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)

RESPONSE BRIEF OF APPELLEES RHEA ANN BROWN AND GREGORY KEVIN MAZE

Theodore O. Bartholow, III
Karen L. Kellett
Kellett & Bartholow, PLLC
11300 N. Central
Expressway Suite 301
Dallas TX 75243
214-696-9000
214-696-9001
thad@kblawtx.com
kkellett@kblawtx.com

Malissa L. Giles
Tracy A. Giles
Giles & Lambert PC
129 E. Campbell Ave.
Suite 300
Roanoke VA 24011
540-981-9000
mgiles@gileslambert.com
tgiles@gileslambert.com

July 17, 2025

Counsel for Appellees
Rhea Ann Brown and Gregory Kevin Maze

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.
- Counsel has a continuing duty to update the disclosure statement.

No. 25-1439 Caption: Goldman Sachs Bank USA v. Rhea Ann Brown and Gregory Kevin Maze

Pursuant to FRAP 26.1 and Local Rule 26.1,

Rhea Ann Brown, Gregory Kevin Maze
name of party/amicus)

who are Appellees, 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? __ YES X NO
If yes, identify all parent corporations, including all generations of parent corporations: N/A

3. Is 10% or more of the stock of a party/amicus owned by a publicly held

corporation or other publicly held entity? __ YES X NO
If yes, identify all such owners:

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: N/A

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. N/A

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/ Theodore O. Bartholow, III* Date: July 17, 2025
Theodore O. Bartholow, III

Counsel for: Appellees Rhea Ann Brown and Gregory Kevin Maze

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STATEMENT OF ISSUES

I. Whether Goldman is barred by the doctrines of waiver and/or invited error from arguing that the Bankruptcy Court lacked discretion to deny its motion to compel arbitration of Plaintiffs' constitutionally and statutorily core claims based on Goldman's express, specific, and repeated concessions to the Bankruptcy Court that the Bankruptcy Court had discretion to deny its motion *because* Plaintiffs' claims in this case are constitutionally and statutorily core.

II. Whether the Bankruptcy Court abused its discretion in denying Appellant Goldman Sachs Bank USA, d/b/a Marcus by Goldman Sachs' ("Appellant" or "Goldman") motion to compel arbitration (the "arbitration motion") of Plaintiffs' constitutionally core claims.

STATEMENT OF THE CASE

a. The Key Role of The Automatic Stay in Facilitating the Bankruptcy Process

The Bankruptcy Code's automatic stay, set forth in 11 U.S.C. § 362, prohibits (among other things) creditors of debtors in bankruptcy

from engaging in acts to collect debtors' pre-bankruptcy (aka "pre-petition") debts (aka "claims") during their bankruptcy cases. *See*, *e.g.*, 11 U.S.C. § 362(a)(6). This automatic stay facilitates the fundamental "fresh start" purpose of the Bankruptcy Code, which the Supreme Court acknowledged in *Marrama* as *the* principal purpose of bankruptcy. *Marrama v. Citizens Bank of Massachusetts,* 549 U.S. 365, 367 (2007). Specifically, as Congress recognized when it passed the Bankruptcy Code in 1978, the automatic stay serves multiple critical systemic interests of the bankruptcy process:

> The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy. The automatic stay also provides creditor protection. Without it, certain creditors would be able to pursue their own remedies against the debtor's property. Those who acted first would obtain payment of the claim in preference to and to the detriment of other creditors. Bankruptcy is designed to provide an orderly liquidation procedure under which all creditors are treated equally. A race of diligence by creditors for the debtor's assets prevents that.

H.R. Rep. No. 95-595, at 340, *reprinted in* 1978 U.S.C.C.A.N. at 6296-97.

Congress also stated:

> The stay is the first part of bankruptcy relief, for it gives the debtor a respite from the forces that led him to bankruptcy. Frequently, a consumer debtor is severely harassed by his creditors when he falls behind in payments on loans. The harassment takes the form of abusive phone calls at all hours, including at work, threats of court action, attacks on the debtor's reputation, and so on. The automatic stay at the commencement of the case takes the pressure off the debtor. Once the debtor has commenced the case, all creditors' rights against the debtor become rights against the estate. Creditors must seek satisfaction of their claims from the estate. The automatic stay recognizes this by preventing creditors from pursuing the debtor.

Id. at 125-26, *reprinted in* 1978 U.S.C.C.A.N. at 6086-87.

b. Plaintiffs' Lawsuit Against Goldman Sachs

Prior to filing for bankruptcy, Plaintiffs each opened a consumer credit account for an "Apple Card" provided by Appellant Goldman. Plaintiffs' complaint alleges that Goldman repeatedly violated the automatic stay in Plaintiffs' Chapter 7 and Chapter 13 cases. *See* JA012-JA089. Plaintiffs allege that Goldman's violations were egregious and continued for extended time periods after Goldman received notice of Plaintiffs' bankruptcy cases and even after Goldman

received direct communications from Plaintiffs and their counsel informing them of the automatic stay and instructing Goldman to cease its collections activities. JA016-021, at ¶¶ 17–50. Plaintiffs also credibly allege that Goldman engages in similar behavior in numerous other bankruptcy cases throughout the country. JA021-JA023, at ¶¶ 51–54; *see also* JA081-089. As noted in Plaintiffs' response to Goldman's motion to compel arbitration, Bankruptcy Docket, (JA009 No. 19 at p. 7, fn. 2), Plaintiffs are aware of at least seven other lawsuits filed by consumer debtors against Goldman for nearly identical stay violations in the following states: Texas, California, Virginia, Alabama, and Kansas.[1]

[1] *Horton v. Goldman Sachs Bank USA Holdings, LLC*, Adversary No. 24-80001-CRJ, in the United States Bankruptcy Court for the Northern District of Alabama, Northern Division (debiting Chapter 7 debtor's bank account); *Captain v. Goldman Sachs Bank USA*, Adversary No. 23-03060-MVL, in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (lawsuit to collect discharged debt); *Harris v. Goldman Sachs Bank USA*, Adversary No. 23-02058, in the United States Bankruptcy Court for the Eastern District of California, Sacramento Division (collection emails and phone calls); *Garrett v. Goldman Sachs Bank USA*, Adversary No. 24-07003, in the United States Bankruptcy Court for the Western District of Virginia, Roanoke Division (collection emails); *Buzuma v. Goldman Sachs Bank USA, d/b/a Marcus by Goldman Sachs* Adversary No. 22-06014, in the United States Bankruptcy Court for the Western

Moreover, Plaintiffs' complaint alleges Goldman's conduct is ongoing. Goldman, despite admitting at oral argument in the Bankruptcy Court that issues with its systems and processes are the reason for its continued collections activities against debtors in bankruptcy after its receipt of notice of such debtors' bankruptcy filings (*see* JA131-132), has not conceded liability on Plaintiffs' claims that it willfully violated the automatic stay. Nor has Goldman offered evidence that it has, in fact, ceased its admittedly systematic post-petition collections activities against debtors in bankruptcy. Accordingly, because of the widespread and systematic nature of Goldman's collections practices, Plaintiffs' complaint seeks injunctive and declaratory relief, as well as certification of a nationwide class of consumer debtors who were subjected to Goldman's unlawful collections practices during the debtors' active bankruptcy cases, in

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District of Virginia, Roanoke Division (collection emails and billing statements); *Brown v. Goldman Sachs Bank USA Holdings, LLC*, Adversary No. 23-80114-CRJ, in the United States Bankruptcy Court for the Northern District of Alabama, Northern Division (alleging Goldman Sachs sent billing statements in violation of the automatic stay); *Docuplex, Inc. v. Goldman Sachs Bank USA, d/b/a Marcus by Goldman Sachs*, Adversary No. 23-05008, United States Bankruptcy Court for District of Kansas (phone calls and billing statements).

addition to compensatory and punitive damages authorized by § 362(k) of the Bankruptcy Code.

As to the specific Plaintiffs in this case, Plaintiff Rhea Ann Brown filed her Chapter 13 bankruptcy case on June 14, 2023. JA016. The Bankruptcy Court confirmed Ms. Brown's Chapter 13 plan on September 1, 2023. Since that date, Ms. Brown has remained current under her Chapter 13 plan. The automatic stay remains in place in Ms. Brown's Chapter 13 case. As outlined in the Complaint, Goldman first began violating the automatic stay in Ms. Brown's case by sending her a collection email on June 16, 2023 and continued sending her numerous additional emails, written demands and phone calls through at least December 20, 2023. JA017-018, ¶¶ 22–31. Goldman also violated the automatic stay by threatening to report Ms. Brown's account as a charge-off to the credit reporting agencies. JA018, JA031-039, JA042-050, JA056-059.

Plaintiff Kevin Maze filed his Chapter 7 bankruptcy case on November 19, 2023. JA019. Goldman violated the automatic stay in Mr. Maze's case on multiple occasions in January and February of 2024 by attempting to collect pre-petition debt through emails and

phone calls. JA020-021, JA063-078. Notably, during one of these calls, Mr. Maze informed Goldman's representative that he was in an active bankruptcy case and provided his bankruptcy counsel's contact information. JA020 at ¶43, JA073-075. In response, Goldman's representative told Mr. Maze that "it was not her job to call Mr. Maze's bankruptcy counsel, but it was Mr. Maze's job to pay his bills." JA020 at ¶43. Mr. Maze alleges further that, in spite of this conversation, Goldman Sach's collections efforts continued. JA020-021 ¶¶44-45, JA076-078. Plaintiffs' complaint details other examples of similar conduct by Goldman with respect to other bankruptcy debtors, dating back to 2022. JA022-23 ¶¶52-53. *See also* JA081-089, Bankruptcy Court opinion and order in *Buzuma v. Goldman Sachs*, Adv. Proc. No. 22-06014 (Bankr. W.D. Va. 2022) (findings of fact and conclusions of law granting judgment against Goldman for engaging in substantially similar conduct in willful violation of the automatic stay).

Plaintiffs do not contest that they signed the Apple Card Customer Agreement or that the Apple Card Customer Agreement contains a valid arbitration clause. However, contrary to Goldman's

representations [Goldman Opening Brief at ECF 19, p.1], Plaintiffs do dispute and have never conceded that the arbitration clause in the Apple Card Customer Agreement is enforceable with respect to Plaintiffs' constitutionally core automatic stay violation claims pursuant to 11 U.S.C. § 362(k). Plaintiffs contend that they have no right to waive the Bankruptcy Court's authority and obligation to enforce the automatic stay's protections, which are a public right that is integral to the functioning of the bankruptcy process as a whole.

The Arbitration Provision in the Apple Card Customer Agreement clarifies that in an arbitration under the provisions of that agreement, the arbitrator cannot provide injunctive and declaratory relief for anyone but the Plaintiffs individually:

> The arbitrator has no authority to award any relief not available in an individual action or award any declaratory, injunctive or other relief primarily for the benefit of the general public. Further, unless you and we both otherwise agree in writing, the arbitrator may award relief only in favor of your individual Claim. The arbitrator may not award relief for or against any other person, whether directly or indirectly.

JA112.

c. Goldman's Motion to Compel Arbitration of Plaintiffs' Claims in This Case.

During the hearing on Goldman's motion to compel arbitration, counsel for Goldman agreed the claim at issue was constitutionally and statutorily core. JA133. Goldman also agreed that the Bankruptcy Court has discretion on whether to send the issue to arbitration or not. JA133, 144. *See also* Goldman Reply in support of its Motion to Compel Arbitration, [Bankruptcy Court, ECF 20, p. 1]: ("[Goldman] does not contest … that because the alleged stay violations are 'core' bankruptcy matters, the Court has discretion in deciding whether or not to send the claims to arbitration."); s*ee also* Oral Argument Transcript at 9:3-15, JA133:

> [Counsel for Goldman:] Third point is the fact that this is a core claim, which we don't dispute is not dispositive. All it does is it gives Your Honor discretion to decide whether or not to send it to arbitration.
> THE COURT: So you would agree that it's constitutionally and statutorily core?
> [Counsel for Goldman:] At least for purposes of this motion, we are not disputing that.
> THE COURT: Okay. All right.
> [Counsel for Goldman:] We agree Your Honor has discretion - -
> THE COURT: Understood.
> [Counsel for Goldman:] -- under the Fourth Circuit decision

> in *CashCall* to decide whether or not to send it to arbitration."

The Bankruptcy Court noted during the argument on Goldman's motion, "… there are other … benefits of the Bankruptcy Code, which Congress has articulated, including the debtor's fresh start and the debtor's freedom from harassment from claims, that's the whole purpose of the automatic stay, is it not?" JA136.

When asked by the Bankruptcy Court, "how does an arbitrator put a stop to this? Do you have piecemeal – is every individual case arbitrated, and do you have the same arbitrator? I mean, does anybody know the scope and parameters of this, other than defense counsel?" JA142. Goldman's counsel responded, "I don't think anyone knows the scope of this. I don't think we know how many similarly situated –" JA143. In response, the Court said, "[w]ell, that's what I'm getting at. Who would know the scope of this, other than defense counsel? If you have a different arbitrator and a different plaintiff, each proceeding as its own little thing done in confidentiality and in secret, and short of discovery, how do you get to the bottom of that?" JA143. Goldman's counsel's response: "I don't know the logistical answer." JA143.

The Bankruptcy Court denied Goldman's motion to compel arbitration in a thorough and well-reasoned opinion. JA113-123. Goldman subsequently appealed that decision to the District Court, and, after careful review of the Bankruptcy Court's opinion and the parties' briefing, the District Court issued its own thoughtful and well-reasoned opinion, which found that the Bankruptcy Court's decision was not an abuse of discretion. JA179-185. Goldman now appeals denial of its motion to compel arbitration of Plaintiffs' claims to this Court.

SUMMARY OF ARGUMENT

This Court should affirm the Bankruptcy Court's decision to deny Appellant Goldman's motion to compel arbitration of Plaintiffs' constitutionally and statutorily core bankruptcy automatic stay violation enforcement claims. As Plaintiffs' complaint alleges, Goldman was put on notice in case after case that it had an ongoing issue with violating the automatic stay. Although Goldman is one of the most resource-rich, sophisticated entities in the world, it chose not to address this issue. Now it seeks to prevent the bankruptcy courts from addressing it by forcing case-by-case arbitrations. Goldman

obviously wishes to avoid a comprehensive remedy to its extensive violations. But Goldman's cynical arbitration strategy is in "inherent conflict" with the purposes of the Bankruptcy Code and the Constitution's mandate that the nation's bankruptcy laws be uniform – and uniformly enforced.

Plaintiffs allege that, with knowledge of Plaintiffs' bankruptcy cases, Goldman engaged in a systematic and uniform practice of repeated phone calls, emails, and other communications and threats in an effort to collect pre-bankruptcy debts from Plaintiffs and other similarly situated consumer bankruptcy debtors while their bankruptcy cases were active and subject to the protections of the automatic stay in 11 U.S.C. § 362. Because Plaintiffs allege this conduct is ongoing and widespread, they seek injunctive and declaratory relief, as well as actual and punitive damages, on behalf of a nationwide class consisting of consumer debtors in bankruptcy who have, like Plaintiffs, been subjected to Goldman's alleged post-petition collections practices in willful violation of the automatic stay.[2]

[2] Contrary to Goldman's repeated assertions, this case is not solely about recovery of monetary damages. Moreover, Goldman has not

The automatic stay is a fundamental component of the Bankruptcy Code. It is a statutory injunction that issues automatically upon the debtor's filing of a bankruptcy petition. Its effect is to provide immediate protection to debtors during their bankruptcy cases by granting them a breathing spell from harassing collections correspondence and phone calls, and by stopping pending collections lawsuits, foreclosure proceedings, and vehicle repossessions, among other things. *See generally*, 11 U.S.C. § 362(a). The automatic stay also protects creditors from competing with one another for the debtor's assets, preventing a "race to the courthouse" and by ensuring the Bankruptcy Code's organized court-administered process for distributing debtors' available assets for the payment of pre-bankruptcy debts is able to proceed, without interference, in a uniform and predictable manner.

Because of the importance of the automatic stay, to ensure it is

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conceded liability, which means that arbitration of Plaintiffs' claims would delegate determination of the extent and effect of the automatic stay to an unaccountable, unappealable non-judicial proceeding. Additionally, Plaintiffs have sought class-wide injunctive relief, which is unavailable in arbitration.

enforced, Congress authorized a powerful private right of action for individuals injured as a result of a violation of the automatic stay, which permits recovery of compensatory (actual) damages, including attorneys' fees, as well as, in appropriate circumstances, punitive damages, pursuant to 11 U.S.C. § 362(k) of the Bankruptcy Code. Similarly, pursuant to § 105(a) of the Bankruptcy Code, which permits bankruptcy courts to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]," bankruptcy courts also have broad independent enforcement authority to ensure compliance with the automatic stay. This separate authority in § 105(a) has been interpreted as authorizing bankruptcy courts to issue any appropriate remedies available at law or in equity to address and prevent abuses of the bankruptcy process, including violations of the automatic stay.

The Bankruptcy Court properly denied Goldman's motion to compel arbitration of Plaintiffs' claims in this case on the basis that arbitration would irreconcilably conflict with the purposes of the automatic stay in § 362 of the Bankruptcy Code, as well as with the principal "fresh start" purpose of the Bankruptcy Code recognized by

the Supreme Court in *Marrama*. The Bankruptcy Court properly applied this Court's binding precedent in *Moses v. CashCall, Inc.*, 781 F.3d 63, 71-72 (4th Cir. 2015) and *In re White Mountain Mining Co.*, 403 F.3d 164 (4th Cir. 2005) and thus did not abuse its discretion in its decision to deny Goldman's motion to compel arbitration of Plaintiffs' automatic stay violation enforcement claims. Moreover, Goldman explicitly conceded that the applicable standard of review in this case is abuse of discretion based on this Court's holding in *CashCall*, both in its reply brief to the Bankruptcy Court and again at oral argument in the Bankruptcy Court. Consequently, Goldman is barred by the doctrines of waiver and invited error from asserting that the Bankruptcy Court's decision should be reviewed under a different legal standard.

Denial of Goldman's arbitration motion was also appropriate because arbitration of Plaintiffs' claims in this case would violate the mandate in the Bankruptcy Clause of the United States Constitution, which requires that the nation's bankruptcy law be uniform and that it be uniformly enforced. See *Central Virginia Community College v.*

Katz, 546 U.S. 356 (2006). This constitutional uniformity mandate is incompatible with arbitration because, unlike judicial determinations, which are subject to appellate review, arbitration awards are confidential and unreviewable, which inherently permits the possibility of dis-uniformity in the interpretation and enforcement of the Bankruptcy Code in this context.

Accordingly, because arbitration of Plaintiffs' core bankruptcy automatic stay violation claims is incompatible with this Court's precedent, the Constitution's uniformity mandate, and the foundational purposes of the automatic stay, the Bankruptcy Court properly rejected Appellant's arguments relying on *MBNA Am. Bank v. Hill*, 436 F.3d 104 (2d Cir. 2006). Likewise, Goldman's jurisdictional argument, which relies on a controversial minority view from a state appellate court, fails to recognize the material differences between reviewable adjudication of stay violation enforcement decisions by courts and the incompatibility of the unreviewable nature of arbitrator's decisions with the Constitution's uniformity mandate.

Thus, because arbitration of this matter would undermine and

inherently conflict with the bankruptcy process and violate the Constitution's mandate of uniformity in the nation's bankruptcy laws, this Court should affirm the Bankruptcy Court's well-reasoned decision denying Goldman's motion to compel arbitration in this case.

ARGUMENT

I. STANDARD OF REVIEW

In this appeal from the Bankruptcy Court's denial of Goldman's motion to compel arbitration of Plaintiffs' automatic stay violation claim pursuant to 11 U.S.C. § 362(k), which was affirmed by the District Court, this Court reviews the Bankruptcy Court's decision—not the District Court's. *Trantham v. Tate*, 112 F.4th 223, 237 (4th Cir. 2024) (citing *Cypher Chiropractic Ctr. v. Runski (In re Runski)*, 102 F.3d 744, 745 (4th Cir. 1996)).

In the Fourth Circuit, the Bankruptcy Court's denial of a motion to compel arbitration of a core bankruptcy issue is reviewed for abuse of discretion. *CashCall*, 781 F.3d at 71-72. Under this standard of review, the judgment below—here the judgment of the Bankruptcy Court—is entitled to "substantial deference[.]" *United States v.*

Russell, 971 F.2d 1098, 1104 (4th Cir. 1992). Courts applying the abuse of discretion standard give "the benefit of every doubt" to the trial judge's judgment. *Sellman v. Safeco Ins. Co. of Am.*, Case No. 22-2145, 2024 US. App. LEXIS 13616, *6-7 (4th Cir. June 5, 2024).[3]

Abuse of discretion requires that the reviewing court be convinced that the trial court is clearly wrong or has committed an error of law. *Adams v. Hall*, Case No. 3:23cv410, 2024 U.S. Dist. LEXIS 171930, *12 (E.D. Va. Sep. 23, 2024). The Fourth Circuit describes this abuse of discretion standard of review as "sharply circumscribed." *Robinson v. Equifax Info. Servs.*, 560 F.3d 235, 243 (4th Cir. 2009).

Goldman now argues that the standard of review is *de novo*, and that the Bankruptcy Court did not have discretion to deny sending this case to arbitration. ECF 19, p. 19., *inter alia.*

However, Goldman is precluded by the doctrines of waiver and invited error to now argue in this Court that the Bankruptcy Court applied the incorrect legal standard in exercising its discretion to deny

[3] In bankruptcy matters, the bankruptcy court is the trial court. *In re Bestwall, LLC*, 658 B.R. 348, 359, n. 11 (Bankr. W.D.N.C. 2024).

Goldman's arbitration motion.[4] Known as "a cardinal rule of appellate review,"[5] the invited error doctrine is regularly invoked by circuit courts to bar appellate review in both civil and criminal cases.

Simply put, the invited error doctrine provides that a party that takes a position on a legal standard at the trial court level may not argue on appeal that it was error for the court to hold that position.[6]

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[4] The invited-error doctrine is an example of waiver, where a party may not induce action by the trial court and later seek reversal on the same ground. *See United States v. Teague*, 443 F.3d 1310, 1314 (10th Cir. 2006); *Eateries, Inc. v. J.R. Simplot Co.*, 346 F.3d 1225, 1229 (10th Cir. 2003). Likewise, a party may not appeal based on an argument it has expressly abandoned. *See United States v. Carrasco-Salazar*, 494 F.3d 1270, 1272–73 (10th Cir. 2007). In either situation, a waiver has occurred, and the party "is not entitled to appellate relief." *Teague*, 443 F.3d at 1314.

[5] *United States v. Carpenter,* 803 F.3d 1224, 1236 (11th Cir. 2015); *accord Sierra Club v. Yeutter,* 926 F.2d 429, 438 (5th Cir. 1991) (same); *Harris v. Roadway Exp. Inc.,* 923 F.2d 59, 60 (6th Cir. 1991) (same).

[6] "Under ordinary circumstances, this court will not consider alleged errors that were invited by the appellant." *United States v. Hickman,* 626 F.3d 756, 772 (4th Cir. 2010). Under this doctrine, known as the invited error doctrine, "a court can not be asked by counsel to take a step in a case and later be convicted of error, because it has complied with such request." *United States v. Herrera,* 23 F.3d 74, 75 (4th Cir. 1994) (quoting *Shields v. United States*, 273 U.S. 583, 586, 47 S. Ct. 478, 71 L. Ed. 787 (1927)). *Ford ex rel. Estate of Ford v. Garcia*, 289 F.3d 1283, 1294 (11th Cir. 2002) (party's affirmative statement that a proximate cause jury instruction was "acceptable to us" constituted

As a result, any court on appeal may disregard the party's assertion of error, and the Court should do so here.

II. THE AUTOMATIC STAY AND ITS UNIFORM ENFORCEMENT ARE FUNDAMENTAL TO THE PROPER FUNCTIONING OF THE BANKRUPTCY PROCESS.

The Bankruptcy Code establishes collective processes for resolving insolvency without creating a race to the courthouse (or worse, self-help) by the debtor's creditors, in order to ensure the orderly liquidation of an insolvent debtor's assets in a Chapter 7 case, and/or establishing and implementing a Chapter 13 plan of reorganization for the payment of claims. The primary tool for implementing this process in an orderly, uniform and efficient manner is the automatic stay. The "automatic stay represents 'one of the fundamental debtor protections provided by the bankruptcy laws.'" *United States v. Gold (In re Avis)*, 178 F.3d 718, 721 (4th Cir. 1999) (quoting *Midtlantic Nat'l Bank v N.J. Dep't of Envtl. Prot.*, 474 U.S. 494, 503 (1986)).

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invited error/waiver, and instruction could not be challenged on appeal).

The Fourth Circuit has long held that a principal purpose of bankruptcy is "to grant a fresh start to the honest but unfortunate debtor." *Bosiger v. US Airways, Inc.* 510 F.3d 442, 448 (4th Cir. 2007) (quoting *Marrama*, 549 U.S. at 367). The debtor's right to protection from creditors – the automatic stay in 11 U.S.C. § 362(a) – arises upon the filing of the bankruptcy petition with the court.[7] "(The) automatic stay bars almost all attempts by creditors to pursue the payment of debts owed by the bankruptcy petitioner. It is one of the 'fundamental debtor protections provided by the bankruptcy laws,' giving 'the debtor a breathing spell from his creditors.'" *Wood v. United State HUD (In re Wood)*, 993 F.3d 245, 249 (4th Cir. 2021). The purpose of the automatic stay "in addition to protecting the relative position of creditors, is to shield the debtor from financial pressure during the pendency of the bankruptcy proceeding." *Crider v. Pilgrim's Pride Corp.*, Case No. 09-00058, 2011 U.S. Dis. LEXIS 140334 at **6-7 (W.D.

[7] Section 362(a) of the Bankruptcy Code provides, in relevant part "… a petition filed under section 301, 302, or 303 of this title … operates as a stay, applicable to all entities …" 11 U.S.C. § 362(a). Section 362(a)(6) specifically prohibits "any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title."

Va. Dec. 6, 2011) (quoting *Winters, By and Through McMahon v. George Mason Bank,* 94 F.3d 130, 133 (4th Cir. 1996)).

Without the protection of the automatic stay, debtors are vulnerable to abuse, which undermines their ability to obtain the fresh start that the Bankruptcy Code was intended to provide. As noted in *In re Seaton*, 462 B.R. 582 (Bankr. E.D. Va. 2011):

> The automatic stay is a bedrock principle upon which the Code is built; the importance of § 362 cannot be over-emphasized. *Grady v. A.H. Robins Co.*, 839 F.2d 198, 200 (4th Cir. 1988). "The purpose of the automatic stay, in addition to protecting the relative position of creditors, is to shield the debtor from financial pressure during the pendency of the bankruptcy proceeding." *Winters By and Through McMahon v. George Mason Bank*, 94 F.3d 130, 133 (4th Cir. 1996) (citation omitted). The automatic stay provides the debtor a breathing spell from creditors, affording the debtor time to reorganize. *Grady v. A.H. Robins Co.*, 839 F.2d at 200 (quoting House Report No. 95-595, 95th Cong. 1st Sess. 340-1 (1977)). Thus, the purpose of the automatic stay is two-fold: to preserve the relative positions and rights of creditors as established by the Bankruptcy Code and to protect the debtor, individually, from collection activities.

462 B.R. at 591, quoting *In re Garner*, Case No. 09-81998, 2010 Bankr. LEXIS 721, 2010 WL 890406, at *2 (Bankr. M.D.N.C. Mar. 9, 2010) (unreported decision). *See also Jones v. Tri-City Auto Sales (In re*

Jones), 2012 Bankr. LEXIS 5567, 2012 WL 5993760 (Bankr. E.D. Va. 2012); *Rushing v. Green Tree Servicing, LLC (In re Rushing),* 443 B.R. 85, 97-98 (Bankr. E.D. Tex. 2010) ("[A] stay violation is not just a private injury. It strikes at the entire bankruptcy system and all parties for whom it was designed.").

In examining the history of the automatic stay, a North Carolina Bankruptcy Court noted the dual purpose: "The automatic stay has a dual nature: to protect debtors from all collection efforts, all harassment, and all foreclosure actions, and to protect creditors by preventing some creditors from obtaining payment of the claims in preference to and to the detriment of other creditors." *In re Crudup*, 287 B.R. 358, 362 (U.S. Bankr. E.D. N.C. 2002) (quoting *In re Sechuan City Inc.*, 96 BR 37, 42 (Bankr. E.D. Pa. 1989)).[8] Referring back to the 1977 House Report, the Court in *In re Sechuan City Inc.* noted the language in 11 U.S.C. § 362(a)(6) is very broad and is designed to prevent creditor coercion and harassment of the debtor. 96 B.R. at 41.

[8] *See also, Ard v. Zold (In re Ard)*, 668 B.R. 395, 400-401 (Bankr. D. S.C. 2025) ("Creditors also benefit as the stay preempts a "race to the courthouse" and provides opportunity for the fair allocation of the bankruptcy estate.")

This broad protection is a foundation of the relief and benefits afforded the debtor and a promise by the Code of protection.

Because Congress designed the automatic stay to protect not just the individual debtor but also the bankruptcy process as a whole, Congress included in section 362 the right of debtors to pursue not only compensatory but also, in circumstances deemed appropriate by the bankruptcy court, punitive damages for willful stay violations, in order to encourage enforcement of the automatic stay and thereby discourage creditors from engaging in direct collections while the debtor's estate is being administered. *See Wood*, 993 F.3d at 249. The monetary damages Plaintiffs seek in this case include punitive damages, the purpose of which is "to cause a change in the creditor's behavior; the prospect of such change is relevant to the amount of punitive damages to be awarded." *In re Shade,* 261 B.R. 213, 216 (Bankr. C.D. Ill. 2001). *See also In re Mann,* Case No. 03-82973, 2004 Bankr. LEXIS 2390 at ** 7-9 (Bankr. M.D.N.C. 2004) (holding that creditors ". . . must take measures and implement procedures to ensure that similar [violations of the automatic stay] do not occur" and

awarding punitive damages); *In re Riddick,* 231 B.R. 265, 269 (Bankr. N.D. Ohio 1999) (awarding punitive damages for creditor's failure to develop procedures to prevent violations of the automatic stay); *In re Perry*, Case No. 04-80461, 2004 Bankr. LEXIS 2386, 2004 WL 3510115, at *2 (Bankr. M.D.N.C. June 3, 2004) (holding punitive damages award was appropriate to deter creditor from future violations of the automatic stay).

Because punitive damages vindicate the Bankruptcy Court's authority to enforce the Bankruptcy Code's protections for the benefit of debtors and their creditors and serve to publicly punish and deter similar conduct, sending Plaintiffs' § 362(k) claims in this case to private, confidential arbitration undermines their effectiveness and all but eliminates the Bankruptcy Court's ability to protect the uniformity of the bankruptcy process.

Compelled mandatory arbitration of Plaintiffs' individual stay violation claims, as Goldman's motion contemplates, would thwart this purpose, because it would hide the public record of the scope and scale of Goldman's stay violation practices behind the closed doors of

confidential, unreviewable, unappealable, private arbitration proceedings. And it would deprive consumers of the ability to seek system-wide relief through collective proceedings.

Consequences for creditors who commit stay violations, in the form of punitive damages and sanctions, are especially crucial to the proper functioning of the bankruptcy process, but they are not the sole remedies Plaintiffs seek for themselves and the other putative members of the class. As noted, Plaintiffs also seek injunctive and declaratory relief for themselves and the class. Thus, Goldman's claim that Plaintiffs are "only" seeking monetary damages is false, although Goldman repeats it often in its appellate briefing to this Court. *See*, *inter alia*, ECF 19, pp. 4, 11, 16, 18-19 (repeatedly characterizing the claims at issue as "individual Section 362(k) monetary claims").

III. THE BANKRUPTCY AND DISTRICT COURTS PROPERLY REJECTED GOLDMAN'S ARGUMENTS FOR COMPELLING ARBITRATION OF PLAINTIFFS' CLAIMS IN THIS CASE.

The Bankruptcy Court correctly found that sending this case to arbitration inherently conflicts with the purposes of the automatic stay and the Bankruptcy Code.

a. The Bankruptcy and District Courts Properly Rejected Goldman's Arguments Based on the Rationale in the Second Circuit's Opinion in *MBNA v. Hill*.

In support of the Bankruptcy Court's legal conclusion that it should exercise its discretion to deny Goldman's arbitration motion, the Bankruptcy Court found that the Second Circuit's opinion in *Hill*, 436 F.3d at 108 was "at variance" with this Court's precedent in *CashCall* ("Arbitration of constitutionally core claims 'inherently conflict[s] with the purposes of the Bankruptcy Code,' and therefore a Bankruptcy Court is generally well within its discretion to refuse arbitration of constitutionally core claims.") JA183. Even Goldman's counsel conceded at oral argument and in their briefing to the Bankruptcy Court that *CashCall* holds that bankruptcy courts have discretion to deny a motion to compel arbitration of a core bankruptcy claim. In any event, despite Goldman's contortions, this court's precedent in *CashCall* and in *In re White Mountain Mining Co*. simply cannot be reconciled with *Hill*, insofar as *Hill* explicitly disregards the core/non-core distinction and instead requires a specific finding that declining to compel arbitration, absent a finding that arbitration of a

statutorily core and constitutionally core bankruptcy claim for violation of the automatic stay would "severely" conflict with administration of the individual debtor's bankruptcy case, would be reversible error. See *Hill* at 108.

Relying on its own experience with administration of bankruptcy cases, the Bankruptcy Court further found that:

> The vast majority of debtors coming into the bankruptcy courts, especially consumer debtors like the ones here, have very limited resources. This Court sees it nearly every day. Centralizing the resolution of disputes before the bankruptcy court, whether the debtor is a no-asset Chapter 7 liquidation or Chapter 13 repayment plan, enables to [*sic*] the debtors to preserve those limited resources, and gain the "fresh start" so often stated as the principal purpose of the Bankruptcy Code. . . . Forcing debtors to resolve their disputes, particularly in the nature of post-filing collection actions, in multiple forums ignores a consumer debtor's financial reality and contravenes this central tenant.

JA121-122. Consequently, rejecting the Second Circuit's insistence in *Hill* that arbitration must be compelled whenever resolution of the plaintiffs' claim would not have an impact on estate administration, the Bankruptcy Court found, "the arguments that a given plaintiff may have had a case fully administered, discharged, or in a post-confirmation Chapter 13 plan of little persuasion." JA122.

Indeed, the Second Circuit's subsequent decisions in *Anderson* and *Belton*, which cannot be squarely reconciled with *Hill*'s rationale, appear to suggest that even the Second Circuit has had second thoughts on the merits of its holding in *Hill*. *See Anderson v. Credit One Bank, N.A. (In re Anderson)*, 884 F.3d 382, 390-391 (2d Cir. 2018); *Belton v. GE Capital Retail Bank (In re Belton)*, 961 F.3d 612, 615-617 (2d Cir. 2020) (each declining to compel arbitration of proceedings to enforce bankruptcy discharge despite no impact on the administration of the debtors' bankruptcy estates). Likewise, the other cases Goldman cites for the proposition that actions to enforce the automatic stay may be sent to arbitration rely primarily on the holding in *Hill* and its rationale and therefore those cases also cannot be reconciled with this Court's clear contrary precedent.[9]

This Court's plurality opinion in *CashCall* held that mandatory arbitration of core bankruptcy claims inherently conflicts with the

[9] *See* ECF 19, p. 34 (Goldman's Opening Brief), citing *In re Banks*, 549 B.R. 257, 267-68 (Bankr. D. Or. 2016) and *Campos v. Bluestem Brands, Inc.*, 2016 WL 297429, at *11-12 (D. Or. 2016) (each relying on *Hill* in compelling arbitration of automatic stay enforcement actions).

principal purposes of the Bankruptcy Code. *CashCall*, 781 F.3d at 72. Contrary to Goldman's arguments below and in this appeal, denial of a motion to compel arbitration under the holding in *CashCall* does not exclusively require a finding that arbitration would substantially interfere with the efficient administration of or the centralization of disputes in the individual bankruptcy cases of the Plaintiffs. None of the three opinions in *CashCall* expresses such a view, implicitly or explicitly.

Additionally, the Bankruptcy Court held that the "well pleaded allegations" in Plaintiffs' complaint

> …suggest a broader issue of multiple debtors being pursued for payment post-filing in violation of the automatic stay in each of their cases. Whereas in a single or few cases outside bankruptcy, an account dispute between two parties may well be best served by submitting the dispute to arbitration. But this is more than an account dispute. Larger systemic issues are alleged to be at play here, ones which implicate the foundational purposes of the Bankruptcy Code and which the Bankruptcy Code – and the specialized experiences of the bankruptcy courts – are particularly suited to address in a global manner.
>
> Moreover, as stated in *In re Grant*, 281 B.R. 721, 725 (Bankr. S.D. Ala. 2000), '[a]llowing arbitration of alleged violations of court authority would leave nonjudicial third parties to punish abuse of the judicial system.' The power

> and authority of the judicial system and the fundamental protections afforded by Congress in the Bankruptcy Code, especially in connection with the automatic stay, would be diminished by such a delegation of power.

JA122-123.

Based on these findings, the Bankruptcy Court properly applied this Court's holdings in *CashCall* and *White Mountain* to conclude that it had discretion to deny Goldman's motion to compel arbitration of Plaintiffs' core claim to enforce the Bankruptcy Code's automatic stay in 11 U.S.C. § 362.

This Court's focus in *CashCall* was on efficient administration of the debtor's bankruptcy estate and centralization of disputes as "principal purposes" of the Bankruptcy Code because they were relevant purposes that this Court found in inherent conflict with compelled arbitration with respect to the core bankruptcy issues *in that case* – resolution of a creditor's disputed proof of claim. *CashCall*, 781 F.3d at 72 (referencing two non-exclusive examples of principal purposes of the Bankruptcy Code applicable in that case: "*a* principal purpose of the Bankruptcy Code is to provide debtors and creditors with the prompt and effectual administration and settlement of the

[debtor's] estate… [s]imilarly, *a* principal purpose of the Bankruptcy Code is also to centralize disputes…")(emphases added)(internal citations omitted). Certainly, this Court's holding in *CashCall* was appropriate: claims administration *is* a necessary component of the process of administering Chapter 13 bankruptcy cases, but it is hardly the only principal purpose, as *CashCall* clearly intimates.

Moreover, as a practical matter, resolution of the core claim in *CashCall*, the debtor's objection to CashCall's proof of claim, in which the debtor asserted that the debt that was the basis for CashCall's proof of claim was unenforceable under non-bankruptcy (state) law, was of less consequence to the efficient administration of that case than Goldman's persistent and repeated stay violations are for this case and for the cases of other debtors who have been subjected to its continued unlawful and harassing collections activities.

Indeed, only Ms. Moses' non-core claim for damages pursuant to her state law consumer protection cause of action had the potential to directly increase Ms. Moses' estate, yet a majority of this Court held in *CashCall* that the purely state law claim could be arbitrated.

CashCall, 781 F.3d at 73. Thus in fact, unlike *Hill*, in *CashCall* efficiency of estate administration could not have been *the* critical factor driving this Court's decision. Rather, as Goldman conceded to the Bankruptcy Court, it was the core nature of the bankruptcy issue in that case – determination of CashCall's proof of claim – that this Court recognized as the basis for the Bankruptcy Court's discretion to decline to compel arbitration in *CashCall*. Although the three members of the *CashCall* panel expressed different opinions on what the ultimate outcome should have been in that case, all three agreed with the basic premise that the bankruptcy court has discretion to deny the motion to compel arbitration of core bankruptcy claims. *Id.* at 67, 72, 82.

In the instant case, Goldman's persistent automatic stay violations, if left un-checked (or forced into arbitration) pose a much more serious threat to bankruptcy administration – and the integrity of the bankruptcy process – by diminishing the debtor's assets if collections efforts succeed. Forcing stay violation claims into arbitration also undermines debtors' confidence in the promise of the

breathing spell that the Bankruptcy Code's automatic stay is supposed to provide and causes serious reputational harm to the effectiveness of the Bankruptcy system.

Moreover, unlike the core bankruptcy proof of claim allowance issue in *CashCall*, which required the bankruptcy court to apply state law to assess the validity of the allegedly fraudulent debt that was the basis for CashCall's disputed proof of claim, the issue in the case at bar is purely an issue of bankruptcy law under § 362 of the Bankruptcy Code. No state law and no non-bankruptcy issue of federal law needs to be interpreted for the Bankruptcy Court to adjudicate Plaintiffs' statutory automatic stay violation claims under § 362(k) of the Bankruptcy Code.

Of course, the "discretion" that *CashCall* recognizes as available to bankruptcy courts when deciding whether to compel arbitration of core bankruptcy claims is neither a mandate for bankruptcy courts to deny motions to compel arbitration anytime the underlying issue is a core bankruptcy matter, nor does *CashCall* invite bankruptcy courts to wield that discretion capriciously. *CashCall* still requires courts to

consider relevant facts when exercising their discretion to deny arbitration motions on the basis that arbitration would "inherently conflict'" with the underlying purposes of the Bankruptcy Code. *CashCall*, 781 F.3d at 71. And, the Bankruptcy Court in this case in fact did consider relevant facts in connection with its decision to deny Goldman's arbitration motion. JA113-123. Although Goldman tries to trivialize the Bankruptcy Court's considerations as "policy" concerns, in this appeal Goldman has not argued that the Bankruptcy Court's findings regarding these factual matters were clearly erroneous.

In addition, the Bankruptcy Court did not determine that it had discretion to deny the motion to compel arbitration simply because the claims were core, as Appellants argue. Instead, the Bankruptcy Court rightly focused on "whether an inherent conflict exists between the FAA and the Bankruptcy Code provision at play here" (JA119-120) and explains why arbitration conflicts with the purposes of the automatic stay (JA 121-123).

b. The Bankruptcy Court Had Discretion to Deny Goldman's Arbitration Motion With Respect to Plaintiffs' Statutorily and Constitutionally Core § 362(k) Stay Violation Claim.

Plaintiffs' stay violation claim under 11 U.S.C. § 362(k)(1) is a constitutionally core proceeding because it derives directly from the Bankruptcy Code and can be brought only in the context of a bankruptcy case. "[A] cause of action is constitutionally core when it 'stems from the bankruptcy itself or would necessarily be resolved in the claims allowance process.'" *Allied Title Lending, LLC v. Taylor*, 420 F. Supp. 3d 436, 448 (E.D. Va. 2019) (quoting *Stern v. Marshall*, 564 U.S. 462, 499 (2011)). If a claim is a constitutionally core proceeding, the Bankruptcy Court has discretion to retain the proceeding and not enforce the terms of the parties' arbitration agreement. *Id.* at 448 (quoting *CashCall,* 781 F.3d at 72-73.) This discretion arises from the inherent conflict in allowing an arbitrator to resolve proceedings that are grounded in the Code itself *or* that are integral to the debtor's reorganization efforts.

In *CashCall*, the Fourth Circuit recognized that Congressional intent to authorize waiver of mandatory arbitration in the bankruptcy

context could be deduced from the "inherent conflict between arbitration and the statute's underlying purposes." *Id.* at 71-72 (quoting *Shearson/Am. Express, Inc. v. McMahon*, 482 U.S. 220, 227 (1987)). "Like any statutory directive," the FAA's "mandate may be overridden by contrary congressional demand." *Camac Fund L.P. v. McPherson (In re McPherson)*, 630 B.R. 160, 167 (Bankr. M.D. June 2, 2021) (quoting *McMahon*, 482 U.S. at 226).

Indeed, the "principal purposes" of the Bankruptcy Code that the Bankruptcy Court identified as supporting denial of Goldman's arbitration motion in this case are, arguably, *more* fundamental as "principal purposes" of the bankruptcy process than the purposes of efficiency of administration and centralization of disputes that *CashCall* recognized. *CashCall*, 781 F.3d at 72. This is because uniform enforcement of the protections of the automatic stay is necessary for efficient administration and centralization of disputes in bankruptcy. Public enforcement of the automatic stay by the bankruptcy court, for the benefit of the bankruptcy system as a whole, is what helps ensure the automatic stay works as Congress intended.

Wood, 993 F.3d at 249 (in addition to providing a breathing spell, the automatic stay enables resolution of debts in orderly fashion, benefits creditors by preempting race to the courthouse, and providing procedures for fair allocation of assets.)

In this sense, compelled arbitration of stay violations would represent a return to the chaos of life outside of bankruptcy, at least with respect to creditors willing and able to rely on pre-petition arbitration clauses as guarantees of safe harbor from bankruptcy court oversight of post-petition collections activities in violation of the automatic stay.[10] Compelled arbitration of stay violations would force

[10] See *Gruntz v. Cty. of L.A. (In re Gruntz)*, 202 F.3d 1074, 1083-1084 (9th Cir. 2000), wherein the Ninth Circuit observed that "[i]t is but slight hyperbole to say that chaos would reign" if state courts were permitted concurrent jurisdiction with bankruptcy courts over the automatic stay—an analogous scenario to concurrent jurisdiction by arbitrators proposed by Goldman here: "If state courts were empowered to issue binding judgments modifying the federal injunction created by the automatic stay, creditors would be free to rush into friendly courthouses around the nation to garner favorable relief. The bankruptcy court would then be stripped of its ability to distribute the debtor's assets equitably, or to allow the debtor to reorganize financial affairs." *Id.* at 1084. "Such an exercise of authority would be inconsistent with and subvert the exclusive jurisdiction of the federal courts by allowing state courts to create their own standards as to when persons may properly seek relief in cases Congress has specifically precluded those courts from adjudicating."

debtors (like the Plaintiffs in this case) to initiate separate proceedings to obtain even a portion of the remedies Congress intended that they could obtain from bankruptcy courts under § 362(k) of the Bankruptcy Code. Thus, the existence and enforceability of the automatic stay is, itself, a fundamental principal purpose of the Bankruptcy Code, which the Bankruptcy Court properly recognized below.

In support of its decision to exercise discretion to deny Goldman's arbitration motion, the Bankruptcy Court properly recognized that arbitration of Plaintiffs' § 362(k) claim would undermine its ability to protect the bankruptcy process from the widespread, ongoing and uniform collections activities (which Goldman's counsel largely acknowledged/admitted to the Bankruptcy Court at oral argument), which Plaintiffs' complaint alleges violate the automatic stay. In Chapter 13 cases, the debtor needs "*court* supervision and protection, to develop *and perform* under a plan for the repayment of his debts over an extended period." H.R. Rep. No. 95-595, at 118, *reprinted in* 1978 U.S.C.C.A.N. at 6079 (emphasis added). "This protection relieves

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Id., *citing Gonzales v. Parks (In re Gonzales)*, 830 F.2d 1033, 1036 (9th Cir. 1987).

the debtor from indirect and direct pressures from creditors, and enables him to support himself and his dependents while repaying his creditors at the same time." *Id.*

Congress has given bankruptcy courts the task of administering the protections of the automatic stay. *In re Walker,* 551 B.R 679, 690 (Bankr. M.D. Ga. 2016). The bankruptcy court is a specialized court that has the knowledge, duty, and incentive to protect the bankruptcy system. *See* H.R. Rep. No. 95-595, at 20, *reprinted in* 1978 U.S.C.C.A.N. at 5980 ("In bankruptcy, specialization is necessary to the functioning of the system.").[11] Congress constructed the bankruptcy system in a manner that ensures that core matters, which "typically involve matters in which the interests of the federal bankruptcy system are most critical," such as the automatic stay, are generally determined by the specialized bankruptcy court rather than

[11] While Congress has had to rework the jurisdictional framework to address constitutional concerns since the passage of the Bankruptcy Code, these revisions have consistently demonstrated that "Congress intended and gave to bankruptcy courts broad jurisdictional authority, consistent with [constitutional limitations], to adjudicate all matters demonstrated to affect the liquidation of assets or the debtor-creditor relationship." *Allard v. Benjamin (In re DeLorean Motor Co.)*, 49 B.R. 900, 909 (Bankr. E.D. Mich. 1985).

a "generalist forum."[12] *In re Walker*, 551 B.R. at 693 (citing *Ames Dep't Stores, Inc. v. Lumbermens Mut. Cas. Co. (In re Ames Dep't Stores, Inc.)*, 542 B.R. 121, 137 (Bankr. S.D.N.Y. 2015)). In doing so, Congress recognized the bankruptcy court's experience,[13] and, more importantly, vested interest,[14] in ruling in a manner that makes the bankruptcy system functional.

Furthermore, as pointed out in *Walker*, the fact that the FAA and the Bankruptcy Code are each heavily procedural in nature

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[12] *See* 28 U.S.C. § 157. *Cf. In re White Mountain Mining Co.*, 403 F.3d at 169 (". . . the statutory text [of 28 U.S.C. § 157] giving bankruptcy courts core-issue jurisdiction reveals a congressional intent to choose those courts in exclusive preference to all other adjudicative bodies, including boards of arbitration, to decide core claims.").

[13] H.R. Rep. No. 95-595, at 20, *reprinted in* 1978 U.S.C.C.A.N. at 5980 ("The reason that the bankruptcy court system works as well as it does today is because the trial judges are specialists, experienced in handling the problems that arise. They are experienced because they handle exclusively bankruptcy cases.").

[14] H.R. Rep. No. 95-595, at 4, *reprinted in* 1978 U.S.C.C.A.N. at 5965 (explaining that the Code was designed to prevent the bankruptcy process from having to "operate under the supervision of an unconcerned district court"); *Id.* at 14-15, *reprinted in* 1978 U.S.C.C.A.N. at 5975-76 (describing reasons why disputes arising in bankruptcy administration should be addressed by bankruptcy court, not district court).

creates a likelihood of tension between the two statutes. *See In re Walker,* 551 B.R. at 690, citing *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 628, 105 S. Ct. 3346, 87 L. Ed. 2d 444 (1985) ("By agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than a judicial, forum.") "In evaluating a tension between the procedures established by these two bodies of law, courts must be careful not to use a broad brush favoring arbitration to paint over the intricate bankruptcy process crafted by Congress. To require arbitration in the stay violation context does just that." *In re Walker*, 551 B.R. at 690.

Of course, neither the Bankruptcy Court, nor Plaintiffs' other creditors consented to Goldman getting the special treatment that would result from compelling Plaintiffs' § 362(k) claims to be arbitrated, which would be tantamount to immunity from Bankruptcy Court oversight and enforcement action against it on a collective basis. Although Goldman has argued that the Bankruptcy Court would retain its contempt and inherent authority to police Goldman's

conduct in Plaintiffs' individual cases, without transparency in §362(k) actions as to the scope and numerosity of the violations, the Court will be handcuffed in determining and assessing appropriate sanctions.

c. Arbitration is Incompatible with the Methods Congress Authorized in the Bankruptcy Code to Enforce the Automatic Stay.

Violators of the automatic stay may be punished by civil contempt based on the inherent power of the bankruptcy court to enforce its own orders, or by an award of damages under § 362(k) of the Code. *In re Crysen/Montenay Energy Co.*, 902 F.2d 1098, 1104 (2d Cir. 1990)("The enactment of subsection (h) [now section (k)] granted bankruptcy courts an independent statutory basis, apart from their contempt power, to order sanctions against violators of automatic stays."); *In re Chateaugay Corp.*, 920 F.2d 183 (2d Cir. 1990).

The "sanctions imposed after a finding of civil contempt serve two functions: to coerce future compliance and to remedy past noncompliance." *Vuitton et Fils S.A. v. Carousel Handbags*, 592 F.2d 126, 130 (2d Cir. 1979). In compelling future compliance, the inherent

power of federal courts is invoked and the judge, "sitting in equity, is vested with wide discretion in fashioning a remedy." *Id*. Because this discretion should be exercised by the court, bankruptcy courts with good reason have been reluctant to compel arbitration of stay violation proceedings. *See Videsh Sanchar Nigam Ltd. V. Startec Global Communs. Corp. (In re Startec Global Communications Corp.),* 300 B.R. 244 (D. Md. 2003); *In re Cavanaugh v. Conseco Finance Servicing Corp.*, 271 B.R. 414 (Bankr. D. Mass. 2001); *In re Grant*, 281 B.R. 721 (Bankr. S.D. Ala. 2000). To hold otherwise would be tantamount to outsourcing determination of the scope and applicability of the stay, which would represent a far broader incursion on the Bankruptcy Court's jurisdiction than the "mere" damages calculation Goldman claims.

A willful violation of the stay is a violation of the integrity of the bankruptcy court's authority. Allowing an arbitrator to resolve that (statutory) contempt-based stay violation enforcement action would impair the bankruptcy court's power and its ability to effectuate the provisions of the Bankruptcy Code. *Grant*, 281 B.R. at 725. *See also,*

In re Lucas, 312 B.R. 559, 570 (Bankr. D. Md. 2004)(arbitration denied in matter involving bankruptcy petition preparer because it "implicates the court's ability to police professionals who provide services in connection with a debtor's bankruptcy case"). So, the bankruptcy court is also aggrieved by willful stay violations. It follows that because the Court did not sign the arbitration agreement, the court is not subject to the agreement, and so the claim may not be forced into arbitration. See *In re Grant*, 281 B.R. at 725.

These same concerns apply when a bankruptcy court assesses punitive damages against willful stay violators. Especially with respect to institutional creditors like Goldman who have claims against debtors in many cases pending before the bankruptcy courts, bankruptcy courts are interested in sending a message to the creditor that will force its future compliance with the automatic stay.[15] *Shade*, 261 B.R. at 216 ("[t]he primary purpose of punitive damages awarded

[15] The First Circuit has stated that "[t]he automatic stay is among the most basic of debtor protections under bankruptcy law," and that "[i]n order to secure ... [its] ... important protections, courts must display a certain rigor in reacting to violations...." *In re Soares*, 107 F.3d 969, 975 (1st Cir.1997).

for a willful violation of the automatic stay is to cause a change in the creditor's behavior; ... [and] ... the prospect of such change is relevant to the amount of punitive damages to be awarded."), *citing Riddick*, 231 B.R. at 269 and *In re Novak*, 223 B.R. 363 (Bankr. M.D. Fla.1997). As in the case of contempt, an arbitrator will not have the same motivation or perspective as the bankruptcy court in upholding the conformity of bankruptcy law, the sanctity of the court's authority, or in influencing the future behavior of stay violators for the protection of the bankruptcy process against similar abuses.

In addition, referral to arbitration of stay violation proceedings necessarily erodes the deterrent effect that now exists as a result of the public disclosure of bankruptcy court sanctions and punitive damage awards. Unlike arbitration awards, bankruptcy court decisions are public documents readily accessible through the PACER system and are typically recorded in the Bankruptcy Reporter or made available on court websites and the major legal research outlets.[16]

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[16] *See, e.g.*, *In re Ocasio*, 272 B.R. 815 (B.A.P. 1st Cir. 2002) (ratio of 9:1 between punitive damages and compensatory damages not excessive); *In re Kortz*, 283 B.R. 706 (Bankr. N.D. Ohio 2002) ($51,000 punitive damages and equitable subordination of mortgage to remedy

Without this public disclosure or the fear of being hailed before the same bankruptcy judge on repeat violations, automatic stay violators may feel they can act with impunity and fail to put into effect procedures to ensure future compliance with the Bankruptcy Code's automatic stay or discharge injunction. To these creditors, even a substantial arbitration award of compensatory damages to the debtor may be little more than a "slap on the wrist" without the associated publicizing of the award, which increases the prospect of even harsher sanctions for future violations and thus incentivizes future compliance.

d. The Bankruptcy Court's Decision to Deny Goldman's Arbitration Motion is Consistent With Its Authority Under § 105(a) of the Bankruptcy Code.

Congress' intention to consolidate core bankruptcy matters

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mortgage company's "belligerent" violations of stay); *In re Henry*, 266 B.R. 457 (Bankr. C.D. Cal. 2001) ($65,700 in punitive damages awarded against mortgage holder who contacted debtors ninety-three times post-petition); *In re Meeks*, 260 B.R. 46 (Bankr. M.D. Fla. 2000) ($35,000 punitive damages for repossession with notice of automatic stay); *In re Timbs*, 178 B.R. 989 (Bankr. E.D. Tenn. 1994) (punitive damages awarded against attorney who failed to take affirmative steps to end wage garnishment); *Edwards v. B&E Transp., LLC (In re Edwards)*, 607 B.R. 530 (Bankr. W.D. Va. 2019) ($25,000 in punitive damages against creditor for unlawful post-petition repossession).

within the jurisdiction of the bankruptcy court is clear: by enacting the Bankruptcy Code, Congress granted comprehensive jurisdiction to bankruptcy courts to deal efficiently and expeditiously with core bankruptcy matters. *See CashCall*, 781 F.3d at 71 (quoting *Celotex Corp. v. Edwards*, 514 U.S. 300, 308, 115 S. Ct. 1493, 131 L. Ed. 2d 403 (1995)). This case implicates the Court's duty to implement the provisions of the Bankruptcy Code and its expansive authority to carry out that duty under § 105(a) of the Bankruptcy Code.

Section 105(a) gives broad authority to bankruptcy courts to "issue *any* order necessary ... to carry out the provisions of the bankruptcy code." *In re Walters*, 868 F.2d 665, 669 (4th Cir. 1989) (emphasis added). *See also Harlow v. Wells Fargo & Co. (In re Harlow)*, No. 17-71487, 2022 LEXIS 3512, 2022 WL 17586716, at *28, n. 11 (Bankr. W.D. Va. Dec. 12, 2022) (recognizing the bankruptcy court's inherent § 105(a) authority can be used to remedy abuse of bankruptcy process in context of creditor's alleged filing of false mortgage payment change notices). This is especially the case when, as here, a creditor is

attempting to flout the Bankruptcy Code for its own illegal purposes.[17] *See Rodriguez v. Countrywide (In re Rodriguez),* 396 B.R. 436, 459 (Bankr. S.D. Tex. 2008) (finding § 105(a) extends to sanctioning abuses of the bankruptcy process through maneuvers or schemes which would have the effect of undermining the integrity of the bankruptcy system.).

It is therefore not unusual for debtors' pre-petition contractual obligations, particularly those dictating forum or waiving the

[17] "[T]he Bankruptcy Code, both in general structure and in specific provisions, authorizes Bankruptcy Courts to prevent the use of the bankruptcy process to achieve illicit objectives." *In re Kestell*, 99 F.3d 146, 149 (4th Cir. 1996); *see also Chicora Life Ctr., LC v. UCF 1 Trust 1* (*In re Chicora Life Ctr., LC*), 553 B.R. 61, 67 (Bankr. D. S.C. 2016) ("The provisions of the Bankruptcy Code, including the equitable powers of the Bankruptcy Court under § 105, are designed to protect the public interest.") (citing *Fisher v. Apostolou*, 155 F.3d 876, 882 (7th Cir. 1998)). To that end, Section 105(a) has been interpreted to instill bankruptcy courts with the civil contempt power. *See In re Walters,* 868 F.2d 665, 669 (4th Cir. 1989) (affirming the bankruptcy court's order holding in contempt an attorney who failed to comply with an order to refund unapproved attorney's fees). Thus, "[b]ankruptcy courts have inherent and statutory power to police the conduct of the parties who appear before them and to impose sanctions on those parties who abuse the judicial process." *In re Banner*, No. 15-31761, 2016 Bankr. LEXIS 2214, 2016 WL 3251886, at *7 (Bankr. W.D. N.C. June 2, 2016) (quotation marks and citation omitted). *See Walker v. UpRight Law* (*In re Walker*), 18-80075, 2020 Bankr. LEXIS 490, **30-31 (Bankr. D. S.C. Feb. 20, 2020).

protections of the automatic stay, for example, to be modified or even ignored in a bankruptcy case. *See, e.g., Mercury Masonry Corp. v. Terminal Constr. Corp. (In re Mercury Masonry Corp.)*, 114 B.R. 35, 39 (Bankr. S.D.N.Y. 1990) ("[E]nforcement of the forum selection clause would violate the public's interest in centralizing bankruptcy proceedings in the bankruptcy court where the case is pending."); *Wheeling-Pittsburgh Steel Corp. v. Blue Cross & Blue Shield of W. Va., Inc. (In re Wheeling-Pittsburgh Steel Corp.),* 108 B.R. 82, 85 (Bankr. W.D. Pa. 1989) ("Public policy and inconvenience require us to deny enforcement of Blue Cross's forum selection clause."); *Banque Francaise du Commerce Exterieur v. Rio Grande Trading, Inc.*, 17 B.R. 134 (Bankr. S.D. Tex. 1981) ("It would be contrary to the theme of the Bankruptcy Reform Act to permit parties by agreement to defeat the jurisdiction of the court. . . . [C]ircumstances could exist under which the bankruptcy court will enforce such a clause and abstain from hearing a case, but not here."); *see also Ellwood City Iron & Wire Co. v. Flakt, Inc. (In re Ellwood City Iron & Wire Co.*), 59 B.R. 53, 55 (Bankr. W.D. Pa. 1986) (recognizing heightened importance of

bankruptcy forum after passage of Bankruptcy Amendments and Federal Judgeship Act of 1984). *See also, e.g., Matter of Pease*, 195 B.R. 431, 435 (Bankr. D. Neb. 1996) ("[A]ny attempt by a creditor in a private prebankruptcy agreement to opt out of the collective consequences of a debtor's future bankruptcy filing is generally unenforceable.").

IV. ARBITRATION OF AUTOMATIC STAY ENFORCEMENT PROCEEDINGS IS INCOMPATIBLE WITH THE UNIFORMITY MANDATE IN THE BANKRUPTCY CLAUSE OF THE CONSTITUTION.

A key issue, which Goldman does not address in its briefing in this appeal, and is independently dispositive on the outcome here, is the Constitution's specific requirement that federal bankruptcy law be "uniform." U.S. Const. Art. I, Sec. 8. Commonly referred to as the "Bankruptcy Clause" of the Constitution, Article I, Section 8 of the Constitution expressly authorizes Congress to establish "*uniform laws* on the subject of bankruptcies throughout the United States[.]" U.S. Const. Art. I, Sec. 8 (emphasis added).

In *Katz*, the Supreme Court acknowledged that the Bankruptcy Clause not only provides Congress the power to enact uniform

bankruptcy laws, it requires the courts to ensure uniformity in the enforcement and application of such laws. *Katz*, 546 U.S. 356, 376 at fn. 13. Indeed, as Goldman's reply brief to the District Court below recognized, the uniformity requirement of the Bankruptcy Clause automatically abrogates states' sovereign immunity with respect to the Bankruptcy Code – without the need for separate legislation passed by Congress.

However, Goldman argued in its reply brief to the District Court [Dist. Ct. Dkt. No. 26 at ECF 27-30] that "… Plaintiffs misunderstand the Bankruptcy Clause. That provision authorizes Congress to enact a uniform federal framework ("uniform Laws") for dealing with bankruptcies; it says nothing about who must adjudicate claims based on that uniform framework." *Id.* at ECF 27. But it is Goldman that misunderstands: Arbitrators' decisions are not subject to traditional appeals and are otherwise practically impossible to overturn.[18]

[18] Judicial review of an arbitration award is "severely circumscribed," and is "among the narrowest known at law." *Friedler v. Stifel, Nicolaus, & Co.*, 108 F.4th 241, 246 (4th Cir. 2024) (quoting *Jones v. Dancel*, 792 F.3d 395, 401 (4th Cir. 2015) (cleaned up). Indeed, it appears that even if the arbitrator commits a manifest disregard of federal bankruptcy law in its award in an automatic stay violation

Consequently, resolution of Plaintiffs' statutorily and constitutionally core automatic stay violation enforcement litigation by an arbitrator would inherently allow the potential for unreviewable dis-uniformity in the enforcement and interpretation of the law. Certainly, the unavailability of a right to appeal an arbitrator's decision could harm or benefit either side in an arbitration, but that is beside the point: The Constitution's Bankruptcy Clause mandates that bankruptcy law be uniform, and that mandate extends to its enforcement. *Katz*, 546 U.S. at 370-374.

Accordingly, because arbitration inherently precludes the possibility of an appeal, including eventually to the Supreme Court if necessary, there is no way to ensure uniformity in the enforcement of the Bankruptcy Code when statutorily and constitutionally core bankruptcy claims are submitted to arbitration. Determinations regarding the automatic stay are core matters that heavily implicate Congress' concerns in setting up the bankruptcy court system to be a

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case, a federal district court will not have subject matter jurisdiction to determine whether the award should be vacated under the very narrow grounds provided in the FAA. *See id.* at 243 – 250.

uniform, functional, and judicially supervised system, managed by judges with a specialized interest in determining core matters. *In re Walker*, 551 B.R. at 693 (citing *In re Merrill*, 343 B.R. 1, at 9 n.10 (Bankr. Me. 2006) ("[A]pplying and enforcing the stay (and related provisions) is [not] a simple exercise where a bankruptcy judge's experience and training are not required.")); *see also In re Rushing*, 443 B.R at 97 ("A bankruptcy court has a unique and compelling interest in insuring obedience to the restrictions imposed by the automatic stay.").

Bankruptcy courts deal with stay violations routinely and thus have the opportunity to observe patterns by creditors within an industry and can make rulings that benefit the entire bankruptcy process. *In re Rushing*, 443 B.R. at 98 ("Punishment [of a stay violation] is necessary not just to compensate a party, but to insure future compliance with the judicial system.") (quoting *In re Grant*, 281 B.R. at 725)); *In re Merrill*, 343 B.R. at 9 ("[O]rdering arbitration of [the debtor's] stay violation claim would conflict with this court's duty to safeguard the automatic stay's fundamental protection for

debtors."). This kind of perspective cannot be expected from an unspecialized private arbitrator. *In re Grant, 281 B.R. at 725* ("Allowing arbitration of alleged violations of court authority would leave nonjudicial third parties to punish abuse of the judicial system.").

Goldman attempts to side-step this obvious incompatibility between arbitration and traditional bankruptcy court adjudication of statutorily and constitutionally core bankruptcy claims by arguing that, pursuant to 28 U.S.C. § 1334(b), Congress did not limit subject matter jurisdiction over civil proceedings arising under, arising in, or related to cases under the Bankruptcy Code to bankruptcy courts alone. Thus, Goldman claims, § 1334(b) must be construed to grant state courts concurrent subject matter jurisdiction over civil proceedings arising under, arising in, or related to cases under the Bankruptcy Code, including cases, such as this one, seeking to determine liability and damages for violations of the Bankruptcy Code's automatic stay. Opening Brief Dkt. 19 at ECF49 (citing *City of New London v. Speer*, 322 A.3d 407, 425-427 (Conn. App. Ct. 2024)).

Goldman's jurisdictional argument fails to resolve the conflict between arbitration and the Constitution's uniformity requirement for two reasons. First, a majority of the courts that have considered the issue have rejected the conclusion that the Connecticut state appellate court reached in *Speer*, holding instead that only federal district/bankruptcy courts may enforce and remedy violations of the automatic stay, on the basis that the automatic stay operates as a statutory injunction that becomes automatically effective upon the filing of a bankruptcy petition (aka "order for relief"), which may only be enforced and remedied by the court in which the injunction was entered.[19] Indeed, it is essential for the bankruptcy courts to maintain

[19] In *Eastern Equipment & Services Corp. v. Factory Point Nat'l Bank,* 236 F.3d 117, 120-21 (2d Cir. 2001), the Second Circuit held that state court tort actions to enforce the automatic stay were preempted by the comprehensive provisions of the Bankruptcy Code, as they are intended to achieve uniform application of bankruptcy law. *Accord MSR Exploration, Ltd. v. Meridian Oil, Inc.,* 74 F.3d 910, 913-16 (9th Cir. 1996). Similarly, in *Halas v. Platek,* 239 B.R. 784, 792 (N.D.Ill. 1999), the district court, after a thorough analysis of the case law, concluded that allowing state courts to impose penalties for stay violations "would undermine Congress' intent to have one uniform bankruptcy system." *Id.* See also *Benalcazar*, 283 B.R. 514, 521 (Bankr. N.D. Ill. 2002) (automatic stay places jurisdiction in the bankruptcy court over all matters subject to the automatic stay); *LaBarge v. Vierkant*, 240 B.R. 317, 322-25 (8th Cir. BAP

full control over the automatic stay, which undergirds every bankruptcy case and ensures the court's ability to have unfettered control over the bankruptcy case and the bankruptcy estate. *See Gruntz*, 202 F.3d at 1083 (In comprehensive review of the jurisdictional basis and scope of the automatic stay, finding a state court cannot modify the stay, and to hold otherwise "would undermine the principle of a unified federal bankruptcy system, as declared in the Constitution and realized through the Bankruptcy Code.")

Similarly, from a practical perspective, it has been noted that only bankruptcy courts *should* impose sanctions for stay violations because sanctions issued by a non-bankruptcy forum would be of no effect in the event that the automatic stay was annulled, and only the bankruptcy court has authority to annul the stay. See *In re Benalcazar*, 2002 Bankr. LEXIS 1240, *16-17. This majority view represents an independent basis for a finding of irreconcilable conflict between the Bankruptcy Code and arbitration of statutorily and

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1999)(same)(collecting authorities); *In re Long*, 564 B.R. 750, 754-755 (Bankr. S.D. Ala. 2017) (bankruptcy court has exclusive jurisdiction over all matters regarding the automatic stay).

constitutionally core issues involving only questions of bankruptcy law, as in this case.

However, Plaintiffs have found no controlling Fourth Circuit precedent on the question of state court concurrent jurisdiction to adjudicate § 362(k) claims, and Goldman does not cite any in its briefing. So, even assuming *arguendo* that this Court were to adopt the minority view that state courts have concurrent jurisdiction under 28 U.S.C. § 1334(b) to determine liability and award compensatory and punitive damages pursuant to § 362(k) for violations of the automatic stay–a question that is neither presented in, nor needs determination by this Court to decide this case–state court concurrent jurisdiction to enforce § 362(k) would still be irrelevant to the question of whether arbitration of these same claims would be proper because, unlike unreviewable decisions of arbitrators, state courts exercising concurrent jurisdiction under § 1334(b) to decide issues of federal law are still subject to appellate review, including, after a decision on the issue by the highest court of the state, final review by the Supreme Court of the United States. As such, even if state courts have concurrent jurisdiction to enforce § 362(k) of the Bankruptcy Code, the

availability of appellate rights in these cases would preserve the uniformity requirement of the Constitution's Bankruptcy Clause in a way that is unavailable in the context of arbitration.

Moreover, neither *Speer* nor the Second Circuit's *Hill* opinion consider the conflict between arbitration of automatic stay violations and the Constitution's unique mandate for uniformity in the nation's bankruptcy laws. Thus, Goldman simply cannot escape the fact that, unlike court decisions, arbitrators' decisions are unreviewable and as a consequence, compelled arbitration of Plaintiffs' statutorily and constitutionally core bankruptcy claims is inherently and irreconcilably in conflict with the Constitution's uniformity requirement in the Bankruptcy Clause.

In its District Court reply brief below, Goldman argued that although uniformity is a common *goal* in all federal statutes, it is not a bar to arbitration with respect to non-bankruptcy law. [Dist. Ct., ECF 26, p. 25]. But unlike other federal statutes derived from Congress's legislative authority in other provisions of the Constitution, uniformity in the nation's bankruptcy laws is not merely

a goal of legislative policy, it is a Constitutional *command*. *See*, *e.g. In re Westmoreland Coal Co.*, 968 F.3d 526, 532 (5th Cir. 2020) (Discussing inclination to avoid circuit splits, especially "… in bankruptcy cases where the need for uniformity is a constitutional command." Citing *In re Ultra Petroleum Corp.*, 943 F.3d 758, 763-64 (5th Cir. 2019) (citing *In re Marciano*, 708 F.3d 1123, 1135 (9th Cir. 2013) (Ikuta, J., dissenting) (quoting U.S. Const. art. I, § 8, cl. 4)).) The Supreme Court has acknowledged this consequential distinction, which it has dubbed "bankruptcy exceptionalism" noting its view that bankruptcy law is "on another plane, governed by principles all its own." *Allen v. Cooper*, 589 U.S. 248, 258-259 (2020).

CONCLUSION

This Court should affirm. The Bankruptcy Court's denial of Goldman's motion to compel arbitration was an appropriate exercise of its discretion under the binding precedent of this Circuit. Arbitration of Plaintiffs' automatic stay violation claims under §362(k) of the Bankruptcy Code would inherently conflict with the principal purposes of the Bankruptcy Code and violate the Bankruptcy Clause

of the Constitution's mandate that the bankruptcy laws be uniform and uniformly enforced.

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Malissa L. Giles
Tracy A. Giles
Giles & Lambert PC
129 E. Campbell
Ave. Suite 300
Roanoke VA 24011
540-981-9000
mgiles@gileslambert.com
tgiles@gileslambert.com

Respectfully submitted,
/s/ Theodore O. Bartholow, III
Theodore O. Bartholow, III
Karen L. Kellett
Kellett & Bartholow, PLLC
11300 N. Central Expy,
Suite 301
Dallas TX 75243
214-696-9000
thad@kblawtx.com
kkellett@kblawtx.com

STATEMENT REGARDING ORAL ARGUMENT

Appellees believe that oral argument is unnecessary in this case since the decision of the Bankruptcy Court properly applied controlling Fourth Circuit precedent to deny Appellant's motion to compel arbitration and because arbitration of Appellees' constitutionally and statutorily core bankruptcy claims is facially incompatible with the Constitution's mandate of uniform interpretation and enforcement of the bankruptcy laws of the United States.

CERTIFICATE OF COMPLIANCE WITH RULE 32(g)

Counsel for Appellees 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 11,880 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 in 14-point Century School Book style font.

Dated: July 17, 2025

/s/ Theodore O. Bartholow, III
Theodore O. Bartholow, III

Counsel for Appellees