No. 10-

IN THE

Supreme Court of the United States

COMPUCREDIT CORPORATION AND SYNOVUS BANK,
Petitioners,

v.

WANDA GREENWOOD *et al.*,
Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether claims arising under the Credit Repair Organizations Act, 15 U.S.C. § 1679 *et seq.*, are subject to arbitration pursuant to a valid arbitration agreement.

PARTIES TO THE PROCEEDING

Petitioners are CompuCredit Corporation and Synovus Bank. CompuCredit Corporation was a defendant-appellant below. Columbus Bank and Trust Company, also a defendant-appellant below, is now known as and is a division of Synovus Bank, a petitioner in this case.

Respondents are Wanda Greenwood, Ladelle Hatfield, and Deborah McCleese, named plaintiffs below, on behalf of themselves and others similarly situated.

RULE 29.6 DISCLOSURE

CompuCredit Corporation is a wholly owned subsidiary of CompuCredit Holdings Corporation, a publicly held corporation.

Synovus Bank is a wholly owned banking subsidiary of Synovus Financial Corporation, a publicly held corporation.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners seek a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The decision of the court of appeals is reported at 615 F.3d 1204, and is reprinted in the Appendix to the Petition ("App.") at 1a-29a. The opinion of the district court is reported at 617 F. Supp. 2d 980, and is reprinted at App. 30a-45a.

JURISDICTION

The court of appeals issued its decision on August 17, 2010, and denied a petition for rehearing and rehearing en banc on October 27, 2010. App. 46a-47a. The Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions of the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*, and the Credit Repair Organizations Act, 15 U.S.C. § 1679 *et seq.*, are reproduced in the appendix. App. 48a-64a.

INTRODUCTION

The court of appeals' decision in this case creates a square and acknowledged conflict among the circuits on whether claims brought under the Credit Repair Organizations Act (CROA), 15 U.S.C. § 1679 *et seq.*, are subject to arbitration. A divided panel of the Ninth Circuit held below that Congress intended to preclude arbitration of CROA claims, and manifested its intention with sufficient clarity to over-

come the strong federal policy favoring arbitration. That decision, as the panel below expressly acknowledged, directly conflicts with decisions of the Third and Eleventh Circuits. The question presented is a recurring and important one. And the class-action nature of many CROA claims will enable forum shopping to avoid arbitration, such that the Ninth Circuit's rule prohibiting arbitration of CROA claims would become a de facto nationwide rule. This Court's review is warranted.

STATEMENT OF THE CASE

1. a. The Credit Repair Organizations Act (CROA) was enacted "to ensure that prospective buyers of the services of credit repair organizations are provided with the information necessary to make an informed decision regarding the purchase of such services," and "to protect the public from unfair or deceptive advertising and business practices by credit repair organizations." 15 U.S.C. § 1679(b). The CROA defines a "credit repair organization" as an organization that provides services aimed to "improv[e] any consumer's credit record, credit history, or credit rating." *Id.* § 1679a(3)(A)(i).

The CROA prohibits certain practices by credit repair organizations deemed by Congress to be unfair or deceptive. *Id.* § 1679b. The statute also affords consumers of credit repair services additional rights, such as the right to cancel a contract with a credit repair organization. *Id.* § 1679e.

b. The CROA requires credit repair organizations, before entering into any agreement with a consumer, to provide a written statement disclosing to consumers certain of the "rights" afforded under

the CROA and related statutes. *See id.* § 1679c. The disclosure provision does not itself enact any of the "rights" subject to the disclosure requirement; rather, each of the rights is separately established in other provisions. *See Rex v. CSA-Credit Solutions of Am., Inc.*, 507 F. Supp. 2d 788, 799 n.5 (W.D. Mich. 2007) (linking each of the "rights" required to be disclosed to consumers under Section 1679c with the separate provisions establishing those rights).

Of particular salience, the disclosure provision prescribes that the written statement to consumers state: "You have a right to sue a credit repair organization that violates the Credit Repair Organization Act." *Id.* § 1679c(a). The "right to sue" described in Section 1679c(a) is found in CROA's civil liability provision, which states: "Any person who fails to comply with any provision of [the CROA] with respect to any other person shall be liable to such person" in an amount determined under a framework set forth in the statute. *Id.* § 1679g.

Finally, the CROA contains an anti-waiver provision. Entitled "Noncompliance with this subchapter," the anti-waiver provision states: "Any waiver by any consumer of any protection provided by or any right of the consumer under" the CROA "shall be treated as void," and "may not be enforced by any Federal or State court or any other person." *Id.* § 1679f(a).

2. The Federal Arbitration Act (FAA) provides that an agreement to arbitrate a dispute "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. As this Court has

long recognized, the FAA "manifest[s] a 'liberal federal policy favoring arbitration agreements.'" *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 25 (1991) (quoting *Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983)).

3. Petitioner CompuCredit marketed and serviced a credit card under the brand name Aspire Visa. App. 3a. Petitioner Synovus Bank (known at the time as Columbus Bank and Trust) issued the Aspire Visa card. App. 3a.

Respondents each applied for and received an Aspire Visa card. Before obtaining the card, respondents agreed that any dispute arising from or related to their credit card account would be arbitrated. In particular, respondents received a mailing entitled "Pre-Approved Acceptance Certificate," which stated, *inter alia*:

> By signing, I request an Aspire Visa card and ask that an account be opened for me. . . . I have read and agree to be bound by the "Summary of Credit Terms" and "Terms of Offer" printed on the enclosed insert, *which insert includes a discussion of arbitration applicable to my account, and is incorporated here by reference.*

App. 4a (emphasis added).

The "Summary of Credit Terms," in turn, provided:

> Any claim, dispute or controversy (whether in contract, tort, or otherwise) at any time arising from or relating to

> your Account, any transferred balances or this Agreement (collectively, "Claims"), upon the election of you or us, *will be resolved by binding arbitration* . . . . Upon such an election, *neither you nor we will have the right to litigate in court the claim being arbitrated*, including a jury trial . . . .

App. 5a (emphasis added).

4. On October 24, 2008, respondents filed a complaint against petitioners alleging, among other things, that the imposition of certain fees associated with the Aspire Visa card violated the CROA, and that petitioners failed to make certain disclosures required by that statute.[1] App. 3a-4a. Respondents purported to represent a nationwide class of holders of the Aspire Visa card. App. 36a.

a. On December 30, 2008, petitioners moved the district court to compel arbitration of respondents' CROA claims based on the mandatory arbitration clause in the parties' contract. The district court denied the motion to compel arbitration, holding that CROA claims are not subject to arbitration. App. 30a-45a.

The district court acknowledged the need under this Court's decisions to assess the arbitrability of CROA claims "with a healthy regard for the federal policy favoring arbitration." App. 41a (quoting *Gilmer*, 500 U.S. at 26) (internal quotation mark omitted). The court further explained that this Court

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[1] Respondents also alleged violations of California law, which are not at issue in this petition.

"has regularly concluded that statutory claims in a variety of contexts are arbitrable." App. 41a. In the district court's view, however, the CROA grants consumers a "non-waivable right to sue" in court, rendering respondents' arbitration agreements void and unenforceable. App. 41a-45a. Petitioners appealed the district court's refusal to compel arbitration pursuant to the FAA, 9 U.S.C. § 16(a)(1)(B).

b. A divided panel of the court of appeals affirmed. App. 1a-29a. The panel majority recognized the "'liberal federal policy favoring arbitration agreements.'" App. 7a (quoting *Gilmer*, 500 U.S. at 25). The majority further explained that a party must adhere to an agreement to arbitrate claims "unless Congress itself has evinced an intention to preclude a waiver of judicial remedies for the statutory rights at issue." App. 8a (quoting *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 628 (1985)) (internal quotation marks omitted). Accordingly, the "burden is on the party opposing arbitration to show that Congress intended to preclude a waiver of judicial remedies." App. 8a (citing *Gilmer*, 500 U.S. at 26).

Nevertheless, the majority found that the "plain language of the CROA" compels concluding that Congress precluded arbitration of CROA claims. App. 17a. The majority reasoned that CROA's disclosure provision refers to a "right to sue," and that the "plain meaning of the phrase 'right to sue' . . . involves the right to bring an action in a court of law," not in arbitration. App. 10a. The majority found it insignificant that the "right to sue" mentioned in the disclosure provision is established, not in that provision, but instead in the CROA's civil liability provi-

sion, 15 U.S.C. § 1679g, the language of which concededly does not preclude submission of a CROA claim to arbitration. App. 13a.

The majority also relied on the CROA's anti-waiver provision, 15 U.S.C. § 1679f(a). App. 14a-15a. In the majority's view, the anti-waiver provision "invalidates any waiver of the right to sue" in a court, thus rendering the arbitration clause in the Aspire Visa agreement void and unenforceable. App. 15a. The majority acknowledged that, because the anti-waiver provision bars enforcement of a waiver of CROA rights by a "court *or any other person*," 15 U.S.C. § 1679f(a) (emphasis added), the provision necessarily contemplates the resolution of disputes between a credit repair organization and a consumer by an arbitrator. App. 15a. But the majority nonetheless considered the statute to bar submission of a consumer's CROA claim to an arbitrator. According to the majority, the "'any other person' language of Section 1679(f) assures that [the CROA's] rights and protections would be preserved in an arbitration instituted by a credit repair organization" in, for example, a collection proceeding. *Id.*

The majority expressly "realize[d] that [its] decision is in conflict with that of two of [its] sister circuits," but was "unpersuaded by the reasoning of those cases." App. 17a (citing *Gay v. CreditInform*, 511 F.3d 369 (3d Cir. 2007); and *Picard v. Credit Solutions, Inc.*, 564 F.3d 1249 (11th Cir. 2009)). In the majority's view, the Third and Eleventh Circuits' decisions gave too "little regard to the 'right to sue' language in the statute," and relied "upon reasoning in Supreme Court cases that are distinguishable from the situation here." App. 17a.

c. Judge Tashima dissented. App. 23a-29a. He explained that, while the CROA's disclosure provision mentions a "right to sue," the provision "does not purport to create any substantive rights, including the right to sue. Rather, its sole purpose is to set forth a disclosure statement to be communicated verbatim to consumers." App. 25a. "The 'right to sue' listed in § 1679c(a)," Judge Tashima observed, "is provided for in 15 U.S.C. § 1679g, which establishes civil liability for violations of the CROA." App. 26a. While the civil liability provision generally confers "the 'right to sue' a credit repair organization which violates the CROA," Judge Tashima explained, the statute nowhere "mandate[s] a judicial forum for enforcement of the CROA's substantive provisions." App. 26a. Moreover, Judge Tashima observed, "the mere mention of a 'right to sue' does not necessarily mean the right to sue *in court*, especially given the lack of other statutory language supporting this interpretation." App. 27a.

Judge Tashima rejected the majority's reliance on the CROA's anti-waiver provision, Section 1679f. The language of that provision, Judge Tashima observed, "indicates that Congress intended that CROA claims . . . be enforceable outside a judicial forum." App. 26a. That is because the provision prohibits any waiver of CROA's protections or rights "by any Federal or State court *or any other person*." App. 26a (quoting 15 U.S.C. § 1679f(a)) (emphasis and omissions in original). "By including 'or any other person' in the same sentence that lists Federal and State courts as appropriate fora for CROA claims," Judge Tashima explained, "Congress clearly

indicated that arbitrators, mediators, and other third parties may decide CROA claims." App. 27a.

Having found that the statutory text fails to support the majority's decision, Judge Tashima also noted the absence of any legislative history "establish[ing] that Congress intended CROA claims to be non-arbitrable." App. 28a. In addition, he found "no inherent conflict between arbitration and CROA's underlying purpose because Plaintiffs may enforce their rights under the substantive provisions of CROA even if compelled to arbitrate." *Id.* Judge Tashima concluded that the court "should not lightly create a circuit split on an issue of national application on the basis of the flimsy evidence on which the majority relies." App. 27a-28a.

d. The court of appeals, over Judge Tashima's dissent, denied panel rehearing and rehearing en banc. App. 46a-47a.

REASONS FOR GRANTING THE PETITION

The courts of appeals are squarely divided over whether Congress intended to preclude arbitration of claims arising under the CROA. The issue is an important and recurring one, and this case presents a highly suitable vehicle for resolving it. The Ninth Circuit, moreover, answered it incorrectly: Nothing in the CROA overcomes the strong presumption that an arbitration agreement is enforceable under the Federal Arbitration Act. The Court should grant certiorari to resolve the court of appeals' disagreement, and should reverse the judgment below.

A. The Courts of Appeals Are Divided on the Question Presented

As the Ninth Circuit expressly recognized below, the courts of appeals are divided on the question presented in this case. The Third and Eleventh Circuits have held that nothing in the CROA precludes enforcement of an agreement to arbitrate claims brought under that statute. The Ninth Circuit expressly rejected the approach of those courts, holding instead that Congress intended to preclude the submission of CROA claims to arbitration.

1. a. In *Gay v. CreditInform*, 511 F.3d 369 (3d Cir. 2007), the Third Circuit held that CROA claims are subject to arbitration. The court allowed that the CROA's civil liability provision, Section 1679g, "contemplate[s] consumers' [CROA] actions being brought in a judicial forum . . . and to that extent may be said to recognize a consumer's right to proceed in court." *Id.* at 381. The court explained, however, that the statute contains no indication "that Congress . . . intended to exclude claims asserted under the CROA . . . from arbitration agreements." *Id.* at 382. The court rejected reliance on the "right to sue" language in the CROA's disclosure provision, explaining that the provision "does not specify the forum for the resolution of the dispute and therefore does not support [the] argument that the CROA provides a consumer with the right to bring suit in a judicial, rather than an arbitral, forum." *Id.* at 377 n.4. Moreover, "even if the use of the word 'sue' implies the availability of a judicial forum for an action against a credit repair organization, use of the word would not mean that the organization could not as-

sert . . . the right to invoke a contractual arbitration provision to change the forum." *Id.*

Having determined that the CROA creates no right to a judicial forum, the Third Circuit found that the CROA's anti-waiver provision, 15 U.S.C. § 1679f(a), is inapplicable. "There is nothing for a consumer to waive under our understanding of the provision[] of the statute[] dealing with [a] judicial forum[]." *Gay*, 511 F.3d at 383 n.10. But even assuming *arguendo* that the CROA conferred a right to a judicial forum, the Third Circuit held that the statute's anti-waiver provision would not bar enforcement of an arbitration agreement. Relying on this Court's decisions in *Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220 (1987), and *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477 (1989), the court "construe[d] the CROA's anti-waiver provision as only extending to rights premised on the imposition of statutory duties." *Gay*, 511 F.3d at 385.

The Eleventh Circuit subsequently adopted the Third Circuit's position in *Picard v. Credit Solutions, Inc.*, 564 F.3d 1249 (11th Cir. 2009). The court explained its holding succinctly:

> The text of CROA makes no mention of arbitration. The only right created in the disclosure provision is the right to a statement containing certain disclosures. The "right to sue" referenced in the required disclosure is set forth separately in the civil liability section, 15 U.S.C. § 1679g(a), which does not mention the word "right," the expres-

> sion "right to sue," or place any limitation on arbitration. Although CROA requires credit repair organizations to inform consumers of their right to a private cause of action, such does not preclude arbitration under CROA. "A statute's provision for a private right of action alone is inadequate to show that Congress intended to prohibit arbitration[]" . . . . *Davis v. S. Energy Homes, Inc.*, 305 F.3d 1268, 1274 (11th Cir. 2002) (quoting *Gilmer*, 500 U.S. at 29)).

Picard, 564 F.3d at 1255. The court found the CROA's anti-waiver provision irrelevant, because the "CROA simply does not create a right to sue only in a judicial forum." *Id.*

b. The Ninth Circuit below expressly acknowledged—and squarely rejected—the approach of the Third and Eleventh Circuits, instead holding that "the plain language of the CROA prohibits enforcement of [an] arbitration agreement." App. 17a. The Ninth Circuit expressed that its sister circuits had "give[n] surprisingly little regard to the 'right to sue' language in the statute, and rel[ied] upon reasoning in Supreme Court cases that are distinguishable from the situation here." App. 17a. Because the Ninth Circuit denied rehearing en banc, the conflict among the courts of appeals is entrenched.

2. As a result of the Ninth Circuit's holding, the enforceability of an agreement to arbitrate claims under the CROA depends entirely upon the jurisdiction in which the plaintiff elects to file suit. Plaintiffs bringing CROA suits in the Third and Eleventh

Circuits will be subject to compelled arbitration based on a valid agreement to arbitrate. Such agreements will be unenforceable in the Ninth Circuit, however, such that CROA claims in that circuit must be resolved by the courts rather than in arbitration. That differential treatment of prospective plaintiffs and defendants, depending solely on where a suit is filed, should not be allowed to persist.

In addition, CROA claims by nature typically involve consumers with poor credit, and poor credit is disproportionately found in the three circuits to have pronounced on the arbitrability of CROA claims—the Third, Ninth, and Eleventh Circuits. According to statistics compiled by the Administrative Office of the U.S. Courts, for instance, in the three months ending on September 30, 2010, the Third, Ninth, and Eleventh Circuits accounted for over 45% of all new personal bankruptcy filings. *See* http://www.uscourts.gov/uscourts/Statistics/BankruptcyStatistics/BankruptcyFilings/2010/ 0910_f23.pdf.

The effect of the conflict among the courts of appeals in fact is more pronounced because of the class-action nature of many CROA actions. This case, for instance, involves a purported nationwide class of credit card holders. The decision below gives rise to significant forum-shopping opportunities in such cases. Class action plaintiffs seeking to avoid enforcement of arbitration agreements will aim to file their CROA action within the Ninth Circuit's expansive geographic reach. The Ninth Circuit's prohibition against arbitration of CROA claims thus could

effectively become the nationwide rule unless this Court grants review to resolve the circuit conflict.[2]

B. The Question Presented Is a Recurring Issue of National Importance, and This Case Presents A Highly Suitable Vehicle For Resolving It

1. The question whether CROA claims are subject to arbitration is a recurring issue of national importance. Three courts of appeals have decided the issue in the past three years, and a number of district courts in other circuits have confronted the question whether CROA claims are arbitrable (and have reached divergent conclusions). *See, e.g.*, *Rex v. CSA-Credit Solutions of Am., Inc.*, 507 F. Supp. 2d 788 (W.D. Mich. 2007) (CROA claims subject to arbitration); *Schreiner v. Credit Advisors, Inc.*, No. 07-78, 2007 U.S. Dist. LEXIS 74014 (D. Neb. Oct. 2, 2007) (same); *Vegter v. Forecast Fin. Corp.*, No. 07-279, 2007 U.S. Dist. LEXIS 85653 (W.D. Mich. Nov. 20, 2007) (same); *Alexander* v. *U.S. Credit Management*, 384 F. Supp. 2d 1003 (N.D. Tex. 2005) (CROA claims not subject to arbitration); *see also Ace Am. Ins. Co. v. Ascend One Corp.*, No. CCB-06-CV-3371, 2007 WL 1774495 (D. Md. June 15, 2007) (involving

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[2] This case illustrates the potential for forum shopping engendered by the decision below. The plaintiffs in this suit attempted to add plaintiffs from a similar suit originally brought—and voluntarily dismissed—in federal court in Alabama. *See Greenwood v. CompuCredit Corp.*, No. 4:08-cv-4878, Dkt. No. 90, at 4 (N.D. Cal.). Under the law of the Eleventh Circuit, the claims of those additional, would-be plaintiffs would be subject to arbitration. But if those plaintiffs were added to the instant suit, arbitration of their claims would be prohibited under the decision below.

agreement to arbitrate CROA claims; court did not consider whether CROA claims are arbitrable); *Vertucci v. Orvis*, No. 3:05 CV 1307, 2006 WL 1688078 (D. Conn. May 30, 2006) (same); *Arnold v. Goldstar Financial Systems, Inc.*, No. 01 C 7694, 2002 WL 1941546 (N.D. Ill. Aug. 22, 2002) (same).

Additionally, the question whether claims under the CROA are subject to arbitration is growing in importance. For instance, the number of personal bankruptcy filings has risen dramatically in the past several years. According to figures reported by the Administrative Office of the U.S. Courts, there were a total of 822,590 newly filed personal bankruptcy petitions in the United States in 2007.[3] That number increased by approximately 72%, to 1,412,838, in 2009.[4] And because the demand for credit repair services presumably correlates strongly with a decline in the quality of consumer credit, the number of CROA suits—and, thus, disputes over arbitration of CROA claims—will only increase in the years to come. This Court's resolution of the question presented will be crucial to the establishment of a predictable regime for resolving an ever growing number of disputes under the CROA.

2. This case also presents a highly suitable vehicle for resolving the question presented. The court below held that petitioners could not compel arbitration of respondents' CROA claims, even though there is no dispute that the agreements between respon-

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[3] *See* http://www.uscourts.gov/uscourts/Statistics/StatisticalTablesForTheFederalJudiciary/2007/dec07/F02dec07.pdf.

[4] *See* http://www.uscourts.gov/uscourts/Statistics/StatisticalTablesForTheFederalJudiciary/2009/dec09/F02dec09.pdf.

dents and petitioners call for arbitration of actions like this one. If this Court were to reject the Ninth Circuit's approach and instead adopt the position of the Third and Eleventh Circuits, the decision below refusing to compel arbitration would necessarily be reversed. This case therefore squarely presents the question whether CROA claims are subject to arbitration.[5]

C. The Court of Appeals Erred in Holding That CROA Claims Are Not Subject To Arbitration

1. The Ninth Circuit erred in holding that CROA claims are not arbitrable. This Court has long recognized that the Federal Arbitration Act institutes a "federal policy favoring arbitration" and that courts therefore must "rigorously enforce agreements to arbitrate." *Shearson/American Exp., Inc. v. McMahon*, 482 U.S. 220, 226 (1986) (quoting *Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983), and *Dean Witter Reynolds v. Byrd*, 470 U.S. 213, 221 (1985)). The strong federal policy favoring arbitration applies with full force "when a party bound by an agreement raises a claim founded on statutory rights." *Id.*

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[5] Petitioners argued in the district court that they do not qualify as "credit repair organizations" and thus do not fall within the coverage of the CROA. Neither the district court nor the court of appeals reached that issue. App. 9a n.3. Under the decision below, the question whether petitioners constitute "credit repair organizations" would be decided by a court rather than in an arbitration proceeding. But if this Court grants certiorari and reverses the decision below, that question would be resolved in an arbitration proceeding.

To be sure, Congress has the power to negate the operation of the FAA with respect to a given statute so as to preclude arbitration of claims arising under the statute. "[S]uch an intent 'will be deducible from [the statute's] text or legislative history,' or from an inherent conflict between arbitration and the statute's underlying purposes." *McMahon*, 482 U.S. at 227 (quoting *Mitsubishi Motors*, 473 U.S. at 628) (alterations in original; citation omitted). But it is well-settled that "[t]he burden is on the party opposing arbitration . . . to show that Congress intended to preclude a waiver of judicial remedies for the statutory rights at issue." *Id.* And this analysis must be guided by a "'healthy regard for the federal policy favoring arbitration.'" *Gilmer*, 500 U.S. at 26 (quoting *Moses H. Cone Memorial Hosp.*, 460 U.S. at 24). The presumption favoring arbitration is so strong that, in the past 25 years, this Court has *not once* denied the arbitrability of a federal statutory cause of action.[6]

2. a. The court of appeals' holding precluding arbitration of CROA claims is incorrect under the governing standards. The CROA establishes a civil

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[6] *See, e.g.*, *Green Tree Fin. Corp. v. Randolph*, 531 U.S. 79 (2000) (Truth in Lending Act claims are subject to arbitration); *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991) (Age Discrimination in Employment Act claims subject to arbitration); *Rodriguez de Quijas v. Shearson/American Express Inc.*, 490 U.S. 477 (1989) (securities fraud actions subject to arbitration); *Shearson/American Express Inc. v. McMahon*, 482 U.S. 220 (1986) (Securities Exchange Act and Racketeer Influenced and Corrupt Organizations Act claims subject to arbitration); *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 628 (1985) (federal antitrust claims subject to arbitration).

cause of action, which states in relevant part: "Any person who fails to comply with any provision of this subchapter with respect to any other person shall be liable to such person in" a manner determined under the statute. 15 U.S.C. § 1679g(a). That provision makes no mention of arbitration. And there is no suggestion that Congress intended the provision to create an *exclusively* judicial remedy. Given the strong presumption favoring arbitrability of a statutory cause of action, the only plausible conclusion is that Congress did not intend to preclude arbitration of CROA claims.

What is more, neither respondents nor the court of appeals has pointed to any legislative history discussing arbitration of CROA claims, much less indicating any intention to preclude arbitration. *See McMahon*, 482 U.S. at 227 (intention to preclude arbitration "will be deducible from text or legislative history") (internal quotation marks omitted). Nor is there any "inherent conflict between arbitration and the statute's underlying purposes." *Id.* Rather, "so long as the prospective litigant effectively may vindicate its statutory cause of action in the arbitral forum, the statute will continue to serve both its remedial and deterrent function." *Mitsubishi Motors*, 473 U.S. at 637; App. 28a (Tashima, J., dissenting).

In short, nothing in the CROA's text, history, or purposes overcomes the "'healthy regard for the federal policy favoring arbitration.'" *Gilmer*, 500 U.S. at 26 (quoting *Moses H. Cone Memorial Hosp.*, 460 U.S. at 24). That should be the end of the matter.

b. The majority below rejected that straightforward analysis. The majority instead relied on the

CROA's disclosure provision, which requires credit repair organizations to state to consumers in writing, *inter alia*: "You have a right to sue a credit repair organization that violates the Credit Repair Organization Act." 15 U.S.C. § 1679c(a). "The plain meaning of the phrase 'right to sue,'" the majority perceived, "clearly involves the right to bring an action in a court of law." App. 10a.

The majority's analysis is fundamentally flawed. The disclosure provision does not create a "right to sue." Rather, the only right that provision creates is a consumer's right to receive a congressionally prescribed, written statement from a credit repair organization. That statement is meant to inform the consumer of certain "rights," each of which is created in other portions of the statute. The "right to sue" is defined in Section 1679g—the CROA's civil liability provision—which makes no mention whatsoever of arbitration. Nothing in that section thus could overcome the strong presumption that Congress intends statutory claims to be subject to arbitration.

The "right to sue" language in the disclosure provision thus does not *create* any right, but rather *describes* the cause of action available under the CROA. But describing a cause of action as a "right to sue" says nothing about whether the parties can agree to arbitrate their dispute. Indeed, *any* statutory cause of action can properly be described as a "right to sue," and yet this Court has repeatedly held that disputes arising under statutes with express causes of action are subject to arbitration. *See supra* note 6. Indeed, this Court so held even when the cause of action in the relevant statute *explicitly* speaks of courts as the relevant forum.

For example, the Age Discrimination in Employment Act (ADEA) provides: "Any person aggrieved may bring a civil action *in any court of competent jurisdiction* for such legal or equitable relief as will effectuate the purposes of this chapter." 29 U.S.C. § 626(c)(1) (emphasis added). This Court nonetheless found ADEA claims to be arbitrable in *Gilmer*. Similarly, the Securities Exchange Act of 1934 vests jurisdiction over "all suits in equity and actions at law brought to enforce any liability or duty created by this chapter or the rules and regulations thereunder" in the "district courts of the United States." 15 U.S.C. § 78aa. This Court nonetheless held Exchange Act claims arbitrable in *McMahon*.

Thus, as the Eleventh Circuit explained in *Picard*, "CROA simply does not create a right to sue only in a judicial forum." 564 F.3d at 1255.

c. The court of appeals erred in relying on the CROA's anti-waiver provision. That provision treats as void "[a]ny waiver by any consumer of any protection provided by or any right of the consumer under" the CROA. 15 U.S.C. § 1679f(a). Because the CROA does not grant a consumer a right to an exclusively judicial forum, a consumer's agreement to submit a dispute to arbitration does not waive any "right of the consumer" under the CROA.

Even assuming, *arguendo*, that the CROA creates a right to an exclusively judicial forum, the anti-waiver provision in the CROA would not preclude enforcement of a consumer's agreement to arbitrate CROA claims. First, the text of the anti-waiver provision demonstrates that Congress *affirmatively intended* for CROA claims to be arbitrable. The provi-

sion says that, "Any waiver by any consumer of any protection provided by or any right of the consumer under [the CROA] . . . may not be enforced by any Federal or State court *or any other person*." 15 U.S.C. § 1679f(a) (emphasis added). The italicized language confirms Congress's intent that "persons" rather than federal and state courts—*e.g.*, arbitrators—would play a role in enforcing the CROA. A provision that affirmatively contemplates arbitration cannot rationally be read to preclude arbitration.

Second, the anti-waiver provision is entitled "Noncompliance with this subchapter." 15 U.S.C. § 1679f.[7] "'[T]he title of a statute and the heading of a section' are 'tools available for the resolution of a doubt' about the meaning of a statute." *Almendarez-Torres v. United States*, 523 U.S. 224, 234 (1998) (quoting *B'hood of R.R. Trainmen v. Baltimore & Ohio R.R. Co.*, 331 U.S. 519, 528-29 (1947)). The anti-waiver provision's title makes clear that it is concerned with waivers of "compliance" with the CROA's substantive provisions. The provision thus would treat as void a waiver of the right to receive the disclosure required by Section 1679c, or the right established by Section 1679e to cancel a contract for credit repair services. But as this Court has repeatedly held, statutes disallowing waivers of "compliance" with the substantive provisions of a statute do not preclude arbitration agreements: arbitration agreements do not waive compliance with the statute's substantive provisions, but provide for their enforcement in an arbitral forum. *See McMahon*, 482

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[7] The title was enacted by Congress, not inserted by a subsequent codifier. *See* Pub. L. No. 104-208, § 408 (1996).

U.S. at 228 (Exchange Act); *Rodriguez de Quijas*, 490 U.S. at 481-83 (Securities Act).

Moreover, the CROA was enacted in 1996, nearly 50 years after the FAA, under which it had been long-settled that agreements to arbitrate "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. The CROA was also enacted well after this Court had repeatedly interpreted the FAA to establish a strong presumption in favor of arbitration. "Congress was, of course, aware of this presumption once it was established by this Court." *Montana v. United States*, 450 U.S. 544, 552 n.2 (1981). Yet there is nothing in the text of the CROA or its legislative history indicating that Congress even considered precluding arbitration of CROA claims. "Congress' silence in this regard can be likened to the dog that did not bark." *Chisom v. Roemer*, 501 U.S. 380, 396, n. 23 (1991) (citing A. Doyle, Silver Blaze, in The Complete Sherlock Holmes 335 (1927)).

The question whether the anti-waiver provision should be read to preclude arbitration of CROA claims "must be addressed with a healthy regard for the federal policy favoring arbitration." *Gilmer*, 500 U.S. at 26 (quoting *Moses H. Cone Mem'l Hosp.*, 460 U.S. at 24). "[A]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Moses H. Cone Mem'l Hosp.*, 460 U.S. at 24-25. Accordingly, even assuming there were "any doubts" about whether the anti-waiver provision precludes arbitration of CROA claims, those doubts "should be resolved in favor of arbitration." There is no basis for concluding that the CROA's anti-waiver

provision bars arbitration, much less for concluding that it does so with sufficient clarity to overcome the requirement to resolve any doubts in favor of arbitration.

The Ninth Circuit thus incorrectly decided the question of whether CROA claims are subject to arbitration, and in doing so created a circuit split on a question of national importance. This Court's review is warranted to resolve the conflict and correct the decision below.

CONCLUSION

The petition for a writ of certiorari should be granted.

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