Case No. S273802

In the

SUPREME COURT

of the

STATE OF CALIFORNIA

ANGELICA RAMIREZ,
Plaintiff and Respondent,

v.

CHARTER COMMUNICATIONS, INC.,
Defendant and Appellant.

COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT, DIVISION FOUR, CASE NO. B309408

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF LOS ANGELES, HONORABLE DAVID J. COWAN, CASE NO. 20STCV25987

REPLY 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.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

STATE CASES

FEDERAL STATUTES

CALIFORNIA STATUTES

OTHER AUTHORITIES

I. INTRODUCTION

Plaintiff's Answering Brief largely follows the flawed approach of the decision below. The *Ramirez* decision misapplied this Court's precedent to invalidate Charter's Arbitration Agreement ("Agreement"). *Ramirez* contradicted the *Patterson* decision, failed to interpret four collateral provisions in a manner to render them enforceable, and ignored the parties' direction to enforce the Agreement through severance, if necessary. In doing so the *Ramirez* court violated the Federal Arbitration Act ("FAA") by treating the Agreement less favorably than other contracts.

Charter's Agreement was written with the object of facilitating fair and efficient resolution of disputes between Charter and its employees. If the provisions at issue in this appeal somehow violate California law, it is the courts' obligation to either interpret those provisions in a way to render them enforceable (as the *Patterson* court did), or to sever the provisions in compliance with the parties' explicit direction in the Agreement.

Plaintiff mistakenly contends that this Court would be required to "rewrite" the Agreement if the Court severed any offending provisions. Yet Charter has requested no such remedy and no rewriting is required. The *Patterson* court did not rewrite Charter's Agreement, and this Court's decisions utilizing severance to render arbitration agreements enforceable do not rewrite those agreements. Interpretation to conform with applicable law is not "rewriting," and is required by statute and

precedent. Severance, as well, is not rewriting and merely strikes provisions collateral to the Agreement's central purpose to render it enforceable. This is the same process applied by courts to any contract. Charter is not seeking special treatment for arbitration agreements, but it is seeking equal treatment as required by the FAA.

This Court should therefore reaffirm its precedent that interpretation and severance are required tools at the disposal of courts to enforce agreements, including arbitration agreements.

II. LEGAL DISCUSSION

A. The Issues on Review Do Not Exceed Those Set Forth in The Petition

As a preliminary matter, Plaintiff mistakenly contends in the Introduction that Charter is requesting review of matters not addressed in the Petition for Review, claiming that Charter merely sought severance of the three substantively unconscionable provisions (other than the interim attorneys' fee provision) but not enforcement of the Agreement. This is incorrect. Item 2 in Charter's Petition asked: "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." [Petition at 7 (emphasis added)]. Charter challenged the *Ramirez* court's refusal to *enforce* the Agreement when it failed to interpret the Agreement to conform with California law (see Petition at pages 26-27, 35), ***and also*** the

Ramirez court's refusal to otherwise sever those provisions if not enforceable. Analysis of these issues requires a discussion of whether the provisions are unconscionable in the first place. Charter's detailed critique of *Ramirez*'s unconscionability analysis in its Opening Brief is the foundation for Charter's contention that *Ramirez* erred in failing to enforce the Agreement. These issues are properly on review before this Court.

B. The Court of Appeal Did Not Conduct a Proper Unconscionability Analysis

Plaintiff misses the main point of Charter's position regarding the *Ramirez* court's insufficient unconscionability analysis. The presence of the *Armendariz* factors required for a fair arbitration agreement demonstrates that Charter was attempting to draft a fair agreement allowing employees to vindicate their statutory rights. *See Armendariz v. Found. Health Psychcare Servs., Inc.* (2000) 24 Cal. 4th 83 ("*Armendariz*"). *Ramirez*'s failure to address Charter's compliance with the fairness requirements set forth in *Armendariz* is indicative of the lower court's antagonism toward arbitration and its faulty analysis of the Agreement.

The presence of the *Armendariz* factors must be considered in determining whether an arbitration agreement is enforceable. *See Sonic-Calabasas A, Inc. v. Moreno* (2013) 57 Cal. 4th 1109, 1159 (referring to *Armendariz* as "the seminal California case to examine unconscionability in the context of adhesive arbitration

agreements"); *Fittante v. Palm Springs Motors, Inc.* (2003) 105 Cal. App. 4th 708, 714, 716, 720 ("arbitration agreement is lawful" and "passes muster" if it complies with *Armendariz* factors . . . Because the arbitration agreement complies with the requirements of *Armendariz*, it may properly be enforced, even though it was required as a condition of employment); *Craig v. Brown & Root, Inc.* (2000) 84 Cal. App. 4th 416, 422 (where the arbitration agreement satisfied *Armendariz* requirements and the plaintiff made no showing that the agreement failed to comply with *Armendariz*, the court found the agreement was not unconscionable). It was improper for the *Ramirez* court to refuse to enforce an Agreement that complied with the basic requirements for an enforceable agreement, where the purportedly "unenforceable" provisions were collateral to the main purpose of the Agreement.

Furthermore, Plaintiff's position that Charter's Agreement does not comply with *Armendariz* because the "discovery allowed in the agreement was *not* sufficient to allow the vindication of Plaintiff's rights in this case" is mistaken, as discussed further below. (See the Answering Brief on the Merits ("ABM") at 20). Again, the standard required by *Armendariz* is that an Agreement provide for "more than minimal discovery." *Armendariz*, 24 Cal. 4th at 102. The Solution Channel Guidelines ("Guidelines") provision permitting four depositions, written discovery requests, and "a full and equal opportunity to all parties to present evidence that the arbitrator deems material and relevant to the resolution of the dispute" (Appellant's

Appendix, Volume 1, page 122 [hereafter AA:vol:page]), is clearly "more than minimal discovery."

Notably, the *Ramirez* court did not find that Charter had some unlawful purpose in drafting the Agreement. In order for cases like *Baxter v. Genworth North America Corp.* (2017) 16 Cal. App. 5th 713, 731 ("*Baxter*") or *Mercuro v. Superior Court* (2002) 96 Cal. App. 4th 167 ("*Mercuro*") (cited by *Ramirez* and Plaintiff) to support the *Ramirez* court's refusal to enforce the Agreement, there would have to be some indication of unlawful purpose. *Ramirez* did not engage in this analysis – and there is no evidence in the record of unlawful motive. Again, the fundamental mutual nature of the Agreement and compliance with the five *Armendariz* factors is evidence of Charter's intention to comply with the law by creating a fair Agreement.

C. The AAA Rules Apply to Arbitrations Under Charter's Agreement

Both *Ramirez* and Plaintiff improperly dismiss Charter's position regarding application of the Employment Rules of the American Arbitration Association ("AAA" and "AAA Rules") because Charter purportedly "abandoned" that argument on appeal. ABM at 41; *Ramirez v. Charter Communications, Inc.*, (2022) 75 Cal.App.5th 365, 385, fn. 10 ("*Ramirez*").

Plaintiff's brief cites no authority for the position that an argument not discussed in the appellate court below is "abandoned" for the purpose of Supreme Court review, especially

where that issue was raised for the first time by the Court of Appeal's decision. To the contrary, this Court has found "sound policy reasons that support [its] discretion to consider all of the issues presented by a case, and [it has] used this discretion in the past to resolve issues of public importance." *Cedars-Sinai Med. Ctr. v. Superior Ct.* (1998) 18 Cal. 4th 1, 7 n.2. The *Ramirez* court's criticism of Charter's failure to address this issue in the appellate briefs when it was not ever mentioned in the trial court's ruling illustrates the biased nature of the *Ramirez* decision.

As outlined in the Opening Brief, the trial court held Charter's Agreement unconscionable based on a different set of provisions than the four provisions at issue in this review. (Opening Brief on the Merits ("OBM") at 14-15). The trial court decision did not find that the limitation on discovery in the Agreement was unconscionable, and thus, Charter did not have cause to address the issue of the application of the AAA rules in detail in the appellate briefs. [1] (See Trial Court decision at AA:2:461-77). This Court has held that "[a]n argument responsive only to a point the Court of Appeal raised for the first time in its opinion is not an 'issue that could have been ... raised in the briefs filed in the Court of Appeal' within the meaning of California Rules of Court, rule 29(b). The [party] is entitled to argue in this court that the Court of Appeal's legal conclusion is

[1] Charter referenced the fact that the AAA rules apply to the Agreement at least six times in the record below. See AA:1:77, 78, 91 and AA:2:414, 420, 421.

incorrect." *People v. Bland* (2002) 28 Cal. 4th 313, 336.

The substance of the contention that the AAA rules do not apply to Charter's Agreement is weak. Plaintiff's brief ignores the fact that the Agreement and the Guidelines incorporate the AAA rules not only by invoking the AAA arbitrator selection process (AA:1:131 (Agreement at Section H)), but also by requiring the AAA to administer and "preside over" the arbitration proceedings (AA:1:131 (Agreement at Section K); AA:1:113 (Guidelines at Rule 11); AA:1:125 (Guidelines)). It is this invocation of the AAA process that requires application of the AAA rules where no other rules apply. *Hoso Foods, Inc. v. Columbus Club, Inc.* (2010) 190 Cal. App. 4th 881, 889 n.2 (holding that "[a]lthough the parties' stipulation to arbitrate does not specify that the AAA Commercial Arbitration Rules applied to the proceedings," Rule 1 of the Rules (which is identical to Rule 1 of the Employment Rules) imposes the rules wherever the parties provide for arbitration by AAA); *Bank of Am., N.A. v. Micheletti Fam. P'ship* (N.D. Cal. Oct. 14, 2008) No. 08-02902 JSW, 2008 WL 4571245, at *6 ("By explicitly stating that arbitration would be conducted by AAA, the parties thereby incorporated AAA rules").

While it is correct that the Agreement invokes the Guidelines as rules that will apply to the proceedings, where there is an issue not covered by the Guidelines, AAA Rule 1 mandates that the AAA rules apply. (AA:1:154 (AAA Rule 1 ("The Parties ***shall*** be deemed to have made these rules a part of

their arbitration agreement ***whenever*** they have provided for arbitration by [AAA]' (emphasis added))). Thus, the AAA rules at the very least serve as a backstop for any issue not covered by the Agreement or the Guidelines. This means that if this Court were to sever one of the four collateral provisions in the Agreement at issue in this appeal, the AAA rules would cover that subject.

D. *Ramirez* Improperly Concluded That the Interim Fee Provision Could Not Be Interpreted In A Way To Make It Compatible With California Law

Plaintiff's defense of the *Ramirez* analysis of the interim fees provision overlooks the main thrust of Charter's argument: the *Ramirez* court ignored California statutes and precedent that arbitration agreements are to be interpreted so as to be enforceable wherever possible.

1. *Ramirez* Did Not Properly Analyze the Case Law

Plaintiff unsuccessfully attempts to distinguish cases which fully support Charter's position. In analyzing (and attempting to distinguish) *Pearson*, Plaintiff makes Charter's point – this Court relied on Civ. Code § 1643 to interpret the provision at issue as "enforceable rather than void." (ABM at 32 (citing *Pearson Dental Supplies, Inc. v. Superior Court* (2010) 48 Cal. 4th 665, 682 ("*Pearson*")). Similarly, *Roman* used both the

tools of interpretation and severance in order to enforce an arbitration agreement. *Roman v. Superior Court* (2009) 172 Cal. App. 4th 1462, 1471-75, 1476-78 ("*Roman*"). These cases fully support Charter's position. The *Ramirez* court's misreading of them to reach a contrary conclusion was erroneous.

Serpa firmly favors enforcement of an arbitration agreement, even where certain provisions within the agreement may seem unconscionable. *Serpa v. Cal. Sur. Investigations, Inc.* (2013) 215 Cal.App.4th 695, 704 ("*Serpa*"). In *Serpa*, the court analyzed four potentially substantively unconscionable provisions. Although the substance of the provisions was different than those at issue here, *Serpa* properly used various contract interpretation methods to ultimately enforce the agreement. First, *Serpa* looked at the context of the agreement as incorporated into the employee handbook to find that although the agreement seemed one-sided on its face, it was actually mutual. *Id.* at 704-705. Second, *Serpa* applied the implied covenant of good faith and fair dealing to conclude that the employer's ability to change the arbitration policy did not render the obligation to arbitrate illusory. *Id.* at 705-708. Third, *Serpa* found that although the provision requiring each party to bear its own attorneys' fees violated FEHA, it was collateral to the main purpose of the agreement and severed it. *Id.* at 709-710. Fourth, *Serpa* interpreted a provision requiring internal efforts to resolve the dispute prior to arbitration as not unconscionable because it did not "shock the conscience." *Id.* at 710-711. Thus, the *Ramirez* court's reliance on *Serpa* to support its refusal to use

these same interpretation methods to enforce Charter's Agreement was improper.

2. There Is Ambiguity in the Interim Fees Provision

Ramirez and Plaintiff attempt to distinguish the pro-arbitration outcomes of *Serpa*, *Pearson*, and *Roman* by claiming that here the interim fees provision is not "ambiguous" and therefore cannot possibly be interpreted in a way to render it enforceable. As discussed in Charter's opening brief, the determination of what is "ambiguous" is totally arbitrary. This is evidenced by the fact that *Patterson* determined that the interim fees provision in Charter's Agreement was sufficiently ambiguous to interpret it in an enforceable manner, whereas *Ramirez* came to the opposite conclusion.

Patterson noted that although the straightforward meaning of a contract provision is ascribed where the provision is not ambiguous, "[a]t the same time, we also recognize the interpretational principle that a contract must be understood with reference to the circumstances under which it was made and the matter to which it relates." *Patterson v. Superior Court* (2021) 70 Cal. App. 5th 473, 480 ("*Patterson*") (quoting *Mountain Air Enterprises, LLC v. Sundowner Towers, LLC* (2017) 3 Cal.5th 744, 752).[2] *Patterson* properly applied this principle when

[2] As noted in *Patterson*, Patterson himself argued that the interim fee provision was ambiguous as to the type of proceeding

analyzing the interim fees provision, because it found the provision generally enforceable, and merely utilized the standard set forth in the FEHA for the determination of whether fees were appropriate *in that case*. *Patterson* at 489-90. The *Patterson* court properly considered that although that particular case arose under FEHA and thus was subject to limitations on fee awards against plaintiffs, the provision was not so limited or unenforceable in any other context. *Id.* Indeed, attorneys' fees provisions are common in commercial contracts and specifically provided for under California law. Cal. Civ. Code § 1717.

Patterson was able to read the FEHA standard for the award of attorneys' fees into the Agreement because the interim fees provision did not specify the standard for determination of whether fees should be awarded. Thus, the provision is ambiguous as to the appropriate standard. The precedent cited by *Ramirez* allowing courts to resolve ambiguities through interpretation fully supports enforcement of the Agreement in this case.

3. *Patterson* Did Not "Rewrite" The Agreement in Order to Enforce It

Plaintiff repeats the term "rewrite" extensively to make the process of interpreting Charter's Agreement seem burdensome. For example, Plaintiff mistakenly contends that the *Patterson* court "rewrote" the Agreement in order to render it enforceable.

---

that would trigger an award of fees. *Patterson*, 70 Cal. App. 5th at 481.

(ABM at 28). This is untrue. The *Patterson* court "construe[d] the prevailing party fee provision in the arbitration agreement to impliedly incorporate the FEHA asymmetric rule for awarding attorney fees and costs." 70 Cal. App. 5th at 490. No rewriting was required to enforce Charter's Agreement.

The interpretation applied by *Patterson* recognizes that the Agreement was written with a lawful intent, and that it should be read in the context of local laws to render it enforceable. This is compatible with the directive of California statutes and case law, which hold that where the central purpose of the contract is not illegal, then the contract should be enforced. 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."); Cal. Civ. Code § 1670.5 ("If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court . . . **may so limit the application** of any unconscionable clause as to avoid any unconscionable result"); *Armendariz*, 24 Cal.4th at 124 ("Courts 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 and restriction, then **such severance or restriction are appropriate**."). *Patterson*'s treatment of the interim fees provision to comply with FEHA was in keeping with this Court's

directive and the statutes which specifically direct courts to reconcile, limit, sever, or restrict any potentially offending contract provision.

4. The Parties' Primary Intent Was to Enforce the Agreement

Plaintiff and *Ramirez* take the position that interpreting the interim fees provision in concert with California law would somehow contravene the "intention of the parties." *Ramirez* at 379; ABM at 29. Yet clearly the intention of the parties was to arbitrate, and the priority of California law is to enforce agreements. See 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."); § 3541 ("An interpretation which gives effect is preferred to one which makes void.").

The parties included the severance provision because they intended for the Agreement to remain "valid and enforceable to the fullest extent permitted by law." (AA:1:132-33). The severance provision states that it applies to "***any portion or provision*** of this Agreement (including, ***without implication of limitation, any portion or provision of any section*** of this Agreement)." (Id. (emphasis added)). The parties could not have made it any clearer that their priority was to have the Agreement to arbitrate enforced, not to have the interim fee provision applied verbatim.

Ramirez violated California law by refusing to interpret the interim fees provision in a way to render it enforceable, at the explicit direction of the parties. *Patterson* properly implemented the parties' intention for the Agreement to be enforced, and its approach should be adopted.

E. ***Ramirez*** **Improperly Concluded That the Statute of Limitations Provision Renders the Agreement Unconscionable**

Established California precedent allows parties to agree to shorten the applicable limitations period, as long as the shortened limitations period is "reasonable." *Baxter*, 16 Cal. App. 5th at 731 (citing *Ellis v. U.S. Sec. Assocs.* (2014) 224 Cal. App. 4th 1213, 1222 ("*Ellis*")); *Soltani v. W. & S. Life Ins. Co.* (9th Cir. 2001) 258 F.3d 1038, 1043 ("[T]he weight of California case law strongly indicates that the six-month limitation provision is not substantively unconscionable.").

Plaintiff's brief fails to acknowledge that since January 1, 2020, the time to file a claim with the California Civil Rights Department for a claim under FEHA was extended to *three years*. Gov. Code, § 12960, subd. (e)(5). Thus, the statute of limitations for FEHA claims under the Agreement is three years, which is eminently reasonable. None of the cases cited by Plaintiff invalidate a statute of limitations provision with a three-year limit. In *Baxter*, the arbitration agreement's limitation of the time to file a claim to **one year** was not reasonable, because it reduced "the time to pursue a claim by as much as two-thirds."

16 Cal. App. 5th at 732. In *Ellis*, the court held that an arbitration agreement establishing a **six-month** limitations period for statutory FEHA claims was unconscionable. 224 Cal. App. 4th at 1223.[3] In *Wherry v. Award, Inc.* (2011) 192 Cal. App. 4th 1242 the unconscionable limitation set in the arbitration agreement was a mere **180 days**.

There is no authority supporting *Ramirez*'s holding that the three-year limitation set in Charter's Agreement is unreasonable or unconscionable. At the time *Baxter* was issued, three years to bring a FEHA claim in court (as an outside limit if the DFEH took review) was considered reasonable. *See Baxter* at 730 ("[A]s a practical matter the outside limit to sue under the FEHA may be as long as three years."); *see also Ellis* at 1225 ("[T]he outside limit to sue under FEHA is as long as three years . . . . That period, the Legislature has determined, will provide an effective remedy."). Now that Charter's Agreement provides for three years based on the change in FEHA, which is longer than the statute of limitation for most common law claims, there is no doubt that this amount of time is "reasonable," because it allows the parties ample time "to effectively pursue a judicial remedy."

---

[3] *Ellis* is also distinguishable because part of the court's basis for finding the statute of limitations provision unconscionable was that it ran six months from the "date of the employment action" on which the employee's suit is based, which would mean different limitation periods for different FEHA claims and that the statute of limitations could run before the employee was terminated. *Ellis* at 1226. There is no such provision in Charter's Agreement.

See Moreno v. Sanchez (2003) 106 Cal. App. 4th 1415, 1430.

Both *Ramirez* and Plaintiff insist that the Agreement should be analyzed based on the circumstances at the time it was written. But this approach does not make sense where the law has permanently changed. Since January 1, 2020 (when FEHA changed), the Agreement no longer has the effect of reducing the limitations period to one year. It would be irrational to invalidate an agreement based on a provision that is not unlawful based on current law.[4]

In fact, in analyzing the enforceability of arbitration agreements, courts routinely apply the law that exists at the time of the court's decision, rather than the law that existed at the time that the agreement was signed. *See e.g.*, *DIRECTV, Inc. v. Imburgia* (2015) 577 U.S. 47 (enforcing arbitration agreement containing class action waiver pursuant to *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 339 ("*Concepcion*"), despite the fact that at the time employees signed the arbitration agreement, California law prohibited class action waivers); *Saheli v. White Mem'l Med. Ctr.* (2018) 21 Cal. App. 5th 308, 320 (same); *Navas v. Fresh Venture Foods, LLC* (2022) 85 Cal. App. 5th 626 ("*Navas*") (applying the U.S. Supreme Court's recent decision in

[4] Both Plaintiff and *Ramirez* contradict themselves by taking the position that the issue of the statute of limitations should be addressed based on circumstances at the time the Agreement was made (ABM at 24; *Ramirez* at 375-76), whereas the issue of the discovery limitations should be addressed based on the discovery Plaintiff's counsel thinks is necessary now. (ABM at 35-36; *Ramirez* at 385).

Viking River Cruises, Inc. v. Moriana (2022) 142 S.Ct. 1906 ("*Viking River*") to hold that an employer and employee could agree to arbitrate an individual PAGA claim, even though the arbitration agreement was signed prior to the ruling in *Viking River*); *Marenco v. DirecTV LLC* (2015) 233 Cal. App. 4th 1409, 1421 (enforcing the class action waiver in an arbitration agreement despite the fact that employee signed the agreement in 2008, when such provisions were still considered unenforceable). Accordingly, the cases that Plaintiff cites, which address arbitration provisions that incorporate the statute of limitations that previously applied to FEHA claims, are moot and *Ramirez*'s refusal to give credence to the change in the law was erroneous.

F. The Authorization of Four Depositions Is Not a Proper Reason to Invalidate the Agreement

The *Ramirez* court found unconscionable the Agreement's allowance of up to four depositions, and Plaintiff argues that the discovery limitations in the Agreement are unfair.[5] Plaintiff ignores that *Armendariz* and its progeny explicitly allow for

[5] Plaintiff's brief contends that other discovery restrictions in the Agreement, such as the 90-day period allowed for discovery, are also unfair. *Ramirez* did not address these restrictions, but in any case, the points made herein regarding the allowance of sufficient discovery apply to any possible argument that the Guidelines are overly restrictive. The Agreement's provision granting discretion to the Arbitrator and the AAA rules allow all reasonable and necessary discovery for a fair adjudication of the case.

limited discovery in arbitration, and the Agreement, Guidelines, and AAA rules provide broad discretion to the arbitrator to order all discovery required for a fair resolution of the claim. Furthermore, Plaintiff's counsel's opinion that Plaintiff requires a specific number of depositions is not evidence and is irrelevant and premature.

1. Reasonable Limitations on Discovery in Arbitration Are Permissible

Plaintiff mistakenly contends that the Agreement is unfair because it does not allow for the full panoply of discovery provided for under the Code of Civil Procedure or the Federal Rules of Civil Procedure (ABM at 36) and that "[t]he Court cannot infer adequate discovery where the agreement explicitly restricts discovery rights." (ABM at 39). Plaintiff's brief cites no case law for this assertion. To the contrary, it is axiomatic that arbitration agreements *can* provide for "something less than the full panoply of discovery provided in the [Code of Procedure]." *Armendariz*, 24 Cal. 4th at 105. In fact, "limiting discovery is one point of arbitration. A central goal is efficiency. A streamlined discovery process promotes this goal." *Torrecillas v. Fitness Internat., LLC* (2020) 52 Cal. App. 5th 485, 497 ("*Torrecillas*") (citing *Aremendariz* at 106, fn 11).

Most of the cases cited in both briefs upheld arbitration agreements that provided for fewer depositions than the four allowed here. (See OBM at 41; ABM at 38). Despite Plaintiff's attempt to distinguish the discovery limitations in each case, the key point is unavoidable: reasonable limitations on discovery, including permission for up to four depositions without arbitrator authorization, is not a ground for invalidating an arbitration agreement.

2. The Agreement and Guidelines Provide Reasonable Limitations on Discovery and Arbitrator Discretion to Order More

Plaintiff attempts to distinguish some of the many cases supporting Charter's position by arguing that the Agreement does not precisely mirror the language approved in other cases. (ABM at 38-39). Plaintiff imposes a requirement on the Agreement not required by law. All that the Agreement must do is provide for "discovery sufficient to adequately arbitrate [an employee's] statutory [FEHA] claim, including access to essential documents and witnesses, as determined by the arbitrator." *Armendariz*, 24 Cal. 4th at 106.

The Guidelines do exactly what is required under *Armendariz*: direct 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). This authority of the arbitrator is *in addition to* the four depositions, 20 interrogatories, and 15 requests for

documents expressly permitted. (See Id.).

Furthermore, the agreements referenced by Plaintiff in the cases cited are actually *more restrictive* as to the arbitrator's ability to order additional discovery as needed. In *Mercuro*, the arbitrator could order additional discovery on a showing of good cause, but there was an express presumption "against increasing the aggregate limit on [discovery] requests." 96 Cal.App.4th at 182. Similarly, in *Sanchez* and *Torrecillas*, the arbitrator could order additional discovery on showing of "substantial need." *Torrecillas*, 52 Cal. App. 5th at 497-498; *Sanchez v. Carmax Auto Superstores Cal., LLC* (2014) 224 Cal. App. 4th 398, 404-406 ("*Sanchez*"). By contrast, the Guidelines state that the arbitrator "will" order additional discovery as necessary for the resolution of the dispute. (AA:1:122). No showing of good cause or substantial need is required.

Finally, as discussed above, the Agreement incorporates the AAA Rules, which also provide for arbitrator discretion "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." (AA:1:158 (Rule 9)). It is no coincidence that the language of the Guidelines closely mirrors this language – both sets of rules allow for sufficient discovery as required by California law. Under the Guidelines and AAA Rules, the parties will receive a "full and fair" resolution of the dispute.

3. The Sufficiency of Discovery Is Determined at the Time the Agreement Is Written

Plaintiff reiterates her mistaken assertion that the Agreement is unconscionable because her counsel claims that Plaintiff needs seven depositions in this case. Plaintiff incorrectly asserts that "courts have consistently assessed unconscionability for limitations on discovery as applied to a particular plaintiff." (ABM at 36). Plaintiff cites only two cases: (1) *Ramirez* itself (the decision below at issue and which improperly relied on Plaintiff's counsel's argument (without admissible evidence) regarding Plaintiff's purported need for depositions), and (2) *Sanchez*, in which the court found that Sanchez had *failed* to demonstrate a need for more discovery than the three depositions provided for in the arbitration agreement. *Sanchez*, 224 Cal. App. 4th at 404-406.

Again, Plaintiff cannot have it both ways. If the Agreement is properly assessed at the time it was written (as Plaintiff's brief itself argues at page 24), then Plaintiff's counsel's biased and unsupported assertion (without even a sworn declaration) that he needs seven depositions cannot establish unconscionability for the purpose of invalidating the entire agreement. "Arguments are not evidence." *Torrecillas*, 52 Cal. App. 5th at 497 (upholding agreement with a five-deposition-limit despite plaintiff's counsel's argument that twenty were required).

4. The Argument for Seven Depositions Is Not Convincing

Finally, even if Plaintiff's counsel's argument for seven depositions in this case could be considered at this stage, neither Plaintiff's brief nor *Ramirez* justify the reasoning behind the need for seven depositions in a single-plaintiff employment case.

As the trial court found, Plaintiff likely would not need additional discovery in light of the very short length of employment and the relevant timeframe at issue. (See Trial Court Order at AA:2:468). Plaintiff was employed for less than one year, during most of which she was out of work on a leave of absence. (AA:1:008 (Complaint at ¶ 10). The relevant time periods that Plaintiff actually worked at Charter are short: November 26, 2019 through December 21, 2019 and then from April 13, 2020 through May 14, 2020 (a mere two months). (AA:1:008-10; AA:2:468). Generally, an employment case has two main witnesses on behalf of the employer – a supervisor, and a human resources representative. In rare cases, there could also be a higher-level manager or director. Plaintiff's counsel claims he will need *seven* depositions: the HR employee and the supervisor (which is reasonable), the person most knowledgeable (which is the HR employee and/or supervisor), and the four employees hired into Plaintiff's department during her leave (which is entirely unreasonable). Other employees hired by Charter would have no relevant knowledge regarding Plaintiff's leave nor the reason for Plaintiff's termination. In reality, the

two depositions of the HR employee and supervisor are all that would be required and permitted in arbitration, even if the Agreement allowed for 20 depositions.

G. The Agreement Does Not Exclude All Employer Claims

Plaintiff's contention that the Agreement is not mutual because it excludes claims that are more likely to be brought by employers is supported neither by facts nor law. The Agreement excludes numerous claims that could be brought by an employee, which are not otherwise excluded from arbitration by law, such as: (a) "Claims arising under separation or severance agreements" (Section C.7); (b) "Claims related to corrective action or other performance management that does not result in termination" (Section C.8); and (c) "Claims of theft or embezzlement or any criminal conduct" (Section C.10). (AA:1:130 (Section C)). There is no basis for *Ramirez*'s conclusion that the exclusions merely target claims that could be brought by Charter against an employee.

The Agreement explicitly requires arbitration of all claims by Charter against an employee, stating that it covers: "all disputes, claims, and controversies . . . **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)…" (AA:1:129 (Section B.1). The

Agreement even enumerates examples of covered claims which are commonly brought by employers, such as 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 …" (Id.). Thus, the Agreement is fundamentally mutual.

Furthermore, there is no requirement that an arbitration agreement be absolutely mutual. *Armendariz*, 24 Cal. 4th at 117 (not "all lack of mutuality in a contract of adhesion [is] invalid." "[A] contract can provide a 'margin of safety' that provides the party with superior bargaining strength a type of extra protection for which it has a legitimate commercial need without being unconscionable. . . ."); *Sanchez v. Valencia Holding Co.* (2015) 61 Cal. 4th 899, 911 ("Not all one-sided contract provisions are unconscionable; hence the various intensifiers in our formulations: 'overly harsh,' 'unduly oppressive,' 'unreasonably favorable.'"). The *Ramirez* court did not engage in any meaningful analysis to conclude that the excluded claims provision is "overly harsh," "unduly oppressive," or "unreasonable" and also ignored this Court's holding that exclusion of provisional relief claims from arbitration does not render an agreement substantively unconscionable. *Baltazar v. Forever 21, Inc.* (2016) 62 Cal.4th 1237, 1247-48.

H. Refusal To Sever Any Provisions Is an Abuse of Discretion

There is no dispute that here the parties agreed to sever unenforceable provisions to allow for enforcement of the Agreement. (AA:1:132-33 (Section Q)). In *Armendariz*, this Court explained that a trial court may refuse to sever an unconscionable provision "only when an agreement is 'permeated' by unconscionability." 24 Cal. 4th at 122 (citing Civ. Code § 1670.5). Here the supposedly unlawful provisions are all collateral to the main purpose of the Agreement. (See OBM at 46-49).

The principle that severance provisions are enforceable and should be applied to validate arbitration agreements was recently reaffirmed by the U.S. Supreme Court. *See Viking River*, 142 S.Ct. at 1925 (severing the unenforceable PAGA waiver to enforce the remainder of the agreement). Clearly, the refusal of both the trial court and the Court of Appeal to sever the collateral provisions at issue in this appeal was an abuse of discretion because it violates the Civil Code (such as Cal. Civ. Code § 1670.5), is contrary to the case law (as discussed at length above) and contradicts U.S. Supreme Court precedent.

Plaintiff incorrectly contends that a court may sever only one unenforceable provision in an employment arbitration agreement, but *Armendariz* did not establish such a rule. Plaintiff relies on Court of Appeal cases which, like *Ramirez*, improperly applied *Armendariz* to conclude that the presence of

more than one unconscionable provision in an arbitration agreement, even if collateral to the main purpose of the agreement, voids the entire agreement. *Armendariz* did not establish such a *per se* rule, and this interpretation contradicts California law. The provisions at issue here can all be interpreted in a manner that renders them lawful and enforceable as there is no evidence of an unlawful motive. In such circumstances, severance of any arguably offensive provision should be required.

Courts are explicitly authorized to sever unlawful or unconscionable contractual provisions and enforce the balance of a contract. Civ. Code, §§ 1599, 1670.5. Section 1599 provides that "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." Section 1670.5 authorizes a court to sever unconscionable provisions from a contract and enforce the remainder of the contract. Nothing in the text of Civil Code § 1670.5 states that severance is limited to one provision per contract. This Court has previously indicated that severance of multiple unconscionable provisions is a possible solution to substantive unconscionability. *Gentry v. Superior Court* (2007) 42 Cal. 4th 443, 473 (abrogated on other grounds) (directing the trial court to determine whether several unconscionable provisions should be severed); *see also Bolter v. Superior Court* (2001) 87 Cal.App.4th 900, 911 (reversing with instructions to sever multiple unconscionable

provisions).[6]

There is no danger that the Court will need to "rewrite" the Agreement because of any severance. The absence of any of the four provisions at issue here would leave an enforceable agreement. As discussed in Charter's Opening Brief, the provision for interim fees is unnecessary, is easily removed from the agreement, and there is extensive precedent for the severance of attorneys' fee provisions in arbitration agreements. (OBM at 46-48); *Serpa*, 215 Cal.App.4th at 709-10. The second part of the statute of limitations provision (Section E) at issue here is also unnecessary and easily severed. (See AAA:1:131). If it were severed, the first portion of the provision, which merely provides for compliance with the applicable statute, would apply. (OBM at 48-49). Similarly, the exclusions from arbitration that are

---

[6] Numerous California federal courts have severed more than one provision in order to enforce an arbitration agreement. *See, e.g.*, *Burgoon v. Narconon of N. California* (N.D. Cal. 2015) 125 F. Supp. 3d 974, 990 (severing three provisions, including a statute of limitations provision and cost-splitting provision); *Lang v. Skytap, Inc.* (N.D. Cal. 2018) 347 F. Supp. 3d 420, 433 ("Although there are three provisions that would need to be severed, this Court finds that each of the provisions can be severed without disrupting the agreement's chief objective— for the parties to submit any employment dispute arising between them to arbitration … ."); *Bermudez v. PrimeLending* (C.D. Cal. Aug. 14, 2012) No. LA CV12-00987 JAK (Ex), 2012 U.S. Dist. LEXIS 197023, at *46-47 ("[A]lthough there are 'multiple defects,' they are severable such that the arbitration provision is not 'permeated' with unconscionability. Thus, the central purpose of the contract is not tainted with illegality."); *Grabowski v. C.H. Robinson Co.* (S.D.Cal.2011) 817 F.Supp.2d 1159, 1179 (severing three unconscionable provisions).

deemed one-side could be severed, leaving behind an all-encompassing mutual arbitration agreement. (OBM at 49); *Farrar v. Direct Com., Inc.* (2017) 9 Cal. App. 5th 1257, 1275 (holding that the trial court "abused its discretion in refusing to sever" an exception for certain employer claims in an arbitration agreement).

Ramirez and Plaintiff's position that it would be "impossible" to sever the discovery limitations is simply untrue. If the limit on the number of depositions (or any other discovery limit in the Agreement) were severed, the provision allowing the arbitrator to order adequate discovery would remain. (See AA:1:122). Furthermore, as discussed above, if the Guidelines do not cover a certain subject, the AAA rules apply, and the AAA rules provide for adequate discovery. (AA:1:158 (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 …")).

Even if all the provisions in the Agreement regarding discovery were stricken, no rewriting would be required. As Plaintiff pointed out in her brief, *Armendariz* held that if an arbitration agreement is silent on a particular point (such as discovery), it can and should be interpreted to provide for the rights required for enforcement of the agreement. (See ABM at 40 (citing *Armendariz* 24 Cal. 4th at 105 n.10)).

There is no requirement that arbitration agreements need

to specifically provide for discovery. *See Armendariz*, 24 Cal. 4th at 106 ("We further infer that when parties agree to arbitrate statutory claims, they also implicitly agree, absent express language to the contrary, to such procedures as are necessary to vindicate that claim. … [T]he employer, by agreeing to arbitrate the FEHA claim, has already impliedly consented to [sufficient] discovery."); *Navas*, 85 Cal. App. 5th 626 (agreement that was silent as to discovery necessarily incorporated Section 1283.05, which provides for depositions and discovery). The *Ramirez* holding that severing the discovery limitations in the Agreement would be impossible is just another red herring.

I. The Failure to Treat the Agreement Like Any Other Contract Violates the FAA

Plaintiff mistakenly contends that Charter is seeking preferential treatment for arbitration agreements by asking courts to "exempt its agreement from the normally applicable rules of unconscionability." (ABM at 53). Charter's position is that enforcement of the Agreement is required by generally applicable contract interpretation principles. Unlike the employer-defendant in *Morgan v. Sundance, Inc.* (cited in Plaintiff's brief), here Charter is not asking the Court to "create arbitration-specific variants of federal procedural rules." 142 S. Ct. 1708, 1712 (2022). Instead, Charter is requesting the Court to apply its own precedent and California statutes to treat the Agreement fairly. *See Armendariz*, 24 Cal. 4th at 127 ("[A]rbitration agreements are neither favored nor disfavored,

but simply placed on an equal footing with other contracts."); Civ. Code §§ 1599, 1636, 1643, 1652, 1670.5, 3541 (all generally applicable rules regarding contract interpretation and enforcement).

Such fair treatment for arbitration agreements is required by the FAA. *See, e.g.*, *Concepcion*, 563 U.S. at 339 ("Thus, courts must place arbitration agreements on an equal footing with other contracts, [cite], and enforce them according to their terms [cite]"); *Kindred Nursing Centers Ltd. P'ship v. Clark* (2017) 581 U.S. 246, 248 ("The [FAA] requires courts to place arbitration agreements 'on equal footing with all other contracts."); *Hall St. Assocs., L.L.C. v. Mattel, Inc.* (2008) 552 U.S. 576, 581 ("Congress enacted the FAA to replace judicial indisposition to arbitration with a 'national policy favoring [it] and plac[ing] arbitration agreements on equal footing with all other contracts." (quoting *Buckeye Check Cashing, Inc. v. Cardegna* (2006) 546 U.S. 440, 443, 126 S.Ct. 1204).

Outside of the arbitration context, both California and federal law prioritize the enforcement of agreements as written by the parties. This standard precludes a finding of substantive unconscionability unless the unfairness of a contract provision is extreme. "With a concept as nebulous as unconscionability it is important that courts not be thrust in the paternalistic role of intervening to change contractual terms that the parties have agreed to merely because the court believes the terms are unreasonable. **The terms must shock the conscience**."

Morris v. Redwood Empire Bancorp (2005) 128 Cal. App. 4th 1305, 1322–23 (citations omitted). Courts are not to take the invalidation of contract provisions lightly.

Similarly, a permissible way to save a potentially unenforceable contract provision is interpretation of the agreement to reconcile it with applicable law. *See, e.g.*, *South Tahoe Gas Co. v. Hofmann Land Imp. Co.* (1972) 25 Cal.App.3d 750 (contract provision between developer and gas utility that contained a charge that violated the tariff rule could be interpreted to comply with tariff rule); *General Paint Corp. v. Seymour* (1932) 124 Cal. App. 611 ("Contract forbidding seller's re-engaging in like business must be so interpreted as to hold it lawful, if possible."); *Stephens v. Bean* (1924) 65 Cal. App. 779, 783, 224 P. 1022 (interpreting overbroad provision in covenant not to compete to be lawful); *Brown v. Kling* (1894) 101 Cal. 295, 302 (same); *Nelson v. McFall* (9th Cir. 2018) 749 F. App'x 510, 515 (interpreting provision in promissory note to not be usurious even though the provision could have been interpreted otherwise).

Both California and federal precedent also allow for the severance of more than one unlawful provision in a non-arbitration contract in order to enforce it. *See, e.g.*, *Cnty. of Ventura v. City of Moorpark* (2018) 24 Cal. App. 5th 377, 394 (severing multiple provisions in settlement agreement); *Meyer v. Sprint Spectrum L.P.* (2007) 59 Cal. Rptr. 3d 309, 315, *review granted and opinion superseded sub nom. Meyer v. Sprint*

Spectrum L.P., 45 Cal. 4th 634, 200 P.3d 295 ("Even if ***all the challenged provisions*** of the customer service agreement were, as plaintiffs claimed, illegal and/or unconscionable, the agreement … is legal. … Therefore, the appropriate remedy (if any) would be to sever the offending provisions, not to void the entire contract." (emphasis added)); *Am. Ry. Express Co. v. Lindenburg* (1923) 260 U.S. 584, 590 ("We do not, therefore, deem it necessary to inquire in respect of the nature or extent of these alleged unlawful conditions, since, in any event, their presence would not have the effect of rendering unenforceable the severable, valid provision here relied upon."); *Balboa Cap. Corp. v. Shaya Med. P.C. Inc.* (C.D. Cal. Aug. 25, 2022) No. SACV2100831CJCJDEX, 2022 WL 16894837, at *6 ("Even if ***all those terms*** were substantively unconscionable, the Court would simply sever those terms and enforce the repayment terms. Again, 'the strong preference is to sever unless the agreement is permeated by unconscionability."(emphasis added)); *Spanish Broad. Sys., Inc. v. Grupo Radio Centro LA, LLC* (C.D. Cal. May 23, 2016) No. CV1600980BROGJSX, 2016 WL 11741137, at *6 (severing multiple unconscionable provisions from employment agreement); *Language Line Servs., Inc. v. Language Servs. Assocs., LLC* (N.D. Cal. Mar. 17, 2011) No. C 10-02605 JW, 2011 WL 13153247, at *7 ("Further, to the extent the Code of Conduct contains unenforceable provisions, the Court has the ability to sever the unenforceable provisions so as to maintain the enforceability of the remainder of a contract.").

As discussed in Charter's Opening Brief and above, the

Civil Code specifically *requires* the courts to sever collateral provisions to enforce a contract. Civ. Code, § 1599; § 1670.5(a). These statutes are not specific to arbitration agreements. Therefore, Charter is seeking nothing more than proper application of these general contract rules to its Agreement, not preferential treatment for arbitration agreements.

J. The Cases Cited in the RJN Illustrate That *Ramirez* Is Contrary to Prevailing Interpretations of Charter's Agreement

The cases attached in Charter's request for judicial notice ("RJN") are not cited for precedential value. Clearly this Court is not bound by trial court rulings. Nevertheless, in assessing whether to overturn the decision below, it is instructive to understand the context of *Ramirez* amongst numerous decisions that have come to a different conclusion.

The fact that many courts have analyzed the very Agreement at issue in this appeal and chose to enforce the Agreement illustrates that, at the very least, Charter did not have an illegal intent in creating this Agreement. Where there is a split of authority between *Patterson* and *Ramirez*, and *Patterson*'s approach was adopted by 35 other courts, that route is likely the correct one.

The fact that some of the decisions at issue addressed a version of the Agreement which was offered to then-current Charter employees with an opportunity to opt-out is irrelevant.

The issue of whether the Agreement was mandatory or not goes to procedural unconscionability, which is not at issue in this case. (See OBM at 22). All the cases appended to the RJN analyzed the same Agreement at issue here, and the analysis of substantive unconscionability in each decision supports Charter's position that its Agreement is lawful and enforceable under California law.

There is simply no justification for the *Ramirez* court's refusal to enforce the Agreement, which could easily have been accomplished through interpretation and severance.

III. CONCLUSION

This Court's precedent, the Civil Code, and the FAA require enforcement of the parties' valid arbitration Agreement. No rewriting is required – only interpretation and if necessary, severance, to allow the viable key provisions of the Agreement to be enforced according to the parties' intent.

Charter respectfully requests that this Court reverse the decision below and order the lower courts to compel arbitration of this dispute.

Dated: February 2, 2023

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 8,356 words, excluding the tables and this certificate according to the word count generated by the computer program used to produce this document.

Dated: February 2, 2023

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

Attorneys for Defendant-Appellant Charter Communications, Inc.

HFB 2604815.4 A5431 130

DECLARATION OF SERVICE

I ROBBI REEDER, declare:

I am a resident of the state of California and over the age of eighteen years and not a party to the within action, my business address is Hill, Farrer & Burrill, LLP, One California Plaza, 300 S. Grand Avenue, 37th Fl., Los Angeles, CA 90071. On February 2, 2023, I served the forgoing document(s) **REPLY BRIEF ON THE MERITS** via electronic transmission through TrueFiling, the court's electronic filing system to the email(s)s on file:

Eric A. Panitz, Esq.
PANITZ LAW GROUP APC
18000 Studebaker Road, Suite 700
Cerritos, CA 90703
Tel: 526-924-7800
Fax: 526-924-7801
E-mail: eric@panitzlaw.com

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on February 2, 2023 at Los Angeles, California.

/s/ Robbi Reeder
Robbi Reeder

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
REPLY TO ANSWER TO PETITION FOR REVIEW	Ramirez v. Charter - Appellant's Reply Brief on the Merits

Service Recipients:

Person Served	Email Address	Type	Date / Time
Elissa Gysi Hill Farrer & Burrill LLP 281338	egysi@hillfarrer.com	e-Serve	2/2/2023 2:51:30 PM
Eric Panitz Panitz Law Group APC 243877	eric@panitzlaw.com	e-Serve	2/2/2023 2:51:30 PM
James Bowles Hill, Farrer & Burrill LLP 89383	jbowles@hillfarrer.com	e-Serve	2/2/2023 2:51:30 PM
Casey Morris Hill Farrer & Burrill, LLP 238455	cmorris@hillfarrer.com	e-Serve	2/2/2023 2:51:30 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.

2/2/2023
Date

/s/James A. Bowles
Signature

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

Hill, Farrer & Burrill, LLP
Law Firm