No.

IN THE
Supreme Court of the United States

DIRECTV, INC.,

Petitioner,

v.

AMY IMBURGIA, ET AL.,

Respondents.

On Petition for Writ of Certiorari to the California Court of Appeal, Second District

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the California Court of Appeal erred by holding, in direct conflict with the Ninth Circuit, that a reference to state law in an arbitration agreement governed by the Federal Arbitration Act requires the application of state law preempted by the Federal Arbitration Act.

RULE 29.6 DISCLOSURE STATEMENT

Petitioner DIRECTV, Inc. has been merged into DIRECTV, LLC, with DIRECTV, LLC as the surviving entity. Pursuant to Supreme Court Rule 29.6, DIRECTV, LLC makes the following disclosures concerning parent entities and publicly held corporations that own 10% or more of its stock:

DIRECTV Holdings, LLC is the direct parent company and 100% owner of DIRECTV, LLC;

The DIRECTV Group, Inc. is the direct parent company and 100% owner of DIRECTV Holdings, LLC;

Greenlady Corp. controls a 57% interest in The DIRECTV Group, Inc.;

DTV Entertainment, Inc. is the direct parent company and 100% owner of Greenlady Corp.; and

DIRECTV, a publicly traded company and the ultimate parent company of DIRECTV, LLC, is the direct parent company and 100% owner of DTV Entertainment, Inc., and controls a 43% interest in The DIRECTV Group, Inc.

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INTRODUCTION

In *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740 (2011), this Court held that California's *Discover Bank* rule, which conditioned the enforceability of consumer arbitration agreements on the availability of classwide arbitration, was preempted by the Federal Arbitration Act ("FAA"). As the Court explained, "[r]equiring the availability of classwide arbitration interferes with fundamental attributes of arbitration and thus creates a scheme inconsistent with the FAA." *Id.* at 1748. Because class arbitration "is not arbitration as envisioned by the FAA [and] lacks its benefits," it "may not be required by state law." *Id.* at 1752-53.

The California Court of Appeal's decision in this case does precisely what *Concepcion* prohibits: it applies state law to invalidate an arbitration agreement solely because that agreement includes a class-action waiver. The Court of Appeal purported to reconcile that result with *Concepcion* by holding that the parties here contractually opted out of FAA preemption, even though they specified that their arbitration agreement "shall be governed by the Federal Arbitration Act." Ironically, the Court based that holding on a "non-severability" clause designed to *prevent* class arbitration. Under that clause, the parties agreed that the arbitration agreement as a whole would be unenforceable if "the law of [the customer's] state" would find the class-action waiver unenforceable. The Court of Appeal seized on that clause to declare that the parties intended to rely on state law *preempted* by the FAA to avoid enforcement of an arbitration agreement *governed* by the FAA.

That reasoning, as the Ninth Circuit explained in interpreting the *same* language in the *same* arbitration agreement, is "nonsensical." *Murphy v. DIRECTV, Inc.*, 724 F.3d 1218, 1226 (9th Cir. 2013). Under the Supremacy Clause, there is no such thing as state law immune from the preemptive force of federal law; to the extent that state law is preempted by federal law, it is a nullity. Thus, *Concepcion* made clear that "the *Discover Bank* rule [disallowing class-action waivers] is not, and indeed never was, California law." *Id.* Accordingly, the FAA requires enforcement of this arbitration provision.

The California Court of Appeal made no attempt to distinguish the Ninth Circuit's decision in *Murphy*; rather, it simply dismissed that decision as "unpersuasive." The upshot is the intolerable situation that parties in California can enforce their federal arbitration rights in federal court, but not in the state court across the street. And because the Court of Appeal's decision is binding on every state trial court in California, and "non-severability" clauses of the type at issue here are found in millions of individual consumer arbitration agreements in that State and elsewhere, the scope of the problem is truly monumental. This Court's review is warranted to resolve this manifest and acknowledged split of authority on a matter of federal law.

And, at an even more fundamental level, review is warranted to vindicate the supremacy of federal law and this Court's interpretation thereof. The FAA, as this Court has stated time and again, establishes a substantive federal policy in favor of arbitration, which requires both federal and state courts to enforce arbitration agreements according to their

terms and to resolve any doubts in *favor* of arbitration. The California Court of Appeal made a mockery of that federal policy, and this Court's recent decision in *Concepcion*, by refusing to enforce federal arbitration rights here on a theory that the Ninth Circuit has described as "nonsensical." The state court below transformed an agreement that *forbids* class arbitration into an agreement that *requires* class arbitration to be enforceable. By no stretch of the imagination can that decision be characterized as resolving any doubts in favor of arbitration; rather, that decision can only be described as a brazen attempt to defy *Concepcion* by resurrecting the preempted *Discover Bank* rule. Because the decision below not only creates an acknowledged conflict between state and federal courts on a matter of federal law, but also evinces the very hostility to arbitration that led to the enactment of the FAA in the first place, this Court's review is warranted.

OPINIONS BELOW

The opinion of the California Court of Appeal is reported at 170 Cal. Rptr. 3d 190, and reprinted in the Appendix ("App.") at 2-16a. The unreported order of the California Supreme Court denying review of the Court of Appeal's decision is reprinted at App. 1a. The trial court's unreported opinion denying petitioner's motion to compel arbitration is reprinted at App. 17-20a.

JURISDICTION

The Court of Appeal issued its decision on April 7, 2014. App. 2a. Petitioner filed a timely petition for review, which the California Supreme Court denied

on July 23, 2014. App. 1a. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

PERTINENT STATUTES AND RULES

The Supremacy Clause of the U.S. Constitution provides in relevant part:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; ... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Const. art. VI, cl. 2.

Section 2 of the FAA provides in relevant part:

> A written provision in … a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction … shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

9 U.S.C. § 2.

Section 4 of the FAA provides in relevant part:

> A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any … court … for an order directing that such arbitration proceed in the manner provided for in such agreement. … The court shall hear the parties, and upon being satisfied that the

> making of the agreement for arbitration … is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement.

9 U.S.C. § 4.

STATEMENT OF THE CASE

A. Background

The provision and acceptance of DIRECTV programming services—like many other consumer services (*e.g.*, banking, cellular, internet)—are subject to certain basic terms and conditions. Those terms and conditions are set forth in the DIRECTV Customer Agreement. The Customer Agreement at issue here includes a dispute-resolution provision (Section 9) that specifies in relevant part:

> [I]f we cannot resolve a Claim informally, any Claim either of us asserts will be resolved only by binding arbitration. The arbitration will be conducted under the rules of JAMS that are in effect at the time the arbitration is initiated ... and under the Rules set forth in this Agreement.
>
> * * *
>
> Neither you nor we shall be entitled to join or consolidate claims in arbitration by or against other individuals or entities, or arbitrate any claim as a representative member of a class or in a private attorney general capacity. Accordingly, you and we agree that the JAMS Class Action Procedures do not apply to our arbitration.

> If, however, the law of your state would find this agreement to dispense with class action procedures unenforceable, then this entire Section 9 is unenforceable.

In addition, the Customer Agreement contains a choice of law provision (Section 10(c)) that specifies as follows:

> Applicable Law. The interpretation and enforcement of this Agreement shall be governed by the rules and regulations of the Federal Communications Commission, other applicable federal laws, and the laws of the state and local area where Service is provided to you. This Agreement is subject to modification if required by such laws. Notwithstanding the foregoing, Section 9 shall be governed by the Federal Arbitration Act.

Finally, as relevant here, the Customer Agreement contains a general severability provision (Section 10(d)): "If any provision is declared by a competent authority to be invalid, that provision will be deleted or modified to the extent necessary, and the rest of the Agreement will remain enforceable."

B. Proceedings Below

In September 2008, respondents Amy Imburgia and Kathy Greiner filed separate putative class actions against DIRECTV, which were later consolidated, in Los Angeles Superior Court. App. 3a. Both complaints alleged that DIRECTV had violated a variety of California laws by assessing early cancellation fees when respondents cancelled

their DIRECTV accounts before the end of an agreed-upon time period. *Id.*

Although the parties had agreed to arbitrate disputes like this one, DIRECTV did not move to compel arbitration when the complaints were filed. That is because, in 2005, the California Supreme Court had announced a rule that invalidated almost all consumer arbitration agreements containing class-action waivers under California law. *See Discover Bank v. Superior Ct.*, 113 P.3d 1100, 1106-10 (Cal. 2005). Applying the *Discover Bank* rule, California courts refused to enforce the arbitration provision in the DIRECTV Customer Agreement. *See*, *e.g.*, *Cohen v. DIRECTV, Inc.*, 48 Cal. Rptr. 3d 813, 819-21 (Cal. Ct. App. 2006). Accordingly, any attempt to compel arbitration when the complaints in this case were filed would have been futile under then-prevailing California law. The case therefore proceeded in court until, on April 27, 2011, this Court held in *Concepcion* that the FAA preempts the *Discover Bank* rule. *See* 131 S. Ct. at 1747-48.

In light of *Concepcion*, DIRECTV promptly moved to compel arbitration. The Superior Court (Wiley, J.), however, denied the motion on the ground that the parties' arbitration agreement is unenforceable under *Brown v. Ralphs Grocery Co.*, 128 Cal. Rptr. 3d 854 (Cal. Ct. App. 2011), a case involving labor-related representative actions under California's Private Attorney General Act of 2004. App. 17-20a.

DIRECTV appealed, but the Court of Appeal affirmed the trial court's decision on different grounds. *See* App. 2-16a. In particular, the Court of Appeal focused on the arbitration agreement's non-severability provision, which states that "if 'the law

of your state would find this agreement to dispense with class arbitration procedures unenforceable, then this entire Section 9 is unenforceable.'" App. 6a (quoting Customer Agreement § 9). According to the Court, the reference to "the law of your state" in this provision means state law immune from the preemptive force of federal law. App. 6-15a. Thus, the Court concluded, the non-severability clause requires the application of the *Discover Bank* rule to nullify the parties' arbitration provision, even though that rule is concededly inconsistent with, and thus preempted by, the FAA under *Concepcion*, and even though the arbitration agreement here is concededly governed by the FAA. App. 15a.

The Court of Appeal acknowledged that its decision conflicts with the Ninth Circuit's decision in *Murphy*, which had characterized the reasoning adopted by the Court of Appeal as "nonsensical." *Murphy*, 724 F.3d at 1226. The Court of Appeal, in turn, dismissed the Ninth Circuit's analysis as "unpersuasive." App. 13a. According to the Court of Appeal, "*Murphy* provides no basis for concluding that the parties intended to use the phrase 'the law of your state'" to mean state law subject to the preemptive force of federal law. *Id.* Instead, the Court of Appeal interpreted the phrase "the law of your state" to mean "'the (nonfederal) law of your state *without considering the preemptive effect, if any, of the FAA*.'" *Id.* at 14a (emphasis added). Applying the preempted *Discover Bank* rule, the Court held the class-action waiver invalid, and thus refused to enforce the entire arbitration agreement. App. 15a.

DIRECTV timely petitioned for review in the California Supreme Court to resolve the conflict between the California Court of Appeal and the Ninth Circuit on this question of federal law. On July 23, 2014, however, the California Supreme Court denied review over Justice Baxter's dissent. App. 1a. This petition follows.

REASON FOR GRANTING THE WRIT

The California Court of Appeal Erred, And Created A Conflict With The Ninth Circuit, By Applying Preempted State Law To Invalidate An FAA-Governed Arbitration Agreement.

This petition presents a conflict about as stark as they come: the California Court of Appeal and the Ninth Circuit interpreted the *same* language in the *same* FAA-governed arbitration agreement, and came to diametrically opposite results. The Ninth Circuit in *Murphy* characterized the position adopted by the California Court of Appeal as "nonsensical," 724 F.3d at 1226, while the Court of Appeal dismissed the Ninth Circuit's position as "unpersuasive," App. 13a. The Ninth Circuit thus enforced the arbitration provision at issue, while the Court of Appeal refused to do so. Under settled California law, the Court of Appeal's decision in this case is binding on *every* trial court in that State. *See Auto Equity Sales, Inc. v. Superior Ct.*, 369 P.2d 937, 940 (Cal. 1962) ("Decisions of every division of the District Courts of Appeal are binding upon all the … superior courts of this state."); *see also Lafferty v. Wells Fargo Bank*, 153 Cal. Rptr. 3d 240, 257 (Cal. Ct. App. 2013) (same); *Sarti v. Salt Creek Ltd.*, 85 Cal. Rptr. 3d 506, 510 (Cal. Ct. App. 2008) (same).

Thus, the enforcement of federally protected arbitration rights in California now turns on whether a dispute is litigated in state or federal court. This Court should not tolerate this anomalous and untenable situation, which "encourage[s] and reward[s] forum-shopping" antithetical to the FAA. *Southland Corp. v. Keating*, 465 U.S. 1, 15 (1984). These forum-shopping concerns present "a substantial reason for granting certiorari," particularly where, as here, "the conflict is between two courts whose jurisdiction includes California, the State with the largest population …." *Yee v. City of Escondido*, 503 U.S. 519, 537-38 (1992).

If the conflict goes unresolved, California trial courts will be required to continue applying a rule that is fundamentally inconsistent with, and thus preempted by, the FAA. *See Concepcion*, 131 S. Ct. at 1748. According to the Court of Appeal, the non-severability provision in DIRECTV's Customer Agreement, which sought to *avoid* class arbitration under the *Discover Bank* rule, evinces an intent to *preserve* the *Discover Bank* rule. In particular, the Court held, the agreement's reference to "the law of your state" means *hypothetical* state law immune from the preemptive force of federal law, rather than *actual* state law subject to the preemptive force of federal law. App. 8-15a. That conclusion cannot withstand scrutiny for at least three reasons.

First, as the Ninth Circuit explained in *Murphy*, there is no such thing as state law immune from the preemptive force of federal law. *See* 724 F.3d at 1226. Under the Supremacy Clause of the Federal Constitution, U.S. Const. art. VI, cl. 2, state law is always subject to the preemptive force of federal law,

and, to the extent preempted, is "nullified," *Fidelity Fed. Sav. & Loan Ass'n v. De la Cuesta*, 458 U.S. 141, 153 (1982). The preempted state law does not live on in the shadows, only to emerge when unsuspecting parties invoke the "law of [a] state" in their private dealings. Rather, "it has long been settled that state laws that conflict with federal law are *without effect*." *Mutual Pharm. Co. v. Bartlett*, 133 S. Ct. 2466, 2473 (2013) (emphasis added; internal quotation omitted).

Thus, in light of *Concepcion*, "the *Discover Bank* rule is not, and indeed never was, California law." *Murphy*, 724 F.3d at 1226. Rather, "the FAA, which under *Concepcion* requires the enforcement of arbitration agreements that ban class procedures, *is* the law of California and of every other state." *Id.* (emphasis in original); *see also id.* (""[A] fundamental principle in our system of complex national polity' mandates that 'the Constitution, laws, and treaties of the United States are as much a part of the law of every State as its own local laws and Constitution."") (quoting *De la Cuesta*, 458 U.S. at 157) (in turn quoting *Hauenstein v. Lynham*, 100 U.S. 483, 490 (1880)); *see also Brown v. Investors Mortg. Co.*, 121 F.3d 472, 476 (9th Cir. 1997) (*per curiam*) (reference to state law in contract "does not mean the parties decided that federal law should not apply"); *Fantastic Fakes, Inc. v. Pickwick Int'l, Inc.*, 661 F.2d 479, 482-83 (5th Cir. 1981) (reference to state law in contract does "not mean that all rights and obligations created by [federal law] are superseded by [state] law" because "[a] choice of law provision ... merely designates the state whose law is to be applied to the extent its use is not preempted by nor contrary to the policies of [federal law]"); *In re Olshan Found. Repair Co.*, 328 S.W.3d 883, 890 (Tex.

2010) ("[J]ust as the FAA is part of the substantive law of Texas, the FAA would be part of the arbitration laws in Texas," and thus "[t]he language of the arbitration clause designating arbitration pursuant to 'the arbitration laws in your state' includes the FAA"); *Ostrowiecki v. Aggressor Fleet, Ltd.*, 965 So.2d 527, 536 (La. Ct. App. 2007) (reference to state law in contract does not avoid federal preemption because "it is axiomatic that the law of any state includes federal law"); *see also* 6A Arthur L. Corbin, *Corbin on Contracts* § 1374 at 7 (1962) ("Under our Constitution, national law is also the law of every separate State."). It is thus fanciful to interpret a reference to "the law of your state" to mean state law that is "without effect," *Bartlett*, 133 S. Ct. at 2473—which, after all, is not "law" at all.

Second, the agreement at issue here *specifically provides* that, "[n]otwithstanding" the general choice-of-law provision in the Customer Agreement, the arbitration clause "'shall be governed by the Federal Arbitration Act.'" App. 5a (quoting Customer Agreement § 10(b)). Given the parties' explicit expectation that the FAA would govern their arbitration agreement, "it would be remarkable for a court to erase that expectation" by relying on state law inconsistent with, and thus preempted by, the FAA. *American Express Co. v. Italian Colors Restaurant*, 133 S. Ct. 2304, 2309 (2013). As the Ninth Circuit recognized in *Murphy*, the non-severability provision represents an agreement to *prevent* the application of state law inconsistent with the FAA, "not an agreement to *rely* on state law that 'creates a scheme inconsistent with the FAA.'" 724 F.3d at 1226 (emphasis added; quoting *Concepcion*, 131 S. Ct. at 1748); *see also In re DIRECTV Early*

Cancellation Fee Mktg. & Sales Pracs. Litig., 810 F. Supp. 2d 1060, 1071 (C.D. Cal. 2011) (holding that to apply preempted state law to the DIRECTV arbitration agreement would render the FAA choice-of-law provision "meaningless" and that "the language of the Arbitration Clause is clear that the parties intended for federal law to apply"), *rev'd on other grounds sub nom. Lombardi v. DirecTV, Inc.*, 546 F. App'x 715 (9th Cir. 2013). Far from embracing the *Discover Bank* rule, the parties here "did exactly the opposite" by agreeing to a class-action waiver. *Murphy*, 724 F.3d at 1228. Because the parties' arbitration agreement is, by its express terms, "governed by the Federal Arbitration Act," the California Court of Appeal's refusal to enforce that agreement based on state law preempted by the FAA can only be described as perverse.

And *third*, even if there were any doubts as to any of the foregoing, the decision below cannot possibly be characterized as a faithful application of the "emphatic federal policy in favor of arbitral dispute resolution." *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 631 (1985); *see also Marmet Health Care Center, Inc. v. Brown*, 132 S. Ct. 1201 (2012) (*per curiam*); *KPMG LLP v. Cocchi*, 132 S. Ct. 23, 25 (2011) (*per curiam*); *Concepcion*, 131 S. Ct. at 1749; *Granite Rock Co. v. International Bhd. of Teamsters*, 130 S. Ct. 2847, 2856-57 (2010); *Preston v. Ferrer*, 552 U.S. 346, 353 (2008); *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 443-45 (2006); *Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681, 688 (1996); *Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 62 (1995); *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 270 (1995); *Southland*, 465 U.S. at 10-16;

Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24-25 (1983). Under that policy, as a matter of substantive federal law, "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability." *Moses H. Cone*, 460 U.S. at 24-25; *see also Mitsubishi,* 473 U.S. at 626 (noting that "as with any other contract, the parties' intentions control, but those intentions are generously construed as to issues of arbitrability").

By refusing to compel arbitration "in accordance with the terms of the agreement," 9 U.S.C. § 4, the California Court of Appeal plainly violated the FAA. Indeed, although the arbitration agreement at issue here specifies that it is "governed by the Federal Arbitration Act," the Court did not even acknowledge the "emphatic federal policy" in favor of arbitration. *Mitsubishi Motors*, 473 U.S. at 631; *see also In re H&R Block Refund Anticipation Loan Litig.*, __ F. Supp. 2d __, 2014 WL 3672124, at *5 (N.D. Ill. July 23, 2014) (rejecting the decision below and noting that "the *Imburgia* court failed to take account of the liberal federal policy favoring arbitration").

And the conflict between the California Court of Appeal and the Ninth Circuit affects a wide range of arbitration agreements entered into by millions of individual customers and companies in California and elsewhere. Many arbitration agreements, like the one at issue here, include references to state law. If such references are deemed to refer to state law preempted by the FAA, then the FAA's preemptive

effect is essentially nullified. Thus, customers of T-Mobile USA sought to avoid arbitration by making the same argument as respondents here: that the preempted *Discover Bank* rule continues to apply after *Concepcion* because "T-Mobile voluntarily and privately agreed to limit the application of the Agreement's terms, including the arbitration clause, if any of the terms were invalid under the law of a particular jurisdiction." *Meyer v. T-Mobile USA Inc.*, 836 F. Supp. 2d 994, 1001 (N.D. Cal. 2011) (Breyer, J.); *see generally* T-Mobile Terms & Conditions, *available at* http://www.t-mobile.com/templates/popup.aspx?PAsset=Ftr_Ftr_TermsAndConditions (last accessed Oct. 20, 2014) (T-Mobile arbitration agreement specifying that "[i]f any provision of the Agreement is invalid under the law of a particular jurisdiction, that provision will not apply in that jurisdiction" and including class-action waiver and non-severability provision). The court, however, squarely rejected that argument, noting that (as here) "the arbitration agreement is not governed *only* by California law," but also by the FAA, and "the FAA preempts the *Discover Bank* rule" per *Concepcion*. *Meyer*, 836 F. Supp. 2d at 1001 (emphasis in original).

Similarly, customers of H&R Block sought to avoid arbitration after *Concepcion* by "argu[ing] that the arbitration clause does not apply to their claims because they reside in states that prohibit class-action waivers in consumer arbitration agreements." *H&R Block*, 2014 WL 3672124, at *3; *see generally id.* at *2 (H&R Block loan agreement providing that "IF YOU APPLY FOR [a loan] IN A STATE THAT PROHIBITS ARBITRATION OR CLASS ACTION WAIVERS FOR CLAIMS RELATED TO [such a

loan] ... THIS [arbitration agreement] SHALL NOT APPLY TO THOSE CLAIMS."). Again, the court readily rejected that argument, relying on the Ninth Circuit's decision in *Murphy* and rejecting the California Court of Appeal's decision in this case. *See id*. at *3-5.

And these references to state law in arbitration agreements are hardly idiosyncratic. *See*, *e.g.*, MovieTickets.com® Privacy Statement, *available at* http://www.movietickets.com/privacy.asp#.U3ZdB50pDMo (last accessed Oct. 20, 2014) (agreeing to arbitrate disputes on an individual basis only, but providing that "[i]f, however, the law of your state would find this agreement to dispense with class arbitration procedures unenforceable, then this entire paragraph (Class Action Waiver) is unenforceable"); Time Warner Cable, Residential Services Subscriber Agreement, *available at* http://help.twcable.com/RSSA_English.pdf (last accessed Oct. 20, 2014) (agreement specifying that if a "legal requirement[] that appl[ies] where you live or where we provide Services to you ... conflicts with our Customer Agreements with respect to one or more Services, the legal requirement will take priority over the part of our Customer Agreements with which it conflicts," and containing arbitration provision with class-action waiver and non-severability provision).

At bottom, the California Court of Appeal flouted federal law by refusing to enforce the FAA-governed arbitration agreement in this case and resurrecting the *Discover Bank* rule buried in *Concepcion*. This Court should not countenance such insubordination. As this Court has explained, "[t]he 'body of federal

substantive law' generated by elaboration of FAA § 2 is equally binding on state and federal courts." *Vaden v. Discover Bank*, 556 U.S. 49, 59 (2009) (quoting *Southland*, 465 U.S. at 12). Indeed, "[g]iven the substantive supremacy of the FAA, but the Act's nonjurisdictional cast, state courts have a prominent role to play as enforcers of agreements to arbitrate." *Id.*; *see also Nitro-Lift Techs., L.L.C. v. Howard*, 133 S. Ct. 500, 501 (2012) (*per curiam*). Because the California state courts have abdicated that role, enforcement of federal arbitration rights in that State now depends on whether a dispute is litigated in state or federal court.

Allowing the acknowledged conflict between the California Court of Appeal and the Ninth Circuit to fester would not only promote legal uncertainty and forum-shopping, but would undermine the whole purpose of arbitration in the first place: to promote speedy and efficient resolution of disputes. *See, e.g.*, *Italian Colors*, 133 S. Ct. at 2312; *Southland*, 465 U.S. at 7. An arbitration agreement is effectively worthless if it will be enforced in some courts but not in others. Accordingly, this Court should grant this petition to vindicate the FAA's "unmistakably clear congressional purpose that the arbitration procedure, when selected by the parties to a contract, be speedy and not subject to delay and obstruction in the courts." *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 404 (1967).

CONCLUSION

For the foregoing reasons, the Court should grant this petition for writ of certiorari.

Respectfully submitted,

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