

No. 12-55578

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

FATEMEH JOHNMOHAMMADI,

Plaintiff-Appellant,

v.

BLOOMINGDALE'S, INC.,

Defendant-Appellee.

On Appeal from the U.S. District Court
for the Central District of California
Case No. 2:11-cv-06434-GW-AJW
Hon. George H. Wu, United States District Judge

**UNOPPOSED MOTION OF *AMICUS CURIAE* THE CHAMBER OF
COMMERCE OF THE UNITED STATES OF AMERICA
FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT AND TO EXTEND THE
TIME FOR ORAL ARGUMENT**

The Chamber of Commerce of the United States of America respectfully moves for leave to participate in oral argument in this matter, which is scheduled to take place on December 6, 2013. The Chamber requests that half the argument time for Defendant-Appellee Bloomingdale's, Inc., be allocated to the Chamber. To ensure that the parties and amicus can sufficiently address the issues before the Court

at oral argument, the Chamber also respectfully requests that the Court increase the time available for argument to 20 minutes per side. David E. Martin, counsel for Defendant-Appellee, has consented to this motion and agrees with the proposed allocation of time and request for additional time. Dennis F. Moss, counsel for Plaintiff-Appellant, has stated that Plaintiff-Appellant consents to this motion and joins in our request for additional time.

1. This case presents the important question whether the Norris-LaGuardia Act and the National Labor Relations Act create an exception to the strong federal policy, articulated by Congress in the Federal Arbitration Act, that arbitration agreements be enforced as written.

Many of the Chamber's members and affiliates regularly use arbitration agreements in contracts with their employees because arbitration allows them to resolve disputes promptly and efficiently, while avoiding the costs associated with traditional litigation. As the Chamber discussed in its amicus brief, the district court correctly concluded that the Norris-LaGuardia Act and the NLRA do not contain the clear congressional command required to override the FAA and

therefore do not prevent enforcement of the parties' agreement to arbitrate wage-and-hour claims on an individual basis. A contrary outcome on appeal would deprive many businesses and their employees of the benefits of arbitration. The Chamber therefore has a strong interest in explaining why the district court's decision was correct.

2. The Chamber's participation in oral argument will benefit the Court and aid it in resolving this case. Representing the interests of the nation's business community in judicial proceedings is one of the Chamber's chief functions. Accordingly, the Chamber filed a brief as an *amicus curiae* in this case, with the consent of the parties; and more generally, the Chamber frequently appears as an *amicus curiae* in cases like this one that involve the proper interpretation of the FAA or other issues of vital concern to the Chamber's members. The Chamber possesses deep, concrete knowledge of the use and workings of arbitration agreements, as well as substantial, long-standing experience analyzing legal issues like the ones presented here.

3. What is more, counsel for the Chamber, Andrew J. Pincus, has especially deep familiarity with issues relating to the enforceability of arbitration provisions under the FAA. Mr. Pincus argued *AT&T*

Mobility LLC v. Concepcion, 131 S. Ct. 1740 (2011), a key case involving the FAA and arbitration agreements that preclude class or collective arbitration. Mr. Pincus has also argued and prepared briefs in many cases that have addressed the implications of *Concepcion* or presented other questions about the enforceability of arbitration agreements under the FAA. Notable among these are *Kilgore v. Keybank, NA*, 718 F.3d 1052 (9th Cir. 2013) (en banc), in which, with leave of the en banc Court, Mr. Pincus presented oral argument on behalf of the Chamber as *amicus curiae*, and *American Express Co. v. Italian Colors Restaurant*, 133 S. Ct. 2304 (2013), in which Mr. Pincus was the lead author of an *amicus* brief on the Chamber's behalf.

4. In light of the substantial interest of the Chamber and its members in the questions presented by this case and the Chamber's and Mr. Pincus's experience in addressing these issues, the Chamber believes that permitting it to participate in oral argument would materially assist the Court. The Court should therefore grant divided argument in this matter.

Respectfully submitted,

s/ Andrew J. Pincus

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on October 31, 2013. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system. I further certify that one of the participants in the case is not a registered CM/ECF user. I have therefore mailed the foregoing document by First-Class Mail, postage prepaid, to the following non-CM/ECF participant:

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s/ Andrew J. Pincus _____
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