IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

CRAIG STOKER, Plaintiff and Respondent, v. BLUE ORIGIN, LLC, et al., Defendants and Appellants.	B344945 (LA Super. Ct. No. 23STCV28816 Hon. Cherol J. Nellon)

APPLICATION FOR PERMISSION TO FILE AMICUS BRIEF and BRIEF OF THE CIVIL JUSTICE ASSOCIATION OF CALIFORNIA AS AMICUS CURIAE SUPPORTING APPELLANTS

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Application for Permission to File Amicus Brief

The Civil Justice Association of California (CJAC) applies for permission to file an amicus brief pursuant to California Rules of Court, rule 8.200(c), supporting Appellants Blue Origin, LLC, Kevin Lunde and Blue, Inc.

CJAC is a nonprofit organization whose members are businesses from a broad cross section of industries. CJAC's principal purpose is to educate the public and its governing bodies about how to make laws determining who gets paid, how much, and by whom when the conduct of some causes harm to others – more fair, certain, and economical. Toward this end, CJAC regularly appears as amicus curiae in numerous cases of interest to its members, including those that raise issues of concern to the business community, including the enforcement of arbitration agreements under the Federal Arbitration Act (FAA), of which the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 (EFAA) is a part.

CJAC's members collectively employ many thousands of people in California and hundreds of thousands nationally. Like many employers, most of CJAC's members have elected to resolve disputes with their employees over employment matters through binding arbitration. Thus, they have an interest in how the FAA, and the EFAA in particular, are interpreted in California courts. The trial court's denial of Blue Origin's motion to compel arbitration based on the EFAA raises an issue that is important to all California employers who have arbitration agreements with their employees: What is a "case which … relates to the sexual

harassment dispute," as that phrase is used in the EFAA? (See 9 U.S.C. § 402.)

CJAC's amicus brief will assist the Court by providing a broader perspective on the issue before the Court than that provided by the parties involved in the pending appeal.

No party to this appeal nor any counsel for a party authored CJAC's proposed amicus brief in whole or in part, or made a monetary contribution intended to fund the preparation or submission of the brief.

No person or entity made a monetary contribution intended to fund the preparation or submission of the brief, other than CJAC and its members.

November 25, 2025

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Amicus Brief

A The EFAA

Congress enacted the EFAA to give "victims of sexual violence and harassment" a choice as to where their claims are heard. Congress was concerned that forcing employees who had been "raped, assaulted, or harassed at work" to pursue their claims in secret in arbitration prevented them from sharing their stories and allowed employers to cover up misconduct. (H.R.Rep. No. 117-234, 2d Sess., pp. 3-6 (2022) [available at www.congress.gov/committee-report/117th-congress/house-report/234/1].)

To implement that policy, the EFAA amended the FAA to provide that, "at the election of the person alleging conduct constituting a sexual harassment dispute or sexual assault dispute,… no predispute arbitration agreement or predispute joint-action waiver shall be valid or enforceable with respect to a case which is filed under Federal, Tribal, or State law and relates to the sexual assault dispute or the sexual harassment dispute." (9 U.S.C. § 402(a).) The applicability of the EFAA is to be determined under federal law by a court, not an arbitrator. (9 U.S.C. § 402(b).)

B Adding the words "sexual harassment" to a complaint against the plaintiff's employer does not make the case exempt from arbitration.

When determining whether to enforce an arbitration agreement, a court should start with the understanding that both federal and California law favor enforcement. (*Moncharsch v. Heily & Blase* (1992) 3 Cal.4th 1, 9 (noting the "strong public

policy in favor of arbitration as a speedy and relatively inexpensive means of dispute resolution, " which requires courts to "indulge very intendment to give effect to such proceedings"); *Preston v. Ferrer* (2008) 552 U.S. 346, 349 (the FAA "establishes a national policy favoring arbitration when the parties contract for that mode of dispute resolution").)

That policy requires courts to take a narrow view of any exceptions to the broad reach of the FAA. (*Circuit City Stores v. Adams* (2001) 532 U.S. 105, 118 (the exclusion in section 1 of the FAA for contracts of employment should be afforded a "narrow construction"); *Henry Schein, Inc. v. Archer & White Sales, Inc.* (2019) 586 U.S. 63, 70 (rejecting a "wholly groundless" exception to the FAA because the Court "may not engraft our own exceptions onto the statutory text"); *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.* (1983) 460 U.S. 1, 24-25 ("any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration").)

Congress used the term "dispute" to describe the event that triggers the right of a victim of sexual assault or sexual harassment to void a predispute arbitration agreement as to a "case" that relates to the dispute. (9 U.S.C. § 402, subd. (a).) Most reported decisions have interpreted that language to mean that the plaintiff must plead sexual harassment "plausibly."[1] This

[1] *Mangum v. Ross Dress for Less, Inc.* (E.D.N.C. 2025) 777 F.Supp.3d 519, 529 (the employee "must plausibly allege a sexual harassment dispute or sexual assault dispute, as defined by the EFAA, to invoke the EFAA and avoid arbitration"); *Clay v. Fgo*

Court should adopt the same interpretation. Judge Engelmayer persuasively explained the rationale for such a standard in his widely cited opinion in *Yost v. Everyrealm, Inc.* (S.D.N.Y. 2023) 657 F.Supp.3d 563.

Although the initial clause of section 402, subdivision (a) might suggest a plaintiff could defeat arbitration by alleging conduct described in the vernacular as sexual harassment, section 401, subdivision (4) makes clear that the conduct must have been "alleged to constitute sexual harassment under applicable Federal, Tribal, or State law." That language "implicitly incorporate[s] the plausibility standard" that the courts use to decide motions to dismiss under Federal Rule of Civil Procedure 12 (b)(6). (657 F.Supp.3d at p. 585.) Judge Engelmayer gave four reasons for his ruling:

First, it would have been well-known to Congress that courts used the plausibility standard to evaluate claims under Rule 12 (b)(6). "In enacting a statute that expressly referred to allegations of violations of law, it is reasonable to infer that

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Logistics, Inc. (D.Conn. 2024) 751 F.Supp.3d 3, 20 ("the EFAA applies to only plausibly pled sexual harassment disputes"); *Prerna Singh v. MeetUp LLC* (S.D.N.Y. 2024) 750 F.Supp.3d 250, 255 ("a plaintiff must plausibly plead—and not merely allege—a sexual harassment or sexual assault claim"); *Newton v. LVMH Moet Hennessy Louis Vuitton Inc.* (S.D.N.Y. 2024) 746 F.Supp.3d 135, 150 ("the plaintiff bringing such claims must put forth plausible allegations that the defendant violated a sexual harassment law"); *Mitura v. Finco Servs., Inc.* (S.D.N.Y. 2024) 712 F.Supp.3d 442, 451-452; *Yost v. Everyrealm, Inc.* (S.D.N.Y. 2023) 657 F.Supp.3d 563, 567 (construing the EFAA "to require that, where a party seeks to invoke the EFAA based on a claim of sexual harassment, such a claim must have been plausibly pled").

Congress in 2022 was aware that only viably pled (that is, plausible) allegations of sexual harassment law had the capacity to proceed past the pleading stage in federal court." (*Ibid*.)

Second, the standard vindicates the purposes of the EFAA even if it results in ordering some claims to arbitration. A plaintiff with a viable sexual harassment claim will be able to insist on a judicial determination of his or her claims. Only those without viable claims—that is, those who were not victims of sexual harassment—will be required to pursue their claims in arbitration. (657 F.Supp.3d at p. 586.)

Third, applying a lesser standard "would affront Congress's intent in enacting the FAA—of which, critically, the EFAA is a part." (*Ibid*.) To read the EFAA as voiding arbitration agreements after plaintiffs "have proven themselves unable to plead claims of sexual harassment … could destabilize the FAA's statutory scheme." (*Ibid*.)

Fourth, courts in other contexts have interpreted the statutory term "allege" with similar analyses. (657 F.Supp.3d at p. 587 (citing to cases interpreting the Resource Conservation and Restoration Act, the Clean Water Act and the Fair Labor Standards Act.)

Allowing a plaintiff to avoid arbitration with vague allegations of sexual harassment that do not meet the plausibility standard

> is incompatible with the "liberal federal policy favoring arbitration agreements" undergirding the FAA. [citation omitted] It would not advance the interest embodied in the EFAA of vindicating the rights of sexual harassment claimants to litigate in

> court, because [plaintiff] has failed to plead facts plausibly placing her in that category of persons, and her lawsuit no longer concerns sexual harassment even in part. And *it would invite mischief, by incenting future litigants bound by arbitration agreements to append bogus, implausible claims of sexual harassment to their viable claims, in the hope of end-running these agreements*.

(657 F.Supp.3d at pp. 587-588 (emphasis supplied).) This Court should not allow the plaintiff in this case to end-run his agreement to arbitrate with implausible claims of sexual harassment.

C Stoker did not plausibly allege conduct constituting a sexual harassment dispute.

As Blue Origin has pointed out in its briefing, the specific conduct that Stoker alleged cannot plausibly support a claim for sexual harassment under the Fair Employment and Housing Act (FEHA). An employee seeking damages for sexual harassment must allege "extreme" conduct. It must be "sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." (*Jones v. Department of Corrections & Rehabilitation* (2007) 152 Cal.App.4th 1367, 1377, quoting *Harris v. Forklift Systems, Inc.* (1993) 510 U.S. 17, 21.) "'[S]imple teasing,' … offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the 'terms and conditions of employment.'" (*Ibid.*, quoting *Faragher v. Boca Raton* (1998) 524 U.S. 775, 788.) That limitation is necessary to prevent the FEHA from being expanded into a "general civility code." (*Ibid.*, quoting *Oncale v. Sundowner Offshore Services, Inc.* (1998) 523 U.S. 75, 81.)

The facts alleged must also show that the plaintiff was subjected to the extreme conduct "on the basis of sex." (*Miller v. Department of Corrections* (2005) 36 Cal.4th 446, 461.) Stoker did not plead such facts. He does not allege that anyone ever made an offensive or inappropriate comment based on his sex. Indeed, the complaint does not allege that anyone ever even referenced his gender. Instead, he falls back on conclusory assertions about expectations that he attributes to higher level employees at Blue Origin. Such allegations that merely parrot the legal elements of the cause of action are not sufficient to plausibly state a cause of action. (See *Rincon Band of Luiseño Mission Indians v. Flynt* (2021) 70 Cal.App.5th 1059, 1112 (allegations "essentially parroting the legal elements of the cause of action, are not sufficient to state a claim").)

Conclusion

Trial courts in California are regularly confronted with arguments that the EFAA relieves a plaintiff from the obligation to comply with an arbitration agreement. This case provides the Court with the opportunity to give those courts clear guidance on the standards they should use to determine whether the EFAA applies in such situations. The Court should rule that the EFAA does not apply unless the plaintiff has plausibly alleged a sexual harassment cause of action under the FEHA and direct the trial court to grant Blue Origin's motion to compel arbitration.

November 25, 2025

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Certificate of Compliance

Counsel of Record hereby certifies that, pursuant to Rule 8.204(c)(1) of the California Rules of Court, the enclosed Respondents' brief is produced using 13-point Roman type including footnotes and contains approximately 2,355 words, which is less than the total words permitted by the Rules of Court. Counsel relies on the word count of the computer program used to prepare this brief.

s/ Calvin House