

Another Check Point For Arbitration: Court of Appeal Rules That Large Scale Employer's Arbitration Scheme Is Unenforceable Due To Attorney Fee Provision

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In another ruling from the Court of Appeal, this time from the Second Appellate District, yet another California Court of Appeal has affirmed the denial of a large-scale arbitration program. This time, the ruling came involving Charter Communications, Inc. ("Charter") and its "Solution Channel." The decision was issued in Angelica Ramirez v. Charter Communications, Inc. (2022) Westlaw 498706. ("Ramirez case"). The Ramirez case concerned a former employee's challenge to the mandatory arbitration agreement that had been set up by Charter for resolving and ultimately arbitrating employment related disputes known as the "Solution Channel". Charter created its program for resolving and ultimately arbitrating employment related disputes—the Solution Channel—in 2017. Since 2017, all individuals who applied for a position with Charter were required to agree to participate in The Solution Channel, as well as agree to Charter's arbitration agreement. Individuals who applied for and received an offer from Charter were then required to complete a web-based onboarding process as a condition of employment. Prospective employees were prompted to review and accept various policies, including the Arbitration Agreement and the Solution Channel program.

Ramirez was hired as an employee of Charter in July 2019. In May 2020, Charter terminated Ramirez. Ramirez then filed suit in July 2020 alleging multiple causes of action under FEHA and wrongful discharge in violation of public policy. Charter immediately filed a Motion to Compel to Arbitration and sought attorney's fees in connection with its Motion pursuant to the Arbitration Agreement. The Trial Court issued a written ruling denying Charter's Motion to Compel. The Trial Court noted that it was undisputed the Arbitration Agreement was an adhesion contract as it was a mandatory condition of employment. The Trial Court further found the agreement was subsequently unconscionable because it shortened the statute of limitations for FEHA claims, failed to restrict attorney fee recovery to only frivolous or bad faith FEHA claims, and "impermissibly" provided for an interim fee award for a party successfully compelling arbitration.

The Court of Appeal affirmed. Significantly, the Court of Appeal addressed case law which had impliedly permitted an attorney fee recovery involving a Motion to Compel, as expressed in Patterson v. Superior Court (2021) 70 Cal.App.5th 473 (a case which considered the enforceability of the provision in a similar arbitration agreement that awarded attorney's fees to the prevailing party on a Motion to Compel Arbitration). In its holding, the Court of Appeal, while rejecting certain of the reasoning of the Trial Court, ruled that the Solution Channel could not be enforced because it was procedurally and

substantively unconscionable. Major sticking points involved the restriction on state of limitations and the remedy provision for prevailing party which allowed for attorney's fees if an employee unsuccessfully contested a motion to compel arbitration.

While Ramirez is an employment case, the Ramirez case could potentially involve other arbitral contracts. And whether or not the Ramirez case, the Court of Appeal's ruling makes clear that an arbitration agreement, required to be entered into as a condition of employment, likely cannot require the losing party to pay attorney fees in contesting a Motion to Compel Arbitration or a shorter statute of limitations period.

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