

No. S284498

**IN THE
SUPREME COURT OF CALIFORNIA**

DANA HOHENSHELT,
Plaintiff-Petitioner,

v.

SUPERIOR COURT,
Respondent.

and

GOLDEN STATE FOODS CORP.
Defendant and Real Party in Interest

Court of Appeal, Second Appellate District, Case No. B327524
Superior Court, County of Los Angeles
No. 20PSCV00827, Hon. Thomas Falls

**APPLICATION TO FILE BRIEF OF AMICI CURIAE
UC BERKELEY CENTER FOR CONSUMER LAW AND
ECONOMIC JUSTICE, CALIFORNIA EMPLOYMENT LAWYERS
ASSOCIATION, AND PUBLIC JUSTICE,
IN SUPPORT OF PETITIONER**

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APPLICATION TO FILE BRIEF AS AMICI CURIAE

Pursuant to California Rules of Court, rule 8.520(f), the organizations described below respectfully request permission to file the attached brief as *amici curiae* in support of Plaintiff-Petitioner Dana Hohenshelt.

This application is timely made within 30 days of the filing of the reply brief on the merits. No party or counsel for any party in the pending appeal authored the proposed amicus brief in whole or in part, or made a monetary contribution intended to fund the preparation or submission of the brief, and no person or entity made a monetary contribution intended to fund the preparation or submission of the brief other than the amici curiae, their members, or their counsel in the pending appeal.

I. INTERESTS OF AMICI CURIAE

Amici curiae are nonprofit organizations that represent and advocate on behalf of low-income California consumers and workers. Each year many thousands of disputes are channeled from the California court system into private arbitral fora, where the due process, appellate oversight, and public scrutiny characteristic of the judicial system are exchanged for the efficiency, speed and confidentiality promised by the arbitral process. Given the cost of the exchange, the benefit of the arbitration bargain is lost if the arbitral process is made inefficient, slow, or ultimately fruitless by the nonpayment of fees. That is what happens when the business defendants

that insisted on arbitration in the first place then fail to pay fees they are contractually obligated to pay.

Recognizing these dangers—and faced with evidence of their prevalence—the California Legislature enacted two laws, SB 707 in 2019 and SB 762 in 2021, that together require payment of arbitral fees within a set reasonable time and impose consequences for the failure to do so.

The Defendant in this case, Golden State Foods Corp. (“Golden State”), challenges these requirements as preempted by the Federal Arbitration Act (“FAA”). If the laws are struck down, California consumers and workers—the tens of millions of individuals on whose behalf *amici curiae* work—will lose an essential guardrail against abuse of the arbitration process.

The UC Berkeley **Center for Consumer Law & Economic Justice** is a research and advocacy center housed at UC Berkeley School of Law. Through frequent participation as *amicus* in this Court, as well as in the U.S. Supreme Court and in other significant cases around the state and throughout the nation, the Center seeks to develop and enhance protections for consumers and to foster economic justice. The prevalence and practice of arbitration have widespread repercussions for consumers, and state-level efforts to provide guardrails have proven essential to maintaining fairness and efficiency in the arbitration process. The Center appears in this proceeding to underscore the seriousness of the problem that SB 707 and

SB 762 were enacted to address, and to offer the Court a framework for analyzing FAA preemption claims that preserves the core requirements of both arbitration and procedural justice.

The **California Employment Lawyers Association (“CELA”)** is an organization of California attorneys whose members primarily represent employees in a wide range of cases, including individual, class, and representative actions. CELA has a substantial interest in protecting the constitutional and statutory rights of California workers and ensuring the vindication of the public policies embodied in California employment laws. CELA has taken a leading role in advancing and protecting the rights of California workers, including by sponsoring legislation and submitting amicus briefs and letters and appearing before this Court in employment rights cases, including cases involving significant arbitration issues: *Quach v. California Commerce Club, Inc.* (2024) 16 Cal.5th 562; *Iskanian v. CLS Transportation Los Angeles, LLC* (2014), 59 Cal.4th 348; *Pearson Dental Supplies, Inc. v. Superior Court* (2010) 48 Cal.4th 665; *Gentry v. Superior Court* (2007) 42 Cal.4th 443; and *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83. CELA was a primary sponsor of Senate Bill 707 (2019) and Senate Bill 762 (2022).

Public Justice is a nonprofit legal advocacy organization that specializes in precedent-setting, socially significant civil litigation, with a focus on fighting corporate and governmental misconduct. The

organization maintains an Access to Justice Project that pursues litigation and advocacy efforts to remove procedural obstacles that unduly restrict the ability of consumers, workers, and other people whose rights have been violated to seek redress for their injuries in the civil court system. As part of that project, Public Justice has litigated numerous cases raising important arbitration questions, including as counsel of record in *Morgan v. Sundance, Inc.* (2022) 596 U.S. 411, a recent case in which the U.S. Supreme Court addressed the equal footing principle. Public Justice also frequently appears as an *amicus* in cases concerning arbitration in this and other state supreme courts across the country. (See, e.g., *Fuentes v. Empire Nissan, Inc.* (Cal. 2023) 553 P.3d 194 [granting review]; *Chilutti v. Uber Technologies Inc.* (Pa. 2023) No. 257 EAL 2023 [review granted].) Public Justice has a continued interest in ensuring the proper interpretation of the equal footing principle and of the preemptive reach of the FAA.

II. NEED FOR FURTHER BRIEFING

The proposed *amici curiae*, organizations with extensive experience researching and advocating on arbitration issues, believe that further briefing can assist the Court by providing a more comprehensive treatment than the parties' briefs of the context in which the challenged provisions of the Code of Civil Procedure were enacted, along with a framework for assessing whether those provisions further both the efficiency purposes of

the Federal Arbitration Act and treat the arbitration agreement at the heart of this case on the same footing as other contracts.

The proposed brief thoroughly examines, as the parties' briefs do not, the spread and impact of the business practice of compelling consumers and workers into arbitration then later refusing to pay arbitral fees. The proposed also provides a detailed framework, absent from the parties' briefs, for assessing state laws' adherence to the efficiency principle at the core of the arbitral process and the equal footing principle that requires arbitration agreements to be treated according to the same standards that govern all types of contracts in the state. Regarding the latter issue, the proposed brief refutes the argument made by Golden State that the challenged provisions single out arbitration agreements for disfavored treatment, establishing instead that the provisions merely codify generally applicable California contract law principles and therefore are not preempted by the FAA. By extensively exploring topics that were raised only briefly or indirectly in the parties' briefs, but that may be of significant value to the Court, the proposed brief provides a broader picture of the context in which this case arose and of the consequences to 40 million Californians of its potential outcome.

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III. CONCLUSION

For the foregoing reasons, the proposed *amici curiae* respectfully request that the Court accept the accompanying brief for filing in this case.

Dated: February 10, 2025

Respectfully submitted,

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