No. 23-2842

In the United States Court of Appeals for the Seventh Circuit

PAUL WALLRICH, DANIELLE JONES, GRANT GRINNELL, JEFFREY BURTON, AND RHONDA MCCALLUM,

Petitioners-Appellees,

v.

SAMSUNG ELECTRONICS AMERICA, INCORPORATED AND SAMSUNG ELECTRONICS,

Respondents-Appellants.

On Appeal from the United States District Court
for the Northern District of Illinois
Case No. 1:22-cv-05506 (The Hon. Harry D. Leinenweber)

BRIEF FOR AMICUS CURIAE PROFESSOR ALEXI PFEFFER-GILLETT IN SUPPORT OF PETITIONERS-APPELLEES

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December 19, 2023

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Appellate Court No: 23-2842

Short Caption: Wallrich v. Samsung Electronics Am. Inc.

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Alexi Pfeffer-Gillett

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

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Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). Yes ☒ No ☐

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INTEREST OF AMICUS CURIAE[1]

Amicus Alexi Pfeffer-Gillett is a law professor at Washington and Lee University School of Law, where his scholarship and teaching focus on civil procedure and consumer protection. He has written about binding consumer and employment arbitration and, in particular, arbitration's rules for payment of required fees—scholarship that was cited by the district court in this case. *See* Alexi Pfeffer-Gillett, *Unfair by Default: Arbitration's Reverse Default Judgment Problem*, 171 U. Pa. L. Rev. 459 (2023). *Amicus* has no personal interest in the outcome of this case. *Amicus* has expertise in this field and an interest in ensuring that arbitration comports with the goals of the Federal Arbitration Act and the public interest by providing an efficient, inexpensive, and fair forum for current and future parties.

SUMMARY OF ARGUMENT

Binding arbitration agreements are supposed to allow parties to agree, at the time of contract formation, to avoid the "procedural rigor" of civil litigation and to instead have any subsequent disputes resolved by

[1] Counsel to the parties have consented to the filing of this amicus brief, satisfying Federal Rule of Appellate Procedure 29(a)(2).

a private arbitrator. *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 348 (2011). The Supreme Court has interpreted the Federal Arbitration Act (FAA) and its provisions consistently with this goal. Yet while privatized dispute resolution has advantages, it also comes with certain tradeoffs and risks. One key tradeoff is that private arbitration is not funded by the general public but rather by the parties to a dispute. In consumer arbitration cases, the reliance on parties for funding poses the risk that companies will fail to pay their share of the fees required to initiate arbitration and that, as a result, individual consumers may be unable to vindicate their contractual right to an arbitration and have their claims heard.

Arbitration providers like the American Arbitration Association ("AAA") have sought to mitigate the financial risk for consumer-claimants by supposedly capping consumers' required filing fees and imposing larger up-front fees on companies defending against the claims. *See infra* Part I. This makes sense: not only are companies likely better able to pay larger fees than individual consumers, but they are also generally the drafters of the take-it-or-leave-it consumer arbitration clauses at issue. If a company ever wanted to avoid arbitration and its

attendant fees, the company could do so by not inserting arbitration clauses into its contracts. Or if the company did not like a specific fee regime, it could also specify a different arbitration provider when drafting the contract.

But a problem arises if a company that has inserted an arbitration clause into its consumer contracts subsequently refuses to pay its share of the fees. Under existing arbitration rules, and in practice, providers like the AAA can and do terminate arbitration proceedings for non-payment unless the consumer—whose filing fees were supposedly capped—decides to pay the company's fees on top of his or her own fees. *See, e.g.*, *Mason v. Coastal Credit, LLC*, No. 18-cv-835, 2018 WL 6620684, at *1–4 (M.D. Fla. Nov. 16, 2018). The effect of this rule is that a consumer unable or unwilling to pay the company's fees is forced to abandon their arbitration claims. Under AAA rules, it is the diligent consumer, not the delinquent company, whose claim is dismissed.

To analogize to civil litigation in court, a company refusing to pay its required fees has essentially defaulted by failing to respond to the consumer's claims. In federal court, a party's failure to plead or otherwise defend itself would lead to entry of default *against* that party. *See* Fed.

R. Civ. P. 55(a) ("When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default."). In arbitration, by contrast, a company's failure to make its required first response—payment of its share of filing fees—operates *in favor* of the company and against the consumer. In my scholarship, I have termed this outcome arbitration's "Reverse Default Judgment Rule" because, absent court enforcement of required arbitration fees, arbitration rewards rather than punishes a party's failure to respond to claims against it. *See generally* Alexi Pfeffer-Gillett, *Unfair by Default: Arbitration's Reverse Default Judgment Problem*, 171 U. Pa. L. Rev. 459 (2023). The result would be a system where binding arbitration is effectively non-binding on companies whose consumers or employees can't cover the company's higher share of the fees.

This seeming absurdity of the Reverse Default Judgment Rule thus reflects the nature of private dispute resolution that: (1) requires fees from the parties to function; and (2) lacks the power of a court to compel payment. The FAA, however, addresses this gap. The statute provides recourse to federal courts—which are publicly funded and can compel

action—when one party has "fail[ed]" or "refus[ed]" to arbitrate. 9 U.S.C. § 4. In such cases, the court will order the party that is "in default" back into arbitration. *Id.*

Yet this system breaks down if courts lack the power to compel defaulting parties to pay the fees that are required of them and necessary for arbitration to occur. Not only does allowing companies to avoid paying the fees required by their arbitration clauses pose substantial fairness concerns, but it also significantly slows down and adds procedural hurdles to a process that is prized for its speed and procedural informality. When a company refuses to participate in arbitration by failing to pay its contractually required share of the fees, it means the consumer or consumers must do the very thing arbitration is designed to avoid: go to court. This process is highly inefficient, as consumers must first file arbitration claims pursuant to their contractual agreements, pay the fees for those claims, wait for weeks or months for the company to pay its fees and then, if the company fails to comply, go to court and seek an order compelling arbitration—with the possibility that they will have to repeat the process again if the company fails to pay other fees or otherwise obstructs the arbitration process.

This issue did not receive widespread attention until consumers harmed by similar conduct by the same company, but bound by arbitration agreements, began bringing their claims in large numbers, a practice sometimes referred to as "mass arbitration." *See, e.g.*, Maria Glover, *Mass Arbitration*, 74 Stan. L. Rev. 1283 (2022); Andrew B. Nissensohn, *Mass Arbitration 2.0*, 79 Wash. & Lee L. Rev. 1225 (2022). Companies faced with these claims did not pay their required arbitration fees, resulting in dismissal of the claims by arbitration providers. *See Postmates Inc. v. 10,356 Individuals*, No. 20-cv-2783, 2021 WL 540155, at *3–4 (C.D. Cal. Jan. 19, 2021) (detailing Postmates's failure to pay initial arbitration fees in response to thousands of arbitration demands against it, despite receiving an extension of time from the AAA, and the AAA's administrative closure of the arbitrations); Janice L. Sperow, *Arbitrating Gig Economy Mass Claims*, 76 Disp. Resol. J. 1, 34 (2023) (documenting companies' "strategy" of refusing to pay fees when confronted with mass arbitration claims). Numerous courts, including the district court in this case, have declined to allow companies to evade arbitration through non-payment of fees and compelled the companies to participate in the arbitration process their own contracts required. *See,*

e.g., *Postmates*, 2021 WL 540155, at *12–13 (compelling arbitration); *Abernathy v. DoorDash, Inc.*, 438 F. Supp. 3d 1062, 1065–66 (N.D. Cal. 2020) (same).

That was the correct approach. If this Court reaches the merits, it should interpret the FAA, consistent with its text, structure and purpose, to prevent a company from unilaterally opting out of an otherwise binding arbitration clause that the company itself drafted.

ARGUMENT

I. FEE PAYMENTS ARE MANDATORY FOR RESPONDENTS IN CONSUMER ARBITRATION.

Parties subject to a binding arbitration agreement must pay their share of the fees necessary for the arbitration to commence. But arbitration organizations, as private providers of dispute resolution services, necessarily lack the tools to give force to those fee-payment requirements. This creates a potential loophole, where companies could have the unilateral option to opt-out of their arbitration agreements by refusing to pay the fees required by the forum.

Comparing arbitration to a public dispute resolution forum, civil litigation in federal court, shows why this loophole exists and why section 4 of the FAA provides the tools needed to close it. A defendant sued in

court must respond in substance to the claims against it, but the defendant is not required to fund the dispute resolution process, for the simple reason that taxpayers—not litigants—fund judicial salaries and the court system. *See* James E. Pfander, *Judicial Compensation and the Definition of Judicial Power in the Early Republic*, 107 Mich. L. Rev. 1, 19 (2008) (describing "[Founding-era] statutes reflect[ing] a decision by Congress to specify fixed . . . salaries for federal judges and to deny the judges any kind of fee-based compensation for their services"). If a defendant in court fails to make its required initial response, courts are empowered to enter default judgment in the plaintiff's favor. *See* Fed. R. Civ. P. 55(a) ("When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default."); Fed. R. Civ. P. 55(b)(1) ("If the plaintiff's claim is for a sum certain or a sum that can be made certain by computation, the clerk—on the plaintiff's request, with an affidavit showing the amount due—must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing.").

Arbitration, as a privatized alternative to the courts, is by definition not funded by the general public. Am. Arb. Ass'n, Consumer Arbitration Rules ("Consumer Rules"), R-4, 5-SA1177 ("AAA Administrative Fees. As a not-for-profit organization, the AAA charges fees to compensate it for the cost of providing administrative services."). In lieu of taxpayer funding, arbitration providers like the AAA require parties in consumer disputes to pay the costs of arbitrating. But because arbitration providers are private actors that do not have the coercive power of the government, providers like the AAA cannot force an unwilling party—whether claimant or respondent—to pay its required upfront fees.

Instead, the AAA's fee-collection process operates as a burden-shifting framework. First, the AAA requires payment from a consumer-claimant at the time the case is filed. Consumer Rules, Costs of Arbitration (i), 5-SA1199. This payment is, according to the AAA, capped at a specified amount per consumer case. *Id.* Once the consumer pays his or her capped filing fee, the burden shifts to the company-respondent to pay its share of the fees. *Id.*, 5-SA1198. If the company pays its required up-front fees, the arbitration begins. *See Id.*, 5-SA1198–99 (detailing pre-arbitration payments); Am. Arb. Ass'n, Supplementary Rules for

Multiple Case Filings, MC-10(a), 5-SA1263 ("Administrative fees . . . will be billed and must be paid prior to the AAA completing the applicable administrative procedures.").

But because the AAA as a private entity cannot force an unwilling company to pay its share of the fees, a company-respondent's failure to pay its required fees effectively shifts the burden back to the consumer to front those fees on behalf of the company (even though payment of the fees remains the company's, not the consumer's, responsibility). The AAA Consumer Rules provide that unless "one of" the parties ultimately pays the outstanding fees owed by the company, the AAA may suspend and terminate the proceedings. R-54, 5-SA1196.

II. FAILURE TO PAY FEES IS AKIN TO DEFAULT AND SHOULD NOT BENEFIT THE DEFAULTING PARTY.

Since its founding, the AAA has sought for its rules and procedures to "approximat[e] [the] integrity [of] a judicial proceeding."[2] But the limitations of private dispute resolution discussed above make it necessary for courts to assist in ensuring that the AAA does in fact

[2] Am. Arb. Ass'n, Code Of Arbitration: Practice And Procedure Of The American Arbitration Tribunal 185 (1931), *available at* https://babel.hathitrust.org/cgi/pt?id=mdp.35128000164556&seq=197.

approximate the integrity of the courts. Default judgment is one such area where the AAA alone cannot achieve fairness and integrity, because only courts, not the AAA, can compel unwilling parties to participate in arbitration.

Default judgment has long been recognized as a vital procedural safeguard for ensuring the fair and speedy resolution of claims. *See* Pfeffer-Gillett, *supra*, at 471–72. Default judgment today is codified in American civil law. The Federal Rules of Civil Procedure provide that "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." Fed. R. Civ. P. 55(a). Once default is entered, the clerk "must enter judgment" upon a showing by the plaintiff as to any "sum certain or a sum that can be made certain by computation." Fed. R. Civ. P. 55(b)(1). A plaintiff is thus entitled to an entry of default when "'the adversary process has been halted because of an essentially unresponsive party.'" *Boland v. Elite Terrazzo Flooring, Inc.*, 763 F. Supp. 2d 64, 67 (D.D.C. 2011) (quoting *Jackson v. Beech*, 636 F.2d 831, 835 (D.C. Cir. 1980)).

This rule exists to protect plaintiffs from undue delay and prejudice from nonresponsive defendants, and to keep cases moving efficiently from the complaint stage to resolution on the merits. *See* Adam Owen Glist, Note, *Enforcing Courtesy: Default Judgments and the Civility Movement*, 69 Fordham L. Rev. 757, 765 (2000) ("The mechanism of default fosters efficiency and discourages delay by severely penalizing dilatory or procrastinating conduct. Defaults protect diligent parties. The law also favors the finality of judgments."); Gregory A. Kendall, Comment, *Defendants' Burdens Under Fed. R. Civ. P. 55: Post-Answer Defaults and Jurisdictional Waivers in* City of New York v. Mickalis Pawn Shop, 81 U. Cin. L. Rev. 1079, 1079 (2013) ("[The default judgment rule's] purposes are to keep dockets current and to prevent dilatory defendants from impeding the speedy disposition of plaintiffs' claims."); *Anilina Fabrique de Colorants v. Aakash Chems. & Dyestuffs, Inc.*, 856 F.2d 873, 882 (7th Cir. 1988) (Posner, J., dissenting) ("The threat of default is one of the district judges' most important tools for obtaining compliance with litigation schedules.").

Courts may, however, "set aside an entry of default for good cause, and . . . may set aside a final default judgment under Rule 60(b)," Fed. R.

Civ. P. 55(c), which allows relief for defendants in specific circumstances or for "any other reason that justifies relief," Fed. R. Civ. P. 60(b). Importantly, courts will consider a defendant's willfulness and prejudice to the non-defaulting party in failing to respond when assessing whether good cause exists to set aside a default judgment. *See, e.g.*, *Hal Commodity Cycles Mgmt. Co. v. Kirsh*, 825 F.2d 1136, 1137–39 (7th Cir. 1987) (affirming denial of motion to vacate default judgment). Thus, where failure to respond appears to be one of the party's "litigation tactics," courts are likely to enter default judgment and deny any attempts to vacate that judgment. *Id.* (deeming "[o]f particular relevance" district court's finding that defendant did not attend pretrial conferences as part of defendant's "litigation tactics"). In sum, traditional default judgment rules strike a balance between deterring gamesmanship by defendants while allowing courts leeway to ensure that the technical rules do not result in unjust awards.

A company-respondent's failure to pay its fees in arbitration is akin to default in court. In consumer arbitration, a company-respondent's first required response is not a substantive reply to the claim against it, as in court, but rather the payment of case initiation fees. Failure to pay these

fees means that the process is held up pending the consumer picking up the costs, and, if the consumer does not pay the extra fees, then the arbitration is terminated altogether. A company's failure to pay its required fees in arbitration, like a failure to plead or otherwise defend in court, therefore means that "the adversary process has been halted because of an essentially unresponsive party." *Boland*, 763 F. Supp. 2d at 67.

Unlike in civil court, however, where such halting of the adversarial process rightly leads to entry of default against the responsible party, a company-respondent that fails to make its required first response in arbitration is actually rewarded, at least temporarily: the company's financial burden shifts back to the consumer-claimant, and the arbitration provider will dismiss the claim if the consumer is unable or unwilling to pay the company's fees. The AAA will not enter default judgment in favor of the consumer (the equivalent of what would happen in court) based on non-responsiveness. In fact, the AAA's Consumer Arbitration Rules explicitly state that arbitrators are prohibited from entering an award solely based on the default of a party. Consumer Rules, R-39, 5-SA1190 ("An award cannot be made only because of the

default of a party."); *id.* at R-54, 5-SA1196 ("[A] party shall never be precluded from defending a claim or counterclaim" because of "nonpayment"). Courts, like the arbitration providers, have also refused to enter default judgment awards based on a party's previous default in arbitration proceedings. *See, e.g.*, *Hernandez v. Acosta Tractors Inc.*, 898 F.3d 1301, 1305 (11th Cir. 2018).

The ability to escape arbitration clauses by simply refusing to participate is not a two-way street. If a consumer refuses or declines to pay, then the consumer loses: the AAA will decline to hear their case, which bars the consumer from proceeding in arbitration. Consumer Rules, R-2, 5-SA1175–77. And despite dismissal of the consumer's case from AAA arbitration, the consumer is still bound by the arbitration clause and cannot pursue any claims in court. The consumer simply will be unable to vindicate her claims at all.

The AAA terminating proceedings for nonpayment by a company-respondent, then, should not be viewed as granting companies permission to unilaterally opt out of arbitration clauses whenever they would prefer to go to court. To the contrary, the AAA's express terms require payment up-front of fees in consumer disputes. *Id.* And

"[a]dministrative fees … are due on or before the deadline established by the AAA." Supplementary Rules for Multiple Case Filings, MC-10(a), 5-SA1263. A company's failure to pay its share of the fees is, in fact, the definition of a "default." Black's Law Dictionary (11th ed. 2019) ("[T]he failure to pay a debt when due."); *see also* Black's Law Dictionary (3d ed. 1933) (defining "default" as the "omission or failure to fulfill a duty, observe a promise, discharge an obligation, or perform an agreement"). Nor is a company's refusal to pay permissible just because a consumer could cover the company's share of the fees. As the district court explained, just "because the AAA rules anticipated nonpayment" does not mean that a non-paying company's "actions were acceptable," RSA28—any more so than Rule 55's anticipation of a default makes refusing to comply with court procedures acceptable.

Rather, the situation reflects the AAA's limited power as a private non-profit to compel the parties before it, be it payment of up-front fees or compliance with post-arbitration awards. *See* Joseph Colagiovanni & Thomas W. Hartmann, *Enforcing Arbitration Awards*, 50 Disp. Resol. J. 14, 17 (1995) ("[W]inning an arbitration award may not immediately end the dispute, particularly where the unsuccessful party refuses to

voluntarily comply with the award or seeks to vacate, modify, or correct the award."). The AAA's limited power, though, should not allow delinquent parties to escape legal responsibility. To the contrary, this is precisely the kind of "default" that section 4 was designed to address. 9 U.S.C. § 4. Where arbitration providers' powers are limited, courts, in accordance with the FAA, should enforce arbitration agreements according to their terms.

III. COMPELLING ARBITRATION AND THE PAYMENT OF REQUIRED ARBITRATION FEES EFFECTUATES THE TEXT, STRUCTURE, AND GOALS OF THE FEDERAL ARBITRATION ACT.

Section 4 of the FAA requires that courts "shall" compel arbitration in the face of a failure or refusal to arbitrate under a valid arbitration agreement. 9 U.S.C. § 4. Thus, in cases where a party is refusing to arbitrate by failing to pay their share of the filing fees necessary for arbitration to commence, courts may also order the payment of fees. *See Espinoza v. Galardi S. Enters.*, 2017 WL 9511098, at *1–3 (S.D. Fla. Oct. 17, 2017). This follows directly from the text, structure, and purpose of the FAA. Allowing companies to unilaterally thwart arbitration through refusals to pay would subvert not only the FAA's requirement that

arbitration contracts be enforced according to their terms, but also the statute's goals of efficient, speedy, and fair dispute resolution.

Section 2 of the Federal Arbitration Act provides that a written agreement to arbitrate in "a contract evidencing a transaction involving commerce . . . 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. This reflects a "liberal federal policy favoring arbitration." *Concepcion*, 563 U.S. at 339. The reason for this policy, the Supreme Court has explained, is arbitration's efficiency and informality. *Id.* at 348 (disfavoring class arbitration, relative to bilateral arbitration, because it "sacrifices the principal advantage of arbitration—its informality—and makes the process slower, more costly, and more likely to generate procedural morass than final judgment"); *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 685 (2010) ("In bilateral arbitration, parties forgo the procedural rigor and appellate review of the courts in order to realize the benefits of private dispute resolution: lower costs, greater efficiency and speed, and the ability to choose expert adjudicators to resolve specialized disputes."). Even with increased speed and informality, however, arbitration must be fair to *all* parties and

produce legitimate outcomes. *Concepcion*, 563 U.S. at 348–51 (describing "amount of process" required for binding parties to an arbitration award and noting that arbitration agreements must be "consensual"); *see also Green Tree Fin. Corp.-Alabama v. Randolph*, 531 U.S. 79, 90 (2000) (noting that "large arbitration costs could preclude a litigant . . . from effectively vindicating her federal statutory rights in the arbitral forum"). These bases for upholding and enforcing arbitration agreements—speed, informality, and fairness—support court enforcement of contractually required arbitration fees.

As for speed, to allow company-respondents to escape arbitration by simply refusing to pay fees would significantly slow down the dispute-resolution process. Unlike judges administering the traditional default judgment rule, arbitration providers left to their own devices and unable to compel payment of fees have no way to ensure compliance with schedules. As a result, defendant-companies are incentivized to ignore and wait out their required deadlines for response rather than quickly paying fees and initiating the arbitration process.

Compelling payment of arbitration fees also supports arbitration's procedural informality. When a company-respondent can opt-out of

arbitration by refusing to pay its required fees, the parties not only must submit to the "procedural rigor" of court, precisely the situation arbitration clauses are designed to "forgo," *Concepcion*, 563 U.S. at 348, but must do so *after* overcoming the procedural hurdles of filing and pursuing an arbitration claim. This wrangling over an initial procedural step creates both additional rules with which the parties must comply and forces the parties to litigate in two forums, court and arbitration, instead of just one—all before even confronting the merits of the consumer's claim. Arbitration is supposed to be more efficient than going to court, but this pre-merits process concerning fees is significantly *less* efficient than simply going to court in the first place. Rather than going to court and staying there, the parties to a consumer dispute must bounce back and forth between two forums with two sets of potentially conflicting rules to follow and potentially duplicative briefing and arguments. *See, e.g.*, *Mason*, 2018 WL 6620684, at *1–4 (detailing one consumer's year-long struggle, going from court to arbitration and then back to court, just to resolve a threshold arbitration fee-payment issue).

Lastly, procedural fairness and the nature of contracts as mutually binding favor compelling arbitration fee payments. As discussed above,

the nature of privatized arbitration means that consumers bound by arbitration clauses have no choice but to pay their required fees. Failure to pay those capped fees would mean abandoning their claims altogether. To allow companies to subsequently shirk their own responsibility to pay fees would be to give them an unfair advantage of being able to pick and choose when to arbitrate and when to go to court, precisely what binding arbitration clauses and the FAA forbid. Indeed, because arbitration is a creature of contract and consent, a mutually binding arbitration agreement should not be allowed to bind only in one direction. The unfairness of such non-mutuality is compounded when companies themselves drafted the binding arbitration clauses, and it is further compounded when companies' failure to pay would shift an undue and significant financial burden onto a consumer who is unable to cover the outstanding balance. *See Green Tree*, 531 U.S. at 90.

Arbitration, and companies' willingness to participate in arbitration, have undergone a sea change with the advent of coordinated "mass arbitration" claims, like the ones at issue in this case. What has not changed, however, is the text of the FAA or the fundamental goal of ensuring that arbitration provides claimants and respondents alike a

speedy, efficient, and fair forum to resolve their disputes. Allowing companies an escape hatch from arbitration any time the forum proves too costly or otherwise inconvenient for their liking would create a double-standard in which only individual claimants are truly bound by arbitration clauses and would undermine the FAA's entire purpose.

CONCLUSION

If the Court reaches the question of arbitration fees, it should affirm the district court's order compelling arbitration and the payment of fees.

Dated: December 19, 2023

Respectfully submitted,

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[3] Mr. Woofter's admission to this Court has been approved as of today, with an effective date of December 22, 2023.

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with Circuit Rule 29 because it contains 4,304 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f). This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point New Century Schoolbook LT Std.

Dated: December 19, 2023

/s/ Daniel Woofter
Daniel Woofter

CERTIFICATE OF SERVICE

I hereby certify that on December 19, 2023, I caused this document to be electronically filed with the Clerk of Court by using the electronic filing system, which will send a notice of electronic filing to all parties who have registered with the electronic filing system.

Dated: December 19, 2023

/s/ Daniel Woofter
Daniel Woofter