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No. 70648-9-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

JAMES A. FRIEL and DEBORAH L. FRIEL, a marital community, individually and on behalf of all others similarly situated,

Respondents,

v.

LEGAL HELPERS DEBT RESOLUTION, LLC, a Nevada limited liability company; THE MORTGAGE LAW GROUP, LLP, a Washington limited liability partnership; MACEY, ALEMAN, HYSLIP & SEARNS, also known as MACEY, ALEMAN & SEARNS, an Illinois law firm; THOMAS G. MACEY, individually and on behalf of the marital community of THOMAS G. MACEY and JANE DOE MACEY; JEFFREY J. ALEMAN, individually and on behalf of the marital community of JEFFREY J. ALEMAN and JANE DOE ALEMAN; JEFFREY HYSLIP, individually and on behalf of the marital community of JEFFREY HYSLIP and JANE DOE HYSLIP; JASON SEARNS, individually and on behalf of the marital community of JASON SEARNS and JANE DOE SEARNS,

Appellants,

and

AMERICAN PLATINUM FINANCIAL SERVICES, INC., an Arizona corporation; JOSEPH COMPRONE, individually and on behalf of the marital community of JOSEPH COMPRONE and JANE DOE COMPRONE; CHRISTOPHER SAUER, individually and on behalf of the marital community of CHRISTOPHER SAUER and JANE DOE SAUER,

Defendants.

REPLY BRIEF OF APPELLANTS

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Appellants Legal Helpers Debt Resolution, LLC, The Mortgage Law Group, LLP, Macey, Aleman, Hyslip & Searns, also known as Macey, Aleman & Searns, Thomas G. Macey, Jeffrey J. Aleman, Jeffrey Hyslip, and Jason Searns, on behalf of themselves and their marital communities (collectively, the "LHDR Defendants") respectfully reply to the Respondents' Brief filed by Respondents James A. Friel and Deborah L. Friel (the "Friels"), as follows:

A. The trial court's procedural unconscionability determination is inconsistent with the Federal Arbitration Act.

The Friels argue that because unconscionability is a "generally applicable" contract defense, the trial court's invalidation of the arbitration clause is permissible under *AT&T Mobility LLC v. Concepción*, 131 S. Ct. 1740, 1748, 179 L. Ed. 2d 742 (2011). Respondents' Br. at 17. But "[a]ny general state-law contract defense, based in unconscionability or otherwise, that has a disproportionate effect on arbitration is displaced by the [Federal Arbitration Act ("FAA")]." *Mortensen v. Bresnan Commc'ns., LLC*, 722 F.3d 1151, 1159 (9th Cir. 2013).

State laws and policies that discriminate against arbitration are often more subtle than an outright prohibition. As the U.S. Supreme Court recognized in *Concepción*:

> When state law prohibits outright the arbitration of a particular type of claim, the analysis is straightforward: The conflicting rule is displaced by the FAA.... But the inquiry becomes more complex when a doctrine normally thought to be generally applicable, such as duress or, as relevant here, unconscionability, is alleged to have been applied in a fashion that disfavors arbitration....
>
> An obvious illustration of this point would be a case finding unconscionable or unenforceable as against public policy consumer arbitration agreements that fail to provide for judicially monitored discovery.... In practice, of course, the rule would have a disproportionate impact on arbitration agreements; but it would presumably apply to contracts purporting to restrict discovery in litigation as well.
>
> Other examples are easy to imagine. The same argument might apply to a rule classifying as unconscionable arbitration agreements that fail to abide by the Federal Rules of Evidence, or that disallow an ultimate disposition by a jury.... Such examples are not fanciful, since the judicial hostility towards arbitration that prompted the FAA had manifested itself in "a great variety" of "devices and formulas" declaring arbitration against public policy.

Concepción, 131 S. Ct. at 1747 (internal citations omitted).

Generally applicable doctrines of contract law, such as unconscionability, are not immune from the requirements of the FAA. They can be applied in a manner that disfavors arbitration in practice. *Id.* Such laws or policies, although facially neutral, are still preempted by the FAA. *Id.* at 1746-48.

The Friels argue that the trial court's invalidation of the arbitration clause on the basis of procedural unconscionability does not

disproportionately disfavor arbitration because, according to the Friels, all material terms in fee agreements must be disclosed pursuant to Washington's Rules of Professional Conduct ("RPCs") 1.4(b) and 1.5(a)(9). The Friels seek to give these two provisions of the RPCs expansive meaning that the text of the rules cannot support. As discussed further below, RPC 1.4(b) and RPC 1.5(a)(9) do not require "full disclosure" to a prospective client of every material term.

The only authority that purports to mandate the "full disclosure" urged by the Friels—of all advantages and disadvantages of arbitration at the risk of invalidating the parties' agreement—are two ethics advisory opinions that specially and exclusively apply only when an arbitration clause is at issue.[1] *See* Washington State Bar Association ("WSBA") Advisory Opinion 1670; American Bar Association ("ABA") Formal Opinion 02-425. The FAA does not allow such laws or policies to invalidate parties' agreements to arbitrate.

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[1] The Friels argue that the LHDR Defendants were required to make disclosures regarding the "forfeiture of important rights," including "the right to pursue their claims through class litigation." Respondents' Br. at 7. No such entitlement to class proceedings exists. *Am. Express Co. v. Italian Colors Rest.*, 133 S. Ct. 2304, 2309-10, 186 L. Ed. 2d 417 (2013).

1. Neither RPC 1.4(b) nor RPC 1.5(a)(9) mandate "full disclosure" to prospective clients of all "advantages and disadvantages of arbitration."

The Friels seek to impose significantly broader meaning and application to RPC 1.4(b) and RPC 1.5(a)(9) than the text of those rules allow. *See* Respondents' Br. at 11-14. RPC 1.4(b) provides, in full, that "[a] lawyer shall explain a matter to the extent reasonably necessary to permit ***the client*** to make informed decisions regarding the representation." RPC 1.4(b) (emphasis added). It concerns communications with a current client and makes no reference to communications with a prospective client. As this Court recently recognized:

> [W]hen an attorney negotiates with a prospective client the terms of the initial fee agreement, the attorney-client relationship has not yet been established. Thus, the attorney does not owe the same duty that he or she owes to a current client. If the prospective client is dissatisfied with the terms of the proposed engagement agreement, the prospective client is free to decline representation or seek representation elsewhere.

Rafel Law Grp. PLLC v. Defoor, 176 Wn. App. 210, 221, 308 P.3d 767 (2013) (holding RPC 1.8 did not apply to terms of (i) settlement and re-engagement agreement and (ii) promissory note because, at the time they were negotiated, the appellant was not a current client).[2]

[2] Here, the trial court cited RPC 1.8 in denying the LHDR Defendants' motion to compel arbitration. RP 33:2-6. RPC 1.8 has no application, however. No attorney-

The Court's holding in *Rafel Law Group* shares similarities with the Texas Court of Appeals' decision in *Tuan Pham v. Letney*, 314 S.W.3d 520 (Tex. App. 2010). In that case, the court rejected the plaintiff's claim that a fiduciary relationship developed between her and her attorney prior to entering into a formal contract for legal services. *Id.* at 527. The court "decline[d] to impose a requirement that attorneys must in all cases fully inform prospective clients regarding the implications of an arbitration clause in an attorney-client contract." *Id.* at 528. The court, therefore, held the trial court erred when it refused to compel arbitration based upon the alleged unconscionability of the arbitration agreement. *Id.* The same result should follow here.

The Friels admit that they had "no contact with LHDR before signing the [Retainer Agreement]." Respondents' Br. at 7; CP 168, 174. No attorney-client relationship existed between the Friels and any of the LHDR Defendants prior to the Friels entering into the Retainer Agreement on December 6, 2010. *See* CP 38. RPC 1.4(b) requires a lawyer to reasonably explain a matter to "***the client***." RPC 1.4(b)

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client relationship existed between the Friels and any of the LHDR Defendants prior to the Friels' execution of the Retainer Agreement. Furthermore, the arbitration clause in the Retainer Agreement does not run afoul of RPC 1.8(h)(1), or prospectively limit the LHDR Defendants' liability for malpractice, as the trial court and the Friels appear to suggest. *See* RP 33:2-6; Respondents' Br. at 11; ABA Formal Op. 02-425 ("Commentators and most state bar ethics committees have concluded that mandatory arbitration provisions do not prospectively limit a lawyer's liability, but instead only prescribe a procedure for resolving such claims.").

(emphasis added). Like RPC 1.8, RPC 1.4(b) by its express terms does not apply to discussions pre-dating the creation of the attorney-client relationship. *See also Rafel Law Grp. PLLC*, 176 Wn. App. at 220 (recognizing "RPC 1.8(a) ... expressly prohibits an attorney from entering into a 'business transaction with ***a client***[,]" but "makes no reference to transactions with prospective clients or transactions entered into in anticipation of representation") (emphasis added). The same is true of RPC 1.4(b). As the Court stated in *Rafel Law Group*, "it would be improper for [the Court] to import language into the rule to create a broader application that that warranted by the text of the rule." *Id.* RPC 1.4(b) does not mandate "full disclosure" to a prospective client of all material terms of a retainer agreement as the Friels contend.

RPC 1.5(a)(9) does not support the Friels' position either. RPC 1.5(a) concerns ***fees***. It prohibits a lawyer from making an agreement for, charging, or collecting "unreasonable fee or an unreasonable amount for expenses." RPC 1.5(a). RPC 1.5(a) then enumerates factors to be considered "in determining the reasonableness of a fee." RPC 1.5(a)(1)-(9).

The Friels rely upon RPC 1.5(a)(9), but RPC 1.5(a)(9) does not establish a mandated duty of "full disclosure" of every "material term" in a retainer agreement as the Friels suggest. Rather, in assessing the

reasonableness of a fee, RPC 1.5(a)(9) describes one factor to consider—*i.e.*, whether "the client ... received a reasonable and fair disclosure of material elements of the fee agreement and of the lawyer's billing practices." RPC 1.5(a)(9). The rule has no application to the enforceability of the arbitration clause contained in the Retainer Agreement.

The Friels' reliance on *Luna v. Gillingham*, 57 Wn. App. 574, 789 P.2d 801 (1990), is similarly misplaced. In *Luna*, the Court was dealing squarely with a dispute over fees.[3] RPC 1.5 has clear application in that context. The Court in *Luna* held that an attorney in that case failed to address the issue of how court-awarded attorneys' fees were to be allocated in his contingent fee agreement with his clients. *Id.* at 581. The Court found the contingent fee agreement to be ambiguous, and stated that it left unresolved the question of how court-awarded attorneys' fees should be allocated. Citing RPC 1.5, the Court recognized there is a "strong public policy in Washington which requires

[3] WSBA Advisory Opinions 898 and 2120 and ABA Formal Opinion 11-458, cited by the Friels on page 19 of Respondents' Brief, also do not impose a general duty of full disclosure of all material terms to prospective clients, but again concern reasonable disclosure of fees and charges. WSBA Advisory Opinion 898 concerned a proposed fee agreement that "generally set out factors which could determine the law firm's fee," without providing "any specific information regarding the fee for a particular client." WSBA Advisory Opinion 2120 concerned hypothetical interest charges to a client, or "mark ups" for copying, online research and messenger expenses. ABA Formal Opinion 11-458 addresses modifications to existing fee agreements ***after*** the initial contract has been formed and the fiduciary relationship of lawyer and client has begun.

counsel to fully disclose and explain the contingent fee agreement to the client." *Id.*

The limited issues before this Court do not concern a contingent fee agreement. The reasonableness of an attorney's fee, or of expenses charged is not currently at issue here. Nor does this appeal concern an ambiguous clause that leaves an important question unresolved.[4] Rather, the issue is whether, either facially or as applied here, WSBA Advisory Opinion 1670 and ABA Formal Opinion 02-425 have a disproportionate effect on arbitration. The LHDR Defendants respectfully submit that they do. These ethics opinions, even if well-intended, cannot be applied to invalidate the Friels' agreement to arbitrate.[5] As the Ninth Circuit recently recognized, "*Concepción* outlaws discrimination in state policy that is unfavorable to arbitration." *Mortensen*, 722 F.3d at 1160.

2. <u>The ABA and WSBA ethics opinions disproportionately burden arbitration and cannot be applied to invalidate the Friels' agreement to arbitrate.</u>

The Friels' argument that there is a "general rule" of full disclosure that applies to all material terms of a retainer agreement is without support. *See* Respondents Br. at 14. No such general duty of

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[4] *See Smith v. Legal Helpers Debt Resolution, LLC*, No. 11-5510, 2012 U.S. Dist. LEXIS 80330 (D.N.J. June 11, 2012) (finding arbitration clause to be "sufficiently clear" and "unambiguously worded").

[5] "States cannot require a procedure that is inconsistent with the FAA, even if it is desirable for unrelated reasons." *Concepción*, 131 S. Ct. at 1753.

disclosure exists in the RPCs.[6] The Friels must rely on two ethics opinions, each of which specifically targets arbitration. Respondent's Br. at 12-13 (citing ABA Formal Opinion 02-425 and WSBA Advisory Opinion 1670). These ethics opinions would impose a special duty of "full disclosure" uniquely in the context of arbitration, or a duty to "fully apprise" a prospective client of the "advantages and disadvantages of arbitration" that does not exist with non-arbitral dispute resolution provisions.

ABA Formal Opinion 02-425, for example, states that an attorney should make clear that arbitration typically results in a "possible waiver of broad discovery." *See also* Respondents' Br. at 16 (arguing LHDR failed to make disclosures regarding, *inter alia*, the forfeiture of "the right to discovery").[7] Discovery may similarly be limited under the

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[6] The Friels cite out-of-state authority, pre-dating *Concepción*, for the proposition that a lawyer who drafts a fee agreement owes a fiduciary duty to fully advise a prospective client of the fee or arbitration agreement. Respondents' Br. at 12 (citing *Wong v. Michael Kennedy, P.C.*, 853 F. Supp. 73 (E.D.N.Y. 1994) (holding special nonfundable retainer fee agreement to be unenforceable), and *Lawrence v. Walzer & Gabrielson*, 207 Cal. App. 3d 1501, 256 Cal. Rptr. 6 (Cal. Ct. App. 1989) (holding legal malpractice claim was outside the scope of the arbitration agreement). Other out-of-state cases, similar to this Court's holding in *Rafel Law Group*, reject such a contention. *See Tuan Pham*, 314 S.W.3d at 528 ("[W]e decline to impose a requirement that attorneys must in all cases fully inform prospective clients regarding the implications of an arbitration clause in an attorney-client contract."); *see also Desert Outdoor Adver. v. Superior Court*, 196 Cal. App. 4th 866, 873-76 (Cal. Ct. App. 2011) (holding that, even with respect to ***existing*** clients, there is no universal duty to fully disclose all terms and consequences of arbitration).

[7] Parties that arbitrate with the Judicial Arbitration Mediation Service ("JAMS"), or American Arbitration Association ("AAA"), as provided for by the arbitration clause, do not forfeit the right to discovery as the Friels suggest. *See* Rule 22, AAA

general or local rules of many courts, however. *See*, *e.g.*, Fed. R. Civ. P. 30(a)(2)(A)(i), 33(a)(1) (limiting the number of depositions and interrogatories); CRLJ 26 (restricting parties to limited interrogatories, requests for production, depositions, and requests for admission); King County LCR 26 (setting limitations upon the number of interrogatories, depositions, and requests for admission). If a retainer agreement contains a forum selection clause requiring, for example, that disputes be resolved in the federal or state courts located in King County, Washington, no comparable advisory opinion requires the attorney to disclose all the procedural variations or discovery limitations that those courts in King County may impose. WSBA Advisory Opinion 1670 and ABA Formal Opinion 02-425 would require an attorney to fully disclose procedural variations only if the attorney and prospective client opted to arbitrate their disputes. As reflected in these advisory opinions, hostility or skepticism towards arbitration as a chosen means of dispute resolution continues.

Arbitration undoubtedly has procedural differences, but so do the courts both in the State of Washington and beyond. Different courts' procedural differences or limitations are certainly not limited to

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Commercial Arbitration Rules and Mediation Procedures (Oct. 1, 2013), *available at* www.adr.org/commercial; Rule 17, JAMS Comprehensive Arbitration Rules & Procedures (Oct. 1, 2010), *available at* http://www.jamsadr.com/rules-comprehensive-arbitration/.

discovery, and the impact they may have on a matter can be significant. As another example, an agreement to litigate in Washington's Superior Courts may also subject the parties to mandatory arbitration under RCW 7.06 and the Mandatory Arbitration Rules ("MAR"). A party to such a case may be required to first arbitrate the dispute and, if there is a request for a trial de novo pursuant to MAR 7.1, try the case again. The procedural variations are substantial. Yet again, no ethics advisory opinion requires an attorney—at the risk of invalidating his or her forum selection agreement—to "fully disclose" all the advantages and disadvantages that choosing to litigate in the Superior Courts of Washington may entail.

By applying WSBA Advisory Opinion 1670 and ABA Formal Opinion 02-425 to invalidate the Friels' agreement to arbitrate, the trial court erred. The FAA does not allow state laws or policies to disproportionately burden arbitration. *Concepción*, 131 S. Ct. at 1753; *Mortensen*, 722 F.3d at 1160. The trial court's holding cannot stand.

B. The trial court improperly relied upon its inherent authority to invalidate the Friels' agreement to arbitrate.

The Washington Supreme Court's inherent power to regulate the admission, discipline and disbarment of attorneys does not empower the trial court to invalidate the arbitration agreement. In *Short v. Demopolis*,

103 Wn.2d 52, 691 P.2d 163 (1984), which the Friels rely upon, the Washington Supreme Court accepted the argument that its inherent power did not insulate attorneys from generally applicable law:

> [T]he exclusive power of the court lies in determining who may practice law and who, once admitted, shall be suspended or disbarred from such practice. The corollary ... is that the Legislature may constitutionally act with regard to attorneys so long as its enactments do not affect or purport to take away the court's power to admit, suspend, or disbar.

Id. at 63. *Short* held that application of the Washington Consumer Protection Act to attorneys did not violate the separation of powers doctrine, or the Court's inherent authority that the separation of powers doctrine protected. *Id.* at 65.

The Washington Supreme Court's inherent power to admit, discipline, or disbar attorneys does not insulate the Retainer Agreement or the arbitration clause it contains from the FAA and applicable law. The FAA and Washington law prohibit the Friels' agreement to arbitrate from being invalidated on equitable grounds, or by state laws or policies that disfavor arbitration. *Weidert v. Hanson*, 178 Wn.2d 462, 465, 309 P.3d 435 (2013) ("There is no support for the notion that a court may ignore an otherwise valid arbitration agreement on equitable grounds."); *Concepción*, 131 S. Ct. at 1740 ("[C]ourts must place arbitration

agreements on an equal footing with other contracts, and enforce them according to their terms") (internal citation omitted).

The Friels argue that the LHDR Defendants' reliance on *Weidert* is misplaced and that the trial court's decision to invalidate the arbitration agreement exercising its inherent authority was not based upon equitable grounds. Respondents' Br. at 21-22 n.10. The LHDR Defendants disagree. It is equity jurisdiction that gives rise to courts' inherent authority. *TMT Bear Creek Shopping Ctr., Inc. v. PETCO Animal Supplies, Inc.*, 140 Wn. App. 191, 206, 165 P.3d 1271 (2007). The fact that the legislature codified the Washington Supreme Court's power to admit, discipline or disbar attorneys does not change its equitable character. *Cf.* RCW 7.40.010 (codifying superior court's power to issue restraining orders and injunctions); *Kucera v. Dep't of Transp.*, 140 Wn.2d 200, 209, 995 P.2d 63 (2000) ("An injunction is distinctly an equitable remedy....").

C. The arbitration agreement is enforceable by all the LHDR Defendants.

The Friels' argument that non-signatories may enforce arbitration agreements only if two elements are met (*i.e.*, a close relationship *and* claims intertwined with the underlying contract), is contrary to relevant case law. Respondents' Br. at 28. Alternative tests exist and either is

sufficient. *Comer v. Micor, Inc.*, 436 F.3d 1098, 1101 (9th Cir. 2006); *accord Kramer v. Toyota Motor Corp.*, 705 F.3d 1122, 1128-29 (9th Cir. 2013). Equitable estoppel applies here because the Friels' claims are founded upon and intertwined with the Retainer Agreement, and the Friels' allegations depend upon interdependent and concerted misconduct with LHDR.

The LHDR Defendants' alleged wrongs flow directly from the obligations and duties imposed by the Retainer Agreement. The Friels controlled the allegations in their Amended Complaint, which expressly references the "Retainer Agreement" seventeen times. CP 36-59. Contrary to the Friels' assertion, the Amended Complaint need not contain an expressly labeled "breach of contract" claim for equitable estoppel to apply; the inextricably intertwined relationship between the Friels' claims and the Retainer Agreement is apparent from the substance of their allegations.

The facts here stand in stark contrast to those cases where courts have refused to enforce arbitration agreements against non-signatories. For example, in *Kramer* the plaintiffs sued car manufacturer Toyota based upon allegations of defective brakes. *Kramer*, 705 F.3d at 1123. Toyota tried to enforce the arbitration agreement in the purchase agreements between plaintiffs and the car dealerships where they bought

the defective vehicles. *Id.* at 1124-25. The court held that Toyota could not compel arbitration under the purchase agreements, reasoning that plaintiffs did not rely on the purchase agreements for their claims and that those claims neither referenced nor were intimately founded in the purchase agreements.[8] *Id.* at 1130-32.

The court noted that plaintiffs' complaint never even mentioned the purchase agreements and while a mere reference to the agreement would not be enough to allow Toyota to enforce its arbitration clause, equitable estoppel applies where a signatory must rely on the terms of the agreement containing the arbitration clause in asserting his or her claims against a non-signatory. *Id.* at 1129.

In contrast, the Friels repeatedly rely on the Retainer Agreement for their allegations. For example, the Friels allege that the LHDR Defendants charged processing and mitigation fees pursuant to the Retainer Agreement that violate statutory fee limitations and form the basis of their statutory claims. CP 44 at ¶ 4.8, 45, 49, 51, 54-55. They allege the Retainer Agreement itself failed to disclose that that the LHDR Defendants were not licensed to practice law in the State of

[8] The court in *Rajagopalan v. NoteWorld, LLC*, 718 F.3d 844 (9th Cir. 2013) similarly found that, in that case, the plaintiff's claims did not arise out of or relate to the contract containing the arbitration clause. *Id.* at 848. That is not the case here. The trial court even recognized that the "some" of the Friels' assertions and allegations "are intimately connected with the obligations of the underlying agreement." RP at 35:3-7.

Washington, were not licensed as loan originators, and that the LHDR Defendants breached their fiduciary duties by not making such disclosures. CP 44 at ¶¶ 4.6-4.7, 53-54.

The Friels further allege that the lawsuit involves questions of (1) whether the LHDR Defendants' services, ***pursuant to the Retainer Agreement***, constitute residential mortgage loan modification services under RCW 19.146 and RCW 31.04, (2) whether the LHDR Defendants, ***pursuant to the Retainer Agreement***, acted as mortgage brokers or loan originators, (3) whether the LHDR Defendants, ***pursuant to the Retainer Agreement***, contracted for or charged fees prohibited by RCW 19.146.355(1)(b) and RCW 31.04.297; and (4) whether the ***Retainer Agreement*** satisfies alleged disclosure requirements of RCW 19.146.355. CP 46-47. The Friels' claims are founded in and intimately connected with the Retainer Agreement.

The contrast is even starker between this case and *Mundi*. There, Mr. Mundi purchased life insurance to pay down a loan in the case of his death. *Mundi v. Union Sec. Life Ins. Co.*, 555 F.3d 1042, 1043-44 (9th Cir. 2009). When he died, the insurer refused to pay, and Mr. Mundi's widow sued. *Id.* at 1044. The insurer tried to enforce the arbitration agreement in Mr. Mundi's loan agreement with the bank, as the insurance agreement itself contained no arbitration clause. *Id.* The court

held that the insurer was not entitled to enforce the arbitration agreement under principles of equitable estoppel. *Id.* at 1047. The court noted that the loan agreement did not even mention the life insurance, that resolution of plaintiff's claims was possible without examining the loan agreement, and that there were no allegations of misconduct by the signatory bank. *Id.*

Here, there is only one contract at the center of this dispute—the Retainer Agreement—which contains an arbitration clause. The Friels' allegations cannot be resolved without examining the Retainer Agreement and the obligations that it created. Under these facts and the allegations made by the Friels, equitable estoppel principles entitle all the LHDR Defendants to enforce the Retainer Agreement.

CONCLUSION

The trial court erred when it invalidated the arbitration agreement. It relied upon impermissible grounds and state policies that disproportionately impact arbitration and that are displaced by the FAA. The arbitration provision of the Retainer Agreement is enforceable and all of the LHDR Defendants are entitled to enforce it. The Court should reverse the trial court's denial of the LHDR Defendants' Motion to Compel Arbitration and order that this dispute be resolved in arbitration as required by the Retainer Agreement.

RESPECTFULLY SUBMITTED this 4th day of December, 2013.

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DECLARATION OF SERVICE

I declare under penalty of perjury under the laws of the state of Washington that on the 4th day of December, 2013, I caused to be served the foregoing document on counsel for Respondents, as noted, at the following addresses:

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Dated: December 4, 2013
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