NOT FOR PUBLICATION

FILED

OCT 30 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CHRISTINA ANTHONY, Plaintiff - Appellant, v. RITZ-CARLTON HOTEL COMPANY, LLC, Defendant - Appellee.	No. 25-2778 D.C. No. 2:24-cv-00965-DAD-AC MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Dale A. Drozd, District Judge, Presiding

Argued and Submitted May 21, 2026
San Francisco, California

Before: COLLINS, JOHNSTONE, and DE ALBA, Circuit Judges;
Concurrence by Judge COLLINS.

Christina Anthony appeals the district court's decision granting Ritz-Carlton Hotel Company, LLC's ("Ritz-Carlton") motion to compel arbitration as to Anthony's individual claims and dismissing Anthony's class claims. As the parties

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

are familiar with the facts, we do not recount them here. We have jurisdiction under 28 U.S.C. § 1291. We affirm.

We review a district court's decision to compel arbitration de novo. *SEIU Loc. 121RN v. Los Robles Reg'l Med. Ctr.*, 976 F.3d 849, 852 (9th Cir. 2020).

1. Contrary to Anthony's argument, the district court did not fail to address whether there was a sufficient "meeting of the minds" between the parties. The district court considered whether there was mutual assent to arbitrate and determined that the Acknowledgement of Agreement ("Acknowledgement") "include[d] the essential terms necessary to form a valid arbitration agreement," even if the Employment Agreement was not incorporated into the Acknowledgement.

Anthony's alternative argument that the district court erred in concluding that mutual assent exists fares no better. Even assuming that the Employee Agreement ("Agreement") and the Acknowledgement have different terms, the district court properly determined that the Acknowledgement, which both parties signed, "clearly evinces an intent to arbitrate" and is enforceable as a standalone document. *See Polimaster Ltd. v. RAE Sys., Inc.*, 623 F.3d 832, 834, 838–40 (9th Cir. 2010). That the Agreement was not presented to Anthony until after she signed the Acknowledgement does not undermine the existence of an agreement to

arbitrate under the Acknowledgement. *See Cruise v. Kroger Co.*, 233 Cal. App. 4th 390, 392–93, 400 (2015).

2. The district court did not err in finding that Ritz-Carlton had not waived its right to compel arbitration. The district court properly applied federal law in addressing this issue. *See Sovak v. Chugai Pharm. Co.*, 280 F.3d 1266, 1270 (9th Cir. 2002). The district court reasonably accepted Ritz-Carlton's explanation, in its reply, that it had made a mistake in attaching the entire Employment Agreement to its motion. Consequently, to show a waiver of the right to compel arbitration under federal law, Anthony had to demonstrate: "(1) knowledge of an existing right to compel arbitration and (2) intentional acts inconsistent with that existing right." *Armstrong v. Michaels Stores, Inc.*, 59 F.4th 1011, 1015 (9th Cir. 2023). The first prong of this test is not at issue. With respect to the second prong, the district court properly determined that Ritz-Carlton's actions were consistent with an intention to arbitrate. For example, as the district court noted, Ritz-Carlton's first substantive motion in the district court was the present motion to compel arbitration. *See id.* at 1015–16.

3. The district court did not err in determining that the Acknowledgement is not unconscionable. Anthony must show both procedural and substantive unconscionability. *Pinnacle Museum Tower Ass'n v. Pinnacle Market Dev. (US), LLC*, 55 Cal. 4th 223, 246 (2012). Before the district court,

Anthony argued that the Acknowledgement is substantively unconscionable because it fails to meet the requirements for the lawful arbitration of unwaivable statutory employment rights claims. *See Armendariz v. Found. Health Psychcare Servs., Inc.*, 24 Cal. 4th 83, 102 (2000). The district court rejected this argument, *see Iyere v. Wise Auto Grp.*, 87 Cal. App. 5th 747, 761 (2023), and Anthony does not argue that the district court's conclusion is in error. Instead, on appeal, Anthony makes four new substantive-unconscionability arguments: the Acknowledgement (1) is illegible[1]; (2) fails to specify how to initiate arbitration; (3) waives all representative claims, including representative Private Attorneys General Act ("PAGA"), Cal. Lab. Code § 2698 et seq., claims; and (4) includes unenforceable factual recitals.

"[A]s a general rule courts of this circuit will not consider arguments on appeal that were not properly raised at the lower court level." *Steam Press Holdings, Inc. v. Haw. Teamsters, Allied Workers Union, Local 996*, 302 F.3d 998, 1005 (9th Cir. 2002); *cf. Pfingston v. Ronan Engineering Co.*, 284 F.3d 999, 1004 (9th Cir. 2002) ("[W]e have *discretion* to review issues not previously raised if the issue presented is purely one of law and either does not depend on the factual record developed below, or the pertinent record has been fully developed."

[1] At oral argument, Anthony conceded that illegibility sounds in procedural—rather than substantive—unconscionability.

(citation modified)). In her reply brief, Anthony merely contends that we *may* exercise our discretion to review her arguments raised for the first time on appeal, but she does not explain why we should do so here. We therefore decline to do so.

AFFIRMED.

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Anthony v. Ritz-Carlton Hotel Co., No. 25-2778

COLLINS, Circuit Judge, concurring:

I concur in the court's memorandum disposition. I write separately only to explain why I think that we have jurisdiction over this appeal.

In *Smith v. Spizzirri*, 601 U.S. 472 (2024), the Supreme Court held that, "[w]hen a district court finds that a lawsuit involves an arbitrable dispute, and a party requests a stay pending arbitration, § 3 of the FAA [Federal Arbitration Act, 9 U.S.C. § 3] compels the court to stay the proceeding" pending the completion of the arbitration. *Id*. at 478. The Court further stated that, when a district court complies with that mandate, the resulting stay precludes there from being any appeal, because there would be no final judgment, and the FAA expressly bars interlocutory appeals of orders compelling arbitration unless an appeal is certified under 28 U.S.C. § 1292(b). *See Smith*, 601 U.S. at 478 (citing 9 U.S.C. § 16(b)).

Here, relying on our decision in *Johnmohammadi v. Bloomingdale's, Inc.*, 755 F.3d 1072 (9th Cir. 2014), Defendant asked the district court, after compelling arbitration, to exercise its discretion to "either stay the action or dismiss it outright," *id*. at 1074, and Plaintiff said nothing on that score in opposing the motion to compel arbitration. The district court chose to dismiss the case and enter judgment. The parties and the district court, however, overlooked the fact that the Supreme Court in *Smith* expressly rejected any such "discretion to dismiss" as

recognized in Ninth Circuit cases such as *Johnmohammadi*, at least when "a party requests a stay pending arbitration." *Smith*, 601 U.S. at 477–78.

Nonetheless, in my view, we need not decide whether, given Defendant's request for a stay *or* dismissal, the district court was presented with a sufficient request for a stay so as to trigger *Smith*'s rule that the court must stay the action, rather than dismiss it. *Smith* makes clear that if, after compelling arbitration, the district court *does* dismiss the action—rightly or wrongly—the result is an appealable final judgment (which may be subject to reversal on the stay-versus-dismissal point if it is raised on appeal). *See id*. at 478 ("If a district court dismisses a suit subject to arbitration even when a party requests a stay, that dismissal *triggers the right to an immediate appeal* where Congress sought to forbid such an appeal." (emphasis added)). Accordingly, the district court's dismissal and judgment here is final and appealable under *Smith*. And since Plaintiff's opening brief on appeal did not contest the district court's decision to dismiss the case rather than to stay it, the point is forfeited.

With these additional observations, I concur in the court's decision affirming the district court's judgment.