No. 19-1382

In The
Supreme Court of the United States

STERLING JEWELERS, INC.,

Petitioner,

v.

LARYSSA JOCK, ET AL.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF OF RETAIL LITIGATION CENTER, INC. AND NATIONAL RETAIL FEDERATION AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

The Retail Litigation Center, Inc. ("RLC") is the only trade organization solely dedicated to representing the retail industry in the judiciary. The RLC's members include many of the country's largest and most innovative retailers. These leading retailers employ millions of workers in the United States, provide goods and services to tens of millions of consumers, and account for tens of billions of dollars in annual sales. The RLC seeks to provide courts with retail-industry perspectives on important legal issues impacting its members, and to highlight the potential industry-wide consequences of significant pending cases. Since its founding in 2010, the RLC has participated as an amicus in more than 150 judicial proceedings of importance to retailers, including in prior cases in this Court addressing arbitration. *See, e.g.*, Brief of the Retail Litigation Center, Inc. as *Amicus Curiae* in Support of Petitioners*, Lamps Plus, Inc. v. Varela*, 139 S. Ct. 1407 (2019) (No. 17-988).

The National Retail Federation ("NRF") is the world's largest retail trade association, representing discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants, and internet retailers from the United States and more than 45 countries. NRF empowers the industry that powers the economy.

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[1] Counsel of record for all parties received timely advance notice of the intent to file this brief and consented to the filing of the brief. S. Ct. R. 37.3(a). No counsel for any party authored this brief in whole or in part, and no person or entity other than *amici curiae* or their counsel made a monetary contribution intended to fund the brief's preparation or submission.

Retail is the nation's largest private-sector employer, contributing $3.9 trillion to annual GDP and supporting one in four U.S. jobs—approximately 52 million working Americans. For over a century, NRF has been the voice for every retailer and every retail job, educating and communicating the powerful impact retail has on local communities and global economies. NRF regularly submits *amicus curiae* briefs in cases raising significant legal issues for the retail community, including cases that involve employment and consumer arbitration agreements.

Amici's members have a strong interest in the Court's consideration of this petition. Relying on legislative policy reflected in the Federal Arbitration Act ("FAA"), and this Court's consistent endorsement of the federal policy favoring arbitration, many of Amici's members and affiliates enter into arbitration agreements with their employees. They do so because arbitration allows all parties to resolve disputes quickly and efficiently while avoiding the time and costs associated with traditional litigation. Arbitration is speedy, fair, inexpensive, conducted by specialized experts, and less adversarial than litigation in court.

Amici's members have entered into innumerable arbitration agreements with their employees. The vast majority of such agreements are entered on the premise that arbitration will be conducted on a bilateral basis, rather than on a class or collective basis, and with good reason: as this Court has often reiterated, there is a "fundamental difference between class arbitration and the individualized form of arbitration envisioned by the FAA," with "[c]lass arbitration lack[ing] th[e] benefits" of bilateral

arbitration. *Lamps Plus, Inc. v. Varela*, 139 S. Ct. 1407, 1416 (2019) (internal quotation marks omitted). Class arbitration involves a host of procedural hurdles not present in standard bilateral arbitrations, and reflects a stark break from traditional arbitration, whereby a party "trades the procedures and opportunity for review of the courtroom for the simplicity, informality, and expedition of arbitration." *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 628 (1985).

Most of Amici's members' arbitration agreements also assign questions of arbitrability—i.e., the scope of issues and parties subject to arbitration—to the arbitrator. If left unchecked, the Second Circuit's rule would transform that commonplace provision into a springboard for arbitrators to impose class arbitration on the parties and absent class members—even though those arbitration agreements lack the unambiguous consent to class arbitration that the FAA requires. Amici's members have a strong interest in preventing such circumvention of the fundamental rule that "[c]onsent is essential under the FAA because arbitrators wield only the authority they are given." *Lamps Plus,* 139 S. Ct. at 1416.

INTRODUCTION AND SUMMARY OF ARGUMENT

In this case, the Second Circuit acknowledged that the arbitrator compelled class arbitration not because the terms of the agreement unambiguously compelled it, but only by applying the *contra proferentem* rule of resolving contract ambiguities against the drafter. Pet. App. 58a. This "default rule"

does not evince the parties' intent but instead is "based on public policy considerations." *Lamps Plus*, 139 S. Ct. at 1417. By affirming class arbitration based on a policy choice, instead of the terms of the agreement, the Second Circuit's holding contravened this Court's teachings that "[c]lass arbitration, to the extent it is manufactured by [state law]," (like *contra proferentem*), "rather than consen[t], is inconsistent with the FAA." *Id.* at 1417–18 (quoting *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 348 (2011)) (all but first alteration in original).

The panel majority held that the court was duty bound to remit the parties (and absent class members) to class procedures. The court did so not because the parties' agreement compelled it, but only because of deference accorded to the arbitrator under the standard of review that applies when agreements assign questions of arbitrability to the arbitrator. Pet. App. 13a–14a, 16a. As the petition explains (Pet. 17–21), the Second Circuit's acquiescence to an arbitrator's policy call (rather than interpretation of the contract's terms) cannot be squared with this Court's precedents.

The Second Circuit's misplaced deference to arbitrators' application of extra-contractual policies will create substantial confusion for an untold number of arbitration agreements. Questions of arbitrability and procedural questions are assigned to arbitrators most of the time, with good reason. This approach avoids piecemeal interlocutory court challenges to decide the scope of proceedings or routine procedural matters, and maintains a key benefit of arbitration: efficient and streamlined proceedings. But under the

Second Circuit's rule, such commonplace assignment opens the door for defending companies to be forced into class arbitration, even without contract terms evidencing their consent to this fundamentally different type of proceeding. The result: employers and employees needlessly face potentially unending class arbitration, and lose the "lower costs, greater efficiency and speed" promised by bilateral arbitration. *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 685 (2010).

These negative consequences will not be limited to the Second Circuit. Instead, the combination of common venue provisions within arbitration agreements with nationwide putative class members will export the Second Circuit's rule across the country for most large employers—including Amici's members. And that rule will exert inexorable pressure toward class settlements—a result that was never the intent of the very parties who entered into the agreements. Percolation may never occur as strategic lawyers will locate Second-Circuit-based class members to spearhead disputes against national and large regional businesses. There is thus no benefit to waiting for other courts of appeals to disagree with the Second Circuit's plainly erroneous rule, and every reason to act now to fix the turmoil the Second Circuit has created.

ARGUMENT

I. The Second Circuit's Decision Provides A Roadmap For Circumventing The FAA And Imposing Class Arbitration On Non-Consenting Parties.

The Second Circuit's attempt to distinguish *Stolt-Nielsen* and *Lamps Plus* is not just wrong. It is a roadmap to evading those decisions and rendering them practical nullities. The parties to arbitration agreements gain many advantages by assigning procedural questions and questions of arbitrability to arbitrators. Under the Second Circuit's rule, making that choice now greenlights class arbitration even when a contract does not unambiguously provide for it. Far from expeditiously resolving bilateral disputes, the ruling below permits commonly-phrased clauses to instead initiate potentially lengthy multi-party sagas.

A. Taken together, the Court's precedents establish that: First, "an ambiguous agreement" cannot "provide the necessary 'contractual basis' for compelling class arbitration." *Lamps Plus*, 139 S. Ct. at 1415 (quoting *Stolt-Nielsen*, 559 U.S. at 684). Second, a state law rule that "ambiguity in a contract should be construed against the drafter" cannot supply the necessary consent, because it "resolves the ambiguity … based on public policy factors" rather than "seek[ing] … the intent of the parties." *Id.* at 1417. Third, because "the task of an arbitrator is to interpret and enforce a contract, not to make public policy," an arbitrator's decision imposing class arbitration based on notions of public policy, rather than the terms of the parties' agreement, "exceed[s]

[the arbitrator's] powers," *Stolt-Nielsen*, 559 U.S. at 672, and therefore must be vacated, 9 U.S.C. § 10(a)(4).

These precedents resolve this case. *See* Pet. 17–21. Left standing, the Second Circuit's evasion of them would render them effectively dead-on-arrival, and eviscerate the FAA's "basic precept," which is that "arbitration 'is a matter of consent, not coercion.'" *Stolt-Nielsen*, 559 U.S. at 681 (quoting *Volt Info. Scis., Inc. v. Bd. of Trs.,* 489 U.S. 468, 479 (1989)).

The Second Circuit's position that this Court's precedents are not applicable to the instant case is without merit. The Second Circuit attempted to distinguish *Lamps Plus* on the ground that "the parties in *Lamps Plus* 'agreed that a court, not an arbitrator, should resolve the question about class arbitration.'" Pet. App. 16a (quoting *Lamps Plus*, 139 S. Ct. at 1417 n.4). But parties assign such questions to arbitrators most of the time, as described below. *See* Pet. 26–27. And they do so with the understanding that such assignment limits only a court's ability to reverse a wrong interpretation of *the contract's terms*. *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 569 (2013) ("[A]n arbitral decision even arguably construing or applying the contract must stand, regardless of a court's view of its (de)merits.") (internal quotation marks omitted). But where, like this case, an arbitration agreement "lack[s] *any* contractual basis for ordering class procedures," courts can (and must) overturn an arbitrator's imposition of class arbitration. *Id.* at 571. In this circumstance, the arbitrator has exceeded his powers and a decision

compelling class arbitration must be vacated. *Stolt-Nielsen*, 559 U.S. at 672.

The Second Circuit would cabin *Stolt-Nielsen* to the highly "idiosyncratic" situation where the parties have expressly stipulated that an agreement is "silent" regarding class arbitration. Pet. App. 83a n.5 (Winter, J., dissenting). Under this interpretation, opportunistic plaintiff attorneys can attempt to force class arbitration merely by refusing to stipulate to "silence," no matter how silent the agreement actually is. But as the Court explained in *Lamps Plus*, when a contract cannot be read to cover class arbitration without resort to an ambiguity-resolving policy rule like *contra proferentem*, the agreement can only be construed as silent; *i.e.*, there is no contractual basis for ordering class procedures. 139 S. Ct. at 1419 ("The doctrine of *contra proferentem* cannot substitute for the requisite affirmative 'contractual basis for concluding that the part[ies] *agreed* to [class arbitration].'") (quoting *Stolt-Nielsen*, 559 U.S. at 684) (alterations in original).

As a matter of law, then, when class arbitration can be manufactured only by *contra proferentem*, an arbitrator "lack[s] *any* contractual basis for ordering class procedures," *Oxford Health*, 569 U.S. at 571. "Like silence, ambiguity does not provide a sufficient basis to conclude that parties to an arbitration agreement agreed to 'sacrifice[] the principal advantage of arbitration.'" *Lamps Plus*, 139 S. Ct. at 1416 (quoting *Concepcion*, 563 U.S. at 348). That is true regardless of whether the parties have stipulated that the agreement is "silent"; the absence of a stipulation does not prove the presence of consent.

If *Lamps Plus* applies only when the parties assign the question of class arbitration to courts, and *Stolt-Nielsen* applies only when there is an express stipulation that an agreement is silent (rather than when an arbitrator recognizes that it is effectively silent by resorting to an extra-contractual policy doctrine like *contra proferentem*), then neither decision has much purchase in the real world. Despite this Court's efforts to clarify the FAA's mandates, the Second Circuit's rule renders those efforts for naught. Parties to bilateral arbitration agreements are returned to square one and faced with the prospect of class arbitration when their agreements do not manifest any consent to it.

B. The Second Circuit's evasion of *Lamps Plus* is not some narrow carve-out. For many reasons, including efficiency, time considerations, and costs, current practice strongly favors assigning questions of arbitrability and procedural questions to the arbitrator. Studies indicate that 90% of arbitration agreements incorporate rules that assign issues of arbitrability and procedural questions to the arbitrator. Pet. 26–27. And most of the bilateral agreements between Amici's members and their employees do so as well.[2] There are many good reasons

[2] The Court "has not decided whether the availability of class arbitration is a so-called 'question of arbitrability.'" *Lamps Plus*, 139 S. Ct. at 1417 n.4. Such "gateway" questions are "presumptively for courts to decide," *Oxford Health*, 569 U.S. at 569 n.2, but contracting parties may assign them to the arbitrator if they do so clearly and unmistakably, *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995), an issue which is not presented in this petition.

to do so. Arbitrators often have relevant experience that provides comparative advantage when interpreting the agreement's terms (as opposed to applying public policy default rules). *See* David Horton, *Arbitration About Arbitration*, 70 Stan. L. Rev. 363, 382–83 (2018) (describing how norms evolved to support labor arbitrators deciding arbitrability, because "labor arbitrators are steeped in the norms of a particular industry," and therefore "better situated than generalist judges to discern the parties' intent"); *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 85 (2002) (for procedural questions "arbitrators, comparatively more expert about the meaning of their own rule, are comparatively better able to interpret and to apply it").

In addition, because deciding questions of arbitrability may require "factual inquiries into the parties' intentions," arbitration is better able to "deliver[] the various advantages associated with it, notably speed, economy, informality, [and] technical expertise," if such questions are assigned to the arbitrator. George A. Bermann, *The "Gateway" Problem in International Commercial Arbitration*, 37 Yale J. Int'l L. 1, 2, 37–38 (2012). Arbitration of such questions also guards against bad-faith attempts to run to court to "halt an arbitration merely by advancing a colorable reason in law why it should not go forward," which "would dramatically impair the efficacy of arbitration." *Id.* at 14.

Petitioner's arbitration agreement is thus fairly typical. Not only do most agreements assign questions of arbitrability to arbitration, agreements also often lack any reference to class arbitration (including to

expressly preclude it). This is because most bilateral agreements simply do not contemplate such a fundamental transformation of traditional arbitration. *See Stolt-Nielsen*, 559 U.S. at 685 ("[C]lass-action arbitration changes the nature of arbitration to such a degree that it cannot be presumed the parties consented to it by simply agreeing to submit their disputes to an arbitrator.").

Most of Amici's members' agreements also contain "all relief" clauses like the one the arbitrator cited here to find ambiguity regarding class arbitration. *See* Pet. App. 296a. Such clauses are intended to make clear that although an arbitration agreement alters the procedures for resolving whether an employee is entitled to relief (replacing court procedures with the procedures affirmatively set forth in the contract), the agreement does not alter the substantive relief an employee may receive. Leading arbitral rules strongly encourage, if not require, such clauses in arbitration agreements related to employment. *See, e.g.*, JAMS, *Policy on Employment Arbitration Minimum Standards of Procedural Fairness*, Standard No. 1 (July 15, 2019) ("All remedies that would be available under the applicable law in a court proceeding … must remain available in the arbitration."); AAA, *Employment Due Process Protocol* C.5 (May 9, 1995) ("The arbitrator should be empowered to award whatever relief would be available in court under the law."). "All relief" clauses are present in nearly all employment arbitration agreements. Given the vast number of employee arbitration agreements currently in effect, requiring retailers to clarify or modify these agreements after

the fact to avoid unintended class arbitration would impose significant administrative and cost burdens.

Such commonalities mean that the Second Circuit's decision creates an unsustainable level of risk for the vast majority of arbitration agreements. Common practices, together with the Second Circuit's strained reading of this Court's precedents, open the door for the arbitrator to apply *contra proferentem* across a wide range of agreements. Courts in that circuit, resolving cases from across the country, will be bound to defer to the arbitrator, even when the arbitrator is admittedly not "interpreting a contract," *Oxford Health*, 569 U.S. at 572, but rather applying an anti-drafter public policy rule, Pet. App. 58a. The result: contrary to this Court's precedents, parties will be compelled to engage in class arbitration without their consent.

C. Class arbitration without consent imposes substantial burdens. It "undermines the most important benefits of th[e] familiar [bilateral] form of arbitration," *Lamps Plus*, 139 S. Ct. at 1415, and "makes the process slower, more costly, and more likely to generate procedural morass than final judgment," *Concepcion*, 563 U.S. at 348—as this case's tortured twelve-year and four-appeal history attests. And it would be bad enough if class arbitration could be guaranteed to resolve the class's claims. But the substitution of an arbitrator's application of a policy rule for contractual agreement—as the Second Circuit's decision allows—raises the even worse problem of never-ending disputes.

Arbitration on a classwide basis is a fundamentally different beast than bilateral arbitration, and an unwieldy enough "procedural morass," *Concepcion*, 563 U.S. at 348, even if it could be guaranteed to resolve class claims. The class at issue here is 70,000 employees (of which only 0.3% have opted in or are named plaintiffs). Pet. 12. Large retailers could face classes that are orders of magnitude larger. *Cf. Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 342 (2011) (reversing certification of a class of 1.5 million employees). Certifying and managing classes necessarily lengthens the arbitration process, destroying the speed and efficiency that are arbitration's hallmarks. *Concepcion*, 563 U.S. at 348–49. It also "*requires* procedural formality," often with rules similar to those that would apply in federal court. *Id.* at 349. At bottom, with class arbitration, "the virtues Congress originally saw in arbitration, its speed and simplicity and inexpensiveness, would be shorn away and arbitration would wind up looking like the litigation it was meant to displace." *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1623 (2018).

Moreover, the costs and burdens associated with class litigation would apply without the judicial scrutiny that normally attends such high-stakes questions, like class certification. *Concepcion*, 563 U.S. at 350–51. The "absence of multilayered review makes it more likely that errors will go uncorrected." *Id.* at 350. In fact, accustomed to resolving bilateral disputes between consenting parties, arbitrators are ill-equipped to handle questions such as class certification. Their remit does not involve, for

example, "ensuring that third parties' due process rights are satisfied," *id.* at 350. Concerns that are uniquely addressed by courts belong in courts. *See, e.g.*, *Wal-Mart*, 564 U.S. at 363 ("In the context of a class action predominantly for money damages we have held that absence of notice and opt-out violates due process. See *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985).") And class arbitrations only exacerbate these problems, "rais[ing] serious due process concerns by adjudicating the rights of absent members of the plaintiff class … with only limited judicial review," *Lamps Plus*, 139 S. Ct. at 1416; *see* Pet. 21–23.

An agreement that unambiguously provides for class arbitration would no doubt at least attempt to address these additional risks and costs of class proceedings through specific provisions. In that situation, the trade-offs might make sense in exchange for final resolution of multiple claims. But when, as here, the agreement is ambiguous, there is a risk that finality will not be achieved.

"With no reason to think that the absent class members ever agreed to class arbitration, it is far from clear that they will be bound by the arbitrator's ultimate resolution of [a] dispute," at least where they have not been required to opt in. *Oxford Health*, 569 U.S. at 574 (Alito, J., concurring). That makes any resolution of the class arbitration "vulnerable to collateral attack" and allows "absent class members to unfairly claim the benefit from a favorable judgment without subjecting themselves to the binding effect of an unfavorable one." *Id.* at 575 (internal quotation marks omitted). Put another way, if the plaintiff class

prevails in the arbitration, then the class members will doubtless collect the spoils. But if the plaintiff class loses in the arbitration, the class members can claim that the award does not bind them, and then initiate their own arbitrations.

The bare notion that all employees "consented to the arbitrator's authority to decide the threshold question of whether the agreement permits class arbitration," Pet. App. 11a, does not solve the problem. The arbitrator's resolution of that threshold question depended not on interpretation of a contract within its four corners, but on application of an anti-drafter rule. *Id.* at 58a. And such resort to an extracontractual ground for imposing class arbitration "exceeded [the arbitrator's] powers." *Stolt-Nielsen*, 559 U.S. at 677. There is therefore a chance that it will not bind absent class members.

Neither the arbitrator nor the Second Circuit thought through the implications of applying this rule, including grappling with how *contra proferentem* would apply in follow-on arbitrations brought by dissatisfied absent class members. Such absent class members, if unhappy with the result of any classwide arbitral award, might contend that they are not bound by the class resolution, arguing afresh that the agreement does not provide for class arbitration. But unlike this case, it will be the employee, not the employer, making the argument against class arbitration. And the absent class member did not draft the contract. Does *contra proferentem* nonetheless supply the default rule permitting the class resolution to stand? Or does it (nonsensically) generate the opposite result when the shoe is on the other foot?

Questions that are already complicated enough for courts to resolve despite years of governing precedents will also be implicated in supposedly streamlined arbitration procedures under the Second Circuit's rule: Should arbitrators be bound by law of the case from earlier rulings? Are absent class members estopped from making arguments that their present counterparts opposed in earlier arbitrations? And on and on….

In short, allowing an arbitrator to impose class arbitration through an extracontractual device, when the agreement to arbitrate does not affirmatively consent to this complex procedure, raises a host of vexing problems at every stage, complicating a proceeding that the parties meant to be streamlined and efficient. The mere possibility of diametrically opposed results—where *contra proferentem* can cut both for and against allowing class arbitration depending on who is challenging what when—highlights that the ambiguity-resolving rule applied here does not stem from the contract itself. It therefore cannot substitute for the clear consent that the FAA requires for class arbitration. The disruption created by the Second Circuit's circumvention of this Court's precedents warrants the Court's immediate intervention.

II. Absent Intervention, The Decision Will Effectively Vitiate Bilateral Arbitration Agreements Nationwide.

If left uncorrected, the decision below will undermine not only the enforcement of an untold number of bilateral arbitration agreements as written,

but also impair the fair adjudication of claims if parties are forced into unintended class-action-style arbitration. As the Court has recognized, "the commercial stakes of class-action arbitration are comparable to those of class-action litigation," even "though the scope of judicial review is much more limited." *Stolt-Nielsen*, 559 U.S. at 686–87. This raises the likelihood of grave errors, while at the same time making "the risk of an error … often … unacceptable." *Concepcion*, 563 U.S. at 350.

Given the risk of collateral attack described above, the stakes for class arbitration are arguably even higher than for class litigation, because any arbitral loss for the defendant is final but a win is potentially subject to continual re-testing by unsatisfied absent class members. As a result, the pressure to settle any claims approved for class arbitration by arbitrators within the Second Circuit will be extreme, even for agreements that manifestly do not consent to class arbitration and even for claims that lack merit. *See id.* ("Other courts have noted the risk of 'in terrorem' settlements that class actions entail, and class arbitration would be no different.") (citation omitted). Even worse, given the due process rights of absent class members, such settlements may not stop the merry-go-round for defending retailers. But they will impair the emergence of new vehicles for this Court's review.

Worse still, the nature of class arbitration means that the Second Circuit's decision will reverberate far beyond the boundaries of the circuit. Most of Amici's members have national or large regional operations extending beyond the borders of the Second Circuit.

Those that have entered into garden variety bilateral arbitration agreements like the one here—*i.e.*, the majority of them—will potentially be subject to nationwide class arbitration so long as a single named plaintiff may be found within a Second Circuit jurisdiction. It is common for arbitration agreements to provide, as this one did, for arbitration to occur "near the site where the complaint arose," Pet. App. 310a. Few arbitration agreements involving Amici's members specify a centralized location for arbitration, because the goal is to make dispute resolution relatively easy and cost-effective for individual employees seeking a speedy low-cost resolution of their disputes.

Such commonplace venue provisions, combined with national and regional work forces, mean that for retailers operating across the country, arbitration may take place practically anywhere, including within the Second Circuit. And employees (or their lawyers) seeking to bring class claims will have every incentive to name lead class members in the Second Circuit. So Second Circuit law will likely govern any litigation over the availability of class arbitration. *See, e.g.*, 9 U.S.C. § 10(a) (order vacating award may be entered by "the United States court in and for the district wherein the award was made").

There is thus not only no need for percolation, *see* Pet. 29—but substantial pressure against percolation ever occurring. Moreover, if left unchecked, the Second Circuit's decision may embolden other circuits to similarly disregard this Court's mandate that "a party may not be compelled under the FAA to submit to class arbitration unless there is a contractual basis for

concluding that the party *agreed* to do so." *Stolt-Nielsen*, 559 U.S. at 684.

As large national and regional employers, Amici's members have entered into innumerable arbitration agreements with employees. Condoning the Second Circuit's approach, that allows class action arbitration to be imposed without the parties' consent, places each of these agreements at risk and would upset the uniform, faithful application of the FAA that this Court has consistently supported and repeatedly granted certiorari to ensure.

CONCLUSION

The petition should be granted.

Respectfully submitted.

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