No. S279969

IN THE
SUPREME COURT OF CALIFORNIA

MARTHA OCHOA, et al.,
Plaintiffs-Respondents,
v.
FORD MOTOR COMPANY,
Defendant-Petitioner.

FORD MOTOR WARRANTY CASES

Court of Appeal, Second Appellate District,
Case No. B312261
Superior Court, County of Los Angeles
JCCP No. 4866, Hon. Amy Hogue

APPLICATION TO FILE BRIEF OF AMICI CURIAE UC BERKELEY CENTER FOR CONSUMER LAW AND ECONOMIC JUSTICE, CONSUMER FEDERATION OF CALIFORNIA, CONSUMERS FOR AUTO RELIABILITY & SAFETY, HOUSING & ECONOMIC RIGHTS ADVOCATES, IMPACT FUND, KATHARINE & GEORGE ALEXANDER COMMUNITY LAW CENTER, NATIONAL ASSOCIATION OF CONSUMER ADVOCATES, NATIONAL CONSUMER LAW CENTER, PUBLIC COUNSEL, PUBLIC JUSTICE, TOWARDS JUSTICE, AND UC BERKELEY CENTER FOR LAW & WORK IN SUPPORT OF PLAINTIFFS-RESPONDENTS

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APPLICATION TO FILE BRIEF OF 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 Plaintiffs-Respondents.

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. INTEREST OF AMICI CURIAE

Amici curiae are nonprofit organizations that represent and advocate for economic justice on behalf of consumers, workers, and vulnerable populations in California. The communities that amici represent regularly face hurdles—often insurmountable ones—to access the court system to enforce their rights under important California and federal laws because of mandatory arbitration provisions in terms of service, employment agreement, and other take-it-or-leave-it contracts. Now, third-party corporate defendants are attempting to force consumers, workers, and vulnerable people into arbitration by invoking arbitration clauses contained in contracts that they did not even sign. These nonsignatory third parties

deploy a bizarre, arbitration-specific variant of equitable estoppel that looks nothing like the doctrine that has roots in ancient English common law. Not only is the arbitration-specific form wholly divorced from the traditional form that is well-accepted by this Court—and centuries of caselaw—it also conflicts with United States Supreme Court precedent interpreting the Federal Arbitration Act that forbids courts from adopting arbitration-specific rules (*Morgan v. Sundance Inc.* (2022) 596 U.S. 411) and using non-state law principles to permit arbitration by nonsignatories (*Arthur Anderson LLP v. Carlisle* (2009) 556 U.S. 624.) Amici curiae have an interest in curbing the wayward, ahistorical form of equitable estoppel in California and ensuring access to justice for the clients and communities they represent.

The **Center for Consumer Law and Economic Justice** is a research and advocacy center housed at the UC Berkeley School of Law. Through participation as amicus in this Court, in the U.S. Supreme Court, and in other major cases around the state and throughout the nation, the Center seeks to develop and enhance protections for consumers and to foster economic justice. The Center appears in this proceeding to provide an historical view of the doctrine of equitable estoppel and to emphasize the primacy of California contract law in resolving the questions at issue in this case.

Amicus curiae **Consumer Federation of California** (CFC) is a

nonprofit consumer advocacy organization based in California. Since 1960, CFC has been a powerful voice for consumer rights. CFC campaigns for state and federal laws that place consumer protection ahead of corporate profit. Each year, CFC testifies before the California legislature on dozens of bills that affect millions of the state's consumers. CFC also appears before state and federal agencies in support of consumer regulations. For decades, CFC has worked to defend consumers' access to justice in open, public courts of law, and is deeply concerned about the erosion of consumer rights in arbitration proceedings and the detrimental impact this has on access.

Consumers for Auto Reliability and Safety (CARS) is a national non-profit auto safety and consumer advocacy organization based in Sacramento and dedicated to preventing motor vehicle-related fatalities, injuries, and economic losses through legislative and regulatory advocacy, public education, outreach, aid to victims, and related activities. The President of CARS has been repeatedly invited to testify before the United States Congress and the California Legislature and served on an Advisory Committee to the Federal Trade Commission regarding auto warranties and state lemon laws, on behalf of the public interest. CARS has been the official sponsor of multiple laws enacted in California to expand and improve protections under the Song-Beverly Act for consumers – including individual entrepreneurs, small business owners, and members of the U.S.

Armed Forces – from seriously defective, unsafe, and unreliable vehicles. CARS thus has an interest in preserving all legal remedies and judicial avenues available to consumers under Song-Beverly, and to stop manufacturers' use of equitable estoppel to force Song-Beverly plaintiffs into arbitration.

Housing and Economic Rights Advocates (HERA) is an Oakland-based legal services and advocacy non-profit dedicated to helping vulnerable Californians build a safe, sound financial future. HERA represents consumers directly in consumer protection litigation over a wide range of fields, including unfair debt collection, home foreclosure, tenant, and student loan cases. HERA routinely encounters forced arbitration provisions in consumer contracts and believes that additional appellate guidance from this Court on the standard for applying equitable estoppel to arbitration provisions would benefit the bench and bar for the reasons stated in the accompanying brief.

The **Impact Fund** is a non-profit legal foundation that provides strategic leadership and support for impact litigation to achieve economic, environmental, racial, and social justice. The Impact Fund provides funding, offers innovative training and support, and serves as counsel for impact litigation across the country. The Impact Fund has served as party or amicus counsel in major civil rights class actions, including cases enforcing protections of essential rights guaranteed under California law on behalf of

underrepresented and vulnerable communities.

The **Katharine & George Alexander Community Law Center** is the civil clinical program (KGACLC) for Santa Clara Law. For over 25 years the KGACLC has advocated on behalf of consumers on a variety of issues including auto warranty issues.

The **National Association of Consumer Advocates** (NACA) is a non-profit corporation whose members are private and public sector attorneys, legal services attorneys, and law professors and students whose primary practice or area of study involves the protection and representation of consumers. NACA's mission is to promote justice for all consumers by maintaining a forum for information sharing among consumer advocates across the country and to serve as a voice for its members and consumers in the ongoing struggle to curb unfair and oppressive business practices.

Since 1969, the nonprofit **National Consumer Law Center®** (NCLC®) has worked for consumer justice and economic security for low-income and other disadvantaged people in the U.S. through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training. NCLC publishes a 21-volume Consumer Credit and Sales Legal Practice Series, including *Consumer Arbitration Agreements* (8th ed. 2020) and *Consumer Class Actions* (11th ed. 2024) and has been actively involved in the debate concerning mandatory pre-dispute arbitration clauses, class action waivers and access to justice for consumers.

NCLC frequently appears as amicus curiae in consumer law cases before trial and appellate courts throughout the country.

Public Counsel is a nonprofit public interest law firm dedicated to advancing civil rights and racial and economic justice, as well as to amplifying the power of our clients through comprehensive legal advocacy. Founded on and strengthened by a pro bono legal service model, our staff and volunteers seek justice through direct legal services, promote healthy and resilient communities through education and outreach, and support community-led efforts to transform unjust systems through litigation and policy advocacy in and beyond Los Angeles. Public Counsel's Consumer Rights & Economic Justice (CREJ) Project is one of the oldest projects within Public Counsel. Our mission is to advance racial and economic justice by providing legal counsel for, and advocacy on behalf of, low-income individuals and their families to advance their rights, address the inequalities in bargaining power embedded in our legal system, and oppose those who take advantage of our client communities. We regularly assist clients who, like the plaintiffs in this case, have claims against car dealerships and associated auto financing companies and who are subject to arbitration clauses in contracts of adhesion.

Public Justice is a national public interest advocacy organization that fights against abusive corporate power and predatory practices, the assault on civil rights and liberties, and the destruction of the earth's

sustainability. Public Justice specializes in precedent-setting, socially significant civil litigation, one focus of which is fighting to preserve access to justice within the civil court system for victims of corporate and governmental misconduct. To that end, Public Justice has a strong interest in the development of the law surrounding arbitration and the unlawful use of pre-dispute mandatory arbitration clauses that deny workers and consumers their day in court. Public Justice has litigated numerous cases concerning the enforcement of arbitration agreements, including *Morgan v. Sundance, Inc.* (2022) 596 U.S. 411, and frequently appears as an amicus in cases concerning arbitration in this and other courts.

Towards Justice is a non-profit law firm that seeks to advance economic justice through impact litigation, strategic policy advocacy, and collaboration with workers, community groups, and governmental agencies. TJ represents and advocates for low-wage and exploited workers and consumers in our home state of Colorado and nationwide. TJ engages in legislative and policy advocacy at the state level, including but not limited to protecting access to the civil court system. As counsel to the workers in *Santich v. VCG Holding Corp.* (Colo. 2019) 443 P.3d 62 (ruling that a nonsignatory seeking to compel arbitration through equitable estoppel must demonstrate detrimental reliance), TJ has an interest in ensuring that the traditional principles of equitable estoppel are applied in every context, including arbitration.

The **UC Berkeley Center for Law and Work** (CLAW) is a research center at the UC Berkeley School of Law that fosters cross-disciplinary scholarship, student engagement, and community involvement to address pressing and emerging labor and employment issues faced by workers, with an emphasis on protecting the rights of workers in low-wage industries. Mandatory arbitration has caused a notable decrease in workers' access to justice, and has been increasingly used to impede the ability of low-wage workers to seek redress when basic labor standards have been violated. The Center therefore has a significant interest in the important issues raised herein.

II. NEED FOR FURTHER BRIEFING

The proposed amici curiae believe that further briefing will assist the Court by describing the history of equitable estoppel and underscoring why the arbitration-specific aberration proffered by Ford Motor Company contorts the well-accepted standard beyond recognition. Since medieval England and throughout California's history, equitable estoppel has served as a defense to parties who relied to their detriment on misrepresentations or fraudulent conduct by an opposing party. Detrimental reliance is thus the core element of the doctrine in California contract law. Furthermore, as the U.S. Supreme Court recently clarified, the Federal Arbitration Act accords no special treatment to arbitration, including via court-created rules. Instead, efforts to compel arbitration—including by non-signatories—must

hew to California state law standards. As the brief emphasizes, Ford's equitable estoppel argument fails to satisfy this standard because it erases the foundational detrimental reliance element.

The brief also details the line of cases in the courts of appeal that have allowed the divergent, arbitration-specific form of the doctrine to emerge and explains why U.S. Supreme Court law has undermined their already shaky ground. Left untouched, the mutant form of arbitration-specific equitable estoppel will continue to harm workers and consumers who find themselves compelled to arbitrate claims against defendants with whom they never agreed to arbitrate their disputes in the first place.

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: May 6, 2024

Respectfully submitted,

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INTERESTS OF AMICI CURIAE

Amici curiae are nonprofit organizations that represent and advocate for economic justice on behalf of consumers, workers, and vulnerable populations in California. The ubiquity of mandatory arbitration provisions in terms of service and other take-it-or-leave-it contracts already deprives Californians of the ability to turn to the courts to vindicate a wide variety of statutory and procedural rights. Now, asserting a bizarre form of equitable estoppel, third-party corporate defendants—including Ford Motor Company in this case—are attempting to avail themselves of arbitration clauses contained in contracts to which they are not even a signatory. This proposed arbitration-specific variant of equitable estoppel distends the core features and purposes of the doctrine far beyond its well-established, common-law origins, and ignores recent decisions from the United States Supreme Court. Amici curiae have an interest in curbing this wayward, ahistorical trend and protecting access to justice for the clients and communities they represent.

Statements of interest of individual amici curiae are available in the accompanying application. (Cal. Rules of Court, rule 8.520(f).)

INTRODUCTION AND SUMMARY OF ARGUMENT

No reliance, no estoppel.

That foundational rule has undergirded the doctrine of equitable estoppel since long before California became a state. Equitable estoppel is "older than the country itself." (*Glus v. Brooklyn Eastern Dist. Terminal* (1959) 359 U.S. 231, 234.) For centuries, equitable estoppel has permitted parties to contracts to avoid harm after relying on another's false or misleading representations. (See, e.g. *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 488-489 (*Mansell*) [setting forth the elements of estoppel, which have been "[l]ong established in the judicial decisions of this state"]; *Davis v. Davis* (1864) 26 Cal. 23, 38-43 [examining the doctrine's "common law origin" in English and American cases].)

Equitable estoppel has long acted "to promote the ends of justice" as a shield "only for protection" and not "as a weapon of assault." (*Dickerson v. Colgrove* (1879) 100 U.S. 578, 580-581; see also *Honeywell v. Workers' Comp. Appeals Bd.* (2005) 35 Cal.4th 24, 38 (*Honeywell*) [explaining that the doctrine is "applied defensively"].) One essential element has always been required to demonstrate that injustice would result absent estoppel: "a showing that a party's words or acts have induced detrimental reliance by the opposing party." (*Lynch v. Cal. Coastal Com.* (2017) 3 Cal.5th 470, 475-476; accord *Boggs v. Merced Mining Co.* (1859) 14 Cal. 279, 368-369 [requiring that "the actor . . . was, by the conduct of the other, induced to do

what otherwise he would not have done, and . . . that injury would ensure"].)

Yet despite this long and unwavering lineage, in recent years a mutation has emerged in one unique area: mandatory arbitration. In response to United States Supreme Court decisions expressing a "federal policy favoring arbitration agreements" (*Moses H. Cone Memorial Hospital v. Mercury Construction Corp.* (1983) 460 U.S. 1, 24) and the threat of preemption by the Federal Arbitration Act (FAA), some courts in California have adopted a rule that applies solely when third parties seek to enforce contractual arbitration provisions. That rule writes reliance out of equitable estoppel—and with it, centuries of history and decades of this Court's precedent.

Not only is this aberrant, arbitration-specific application of equitable estoppel wrong as a matter of California contract law, but it is also—as the United States Supreme Court has recently clarified—wholly inconsistent with the FAA. As the high court has repeatedly held, state law contract principles govern the enforceability of arbitration clauses, whether by the parties or by nonsignatories. (*Lamps Plus v. Varela* (2019) 587 U.S. 176, 183; *Arthur Anderson LLP v. Carlisle* (2009) 556 U.S. 624, 630-631 (*Arthur Anderson*).) And despite invoking a policy favoring arbitration, the Court has now confirmed that state laws may not treat arbitration clauses differently from other types of contracts. (*Kindred Nursing Centers Ltd.*

Partnership v. Clark (2017) 581 U.S. 246, 251 [describing the "equal-treatment principle" under the FAA]; *DIRECTV, Inc. v. Imburgia* (2015) 577 U.S. 47, 58 (*DIRECTV*).) That means that a policy or practice giving arbitration preferred status—for example, by removing the requirement of reliance from equitable estoppel only to enforce arbitration agreements—cannot stand. (See *Morgan v. Sundance, Inc.* (2022) 596 U.S. 411, 418 (*Morgan*) [holding courts may not create an arbitration-specific rule conditioning a waiver of the right to arbitrate on a showing of prejudice].)

The requirement that state law place arbitration agreements on an "equal footing with other contracts" (*DIRECTV*, *supra*, 577 U.S. at p. 58) makes the equitable estoppel analysis here clear-cut. California law governing equitable estoppel applies to this case. Equitable estoppel in California requires detrimental reliance. Ford did not detrimentally rely on any misrepresentations or inducements by the plaintiffs. Therefore, Ford may not assert equitable estoppel.

History, practice, and controlling precedent from both this Court and the high court lead to the same conclusion. That conclusion precludes Ford from invoking equitable estoppel to benefit from an arbitration agreement to which it was not a party. It also precludes Ford from invoking a special arbitration-specific theory that elides the detrimental reliance requirement to force plaintiffs into arbitrating their claims.

The judgment of the court of appeal should be affirmed.

ARGUMENT

Any assertion of the doctrine of equitable estoppel that is not premised on detrimental reliance is a departure from longstanding California contract law. An arbitration agreement is a species of contract. Under the FAA, it warrants no special treatment. (*Morgan*, *supra*, 596 U.S. at pp. 418-19 [the FAA places "a bar on using custom-made rules[] to tilt the playing field in favor of (or against) arbitration"].) This Court has recognized that "the high court has stated that state contract rules generally govern the construction of arbitration agreements." (*Cronus Investments, Inc. v. Concierge Services* (2005) 35 Cal.4th 376, 384-85 (*Cronus*) [citing U.S. Supreme Court precedent].) Since California contract law requires detrimental reliance to establish equitable estoppel, and since Ford has presented no evidence that it detrimentally relied on an inducement or representation by the plaintiff buyers, the buyers are not estopped from pursuing their claims in court. The reason lies in history.

I. EQUITABLE ESTOPPEL HAS ALWAYS REQUIRED DETRIMENTAL RELIANCE.

Detrimental reliance is, and has always been, an indispensable element of equitable estoppel. (*Steinhart v. County of Los Angeles* (2010) 47 Cal.4th 1298, 1317 (*Steinhart*); see also *Orange County Water Dist. v. Assn. of Cal. Water etc. Authority* (1997) 54 Cal.App.4th 772, 780 ["The sine qua non of estoppel is that the party claiming it relied to its detriment

on the conduct of the party to be estopped"].)[1] Any assertion of equitable estoppel that is not premised on detrimental reliance is a violation of contract law older than the state of California.

A. The Reliance Element Is Rooted In Ancient English Common Law.

Prejudicial reliance has formed the keystone of equitable estoppel since the times of feudal England.[2] Through the ancient action of assumpsit, English common law courts over half a millennium ago "enforced informal promises based on the reliance principle"—that is, where the plaintiff "alleg[ed] that the defendant promised ('super se assumpsit') and that plaintiff had relied thereon to the injury of the plaintiff."[3] Courts applied the

[1] See also Cooke, *The Modern Law of Estoppel* (2000) p. 80 ("The crucial condition for estoppel is that the representation must have been relied upon").

[2] Herman, *The Law of Estoppel* (1871) § 1, p. 7 ("There are but few older principles or rules of law that have been handed down from generation to generation, from the earliest days of Roman law to the present time, than that of Estoppel"); see 3 Corbin on Contracts (2024) § 8.11 (describing a promissory estoppel decision in 1378 in which the English Chancery Court "gave 'equitable' relief to a disappointed purchaser whose detrimental-reliance loss consisted in travelling and legal expenses arising from a sale of land which the defendant refused to complete"). In 1628, Lord Edward Coke, former Chief Justice of the King's Bench, was one of the first jurists to articulate the principles of equitable estoppel. (Cooke, *supra* note 1, at p. 6 [quoting Lord Coke, Co. Litt. 352a]; accord Herman, *supra*, § 2 at p. 2.

[3] Corbin, *supra*, § 8.11; see also Rest.2d, Contracts, § 90, com. a. (explaining that "the enforcement of informal contracts in the action of assumpsit rested historically on justifiable reliance on a promise"); Fuller & Perdue, *The Reliance Interest in Contract Damages: 1* (1936) 46 Yale L.J. 52, 68 ("in the early stages of its growth the action of assumpsit was clearly dominated by the reliance interest").

principle in cases involving prenuptial settlements, in which a "marriage had taken place on the faith of [the groom's] representation" of his assets to the bride's father, and the court, in the interests of fairness, enforced "informal agreements on the basis of reliance."[4] In one of the first cases introducing the concept of equitable estoppel to common law courts, Chief Justice Lord Mansfield ordered husband's brother to honor a fraudulent promissory note that the husband had produced as evidence of his assets in order to induce the bride to marry him. (See *Montefiori v. Montefiori* (K.B. 1762) 96 Eng.Rep. 203, 203 ["[W]here, upon proposals of marriage, third persons represent any thing material, in a light different from the truth, even if it be by collusion with the husband, they shall be bound to make good the thing in the manner in which they represented it. It shall be, as represented to be"].)[5]

The preeminent cases at common law of equitable estoppel, also known as estoppel *in pais*, establish that reliance induced by one party's actions forms the predicate for the assertion of estoppel against that party.

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[4] Cooke, *supra* note 1, at pp. 19-20; see, e.g., *Beach v. Beach* (Iowa 1913) 141 N.W. 921, 922 ("The English courts have held that a person who, by acts or speech, represents property as belonging to the proposed husband, when the possession thereof forms an inducement to the marriage, shall be bound to make good the thing in the manner represented").

[5] See also Cooke, *supra* note 1, at p. 20 (explaining *Montefiori* as "saying 'let it be as you said it is', and it does so because another has relied upon what was said").

In the leading case on the subject, Chief Justice Lord Denman declared that one party must have detrimentally relied on a prior misrepresentation by the other party:

> [T]he rule of law is clear, that, where one by his words or conduct *willfully causes another to believe the existence of a certain state of things, and induces him to act on that belief*, so as to alter his own previous position, the former is concluded from averring against the latter a different state of things as existing at the same time.

(*Pickard v. Sears* (K.B. 1837) 112 Eng.Rep. 179, 181, emphasis added, fn. omitted.)[6] Other cases affirm that the "foundation" of equitable estoppel involves a statement "without reliance upon which . . . the party would not enter into the contract." (*The Citizen's Bank of La. v. First Nat. Bank of Orleans* (1873) L.R. 6 H.L. 352, 360 (Selborne, L.J.)[7]; accord *Freeman v. Cooke* (Exch. 1848) 154 Eng.Rep. 652, 656-657 (Parke, L.B.) [following the *Pickard* rule and rejecting estoppel claim by a party that could not have reasonably relied on misrepresentations by the other party].)

[6] See also Everest & Strode, *Law of Estoppel* (2d ed. 1907) p. 328 (explaining the "general principle" of *Pickard* that "[i]t is sufficient if it can be shown that it was a material inducement, and that reliance was placed upon it by the person acting upon it"). *Pickard v. Sears* has been called the "first distinctive enunciation in England" of equitable estoppel (Bigelow, *A Treatise on the Law of Estoppel and Its Application in Practice* (1872) p. 473), and among the "leading cases" on the subject (Everest & Strode, *supra*, at p. 327).

[7] Quoted in Everest & Strode, *supra* note 6, at p. 14.

B. Equitable Estoppel Crossed The Atlantic With The Reliance Element Intact.

When courts in the early United States adopted the old English common law doctrine of estoppel *in pais*, they expressly retained detrimental reliance—that is, where one party suffered harm or incurred loss as a result of relying on the representations of another party[8]—as an indispensable element. (See, e.g., *Welland Canal Co. v. Hathaway* (N.Y.Sup.Ct. 1832) 8 Wend. 480, 480 [to establish an estoppel *in pais*, "the acts or admissions relied on by way of estoppel must have been intended to influence the conduct of the party setting them up, must have had the effect intended, and the denial must operate to the injury of such latter party"); accord *Ludwick v. Croll* (Pa. 1799) 2 Yeates 464, 464; *Mackay v. Holland* (Mass. 1842) 4 Metcalf 69, 71; *Whitaker v. Williams* (Conn. 1849) 20 Conn. 98, 104.) The U.S. Supreme Court later adopted the same principles to equitably estop a party who obtained an advantage from representations or conduct that were "set up and relied on to defeat the ends of justice or

[8] See, e.g., Black's Law Dict. (11th ed. 2019) (defining "detrimental reliance" as "Reliance by one party on the acts or representations of another, causing a worsening of the first party's position"]; Herman, *supra* note 2, § 330, pp. 341-342 ("no declarations or acts give rise to an estoppel *unless they have been relied and acted upon*, and unless their denial would *prejudice* the person in whose favor the estoppel is introduced," emphasis added).

establish a dishonest claim." (*Union Mutual Insurance Co. v. Wilkinson* (1871) 80 U.S. 222, 233 & fn. 6 [citing state court cases].)

C. Reliance In Equitable Estoppel Arrived In The Golden State At Statehood And Has Never Been Abandoned.

Since statehood, California has adhered to the requirements of common-law equitable estoppel to prevent parties from benefiting from falsehoods upon which others relied and thereby acted. (See, e.g., *Hostler v. Hays* (1853) 3 Cal. 302, 306-307 ["The sense of estoppel is, that a man for the sake of good faith and fair dealing, ought to be estopped from saying that to be false, which . . . by his representations has led others to act"].) This Court has thus repeatedly emphasized the crucial showing of "some conduct which induces action in reliance upon it" and ensuing prejudice "in reliance on the act or non-action" to establish equitable estoppel. (*Wheaton v. North British & Mercantile Insurance Co.* (1888) 76 Cal. 415, 431-432; accord *Carpy v. Dowdell* (1897) 115 Cal. 677, 686-687; *Davis v. Davis*, *supra*, 26 Cal. at pp. 39-40.)

Throughout the twentieth century and into the twenty-first, this Court has repeatedly stated that one "essential element[]" of equitable estoppel is reliance. (*Steinhart*, *supra*, 47 Cal.4th at p. 1316; accord *Seymour v. Oelrichs* (1909) 156 Cal. 782, 795; *American Nat. Bank of S.F. v. A.G. Sommerville, Inc.* (1923) 191 Cal. 364, 372-373; *Lynch v. Cal. Coastal Commission*, *supra*, 3 Cal.5th at pp. 475-476.) Notably, the Court

also has imported Lord Denman's aforementioned statement in *Pickard v. Sears*, which makes clear the rule of reliance at the heart of English common law. (See, e.g., *Mansell*, *supra*, 3 Cal.3d at p. 488 [quoting *Pickard*]; *Davis v. Davis*, *supra*, 26 Cal. at p. 40 [same].)

History therefore militates against adopting an equitable estoppel rule that would result in abandoning the fundamental reliance principle.

II. THE ARBITRATION-SPECIFIC EXCEPTION TO THE ESTOPPEL RULE IN CALIFORNIA AROSE FROM A NOW-CLARIFIED MISINTERPRETATION OF FEDERAL LAW.

Despite the longevity and clarity of the reliance requirement in California's law of estoppel, an anomalous line of cases has emerged in recent years in response to the U.S. Supreme Court's repeated invocation of the "federal policy in favor of arbitration." (*Boucher v. Alliance Title Co., Inc.* (2005) 127 Cal.App.4th 262, 267 (*Boucher*) [addressing the arbitrability of plaintiff's claims against the nonsignatory defendant "with regard to that policy"]; see also *Rowe v. Exline* (2007) 153 Cal.App.4th 1276, 1288 (*Rowe*) [compelling arbitration of claims against nonsignatory under equitable estoppel theory "to ensure a result that is equitable and in line with the fundamental public policy favoring arbitration"].) But, as the high court recently confirmed in *Morgan v. Sundance, Inc.*, the creation of an arbitration-specific version of equitable estoppel not only finds no support in the FAA, but in fact violates the Act's mandate of equal treatment of arbitration. (*Morgan*, *supra*, 596 U.S. at p. 418 ["The federal

policy is about treating arbitration contracts like all others, not about fostering arbitration"].)

A. The Errant Line Of Cases Rests On A Mistaken Understanding Of The Federal Arbitration Act.

The alternative form of estoppel proposed by Ford here is a relatively recent invention that is unique to arbitration and motivated by an erroneous construction of federal policy under the FAA.[9] As the U.S. Supreme Court recently clarified, "the FAA's policy is based upon the enforcement of contract, rather than a preference for arbitration"; however, it does not condone "special, arbitration-preferring procedural rules." (*Morgan*, *supra*, 596 U.S. at pp. 418-19; see also *Dean Witter Reynolds, Inc. v. Byrd* (1985) 470 U.S. 213, 219 [explaining that the Act's "purpose was to place an arbitration agreement 'upon the same footing as other contracts,'" quoting H.R.Rep. No. 96, 68th Cong., 1st Sess., p. 1 (1924)].) Yet, starting in the early 2000s, some California courts have entitled arbitration to a peculiar form of equitable estoppel that is unmoored from the core detrimental reliance requirement out of deference to the "liberal

[9] Frankel, *The Arbitration Clause As Super Contract* (2014) 91 Wash.U. L.Rev. 531, 587 & fn. 230 (quoting Rosenhouse, Annot., *Application of Equitable Estoppel to Compel Arbitration by or Against Nonsignatory—State Cases* (2007) 22 A.L.R.6th 387, 387 ["The federal courts have initiated and many state courts have recognized and adopted a unique body of 'equitable estoppel' law that is peculiarly applicable" in nonsignatory arbitration cases].)

federal policy favoring arbitration agreements" and its interpretation by federal courts. (*Goldman v. KPMG, LLP* (2009) 173 Cal.App.4th 209, 219-229 (*Goldman*) [examining federal precedent]; *Metalclad Corp. v. Ventana Environmental Organizational Partnership* (2003) 109 Cal.App.4th 1705, 1713-1715 (*Metalclad*) [same].)[10] These cases have unjustifiably thrown into question the centuries-old understanding of equitable estoppel.

The arbitration-specific version of the doctrine rests on a flimsy foundation. The theory first took root in California in *Metalclad* in 2003, in which the court of appeal allowed a nonsignatory Mexican parent company to use equitable estoppel to invoke an arbitration clause in an investment contract signed between its subsidiary and a U.S.-based corporation. (*Metalclad*, *supra*, 109 Cal.App.4th at p. 1717.) *Metalclad* is of little use today. First, the court determined that "federal law, not state law" dictated whether a nonsignatory could enforce an arbitration agreement. (*Id.* at pp. 1712.) It thus imported and adopted the analysis in out-of-circuit federal cases that applied a special, federal common law form of equitable estoppel to compel arbitration of claims against a nonsignatory defendant. (*Id.* at pp. 1717-1718, citing *MS Dealer Service Corp. v. Franklin* (11th Cir. 1999)

[10] See also Frankel, *supra* note 9, at p. 582 (positing that "the shift away from detrimental reliance [in arbitration] . . . derives in part from the federal policy favoring arbitration," and that now "the hallmark element of traditional equitable estoppel—detrimental reliance—is a not a relevant consideration in the arbitration context").

177 F.3d 942, 947 (*MS Dealer*), and *Sunkist Soft Drinks, Inc. v. Sunkist Growers, Inc.* (11th Cir. 1993) 10 F.3d 753, 758.) Yet as the U.S. Supreme Court subsequently explained, enforcement of an arbitration clause by a nonsignatory turns exclusively on "traditional principles of state law." (*Arthur Anderson*, *supra*, 556 U.S. at p. 631.) Accordingly, the adoption by *Metalclad* of equitable estoppel standards from federal common law rather than California law is wholly untenable today. (See *Doe v. Carmel Operator, LLC* (Ind. 2021) 160 N.E.3d 518, 525-526 [declaring that *Arthur Anderson* "effectively abrogated any case that applied federal common law while ignoring state contract law" and repudiating an arbitration-specific equitable estoppel under Indiana law]; *Santich v. VCG Holding Corp.* (Colo. 2019) 443 P.3d 62, 65-66 [citing *Arthur Anderson* and holding that, "[i]n keeping with long-standing Colorado law, an equitable estoppel argument raised by a nonsignatory . . . must be supported by all four traditionally defined elements of equitable estoppel," which include "the element of detrimental reliance"]; Resp. Br. at pp. 18-19.)

Since the cases on which *Metalclad* rested are no longer viable, *Metalclad* cannot be considered good law. Its progeny, consequently, constitute equally dubious precedent. (See, e.g., *Turtle Ridge Media Group, Inc. v. Pacific Bell Directory* (2006) 140 Cal.App.4th 828, 835 [stating incorrectly that "state law does not govern the interpretation of arbitration agreements to which the FAA applies"]; *Boucher*, *supra*, 127 Cal.App.4th

at p. 268 [holding mistakenly that the question whether a nonsignatory defendant can rely on the plaintiff's employment agreement to compel arbitration "is answered not by state law, but by the federal substantive law of arbitrability"]; *Goldman*, *supra*, 173 Cal.App.5th at p. 219 [following erroneously "governing federal law"].)

Moreover, what started as a theory based on federal common law has mushroomed into an arbitration-only deviation from the basic rules of California contract law. Although *Metalclad* itself cabined the federal standards to "appropriate factual circumstances" (*Metalclad*, 109 Cal.App.4th at p. 1718 [applying the standard to a situation involving alleged collusion and fraud between parent and subsidiary companies]), later courts interpreting that decision have stretched and expanded the arbitration-specific rule. (See, e.g., *Boucher*, *supra*, 127 Cal.App.4th at p. 269 [applying—in "appropriate factual circumstances"—the alternative rule to allow a nonsignatory to enforce an arbitration clause where *no* alleged misconduct was present]; *Rowe*, *supra*, 153 Cal.App.4th at pp. 1287-1988 [enforcing arbitration clause based on alter ego allegations]; *JSM Tuscany, LLC v. Super. Ct.* (2011) 193 Cal.App.4th 1222, 1240 [compelling arbitration based on "a preexisting relationship" between the nonsignatory and a signatory].) The departure from settled law has extended so far that in one decision the Third District left behind not only the traditional doctrine of equitable estoppel but also the standards (such as

they were) of the arbitration-specific rule and removed the requirement of *any* showing of a particular relationship between a nonsignatory vehicle manufacturer and signatory dealer. (*Felisilda v. FCA, Inc.* (2020) 53 Cal.App.5th 486, 496-497 (*Felisilda*); see Resp. Br. at pp. 24-25, 42, fn. 10.)[11] Without the moorings of the common law, the doctrine of equitable estoppel, at least in the context of arbitration, has thus drifted far.

This variant of equitable estoppel applicable only to arbitration therefore turns the doctrine on its head so that it looks nothing like its common law antecedents. Perhaps even more peculiarly, the courts that have adopted this variant still assess "reliance," but only as it pertains to the party *resisting* estoppel, and to the terms of the contract and the claims at issue rather than the conduct of the party to be estopped. (See, e.g., *Goldman*, *supra*, 173 Cal.App.4th at p. 218 [for equitable estoppel to apply, the signatory to the contract "must 'rely on the terms of the written agreement in asserting [its] claims against the nonsignatory,'" quoting *MS Dealer*, *supra*, 177 F.3d at p. 947]; *Rowe*, *supra*, 153 Cal.App.4th at p. 1289 ["the estoppel doctrine in this context . . . turns upon the nexus

[11] Multiple courts, including the court below, have rightly repudiated *Felisilda* because the factual circumstances there did not even warrant application of the arbitration-specific equitable estoppel rule. (See, e.g., *Ford Motor Warranty Cases* (2023) 89 Cal.App.5th 1234, 1334 [disagreeing with *Felisilda* and declaring that "[t]he plaintiffs' breach of warranty claims . . . were not based on their sale contracts"]; see also *Kielar v. Super. Ct.* (2023) 94 Cal.App.5th 614, 620 [same]; *infra* footnote 14.)

between the contract and the causes of action asserted"]; *Boucher*, *supra*, 127 Cal.App.4th at p. 272 ["The focus is on the nature of the *claims* asserted by the plaintiff against the nonsignatory defendant," emphasis added]; see also Reply at p. 34 ["Plaintiffs' Claims Must Rely on the Sale Contracts' Terms"].) The cases thus conjure the bizarre idea that equitable estoppel—at least in the arbitration context—requires the claims to be "founded in and inextricably bound up with the obligations imposed by the agreement containing the arbitration clause." (*Pacific Fertility Cases* (2022) 85 Cal.App.5th 887, 893, quoting *Goldman* at p. 219; accord *Felisilda*, *supra*, 53 Cal.App.5th at 495-496; *JSM Tuscany*, *supra*, 193 Cal.App.4th at p. 1239.) That rule has no precedent in the history of equitable estoppel.

The apparent reversal of the "relying party" shows just how far the arbitration-specific rule has strayed from traditional doctrine. In the conventional sense, it is the party *asserting* the estoppel that must have relied on actions or statements by the party to be estopped. (See *Gen. Motors Acceptance Corp. v. Gandy* (1927) 200 Cal. 284, 294 ["The settled rule as to the proof of equitable estoppel is that the burden rests upon the party asserting such estoppel to prove all the elements constituting it"].) The inquiry has nothing to do with reliance on the *text* of a signed contract by the party to be estopped to assert her claims.

In the service of "favoring" arbitration, this form of equitable estoppel warps the doctrine so far beyond its accepted sense in California contract law that it can no longer accurately be called estoppel at all.

B. As The U.S. Supreme Court Recently Clarified, Arbitration Agreements Are Not Afforded Special Treatment But Are Instead Subject To General Contract Principles.

The divergence between California contract law and the arbitration-only variant of equitable estoppel matters not just because of the illogic of the new variant, but also because federal law precludes novel contract rules that apply specifically to arbitration agreements. (See *Morgan*, *supra*, 596 U.S. at p. 419.) Agreements to arbitrate disputes are governed by "state contract principles." (*Lamps Plus, Inc. v. Varela*, *supra*, 587 U.S. at p. 183; see also *Sanquist v. Lebo Automotive* (2016) 1 Cal.5th 233, 243-244 [adopting U.S. Supreme Court rule calling for examination of an arbitration clause "through the prism of state law"].)

As "the final arbiter of what is state law" (*Adolph v. Uber Techs.* (2023) 14 Cal.5th 1104, 1119) in California, this Court has the "last word" (*ibid.*) on the rules governing contract enforcement. California estoppel law as enunciated by this Court has been clear for over a century and a half: the party seeking to equitably estop another party must have detrimentally relied on the other's representations. As an essential element of the standard, detrimental reliance may not be elided in service of an ultimately

incorrect interpretation of the "federal policy favoring arbitration." (See *Honeywell*, *supra*, 35 Cal.4th at p. 38 [rejecting defendant's proposed standard for estoppel that "ignore[d] the detrimental reliance element"].)

The FAA does not permit the adoption of arbitration-specific contract rules, including rules regarding estoppel that are inconsistent with state contract law. Under the FAA, while "a court must hold a party to its arbitration contract just as the court would to any other kind . . . [it] may not devise novel rules to favor arbitration." (*Morgan*, *supra*, 596 U.S. at p. 418.) In other words, courts cannot craft "arbitration-specific variants" that deviate from ordinary contract law. (*Id.* at p. 417; see also *Prima Paint Corp. v. Flood & Conklin Manufacturing Co.* (1967) 388 U.S. 395, 405, fn. 12 [explaining that an arbitration-specific rule that would "elevate it over other forms of contract" would be "inconsistent" with the FAA]; *Cronus*, *supra*, 35 Cal.4th at p. 384 [noting that the FAA is not intended to give arbitration any "special status"].)[12]

[12] Ford quibbles with the fact that *Morgan* involved a federal court's application of federal waiver law rather a state court's application of state law. (Reply at p. 40.) Yet the U.S. Supreme Court has stated unequivocally that "the FAA's core substantive requirement—Section 2's command to enforce arbitration agreements like other contracts—applies in state courts, just as it does in federal courts." (*Badgerow v. Walters* (2022) 596 U.S. 1, 8, fn. 2.) To limit the central holding of *Morgan*—that a court "may not make up a new procedural rule based on the FAA's 'policy favoring arbitration'" (*Morgan* at p. 419)—to the federal system would therefore contradict the high court's own plain mandate.

The mandate of the FAA is effectuated by applying the same rule to arbitration agreements as to other types of contracts. Because arbitration provisions cannot be treated more (or less) favorably than other contracts, courts in several of California's sister states have already applied their state law on equitable estoppel—which mirrors that of California—to jettison an arbitration-specific variant notwithstanding any policy favoring arbitration. (See, e.g., *Doe v. Carmel Operator, LLC* (Ind. 2023), *supra*, 160 N.E.3d at pp. 525-526; *Santich v. VCG Holding Corp.* (Colo. 2019), *supra*, 443 P.3d at p. 66; *Hirsch v. Amper Financial Services, LLC* (N.J. 2013) 71 A.3d 849, 858-860; *B.C. Rogers Poultry, Inc. v. Wedgeworth* (Miss. 2005) 911 So.2d 483, 487, 492-493; see also *In re Merrill Lynch Trust Co. FSB* (Tex. 2007) 235 S.W.3d 185, 194-195 [rejecting any alternative arbitration-specific standard based on "concerted misconduct" under Texas law].)

The same principles counsel for a repudiation of the variant in California.

III. FORD CANNOT CLAIM EQUITABLE ESTOPPEL WHEN IT DID NOT DETRIMENTALLY RELY ON ANY REPRESENTATIONS BY THE PLAINTIFFS.

A. The Essential Elements Of Equitable Estoppel Are Not Present Here.

Ford cannot "equitably estop" the plaintiffs from refusing to arbitrate their Song-Beverly Act express warranty claims based on the arbitration clause in the plaintiffs' sales contract. For centuries, equitable estoppel has

required inducement through an intentional misrepresentation or fraudulent statement, reliance and action upon those misrepresentations, and injury. (See, e.g., *Honeywell*, *supra*, 35 Cal.4th 24, 37 [articulating the "well established and easily stated" elements that "must be present" to invoke equitable estoppel].)[13] Ford has not established that it detrimentally relied on any fraudulent inducement or representation by the buyers that they would take their express warranty claims to arbitration—because no such representations were made.

Contorting California's equitable estoppel doctrine to apply to the facts of this case would require twisting the doctrine beyond recognition. It strains credulity to contend—as Ford must to prevail—that the individual buyers of Ford vehicles, during their transaction with the *dealer*, misled the *manufacturer* into believing that they would arbitrate any possible express warranty claims they might have, and that the manufacturer acted in some way on the basis of that representation. Ford adduces no evidence in the record—nor can it—indicating that it reasonably relied on the plaintiffs' acquiescence to arbitrate disputes that arise out of the contract. It is undisputed that Ford is neither party to nor named in the sale contracts.

[13] See also 4 Williston on Contracts (4th ed. 2023) § 8:3 [stating that "if any of [the elements] is missing, an equitable estoppel will not be applied"]; Bigelow, *supra* note 6, at p. 480 (articulating, based on English common law cases, the necessary elements to establish equitable estoppel and stating that "all . . . elements must be present").

(See Appellant's Appen. at pp. 6-30 [compiling the plaintiffs' retail installment sales contract]; Pet. Br. at pp. 17-18; Resp. Br. at pp. 22-23.) Ford cannot claim that the plaintiffs knew they were entering into an arbitration agreement with Ford, because plainly they were not.

Stripped of an equitable estoppel standard that ignores detrimental reliance, Ford's arguments about interconnection between the sales contract and its express warranty obligations are rendered meaningless. (See, e.g., Pet. Br. at pp. 30-36; Reply at 17-35.) As discussed above, establishing equitable estoppel does not require a showing that the plaintiffs' Song-Beverly Act claims rely on the sales contract. In issuing the warranty, Ford did not somehow rely on representations or inducement by the buyers in the sales contract to which the manufacturer is not a party. Whether the warranties are part of the sales contract or not is therefore irrelevant to asserting equitable estoppel. Even if the equitable estoppel standard did require a showing of interconnectedness, any warranty obligations between the buyer and the manufacturer arise wholly separately from any contractual obligations, including to arbitrate disputes, between the buyer and the dealer. Thus—as the court below properly concluded and several courts have confirmed—claims to enforce the manufacturer's warranty obligations under the Song-Beverly Act are not connected the sales contract. (*Ford Motor Warranty Cases*, *supra*, 89 Cal.App.5th at pp. 1336-

1337; see also Resp. Br. at pp. 39-42.)[14]

B. Ford's Proposed Standard Robs Equitable Estoppel Of Its Core Fairness Functions And Allows Corporations To Derive The Benefits—But Not Bear The Costs—Of Contracts To Which They Are Not Party.

Approval of an arbitration-specific version of equitable estoppel that ignores reliance also undermines the core purpose of the doctrine: to promote fairness and to protect parties from fraud and deception. Equitable estoppel "rests firmly upon a foundation of conscience and fair dealing" (*Mansell*, *supra*, 3 Cal.3d at p. 488) and is "based upon principles of justice and the purest morality."[15] It therefore is, and always has been, "only enforced in the interests of justice" (*Gerig v. Loveland* (1900) 130 Cal. 512, 514) to prevent "the mischievous consequences of fraud." (*Davis v. Davis*, *supra*, 26 Cal. at p. 40.)[16] This Court has long held that the doctrine holds people to their word: "If parties choose to make untrue statements, by which others are injured, they should be estopped to unsay what they have

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[14] Accord *Davis v. Nissan North America, Inc.* (2024) 100 Cal.App.5th 825, 837; *Yeh v. Super. Ct.* (2023) 95 Cal.App.5th 264, 277-278; *Kielar v. Super. Ct.*, *supra*, 94 Cal.App.5th at pp. 620-621; *Montemayor v. Ford Motor Co.* (2023) 92 Cal.App.5th 958, 971-972.

[15] Herman, *supra* note 2, § 328, p. 341.

[16] See also *Evans v. Bicknell* (Ch. 1801) 31 Eng.Rep. 998, 1002 (Eldon, L.J.) ("for it is a very old head of equity, that if a representation is made to another person, going to deal in a matter of interest upon the faith of that representation, the former shall make that representation good, if he knows it to be false"); Herman, *supra* note 2, § 321, p. 335 ("Equitable estoppels only arise when the conduct of the party estopped is fraudulent in its purpose or unjust in its results").

before said." (*Mitchell v. Reed* (1858) 9 Cal. 204, 207; accord *Hostler v. Hays*, *supra*, 3 Cal. 102 at pp. 306-307).[17] Permitting a party to take advantage of another party to the latter's injury "involves fraud and falsehood, and the law abhors both." (*Carpy v. Dowdell*, *supra*, 115 Cal. at pp. 686-687; see also *Honeywell*, *supra*, 35 Cal.4th at p. 38 [stating that equitable estoppel "operates to prevent one from taking an unfair advantage of another but not to give an unfair advantage to one seeking to invoke the doctrine"].)

The fundamental tenets of justice and the prevention of fraud that animate equitable estoppel do not support Ford's invocation of the doctrine here. Contrary to Ford's assertions (see, e.g., Reply at p. 48), it is not unfair to require the manufacturer, a large corporation with significant resources, to litigate express warranty claims brought by individual consumers, especially where the Song-Beverly Act requires those claims to be asserted against the manufacturer, not the dealer. (Civ. Code, § 1793.2, subd. (d)(2).) On the other hand, forcing the consumers to arbitrate their claims based on an arbitration agreement that they signed in a form contract with their dealer, not the manufacturer, when they bought their cars amounts to

[17] Likewise, as Lord Coke explained in the Seventeenth Century, "No man ought to allege anything but the truth for his defence, and what he has alleged once, is to be presumed true, and therefore, he ought not to contradict it." (Everest & Strode, *supra* note 6, at p. 4 [quoting Lord Coke, Co. Litt. 352a].)

considerable unfairness.

Ford's claims of unfairness are unavailing in light of the significant power imbalance between the manufacturer and the individual buyer, who is obviously the weaker party to a contract of adhesion. Plaintiffs were required to sign the contract with the dealer in order to purchase the vehicle. They were never presented with an opportunity to form a direct contractual relationship with Ford, which was not involved in the contract at all yet attempts to wield it for its own purposes. And the hands of new car buyers are especially tied: because they "often depend on those cars to get to work, to take their children to school, and to handle myriad other daily necessities of life," they are not likely to have the wherewithal to object to an arbitration clause that is presented to them at the end of an arduous purchase process. (*Niedermeier v. FCA US LLC* (2024) 15 Cal.5th 792, 954 (conc. opn. of Kruger, J.).)

Claiming that it is unfair to require Ford to litigate express warranty claims against the company makes little sense and is inconsistent with the long-held understanding that estoppel is a defense against fraud and injustice. (See *Honeywell*, *supra*, 35 Cal.4th at p. 38; see also *Santich v. VCG Holding Corp.*, *supra*, 443 P.3d 62, 66 ["Equitable estoppel is more properly viewed as a shield to prevent injustice rather than a sword to

compel arbitration"].)[18]

Additionally, ratifying Ford's assertion of arbitration-specific equitable estoppel would pose dangerous repercussions for all manner of contracts, outside of the Song-Beverly context. The new use of equitable estoppel has proliferated widely as a strategy for nonparties to force claims against them into arbitration.[19] In the employment context, for instance, companies nowadays regularly outsource core functions to independent contractors, franchisees, temporary staffing agencies, and third-party help centers.[20] This practice has resulted in a so-called "fissured workplace"

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[18] See also Herman, *supra* note 2, § 329, p. 341 ("An estoppel *in pais* is to be resorted to solely as a measure to prevent injustice. Always as a shield, but never as a sword").

[19] See, e.g., Horton, *Infinite Arbitration Clauses* (2020) 168 U.Pa. L.Rev. 633, 674 (finding that "businesses are increasingly relying on infinite language [in arbitration clauses] to try to invoke [equitable estoppel] . . . Thus, at least on paper, a single arbitration clause can span enormous sectors of the business world"); Frankel, *supra* note 9, at p. 582 ("Equitable estoppel comes up often in arbitration cases [citations] and is the most common argument used by non-parties as the basis for enforcing an arbitration provision"); see also Anenson, *The Triumph of Equity: Equitable Estoppel in Modern Litigation* (2008) 27 Rev. Litig. 377, 390 ("Without reliance, estoppel extends to an infinite variety of situations because its operation no longer depends on a prior relationship between the parties to the lawsuit").

[20] Goldman & Weil, *Who's Responsible Here? Establishing Legal Responsibility in the Fissured Workplace* (2020) 42 Berk.J. Emp. & Lab.L. 55, 58-59, 65-66 (explaining that companies have largely turned to outsourcing their activities from the "less essential" to their core functions (e.g. payroll, accounting, human resources, security, and facilities maintenance) to even core employment activities); Cappelli & Keller, *A Study of the Extent and Potential Causes of Alternative Employment*

whereby "[t]he basic terms of employment—hiring, evaluation, pay, supervision, training, coordination are now the result of multiple organizations. Responsibility for conditions has become blurred."[21] As businesses rely more and more on a fissured workplace model, it has become easier to circumvent employment obligations and pass liability off to the contractor or franchisee.[22] Yet simultaneously, in the event that workers have a legitimate claim against the parent or lead business, that business can wield arbitration-only equitable estoppel to enforce arbitration provisions in contacts signed between the worker and contactor or subsidiary. (See, e.g., *Garcia v. Pexco*, *LLC* (2017) 11 Cal.App.5th 782,

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Arrangements (2013) 66 ILRRev. 874, 898 (finding that "alternative work arrangements are used extensively" and "an overall increase" in such structures).

[21] Weil, *The Fissured Workplace: Why Work Became So Bad For So Many and What Can Be Done To Improve It* (2014) p. 7; see *id.* at p. 44 (attributing the fissured workplace to "intensifying pressure [on companies] to focus on their core competencies" by "capital markets" and "technological changes").

[22] See, e.g., Goldman & Weil, *supra* note 20, at pp. 66-67 (arguing that in fissured workplaces, "companies have even greater incentives to cut corners with workers paying the price," and that "[t]he growth of fissured work arrangements and increasing classification and misclassification of workers as independent contractors [citations] deprives workers of their fundamental civil rights and labor and employment law protections and denies them access to some public benefits"); Weil, *supra* note 21, at p. 183 (noting that franchisor companies "deftly craft[] franchise manuals, delivery standards and systems, and monitoring arrangements" such that they can remain unaware about "the work conditions that flow from the very same standards" or "coordination functions that might compromise their arm's length status").

787-788 [compelling arbitration of temporary employee's claims against nonsignatory employer by using the arbitration clause in staffing agency's contract]; see also *Franklin v. Community Regional Med. Ctr.* (9th Cir. 2021) 998 F.3d 867, 874-875 [holding, based on *Garcia*, that a hospital could enforce an arbitration clause in staffing agency's contract with traveling nurse].) In other times, business can intentionally structure their employment models to evade certain workplace protections in the first place and then bootstrap their way into arbitration when challenged for labor violations. (See, e.g., *Santich*, *supra*, 443 P.3d at p. 64 [addressing attempt by nonsignatory parent corporation to arbitrate wage-and-hour claims brought by exotic dancers based on arbitration clauses in the dancers' agreements with subsidiary club owners).

Similarly, in the debt collection context, nearly every contract between a creditor and a consumer contains a mandatory arbitration clause.[23] The arbitration-specific variant of equitable estoppel has forced consumers to arbitrate claims of unfair debt collection practices against collection agencies or even third-party debt buyers that consumers may never have even heard of.[24] (See, e.g., *Lomeli v. Midland Funding, LLC*

[23] Alderman, *The Fair Debt Collection Practices Act Meets Arbitration: Non-Parties and Arbitration* (2012) 24 Loy.Consumer L.Rev. 586, 589.

[24] Alderman, *supra* note 22, at p. 597; but see *id.* at pp. 597-599 (citing cases denying application of equitable estoppel but nonetheless applying the arbitration-specific variant).

(N.D. Cal. Sept. 26, 2019, No. 19-cv-01141-LHK) 2019 WL 4695279, at *11 [applying South Dakota's arbitration-specific equitable estoppel equivalent and compelling arbitration of Fair Debt Collections Practices Act claims against nonsignatory collection agency hired by third-party debt buyer based on arbitration clause in original credit card agreement].)

* * *

Nothing in centuries of contract law, nor the U.S. Supreme Court precedent under the Federal Arbitration Act, permits Ford to deploy equitable estoppel as a weapon to force plaintiffs into arbitration. Instead, equitable estoppel is, and always has been, properly reserved as a shield to promote justice to parties that detrimentally relied on another's representations. Arbitration does not warrant special treatment or deviation from these foundational precepts.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeal should be affirmed.

Dated: May 6, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the typeface and volume limitations set forth in California Rules of Court, rule 8.204(c)(1). The brief has been prepared in 13-point Times New Roman font. The word count is 7,140 words based on the word count of the program used to prepare the brief.

Dated: May 6, 2024

By: /s/ *David S. Nahmias*
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CERTIFICATE OF SERVICE

I, the undersigned, declare that I am a citizen of the United States, over the age of 18 years, reside in Oakland, California, and not a party to the within action. My business address is the University of California, Berkeley, School of Law, 308 Berkeley Law, Berkeley, CA 94720-7200.

On the date set forth below, I caused a copy of the following to be served:

APPLICATION TO FILE BRIEF AND BRIEF OF AMICI CURIAE UC BERKELEY CENTER FOR CONSUMER LAW AND ECONOMIC JUSTICE, CONSUMER FEDERATION OF CALIFORNIA, CONSUMERS FOR AUTO RELIABILITY & SAFETY, HOUSING & ECONOMIC RIGHTS ADVOCATES, IMPACT FUND, KATHARINE & GEORGE ALEXANDER COMMUNITY LAW CENTER, NATIONAL ASSOCIATION OF CONSUMER ADVOCATES, NATIONAL CONSUMER LAW CENTER, PUBLIC COUNSEL, PUBLIC JUSTICE, TOWARDS JUSTICE, AND UC BERKELEY CENTER FOR LAW AND WORK IN SUPPORT OF PLAINTIFFS-RESPONDENTS

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I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on May 6, 2024, in Langhorne, PA.

By: /s/ *David S. Nahmias*
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