No. 14-462

IN THE
Supreme Court of the United States

DIRECTV, INC.,

Petitioner,

v.

AMY IMBURGIA, ET AL.,

Respondents.

On Writ of Certiorari to the California Court of Appeal, Second District

RESPONSE TO RESPONDENTS' SUPPLEMENTAL BRIEF

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RESPONSE TO RESPONDENTS' SUPPLEMENTAL BRIEF

Respondents desperately want to keep this Court from reaching the merits of this case. After unsuccessfully opposing the petition, *see* Pet. Opp. 3-22, they urged the Court in their merits brief to dismiss the writ as improvidently granted, *see* Resps. Br. 39-45. And now they have filed a Supplemental Brief once again declaring that the case "does not merit this Court's attention," and asking the Court to dismiss the writ. Supp. Br. 4.

At the outset, this argument has no place in a Supplemental Brief, which is "restricted" to presenting this Court with "new matter." S. Ct. R. 25.6. Respondents' fig-leaf for renewing their call for this Court to dismiss the writ is the California Supreme Court's recent decision in *Sanchez v. Valencia Holding Co.*, __ P.3d __, 2015 WL 4605381 (Cal. Aug. 3, 2015). According to respondents, "the ruling in *Sanchez* tracks respondents' position precisely." Supp. Br. 2.

Their only support for that assertion, however, consists of an attempt to *distinguish Sanchez*. In that case, the California Supreme Court reversed a ruling, like the ruling below, that refused to enforce an arbitration agreement governed by the Federal Arbitration Act (FAA). As DIRECTV noted in its reply brief, the *Sanchez* court rejected the argument that the anti-waiver provision in California's Consumers Legal Remedies Act, Cal. Civ. Code § 1751, renders unenforceable class-action waivers in arbitration agreements governed by the FAA. *See* Reply Br. 12 (citing 2015 WL 4605381, at *15). Respondents do not dispute that point.

Rather, respondents accuse DIRECTV of providing a "substantially incomplete" description of *Sanchez* in its reply brief. Supp. Br. 1. That accusation is baseless. The arbitration agreement in *Sanchez*, like the arbitration agreement here, contained a non-severability provision specifying that the arbitration agreement as a whole would be unenforceable if the class-action waiver were unenforceable. But, in sharp contrast to the court below, the *Sanchez* court did not rely on that provision to invalidate the arbitration agreement. To the contrary, the *Sanchez* court recognized that the purpose of such a provision is "to permit the parties to choose class litigation over class arbitration in the event that the class waiver turns out to be legally invalid," and held that the provision there was not triggered when a lower court *erroneously* concluded that a class-action waiver was unenforceable but that error was corrected on appeal. 2015 WL 4605381, at *15.

Respondents insist that the non-severability provision at issue in *Sanchez* "differs critically" from the non-severability provision at issue here. Supp. Br. 2. But that assertion proves at most that *Sanchez* sheds no light on this case. Thus, respondents' reliance on *Sanchez* is unavailing.*

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* Similarly unavailing is respondents' reliance on *Chorley Enters., Inc. v. Dickey's Barbecue Restaurants, Inc.*, __ F.3d __, 2015 WL 4637967 (4th Cir. Aug. 5, 2015). *See* Supp. Br. 2 n.1. That case simply recites the general rule that arbitration is a matter of contract, and the FAA "does not prevent private parties from agreeing to litigate, rather than arbitrate, specific claims." 2015 WL 4637967, at *12. DIRECTV has never

At bottom, respondents' repeated efforts to dodge review of this case only underscore that such review is warranted. Respondents' own filings (as well as the numerous *amicus* briefs supporting each side) confirm that the case presents important and recurring issues about the interplay of federal and state law in the interpretation and enforcement of arbitration agreements. And, at an even deeper level, this case is important because the decision below reflects the "judicial hostility to arbitration," *CompuCredit Corp. v. Greenwood*, 132 S. Ct. 665, 668 (2011), that prompted the FAA in the first place. Accordingly, this case once again calls upon this Court to vindicate federal arbitration rights and the supremacy of federal law.

Respectfully submitted,

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disputed, and indeed has specifically endorsed, that rule. *See generally* Reply Br. 11-12.