would consent or agree to stalling and delaying arbitration given it would not afford them any relief and only cut against the purpose of arbitration. Thus, SB 707's material breach was adopted in order to combat this bad-faith behavior by employers and ensure the parties could arbitrate disputes according to their mutual intent. *Gallo*, *supra*, 81 Cal. App. 5th at 644*; see also* (Sen. Rules Com., Off. of Sen. Floor

Analyses, 3d reading analysis of Sen. Bill No. 707 (2019–2020 Reg. Sess.) as amended Apr. 30, 2019, p. 4).

Thus, it is clear, SB 707 promotes the objectives of the FAA and is not an obstruction. Golden State's arguments are meritless, and this Court is respectfully asked to uphold the Court of Appeal's decision.

C. The CAA and SB 707 Apply to This Proceeding

Golden State also improperly argues for the first time that the CAA and subsequently SB 707 do not apply to the current proceedings even if not preempted. Golden State bases this argument on the fact that its agreement does not directly incorporate the CAA but instead states, the arbitration "shall be governed by the Federal Arbitration Act" and proceed "in accordance with [JAMS'] rules."

It is well established, "t]he CAA's procedural rules apply by default to cases brought in California courts, *including those in which the FAA governs the arbitrability of the controversy*, the FAA's procedural rules may apply if the parties expressly agree they do or if the CAA's procedural rules are preempted." *Quach v. California Commerce Club, Inc.* (2024) 16 Cal. 5th 562, 582 (citing *Cronus Invs. Inc. v. Concierge Servs.* (2005) 35 Cal.4th 376, 394) (emphasis added); *see also Espinoza, supra*, 83 Cal. App. 5th at 785-86; *Keeton*, *supra*, 103 Cal. App. 5th at 38.

In *Cronus*, this Court determined that the FAA's procedural provisions did not preclude the application of the CAA and Section 1281.2(c) because the arbitration clause "call[ed] for the

application of the FAA if it would be applicable." *Cronus, supra*, 35 Cal.4th at 394. Thus, the analysis by this court in *Quach* and *Cronus* makes clear that the CAA and SB707 apply in the instant case. The language in the Golden State arbitration agreement is a far cry from clearly establishing the procedural rules of the FAA apply. The fact that the agreement states the FAA would govern is not dispositive; as *Quach* instructs, the CAA procedures apply by default even if the FAA governs arbitrability. Moreover, similar language in the *Cronus* arbitration agreement did not preclude application of the CAA's procedures.

Further, SB 707 has applied in other cases where arbitration agreements stated the FAA governs. *See Postmates, supra*, 2021 U.S. Dist. LEXIS 28554 at *3 (where the arbitration agreement stated it "is governed exclusively by the [FAA]"); *De Leon, supra*, 85 Cal. App. 5th at 746 (the agreement noted it was "governed by the FAA" and California law to the extent not preempted); *see also Espinoza*, *supra*, 3 Cal. App. 5th at 785-86 (the agreement stated it would be governed by JAMS and that the FAA, if applicable, would determine the enforceability of the arbitrator's decision); *see also Hernandez v. Sohnen Enterprises, Inc.* (2024) Cal. App. 5th 222, 247 (diss. opn. Barker, P.J.) (noting the arbitration agreement was too ambiguous to conclude the FAA procedure applies instead of the CAA, where the agreement stated it was "governed by the FAA").

Thus, Golden State's argument is baseless and the CAA and SB 707 apply to the present case.

III. CONCLUSION

Consistent with California precedent and SB 707, this Court is respectfully asked to affirm the Court of Appeal's decision.

DATED: February 7, 2025

MARA LAW FIRM, PC

/s/ David Mara

David Mara

CERTIFICATE OF COMPLIANCE

Counsel of record hereby certifies under California Rule of Court 8.520(c)(1), that this brief is produced using 13-point Century font type, including footnotes, and contains approximately 3810 words of text, or less than the total words permitted by the rules of court. Counsel relies on the word count provided by Microsoft Word word-processing software.

DATED: February 7, 2025

MARA LAW FIRM, PC

David Mara

PROOF OF SERVICE

I am employed in the County of: San Diego, State of California. I am over the age of 18 and not a party to the within-entitled action; my business address is: 2650 Camino Del Rio N., Suite 302, San Diego, CA 92108. On February 7, 2025, I served the foregoing document(s) described as:

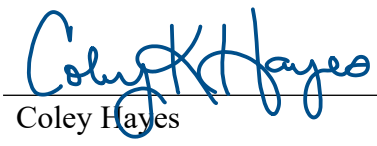
APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND BRIEF OF CONSUMER ATTORNEYS OF CALIFORNIA SUPPORTING PETITIONERS

On interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED LIST OF PARTIES SERVED

The envelope was then sealed. I am familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice the sealed envelope would be deposited with the United States Postal Service, with the postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. I also declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.
Executed on February 7, 2025, at San Diego California.



Coley Hayes

SERVICE LIST

Supreme Court of the State of California

Dana Hohenshelt. Et. Al. v. Golden State Foods Corp., case number S284498

Nicholas John Scardigli Mayall Hurley P.C. 2453 Grand Canal Boulevard Stockton, CA 95207	*Attorneys/or Plaintiffs, Appellants and Petitioners*
Court Counsel Superior Court of Los Angeles County 111 North Hill Street, Room 546 Los Angeles, CA 90012	*Superior Court of Los Angeles County: Respondent*
Melvin L. Felton Sanders Roberts LLP 1055 West 7th Street Suite 3200 Los Angeles, CA 90017-2557	*Golden State Foods Corp.: Real Party in Interest*
Reginald Roberts SANDERS ROBERTS LLP 1055 West 7th Street, Suite. 3200 Los Angeles, CA 90017	*Golden State Foods Corp.: Real Party in Interest*
Tyler S. Dobberstein SANDERS ROBERTS LLP 1055 West 7th Street, Suite. 3200 Los Angeles, CA 90017	*Golden State Foods Corp.: Real Party in Interest*
Ashley Nicole Bobo SANDERS ROBERTS LLP 1055 West 7th Street, Suite. 3200 Los Angeles, CA 90017-3506	*Golden State Foods Corp.: Real Party in Interest*
Anand Singh Sanders Roberts LLP 1055 West 7th Street, Suite 3200 Los Angeles, CA 90017	*Golden State Foods Corp.: Real Party in Interest*
Wendy S. Albers Benedon & Serlin, LLP 22708 Mariano Street Woodland Hills, CA 91367-6128	*Golden State Foods Corp.: Real Party in Interest*
Kelly Riordan Horwitz Bendon & Serlin, LLP 22708 Mariano Street Woodland Hills, CA 91367	*Golden State Foods Corp.: Real Party in Interest*

SERVICE LIST

Supreme Court of the State of California

Dana Hohenshelt. Et. Al. v. Golden State Foods Corp., case number S284498

David Mills Arbogast Arbogast Law 22833 Conetoga Circle Reno, NV 89521-*7819*	*Arbitration and Civil Procedure Law Professors: Amicus curiae*
Gerson Harry Smoger Smoger & Associates 7080 Norfolk Road *Berkeley, CA 94705*	*Arbitration and Civil Procedure Law Professors: Amicus curiae*

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **HOHENSHELT v. S.C. (GOLDEN STATE FOODS CORP.)**
Case Number: **S284498**
Lower Court Case Number: **B327524**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **dmara@maralawfirm.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
BRIEF	Hohenshelt Amicus Brief

Service Recipients:

Person Served	Email Address	Type	Date / Time
Melvin Felton Sanders Roberts LLP 276047	mfelton@sandersroberts.com	e-Serve	2/7/2025 10:44:15 AM
Kelly Horwitz Benedon & Serlin, LLP 205932	kelly@benedonserlin.com	e-Serve	2/7/2025 10:44:15 AM
Nicholas Scardigli Mayall Hurley PC 249947	nscardigli@mayallaw.com	e-Serve	2/7/2025 10:44:15 AM
Susan Robbins Benedon & Serlin LLP	srobbins@benedonserlin.com	e-Serve	2/7/2025 10:44:15 AM
Court Counsel Superior Court of Los Angeles County	courtcounselwrits@lacourt.org	e-Serve	2/7/2025 10:44:15 AM
Wendy Albers Benedon & Serlin, LLP 166993	wendy@benedonserlin.com	e-Serve	2/7/2025 10:44:15 AM
Tina Lara Benedon & Serlin, LLP	accounts@benedonserlin.com	e-Serve	2/7/2025 10:44:15 AM
David Arbogast Arbogast Law 167571	david@arbogastlaw.com	e-Serve	2/7/2025 10:44:15 AM
Gerson Smoger Smoger & Associates	gerson@texasinjurylaw.com	e-Serve	2/7/2025 10:44:15 AM
David Mara Mara Law Firm, PC 230498	dmara@maralawfirm.com	e-Serve	2/7/2025 10:44:15 AM
Coley Hayes	chayes@maralawfirm.com	e-Serve	2/7/2025 10:44:15 AM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

2/7/2025

Date

/s/David Mara

Signature

Mara, David (230498)

Last Name, First Name (PNum)

Mara Law Firm, PC

Law Firm