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Association of Southern California Defense Counsel

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January 10, 2019

Chief Justice Cantil-Sakauye and Associate Justices
California Supreme Court
350 McAllister Street
San Francisco, CA 94102-4797

Re: Letter urging a grant of review in S253014
Ramos v. Superior Court (Winston & Strawn)
28 Cal.App.5th 1042, 29 Cal.App.5th 190d

Honorable Justices:

The Association of Southern California Defense Counsel (ASCDC) respectfully requests that this Court grant review of the Court of Appeal's published opinion in *Ramos v. Superior Court (Winston & Strawn).*

ASCDC is a preeminent regional organization of over a thousand California lawyers, specializing in defending civil actions. The Association is dedicated to promoting the administration of justice, educating the public about the legal system, and enhancing the standards of civil litigation practice. The Association is also actively engaged in assisting courts by appearing as amicus curiae, or filing requests for publication, in cases involving issues of significance to its members. The Association has no connection to any of the parties, lawyers, or law firms involved in this appeal. ASCDC has appeared as amicus curiae in numerous cases before the California Supreme Court and Courts of Appeal across the state.

The *Ramos* opinion applies the *Armendariz* test for enforcement of employee arbitration provisions (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83) to invalidate an arbitration provision in a law firm partnership agreement as procedurally and substantively unconscionable. In particular, the opinion concludes that a standard confidentiality

clause in the agreement had the effect of unconscionably limiting Ramos's ability to conduct discovery. Moreover, the court construed another clause to unconscionably bar the arbitrators' ability to grant relief on Ramos's claims. Finally, the court refused to sever the terms it found objectionable, and invalidated the entire arbitration provision.

This outcome was surprising for many reasons. If anyone could be expected to draft an enforceable arbitration clause, presumably it would be a "big law" firm like Winston & Strawn. And if anyone (partner or ordinary employee) could be expected to understand an arbitration provision, presumably it would be a sophisticated lawyer like Ramos. Yet the law firm's arbitration clause, which contained typical language and provisions (e.g., confidentiality), failed scrutiny. Ramos appears to stand for the proposition that just about any type of employee will be able to overcome just about any arbitration provision—and certainly the provisions typically used by most companies. In short, this opinion will have wide-ranging consequences for every employer in California, especially those governed by partnership agreements.

Arbitration provisions, and confidentiality clauses within such provisions, are both commonplace and important. *Ramos*'s application of *Armendariz* raises recurring unresolved questions about whether the Federal Arbitration Act preempts California's arbitration-specific standards for contract enforceability; whether the standards for interpreting arbitration agreements under California law differ from the standards for interpreting other contracts (i.e., construing agreements in favor of enforceability); and finally whether *Armendariz* applies to any relationship (whether employer-employee or not) perceived to labor under unequal bargaining power. These are issues of concern to the entire legal and business community.

This Court's guidance would be highly beneficial. Review should be granted.

Respectfully submitted,

By *Benjamin G. Shatz*
(CBN 160229)
For ASCDC

cc: See attached Proof of Service

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