No. 21-31

IN THE

Supreme Court of the United States

FAST AUTO LOANS, INC.,

Petitioner,

v.

JOE MALDONADO, ALFREDO MENDEZ, J. PETER TUMA, JONABETTE MICHELLE TUMA, ROBERT MATEOS SALMERON,

Respondents.

On Petition for a Writ of Certiorari to the Court of Appeal of California, Fourth District

SUPPLEMENTAL BRIEF OF PETITIONER

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September 16, 2021

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CORPORATE DISCLOSURE STATEMENT

The corporate disclosure statement for Petitioner was set forth at page ii of the Petition for Writ of Certiorari and there are no changes to that statement.

TABLE OF AUTHORITIES

SUPPLEMENTAL BRIEF OF PETITIONER

Pursuant to Supreme Court Rule 15.8, petitioner Fast Auto Loans, Inc. brings to the Court's attention the opinion of the United States Court of Appeals for the Ninth Circuit in *Hodges v. Comcast Cable Communications, LLC.*, No. 19-16483, 2021 U.S. App. LEXIS 27268 (9th Cir. Sept. 10, 2021). *Hodges* held that the California Court of Appeal's decision in *Maldonado v. Fast Auto Loans, Inc.,* 60 Cal. App. 5th 710 (Cal. Ct. App. 2021)—the decision that is the subject of this Petition—was "clearly wrong" and that "the *McGill* rule is preempted by the FAA." *Id.* at *24, 28. It thus strongly supports the grant of review in this case.

The plaintiff in *Hodges* brought a class action against Comcast for allegedly violating California's Unfair Competition Law and other state statutes and sought public injunctive relief among other remedies. *Id.* at *5-6. The district court denied Comcast's motion to compel individual arbitration on the ground that its arbitration provision violated California's *McGill* rule. *Id.* at *7. Comcast appealed, and the plaintiff relied heavily on *Maldonado* in arguing that the district court's ruling should be affirmed. However, the Ninth Circuit panel, finding that the *Maldonado* court's analysis of the *McGill* rule was "flawed" and "plainly incorrect," *id.* at *23-24, and that the plaintiff's reliance on *Maldonado* was "unavailing," *id.* at *21, reversed the district court and instructed it to grant Comcast's motion and compel arbitration. *Id.* at *34.

The appeals court found that the *Maldonado* court erroneously broadened the scope of the *McGill* rule to "forbid[] waiving claims for prospective injunctive relief against unlawful conduct even if . . . the implementation of such an injunction would require

evaluation of the individual claims of numerous non-parties." *Id.* at *28-29. This "expansion of the *McGill* rule," it concluded, "is preempted by the FAA." *Id.* at *27-28.

As the court explained, *Maldonado* held that "an injunction aimed at preventing 'unconscionable' loan agreements with excessive interest rates was public injunctive relief." *Id.* at *23. But under California law, "determining whether any particular future loan agreement was unconscionable due to its interest rate would require an individualized inquiry that considers whether, 'under the circumstances of the case, taking into account the bargaining process and prevailing market conditions—a particular rate was 'overly harsh,' unduly oppressive,' or 'so one-sided as to shock the conscience.'" *Id.* at *25 (citation omitted). Accordingly, under the "broader version of the *McGill* rule embraced in . . . *Maldonado*," *id.* at *28, implementation of an "injunction[] regulating the drafting and substantive terms of actual contracts with innumerable different persons . . . would require a level of procedural complexity that is inherently incompatible 'with the informal, bilateral nature of traditional consumer arbitration' . . . and with the 'efficient streamlined procedures' that the FAA seeks to protect." *Id.* at *29, citing, *inter alia*, *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 344 (2011). The *Hodges* court further emphasized:

> [I]njunctions are not simply words on a page, and their compatibility with bilateral arbitration must be evaluated in light of how they would actually be *implemented* . . . . By insisting that contracting parties may not waive a form of relief that is fundamentally incompatible with the sort of simplified proce-

> dures the FAA protects, the . . . *Maldonado* rule effectively bans parties from agreeing to arbitrate all of their disputes arising from such contracts. To say that such a rule is not preempted would flout Supreme Court authority. *See, e.g., Epic Sys.*[*Corp. v. Lewis,* 138 S. Ct. 1612, 1623 (2018)] (holding that, under *Concepcion*, "courts may not allow a contract defense to reshape traditional individualized arbitration" and "a rule seeking to declare individualized arbitration proceedings off limits" is preempted by the FAA). And that we cannot do.

2021 U.S. App. LEXIS 27268, at *30 (emphasis by the court).

Respectfully submitted,

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