S273802

SUPREME COURT OF THE STATE OF CALIFORNIA

ANGELICA RAMIREZ,

Plaintiff and Respondent

v.

CHARTER COMMUNICATIONS, INC.,

Defendant and Appellant

On Grant of Petition for Review from
Court of Appeal of the State of California
Second Appellate District, Division Four, Case No. B309408

Superior Court of the State of California
for the County of Los Angeles
Hon. David J. Cowan, Dept. 20
Case No. 20STCV25987

PLAINTIFF/RESPONDENT'S SUPPLEMENTAL BRIEF RE RECENT AUTHORITIES

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Plaintiff/Respondent Angelica Ramirez filed her Answering Brief for this case in December 2022. In the 16 months since Ramirez filed her merits brief, several decisions have been issued that bear on the issues in this case. Ramirez respectfully files this supplemental brief under rule 8.520(d) of the California Rules of Court.

A. The *Hasty* Decision Is A New Authority That Supports Ramirez's Arguments In This Case

In *Hasty v. American Automobile Association of Northern California, Nevada & Utah* (Dec. 21, 2023) 98 Cal.App.5th 1041, the court of appeal affirmed a trial court's order denying an employer's motion to compel arbitration based on unconscionability. The decision in *Hasty* is consistent with this Court's precedents and supports Ramirez's arguments in this case.

As in this case, *Hasty* involved an adhesive arbitration agreement that the employer imposed on employees as a condition of their employment. (Id. at p. 1055.) The agreement used "smaller than average" font size and dense paragraphs. (Id. at p. 1057.) The agreement was "filled with statutory references and legal jargon." (Id.) The agreement included terms and instructions that "appear[] to be inconsistent" and would be "confusing" to employees. (Id. at p. 1060.) While the agreement referred to the JAMS employment arbitration rules and procedures and included a hyperlink, the hyperlink lead to a webpage that did not contain the rules and procedures, making it "unclear how an employee would know what terms he, she, or they were agreeing to at the time of signing the agreement." (Id. at pp. 1060–1061.) Charter's Arbitration Agreement is longer and more confusing, and it does not attach or even refer to the AAA employment arbitration rules and procedures.

As in this case, the arbitration agreement in *Hasty* also required employees to "waive their right to any remedy or relief" that may be obtained

as a result of a charge or complaint filed with a governmental agency.[1] (Id. at p. 1060). The court of appeal noted that such a waiver "has nothing to do with *arbitration*," and it held that this waiver of the right to compensation or relief obtained on an employee's behalf by a government agency or its proxy is substantively unconscionable. (Id.) The court of appeal also found that the agreement's requirement that employees only bring claims in their "individual capacity" limited employee rights and constituted an improper ban on PAGA claims. (Id. at p.1063.) Because the unconscionability is determined at the time of contracting and is not claim-specific, the court of appeal held that "it is relevant that [the employee] has not brought a private attorney general action."[2] (Id.)

Finally, as in this case, the court of appeal in *Hasty* rejected the employer's argument that the trial court should have severed each of the unfair and unconscionable terms, enforced the remaining terms, and compelled arbitration. (Id. at pp. 1064–1065.) The court of appeals observed that courts have broad discretion whether or not to sever—particularly when there is more than one improper term—and that the severability analysis considers how many improper terms there are, whether the terms are wholly collateral to the purpose of the agreement, whether it would be simple to sever the offending terms, and whether severance would "create an incentive" to draft a one-sided agreement in hopes that it would not be

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[1] Section L of the Arbitration Agreement waives employees' rights and remedies for non-arbitrable claims, including unwaivable statutory rights and remedies that may be obtained on their behalf under PAGA (their share of civil penalties) or the Unfair Competition Law (the benefits of public injunctive relief).

[2] The court of appeal in *Hasty* also noted, in the context of a one-sided confidentiality provision, that the employer "identified no commercial need for requiring" such a provision. (*Hasty*, 98 Cal.App.5th at p. 1062). In this case, Charter has never identified any legitimate commercial or business need for *any* of the one-sided provisions in the Arbitration Agreement that favor Charter over its employees.

challenged or that courts would simply sever the terms that should not have been included in the first place. (Id. at p. 1065.)

The arbitration agreement in *Hasty* shares multiple features with the Arbitration Agreement in this case. And like the court of appeal decision in this case, the court of appeal decision in *Hasty* correctly analyzed and applied this Court's unconscionability and severability precedents. *Hasty* is new authority lends further support for Ramirez and her Amici's arguments, and rejects Charter's and its amici's arguments.

B. The *Haydon* Decision Is A New Authority That Supports Ramirez's Arguments In This Case

In *Haydon v. Elegance at Dublin* (Dec. 19, 2023) 97 Cal.App.5th 1280, the court of appeal affirmed a trial court's order denying a corporation's motion to compel arbitration based on unconscionability. The decision in *Haydon* also is consistent with this Court's precedents and supports Ramirez's arguments in this case.

As in this case, the arbitration agreement in *Haydon* limited discovery in a way that could frustrate plaintiffs' statutory rights and required parties to bear their own costs and fees. (Id. at p. 1291). And as in this case, the arbitration agreement in *Haydon* also contained other features that increased the procedural and substantive unconscionability. (Id. at pp. 1288–1290.)

The court of appeal in *Haydon* applied the same severability analysis as the courts of appeal in this case and in *Hasty*, and it reached the same conclusion: that it was not an abuse of discretion for the trial court to refuse to sever multiple improper terms from an adhesive agreement whose purpose was to make arbitration an advantageous forum for the drafting party. (Id. at p. 1292.) The court of appeal in Haydon also appropriately declined to accept the defendant's "after-the-fact offer to modify" the arbitration agreement by severing and agreeing not to enforce the improper terms. (Id.)

Haydon is new authority lends further support for Ramirez and her Amici's arguments, and rejects Charter's and its amici's arguments.

C. The *Alvitre* And *Munoz* Decisions Are New Authorities That Supports Ramirez's Arguments In This Case

In *Alvitre v. Colonial Life & Accident Insurance Company* (C.D. Cal. Mar. 2, 2023) 2023 WL 3549743, at p. *5, the federal district court analyzed a fee provision similar to the one in Section K of the Arbitration Agreement and concluded that "[r]equiring [the employee] to pay the costs of litigating this motion [to compel arbitration of Labor Code claims] would contravene California's strong public policy of preventing employers from recovering fees for defending a wage and hour claim, as well as the statutory scheme of attorneys' fees discussed above."

And in *Munoz v. Earthgrains Distribution, LLC* (S.D. Cal. Sept. 13, 2023) 2023 WL 5986129, at p. *7, the federal district court analyzed another fee-shifting provision and concluded that the employer was using the provision "to intimidate Plaintiffs and prevent them from challenging the arbitration clause and pursuing their rights" because it is "overly harsh, unduly oppressive, and unfairly one-sided."

These cases also are new authorities that support Ramirez and her Amici's arguments in this case with respect to the fairness of Section K's interim attorney fees provision and the chilling effect it has on employees with FEHA, Labor Code, or other types of claims against Charter.

Respectfully submitted,

Dated: April 24, 2024

PANITZ LAW GROUP APC

By: _____
Eric A. Panitz

Attorneys for
Plaintiff/Respondent
ANGELICA RAMIREZ

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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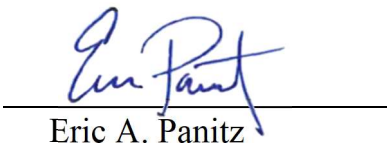

Eric A. Panitz

STATE OF CALIFORNIA
Supreme Court of California

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Date

/s/Eric Panitz

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