Case No. S273802

In the

Supreme Court

of the

State of California

ANGELICA RAMIREZ,
Plaintiff and Respondent,

v.

CHARTER COMMUNICATIONS, INC.,
Defendant and Appellant.

REVIEW OF A DECISION FROM THE CALIFORNIA COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION FOUR, CASE NO. B309408

OPENING BRIEF ON THE MERITS

*JAMES A. BOWLES (SBN 89383)
CASEY L. MORRIS (SBN 238455)
ELISSA L. GYSI (SBN 281338)
HILL, FARRER & BURRILL LLP
One California Plaza
300 South Grand Avenue, 37th Floor
Los Angeles, California 90071
(213) 620-0460 Telephone
(213) 624-4840 Facsimile
jbowles@hillfarrer.com • cmorris@hillfarrer.com
egysi@hillfarrer.com

Attorneys for Defendant and Appellant,
Charter Communications, Inc.

COUNSEL PRESS · (213) 680-2300 PRINTED ON RECYCLED PAPER

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

STATE CASES

FEDERAL STATUTES

STATE STATUTES

I. ISSUES PRESENTED

1. Whether the Court of Appeal erred in finding the provision in Charter's arbitration agreement allowing for recovery of interim attorneys' fees after a successful motion to compel arbitration so substantively unconscionable as to render the arbitration agreement unenforceable where the Court of Appeal in *Patterson v. Superior Court*, (2021) 70 Cal.App.5th 473 ("*Patterson*") reached the opposite conclusion and found the provision lawful and enforceable.

2. Whether the Court of Appeal erred in refusing to enforce and refusing to sever the allegedly unconscionable provisions of Charter's arbitration agreement where numerous other courts have enforced the same agreement.

3. Whether the Court of Appeal's decision that Charter's arbitration agreement is not enforceable is preempted as in conflict with the Federal Arbitration Act as interpreted by this Court.

No additional issues were presented in the Answer to Petition for Review.

II. INTRODUCTION

This case arises from the trial court's denial of a motion to compel arbitration in a single-plaintiff employment case. While there was no dispute that Plaintiff Angelica Ramirez ("Ramirez") had agreed to arbitrate all employment claims against her employer, Defendant Charter Communications, Inc. ("Charter"), the trial court found three provisions of Charter's Mutual Arbitration Agreement ("Agreement") substantively unconscionable, including: (1) a provision regarding the statute of limitations; (2) a provision regarding remedies; and (3) a provision allowing for interim attorney's fees after a successful motion to compel arbitration ("Section K").

The Court of Appeal affirmed in a published opinion ("*Ramirez*"), but in doing so contradicted the trial court by finding a different set of four provisions of the Agreement unconscionable, including: (1) the provision regarding the statute of limitations, (2) a provision excluding certain claims from arbitration (including claims that could be brought by an employee and claims for provisional remedies), (3) a provision permitting four depositions per side in arbitration, and (4) Section K regarding interim fees. In doing so, *Ramirez* explicitly disagreed with a recent decision from a different panel of the same Court in *Patterson*, which enforced the Agreement and found Section K was not unconscionable.

Each of the four provisions at issue here could and should be interpreted in a manner that would make the Agreement

lawful and enforceable. Furthermore, these provisions are collateral to the main purpose of the Agreement and, if necessary, can be severed without affecting the central purpose of the Agreement, which is to arbitrate and resolve disputes. Numerous California trial courts and federal district courts have upheld the same Agreement by interpreting it in a manner to render it enforceable, or by severing any provisions found unconscionable. (See Exhibits to Appellant's Request for Judicial Notice, Volumes 1-2, pages 32-388 [hereafter RJN:vol:page]).

Ramirez is devoid of analysis which would justify refusing to sever the provisions at issue and enforce the Agreement. While precedent allows a court to refuse to enforce an employment arbitration agreement that is tainted by an overarching illegal purpose, there is no such bad purpose here. Charter's agreement applies to nearly 100,000 employees in 41 states (RJN:1:9-10) and is designed to create a fair forum for expeditious resolution of all types of claims that could arise between Charter and its employees. The Agreement provides for a neutral arbitrator and allocates discretion to the arbitrator to cure any unconscionable provisions when necessary. The Agreement also provides for the other four key protections required by *Armendariz v. Found. Health Psychcare Servs., Inc.* (2000) 24 Cal.4th 83 ("*Armendariz*"): all substantive remedies available in court, a written award, adequate discovery, and limited costs for the employee. Such facts evince Charter's lawful purpose of creating a fair arbitration forum.

Ramirez was unduly hostile to the enforcement of arbitration agreements, misinterpreting lawful clauses as evidencing an illegal intent and not considering all parts of the Agreement, such as the attached Solution Channel Program Guidelines and the Employment Rules of the American Arbitration Association ("AAA" and "AAA Rules"). *Ramirez's* hostility towards enforcing the Agreement contravenes the Federal Arbitration Act ("FAA") and violates this Court's established precedent, as well as jurisprudence from the United States Supreme Court, which establish that arbitration agreements should be treated with the same deference as any other contract.

Accordingly, Charter respectfully requests this Court reverse and vacate *Ramirez*, affirm *Patterson*, and reaffirm the principles established in *Armendariz*, that employment arbitration agreements should be enforced where possible to give credence to parties' agreement to arbitrate.

III. FACTUAL AND PROCEDURAL BACKGROUND

Charter provides telecommunications services to customers throughout the United States. Charter also purchases and sells goods, materials, supplies, services, and equipment in multiple states. (Appellant's Appendix, Volume 1, page 87 [hereafter AA:vol:page]). As such, during all relevant times, Charter was engaged in interstate commerce within the meaning of the FAA.

Charter announced and implemented its Solution Channel Program, which includes the Arbitration Agreement at issue in this case, on October 6, 2017. (AA:1:87:¶5). At all relevant times, Charter has employed over 93,000 employees in 41 states. (RJN:1:7-31). Ramirez worked for Charter from July 17, 2019 through May 14, 2020. (AA:1:8:¶10).

A. The Arbitration Agreement

Charter's Solution Channel Program ("Program") is an employment-based legal dispute resolution and arbitration program. (AA:1:87:¶5). One component of the Program is the Agreement, which applicants and employees are required to accept when applying for a position with Charter or when completing the onboarding process to commence employment with Charter. (AA:1:88:¶¶6-7).

Ramirez agreed to arbitrate all claims against Charter on two occasions. First, when Ramirez applied to work for Charter on June 28, 2019, and second when Ramirez commenced employment with Charter on July 17, 2019. (AA:1:94-102).

The Agreement states: "Arbitration hearings will be conducted pursuant to the Solution Channel Program Guidelines" ("Guidelines"). (AA:1:131 (Section I(1)). The Guidelines are a body of rules that apply to the arbitration proceeding. The Guidelines also explain the benefits of arbitration and describe the process in detail. (AA:1:104-128).

The Agreement also provides: "[t]he arbitration shall be held before one arbitrator who is a current member of the [AAA]" (AA:1:131 (Section H)), and "Charter will pay the AAA administrative fees." (AA:1:131 (Section K)). The Guidelines state that AAA "will be the administrator of the claim" and "AAA will preside over disputes that proceed to arbitration ..." (AA:1:113 (Rule 11), AA:1:125).

The Agreement explicitly provides for severance in the event that any term in the Agreement or Guidelines is found to be unconscionable or unenforceable. (AA:1:132 (Section Q)).

The Agreement further states that it is governed by the FAA. (AA:1:133 (Section R)).

B. The Complaint and Motion to Compel Arbitration

On July 9, 2020, notwithstanding her Agreement, Ramirez filed this civil action, alleging the following employment-related causes of action against Charter: (1) disability discrimination; (2) interference with pregnancy leave; (3) retaliation; (4) harassment; (5) failure to prevent retaliation and harassment; (6) failure to accommodate; (7) failure to engage in the interactive process; and (8) wrongful termination. (AA:1:006-58).[1] It is

[1] All of Ramirez's claims arise under FEHA, except for the eighth cause of action for wrongful termination in violation of public policy.

undisputed that all of Ramirez's claims fall within the scope of her Agreement. (AA:2:316-339).

On October 20, 2020, Charter filed a Motion to Compel Arbitration ("Motion") in response to Ramirez's Complaint. Charter also filed a Request for Judicial Notice, requesting judicial notice of twelve decisions where courts compelled arbitration based on the same Agreement. (AA:1:59-279; AA:2:280-315).[2]

Ramirez opposed the Motion on November 2, 2020. In the opposition, Ramirez argued that the following provisions were substantively unconscionable: (1) the discovery clause, which Ramirez argued improperly limited her right to discovery; (2) the clause that exempts certain claims from arbitration, which Ramirez contended rendered the Agreement non-mutual; (3) the statute of limitations provision; and (4) the remedies provision, which Ramirez argued did not include protections required under the California Fair Employment and Housing Act ("FEHA"). Ramirez did not argue that the interim fees provision in Section K invalidated the Agreement, but only that Charter's *request* for interim fees if it prevailed on the motion to compel arbitration was "itself substantively unconscionable." (AA:2:334). However, Ramirez cited no authority in support of this argument. Charter filed a Reply in Support of the Motion on November 5, 2020. (AA:2:417-435).

---

[2] The trial court did not expressly grant or deny Charter's Request for Judicial Notice. (See AA:2:499-515).

On November 16, 2020, the trial court held a hearing on the Motion. Prior to the hearing, the trial court issued a tentative ruling granting the Motion. In its tentative ruling, the trial court correctly found that Ramirez consented to the Agreement both when she applied for employment and when she completed Charter's onboarding process. The trial court further found that while the statute of limitations provision and the remedies provision could be interpreted as potentially unconscionable in certain circumstances, those circumstances were not present in this case and those provisions could be severed. (AA:2:447-63). The trial court found the remaining provisions lawful and enforceable.

At the hearing on the Motion, Ramirez's counsel reiterated the argument that the interim attorneys' fee provision in section K of the Agreement, which provides for attorneys' fees to a prevailing party on a motion to compel arbitration, was also unconscionable.

The trial court took the motion under submission and ultimately found the interim fees provision to be unconscionable. Although the trial court had indicated in the tentative ruling that it would have been proper to sever two purportedly unconscionable provisions to enforce the Agreement, the trial court was unwilling to sever three provisions. On November 25, 2020, the trial court issued its final ruling, denying the Motion on the ground that the Agreement was unconscionable. (AA:2:464-516).

C. The Court of Appeal Decision

Charter timely appealed the denial of the Motion. (AA:2:513-18). On February 18, 2022, the Court of Appeal affirmed, in the published opinion in *Ramirez*. However, the Court conducted an independent analysis of the purportedly unconscionable provisions in the Agreement and came to a different conclusion than the trial court. *Ramirez* agreed that the statute of limitations clause and the provision for interim fees in Section K were unconscionable but disagreed that the remedies provision was unconscionable. *Ramirez* also found that the exclusion of certain claims from arbitration and a "limitation" on depositions to four per side were unconscionable. *Ramirez* concluded that it was not possible to sever these four provisions, and instead found the entire agreement unenforceable.

D. The Multitude of Decisions Enforcing Charter's Agreement

Contrary to the Court of Appeal's findings in *Ramirez*, the same Agreement – which has always included the provisions at issue here – has been repeatedly enforced by California and federal courts for the past five years. In Charter's Request for Judicial Notice filed concurrently herewith, Charter has attached one California Court of Appeal decision (in addition to *Patterson*), fourteen California trial court decisions, and twenty federal district or circuit court decisions wherein the same Agreement

has been upheld since its implementation in late 2017.[3] (RJN:1:32-194, RJN:2:201-388). Eleven of those decisions specifically analyzed the same provisions at issue in this case, and either found those provisions to be lawful, or severed those provisions to enforce the remainder of the Agreement:

- **Discovery Provision**: Six decisions held that the discovery provision is not unconscionable because the Agreement allows for sufficient discovery for the parties to vindicate their rights. (RJN:1:135 (Exh. 16: *Gonzales v. Charter* (C.D. Cal. 2020) 497 F.Supp.3d 844 ("*Gonzales*") ("Discovery limitations, however, are a common feature of arbitration that can be beneficial to all parties. … There is nothing unusual or unfair about the limitation imposed here.")); RJN:2:307 (Exh. 36: *Ibarra v. Charter*, Los Angeles Superior Court ("LASC") Case No. 21STCV36249, January 18, 2022 Order ("*Ibarra*") ("Since this agreement leaves the arbitrator the flexibility to allow further discovery, the initial limitation on discovery is not unconscionable.")); RJN:2:360 (Exh. 41: *Christmas v. Charter*, LASC Case No. 19STCV45265, August 12, 2020 Order ("The Court finds that the [Agreement and Guidelines] do provide for

[3] Charter attaches 40 decisions to its RJN, but five of those decisions involve instances where a District Court adopted the ruling of a Magistrate Judge, or in two cases, where the Fifth and Sixth Circuits affirmed rulings from the District Courts. (RJN Exhs. 7, 14, 15 (*Gezu*); Exhs. 10, 17 (*Anderson*); Exhs. 20, 23 (*Hughes*); Exhs. 19, 21 (*Lasser*). Accordingly, there are 35 unique cases where courts have enforced Charter's arbitration agreement.

adequate discovery" and allows the Arbitrator to decide discovery disputes and order additional discovery. "Also, the discovery limitations in the [Agreement] apply to both parties and such limitations do not 'shock the conscience.'")); RJN:2:373 (Exh. 42: *Booker v. Charter*, LASC Case No. 20STCV07680, July 17, 2020 Order ("*Booker*") ("The amount of discovery provided is adequate. … Accordingly, the Court does not find that the discovery provisions are unconscionable.")); RJN:2:287 (Exh. 33: *Coelho v. Charter*, LASC Case No. 21STCV12694, August 2, 2022 Order ("*Coelho*") ("The court finds that this provision does not render the [Agreement] substantively unconscionable because (1) the discovery permitted by the Guidelines is adequate, and (2) the arbitrator has the ability to resolve discovery disputes in order to facilitate 'a full and equal opportunity to all parties to present evidence' and therefore has the ability to permit more discovery if necessary to establish Plaintiff's claims.")); RJN:2:271 (Exh. 32: *Witrago v. Charter*, LASC Case No. 21STCV44796, August 23, 2022 ("*Witrago*") (same))).

- **Interim Fee Provision**: Three decisions recognized that the interim fee provision in Section K is not unconscionable because it is mutual. (RJN:1:248 (Exh. 30: *Esquivel v. Charter*, No. CV 18-7304-GW(MRWX), 2018 WL 10806904, at *1 (C.D. Cal. Dec. 6, 2018) ("*Esquivel*")); RJN:2:308 (Exh. 36: *Ibarra* ("There is nothing inappropriate about a fee provision of this type.")); RJN:2:337 (Exh. 38: *Becerra v.*

Charter, LASC Case No. 21STCV14283, September 9, 2021 Order ("Becerra")).[4] Further, in *Booker* (RJN Exh. 42), *Scarpitti v. Charter*, No. 18-CV-02133-REB-MEH, 2018 WL 10806905, at *1 (D. Colo. Dec. 7, 2018) (RJN Exh. 29), and *Muhammad v. Charter*, USDC, Western District of Missouri, Case No. 21-0614-CV-W-FJG, January 6, 2022 (RJN Exh. 6), the courts granted Charter's motion for fees after Charter prevailed in compelling arbitration, which means that the courts did not find Section K unconscionable.

- **Statute of Limitations Provision**: At least one decision interpreted the Agreement to find that there is no provision that shortens the statute of limitations for FEHA claims. (RJN:2:335 (Exh. 38: *Becerra*)).

- **Exclusion of Claims**: Three decisions emphasized that the Agreement is mutual and is not one-sided given that the provision exempting certain claims from arbitration applies both to Charter and employees. (RJN:1:134 (Exh. 16: *Gonzales* 497 F.Supp.3d at 844)); RJN:2:231 (Exh. 28: *Castorena v. Charter* (C.D. Cal. Dec. 14, 2018) No. 2:18-CV-07981-JFW-KS, 2018 WL 10806903, at *5); RJN:2:374

[4] Additionally, one out-of-state district court decision agreed that the fee provision was not unconscionable under a similar unconscionability doctrine under Wisconsin law. (RJN:2:223 (Exh. 27: *Moorman v. Charter* (W.D. Wis. May 1, 2019) No. 18-CV-820-WMC, 2019 WL 1930116, at *2)).

(*Booker,* Exh. 42 ("The Court agrees with Defendant that the provision is not one-sided.")).

Where other courts have found the provisions at issue in this case to be unconscionable, they have properly severed those provisions pursuant to Section Q of the Agreement and enforced the remainder of the Agreement. (RJN:2:298 (Exh. 35: *Sestrich v. Charter Communications, Inc.*, LASC Case No. 21STCV33717, March 17, 2022 Order (severing the statute of limitations provision)); (RJN:2:307 (Exh. 36: *Ibarra* ("However, [the statute of limitations provision] can easily be dealt with by severing that provision from the contract. Severance is the preferred method of dealing with minor problematic terms and is the remedy called for by Section Q of the Agreement. … Therefore, the second sentence of Section E of the Agreement should be SEVERED.")); (RJN:2:272 (Exh. 32: *Witrago* (same)); (RJN:2:286-88 (Exh. 33: *Coelho* (severing four provisions in the Agreement while still enforcing the Agreement))).

E. The *Patterson* Decision

In addition to disagreeing with the vast majority of courts that have analyzed the Agreement, *Ramirez* directly contradicts and openly criticizes a recent prior decision by Division Seven of the same Court, *Patterson*, which was issued on October 18, 2021 (four months before *Ramirez*), and which also addressed the same Agreement.

In *Patterson*, the trial court granted Charter's motion to compel arbitration and rejected Patterson's arguments that Charter's Agreement is unconscionable. *Patterson,* 70 Cal.App.5th at 479. Patterson sought a writ of mandate of the grant of Charter's motion, which was summarily denied. *Id.* Charter then moved the trial court for an award of attorneys' fees under Section K of the Agreement, which the trial court granted. Patterson sought a writ of mandate regarding the fee award, arguing that Section K of the Agreement was unconscionable. The Court granted the petition to decide whether Section K of the Agreement is enforceable. The Court found Section K enforceable:

> Charter argues the fee provision in its arbitration agreement is analogous to the separate fee provision at issue in *Acosta*, 150 Cal.App.4th 1124—that is, it is specifically directed to fees incurred to compel arbitration—and **should be enforced on the same basis. We agree.** … Patterson's claims are based on Charter's alleged violations of FEHA. The only contract dispute was the enforceability of the arbitration agreement. **Charter was the prevailing party in the superior court and is entitled to its fees under the fee provision in that contract to the extent not otherwise prohibited or limited by FEHA**.

Patterson, 70 Cal.App.5th at 486 (emphasis added). While the *Patterson* court acknowledged that Section K could be read to contradict FEHA, the opinion instead gave credence to "the strong public policy favoring arbitration" and the "requirement we interpret the provisions in a contract in a manner that render them legal rather than void when possible." *Patterson,* 70

Cal.App.5th at 489. *Patterson* construed Section K to "impliedly incorporate the FEHA asymmetric rule for awarding attorney fees and costs." *Id.* at 490. Thus, while *Patterson* sent the decision of whether to award fees back to the trial court for reevaluation considering the Court of Appeal's analysis of the FEHA framework, it did not invalidate Section K of the Agreement.

IV. LEGAL DISCUSSION

Ramirez invalidated Charter's Agreement on the premise that it includes four substantively unconscionable provisions which render the entire Agreement unenforceable. The Court of Appeal took great pains to find unlawful intent where none existed. In doing so, *Ramirez* contravened the FAA and this Court's precedent by first misinterpreting the Agreement to find Section K and three other provisions unconscionable, and second, refusing to sever the purportedly unconscionable provisions to render the Agreement enforceable.

A. The Court Below Failed to Engage in A Proper Unconscionability Analysis.

As this Court has recognized, "California law strongly favors arbitration." *OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 125. The California Legislature "has expressed a strong public policy in favor of arbitration as a speedy and relatively inexpensive means of dispute resolution." *Ibid* (quotations omitted). California law also "establishes a presumption in favor of

arbitrability" and an "agreement to submit disputes to arbitration is valid, enforceable and irrevocable, save upon such grounds as exist for the revocation of any contract." *Id.* (citing Code Civ. Proc., § 1281; 9 U.S.C. § 2 (the FAA)).

At issue here is the general contract principle of unconscionability, which is often used to attempt to invalidate employment arbitration agreements. "[U]nconscionability has both a procedural and a substantive element, the former focusing on oppression or surprise due to unequal bargaining power, the latter on overly harsh or one-sided results." *Armendariz*, 24 Cal.4th at 114 (quotations omitted). Procedural and substantive unconscionability "must both be present in order for a court to exercise its discretion to refuse to enforce a contract or clause under the doctrine of unconscionability," but "need not be present in the same degree . . . Essentially a sliding scale is invoked." *Ibid.* In other words, where the level of procedural unconscionability is low, "the agreement will be enforceable unless the degree of substantive unconscionability is high." *E.g.*, *Serpa v. Cal. Sur. Investigations, Inc.*, (2013) 215 Cal.App.4th 695, 704 (*"Serpa"*).

1. Here the Level of Procedural Unconscionability Is Low and Not at Issue.

Both the trial court and *Ramirez* properly concluded that the Agreement includes only a low level of procedural unconscionability due to the adhesive nature of Charter's mandatory arbitration policy. (AA:2:465-67); *Ramirez v. Charter*

Communications, Inc., (2022) 75 Cal.App.5th 365, 373 ("*Ramirez*")). *Ramirez* did not find any other evidence of procedural unconscionability. *Id.*

This low level of procedural unconscionability is standard and not determinative of enforceability. *Ramirez* correctly held: "the fact that the arbitration agreement is an adhesion contract does not render it automatically unenforceable as unconscionable. Courts have consistently held that the requirement to enter into an arbitration agreement is not a bar to its enforcement." *Id.* at 379 (citations omitted).

2. The Agreement Complies with the Five *Armendariz* Safeguards to Avoid Unfairness.

Ramirez primarily focused on the issue of substantive unconscionability, which the Court eventually concluded was fatal to the Agreement. Yet in undertaking the substantive unconscionability analysis, *Ramirez* failed to address the Agreement's compliance with the five *Armendariz* factors.

Given the inherent procedural unconscionability associated with mandatory arbitration agreements in the employment context, the Court in *Armendariz* held that there are certain minimal safeguards that must be present in mandatory arbitration agreements covering FEHA claims. Specifically, this Court held that in FEHA cases, an arbitration agreement is lawful and enforceable if it "(1) provides for neutral arbitrators,

(2) provides for more than minimal discovery, (3) requires a written award, (4) provides for all of the types of relief that would otherwise be available in court, and (5) does not require employees to pay either unreasonable costs or any arbitrators' fees or expenses as a condition of access to the arbitration forum." *Armendariz*, 24 Cal.4th at 83 (citation and internal quotation marks omitted).

Here, the Agreement and Guidelines explicitly provide for the five safeguards required by *Armendariz*.[5]

First, the Guidelines provide: "the prevailing party may recover any remedy that the party would have been allowed to recover had the dispute been brought in court." (AA:1:113 (Section 13)).

Second, the Agreement and Guidelines provide that the arbitrator must be "neutral" and "experienced in the field of employment law." (AA:1:117, 125, 129 (Section A)).

Third, the Guidelines state that "[e]ach party will be permitted to take up to four (4) depositions and allowed up to 20 total interrogatories (including subparts) and up to 15 total requests for documents to the other party…." The Guidelines further give the arbitrator discretion to resolve "[a]ny

---

[5] The AAA Rules, which are discussed further below, also provide for all remedies available in court (AA:1:168 (Rule 39(d)), a neutral arbitrator (AA:1:159 (Rule 12(b)(I)), sufficient discovery (AA:1:158 (Rule 9)), a written award (AA:1:168(Rule 39(c)), and no excessive fees for employees (AA:1:170-72).

disagreements regarding the exchange of information or depositions" to "allow a full and equal opportunity to all parties to present evidence that the arbitrator deems material and relevant to the resolution of the dispute." (AA:1:122).

Fourth, the Agreement provides: "[t]he award shall be in writing" and will contain "express findings of fact and the legal reasons for the decision and any award." (AA:1:131 (Section I (5)).

Fifth, the Agreement and Guidelines provide: "Charter will pay the AAA administrative fees and the arbitrator's fees and expenses." (AA:1:113 (Rule 11); AA:1:132 (Section K)).

The Agreement's provision for each of the *Armendariz* requirements establishes Charter's good faith attempt to draft a fair arbitration agreement and the absence of an illegal motive necessary to invalidate the Agreement.

3. This Court's Precedent Requires Interpretation of Arbitration Agreements Which Render Them Enforceable.

To invalidate an arbitration agreement on the grounds of substantive unconscionability, the agreement must be severely unfair and one-sided. "A contract term is not substantively unconscionable when it merely gives one side a greater benefit; rather, the term must be so one-sided as to 'shock the conscience.'" *Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC*, (2012) 55 Cal.4th 223, 246 (*"Pinnacle"*) (quotations omitted).

In *Baltazar v. Forever 21, Inc.*, (2016) 62 Cal.4th 1237 (*"Baltazar"*), this Court applied the "shock the conscience" standard to hold that courts must enforce employment arbitration agreements unless an agreement is extremely unfair. *Id.* at 1243-45.

> Commerce depends on the enforceability, in most instances, of a duly executed written contract. A party cannot avoid a contractual obligation merely by complaining that the deal, in retrospect, was unfair or a bad bargain. Not all one-sided contract provisions are unconscionable; hence the various intensifiers in our formulations: 'overly harsh,' 'unduly oppressive,' 'unreasonably favorable.' [citing *Pinnacle*, 55 Cal.4th at 246] … [¶] … **The ultimate issue in every case is whether the terms of the contract are sufficiently unfair, in view of all relevant circumstances, that a court should withhold enforcement**.

Id. at 1245 (emphasis added).

In *Baltazar*, this Court addressed three purportedly unconscionable provisions, which were similar to the types of purportedly non-mutual provisions at issue here. The agreement in *Baltazar* called for provisional relief that was more likely to favor the employer, only specifically listed claims brought by employees as subject to arbitration, and explicitly protected the employer's confidential information. This Court held that the apparent unfairness of these terms was largely a result of skewed contract interpretation, and that in reality, the agreement was fair. *See Baltazar*, 62 Cal.4th at 1246-1250. The primary principle established in *Baltazar* is that courts must interpret

arbitration agreements so as to promote enforceability, unless there is extreme unfairness.

The Civil Code, as well as this Court's decisions since *Armendariz*, illustrate that California law requires interpretations of arbitration agreements which render them enforceable, while ensuring a fair outcome in arbitration for all parties. *See* Civ. Code, § 1643 (if possible, without violating the parties' unambiguous intent, a contract is interpreted to make it "lawful, operative, definite, reasonable, and capable of being carried into effect"); § 3541 ("[a]n interpretation which gives [an agreement] effect is preferred to one which makes void"); *Pearson Dental Supplies, Inc. v. Superior Ct.*, (2010) 48 Cal.4th 665, 682 (*"Pearson"*) ("When an arbitration provision is ambiguous," courts are required to "interpret that provision, if reasonable, in a manner that renders it lawful, both because of [California's] public policy in favor of arbitration as a speedy and relatively inexpensive means of dispute resolution, and because of the general principle that [courts] interpret a contractual provision in a manner that renders it enforceable rather than void."); *Roman v. Superior Court,* (2009) 172 Cal.App.4th 1462, 1473 ("*Roman*") ("[G]iven . . . the strong public policy favoring arbitration . . . and the requirement we interpret the provision in a manner that renders it legal rather than void . . . we would necessarily construe the arbitration agreement as imposing a valid, mutual obligation to arbitrate.").

Ramirez failed to follow this directive.

B. *Ramirez*'s Conclusion that the Interim Attorneys' Fees Provision Is Unconscionable Is Not Legally Viable.

Ramirez erred by diverging from *Patterson* and finding the interim attorney's fees provision in Section K of the Agreement irreparably unconscionable. If this Court finds that Section K has the potential to conflict with FEHA in this case, this Court should follow the *Patterson* approach and hold that the provision is not inherently flawed and can be interpreted to render it enforceable.

Section K of the Agreement provides in pertinent part:

> **K. Arbitration Costs**. … The parties agree and acknowledge, however, that the failure or refusal of either party to submit to arbitration as required by this Agreement will constitute a material breach of this Agreement. If any judicial action or proceeding is commenced in order to compel arbitration, and if arbitration is in fact compelled, or the party resisting arbitration submits to arbitration following the commencement of the action or proceeding, **the party that resisted arbitration will be required to pay the other party all costs, fees and expenses that they incur in compelling arbitration**, including, without limitation, **reasonable attorneys' fees**.

(AA:1:132 (emphasis added)).[6]

---

[6] Ramirez also argued, and the trial court agreed, that the remedy provision in the Agreement was unconscionable because it failed to "expressly restrict fee recovery [for a prevailing defendant] to frivolous or bad faith FEHA claims." (AA:2:506-07). *Ramirez* reversed the trial court and held that because the Guidelines expressly provide that "the prevailing party may recover any remedy that the party would have been allowed to

Charter took the position in *Patterson* and still contends, that this provision is not unconscionable and does not violate FEHA because it is outside of FEHA's purview. The fee provision deals with the enforcement of the Agreement, not with the underlying FEHA action.

Although the *Patterson* court disagreed with Charter's position, the decision properly held that Section K was enforceable under the principles established by the FAA and *Armendariz*, which require courts to give effect to arbitration agreements between parties. *See, e.g.*, *AT&T Mobility LLC v. Concepcion*, (2011) 563 U.S. 333, 339 ("*Concepcion*") (noting the "liberal federal policy favoring arbitration"); *Armendariz*, 24 Cal.4th at 97 ("California law, like federal law, favors enforcement of valid arbitration agreements."). The *Patterson* court relied primarily on Civil Code §§ 1643, 3541, *Armendariz*, *Pearson,* and *Roman* in reaching its holding that although Section K has the potential to conflict with the attorneys' fee award provisions in the FEHA, the provision should be interpreted in a manner to render it lawful by reading it to only allow attorneys' fees where the plaintiff's opposition to the motion to compel arbitration was frivolous or groundless. *Patterson,* 70 Cal.App.5th at 490. By interpreting Section K in this manner, *Patterson* complied with the FAA and this Court's precedent by

---

recover had the dispute been brought in court," the remedy provision incorporates FEHA and is not unconscionable. *Ramirez*, 75 Cal.App.5th at 376 (quoting AA:1:113 (Rule 13)).

honoring the parties' agreement to arbitrate, while ensuring that enforcing the Agreement did not run afoul of the FEHA.

Ramirez explicitly rejected the reasoning of the *Patterson* decision and instead found the provision unconscionable. *Ramirez* even criticized the *Patterson* court for its reliance on this Court's decision in *Armendariz* to support enforcement of the Agreement. *Ramirez* erroneously concludes that Section K is not sufficiently ambiguous to allow the court to step in to interpret it. *See Ramirez*, 75 Cal.App.5th at 379.

Ramirez's logic is faulty. The court relied in part on *Serpa,* 215 Cal.App.4th at 695 to hold that because the attorneys' fee provision in Charter's Agreement is straightforward, it cannot be saved or severed. *See Ramirez*, 75 Cal.App.5th at 379. Yet in *Serpa* the court ***enforced*** an employment arbitration agreement that included an unenforceable fee provision and simply severed the offensive provision. After finding the attorneys' fee provision unenforceable, *Serpa* held that the "offending provision, which is plainly collateral to the main purpose of the contract, is properly severed and the remainder of the contract enforced." *Id.* at 710 (citing *Roman,* 172 Cal.App.4th at 1462).

Ramirez also attempts to distinguish the particular facts of the decisions relied upon by the *Patterson* court – *Pearson* and *Roman*. In *Roman*, the Court of Appeal relied on *Armendariz* and severed an unconscionable fee shifting provision, noting: "the strong legislative and judicial preference is to sever the offending term and enforce the balance of the agreement." *Roman,* 172

Cal.App.4th at 1477. "We have little difficulty concluding the interests of justice would be furthered by severance of the cost provision, which, if unconscionable … is plainly 'collateral to the main purpose of the contract.'" *Roman,* 172 Cal.App.4th at 1478 (citing *Armendariz*, 24 Cal.4th at 124).

In *Pearson*, this Court cited *Roman* to re-emphasize "the general principle that we interpret a contractual provision in a manner that renders it enforceable rather than void." *Pearson,* 48 Cal.4th at 682. This Court proceeded to interpret a provision in the arbitration agreement at issue regarding administrative remedies to comply with existing law. *Ibid.*

Ramirez attempted to side-step *Pearson* and *Roman* by concluding that the courts' efforts to save the arbitration agreements in those cases were distinguishable because they were required to interpret ambiguous provisions or provisions which were "treated as ambiguous under the circumstances." *Ramirez*, 75 Cal.App.5th at 380. But *Ramirez*'s finding of ambiguity in the provisions at issue in these cases is arbitrary. Both *Pearson* and *Roman* clearly stand for the principle applied in *Patterson* that a fee provision in an arbitration agreement is collateral to the main purpose of the agreements so, if the provision is unconscionable, it should be severed.

Ramirez improperly ignored the weight of Supreme Court and Appellate precedent, which requires enforcement of employment arbitration agreements, even where there is doubt as to the enforceability of certain provisions.

Finally, *Ramirez* attempted to undermine the *Patterson* court's reliance on *Armendariz*, by trying to distinguish the costs provision in *Armendariz* from Section K at issue here: "In *Armendariz*, the agreement had no provision governing costs, and the court was not called upon to interpret one. Thus, the Supreme Court did not make the arbitration agreement enforceable by grafting an implied cost-sharing term onto an express provision governing costs." *Ramirez*, 75 Cal.App.5th at 382.

But *Ramirez*'s analysis of *Armendariz* entirely missed the point made in *Patterson*: *Armendariz* stands for the principle that courts must interpret arbitration agreements ***so as to render them enforceable***. *Patterson,* 70 Cal.App.5th at 490. *Armendariz* requires courts to give credence to the parties' agreement to arbitrate all disputes between them, even if that process in this instance requires the Court to interpret the interim attorneys' fee provision in Section K so as not to conflict with FEHA.

> That is precisely the course followed by the Supreme Court in *Armendariz*, which, after concluding it violated FEHA to require an employee to pay the costs associated with arbitration of a FEHA claim, held, "[A] mandatory employment arbitration agreement that contains within its scope the arbitration of FEHA claims impliedly obliges the employer to pay all types of costs that are unique to arbitration." [citing *Armendariz*, 24 Cal.4th at 113]. As a result, the court continued, "[t]he absence of specific provisions on

> arbitration costs would therefore not be grounds for denying the enforcement of an arbitration agreement." (Ibid.).

Patterson, 70 Cal.App.5th at 490.

Ramirez went to great pains to distinguish two California Supreme Court cases (*Armendariz* and *Pearson*), and two Court of Appeal cases (*Roman* and *Patterson*), which require enforcement of arbitration agreements through use of interpretation or severance. At the same time, *Ramirez* strangely relied on *Serpa*, which actually supports severance of any allegedly unconscionable provision. *Ramirez* cited no cases in its analysis of Section K that support the erroneous conclusion that the *Patterson* decision is wrong.

C. The Other Three Provisions at Issue Are Not Unconscionable.

Ramirez also found that three other provisions of Charter's Agreement are substantively unconscionable: (1) a provision exempting certain claims from arbitration; (2) a provision regarding the statutes of limitations; and (3) a provision permitting each party to take four depositions. Each of these provisions is not unconscionable and can be interpreted in a way to allow for enforcement.

1. The Provision Excluding Certain Claims Does Not Render the Agreement Unconscionable Because It Is Mutual and Redundant.

The Court held that Section C of the Agreement, which excludes certain claims from arbitration, was unconscionable because it renders the Agreement "unfairly one-sided" by "compel[ling] arbitration of the claims more likely to be brought by an employee, the weaker party, but exempt[ing] from arbitration the types of claims that are more likely to be brought by an employer, the stronger party." *Ramirez*, 75 Cal.App.5th at 383. This is untrue. Section B(1) of the Agreement establishes that the Agreement is fundamentally mutual, because it provides for arbitration of the types of claims likely to be brought by Charter:

> [A]ll disputes, claims, and controversies that could be asserted in court or before an administrative agency or for which you or Charter have an alleged cause of action related to pre-employment, employment, employment termination or post-employment-related claims, whether the claims are denominated as tort, contract, common law, or statutory claims (whether under local, state or federal law), including without limitation claims for: collection of overpaid wages and commissions, recovery of reimbursed tuition or relocation expense reimbursement, damage to or loss of Charter property, recovery of unauthorized charges on company credit card…

(AA:1:129).

Section C, which discusses excluded claims, provides that "[a]ll other claims not covered under Section B above will not be submitted to arbitration under this Agreement" (AA:1:130) and provides examples of excluded claims.

Ramirez took issue with the exclusion of "claims for **injunctive or other equitable relief** related to unfair competition and the taking, use or unauthorized disclosure of trade secrets or confidential information" and "claims arising under separation or severance agreements or non-compete agreements; . . . for theft or embezzlement or any other criminal conduct; . . . [and] over the validity of any party's intellectual property rights." *See Ramirez*, 75 Cal.App.5th at 382-83 (emphasis added). But an agreement that exempts certain claims from arbitration is not *per se* unconscionable. *Armendariz*, 24 Cal.4th at 120 (an arbitration agreement need not "mandate the arbitration of all claims between employer and employee in order to avoid invalidation on grounds of unconscionability.").

Here, the provision exempting certain claims from arbitration applies to employers and employees alike. *Ramirez* fails to acknowledge that Section C exempts numerous types of claims that could be brought by an employee, including claims for workers' compensation benefits, unemployment compensation benefits, claims under the NLRA, claims for violations of ERISA, and claims arising under HIPAA. (AA:1:130 (Section C(1)-(5)). The excluded claims discussed in *Ramirez* (validity of IP rights, claims arising under separation agreements, and claims for

criminal conduct) are clearly mutual because either Charter or a Charter employee could bring such claims.[7]

Further, with respect to the exemption for injunctive or other equitable relief related to unfair competition and trade secret claims – which appears to be what *Ramirez* relied on in holding the provision unconscionable – those types of claims are already exempt from arbitration pursuant to California Code of Civil Procedure §1281.8(b). As this Court held in *Baltazar*: "the provisional relief clause does no more than recite the procedural protections already secured by section 1281.8(b), which expressly permits parties to an arbitration to seek preliminary injunctive relief during the pendency of the arbitration." 62 Cal.4th at 1247. "[A]n arbitration agreement is not substantively unconscionable simply because it confirms the parties' ability to invoke undisputed statutory rights. And the clause confirming the availability of provisional relief under section 1281.8(b) confers no advantage on the drafting party that would otherwise be unavailable in the litigation context." *Id.* at 1248.

Instead of citing *Baltazar*, *Ramirez* heavily relied on *Mercuro v. Superior Court* (2002) 96 Cal.App.4th 167 ("*Mercuro*") and *Fitz v. NCR Corp*. (2004) 118 Cal.App.4th 702 (*"Fitz"*), two Court of Appeal cases which pre-date *Baltazar*. *Fitz* is distinguishable. The Agreement at issue in this case only

---

[7] Of course, certain of the excluded claims, such as claims for criminal conduct, are excluded from arbitration by law. Charter's explicit exclusion of those claims should not be a reason to hold the Agreement unenforceable.

exempts claims for injunctive or other equitable relief related to unfair competition or trade secrets from arbitration, whereas the agreement in *Fitz* exempted *any claim* (not only claims for injunctive or equitable relief) relating to unfair competition or trade secrets from arbitration. In other words, whereas the Agreement in this case simply reiterated the procedural protections already secured by section 1281.8(b), the agreement in *Fitz* sought to confer a benefit to the employer. *See Fitz*, 118 Cal. App. 4th at 709. *Ramirez's* comparison of this case to *Fitz*, and lack of reference to *Baltazar*, which is directly on point, was improper.

2. The Statute of Limitations Provision Does Not Render the Agreement Unconscionable Because It Is Ambiguous.

The next provision at issue is the statute of limitations clause ("Section E"). Section E starts with the premise that normal statutes of limitations apply: "The aggrieved party must give written notice of the claim, in the manner required by this Agreement, within the time limit established by the applicable statute of limitations for each legal claim being asserted." (AA:1:131 (Section E)). *Ramirez*, however, focuses solely on the conflicting language in the second sentence of Section E: "To be timely, any claim that must be filed with an administrative agency or body as a precondition or prerequisite to filing the claim in court, must be filed with Solution Channel within the time period by which the charge, complaint or other similar

document would have had to be filed with the agency or other administrative body." (*Id.*).

This provision, however, cannot be interpreted in a vacuum. When all the language on statute of limitations in the Agreement and Guidelines is viewed in totality, it is clear this provision at worst presents ambiguity. For example, the Guidelines state: (1) "A claim must be submitted to Solution Channel within the time period established by the applicable statute of limitations" (AA:1:113 (Rule 7)); and (2) "You must submit a covered claim before the end of the statute of limitations applicable to the claim" (AA:1:121). The Guidelines even define "Statute of Limitations" as "[t]he period of time during which the law allows an individual or entity to pursue a particular type of claim." (AA:1:127).

Given this ambiguity, Section E should be interpreted in a way to make the Agreement operative. *Pearson,* 48 Cal.4th at 682. *Ramirez* itself admitted that ambiguous provisions should be interpreted so as to allow for enforcement of an agreement. *See Ramirez* 75 Cal.App.5th at 379 ("[A]mbiguous terms in an arbitration agreement should be construed, where reasonable, in favor of legality."). To that end, the second sentence of Section E should be interpreted to conform with the other statements in the Agreement and Guidelines, to find that the applicable statute of limitations will apply.

Further, an arbitration agreement need not provide the same statute of limitations as the parties have in court. "'A

contractual period of limitation is reasonable if the plaintiff has a sufficient opportunity to investigate and file an action, the time is not so short as to work a practical abrogation of the right of action, and the action is not barred before the loss or damage can be ascertained.'" *Baxter v. Genworth North America Corp.* (2017) 16 Cal.App.5th 713, 731; *see also Ramirez*, 75 Cal.App.5th at 374. *Ramirez* found Section E unconscionable because it could potentially preclude a plaintiff from seeking administrative remedies before having to initiate arbitration. Even if the Agreement precludes a plaintiff from seeking an investigation from the DFEH, that would not serve as a "practical abrogation of the right of the action" and would not bar the action "before the loss or damage can be ascertained." If the employee had the information, he needed to seek an investigation from the DFEH, then he would already be aware of the loss or damage at that time.[8]

3. Permitting Four Depositions Does Not Render the Agreement Unconscionable Because It Is Reasonable.

Ramirez's hostility to arbitration was displayed most visibly in its unfair analysis of the Guidelines' discovery provision. *Ramirez* found that it was impossible to sever the provision that states that "[e]ach party will be permitted to take

[8] Ramirez herself obtained an immediate right to sue notice from the DFEH, so the Agreement did not deprive her of any right to seek an investigation – she chose to forfeit that right. (AA:1:22-23).

up to four (4) depositions" (AA:1:122) and improperly relied on Ramirez's counsel's argument in his brief, without any supporting evidence, that Ramirez needed seven depositions to prepare her case for arbitration. *Ramirez*'s analysis was flawed in several respects.

First, this provision serves as a guarantee that employees can take at least four depositions – not as a limit that parties can only take four depositions in all circumstances. This is evident from the use of the term "permit." The Guidelines go on to state that "Any disagreements regarding the exchange of information or depositions will be resolved by the arbitrator **to allow a full and equal opportunity to all parties to present evidence** that the arbitrator deems material and relevant to the resolution of the dispute. (AA:1:122 (emphasis added)).

Second, *Armendariz* held that limitations on discovery are not an appropriate basis to invalidate an arbitration agreement, because "the employer, by agreeing to arbitrate the FEHA claim, has already impliedly consented to [sufficient] discovery. Therefore, lack of discovery is not grounds for holding a FEHA claim inarbitrable." *Armendariz*, 24 Cal.4th at 106.

Third, even if the deposition provision could be read as a limitation on discovery, four depositions per side is not unconscionable. *Armendariz* made clear that arbitration is an expedited process and the "full panoply" of discovery available in state court is not required. *Armendariz*, 24 Cal.4th at 105; *see also Mercuro v. Superior Court* (2002) 96 Cal.App.4th 167, 184

("'[A]dequate' discovery does not mean unfettered discovery…"); *Dotson v. Amgen, Inc.* (2010) 181 Cal.App.4th 975, 983 (*"Dotson"*) ("[A]rbitration is meant to be a streamlined procedure. Limitations on discovery, including the number of depositions is one of the ways streamlining is achieved."). The parties are simply entitled to discovery "sufficient to adequately arbitrate their statutory claim, including access to essential documents and witnesses, as determined by the arbitrator(s)." *Armendariz*, 24 Cal.4th at 106.

Courts have routinely upheld arbitration agreements with similar or even more restrictive discovery limitations. *Armendariz*, 24 Cal.4th at 105 n.10 (Agreement incorporated the rules set forth in the California Arbitration Act, which provide that depositions may only be taken with the approval of the arbitrator); *Roman,* 172 Cal.App.4th at 1475 (agreement incorporated the AAA employment rules, which do not specify the number of depositions permitted); *Sanchez v. Carmax Auto Superstores California, LLC*, (2014) 224 Cal.App.4th 398, 404 ("*Sanchez*") (3 depositions, 20 interrogatories, and production of relevant documents and personnel file upon request); *Dotson*, 181 Cal.App.4th at 982 (one deposition and requests for production); *Mercuro,* 96 Cal.App.4th at 182 (30 discovery requests and 3 depositions (with the Person Most Knowledgeable Deposition being limited to 4 categories)); *Torrecillas v. Fitness International, LLC* (2020) 52 Cal.App.5th 485, 497-498 ("*Torrecillas*") ("A limit of five depositions is not shocking" and noting that "limiting discovery is one point of arbitration.").

Fourth, the explicit ability of the arbitrator to manage discovery confirms that the discovery provision is not unconscionable. The Court in *Mercuro,* 96 Cal.App.4th at 182-83, interpreted a similar provision that gave the arbitrator discretion to resolve "disputes concerning discovery" as giving the arbitrator discretion to order additional discovery. The court reached that holding even though the arbitration agreement contained an express presumption "against increasing the aggregate limit on [discovery] requests." *Id.* There is no similar presumption against increasing the amount of discovery in the Agreement here. It was improper for *Ramirez* to "assum[e] that the arbitrator would not be fair in determining whether additional [discovery] is needed. This assumption is not a consideration when determining the validity of a discovery provision. Indeed, it is quite the opposite." *Dotson*, 181 Cal.App.4th at 984. "We must presume the arbitrator will behave reasonably." *Torrecillas*, 52 Cal.App.5th at 497.

Lastly, *Ramirez* gave improper weight to Ramirez's counsel's argument that he needs seven depositions in this case. As *Ramirez* itself notes *five times*, the reasonableness of the agreement is assessed *at the time it was made*. *Ramirez*, 75 Cal.App.5th at 372, 374, 375, 384. At the time the Agreement was written Ramirez did not even work for Charter, let alone know how many depositions she would need in arbitration. The post-hoc speculation of Ramirez's attorney in argument form that Ramirez needs to take seven depositions cannot render the Agreement unconscionable at the time it was implemented.

Further, Ramirez introduced no evidence that she needed to take these depositions, which is fatal to her claim. *Sanchez*, 224 Cal.App.4th at 404 ("Sanchez does not make any showing that he could not maintain his claim without more discovery than that provided by the agreement. Without some showing that Sanchez would be unable to vindicate his rights," the provision was not unconscionable); *Torrecillas*, 52 Cal.App.5th at 497 ("In his appellate brief, Torrecillas argues he requires certain documents and witnesses to pursue his claims. Arguments are not evidence.").

Ramirez's counsel's argument in the Opposition to the Motion is not evidence and the Court erred in holding otherwise. If an attorney's conclusory statement in a brief as to the number of depositions he needs to take was sufficient evidence to render a deposition limitation unconscionable, then an attorney could simply argue that he needs to take more depositions than that allowed by the agreement in every case. Notably, Ramirez's counsel did not even indicate that he needed to take these depositions in a declaration under penalty of perjury. It was improper for *Ramirez* to refuse to enforce the Agreement based on argument of counsel.[9]

---

[9] *Ramirez* also erroneously faulted Charter for failing to rebut or dispute Ramirez's counsel's conclusory statement in the Opposition that she requires seven depositions. Had Ramirez's attorney properly provided *evidence* in the form of a sworn declaration (as opposed to mere argument or speculation), Charter would have had the opportunity to submit an objection to that evidence.

As explained above, arbitration is a streamlined proceeding. If Ramirez truly needed to take these depositions, she could make a proffer of evidence to the arbitrator, who would have the discretion to allow any truly necessary depositions.

D. If Necessary, Each of the Four Provisions Should Be Severed.

If this Court were to hold that any of the provisions at issue is irreparably unconscionable, that provision should be severed from the Agreement to allow for enforcement.

1. The Agreement and General Contract Principles Provide for Severance.

General contract principles and precedent call for severance where it will allow the court to give effect to the parties' agreement.

Contracts must be enforced as close as possible to how they were written to manifest the parties' intent at the time the contract was entered. Cal. Civ. Code § 1636 ("A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful."); Cal. Civ. Code § 1643 ("A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect, if it can be done without violating the intention of the parties."); Cal. Civ. Code § 1652 ("Repugnancy in a contract must be reconciled, if possible, by such an interpretation as will give

some effect to the repugnant clauses, subordinate to the general intent and purpose of the whole contract."). These principles were affirmed in *Armendariz*: "Whether a contract is entire or separable depends upon its language and subject matter, and this question is one of construction to be determined by the court according to the intention of the parties. If the contract is divisible, the first part may stand, although the latter is illegal." 24 Cal.4th at 122. Even *Ramirez* itself articulated this general contract principle that requires courts to construe terms in an arbitration agreement to be lawful "if it can be done without violating the intention of the parties." *Ramirez*, 75 Cal.App.5th at 379 (citing Cal. Civ. Code § 1643).

Severance in this case is especially appropriate because the Agreement specifically provides for severability. Section Q states:

> [I]f any portion or provision of this Agreement (including, without implication of limitation, any portion or provision of any section of this Agreement) is determined to be illegal, invalid, or unenforceable by any court of competent jurisdiction and cannot be modified to be legal, valid, or enforceable, the remainder of this Agreement shall not be affected by such determination and shall be valid and enforceable to the fullest extent permitted by law, and said illegal, invalid, or unenforceable portion or provision shall be deemed not to be a part of this Agreement.

(AA:1:132-33). The parties agreed on severance and therefore it is proper to sever. *See Booker v. Robert Half, International, Inc.* (D.C. Cir. 2005) 413 F.3d 77, 84-85 ("the FAA's primary purpose

was to ensure that private agreements to arbitrate are enforced according to their terms.").

The United States Supreme Court has also repeatedly decreed that courts should give effect to the parties' intentions set forth in the arbitration agreement and that courts should sever unconscionable provisions, rather than refusing to compel arbitration, if the agreement calls for severance. Most recently, the Court emphasized this principal in *Viking River Cruises, Inc. v. Moriana*, (2022) 142 S.Ct. 1906, 1925, *reh'g denied*, No. 20-1573, 2022 WL 3580311 (U.S. Aug. 22, 2022) (severing the PAGA waiver because of the "severability clause in the agreement").

2. Each of the Provisions at Issue Is Collateral to the Main Purpose of the Agreement and Easily Severed.

Provisions are properly severed from an arbitration agreement where "no contract reformation is required--the offending provision can be severed and the rest of the arbitration agreement left intact." *Little v. Auto Stiegler, Inc.* (2003) 29 Cal.4th 1064, 1075 (*"Little"*). This is true of all four provisions at issue in the Agreement.

First, the interim fee provision in Section K is entirely collateral to the main purpose of the Agreement, which is arbitration. The interim fees provision applies to actions taken *in court* to enforce the Agreement. Thus, this provision does not undermine the fairness of *the arbitration*. The purpose of the

Agreement is to provide arbitration as the forum for the parties' disputes, whereas the purpose of the fee provision is to grant the prevailing party fees if one party refuses to honor the Agreement. "Where a contract has several distinct objects, of which one at least is lawful, and one at least is unlawful, in whole or in part, the contract is void as to the latter and valid as to the rest." Cal. Civ Code § 1599.

Courts have even found fee provisions relating to the underlying FEHA action, i.e., provisions that state that each party is to bear its own costs and fees, to be collateral to the main purpose of the Agreement. *Serafin v. Balco Properties Ltd., LLC* (2015) 235 Cal.App.4th 165, 184 ("Serafin has failed to show that unconscionability so permeates the arbitration agreement that the flawed attorney fees and costs provision could not be severed and the balance of the agreement enforced. We note that other courts have severed similar unconscionable arbitration provisions and enforced the rest of the arbitration agreement."); *Serpa,* 215 Cal.App.4th at 710 (attorney fees provision severed as it is "plainly collateral to the main purpose of the contract," and remainder of arbitration agreement enforced); *Roman,* 172 Cal.App.4th at 1478 (holding that a former AAA rule, which required parties to split the costs associated with the arbitration, was "collateral to the main purpose of the contract" and could be severed and that "[o]nce [the cost] provision is severed from the agreement, the costs of the arbitration are properly imposed on [employer])); *Gutierrez v. Autowest, Inc.* (2003) 114 Cal.App.4th 77, 92 (the central purpose of the arbitration agreement "was not

to regulate costs, but to provide a mechanism to resolve disputes … [and] [b]ecause the costs provision is collateral to that purpose, severance was available" (citation omitted)).

Certainly here the interim fee provision, which does not relate to the underlying arbitration, is collateral to the purpose of the Agreement. Accordingly, because *Ramirez* found this provision unconscionable, it should have stricken this provision from the Agreement.

The statute of limitations and discovery clauses are similarly collateral to the main purpose of the agreement because arbitration agreements do not need to address the statute of limitations or provide for a certain amount of discovery. *Dotson*, 181 Cal.App.4th at 985 ("Even if we assume the discovery provision to be unconscionable, which we do not, the trial court abused its discretion by refusing to sever it."); *Jones v. Deja Vu, Inc.* (N.D. Cal. 2005) 419 F.Supp.2d 1146, 1150 ("I find that the unconscionable provisions shortening the statute of limitations … are collateral to the main purpose of the parties' contracts and do not so pervade the entirety of the contracts as to render the contracts unenforceable.").

In addition, where arbitration agreements are silent as to a specific safeguard required under *Armendariz*, courts are required to interpret the agreement to comply with the law. *Armendariz*, 24 Cal.4th at 113 (where agreement was silent as to costs, this Court "interpret[ted] the arbitration agreement in the present case as providing, consistent with the above, that the

employer must bear the arbitration forum costs. The absence of specific provisions on arbitration costs would therefore not be grounds for denying the enforcement of an arbitration agreement."); *Sanchez v. W. Pizza Enterprises, Inc.* (2009) 172 Cal.App.4th 154, 177, *abrogated on other grounds*, ("Similarly here, we conclude that the absence of express provisions requiring a written arbitration award and allowing discovery does not render the arbitration agreement unconscionable. Rather, those terms are implied as a matter of law as part of the agreement."). Accordingly, had the court below severed the statute of limitations or the deposition provision, the court could properly have interpreted the Agreement to comply with the law.

Similarly, the provision which excludes certain claims from arbitration is collateral to the Agreement. *Poublon v. C.H. Robinson Co.* (9th Cir. 2017) 846 F.3d 1251, 1261 (holding that a similar provision could "be extirpated without affecting the remainder of the [agreement] and [was] collateral to the main purpose of the contract, which is to require arbitration of disputes."). Further, if the court had simply struck the "Excluded Claims" provision, then the Agreement would have been left with the "Covered Claims" provision, which is indisputably mutual and provides that all employment-related claims are subject to arbitration. (See AA:1:129 (Section B "Covered Claims")).

Accordingly, *Ramirez* erred and contradicted the tide of California and federal cases interpreting California law by refusing to sever the supposedly unconscionable provisions.

3. The Decision to Sever Is a Qualitative Decision, Not Quantitative.

Both courts below seemed to operate under the assumption that while one or two provisions may be severed from an arbitration agreement, three or four is too many. This is clear from the trial court's change from the tentative ruling to the final ruling after Plaintiff's counsel brought up Section K of the Agreement at oral argument. The fact that the addition of one, collateral, purportedly unconscionable provision can change the outcome of the motion to compel arbitration illustrates that the trial court arbitrarily held that two unconscionable provisions could be severed, but three was too many.

This notion regarding the number of provisions is likely based on a common misinterpretation of *Armendariz*. In *Armendariz*, this Court held that severance was inappropriate because (1) there was more than one unlawful provision ***and***, more importantly, (2) there was no single provision the Court could strike or restrict "in order to remove the unconscionable taint from the agreement," meaning that the court could not reform the agreement through severance or restriction but would instead need to augment or reform the agreement by inserting additional terms, which it refused to do.

This passage in *Armendariz* does not establish some bright line rule that more than one unconscionable provision cannot be severed *where the provisions are collateral to the main purpose of the contract*. On the contrary, the two unconscionable provisions

at issue in *Armendariz* were fundamental to the purpose of the agreement – the agreement was not mutual because it required only arbitration of claims brought by employees, and the agreement limited the damages available to employees for statutory antidiscrimination claims to backpay, eliminating recovery for emotional distress damages, punitive damages and attorneys' fees. In other words, employees were not entitled to the same damages that they would have been entitled to had the claims been asserted in court. *See Armendariz*, 24 Cal.4th at 92.

Armendariz emphasized that "[c]ourts are to look to the various purposes of the contract. If the central purpose of the contract is tainted with illegality, then the contract as a whole cannot be enforced. If the illegality is ***collateral*** to the main purpose of the contract, and ***the illegal provision can be extirpated from the contract by means of severance or restriction, then such severance and restriction are appropriate***." *Armendariz*, 24 Cal.4th at 124 (emphasis added).

Subsequent decisions that have interpreted *Armendariz* have made clear that "[n]o authority supports the . . . conclusion that any more than a single unconscionable provision in an arbitration agreement *precludes* severance. . . . [T]he presence of multiple unconscionable clauses is merely one factor in the trial court's inquiry; it is not dispositive. That an agreement can be considered permeated by unconscionability if it contains more than one unlawful provision does not compel the conclusion that

it must be so." *Lange v. Monster Energy Co.* (2020) 46 Cal.App.5th 436, 454 (citation omitted).

Ramirez concluded that because there were four substantively unconscionable provisions in the Agreement, it was "reasonable" for the trial court to refuse to sever the unconscionable provisions and even suggested that severance would not be "possible." *Ramirez*, 75 Cal.App.5th at fn. 11. This conclusion is arbitrary and contradicts *Armendariz*.

Pursuant to Cal. Civ. Code § 1670.5(a), a court has discretion to "enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result." As *Armendariz* teaches, while a trial court has considerable discretion with respect to severability, the statute contemplates that refusal to enforce an agreement altogether should be limited to situations where the agreement is "'permeated'" by unconscionability. *See Farrar v. Direct Commerce, Inc.* (2017) 9 Cal.App.5th 1257, 1274 (citing *Armendariz,* 24 Cal.4th at 122). "If the illegality is collateral to the main purpose of the contract, and the illegal provision can be extirpated from the contract by means of severance or restriction, then such severance and restriction are appropriate." *Id.*

4. Charter Did Not Have an Illegal Purpose Because the Issues Are Novel and Other Courts Have Consistently Enforced the Agreement.

Although it did not state this explicitly, *Ramirez* hinted that there was something nefarious about Charter's agreement. This Court in *Armendariz* stated in dicta that "courts have tended to invalidate rather than restrict such covenants when it appears they were drafted in bad faith, i.e., with a knowledge of their illegality." *Armendariz*, 24 Cal.4th at 124 n.13; s*ee also Little*, 29 Cal.4th at 1074 ("'If the central purpose of the contract is tainted with illegality, then the contract as a whole cannot be enforced. If the illegality is collateral to the main purpose of the contract, and the illegal provision can be extirpated from the contract by means of severance or restriction, then such severance and restriction are appropriate.'") (quoting *Armendariz*, 24 Cal.4th at 124). This Court in *Little* reiterated that in analyzing whether severance is appropriate courts look to whether "the state of the law was sufficiently clear at the time the arbitration agreement was signed to lead to the conclusion that [the allegedly unconscionable provision] was drafted in bad faith." *Id.* (quoting *Armendariz*, 24 Cal.4th at 124-25, n.13).

As discussed above, Charter's Agreement includes the key safeguards of a fair and mutual arbitration agreement that were not present in cases where agreements have been found to be imbued with illegality. The Agreement is fully mutual and

requires arbitration of "all disputes, claims, and controversies that could be asserted in court or before an administrative agency or for which [employee] or Charter have an alleged cause of action related to pre-employment, employment, employment termination or post-employment-related claims …." (AA:1:129). The Agreement provides for the selection of a neutral arbitrator from AAA's panel of employment arbitrators. The Agreement also provides for "all remedies you can get in court" which, *Ramirez* noted in enforcing the remedies provision, is a safeguard that preserves the right to fees under FEHA. *Ramirez*, 75 Cal.App.5th at 376.

Charter attempted to comply with *Armendariz* by creating a fundamentally fair and mutual agreement that contained all the safeguards for an employee to vindicate his FEHA rights. If this Court determines that any of the four provisions is fundamentally unconscionable, this would be new law.

For example, *Patterson*'s initial analysis of Section K to determine whether it is enforceable *per se*, shows that there is little applicable precedent for analysis of this unique type of provision. The *Patterson* court analyzed the few cases at issue and concluded that because "Charter was the prevailing party in the superior court…", Charter "is entitled to its fees under the fee provision in that contract to the extent not otherwise prohibited or limited by FEHA." *Patterson,* 70 Cal.App.5th at 486.

The existence of the *Patterson* decision proves that the law on this issue is unsettled so Charter was not flouting some

established precedent. Certainly, Charter should not be held to have imbued its agreement with an illegal purpose simply for having a novel interim attorneys' fees provision in a contract that applies to employees in 41 states and to all employment-related claims. Therefore, it is appropriate under *Armendariz* and its progeny to enforce the remainder of the Agreement, even if Section K can be unconscionable in a FEHA case.[10]

The novelty of these issues is also evident from the existence of 34 unique decisions that have upheld the Agreement in the five years since the Agreement's implementation. (*See* Section III(E), *supra*; RJN:1:32-194, RJN:2:201-388). Not only do these cases illustrate that Charter did not have an illegal purpose in implementing the Agreement, but also *Ramirez*'s divergence from the weight of authority upholding Charter's Agreement demonstrates that the ruling below was in error.

E. The AAA Rules Also Ensure Fairness in the Process.

The Agreement's reliance upon AAA to supply a neutral arbitrator and to administer the arbitration further establishes that the purpose of the Agreement was to provide a fair and efficient forum for the resolution of employment disputes.

The Court below took great pains to make it seem difficult to sever or correct any perceived errors in Charter's Agreement.

---

[10] Even Ramirez has a non-FEHA claim for wrongful termination in violation of public policy.

For example, the Court included a footnote asserting that it would not be "possible" to sever the purportedly unconscionable discovery limitation in the Agreement because "the arbitration agreement does not provide the arbitrator discretion, apart from the power conferred by the agreement, to order additional discovery." *Ramirez*, 75 Cal.App.5th at 387, fn. 11. In making this point, the Court below not only disregarded the fact that the Agreement provides the arbitrator authority to resolve disputes regarding depositions to enable parties to present all evidence the arbitrator deems material, but it also willfully ignored the fact that the arbitrator can use the AAA Rules as appropriate to provide for all discovery necessary to allow for a full and fair resolution of plaintiff's claims.

The AAA Rules, which are part of the appellate record because they were attached to Charter's Motion, (AA:1:140-91), provide as follows:

> **The parties shall be deemed to have made these rules a part of their arbitration agreement whenever they have provided for arbitration by [AAA]** … or for arbitration by the AAA of an employment dispute without specifying particular rules*. **If a party establishes that an adverse material inconsistency exists between the arbitration agreement and these rules, the arbitrator shall apply these rules**.

(AA:1:154 (AAA Rule 1 (emphasis added))).

In *Armendariz*, this Court held that arbitration rules are presumed to be incorporated by reference in the agreement, and that those rules can save an agreement which is otherwise

lacking in explicit protections for employees. *See Armendariz*, 24 Cal.4th at 104-106. "When, as here, parties expressly agree to submit their commercial disputes to AAA arbitration for resolution, ... such language is reasonably understood, without more, to agree to arbitration pursuant to AAA Rules and to the incorporation of those rules into the parties' agreement." *Swissmex-Rapid S.A. de C.V. v. SP Sys., LLC* (2012), *as modified* (Jan. 4, 2013) 212 Cal.App.4th 539, 548 (quoting *Idea Nuova, Inc. v. GM Licensing Group, Inc.* (2d Cir.2010) 617 F.3d 177).

The Agreement and Guidelines vest the arbitrator with discretion to cure unconscionable provisions when necessary. This includes incorporating provisions of the AAA rules when needed to protect employees by providing due process and all the requirements enumerated in *Armendariz*. This common procedure is confirmed by AAA's own rules that provide that they apply when the parties agree to use AAA arbitrators and to have AAA administer the arbitration (as the parties did here).

California courts have established that the AAA Rules are inherently fair. The AAA Rules are considered by courts to be the gold standard in assuring fairness in arbitration. *Baltazar*, 62 Cal.4th at 1246 (challenged agreement did not concern the validity of the AAA Rules and therefore unconscionable terms were not artfully hidden from the plaintiff), affirming and superseding, *Baltazar v. Forever 21, Inc.* (2012) 212 Cal.App.4th 221, 241 ("… AAA rules are fair."); *Lagatree v. Luce, Forward,*

Hamilton & Scripps (1999) 74 Cal.App.4th 1105, 1127, 1130 n. 21 ("We also find that the AAA rules governing discovery and remedies are fair to claimants."); *Collins v. Diamond Pet Food Processors of California, LLC* (E.D. Cal. 2013) 2013 WL 1791926 ("Plaintiffs do not argue that the AAA rules do not satisfy the *Armendariz* requirements. In fact, courts generally regard the AAA rules as being fair and neutral."); *Amisil Holdings Ltd. V. Clarium Capital Management* (N.D. Cal. 2007) 622 F.Supp.2d 825, 830 ("The AAA rules allow for discovery, including the production of documents. That the discovery is at the discretion of the arbitrator does not mean that [employee] will necessarily be denied the ability to obtain relevant books and records."); *Lucas v. Gund, Inc.* (C.D. Cal. 2006) 450 F.Supp.2d 1125, 1131-1134 ("The agreement provides that the AAA Employment Dispute Resolution Rules shall govern the arbitration, rules which have been carefully drafted by the AAA to ensure thy are fair to all parties."); *Roman*, 172 Cal.App.4th at 1476 ("There appears to be no meaningful difference between the scope of discovery approved in *Armendariz* and that authorized by the AAA employment dispute rules."); *Lane*, 224 Cal. App. 4th at 693 ("whether implied or in fact, the discovery permitted by the expressly referenced AAA rules satisfied the requirements of *Armendariz* for arbitration of statutory claims.")

Specifically, the AAA Rules guarantee due process and fairness, the applicable statute of limitations, sufficient discovery, and access to all remedies available in court. The AAA Rules were based on the "Due Process Protocol," which "seeks to

ensure fairness and equity in resolving workplace disputes." (AA:1:148). The AAA rules today were based on this Due Process Protocol and "ensure due process in both the mediation and arbitration of employment disputes." (AA:1:148-49).

For example, the AAA Rules provide that the arbitrator shall consider any claim that is filed within the applicable statute of limitations (Rule 4: "Any dispute over the timeliness of the [arbitration] demand shall be referred to the arbitrator.") Therefore, even if the Agreement and Guidelines, standing alone, could be interpreted as having a limitations period shorter than that of FEHA, the arbitrator could turn to the AAA Rules to find that the Agreement should not be considered unconscionable based on a shortened statute of limitations.

Also, the AAA Rules provide that the arbitrator may order sufficient discovery, including depositions, necessary for a full exploration of the issues taking into consideration the expedited nature of arbitration (Rule 9: "The arbitrator shall have the authority to order such discovery, by way of deposition, interrogatory, document production, or otherwise, as the arbitrator considers necessary to a full and fair exploration of the issues in dispute, consistent with the expedited nature of arbitration."). Therefore, the Guidelines and the AAA Rules both provide the arbitrator with authority to order more than four depositions if that were shown to be necessary discovery. This protects Charter from a finding of unconscionability based on a plaintiff's representation that they need more discovery than

Solution Channel allows. *See Sanchez*, 224 Cal.App.4th at 404 (Provision in arbitration agreement granting arbitrator the discretion to grant additional discovery precluded a finding of substantive unconscionability).

F. The Decision Below Violates the FAA.

It is undisputed that the Agreement is covered by the FAA, both because Charter engages in interstate commerce, and the Agreement expressly incorporates the FAA. (AA:1:133 (Section R)). Notably, *Ramirez* does not mention the FAA nor acknowledge that the Agreement is governed by the FAA. The *Patterson* decision, by contrast, acknowledged the FAA, and relied upon *Concepcion* to interpret Charter's Agreement in a way that renders it enforceable. *See Patterson,* 70 Cal.App.5th at 490 (noting "the strong public policy favoring arbitration" as stated in *Concepcion*).

In *Concepcion*, the U.S. Supreme Court examined the language of the FAA and emphasized the importance of state court deference to the FAA's protection of arbitration agreements. "The overarching purpose of the FAA, evident in the text [the statute], is to ensure the enforcement of arbitration agreements according to their terms so as to facilitate streamlined proceedings." *Concepcion*, 563 U.S. at 344. In interpreting arbitration agreements that arise under the FAA, courts cannot impose unconscionability rules that interfere with arbitral efficiency. *Ibid.* The FAA "also displaces any rule that covertly accomplishes the same objective by disfavoring contracts that (oh

so coincidentally) have the defining features of arbitration agreements." *Kindred Nursing Ctrs. Ltd. P'ship v. Clark* (2017) 137 S.Ct. 1421, 1426 ("*Kindred*").

Since *Concepcion* was issued, this Court has acknowledged that decision's preeminence in requiring enforcement of employment arbitration agreements. *See Iskanian v. CLS Transp. L.A., LLC* (2014) 59 Cal.4th 348, 366 (explaining that under *Concepcion* the FAA preempts the California rule invalidating class action waivers in arbitration agreements); *Sonic-Calabasas A, Inc. v. Moreno* (2013) 57 Cal.4th 1109, 1139 (acknowledging that under *Concepcion* the FAA preempts the California rule invalidating waivers of Berman hearings in employment arbitration agreements).

Ramirez contravenes the FAA by imposing unconscionability rules on Charter's Agreement that exceed those enunciated in *Armendariz* and prevent arbitration of claims that the parties agreed to submit to arbitration. *Ramirez*'s insistence that Charter's Agreement is irreparably unconscionable contravenes the FAA, *Concepcion*, and the interpretations of the FAA by this Court.

Ramirez also violates the U.S. Supreme Court's directive in *Kindred*, that arbitration agreements cannot be held to a higher standard than any other agreement. Arbitration agreements must be "on an equal footing with all other contracts." *Id.* at 1429. "Just as judicial antagonism toward arbitration before the [FAA's] enactment 'manifested itself in a great variety of devices

and formulas declaring arbitration against public policy,' *Concepcion* teaches that we must be alert to new devices and formulas that would achieve much the same result today. *Epic Sys. Corp. v. Lewis* (2018) 138 S.Ct. 1612, 1623 ("*Epic*") (quoting *Concepcion*, 563 U.S. at 342).

Ramirez's refusal to interpret or sever any of the four provisions so as to render the Agreement enforceable exhibits an undue hostility toward arbitration. This unexplained hostility can only be based on the nature of the Agreement as an arbitration agreement, since there is no procedural or legal bar to enforcement, as discussed above. For example, there is nothing inherently unlawful about including an attorney's fee provision in a contract. Although Section K may contradict FEHA in this case, not all employment disputes between Charter and its employees arise under FEHA (certainly not in other states). *Kindred* requires that the Agreement be treated the same as any other contract. It cannot be that the mere inclusion of an attorneys' fee provision renders the entire agreement unenforceable. The same is true of provisions which reserve provisional remedies for certain claims, address the applicable statute of limitations, and permit a fair number of depositions in arbitration. "A defense of that kind, *Concepcion* tells us, is one that impermissibly disfavors arbitration whether it sounds in illegality or unconscionability." *Epic*, 138 S.Ct. at 1623.

V. CONCLUSION

California employers and employees deserve a clear path toward achieving the important public policy favoring arbitration as a fair and efficient way to resolve employment disputes. This Court should follow its precedent, from *Armendariz* to *Baltazar*, (and followed by the Court Appeal in *Patterson*) and enforce the Agreement by interpreting it in a lawful manner that is consistent with both the FAA and FEHA.

Appellant therefore respectfully requests that this Court reverse the judgment below and order the lower courts to order arbitration of this dispute.

Dated: September 13, 2022 **HILL, FARRER & BURRILL LLP**

By: */s/ James A. Bowles*
James A. Bowles
Casey L. Morris
Elissa L. Gysi
Attorneys for Defendant-Appellant
CHARTER COMMUNICATIONS, INC.

CERTIFICATE OF WORD COUNT

Pursuant to California Rules of Court, rule 8.204, subdivision (c)(1), the undersigned hereby certifies that this Opening Brief contains 12,702 words, excluding the tables and this certificate according to the word count generated by the computer program used to produce this document.

Dated: September 13, 2022

By: */s/ James A. Bowles*
James A. Bowles

Attorneys for Defendant-Appellant Charter Communications, Inc.

State of California)
County of Los Angeles)
)

Proof of Service by:
US Postal Service
Federal Express

I, Stephen Moore , declare that I am not a party to the action, am over 18 years of age and my business address is: 626 Wilshire Blvd., Suite 820, Los Angeles, California 90017; ca@counselpress.com

On 9/13/2022 declarant served the within: Opening Brief on the Merits **upon:**

Copies FedEx USPS

ELECTRONICALLY SERVED VIA TRUEFILING:

Eric A. Panitz
PANITZ LAW GROUP APC
18000 Studebaker Road, Suite 700
Cerritos, California 90703
eric@panitzlaw.com
Attorneys for Respondent Angelica Ramirez

Copies FedEx USPS

Copies FedEx USPS

Copies FedEx USPS

the address(es) designated by said attorney(s) for that purpose by depositing **the number of copies indicated above,** of same, enclosed in a postpaid properly addressed wrapper in a Post Office Mail Depository, under the exclusive custody and care of the United States Postal Service, within the State of California, or properly addressed wrapper in an Federal Express Official Depository, under the exclusive custody and care of Federal Express, within the State of California

I further declare that this same day the **original and** copies has/have been hand delivered for filing OR the **original and** copies has/have been filed by third party commercial carrier for next business day delivery to:

ELECTRONICALLY FILED VIA TRUEFILING:

SUPREME COURT OF CALIFORNIA
350 McAllister Street
Room 1295
San Francisco, California 94102-4797

I declare under penalty of perjury that the foregoing is true and correct:

Signature: /s/ Stephen Moore, Senior Appellate Paralegal, Counsel Press Inc.; ca@counselpress.com

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **RAMIREZ v. CHARTER COMMUNICATIONS**
Case Number: **S273802**
Lower Court Case Number: **B309408**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **jbowles@hillfarrer.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
BRIEF	Opening Brief on the Merits
REQUEST FOR JUDICIAL NOTICE	Appellant's Request for Judicial Notice
ADDITIONAL DOCUMENTS	Exhibits to Appellant's Request for Judicial Notice Volume 1 of 2
ADDITIONAL DOCUMENTS	Exhibits to Appellant's Request for Judicial Notice Volume 2 of 2

Service Recipients:

Person Served	Email Address	Type	Date / Time
Elissa Gysi Hill Farrer & Burrill LLP 281338	egysi@hillfarrer.com	e-Serve	9/13/2022 1:48:04 PM
Eric Panitz Panitz Law Group APC 243877	eric@panitzlaw.com	e-Serve	9/13/2022 1:48:04 PM
Casey Morris Hill Farrer & Burrill, LLP 238455	cmorris@hillfarrer.com	e-Serve	9/13/2022 1:48:04 PM
James A. Bowles 89383	jbowles@hillfarrer.com	e-Serve	9/13/2022 1:48:04 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

9/13/2022
Date

/s/James A. Bowles
Signature

Bowles, James A. (89383)
Last Name, First Name (PNum)

Hill, Farrer & Burrill, LLP

Law Firm