No. 25-1439

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

GOLDMAN SACHS BANK USA, d/b/a Marcus by Goldman Sachs,
Appellant,

v.

RHEA ANN BROWN; GREGORY KEVIN MAZE,
Appellees.

On Appeal from the United States District Court
for the Western District of Virginia at Roanoke
No. 7:24-cv-00490-RSB-CKM (Hon. Robert S. Ballou)

OPENING BRIEF OF APPELLANT GOLDMAN SACHS BANK USA

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June 17, 2025

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

DISCLOSURE STATEMENT

- In civil, agency, bankruptcy, and mandamus cases, a disclosure statement must be filed by **all** parties, with the following exceptions: (1) the United States is not required to file a disclosure statement; (2) an indigent party is not required to file a disclosure statement; and (3) a state or local government is not required to file a disclosure statement in pro se cases. (All parties to the action in the district court are considered parties to a mandamus case.)
- In criminal and post-conviction cases, a corporate defendant must file a disclosure statement.
- In criminal cases, the United States must file a disclosure statement if there was an organizational victim of the alleged criminal activity. (See question 7.)
- Any corporate amicus curiae must file a disclosure statement.
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No. 25-1439 Caption: Goldman Sachs Bank USA v. Rhea Ann Brown; Gregory Kevin Maze

Pursuant to FRAP 26.1 and Local Rule 26.1,

Goldman Sachs Bank USA
(name of party/amicus)

who is Appellant, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity?
___ YES _X_ NO

2. Does party/amicus have any parent corporations? _X_ YES ___ NO
If yes, identify all parent corporations, including all generations of parent corporations:

The Goldman Sachs Group, Inc.

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? _X_ YES ___ NO
If yes, identify all such owners:

Goldman Sachs Bank USA is a wholly owned, indirect subsidiary of the Goldman Sachs Group, Inc., which is a publicly traded company.

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? ___ YES _X_ NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question)
___ YES _X_ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? _X_ YES ___ NO
If yes, the debtor, the trustee, or the appellant (if neither the debtor nor the trustee is a party) must list (1) the members of any creditors' committee, (2) each debtor (if not in the caption), and (3) if a debtor is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of the debtor.

Not applicable.

7. Is this a criminal case in which there was an organizational victim?
___ YES _X_ NO
If yes, the United States, absent good cause shown, must list (1) each organizational victim of the criminal activity and (2) if an organizational victim is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of victim, to the extent that information can be obtained through due diligence.

Signature: */s/ Roman Martinez* Date: June 17, 2025

Counsel for: Goldman Sachs Bank USA

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INTRODUCTION

This appeal presents a single question: Whether the district court erred in refusing to send Plaintiffs' damages claims to the arbitrator, where the parties agreed to arbitrate those claims, and even though doing so would not interfere with the administration of Plaintiffs' bankruptcy estates. Under principles articulated by the Supreme Court and this Court's own precedents, the answer to that question is yes. There is no conflict between the Bankruptcy Code and the Federal Arbitration Act (FAA) in the particular circumstances presented here. This Court should now enforce the parties' agreements to arbitrate.

No one disputes that the plain terms of the parties' arbitration agreements cover Plaintiffs' claims under 11 U.S.C. § 362(k), which are based on allegations that GS Bank violated the Bankruptcy Code's automatic stay by communicating with Plaintiffs about certain debts following the filing of their bankruptcies. Yet the bankruptcy court decided that Plaintiffs' claims should be adjudicated in court, instead of in the contractually agreed arbitration. And in a short opinion, the district court blessed the bankruptcy court's decision, without addressing GS Bank's arguments or this Court's controlling, precedents.

The district court's refusal to reverse the bankruptcy court was error. Under precedents from the Supreme Court and this Court, the FAA's mandate to honor arbitration agreements may not be overridden unless another federal statute clearly

manifests congressional intent to preclude arbitration for the claims at issue. In theory, where the Bankruptcy Code's text and history are silent, such intent can be discerned from an inherent, irreconcilable conflict between arbitration and a statute's underlying purposes, as presented in the specific case at hand. In practice, though, the Supreme Court has rejected all efforts to "conjure [such] conflicts between the Arbitration Act and other federal statutes." *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 516 (2018).

The district court was wrong to hold that enforcing the FAA and requiring arbitration of Plaintiffs' Section 362(k) claims would create an irreconcilable conflict with the Bankruptcy Code. Under this Court's precedent in *Moses v. CashCall, Inc.*, arbitration poses an inherent conflict with the Bankruptcy Code in a given case only when enforcing the particular arbitration agreement at issue would (1) undermine the "'the prompt and effectual administration and settlement'" of the bankruptcy estate, or (2) prevent "centraliz[ing] disputes over the debtor's assets and obligations" in bankruptcy court. 781 F.3d 63, 72 (4th Cir. 2015) (citation omitted). The requisite conflict cannot be abstract or hypothetical—it must actually be presented in the case before the court.

Here, arbitrating Plaintiffs' Section 362(k) claims would implicate no such conflict. Arbitrating Plaintiffs' individual claims—the only ones now at issue—would have no direct impact on the administration and settlement of their bankruptcy

estates, nor would it interfere with Plaintiffs' ability to reorganize, which neither the Plaintiffs or the district court even argued it would. Plaintiff Gregory Maze, who filed a Chapter 7 bankruptcy, has already had all his debts discharged, and his bankruptcy case is now closed. And Plaintiff Rhea Brown, who filed a Chapter 13 bankruptcy, has had her repayment plan approved by the bankruptcy court, and she is set to emerge from bankruptcy after completing that plan. The only conceivable impact this case could have on the administration of Brown's estate would be if she prevails on her damages claims, gains additional money to pay her creditors, and has her plan modified accordingly. But under *CashCall*, the potential for such an attenuated effect is insufficient to create an "inherent conflict" justifying non-enforcement of the arbitration agreement. That is especially true given that the bankruptcy court already deemed Brown's existing income stream sufficient to make her repayment plan effective.

In affirming the bankruptcy court, the district court ignored these binding principles and the case-specific analysis they demand. Most importantly, the court failed to apply *CashCall*'s test for determining if arbitrating a specific claim would create an "inherent conflict" with the underlying purposes of the Bankruptcy Code. Indeed, its one-page explanation of why arbitrating Plaintiffs' Section 362(k) claims would undermine the purposes of the Bankruptcy Code failed to even mention *CashCall* or its "inherent conflict" framework.

Instead, the district court found an "inherent conflict" with the Bankruptcy Code for two overbroad reasons. *First*, the court posited that arbitration would undermine the bankruptcy court's authority to enforce the automatic stay. That is wrong. Even if individual Section 362(k) monetary claims are sent to arbitration, bankruptcy courts retain the power, in appropriate cases, to punish violations of the automatic stay through their statutory contempt powers. Arbitrating Plaintiffs' private Section 362(k) claims will not interfere with that authority. Furthermore, Congress has given state courts concurrent jurisdiction over Section 362(k) claims, undermining the notion that adjudicating such claims in any forum other than bankruptcy court would undermine the purposes of the Bankruptcy Code.

Second, the district court asserted that sending Plaintiffs' Section 362(k) claims to arbitration would undermine the bankruptcy court's authority "to provide a single centralized forum for resolving disputes related to the Plaintiffs' bankruptcy proceedings." JA184-185. That too was error. The principle of centralization corresponds to *CashCall*'s emphasis on the efficient administration of the bankruptcy estate. As this Court has put it, the idea is "to centralize disputes about a chapter 11 debtor's legal obligations *so that reorganization can proceed efficiently*." *Phillips v. Congelton, LLC (In re White Mountain Mining Co.)*, 403 F.3d 164, 170 (4th Cir. 2005) (emphasis added). But the district court did not even try to show how arbitrating Plaintiffs' specific claims would adversely affect their

reorganizations or the orderly administration of their bankruptcy estates given the nature of their claims and the status of their bankruptcy cases. And the district court's broad articulation of the centralization principle would rule out arbitration for all core claims (and many non-core claims), directly contradicting *CashCall*'s mandate to assess the arbitrability of even core claims on a case-by-case basis.

The bottom line is that arbitrating Section 362(k) claims like the ones at issue here would not "inherent[ly] conflict" with the Bankruptcy Code. That is borne out by this Court's precedents, and is consistent with the conclusion of the only federal appeals court to have directly addressed this issue. *See MBNA Am. Bank, N.A. v. Hill*, 436 F.3d 104, 110 (2d Cir. 2006). The lower courts' refusal to order arbitration of Plaintiffs' claims violates the FAA and disregards precedent from the Supreme Court and this Court setting an exceedingly high bar for a statute to displace the FAA's pro-arbitration mandate. This Court should send this case to arbitration, just as the parties agreed.

STATEMENT OF JURISDICTION

GS Bank appeals from the district court's March 17, 2025 order affirming the bankruptcy court's July 15, 2024 denial of GS Bank's motion to compel arbitration and stay proceedings. JA178. The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334(a) and 157(a), (b)(2), and by virtue of the referral made by Order from the District Court on December 6, 1994, and Rule 3(a) of the Local Rules of

the United States District Court for the Western District of Virginia. *See* JA84. GS Bank timely filed a notice of appeal to the district court from the bankruptcy court's order on July 29, 2024, JA170-173; *see also* Fed. R. Bankr. P. 8002(1). The district court had jurisdiction under 9 U.S.C. § 16(a)(1)(A). *Moses v. CashCall, Inc.*, 781 F.3d 63, 79 (4th Cir. 2015); *see Midland Funding LLC v. Thomas*, 606 B.R. 687, 691 (W.D. Va. 2019). GS Bank timely filed a notice of appeal to this Court from the district court's order on April 15, 2025. JA186-189; *see also* Fed. R. App. P. 4(1)(A). This Court has jurisdiction under 9 U.S.C. § 16(a)(1). *See CashCall*, 781 F.3d at 79-80; *see also Cont'l Ins. Co. v. Thorpe Insulation Co. (In re Thorpe Insulation Co.)*, 671 F.3d 1011, 1019 (9th Cir. 2012).

ISSUE PRESENTED

Whether Plaintiffs' claim for money damages against GS Bank should be resolved through arbitration, as the parties indisputably agreed by contract.

STATEMENT OF THE CASE

A. GS Bank And Plaintiffs' Apple Card Accounts

GS Bank is a New York State chartered bank. JA91 ¶ 4. In 2019, GS Bank partnered with Apple Inc. to launch the Apple Card. GS Bank issues and operates Apple Card credit card accounts. *See id*.

In November 2020, Plaintiffs Rhea Ann Brown and Gregory Kevin Maze applied online for Apple Card credit card accounts. *See* A92 ¶ 6. Before submitting

their online applications, Plaintiffs were presented with the Apple Customer Agreement, which was visible within the application interface. *Id.* ¶¶ 6-7. The Customer Agreement includes a clearly marked Arbitration Provision. JA111-112. Like all Apple Card applicants, Plaintiffs scrolled through the entire Agreement and affirmatively agreed to the terms by clicking an "Agree and Apply" button. JA92 ¶ 5. Plaintiffs do not dispute that the Apple Card Customer Agreement is a valid agreement, that they validly consented to the entire Agreement, including the Arbitration Provision, or that their claims here fall within the Arbitration Provision. *See* JA115 & n.3.

On November 30, 2020, GS Bank issued an Apple Card credit card account to Brown. JA92 ¶ 8. On December 1, 2020, it did the same for Maze. *Id.*

B. Plaintiffs' Bankruptcy Cases

In June 2023, Brown filed a Chapter 13 bankruptcy. *In re Brown*, No. 23-70426 (Bankr. W.D. Va. filed June 14, 2023). A Chapter 13 bankruptcy "provides . . . protection to 'individual[s] with regular income' whose debts fall within statutory limits." *Hamilton v. Lanning*, 560 U.S. 505, 508 (2010) (alteration in original) (quoting 11 U.S.C. §§ 101(30), 109(e)). Chapter 13 debtors are "permitted to keep their property, but they must agree to a court-approved plan under which they pay creditors out of their future income." *Id.* In June 2023, two weeks after filing for bankruptcy, Brown proposed a repayment plan that did not contemplate

recoveries from any lawsuit. *In re Brown*, No. 23-70426, Dkt. No. 11. The bankruptcy court approved that repayment plan on September 1, 2023, and it approved a slightly amended plan (to account for Brown's tenant moving out) on September 4, 2024. *Id.*, Dkt. Nos. 20, 40.

With approval of the repayment plan, distributions from the bankruptcy estate to creditors have been settled, allowing Brown to regain full ownership and control of "all of the property of the [bankruptcy] estate" except as provided in the repayment plan. 11 U.S.C. § 1327(b). When Brown completes her repayment plan, she will receive a discharge of her debt, and her bankruptcy case will then be closed. *See id.* § 1328.

Maze filed a Chapter 7 bankruptcy in November 2023. *In re Maze*, No. 23-70735 (Bankr. W.D. Va. filed Nov. 9, 2023). A Chapter 7 bankruptcy involves the "discharge of prepetition debts following the liquidation of the debtor's [non-exempt] assets by a bankruptcy trustee, who then distributes the proceeds to creditors." *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 367 (2007). Maze was granted a discharge of his pre-petition debt on February 21, 2024, and his bankruptcy case was then officially closed. *In re Maze*, No. 23-70735, Dkt. Nos. 18, 19.

GS Bank was listed as a creditor in filings made in each bankruptcy case, *see id.*, Dkt. No. 1 at PDF 29, 62; *In re Brown*, No. 23-70426, Dkt. No. 1 at PDF 26, 55, but did not file a proof of claim in either case.

C. Plaintiffs' Adversary Proceeding To Collect Damages For Alleged Automatic Stay Violations

Despite the parties' binding arbitration agreements, on March 12, 2024—after Brown's repayment plan was approved and after Maze received a discharge of his debts—Plaintiffs filed an adversary proceeding in the United States Bankruptcy Court for the Western District of Virginia. JA12-30. Together, Plaintiffs alleged that GS Bank had willfully violated the Bankruptcy Code's automatic stay provision, 11 U.S.C. § 362(a), which broadly forbids "efforts to collect from the debtor outside of the bankruptcy forum," *City of Chicago v. Fulton*, 592 U.S. 154, 156 (2021). Specifically, Plaintiffs alleged that GS Bank willfully violated Section 362 when—after receiving notice of Plaintiffs' respective bankruptcy proceedings—it nonetheless sent them "written demands for payment of pre-petition credit card debt" and made "collection telephone calls" seeking to collect their debts. JA13, JA26-27 ¶¶ 2, 64-71.

Plaintiffs brought their allegations on behalf of themselves and a putative class consisting of "all individuals in the United States[] who currently are in a consumer bankruptcy case or were formerly in a consumer bankruptcy case . . . from whom [GS Bank] made a post-petition demand for pre-petition debt." JA24 ¶ 57. The

complaint sought "actual damages, punitive damages, and reasonable attorney's fees," as well as "a declaration that Goldman Sachs' conduct violates [the automatic stay provision]," and an injunction "permanently enjoining [GS Bank] from engaging in the acts and practices [described in the Complaint] as to any person who is a member, or could become a member, of the class." JA27, JA29 ¶¶ 71, 73, 85. In seeking damages and attorney's fees, Plaintiffs relied on Section 362(k)—a provision added to the Bankruptcy Code in 1984—which provides that "an individual injured by any willful violation of a stay . . . shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." 11 U.S.C. § 362(k)(1).[1]

D. GS Bank's Motion To Compel Arbitration

Because the Arbitration Agreement in the parties' Consumer Agreement covers Plaintiffs' claims that GS Bank violated the automatic stay, *see* JA111, GS Bank filed a motion to compel arbitration and stay the bankruptcy court proceedings. Adv. Proc. No. 24-7009, Dkt. No. 15.

On July 15, 2024, the bankruptcy court denied GS Bank's motion to compel arbitration. JA113-124. The court recognized that, under well-settled law, it lacked

[1] Section 362(k) "created a private cause of action for the willful violation of a stay." *Houck v. Substitute Tr. Servs., Inc.*, 791 F.3d 473, 481 (4th Cir. 2015). Before 1984, Section 362's automatic-stay provision did not "provide a party with an independent right of action for damages." *Id.*

discretion to ignore the parties' arbitration agreement unless Congress had "'evinced an intention'" to preclude the arbitration of Section 362(k) monetary claims, and that such an intention had to be "gleaned from (1) the statute's text, (2) its legislative history, or (3) 'an inherent conflict between arbitration and [the Bankruptcy Code's] underlying purposes.'" JA119 (quoting *CashCall*, 781 F.3d at 71).[2] The bankruptcy court nevertheless concluded that it "ha[d] the discretion to retain the proceeding" simply because resolution of a Section 362(k) claim is a so-called "core" bankruptcy proceeding, such that arbitrating the claim would *automatically* conflict with the Code. JA120 (citation omitted). Section 157 of the Bankruptcy Code defines such "core" proceedings as those over which a bankruptcy court is authorized to enter final "orders and judgments," as opposed to merely submitting proposed findings of facts and conclusions of law to the district court. 28 U.S.C. § 157(b)-(c).

[2] This Court's decision in *CashCall* was reflected in three opinions: (1) an opinion from Judge Niemeyer that partly spoke for a majority of himself and Judge Gregory on one issue in the case (*see* 781 F.3d at 67-73, 77-82), and partly dissented from the conclusions reached by Judges Gregory and Davis on the other issue in the case (*see id.* at 73-77); (2) an opinion from Judge Gregory explaining why he joined the majority on both issues (*see id.* at 82-88); and (3) an opinion from Judge Davis on why he dissented from the majority on the first issue, but agreed to form a majority with Judge Gregory on the second issue (*see id.* at 88-94). For precision and ease of reference, this brief's general citations to *CashCall* will generally refer to the portions of Judge Niemeyer's opinion that speak for a majority, unless a parenthetical indicates that the citation is to the portions of Judges Niemeyer's, Gregory's, and Davis's analyses in which those judges speak for themselves.

As the Supreme Court has explained, "core" proceedings are those that "stem[] from the bankruptcy itself or would necessarily be resolved in the claims allowance process." *Stern v. Marshall*, 564 U.S. 462, 499 (2011).[3] In deciding it could disregard the parties' otherwise valid arbitration agreements, the bankruptcy court relied on a single sentence from this Court's decision in *CashCall*, in which this Court had said that "forcing *Moses*"—the debtor in that case—"to arbitrate her constitutionally core claim would inherently conflict with the purposes of the Bankruptcy Code." 781 F.3d at 73 (emphasis added); *see* JA120. Instead of recognizing that the sentence was a case-specific statement about Moses' particular claim, the bankruptcy court used brackets to change the Court's reference to "Moses" to more generically refer to "a debtor," thereby refashioning the statement as a general rule that arbitrating *any* "core" claim from *any* debtor would inherently conflict with the Bankruptcy Code. JA120.

After finding that it had discretion to disregard the parties' arbitration agreements, the bankruptcy court then decided that it would "exercise [that] discretion and deny the motion to compel arbitration" for several policy-based

[3] "A bankruptcy case involves 'an aggregation of individual controversies,' many of which would exist as stand-alone lawsuits but for the bankrupt status of the debtor." *Bullard v. Blue Hills Bank*, 575 U.S. 496, 501 (2015). Each of these "discrete disputes within the larger case" is referred to as a "proceeding[]." *Id.* at 501-02 (citations omitted).

reasons. JA121. First, the court explained that sending Plaintiffs' claims to arbitration would ignore the "financial reality" that "[t]he vast majority of consumer debtors coming into bankruptcy court" "have very limited resources," and that forcing them "to resolve their disputes" "in multiple forums" would prevent them from "preserv[ing] those limited resources" and gaining a "'fresh start.'" JA121-122. Looking beyond the specific circumstances of the only named plaintiffs before it, the court then reasoned that because Plaintiffs' allegations "suggest a broader issue of multiple debtors being pursued for payment post-filing," their resolution should be informed by "the specialized experiences of the bankruptcy courts." JA122-123. Finally, the court posited that "[t]he power and authority of the judicial system and the fundamental protections [of the Bankruptcy Code] . . . would be diminished" by allowing arbitration of alleged violations of the automatic stay. JA123.

E. The District Court Appeal

GS Bank appealed to the district court from the bankruptcy court's denial of its motion to compel arbitration. JA170-173. GS Bank demonstrated that the bankruptcy court's opinion largely flowed from its misinterpretation of *CashCall* as adopting a categorical rule under which arbitrating any "core" bankruptcy claim necessarily conflicts with the Bankruptcy Code. D.Ct. Dkt. No. 21 at 33-50 (D.Ct. Opening Brief); D.Ct. Dkt. No. 26 at 11-14 (D.Ct. Reply Brief). GS Bank also

demonstrated how, under the proper case-specific analysis set forth in *CashCall* and other cases, sending Plaintiffs' Section 362(k) claims to arbitration would not create an "inherent conflict" with the underlying purposes of the Bankruptcy Code. D.Ct. Opening Br. 22-30; D.Ct. Reply Br. 17-18. Finally, GS Bank pointed out that the bankruptcy court's decision directly conflicted with the only federal court of appeals to have directly addressed the issue of the arbitrability of Section 362(k) claims—the Second Circuit, which held in *Hill* that a bankruptcy court did not have discretion to disregard a valid arbitration agreement under almost identical circumstances. 436 F.3d at 109-11.

The district court affirmed the bankruptcy court in a 7-page opinion. JA179-185. The court first agreed with GS Bank that the bankruptcy court erred in concluding that it had discretion to deny arbitration just because Plaintiffs' Section 362(k) claims are "core" proceedings. To the contrary, the district court explained, the "core/non-core distinction does not . . . affect whether a bankruptcy court has the discretion to deny enforcement of an arbitration agreement." JA183 (citation omitted). Rather, "for both core and non-core claims," courts must "examine the nature of the claim and the specific facts of the bankruptcy to determine whether enforcing arbitration would inherently conflict with the Bankruptcy Code's purposes." *Id.*

Despite diverging from the bankruptcy court on this crucial point, the district court concluded that "arbitrating Plaintiffs' claims would inherently conflict with the Bankruptcy Code's objectives"—and that the bankruptcy court therefore had discretion to ignore the parties' arbitration agreement. JA184. Specifically, the district court held that arbitration "*could* undermine the Bankruptcy Court's authority (1) to enforce the automatic stay to protect debtors[']and creditors' rights and (2) to provide a single centralized forum for resolving disputes related to the Plaintiffs' bankruptcy proceedings." JA184-185 (emphasis added). In reaching that conclusion, the district court did not mention the test this Court set forth in *CashCall* for analyzing alleged conflicts between arbitration and the Bankruptcy Code, let alone apply that case-specific inquiry to Plaintiffs' Section 362(k) claims—even though a large part of GS Bank's district court briefing was devoted to showing why arbitrating Plaintiffs' own claims was not problematic under that test. The court also did not mention, let alone distinguish, the Second Circuit's opinion in *Hill.*

After concluding that the bankruptcy court had discretion to withhold arbitration, the district court quickly held that the bankruptcy court did not abuse that discretion—for the same reasons it had held that arbitration would create an inherent conflict with the underlying purposes of the Bankruptcy Code. JA185.

SUMMARY OF THE ARGUMENT

This case should proceed in arbitration. Under *Cash Call*, arbitrating Plaintiffs' Section 362(k) claims would not inherently conflict with the purposes of the Bankruptcy Code because such arbitration would not adversely affect the administration of Plaintiffs' bankruptcy estates. The district court erred in affirming the bankruptcy court's denial of GS Bank's motion to compel arbitration. This Court should reverse.

I. To override the FAA's mandate to enforce valid arbitration agreements, Plaintiffs had to show that arbitrating their Section 362(k) monetary claims would create an "inherent conflict" with the underlying purposes of the Bankruptcy Code. *CashCall*, 781 F.3d at 71 (quoting *Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220, 227 (1987)). But under binding Fourth Circuit precedent in *CashCall*, arbitrating Plaintiffs' Section 362(k) claims would not create an "inherent conflict" with the Code, because it would not jeopardize an efficient reorganization or centralize the administration of claims against Plaintiffs' bankruptcy estates in any way.

Plaintiff Maze's bankruptcy case is closed, so resolution of his Section 362(k) monetary claim cannot possibly affect the administration and settlement of his bankruptcy estate. And Plaintiff Brown's Chapter 13 repayment plan has already been approved, without contemplating any recovery from her Section 362(k) claim.

The only way resolution of Brown's claim could affect the administration and settlement of her bankruptcy estate and her reorganization is if she wins damages that increase the value of her estate and what is available to distribute to creditors. But *CashCall* makes clear that such "ancillary effects" are "simply too attenuated" to foreclose arbitration, 781 F.3d at 82 (Gregory), and cannot be said to "frustrate creditor distribution or otherwise interfere with the bankruptcy proceedings," *id.* at 93 (Davis). Indeed, the Second Circuit—the only other federal court of appeals that has directly addressed the arbitrability of Section 362(k) claims in a similar posture—has concluded that they *must* be arbitrated. *Hill*, 436 F.3d at 110.

II. The district court's refusal to enforce the parties' arbitration agreements was error. To be sure, that court correctly recognized that the bankruptcy court made a fundamental mistake in reading *CashCall* as establishing that any "core" claim would automatically create an "inherent conflict" with the underlying purposes of the Bankruptcy Code. But the court then erred in concluding that sending Plaintiffs' money damages claims to arbitration would create such an "inherent conflict," without applying *CashCall*'s test. Neither of the cursory reasons the court provided establish such a conflict.

The district court was wrong to conclude that arbitrating Plaintiffs' claims would inherently conflict with the Bankruptcy Code by "undermin[ing] the Bankruptcy Court's authority . . . to enforce the automatic stay to protect debtors[']

and creditors' rights." JA185. Even if Section 362(k) claims go to arbitration, bankruptcy courts retain the authority, in appropriate cases, to punish violations of the automatic stay through their statutory contempt power, set forth in Section 105(a) of the Code. Enforcing the parties' arbitration agreements does not eliminate or cut back on this authority. Indeed, the fact that Congress gave state courts concurrent jurisdiction over Section 362(k) claims, *see* 28 U.S.C. §§ 1334(a), 157(a), undercuts the notion that adjudicating such claims outside of bankruptcy court is contrary to Congress's intent.

The district court was also wrong to conclude that sending Plaintiffs' Section 362(k) claims to arbitration would create an "inherent[] conflict" by "undermin[ing] the Bankruptcy Court's authority . . . to provide a single centralized forum for resolving disputes related to the Plaintiffs' bankruptcy proceedings." JA184-185. While the centralization of disputes is a focus of the Bankruptcy Code, that focus cannot be divorced from the Code's overarching purpose of "provid[ing] debtors and creditors with 'the prompt and effectual administration and settlement of the [debtor's] estate.'" *CashCall*, 781 F.3d at 72 (quoting *Katchen v. Landy*, 382 U.S. 323, 328 (1966) (alteration in original)). In fact, as this Court has explained, the entire purpose of centralization is "so that reorganization can proceed efficiently." *Phillips*, 403 F.3d at 170. The district court failed to show how arbitrating Plaintiffs' monetary damages claims in the particular circumstances of their bankruptcy cases

would negatively affect the administration of their bankruptcy estates, so its concerns about centralization fail to establish an "inherent conflict."

For its part, the bankruptcy court also failed to establish "inherent conflict." Given its misreading of *CashCall*, much of the bankruptcy court's analysis consisted of improper weighing of competing policy interests, which is beside the point. None of that weighing comes close to establishing the "inherent conflict" necessary to disregard a valid arbitration agreement.

STANDARD OF REVIEW

This Court reviews the district court's factual findings for clear error and its conclusions of law de novo. *United Rentals, Inc. v. Angell*, 592 F.3d 525, 531 (4th Cir. 2010). The threshold question of whether a court has discretion to withhold arbitration is a question of law, so it is reviewed de novo. *See CashCall*, 781 F.3d at 71-72; *In re Thorpe Insulation Co.*, 671 F.3d at 1019-20; *Midland Funding*, 606 B.R. at 692. If, however, a court has such discretion, this Court reviews the denial of a motion to compel arbitration for abuse of discretion. *Id.*

ARGUMENT

I. PLAINTIFFS' CLAIMS MUST BE ARBITRATED

No one denies that the parties' valid arbitration agreements cover Plaintiffs' Section 362(k) monetary claims. *See* JA115 n.3. As a result, the FAA required the bankruptcy court to send those claims to arbitration unless Plaintiffs could show that

Congress intended to preclude arbitration for their claims. Plaintiffs could not make that showing, so their claims must be arbitrated.

A. The FAA Requires Sending Plaintiffs' Claims To Arbitration Unless Doing So Would Inherently Conflict With The Bankruptcy Code

The FAA commands that an arbitration agreement "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. That directive requires courts to "rigorously enforce agreements to arbitrate," "leav[ing] no place for the exercise of discretion." *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 221, 218 (1985).

Section 4 of the FAA requires a court presented with a motion to compel arbitration to "make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement" if the court is "satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue." 9 U.S.C.§ 4. This Court has thus stated that a court facing a motion to compel arbitration of a dispute should consider only two questions: (1) whether "the parties have entered into a valid agreement to arbitrate"; and (2) whether "the dispute in question falls within the scope of the arbitration agreement." *Chorley Enters., Inc. v. Dickey's Barbecue Rests., Inc.*, 807 F.3d 553, 563 (4th Cir. 2015). If the answer to both questions is yes, then the FAA requires the court to honor the parties' agreement and compel arbitration. *Id*.

Here, the answer to both questions is unquestionably yes—and Plaintiffs have never argued otherwise. Thus, "[t]he Arbitration Act, standing alone . . . mandates enforcement of [the parties'] agreements to arbitrate [the automatic stay] claims." *Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220, 226 (1987).

The FAA's sweeping directive to enforce arbitration agreements has no explicit carveout for statutory claims. And the Supreme Court has refused to discern one. A long line of Supreme Court precedent, spanning a wide range of statutory contexts, has made "clear" that agreements to arbitrate such claims are also "enforceable pursuant to the FAA." *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 26 (1991) (listing cases). The Supreme Court has repeatedly concluded that a "prospective litigant effectively may vindicate its statutory cause of action in the arbitral forum" agreed upon by the parties. *Am. Express Co. v. Italian Colors Rest.*, 570 U.S. 228, 235-36 (2013) (citation omitted); *see also Gilmer*, 500 U.S. at 28 (same). As a general rule, "[h]aving made the bargain to arbitrate [statutory claims], the party should be held to it." *Gilmer*, 500 U.S. at 26 (first alteration in original) (citation omitted).

In *McMahon*, the Supreme Court held that this general rule favoring arbitration of statutory claims may sometimes be "overridden." 482 U.S. at 226. But the Court clarified that this is proper only in the limited circumstances where "the party seeking to prevent enforcement of an applicable arbitration agreement"

can show "that 'Congress has evinced an intention to preclude a waiver of judicial remedies for the statutory rights at issue.'" *Moses v. CashCall, Inc.*, 781 F.3d 63, 71 (4th Cir. 2015) (quoting *Green Tree Fin. Corp.-Alabama v. Randolph*, 531 U.S. 79, 90 (2000)). Such intent must be "deducible" from either (1) the "text" of the statute; (2) its "legislative history"; or (3) "'an inherent conflict between arbitration and the statute's underlying purposes.'" *Id.* (quoting *McMahon*, 482 U.S. at 227). Only "[w]here such an intent can be deduced"—as bearing on the specific case at hand—does a court have "*discretion* to decide whether to withhold arbitration." *Id.* But if such an intent *cannot* be deduced, the court remains bound by the FAA's directive to honor the arbitration agreement.

Demonstrating congressional intent to override the FAA is a heavy burden that litigants have consistently tried—but failed—to carry. An "inherent conflict" is one that is "irreconcilable." *McMahon*, 482 U.S. at 227, 239. Moreover, Congress's intent to displace the FAA must be "clear and manifest," *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510 (2018) (citation omitted), and the inquiry "must be addressed with a healthy regard for the federal policy favoring arbitration," *Gilmer*, 500 U.S. at 26 (citation omitted).

Over the years, the Supreme Court has "heard and rejected efforts to conjure conflicts between the Arbitration Act and other federal statutes" in "many cases," including "statutes ranging from the Sherman and Clayton Acts to the Age

Discrimination in Employment Act, the Credit Repair Organizations Act, the Securities Act of 1933, the Securities Exchange Act of 1934, and the Racketeer Influenced and Corrupt Organizations Act." *Epic Sys. Corp.* 584 U.S. at 516. Despite repeated efforts by creative litigants, the Supreme Court has *never* held that a federal statutory claim is unsuited for arbitration. *See id.* This Court has followed suit, stressing that "courts should not strain to find in statutes what Congress has not put there" and that "[c]ourts cannot determine whether arbitration agreements are to be enforced by making subjective judgments as to the relative importance of various federal statutes." *Gilmer v. Interstate/Johnson Lane Corp.*, 895 F.2d 195, 202-03 (4th Cir. 1990), *aff'd*, 500 U.S. 20 (1991).

Here, Plaintiffs do not—and cannot—argue that either the text or legislative history of the Bankruptcy Code expressly precludes arbitration of their Section 362(k) claims. Accordingly, to avoid arbitration, Plaintiffs must show that there is an "inherent conflict" between sending their specific claims to arbitration and the underlying purposes of the Bankruptcy Code. *McMahon*, 482 U.S. at 227; *CashCall*, 781 F.3d at 71 (quoting *McMahon*). For the reasons explained further below, they cannot satisfy that burden.

B. Arbitrating Plaintiffs' Claims Would Not Inherently Conflict With The Bankruptcy Code

To establish an "inherent conflict" with the Bankruptcy Code under this Court's precedent, Plaintiffs must show that arbitrating their claims would

undermine the prompt and effectual administration and settlement of their bankruptcy estates. *See CashCall*, 781 F.3d at 72. They cannot make that showing—and have not even tried. So the parties' arbitration agreement must be honored, and Plaintiffs' Section 362(k) claims must be sent to arbitration.

1. Under *CashCall*, Arbitration Does Not Inherently Conflict With the Bankruptcy Code Just Because It May Enhance The Debtor's Financial Resources

In *CashCall*, this Court set forth the framework for analyzing when arbitration conflicts with the purposes of the Bankruptcy Code under *McMahon*'s "inherent conflict" prong. 781 F.3d at 72. The test turns on whether arbitrating a particular claim would undermine the prompt and effectual administration and settlement of the bankruptcy estate, not on whether the claim is "core" within the meaning of 28 U.S.C. § 157 or otherwise generally relates to the Bankruptcy Code.

CashCall involved a loan servicer (CashCall, Inc.) that filed a proof of claim in a Chapter 13 bankruptcy proceeding filed by a debtor (Moses). 781 F.3d at 66. A proof of claim is a written statement asserting an entitlement to receive a distribution from the bankruptcy estate. CashCall's proof of claim was for amounts owed under a consumer loan it had extended to Moses. *Id.* Moses disputed the proof of claim in the main bankruptcy case. *Id.* She also filed a separate "adversary proceeding" against CashCall asking the bankruptcy court for two distinct forms of relief: "(1) to declare the loan illegal" under North Carolina law prohibiting

unlicensed lending, and "(2) to obtain damages for CashCall's allegedly illegal debt collection activities" under the North Carolina Debt Collection Act. *Id.*[4]

While the adversary proceeding was pending, the bankruptcy court approved Moses' repayment plan. CashCall then filed a motion to stay the adversary proceeding and compel arbitration of Moses' claims in the adversary proceeding, based on the parties' agreement that "any disputes relating to [the Loan Agreement] were to be resolved by arbitration." *Id.* at 67. Like Plaintiffs here, Moses opposed arbitration, arguing that sending her claims to arbitration would "inherently conflict with the Bankruptcy Code's purposes." *Id.* at 72.

This Court noted that the request for declaratory relief (the first claim in the adversary proceeding) was a "core" bankruptcy proceeding and that the state-law damages claim (the second claim in the adversary proceeding) was not, but those labels did not determine its analysis of either claim. *Id.* at 72-73. Rather, the Court began by identifying the two "principal purpose[s]" of the Bankruptcy Code: (1) to

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[4] A bankruptcy case "is an aggregation of individual controversies," which must be resolved "before bankruptcy distribution can be made." 1 *Collier on Bankruptcy* ¶ 5.08[1][b] (16th ed. 2025). Some of those controversies are characterized as "adversary proceeding[s]," and must be commenced by the filing of a complaint. Fed. R. Bankr. P. 7003; 10 *Collier on Bankruptcy* ¶ 7003.02. Each adversary proceeding is assigned its own case number, separate from the number of the main bankruptcy case. A debtor's request to recover damages from a creditor or for a determination of the validity of an interest in property are each considered an adversary proceeding. Fed. R. Bankr. P. 7001. A proof of claim, by contrast, is not considered an adversary proceeding, and is submitted in the main bankruptcy case.

"provide debtors and creditors with 'the prompt and effectual administration and settlement of the [debtor's] estate,'" and (2) to "centralize disputes over the debtor's assets and obligations." *Id.* at 72 (alteration in original) (quoting *Katchen v. Landy*, 382 U.S. 323, 328 (1966)). Importantly, as this Court stressed, both purposes relate to the bankruptcy court's administration of the bankruptcy estate: The first purpose relates to "[e]ase" of administration, while the second relates to "centrali[zation]" of administration. *Id.* (citation omitted).

The Court then proceeded to analyze whether arbitrating Moses' two distinct claims for relief—the request for declaratory judgment and the claim for damages under state law—would inherently conflict with the twin purposes it had just identified. As to Moses' request for a declaration that the loan was illegal and unenforceable, the court concluded—in a portion of the majority decision written by Judge Niemeyer and joined by Judge Gregory—that forcing arbitration of this claim "*would* inherently conflict with the purposes of the Bankruptcy Code." *Id.* at 73 (emphasis added). The court explained that adjudication of the legality of the loan was inextricably connected with the administration of the bankruptcy estate, because if the loan was valid it "could directly impact claims against [Moses'] estate and her plan for financial reorganization." *Id.* at 72.

In other words, this Court recognized that the loan issue required assessing the validity of a creditor's claim against the bankruptcy estate—the bread and butter

of administering a bankruptcy estate. If the loan was deemed valid, CashCall would have a valid monetary claim against Moses' bankruptcy estate, and that claim would then compete with other creditors' claims. Because the validity of CashCall's claim against Moses' bankruptcy estate could significantly affect other creditors and the plan as a whole, arbitrating the validity of CashCall's claim "would 'substantially interfere with [the debtor's] efforts to reorganize'" and thus inherently conflict with the operation of the Bankruptcy Code. *Id.* at 73. For that claim-specific reason, the *CashCall* majority refused to arbitrate Moses' request for a declaration that the loan was unenforceable.[5]

Crucially, though, *CashCall* treated Moses' second claim—her demand for money damages under North Carolina's Debt Collection Act—quite differently. As to that claim, Judges Gregory and Davis formed a separate majority concluding that arbitration would pose *no inherent conflict* with the underlying purposes of the Bankruptcy Code. *See* 781 F.3d at 82-83 (Gregory); *id.* at 92-93 (Davis); *see also id.* at 66-67 (Niemeyer majority opinion acknowledging this holding). Unlike Moses' request for a declaratory judgment that CashCall's loan was invalid, her damages claim did *not* "seek[] to determine the validity of a demand on [her] estate" by a creditor. *Id.* at 82 (Gregory). The success or failure of Moses' damages claim

[5] Judge Davis dissented because he concluded that CashCall had abandoned its claim for the loan, rendering Moses' core claim moot. *See* 781 F.3d at 92.

could not add or subtract a new creditor, or otherwise "frustrate creditor distribution." *Id.* at 93 (Davis). It thus lacked any direct connection to the administration and settlement of the bankruptcy estate.

Moreover, and critically here, according to Judges Gregory and Davis, the only way adjudication of Moses' damages claim could possibly affect the administration of her estate was *indirectly*—by increasing her assets, possibly requiring changes to her payment plan. The court held that this was not enough to conflict with the purposes of the Bankruptcy Code and thus did not provide a reason to deny arbitration. *See id.* at 82-83 (Gregory); *id.* at 92 (Davis). As Judge Gregory explained, the potential growth of the pot of available assets was "too attenuated, and indeed extrinsic to the bankruptcy, to constitute an 'inherent conflict' with the Bankruptcy Code's purpose of facilitating an efficient reorganization." *Id.* at 82. Indeed, "if such generic considerations" of enlarging the underlying estate "were enough to justify a denial of arbitration," arbitration of almost *any* monetary claim made by a debtor—regardless of how unrelated to the bankruptcy case—would pose an inherent conflict with the Bankruptcy Code. *Id.* at 87. In that event, "there would be little limit to a bankruptcy judge's discretion" to ignore a valid arbitration agreement between a creditor and a debtor. *Id*. Judge Davis similarly explained that he could not conceive of any explanation "as to how an enlargement of the assets in

the bankruptcy estate would frustrate creditor distribution or otherwise interfere with the bankruptcy proceedings." *Id.* at 93.

In short, absent an inherent conflict with the Bankruptcy Code, Moses' damages claim had to be sent to arbitration, consistent with the parties' arbitration agreement. Because arbitrating Moses' own damages claim under the North Carolina Debt Collection Act created no such a conflict, this Court reversed the district court and required arbitration.

2. Arbitrating Plaintiffs' Claims Here Would Create No "Inherent Conflict" Under *CashCall*'s Test

Applying *CashCall*'s test for "inherent conflict" in a bankruptcy matter to this case produces a clear result: Sending Plaintiffs' Section 362(k) monetary claims to arbitration would not inherently conflict with the Bankruptcy Code because it would not jeopardize an efficient reorganization or the centralization of claims against either of Plaintiffs' bankruptcy estates in any relevant way. Maze's Chapter 7 bankruptcy case is closed, and any monetary recovery Brown wins here would merely increase the value of her estate and potentially lead to modifications in her repayment plan. Under *CashCall*'s analysis of Moses' damages claim, that is not enough.

Plaintiffs' claims against GS Bank for actual and punitive damages under Section 362(k) bear a striking resemblance to the damages claim in *CashCall*. As in *CashCall*, Plaintiffs' do not "seek[] to determine the validity of a demand on [a

debtor's] estate." 781 F.3d at 82 (Gregory). In fact, GS Bank did not even submit claims against Plaintiffs' estates, so Plaintiffs' claims cannot possibly determine the validity of demands on their estates. Rather, Plaintiffs merely seek to recover damages from GS Bank. That can have absolutely no impact on the administration of the bankruptcy estates, other than the incidental effect of enlarging the amount of money that may be available to creditors. Plaintiffs' claims therefore lack any direct connection to administration of their bankruptcy estates. Arbitrating them would not inherently conflict with the Bankruptcy Code, just as this Court concluded with respect to the analogous damages claim in *CashCall.*

To see how arbitration of Plaintiffs' claims would not interfere with the administration of Plaintiffs' bankruptcy estates, it is helpful to review the status of each Plaintiff's bankruptcy case. As mentioned above, Maze has already been granted a discharge of his debts, so his Chapter 7 bankruptcy case is now closed—it is over. *Supra* at 8. There is simply no bankruptcy estate to administer. So even if Maze prevails on his Section 362(k) claim and recovers damages, that will have zero impact on the administration of his estate, not even an indirect impact.

As for Brown, the bankruptcy court has already approved her Chapter 13 repayment plan, just as with Moses, the debtor in *CashCall*. *Supra* at 7-8. Because her repayment plan has been confirmed, Brown will emerge from bankruptcy and her case will be closed once she completes that plan. If she prevails on her Section

362(k) claim and recovers damages, the bankruptcy court could potentially modify her plan based on a change in circumstances—just as if she instead won the lottery, received an inheritance, or accepted a higher paying job. *See* 11 U.S.C. § 1329. But *CashCall* made clear that such an enlargement of available assets has only "ancillary effects on [the debtor's] bankruptcy" and is "simply too attenuated . . . to constitute an 'inherent conflict' with the Bankruptcy Code's purpose of facilitating an efficient reorganization." 781 F.3d at 82 (Gregory); *see id.* at 93 (Davis) (similar). Brown's claim—like Maze's—must therefore be arbitrated.

3. The Second Circuit's Decision In *Hill* Confirms That There Is No "Inherent Conflict" Here

CashCall's reasoning is squarely on point, even though it addressed the issue of "inherent conflict" in bankruptcy matters with respect to different claims from the Section 362(k) claims asserted by Plaintiffs here. The only court of appeals to address this issue with respect to Section 362(k) claims is the Second Circuit. Its decision in *MBNA America Bank, N.A. v. Hill*, 436 F.3d 104, 110 (2d Cir. 2006), confirms that arbitrating a debtor's Section 362(k) monetary claim does not substantially interfere with administration of the debtor's bankruptcy or otherwise conflict with the Code.

Hill's facts are virtually identical to this case in all the ways that matter. There, Kathleen Hill filed a Chapter 7 bankruptcy and eventually received a discharge of her debts, just like Maze in this case. *Id.* at 106. Hill also filed an

adversary proceeding, alleging that MBNA had violated the automatic stay as to herself and a putative class (just as Plaintiffs allege about GS Bank here). Specifically, Hill alleged that MBNA had continued to collect monthly payments on consumer loans even after the class members' bankruptcy cases were filed. *Id.* The bankruptcy court denied MBNA's motion to compel arbitration, and the district court affirmed in relevant part. *Id.* at 106-07.

The Second Circuit reversed. In its view, the bankruptcy court "did not have discretion to deny the motion to stay or dismiss the proceeding in favor of arbitration." *Id.* at 110. Applying a similar framework to the one this Court set forth in *CashCall* for resolving "[d]isputes that involve both the Bankruptcy Code and the Arbitration Act," the court explained that arbitrating Hill's Section 362 claim "would not interfere with or affect the distribution of the estate." *Id.* at 108-09. Importantly, because Hill (like Maze here) had already received a discharge of her debt, there was no "ongoing reorganization." *Id.* at 110. Therefore, resolution of claims like Hill's were not "integral to [the] bankruptcy court's ability to preserve and equitably distribute assets of the estate" and did not "directly implicate[] matters central to the purposes and policies of the Bankruptcy Code." *Id.*

Notably, the Second Circuit emphasized that "the fact that Hill filed her § 362(h) claim as a putative class action" made the case for sending the claim to arbitration even more compelling, because it highlighted the lack of a connection

between the claims and Hill's bankruptcy case. *Id.*[6] "By tying her claim to a class of allegedly similarly situated individuals, many of whom [were] no longer in bankruptcy proceedings"—and whose bankruptcy cases were never before the court—Hill "further demonstrate[d]" that her claim was all about using a statutorily provided private right of action to recover money damages and "[was] not integral to her individual bankruptcy proceeding." *Id.* The same is true here. This Court's precedent would require Plaintiffs' claims to be arbitrated even if they were not brought on behalf of a putative class. But the fact that Plaintiffs chose to bring their claims on behalf of a nationwide class of debtors only underscores that this case has little connection to the equitable and efficient administration of Plaintiffs' own bankruptcy estates.

Hill thus confirms that arbitrating Plaintiffs' claims would not undermine—let alone conflict with—the Bankruptcy Code's core goals of efficiently settling their estates and resolving competing claims over their assets. *See TexStyle, LLC v. Harry Grp., Inc. (In re TexStyle, LLC)*, Bankr. No. 11-11686, Adv. No. 11-02265, 2012 WL 1345646, at *8 (Bankr. S.D.N.Y. Apr. 17, 2012) (applying *Hill* to uphold arbitration of Section 362 claims by debtor, who like Brown here, had a repayment plan confirmed). Other courts have agreed, reaching the same conclusion about the

[6] At the time of the *Hill* case, the actual and punitive damages now set forth in 11 U.S.C. § 362(k)(1) were codified at 11 U.S.C. § 362(h).

arbitrability of Section 362(k) claims in similar circumstances. *See In re Banks*, 549 B.R. 257, 268 (Bankr. D. Or. 2016) (concluding that arbitration of Section 362(k) claims for damages and attorney's fees would "have no direct impact on performance of her chapter 13 Plan or estate administration in her bankruptcy case"); *Campos v. Bluestem Brands, Inc.*, No. 3:15-CV-00629, 2016 WL 297429, at *12 (D. Or. Jan. 22, 2016) (concluding that arbitration of § 362(k) claims would "not conflict with the underlying purpose of the Bankruptcy Code"). There is no reason for this Court to depart from those well-reasoned decisions.

II. THE LOWER COURTS' CONTRARY REASONING WAS WRONG

In sharp contrast to the analysis above driven by *CashCall*, the bankruptcy court and the district court held that the FAA's mandate to honor the parties' arbitration agreements is displaced by the Bankruptcy Code. Neither court's reasoning is persuasive.

A. The District Court Correctly Rejected The Major Premise Of Plaintiffs' Arguments And The Bankruptcy Court's Opinion

Plaintiffs' arguments in the lower courts and the bankruptcy court's order denying GS Bank's motion to compel arbitration were based on a fundamental misinterpretation of this Court's statements in *CashCall.* The district court correctly rejected that misinterpretation, thus undermining the foundation of the bankruptcy court's order.

Throughout this litigation, Plaintiffs have argued that arbitration of any "constitutionally core" claim would "inherently conflict" with the Bankruptcy Code under *McMahon*, thereby giving bankruptcy courts discretion to refuse to enforce arbitration agreements in those circumstances. Adv. Proc. 24-7009 Dkt. No. 19 at 9-11; D.Ct. Dkt. No. 23 at 24-26, 35-37. The bankruptcy court agreed with Plaintiffs and accordingly held: "If a claim is a constitutionally core proceeding, the bankruptcy court has the discretion to retain the proceeding and not enforce the terms of the parties arbitration agreement." JA120 (quoting *Carmac Fund, L.P. v. McPherson (In re McPherson)*, 630 B.R. 160, 168 (Bankr. D. Md. 2021)). After concluding that it had such discretion simply because Plaintiffs' claims are "core," the bankruptcy court then "exercise[d] its discretion and den[ied] the motion to compel arbitration" based on policy considerations. JA121; *see* JA121-123. At no point, however, did the bankruptcy court focus on the dispositive legal issue of whether arbitrating Plaintiffs' Section 362(k) claims would inherently conflict with the administration of their estates.

To the district court's credit, it rejected the bankruptcy court's and Plaintiffs' reading of *CashCall*. JA183-184. Instead, the district court acknowledged that "'[t]he core/non-core distinction does not . . . affect whether a bankruptcy court has the discretion to deny enforcement of an arbitration agreement'" and that for all types of claims, the court must "examine the nature of the claim and the specific facts of

the bankruptcy to determine whether enforcing arbitration would inherently conflict with the Bankruptcy Code's purposes." JA183 (citation omitted).

The district court was correct in rejecting the bankruptcy court's and Plaintiffs' interpretation of *CashCall*. That reading is demonstrably mistaken. To support its categorical rule automatically giving courts discretion to deny arbitration for "core" proceedings, the bankruptcy court quoted *CashCall* as saying that "forcing [a debtor] to arbitrate her constitutionally core claim would inherently conflict with the purposes of the Bankruptcy Code." JA120 (bankruptcy court quoting 781 F.3d at 73, but making bracketed alteration). In rendering that quotation, the bankruptcy court made a crucial change to what *CashCall* actually said, which was that "forcing *Moses* to arbitrate her constitutionally core claim would inherently conflict with the purposes of the Bankruptcy Code." 781 F.3d at 73 (emphasis added). By replacing *CashCall*'s specific reference to Moses, the particular debtor in that case, with a more general phrase—"a debtor"—the bankruptcy court transformed *CashCall*'s statement about Moses into a general rule automatically covering all debtors, including Plaintiffs here.

In reality, *CashCall*'s statement was a case-specific statement that arbitrating Moses' particular core claim would be inconsistent with the Bankruptcy Code. *See id.* at 66-67. That is clear from the fact that the Court spent five paragraphs analyzing why arbitrating Moses' core claim would create an inherent conflict. *CashCall*, 781

F.3d at 72-73. Had *CashCall* embraced the bankruptcy court's per se rule, there would have been no need for any particularized analysis. *See* D.Ct. Opening Br. 33-39.[7]

The bankruptcy court thus erred when it gleaned a categorical rule from *CashCall* about the incompatibility of arbitrating any "core" claim with the underlying purposes of the Bankruptcy Code. The proper analysis requires a case-specific inquiry into whether arbitrating the particular claims at issue would create an inherent conflict with the underlying purposes of the Bankruptcy Code.

B. The District Court Failed To Establish Any "Inherent Conflict" Between Arbitrating Plaintiffs' Claims And The Bankruptcy Code's Purposes

Having rejected the bankruptcy court's and Plaintiffs' reading of *CashCall*, the district court should have proceeded to analyze the arbitration of Plaintiffs' specific Section 362(k) monetary claims under *CashCall*'s test for establishing an "inherent conflict" between arbitration and the underlying purposes of the Bankruptcy Code. But the district court did nothing of the sort, failing to even

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[7] All five of the circuit courts (beyond this Court) that have addressed conflicts between the FAA and the Bankruptcy Code have rejected the bankruptcy court's per se rule. *See Hill*, 436 F.3d at 108; *Mintze v. Am. Gen. Fin. Servs., Inc. (In re Mintze)*, 434 F.3d 222, 228-29 (3d Cir. 2006); *Ins. Co. of N. Am. v. NGC Settlement Tr. & Asbestos Claims Mgmt. Corp. (In re Nat'l Gypsum Co.)*, 118 F.3d 1056, 1069-70 (5th Cir. 1997); *Cont'l Ins. Co. v. Thorpe Insulation Co. (In re Thorpe)*, 671 F.3d 1011, 1021 (9th Cir. 2012); *Whiting-Turner Contracting Co. v. Elec. Mach. Enters., Inc. (In re Elec. Mach. Enters., Inc.)*, 479 F.3d 791, 796 (11th Cir. 2007).

mention *CashCall* a single time in its short, one-page explanation of why it believed sending Plaintiffs' claims to arbitration would "inherently conflict with the Bankruptcy Code[]." JA184. And neither of the two, cursory reasons the district court provided for its conclusion comes close to establishing an "inherent conflict" between arbitrating Plaintiffs' Section 362(k) claims and the Code's underlying purposes.

1. Arbitrating Plaintiffs' Section 362(k) Claims Would Not Undermine The Bankruptcy Court's Authority To Enforce The Automatic Stay

According to the district court, "arbitrating Plaintiffs' claims would inherently conflict with the Bankruptcy Code's objectives" because "it could undermine the Bankruptcy Court's authority . . . to enforce the automatic stay to protect debtors[']and creditors' rights." JA184-185. Those concerns are misplaced.

Even if Section 362(k) claims can be sent to arbitration, bankruptcy courts retain their authority to punish violations of the automatic stay in appropriate cases. After all, Section 105(a) of the Bankruptcy Code gives bankruptcy courts the broad power to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]" and to "tak[e] any action or make[e] any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process." 11 U.S.C. § 105(a). It is well-established that this provision authorizes a bankruptcy court, when necessary or

appropriate, to punish violations of the automatic stay in bankruptcy cases over which it is presiding. *See, e.g.*, *Burd v. Walters (In re Walters)*, 868 F.2d 665, 670 (4th Cir. 1989) (recognizing 11 U.S.C. § 105(a) as setting forth general contempt power); *Spookyworld, Inc. v. Town of Berlin (In re Spookyworld, Inc.)*, 346 F.3d 1, 10-11 (1st Cir. 2003); *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1189-90 (9th Cir. 2003); 3 *Collier on Bankruptcy* ¶ 362.12.

A bankruptcy court's authority to punish stay violations does not turn on its jurisdiction over a private claim for damages under Section 362(k). Rather, that authority may be exercised in appropriate cases on a motion filed by the debtor, by the United States trustee, or even sua sponte. *See* 11 U.S.C. § 105(a) (discussing court's power to order relief sua sponte); Fed. R. Bankr. P. 9020 (discussing motion made by the United States trustee or a party in interest). Private parties can agree to arbitrate private Section 362(k) claims among themselves, but they cannot contract away the bankruptcy court's independent authority to enforce stay violations through its contempt power, when necessary. Enforcing private arbitration agreements thus has no impact on the court's ability to police automatic stay violations in appropriate cases, and there is no reason to disregard such agreements.

Notably, the district court's theory—that private Section 362(k) damages claims must be adjudicated exclusively in bankruptcy court because bankruptcy courts have exclusive power to enforce the automatic stay—conflicts with the

Bankruptcy Code itself. As mentioned above, Section 362(k) was enacted in 1984 and "created a private cause of action for the willful violation of a stay, authorizing an individual injured by any such violation to recover damages." *Houck v. Substitute Tr. Servs., Inc.*, 791 F.3d 473, 481 (4th Cir. 2015); *supra* 10 n.1. A "claim under § 362(k) for violation of the automatic stay is a cause of action arising under Title 11," 791 F.3d at 481, and bankruptcy courts (after referral by the district court) have "original *but not exclusive jurisdiction* of all civil proceedings arising under title 11." 28 U.S.C. § 1334(b) (emphasis added); *see id.* § 157(a).

The "plain language" of Section 1334(a) thus indicates that state courts have concurrent jurisdiction over Section 362(k) claims. *City of New London v. Speer*, 322 A.3d 407, 425-27 (Conn. App. Ct. 2024); *see also Hill*, 436 F.3d at 110 (Section 362(k) claims are "not a matter within the exclusive jurisdiction of the bankruptcy courts"). Clearly, then, the Bankruptcy Code does not demand that Section 362(k) claims be adjudicated exclusively in bankruptcy court, so adjudication of such claims in other forums does not inherently undermine the purposes of the Bankruptcy Code. Given that such claims can be heard in state court, there is no reason to think they should not be heard by arbitrators when the parties' have contractually agreed to arbitrate such claims.

2. Arbitrating Plaintiffs' Section 362(k) Claims Would Not Undermine The Centralization Of Disputes Related To Estate Administration

The district court further reasoned that "arbitrating Plaintiffs' claims would inherently conflict with the Bankruptcy Code's objectives" because "it could undermine the Bankruptcy Court's authority . . . to provide a single centralized forum for resolving disputes related to the Plaintiffs' bankruptcy proceedings." JA184-185. That formulation misconceives the centralization principle recognized in *CashCall*..

CashCall stated that one of the principal purposes of the Bankruptcy Code is "to centralize disputes" so as to "protect[] both debtors and creditors from piecemeal litigation and conflicting judgments," 781 F.3d at 72, but *CashCall* did not say that this centralization principle means that the bankruptcy court must adjudicate any issue that is "related" in any way "to the Plaintiffs' bankruptcy proceedings." JA185. Rather, *CashCall* explained that centralization is meant to "provid[e] debtors and creditors with 'the prompt and effectual administration and settlement of the [debtor's] estate.'" 781 F.3d at 72 (quoting *Katchen*, 382 U.S. at 328).

In other words, the Bankruptcy Code aims "to centralize disputes about a chapter 11 debtor's legal obligations *so that reorganization can proceed efficiently*." *Phillips v. Congelton, LLC (In re White Mountain Mining Co.)*, 403 F.3d 164, 170 (4th Cir. 2005) (emphasis added). Thus, "centrality of administration'" of the

particular bankruptcy estate is the touchstone. *CashCall*, 781 F.3d at 72 (citation omitted). The district court did not even attempt to show how arbitrating Plaintiffs' claims would negatively affect the administration of their particular bankruptcy estates. And, as explained above, it does not. *Supra* at 28-31.

The district court's overbroad invocation of the centralization principle also proves too much. On the district court's theory, a bankruptcy court should have discretion to disregard arbitration agreements even with respect to *non*-core claims—so long as they in any way "relate[] to the Plaintiffs' bankruptcy proceedings." JA185. But "bankruptcy courts *generally* have no discretion to refuse to arbitrate non-core claims," *CashCall*, 781 F.3d at 83 (Gregory), because arbitrating the vast majority of them would not create an "inherent conflict" with estate administration.

Likewise, under the district court's theory, a bankruptcy court should not have discretion to send any core claims to arbitration, as core proceedings by definition are "disputes related to the Plaintiffs' bankruptcy proceedings," JA185. But this Court has made clear that even as to core proceedings, a court's discretion to deny arbitration is limited to those particular cases in which arbitration would "substantially interfere[] with the debtor's efforts to reorganize." *Phillips*, 403 F.3d at 170. The district court's pronouncement on centralization does not withstand scrutiny.

The district court also emphasized that the automatic stay is "one of the fundamental protections offered under the Bankruptcy Code" and that honoring the parties' arbitration agreement would "allow[] an arbitrator to resolve a fundamental issue." JA184. GS Bank does not dispute that the stay is important. But when faced with allegedly irreconcilable conflicts between the FAA and other statutory schemes, the Supreme Court has consistently rejected the argument that certain matters are too important to a statutory scheme to be resolved by an arbitrator.

In *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth Inc.*, for example, the Court rejected the argument that "the fundamental importance" of "[t]he treble-damages provision" to the "antitrust enforcement scheme" and the "potential complexity" of antitrust claims made antitrust matters "inherently insusceptible to resolution by arbitration." 473 U.S. 614, 633-35 (1985). Those arguments, the Court explained, failed to establish the type of irreconcilable conflict that permits a court to ignore a valid arbitration agreement. Simply put, there is no FAA exception for important—or even fundamental—matters. Rather, "so long as the prospective litigant effectively may vindicate its statutory cause of action in the arbitral forum," a court has no discretion to disregard a valid arbitration agreement. *Id.* at 636-37.

Likewise, in *Gilmer* the Supreme Court rejected the argument that courts should ignore valid arbitration agreements with respect to claims brought under the Age Discrimination in Employment Act of 1967 (ADEA) just because "the ADEA

is designed not only to address individual grievances, but also to further social policies." 500 U.S. at 27. The Court explained that there is no "inherent inconsistency" between arbitration and the adjudication of statutory claims that "further broader social purposes," because those broader purposes can be vindicated in an arbitral forum, just as they can be vindicated in a court. *Id.* at 27-28. After all, "[t]he Sherman Act, the Securities Exchange Act of 1934, RICO, and the Securities Act of 1933 all are designed to advance important public policies," yet the Court has held that "claims under [all] those statutes are appropriate for arbitration." *Id.* at 28.

The district court's appeal to the "fundamental importance" of the automatic stay thus clashes with a long line of Supreme Court precedent, and does not help establish an irreconcilable conflict under *McMahon.*

C. The Bankruptcy Court Also Failed To Establish An "Inherent Conflict"

Though somewhat different from the district court's analysis, the bankruptcy court's ruling did not come close to establishing an "inherent conflict" either. In fact, given its misinterpretation of *CashCall* as granting it discretion to disregard the parties' arbitration agreements just because the proceedings are "core, the bankruptcy court had no real need to conduct the required case-specific "inherent conflict" analysis. The court instead resolved the arbitration question primarily by weighing various policy considerations. That weighing exercise was improper and beside the point: The FAA requires arbitration—and provides no discretion—in the

absence of an inherent conflict with the underlying purposes of the Bankruptcy Code. *Supra* at 20-23.

In weighing the policy interests, the bankruptcy court explained that "maintaining the claims in this case [in court]" would be "*more consistent* with the goals of the Bankruptcy Code than of the FAA." JA122 (emphasis added). That is so, the court explained, because (1) the "'legislative history of the Code reveals the importance of § 362['s] stay provision,'" (2) the "'automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws,'" and (3) "the specialized experiences of the bankruptcy courts" are "*particularly suited* to address" these issues. JA122-123 (emphasis added) (citation omitted).

Of course, those considerations fall well short of establishing that sending Plaintiffs' claims to arbitration would "'*substantially* interfere with [their] efforts to reorganize'" and thus create an "inherent conflict" with the purposes of the Bankruptcy Code. *CashCall*, 781 F.3d at 72-73 (emphasis added) (citation omitted). As explained above, there is no FAA exception for important matters. *Supra* at 43-44. Moreover, the FAA prevents courts from "indulg[ing] the presumption" that arbitrators cannot "competent[ly], conscientious[ly], and impartial[ly]" decide complex matters that are crucial to carefully crafted statutory schemes. *Mitsubishi Motors Corp.*, 473 U.S. at 634. Because the bankruptcy court misread *CashCall*, it credited considerations that are irrelevant to the proper analysis.

In conducting this improper weighing exercise, the bankruptcy court ignored that the FAA itself advances important policy goals—most importantly, "to ensure the enforceability, according to their terms, of private agreements to arbitrate." *Volt Info. Scis., Inc. v. Bd. of Trs. of the Leland Stanford Junior Univ.*, 489 U.S. 468, 476 (1989). It also ignored that the FAA's mandate to honor arbitration agreements and further those goals cannot be set aside unless there is an "irreconcilable" conflict between arbitration and the resolution of statutory claims. *McMahon*, 482 U.S. at 239. The bankruptcy court certainly did not heed the Supreme Court's command to "ke[ep] in mind," throughout its inquiry, "that 'questions of arbitrability must be addressed with a healthy regard for the federal policy favoring arbitration.'" *Gilmer*, 500 U.S. at 26 (citation omitted).

The bankruptcy court also asserted that "[t]he vast majority of debtors coming into the bankruptcy courts . . . have very limited resources" and that "[f]orcing debtors to resolve their disputes" over Section 362(k) damages in an arbitral forum "ignores a consumer debtor's financial reality and contravenes this central [tenet]" of giving the debtor a fresh start. JA121-122. But that grossly mischaracterizes the "fresh start" principle. The Bankruptcy Code provides a "'fresh start'" to the "'honest but unfortunate debtor'" in a very specific way: by "provid[ing] a procedure" for "insolvent debtors" to "reorder their affairs" and "make peace with their creditors," so that they can "enjoy 'a new opportunity in life . . . unhampered

by the pressure and discouragement of preexisting debt.'" *Grogan v. Garner*, 498 U.S. 279, 286-87 (1991) (citation omitted). The "fresh start" principle is thus all about promptly and effectively administering claims against the bankruptcy estate so that an insolvent debtor can receive a "fresh start" from crushing *debt.* It does not promise an insolvent debtor the ability to use bankruptcy courts to resolve all of the debtor's *affirmative* lawsuits, regardless of whether they are necessary to the "prompt and effectual administration . . . of the [debtor's] estate." *Katchen*, 382 U.S. at 328-29 (citation omitted). The bankruptcy court's appeal to the fresh start principle falls well short of establishing an "inherent conflict" between arbitrating Plaintiffs' Section 362(k) claims and the underlying purposes of the Bankruptcy Code.

* * *

Under the well-established precedents of the Supreme Court and this Court, the parties' arbitration agreements may be disregarded only if arbitrating Plaintiffs' particular Section 362(k) claims would create an "inherent conflict" with the underlying purposes of the Bankruptcy Code. No one—neither Plaintiffs nor either of the courts below—have established such a conflict. That's because there is none. The Bankruptcy Code does not displace the FAA with respect to Plaintiffs' Section 362(k) claims. Those claims must now be arbitrated.

CONCLUSION

The district court's order affirming the bankruptcy court should be reversed.

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Respectfully submitted,

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STATEMENT REGARDING ORAL ARGUMENT

Appellant Goldman Sachs Bank USA respectfully requests oral argument in this case. This case presents an important question regarding the enforceability of agreements to arbitrate monetary claims arising under Section 362(k) of the Bankruptcy Code. That precise question is one of first impression in this Court. Appellant believes that oral argument would aid the Court in its consideration of this issue.

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CERTIFICATE OF COMPLIANCE WITH RULE 32(g)

Counsel for Appellant Goldman Sachs Bank USA hereby certifies that:

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) and Local Rule 32(b). The brief contains 11,133 words (as calculated by the Microsoft Word 365 word processing system used to prepare this brief), excluding the parts exempted by Federal Rule of Appellate Procedure 32(f).

2. This brief complies with the type-face requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6). The brief has been prepared in proportionally spaced typeface using Microsoft Word 365 in 14-point Times New Roman style font.

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