S275121

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PETER QUACH,

Plaintiff and Respondent,

v.

CALIFORNIA COMMERCE CLUB, INC.,

Defendant and Appellant.

On Review from the Court Of Appeal
Second Appellate District, Division One
Appellate Court Case No. B310458

After an Appeal from Los Angeles Superior Court
Hon. Michael L. Stern
Superior Court No. 19STCV42445

ANSWER BRIEF ON THE MERITS

SANDERS ROBERTS LLP
Reginald Roberts, Jr. [SBN 216249]
*Eric S. Mintz [SBN 207384]
1055 W. 7th Street, Suite 3200
Los Angeles, California 90017-2557
(213) 426-5000
rroberts@sandersroberts.com
emintz@sandersroberts.com

BENEDON & SERLIN, LLP
*Wendy S. Albers [SBN 166993]
Kelly Riordan Horwitz [SBN 205932]
22708 Mariano Street
Woodland Hills, California 91367-6128
(818) 340-1950
wendy@benedonserlin.com
kelly@benedonserlin.com

Attorneys for Defendant and Appellant
CALIFORNIA COMMERCE CLUB, INC.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

Statutes

Rules

Texts

INTRODUCTION

California jurisprudence has long considered the presence and/or absence of prejudice when assessing arbitration waiver. Even before this Court endorsed the multi-factor test for assessing claims of arbitration waiver in *St. Agnes Medical Center v. PacifiCare of California* (2003) 31 Cal.4th 1187 (*St. Agnes*), California courts, explicitly or implicitly, considered prejudice in determining whether arbitration had been waived. The opening brief on the merits filed by plaintiff and respondent Peter Quach (Quach) provides no compelling reason for this Court to dispense with settled California law.

First, Quach's argument that *St. Agnes* has been abrogated by the United States Supreme Court decision in *Morgan v. Sundance, Inc.* (2022) ___ U.S. ___ [142 S.Ct. 1708, 212 L.Ed.2d 753] (*Morgan*) is incorrect. The decision in *Morgan* is tethered to federal procedural law. The procedural provisions of the Federal Arbitration Act (FAA) do *not* apply to state court proceedings unless the parties have expressly opted to apply them, which is not the case here. *Morgan* does not abrogate *St. Agnes* or even suggest that prejudice cannot be considered as a factor for arbitration waiver under state law. To the contrary, it expressly leaves that decision to state law.

Second, Quach's argument – that California law on arbitration waiver should conform to a traditional waiver

analysis in other contractual settings – is faulty for several reasons. While *Morgan* concluded the FAA does not authorize arbitration-specific rules that give preference to arbitration, California law differs from federal law in that it *favors* arbitration. Under California law, an arbitration agreement may only be *invalidated* for the same reasons as other contracts. California law does not preclude special rules that favor arbitration. Moreover, this Court in *St. Agnes* expressly recognized that, in an arbitration context, the term "waiver" is interpreted more broadly than in a traditional waiver analysis. In the context of arbitration, the appropriate inquiry is: when does a party *lose* the contractual right to arbitrate? This inquiry requires a broader analytical framework which incorporates principles of waiver, forfeiture, and estoppel.

The *St. Agnes* factors set forth a reasonable and workable framework based on well-established principles for determining when a party loses a contractual right which necessarily includes a prejudice component. That test should be reaffirmed here.

Finally, even were this Court to exclude prejudice from consideration in claims of arbitration waiver, the Court of Appeal properly considered other relevant factors in finding there was no waiver. Its decision should stand on those factors alone.

Accordingly, the Court of Appeal's decision should be affirmed.

FACTUAL AND PROCEDURAL STATEMENT

A. Quach Agrees to Resolve all Disputes Arising Out of His Employment With Commerce Club Through Binding Arbitration.

Defendant and appellant California Commerce Club, Inc. (Commerce Club) operates a hotel and casino located in Commerce, California. (AA 72.) In 1989, Commerce Club hired Quach to work as a Floorperson on the gambling floor. (*Ibid.*) Quach's job duties included, among other things, watching for suspicious activity and maintaining the integrity of the casino games. (*Ibid.*)

In February 2015, Commerce Club updated its arbitration and mandatory dispute resolution policy. (AA 72-73, 78.) The Human Resources Department notified all casino employees to attend a mandatory arbitration meeting. (AA 73, 79.) The arbitration meetings ran for several days in February, twenty-four hours a day, every 30 minutes with the exception of the attendants' meal breaks. (*Ibid.*) At the meeting, employees watched a video presentation explaining the details of the new arbitration and mandatory dispute resolution process. (*Ibid.*) The video presentation explained, among other things, that signing the arbitration agreement was a condition of continued employment at the casino. (AA 74.) Each employee in attendance received an arbitration policy packet, which included

the arbitration agreement in English, Chinese, and Spanish. (AA 73, 79.) Employees had thirty days to review and sign the arbitration agreement, titled "Arbitration Agreement and Mandatory Dispute Resolution Process," and return the executed agreement to the Human Resources Department. (AA 73-74, 83-84.)

On February 18, 2015, Quach attended one of the arbitration meetings, signed the arbitration agreement that day, and returned it to Commerce Club. (AA 74, 81, 83-84.) The arbitration agreement was also signed by the executive director for Human Resources on behalf of Commerce Club. (AA 84.) The arbitration agreement required the parties to submit any employment-related claims to binding arbitration after exhausting efforts to informally resolve the dispute. (AA 83-84.)

B. Notwithstanding His Agreement to Arbitrate, Quach Sues Commerce Club in Superior Court Based on a Dispute Arising Out of His Employment.

On November 22, 2019, Quach filed the present action against Commerce Club. (AA 8-20.) Quach alleged causes of action under California law for (1) wrongful termination; (2) age discrimination; (3) retaliation; (4) harassment; and (5) failure to take reasonable steps to prevent discrimination and harassment.

(*Ibid.*) All of the causes of action asserted are based on Quach's employment with Commerce Club. (*Ibid.*)

The gravamen of Quach's complaint is that he was discriminated against, harassed, and ultimately terminated based on his age. (AA 12-18.) At the time of his termination, Quach was 69 years old. (AA 10.) Quach alleged that after a change in upper management at the casino in 2015, "older employees were written up, suspended and terminated for minor, trivial, nonexistent, and fabricated violations of supposed company policy, rules and regulations." (AA 10-11.) Around this time, management allegedly urged Quach to retire. (AA 11.) In April 2016, he was suspended over a purportedly "trivial non-issue." (*Ibid.*) Two years later, in November 2018, he was suspended and subsequently terminated after a customer gambled with five counterfeit twenty-dollar bills. (*Ibid.*) Commerce Club accused him of being dishonest about the incident. (*Ibid.*) Quach filed a grievance with Commerce Club, objecting to the termination. (*Ibid.*) In December 2018, he received notice that Commerce Club had reviewed the decision and ratified the termination. (*Ibid.*)

C. Commerce Club Files an Answer and Both Parties Serve Initial Discovery Requests.

In December 2019, Quach served Commerce Club with the complaint. (See AA 180.) Commerce Club filed its answer in

January 2020, asserting the right to arbitrate as an affirmative defense. (AA 28, 31.) In January 2020, both parties propounded an initial set of discovery requests, which consisted of form interrogatories, special interrogatories, requests for admission, and a request for production of documents. (AA 105-106.)

The parties appeared for a case management conference on February 28, 2020. (AA 105.) In its case management conference statement, Commerce Club requested a jury trial. (AR 12.) The trial court scheduled a jury trial for December 7, 2020 (AR 25), and both parties posted jury fees (AA 105).

In March 2020, Commerce Club served responses to Quach's initial set of discovery and propounded a second set of special interrogatories. (AA 106.) In the process of responding to Quach's request for production of documents, Commerce Club found a complete copy of Quach's signed arbitration agreement. (AA 76.)

D. The COVID-19 Pandemic Brings the Parties' Discovery Activities to a Near Standstill.

In March 2020, the COVID-19 pandemic and ensuing widespread court closures and business shutdowns brought the parties' litigation to a near standstill.[1] (AA 64-65.) The

[1] "On March 23, 2020, the Chief Justice of the California Supreme Court issued the first of a series of emergency orders delaying lower court proceedings for the foreseeable future." (*Quach v. Commerce Club, Inc.* (2022) 78 Cal.App.5th 470, 475 (*Quach*).)

pandemic forced Commerce Club to close its operations, impacting access to information and witnesses. (AA 64.) Commerce Club employees involved in Quach's termination were furloughed due to the pandemic and unavailable for deposition. (AA 107.)

On April 10, 2020, Quach's counsel sent a three-page meet and confer letter based on purported deficiencies in Commerce Club's discovery responses. (AA 106, 119-121.) Commerce Club responded to the meet and confer letter on May 5, 2020. (AA 106.) Thereafter, the meet and confer process was put on hold until Commerce Club could provide verifications to its discovery responses. (*Ibid.*)

On June 23, 2020, Quach appeared for a one-day deposition via Zoom. (AA 107; see also AA 64.) Commerce Club's counsel planned to conduct a second day of Quach's deposition, but that did not occur. (*Ibid.*) Thus, from April 2020 until September 2020, the only litigation activities that occurred was one exchange of meet and confer letters and a one-day partial deposition of Quach. (AA 106-107.)

On September 16, 2020, the trial court continued the December 7, 2020 trial date to July 19, 2021 due to pandemic-related court congestion. (AA 36, 65.) About the same time, Commerce Club provided verifications to its earlier discovery responses. (AA 106, 134.) After receiving the verifications, Quach's counsel renewed his efforts to meet and confer by

sending a follow-up letter on September 25, 2020. (AA 106-107, 134-137.)

On October 9, 2020, both parties' counsel met and conferred by phone, and Commerce Club's counsel agreed to provide supplemental discovery responses. (AA 108.) Shortly thereafter, on October 29, Commerce Club asked Quach to stipulate to stay the action and proceed to arbitration based on the parties' signed arbitration agreement. (AA 64, 67-68, 108.) Quach refused to stipulate, asserting that Commerce Club had waived its right to arbitrate. (AA 64, 67-68.)

E. Commerce Club Moves to Compel Arbitration.

On December 23, 2020, Commerce Club filed a motion to compel arbitration and stay the present action. (AA 38-58.) The motion was brought pursuant to both the California Arbitration Act (CAA) and the FAA.[2] (AA 39.)

---

[2] The arbitration agreement did not contain a choice-of-law provision. (See AA 83-84.) The parties disputed below whether the agreement involved interstate commerce and was governed by the FAA or CAA. (See AA 47-48, 96-97.) That dispute was not resolved presumably because no discernable difference existed between federal and state law applicable to wavier. (See *St. Agnes*, *supra*, 31 Cal.4th at pp. 1194-1196.) This dispute still does not need to be resolved because, as discussed below, arbitration waiver is a procedural, rather than a substantive matter, and the procedural provisions of the CAA apply in *California* courts absent a choice-of-law clause expressly

In the motion, Commerce Club asserted it did not waive its right to compel arbitration because only minimal discovery had been conducted to date, no other motions had been filed, and the discovery conducted would have been equally available to the parties in arbitration. (AA 50, 64-65.) Thus, Commerce Club had not unreasonably delayed in asserting its right to arbitrate and Quach could not establish any prejudice from the delay. (AA 50, 64.)

In support of its motion, Commerce Club submitted, among other exhibits, an executed copy of Quach's arbitration agreement and the arbitration agreement attendance tracking log with Quach's signature. (AA 81, 83-84.) It also supported its motion with a declaration from its Executive Director of Human Resources, Jose Garcia, who oversaw the planning and execution of Commerce Club's arbitration policy in 2015. (AA 72-76.) Garcia declared that "[a]n initial review of [Quach's] lengthy employee file by [Commerce Club] staff (over 900+ pages) did not reveal a complete, signed arbitration agreement. Part of the 2015 Arbitration Agreement was found, but it was not until the process of responding to [Quach's] requests for production of documents, that a complete and signed copy of the 2015 Arbitration Agreement was found." (AA 76.) Garcia further explained that *after* Quach was terminated, Commerce Club

---

incorporating the procedural provisions of the FAA.

issued an updated arbitration agreement for employees to review and sign in mid-December 2018. (*Ibid.*) Because Quach was no longer employed with Commerce Club, he was never provided nor signed the December 2018 arbitration agreement, which is the current arbitration agreement in place. (*Ibid.*)

Quach opposed the motion to compel arbitration (AA 87-138) and filed objections to Commerce Club's evidence (AA 139-142). Quach asserted that Commerce Club had waived the right to arbitrate. Quach argued: (1) Commerce Club was aware of the right to arbitrate at the outset of the litigation because the signed and dated second page of the two-page arbitration agreement was included in the employee file provided to Quach's counsel prior to filing suit (AA 98-99); (2) Commerce Club engaged in acts inconsistent with arbitration by propounding and responding to discovery, participating in the meet and confer process, posting jury fees, and taking Quach's deposition (AA 99-100); and (3) Quach had been prejudiced by expending time and money on the litigation (AA 100-102). Alternatively, Quach argued the arbitration agreement was unconscionable. (AA 102-104.)

In support of the opposition, Quach's counsel submitted a declaration detailing the parties' activities that had occurred in the course of the litigation. (AA 105-108.)

Commerce Club filed a reply. (AA 143-151.) Commerce Club emphasized that the parties were still in the early stages of discovery (having conducted only one deposition and exchanged

one set of written discovery), the trial date was over seven months away, Commerce Club had not taken advantage of any judicial discovery procedures that would have been unavailable in arbitration, and Quach had failed to articulate any prejudice from the delay other than the expenditure of time and money which is an insufficient basis for a waiver finding. (AA 146-147.)

Commerce Club addressed Quach's unconscionability argument. (AA 147-148.) Additionally, it filed a response to Quach's evidentiary objections. (AA 152-157.)

F. The Trial Court Finds Commerce Club Waived the Right to Arbitration and Denies its Motion. Commerce Club Appeals.

On January 22, 2021, the trial court took the motion to compel arbitration under submission without a hearing. (AA 158.) The court denied the motion that same day, concluding that Commerce Club waived its right to arbitrate. (AA 158-159.) The court found that Commerce Club was aware of its right to compel arbitration based on the company policy and the pretrial exchanges. (AA 159.) The court also found that the discovery conducted to date was inconsistent with the right to arbitrate, and that this discovery *in and of itself* had resulted in prejudice to Quach. (*Ibid.*) Because it found Commerce Club waived its right to arbitrate, the court did not address Quach's claim of

unconscionability. (See AA 158-159.) Nor did the court rule on the evidentiary objections. (See *ibid.*)

Commerce Club appealed the order denying arbitration. (AA 161.)

G. The Court of Appeal Reverses the Order Denying Arbitration.

On April 14, 2022, in a 2-1 unpublished decision, the Court of Appeal reversed the trial court's order denying arbitration, finding Commerce Club did not waive its right to arbitrate and Quach failed to show the arbitration agreement was unconscionable. (See *Quach v. Commerce Club, Inc.* (Apr. 14, 2022) 2022 WL 1113998.)

On April 28, 2022, a private practitioner, as amicus curiae, requested publication of the Court of Appeal's opinion, claiming the opinion's analysis concerning arbitration waiver "would be valuable precedent." (Letter from Publication Requester at p. 1.)

On May 10, 2022, the Court of Appeal vacated its prior opinion and issued a new 2-1 opinion with no substantive changes and the same disposition, but certified the opinion for partial publication. (*Quach*, *supra*, 78 Cal.App.5th 470.) The Court of Appeal did not order publication of the portion of its opinion finding no unconscionability. (*Ibid.*)

In its majority opinion, the Court of Appeal relied on this Court's decision in *St. Agnes* to find Quach's showing insufficient

as a matter of law to establish waiver. (*Quach*, *supra*, 78 Cal.App.5th at pp. 474, 478.) The majority reasoned Commerce Club's mere participation in the litigation alone was insufficient to establish waiver, particularly where there had been no judicial determination of the merits of arbitrable issues. (*Id.* at pp. 478-479.) It explained that, in the instant case, the parties' litigation activities were "limited to party-directed discovery, with no trial court involvement, and certainly no determinations by the court on the merits." (*Id.* at p. 479.)

In addition, the majority found the expenditure of time and money on the litigation – the only purported prejudice to Quach – was insufficient to establish waiver, particularly where Quach admitted he incurred no litigation expenses he otherwise would not have incurred in arbitration. (*Quach*, *supra*, 78 Cal.App.5th at pp. 474, 478-479.)

The majority further observed that "[t]he record also is bereft of evidence that Commerce Club engaged in bad faith abuse of judicial processes." (*Quach*, *supra*, 78 Cal.App.5th at p. 482; see also p. 484 ["There is no indication the trial court inferred nefarious intent, nor shall we on this record"].)

Judge Crandall, sitting *pro tem*, dissented on the waiver issue.[3] He argued prejudice had been established as a result of

---

[3] Judge Crandall concurred, albeit reluctantly, with the majority's decision on unconscionability. (*Quach*, *supra*, 78 Cal.App.5th at p. 485 & fn. 1 [dis. opn. of Crandall, J.].)

the delay in moving to compel arbitration which "undermined the very nature of a quick resolution that is *the* central tenet of arbitration." (*Quach*, *supra*, 78 Cal.App.5th at p. 490 [dis. opn. of Crandall, J.].)

H. This Court Grants Review.

A few weeks after the Court of Appeal published its opinion, the United States Supreme Court issued its decision in *Morgan*. *Morgan* held federal policy favoring arbitration does not authorize federal courts to create an arbitration-specific *federal procedural rule* conditioning waiver of the right to arbitrate on a showing of prejudice. (*Morgan*, *supra*, 142 S.Ct. at pp. 1712-1713.) *Morgan* did not address the role state law may play in resolving claims of arbitration waiver. (*Id.* at p. 1712.)

Quach filed a petition for review asking this Court to provide post-*Morgan* guidance on the role of prejudice in arbitration waiver in California. This Court granted review.

LEGAL DISCUSSION

I. *MORGAN* HAS NO BEARING ON ARBITRATION WAIVER IN CALIFORNIA.

A. The United Supreme Court's Analysis in *Morgan* Is Tethered to Federal Procedural Law.

In *Morgan*, the United States Supreme Court decided "a single issue" – can federal courts "create arbitration-specific variants of federal procedural rules," such as the rule conditioning waiver of the right to arbitrate on a showing of prejudice, "based on the FAA's 'policy favoring arbitration.'" (*Morgan*, *supra*, 142 S.Ct. at p. 1712.) In ruling they cannot, the Court observed that "[o]utside the arbitration context, a federal court assessing waiver does not generally ask about prejudice. Waiver . . . 'is the intentional relinquishment or abandonment of a known right.' [Citation.] To decide whether a waiver has occurred, the court focuses on the actions of the person who held the right; the court seldom considers the effects of those actions on the opposing party." (*Id*. at p. 1713.)

The Court traced the development of an arbitration-specific rule requiring a showing of prejudice to a Second Circuit decision which based the rule on the FAA's policy favoring arbitration. (*Morgan*, *supra*, 142 S.Ct. at p. 1713.) The Court, however, observed that this policy is "not about fostering arbitration,"

but rather "about treating arbitration contracts like all others." (*Ibid.*) It "'is merely an acknowledgement of the FAA's commitment to overrule the judiciary's longstanding refusal to enforce agreements to arbitrate and to place such agreements upon the same footing as other contracts.' [Citation.]" (*Ibid.*) As such, the FAA "does not authorize federal courts to invent special, arbitration-preferring procedural rules." (*Ibid.*)

The Court further reasoned that "the text of the FAA makes clear that courts are not to create arbitration-specific procedural rules like the one we address here. Section 6 of the FAA provides that any application under the statute – including an application to stay litigation or compel arbitration – 'shall be made and heard in the manner provided by law for the making and hearing of motions' . . . *A directive to a federal court* to treat arbitration applications 'in the manner provided by law' for all other motions is simply a command to apply *the usual federal procedural rules*, including any rules relating to a motion's timeliness." (*Morgan*, *supra*, 142 S.Ct. at p. 1714, emphasis added.)

The Court did not address "the role state law might play in resolving when a party's litigation conduct results in the loss of a contractual right to arbitrate . . . [or] whether to understand that inquiry as involving rules of waiver, forfeiture, estoppel, laches, or procedural timeliness." (*Morgan*, *supra*, 142 S.Ct. at p. 1712; see also *id.* at p. 1714 [on remand, the Court of Appeals may

"determine that a different procedural framework (such as forfeiture) is appropriate"].) The Court's "sole holding . . . is that [a federal Court of Appeals] may not make up *a new procedural rule* based on the FAA's "'policy favoring arbitration.'" (*Id.* at p. 1714, emphasis added.)

Accordingly, *Morgan's* holding that prejudice is not required for a finding of waiver is limited to federal courts and firmly grounded in federal procedural law.

B. Procedural Aspects of the FAA Do Not Explicitly Apply to State Court Proceedings.

The FAA's provisions fall into two distinct categories: substantive and procedural. The statute's "'primary substantive provision'" can be found in Section 2. (*Rent-A-Center, West, Inc. v. Jackson* (2010) 561 U.S. 63, 67 [130 S.Ct. 2772, 2776] (*Rent-A-Center, West, Inc.*, quoting *Moses H. Cone Memorial Hospital v. Mercury Constr. Corp.* (1983) 460 U.S. 1, 24 [103 S.Ct. 927, 941].) Section 2 provides:

> A written provision in . . . a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract. . . .

(9 U.S.C. § 2.)

This substantive provision "places arbitration agreements on equal footing with all other contracts . . . and requires courts to enforce them according to their terms." (*Rent-A-Center, West, Inc., supra,* 561 U.S. at pp. 67-68, internal citations omitted.) Section 2 preempts any "state law that withdraws the power to enforce arbitration agreements. . . ." (*Southland Corp. v. Keating* (1984) 465 U.S. 1, 16, fn. 10 [104 S.Ct. 852, 861, fn. 10] (*Southland Corp.*).)

The FAA also contains "procedures by which federal courts implement § 2's substantive rule." (*Rent-A-Center, West, Inc., supra*, 561 U.S. at p. 68.) In contrast with the FAA's substantive provision, courts have recognized in myriad cases that procedural aspects of the FAA do *not* apply to cases pending in California courts. (*Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University* (1989) 489 U.S. 468, 477, fn. 6 [109 S.Ct. 1248, 1254, fn. 6] [FAA's procedural provisions apply only in federal court]; *Southland Corp., supra,* 465 U.S. at p. 16, fn. 10 [Section 4 of FAA does not apply to state courts]; *Cable Connection, Inc. v. DIRECTV, Inc.* (2008) 44 Cal.4th 1334, 1351 [Sections 3 and 4 of FAA do not apply to state court]; *Cronus Investments, Inc. v. Concierge Services* (2005) 35 Cal.4th 376, 388 (*Cronus*) [FAA procedural provisions were intended to apply only in federal court proceedings]; *Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 405-406, 409 (*Rosenthal*) [FAA's procedural rules are not binding on state court];

Judge v. Nijjar Realty, Inc. (2014) 232 Cal.App.4th 619, 629 [appealability of order vacating arbitration award is procedural issue governed by California law]; *Mave Enterprises, Inc. v. Travelers Indemnity Co.* (2013) 219 Cal.App.4th 1408, 1429 [procedural provisions of CAA apply in California courts unless contract states otherwise]; *Swissmex-Rapid S.A. de C.V. v. SP Systems, LLC* (2012) 212 Cal.App.4th 539, 541 [Section 9 of FAA which requires written consent of parties to judicial confirmation of award is procedural rule which only applies in federal court]; *Valencia v. Smyth* (2010) 185 Cal.App.4th 153, 173-174 (*Valencia*) [FAA procedural provisions do not apply in state court unless the contract expressly incorporates them]; *Muao v. Grosvenor Properties* (2002) 99 Cal.App.4th 1085, 1092 [Section 16 of FAA is procedural rule that does not apply in state court].)

The Court of Appeal exhaustively surveyed California case law in this area in *Valencia* and aptly summed up the judicial consensus that "the procedural provisions of the CAA apply in *California* courts by default." (*Valencia, supra,* 185 Cal.App.4th at p. 174, original italics.) In order to overcome this default rule, the parties must expressly designate that the arbitration proceedings "'move forward under the FAA's procedural provisions rather than under state procedural law.'" (*Ibid.*, quoting *Cronus*, *supra*, 35 Cal.4th 376 at p. 394.)

The arbitration agreement in the present case contained no such express designation. (See AA 83-84.) Accordingly, California procedures apply.

The CAA requires a court to order parties to an arbitration agreement to arbitrate a controversy unless the right to compel has been waived by the moving party. (Code Civ. Proc., § 1281.2, subd. (a).) This statute provides the procedure which govern arbitration cases in California courts even when the substantive provisions of the FAA otherwise govern. (*Cronus, supra*, 35 Cal.4th at p. 394; *Rosenthal, supra,* 14 Cal.4th at p. 402.) Accordingly, California procedural rules on waiver apply here regardless of whether the arbitration agreement is governed by the FAA or CAA.

In sum, since *Morgan* made clear waiver is a federal procedural rule rather than a substantive matter, *Morgan* has no bearing on the present case. It does not abrogate *St. Agnes* or in any way signify that prejudice cannot be considered as a factor for arbitration waiver in California. *Morgan* reviewed FAA provisions that speak only to the federal courts and expressly left open "the role state law might play in resolving when a party's litigation conduct results in loss of a contractual right to arbitrate," including whether a different procedural framework is appropriate. (*Morgan*, *supra*, 142 S.Ct. at pp. 1712, 1714.)

II. THIS COURT SHOULD AFFIRM THE *ST. AGNES* MULTI-FACTOR TEST FOR DETERMINING WAIVER.

A. The *St. Agnes* Factors Provide Practical Guideposts for Resolving Claims of Arbitration Waiver.

Because *Morgan* does not require California courts to change their analysis of whether a party has lost the right to compel arbitration, this Court can and should affirm that *St. Agnes'* multi-factor test provides the appropriate procedural framework for determining the loss of a contractual right to arbitrate in California courts. The *St. Agnes* test remains relevant because it reflects California's policy favoring arbitration and it captures and summarizes decades of California courts' analysis of arbitration waiver.

In *St. Agnes*, this Court addressed the issue of arbitration waiver based on a party's litigation conduct. The Court observed that California law "reflects a strong policy favoring arbitration agreements and requires close judicial scrutiny of waiver claims." (*St. Agnes*, *supra*, 31 Cal.4th at p. 1195.) Thus, while "a court may deny a petition to compel arbitration on the ground of waiver [under state law] (§ 1281.2, subd. (a)), waivers are not to be lightly inferred and the party seeking to establish a waiver bears a heavy burden of proof." (*Ibid.*; see *Church v. Public Utilities*

Commission of State (1958) 51 Cal.2d 399, 401 ["a waiver of a right cannot be established without a clear showing of an intent to relinquish such right and doubtful cases will be decided against a waiver"].)

California's clear preference for arbitration distinguishes this state's policy from federal law which *Morgan* concluded does not give preference to enforcement of arbitration agreements. (See, e.g., *Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 9-10 [California public policy favors enforcement of arbitration agreements].) The fact that the United States Supreme Court has now interpreted federal law to bar creation of legal rules which preference arbitration does not require this Court to retreat from California's lengthy history of favoring arbitration. Indeed, federal and state procedures frequently differ. (*Manco Contracting Co. (W.L.L.) v. Bezdikian* (2008) 45 Cal.4th 192, 202 [collecting cases on different federal and state law on finality of decisions]; *Agricultural Labor Relations Bd. v. Tex-Cal Land Management, Inc.* (1987) 43 Cal.3d 696, 701, fn. 3 [recognizing differences between procedures governing state Agricultural Labor Relations Board and National Labor Relations Board]; *Veitch v. Superior Court* (1979) 89 Cal.App.3d 722, 728 [California procedures governing motions for new trial differ from federal procedures].) Adopting a different procedural rule is particularly appropriate where necessary to advance and remain

consistent with this Court's prior pronouncements about preferencing arbitration.

Indeed, it was in looking to California case law and the California law's preference for arbitration that this Court adopted a multi-factor test for assessing when a moving party loses the right to arbitrate. In so doing, the Court endorsed a flexible, fact-based determination by trial courts, noting that "no single test delineates the nature of the conduct that will constitute a waiver of arbitration." (*St. Agnes*, *supra*, 31 Cal.4th at p. 1195.)

The Court endorsed the following factors as relevant in assessing claims of waiver: "(1) whether the party's actions are inconsistent with the right to arbitrate; (2) whether the litigation machinery has been substantially invoked and the parties were well into preparation of a lawsuit before the party notified the opposing party of an intent to arbitrate; (3) whether a party either requested arbitration enforcement close to the trial date or delayed for a long period before seeking a stay; (4) whether a defendant seeking arbitration filed a counterclaim without asking for a stay of the proceedings; (5) whether important intervening steps [e.g., taking advantage of judicial discovery procedures not available in arbitration] had taken place; and (6) whether the delay affected, misled, or prejudiced the opposing party." (*St. Agnes*, *supra*, 31 Cal.4th at p. 1196, quoting *Sobremonte v. Superior Court* (1998) 61 Cal.App.4th 980, 992

(*Sobremonte*), internal quotations omitted.) These factors were re-affirmed by this Court in *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 375 (*Iskanian*), abrogated on other grounds in *Viking River Cruises, Inc. v. Moriana* (2022) __ U.S. __ [142 S.Ct. 1906, 213 L.Ed.2d 179].)

Long before *St. Agnes* articulated these guideposts for determining waiver, California courts had already agreed on the two outlying points: a party does not waive its right to seek arbitration merely by filing a lawsuit and, at the other end of the spectrum, waiver clearly occurs when litigation has resulted in a determination on the merits. (*Doers v. Golden Gate Bridge etc. Dist.* (1979) 23 Cal.3d 180, 183, 186.) The cases in between these points is where disagreement appeared. The factors articulated in *St. Agnes* arose to address the grey areas between these two points and provide guidance for determining when a moving party's litigation conduct rises to the level of a waiver. Without such factors, courts will struggle in determining how much litigation conduct is sufficient to constitute a waiver or how much delay is unreasonable which will lead to inconsistent results.

Additionally, maintaining a waiver analysis incorporating prejudice as a factor would *not* create an issue of federal preemption. The FAA only preempts contrary state laws that *disadvantage* the enforceability of arbitration agreements. (See *Cable Connection, Inc. v. DIRECTV, Inc.*, *supra*, 44 Cal.4th at p. 1352 [the determinative question for preemption is whether

CAA procedures conflict with the FAA policy favoring the enforcement of arbitration agreements].) California's more stringent waiver analysis, consistent with California policy, promotes enforcement of arbitration agreements and, therefore, is not at odds with the FAA.

In sum, the *St. Agnes* factors have provided a workable framework for arbitration waiver in California. *Morgan* does not require this Court to upend years of California precedent on this subject.

B. Prejudice Has Long Been Considered a Factor In Assessing Claims of Arbitration Waiver Under California Law.

Quach urges this Court to eliminate the prejudice factor from the analysis of whether a party has waived its right to compel arbitration. Quach's reasons for advocating this change to the *St. Agnes* factors rests on two grounds: (1) *Morgan* does not recognize prejudice as a relevant consideration in the analysis of waiver of arbitration in federal courts; and (2) the purported need to conform California arbitration waiver law with analysis of waiver in other contractual settings. Neither requires this Court to abandon a factor that has a long and established history of providing guidance to California courts in determining whether waiver of arbitration has occurred.

Quach's first argument has already been addressed and shown wanting. As detailed above, *Morgan* applies only in federal courts and is based on the Supreme Court's conclusion that the FAA does not allow courts to give preference to arbitration. Because California's law differs from federal law in that it favors arbitration, following *Morgan* would undercut California policy.

Quach's second argument fares no better. Quach ignores that fact that *St. Agnes* was not the first California case – or even the first case from this Court – to recognize prejudice is a consideration in assessing whether arbitration has been waived. Indeed, that consideration has a long-established lineage in California jurisprudence. (See *Christensen v. Dewor Developments* (1983) 33 Cal.3d 778, 782; *Keating v. Superior Court* (1982) 31 Cal.3d 584, 605, revd. in part by *Southland Corp., supra*, 465 U.S. 1; *Doers v. Golden Gate Bridge, Highway and Transportation Dist.*, *supra*, 23 Cal.3d at pp. 188-189; *Martinez v. Scott Specialty Gases, Inc.* (2000) 83 Cal.App.4th 1236, 1250; *Groom v. Health Net* (2000) 82 Cal.App.4th 1189,1196; *Berman v. Health Net* (2000) 80 Cal.App.4th 1359, 1364-1369; *Guess?, Inc. v. Superior Court* (2000) 79 Cal.App.4th 553, 558; *Sobremonte*, *supra*, 61 Cal.App.4th at pp. 992-993; *Davis v. Continental Airlines, Inc.* (1997) 59 Cal.App.4th 205, 212; *Chase v. Blue Cross of California* (1996) 42 Cal.App.4th 1142, 1149-1151; *Thorup v. Dean Witter Reynolds, Inc.* (1986) 180

Cal.App.3d 228, 237; *A.D. Hoppe Co. v. Fred Katz Constr. Co.* (1967) 249 Cal.App.2d 154, 161-162.)

Quach's reason for jettisoning over 50 years of jurisprudence recognizing prejudice is a proper consideration in determining whether arbitration has been waived stems from his belief that this Court is required to do so under Code of Civil Procedure section 1281. That statute provides:

> "A written agreement to submit to arbitration an existing controversy or a controversy thereafter arising is valid, enforceable and irrevocable, save upon such grounds as exist for the revocation of any contract."

Quach contends the statute requires perfect symmetry and parity between waiver in the context of arbitration and any other contract.

As an initial matter, Quach's premise that consideration of prejudice is unique in the context of arbitration contracts is flawed. California courts *have* considered prejudice when assessing waiver of contractual rights outside of the arbitration context. (See, e.g., *Applera Corp. v. MP Biomedicals, LLC* (2009) 173 Cal.App.4th 769, 791 [waiver of contractual provision requires showing of prejudice]; *Chase v. National Indem. Co.* (1954) 129 Cal.App.2d 853, 858 [waiver will not be presumed absent prejudice to other party].) And prejudice is the determinative consideration when assessing whether a party has

revoked its waiver of a contractual right. (*Kacha v. Allstate Ins. Co.* (2006) 140 Cal.App.4th 1023, 1035.)

Even if there were no history of considering prejudice in assessing waiver of contractual rights outside of the arbitration context, this would not be a reason to discard the prejudice factor. To do so would be to disregard the purpose of the CAA which, reflects " ' "a friendly policy toward the arbitration process." ' " (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 97-98, quoting *Keating v. Superior Court*, *supra*, 31 Cal.3d at pp. 601-602.) Consistent with that policy, this Court has held "an arbitration agreement may only be *invalidated* [under Section 1281] for the same reasons as other contracts." (*Id.* at p. 98, emphasis added.) In other words, special rules may not be adopted to *disadvantage* arbitration agreements. The waiver analysis applied to arbitration agreements does not create a special rule to invalidate arbitration agreements; instead, it advances "a friendly policy toward the arbitration process." (*Id.* at pp. 97-98.)

Moreover, as this Court explained in *St. Agnes* "the term 'waiver' has a number of meanings in statute and case law. [Citation.] While 'waiver' generally denotes the voluntary relinquishment of a known right, it can also refer to the loss of a right as a result of a party's failure to perform an act it is required to perform, regardless of the party's intent to relinquish the right. [Citations.] In the arbitration context, '[t]he term

'waiver' has also been used as a shorthand statement for the conclusion that a contractual right to arbitration has been lost.' [Citation.]" (*St. Agnes*, *supra*, 31 Cal.4th at p. 1195, fn. 4.) Quach's argument disregards the broad manner in which the term "waiver" is used in the arbitration context and seeks to shoehorn the term into a more restricted contractual box from which it long ago escaped.

In addition to waiver, a contractual right also can be lost through principles of estoppel or forfeiture. As this Court has observed previously, "[a]lthough the distinctions between waiver, estoppel, and forfeiture can be significant, the terms are not always used with care." (*Lynch v. California Coastal Com.* (2017) 3 Cal.5th 470, 476 (*Lynch*).)

Waiver "requires an existing right, the waiving party's knowledge of that right, and the party's actual intention to relinquish the right. [Citation.] Waiver always rests upon intent. [Citation.] The intention may be express, based on the waiving party's words, or implied, based on conduct that is so inconsistent with an intent to enforce the right as to induce a reasonable belief that such right has been relinquished. [Citations.]" (*Lynch*, *supra*, 3 Cal.5th at p. 475, internal quotations omitted.)

"Waiver differs from estoppel, which generally requires a showing that a party's words or acts have induced detrimental reliance by the opposing party. [Citation.] It also differs from the related concept of forfeiture, which results when a party fails to

preserve a claim by raising a timely objection." (*Lynch*, *supra*, 3 Cal.5th at pp. 475-476.)

This Court in *St. Agnes* expressly recognized that, in the arbitration context, "waiver" has a broader connotation. (See *St. Agnes*, *supra*, 31 Cal.4th at p. 1195, fn. 4.) The *St. Agnes* factors incorporate principles of waiver, forfeiture and estoppel in determining whether a party has lost the contractual right to arbitrate. The factors look not only at traditional waiver analysis, i.e., the moving party's conduct (factors 1 and 4), but also at the timing of the request to arbitrate, incorporating the related concept of forfeiture (factors 2 and 3). Factors 5 and 6 invite consideration of the effect of the request on the opposing party which could be viewed as an estoppel to deny waiver. The law allows a party who knowingly waives a right to retract its waiver so long as the other party has not relied on the waiver to its detriment. (13 Williston on Contracts (9th ed. 2022) § 39:20; see also *Storek & Storek, Inc. v. Citicorp Real Estate, Inc.* (2002) 100 Cal.App.4th 44, 58, fn. 11; *Lally v. Allstate Ins. Co.* (S.D.Cal. 1989) 724 F.Supp. 760, 763; 1 Witkin, Summary of Cal. Law (11th ed. 2022) Contracts, § 850.) Because waiver is a unilateral act, it requires reliance or consideration to become irrevocable.

Thus, a traditional waiver analysis which looks solely at the conduct of the moving party is not the correct analytical framework for assessing claims of arbitration waiver. Rather the appropriate inquiry is when does a party lose the contractual

right to arbitration. (See *St. Agnes*, *supra*, 31 Cal.4th at p. 1195, fn. 4 ["'[t]he term "waiver" has also been used as a shorthand statement for the conclusion that a contractual right to arbitration has been lost]"'.) That inquiry requires a broader analytical framework which incorporates the concepts of waiver, forfeiture, and estoppel.

In sum, California law sets forth a reasonable framework based on well-established legal principles for determining when a party loses a contractual right. Those principles should be reaffirmed here.

C. Prejudice is an Inherent Consideration in the *St. Agnes* Factors.

Prejudice makes express what is implicit in several of the other *St. Agnes* factors. (See, e.g., *Iskanian, supra*, 59 Cal.4th at p. 376 [recognizing futility is implicit in waiver principles].) Many of the *St. Agnes* factors incorporate the concept of prejudice, i.e., how far along the parties are in preparation for a lawsuit (factor 2); whether the moving party requested arbitration close to the trial date (factor 3); and whether the moving party took advantage of judicial discovery procedures not available in arbitration (factor 5). These factors indirectly invite consideration of the effect of the delay on the opposing party. Thus, eliminating factor 6 – "whether the delay 'affected, misled,

or prejudiced' the opposing party" – will not truly eliminate its consideration. Nor should it.

Whether arbitration waiver has occurred is a fact-intensive inquiry that cannot be determined in a vacuum. How much delay is unreasonable or how much litigation conduct is inconsistent with the right to arbitrate requires a court to examine the totality of the circumstances. In other words, a court may consider prejudice as a relevant factor among the circumstances a court examines in deciding whether a moving party's litigation conduct is inconsistent with an intent to arbitrate or whether the moving party has unreasonably delayed.

At most, this Court should clarify that while prejudice is not necessarily a requirement for arbitration waiver, it is an inherent consideration in assessing whether a party has taken action inconsistent with its right to arbitrate or has unreasonably delayed in seeking arbitration. Otherwise, California trial courts will be left to struggle with how much litigation conduct is inconsistent or how much delay is unreasonable.

III. THE COURT OF APPEAL DECISION MAY BE AFFIRMED ON FACTORS OTHER THAN PREJUDICE.

Even without considering prejudice, the Court of Appeal reached the correct result in this case. While the majority opinion found Quach had not shown any prejudice apart from the

expenditure of time and money on the litigation, it did *not* rely exclusively on the absence of prejudice. Its decision was also grounded on other *St. Agnes* factors.

Specifically, the majority held that Commerce Club's litigation activities were insufficient to constitute waiver. The opinion explained that Quach's "showing below indicated nothing more than the parties participated in litigation. That participation, moreover, largely was limited to party-directed discovery, with no trial court involvement, and certainly no determinations by the court on the merits." (*Quach*, *supra*, 78 Cal.App.5th at p. 479.) As such, "there has 'been no judicial litigation of the merits of arbitrable issues,' and therefore no waiver on that basis. [Citation.]" (*Id.* at p. 478.)

Additionally, the Court of Appeal found Commerce Club's delay was *not* unreasonable. Quach did not claim that "Commerce Club gained information or conducted discovery it would not have been able to obtain in arbitration or that the delay led to lost evidence." (*Quach*, *supra*, 78 Cal.App.5th at p. 479.) Further, "Commerce Club moved to compel arbitration almost seven months before the then-operative trial date, not on the 'eve of trial.' [Citation.]" (*Ibid*.)

As this Court has made clear, mere participation in litigation does not *by itself* constitute waiver. (*Iskanian*, *supra*, 59 Cal.4th at p. 375.) For waiver to apply, a party has to

substantially invoke the litigation process. (*St. Agnes*, *supra*, 31 Cal.4th at p. 1196.)

In this case, after being served with the complaint, Commerce Club asserted its right to arbitrate in its answer's affirmative defenses. (AA 31.) Both parties propounded initial sets of discovery in January 2020. Commerce Club responded to the discovery requests, produced documents, and propounded a second set of special interrogatories in March 2020. Quach's counsel initiated meet and confer efforts in early April, and Commerce Club's counsel responded to the meet and confer letter in early May. (AA 105-106.) Thereafter, Commerce Club's litigation efforts effectively ceased.

The COVID-19 pandemic and widespread court closures and business shutdowns in March 2020 put the parties' litigation activities on hold. (AA 64-65.) The pandemic forced Commerce Club to close its operations, impacting access to information and witnesses. (AA 64.) Commerce Club employees involved in Quach's termination were furloughed and unavailable for deposition. (AA 107.) No litigation activities occurred in this case from April 2020 until September 2020 except for one exchange of meet and confer letters (a letter initiated by Quach's counsel and Commerce Club's counsel's response) and the one-day partial deposition of Quach via Zoom. (AA 106-107.)

In September 2020, the trial court continued the December 7, 2020 trial date to July 19, 2021 due to the

COVID-19 case backlog, Commerce Club provided verifications for the earlier discovery responses, and Quach's counsel resumed meet and confer efforts. (AA 36, 65, 106-107.) On October 29, 2020, Commerce Club requested Quach stipulate to stay the action and proceed to arbitration as required by the parties' signed arbitration agreement. (AA 64, 67-68, 108.) Thus, Commerce Club raised arbitration *one month* after the parties litigation activities resumed. At that time, no motions had been filed, no mediation or settlement conferences had been conducted, and the trial date was over eight months away. Under these circumstances, Commerce Club did not "substantially invoke" the litigation process, and the Court of Appeal's finding of no waiver could be affirmed on this basis alone.

Additionally, the Court of Appeal correctly found Commerce Club's delay was *not* unreasonable. As Commerce Club explained "[i]n the wake of the global pandemic and the widespread judicial shut-downs that occurred in the first half of 2020, the parties' litigation efforts slowed to a virtual stop" and only recently began to resume. (AA 65.) Shortly after the litigation activities resumed in September 2020, Commerce Club asserted its right to arbitrate. (See AA 64-65, 67-68, 108 [Commerce Club asked Quach to stipulate to stay the action and proceed to arbitration on October 29, 2020].) Quach did not claim that Commerce Club took advantage of discovery unavailable in arbitration or gained any tactical advantage as a result of delay.

(See *St. Agnes*, *supra*, 31 Cal.4th at p. 1196 [in determining waiver, a court can consider "'whether important intervening steps [e.g., taking advantage of judicial discovery procedures not available in arbitration] had taken place'"].)

The Court of Appeal correctly analyzed the case law and found the delay in this case "was qualitatively different from" those cases which found the moving party's delay was unreasonable. (See *Quach*, *supra*, 78 Cal.App.5th at pp. 481-482.)

Accordingly, the result in this case is correct even without considering prejudice as a factor.

IV. THIS COURT DID NOT GRANT REVIEW ON THE ISSUE OF UNCONSCIONABILITY.

Finally, Quach urges that, even if this Court affirms the Court of Appeal's finding of no waiver, it should remand the case for the full panoply of defenses available to a party opposing arbitration, including unconscionability. (See OBOM at 46-47.) Quach's argument goes beyond the issues specified for review and should be disregarded. (Cal. Rules of Court, rules 8.516(a)(1), 8.520(b)(3).) This Court did not grant review of the Court of Appeal's unpublished and unanimous decision that there is no basis to invalidate the arbitration agreement as unconscionable.

CONCLUSION

For the reasons stated herein, this Court should affirm the decision of the Court of Appeal.

DATED: December 7, 2022

SANDERS ROBERTS LLP
Reginald Roberts, Jr.
Eric S. Mintz

BENEDON & SERLIN, LLP
Wendy S. Albers
Kelly Riordan Horwitz

Wendy S. Albers

Attorneys for Defendant and Appellant
CALIFORNIA COMMERCE CLUB, INC.

CERTIFICATE OF COMPLIANCE

Pursuant to California Rules of Court, rule 8.520(c)(1), I certify that the total word count of this Answer Brief on the Merits, excluding covers, table of contents, table of authorities, and certificate of compliance, is 7,747.

DATED: December 7, 2022

SANDERS ROBERTS LLP
Reginald Roberts, Jr.
Eric S. Mintz

BENEDON & SERLIN, LLP
Wendy S. Albers
Kelly Riordan Horwitz

Wendy S. Albers

Attorneys for Defendant and Appellant
CALIFORNIA COMMERCE CLUB, INC.

PROOF OF SERVICE
(C.C.P. § 1013a)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am over the age of eighteen (18) years and not a party to the within action. I am a resident of or employed in the county where the mailing took place. My business address is 22708 Mariano Street, Woodland Hills, California 91367-6128.

On December 7, 2022, I served the **ANSWER BRIEF ON THE MERITS,** by enclosing a true and correct copy thereof in a sealed envelope as follows:

[X] BY FIRST-CLASS U.S. MAIL: I enclosed the document in a sealed envelope/package addressed to each addressee listed below and placed it for mailing, following our ordinary business practices. I am readily familiar with the mailing practice of my place of employment in respect to the collection and processing of correspondence and pleadings for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business with first-class postage fully prepaid.

The envelopes were addressed and mailed to all interested parties as follows:

Hon. Hon. Michael L. Stern *Trial Court*
Los Angeles Superior Court
111 North Hill Street, Department 62
Los Angeles, California 90012-3014

[X] PROOF OF SERVICE BY ELECTRONIC TRANSMISSION to Supreme Court of the State of California, using TrueFiling (https://www.truefiling.com). All interested parties listed below, registered with TrueFiling, will be electronically served through TrueFiling. Pursuant to California

Rules of Court, rule 8.204, bookmarks have been inserted which correspond to each: 1) topic heading in a brief, 2) section heading in a motion or original proceeding, and 3) exhibit page and a description of each exhibit in an appendix.

Nilay U. Vora (SBN 268339) Jeffrey A. Atteberry (SBN 266728) William M. Odom (SBN 313428) Amy (Lou) Egerton-Wiley (SBN 323482) The Vora Law Firm, P.C. 201 Santa Monica Blvd., Suite 300 Santa Monica, California 90402 (424) 258-5190 tel E-mail: nvora@voralaw.com E-mail: jatteberry@voralaw.com E-mail: will@voralaw.com E-mail: lou@voralaw.com	*Counsel for Plaintiff and Respondent Peter Quach*
Jonathan J. Moon [SBN 282522] Law Offices of Jonathan J. Moon 18000 Studebaker Road, Suite 700 Cerritos, California 90703-2684 (213) 867-1908 tel (213) 402-6518 fax E-mail: jmoon@jmoonlaw.com	*Counsel for Plaintiff and Respondent Peter Quach*
Dilip M. Vithlani [SBN 199474] Law Offices of Dilip Vithlani, APC 18000 Studebaker Road, Suite 700 Cerritos, California 90703-2684 (562) 867-6622 (562) 867-6624 (fax) E-mail: dvithlani@icloud.com	*Counsel for Plaintiff and Respondent Peter Quach*
Reginald Roberts, Jr. [SBN 216249] Eric S. Mintz [SBN 207384] Sanders Roberts LLP 1055 W. 7th Street, Suite 3200 Los Angeles, California 90017-2557 (213) 426-5000 tel (213) 234-4581 fax E-mail: rroberts@sandersroberts.com E-mail: emintz@sandersroberts.com	*Co-Counsel for Defendant and Appellant California Commerce Club, Inc.*

California Court of Appeal Second Appellate District, Division One	*Service Copy via Truefiling*

[X] (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on December 7, 2022, at Woodland Hills, California.

/s/Tina Lara
Tina Lara

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **QUACH v. CALIFORNIA COMMERCE CLUB**
Case Number: **S275121**
Lower Court Case Number: **B310458**

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: **wendy@benedonserlin.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
OPPOSITION	S275121_Answer_Brief_On_The_Merits_California Commerce Club, Inc

Service Recipients:

Person Served	Email Address	Type	Date / Time
Kelly Horwitz Bendon & Serlin, LLP 205932	kelly@benedonserlin.com	e-Serve	12/7/2022 11:44:32 AM
Gerald Serlin Benedon & Serlin 123421	gerald@benedonserlin.com	e-Serve	12/7/2022 11:44:32 AM
Reginald Roberts Sanders Roberts & Jewett, LLP. 216249	rroberts@sandersroberts.com	e-Serve	12/7/2022 11:44:32 AM
Wendy Albers Benedon & Serlin LLP 166993	wendy@benedonserlin.com	e-Serve	12/7/2022 11:44:32 AM
Dilip Vithlani Law Offices of Dilip Vithlani, APC	dilipvithlani@yahoo.com	e-Serve	12/7/2022 11:44:32 AM
Susan Donnelly Benedon & Serlin, LLP	admin@benedonserlin.com	e-Serve	12/7/2022 11:44:32 AM
Tina Lara Benedon & Serlin, LLP	accounts@benedonserlin.com	e-Serve	12/7/2022 11:44:32 AM
Nilay Vora The Vora Law Firm, P.C. 268339	nvora@voralaw.com	e-Serve	12/7/2022 11:44:32 AM
William Odom The Vora Law Firm, P.C. 313428	will@voralaw.com	e-Serve	12/7/2022 11:44:32 AM
Jonathan J. Moon 282522	jmoon@jmoonlaw.com	e-Serve	12/7/2022 11:44:32 AM
Eric S. Mintz	emintz@sandersroberts.com	e-Serve	12/7/2022 11:44:32 AM

Jeffrey A. Atteberry	jatteberry@voralaw.com	e-Serve	12/7/2022 11:44:32 AM
Amy (Lou) Egerton-Wiley 323482	lou@voralaw.com	e-Serve	12/7/2022 11:44:32 AM

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.

12/7/2022

Date

/s/Tina Lara

Signature

Albers, Wendy (166993)

Last Name, First Name (PNum)

Benedon & Serlin, LLP

Law Firm