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October 14, 2024

BY ECF

Patricia S. Dodszuweit
Clerk of the Court
United States Court of Appeals for the Third Circuit
21400 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

Re: *Adler et al. v. Gruma Corp.*, No. 23-3177 (3d Cir.)

Dear Ms. Dodszuweit:

On October 10, 2024, counsel for Appellants submitted a letter to this Court arguing that the decision issued by this Court in August 2024 in *Grajales-El v. Amazon Prime*, No. 23-2984, 2024 WL 3983335 (3d Cir. Aug. 29, 2024), supports their appeal. This responds briefly to their letter.

First, unlike *Grajales-El*, the Adlers' complaint not only makes reference to the underlying agreement but also attached it as Exhibit A to the complaint, with the arbitration clause appearing therein on pages 21-22 of such Exhibit (JA096-097). Second, unlike the governing law provision in *Grajales-El*, the "Governing Law" provision in the underlying agreement expressly states (at JA098) that the agreement "is governed by ... the laws of the State of Texas" and that the FAA shall "**also** apply **as needed** to uphold the validity or enforceability of the arbitration provisions of this Agreement." (Emphasis added) Where, as here, Texas arbitration law provides independent authority that the arbitration clause is valid and enforceable, there is no need for a court to also resort to the FAA. Third, Appellants assert in the last paragraph of their letter to this Court that "*Grajales-El* demonstrates that, in the Adlers' case, too, the district court erred by not addressing the application of the FAA *first* before compelling arbitration." (Emphasis added.) However, there is nothing in *Grajales-El*, which cites to and relies upon the Third Circuit's decision in

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Harper v. Amazon.com Servs., Inc., 12 F.4th 287 (3d Cir. 2021), suggesting that the Third Circuit has modified its view, as stated in *Harper*, that a district court shall determine, as a threshold matter, whether state law provides an independent basis for arbitration separate and apart from the FAA. *Id.* at 297. *See also id.* at 295-96 (“state law arbitration questions must be resolved before turning to questions of fact and discovery [related to the FAA’s Section 1 exemption from arbitration]”).

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Richard J. Reibstein". The signature is written in a cursive, flowing style.

Richard J. Reibstein

cc: All Counsel (By ECF)