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**Division II**  
**State of Washington**  
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No. 51370-6-II

**COURT OF APPEALS OF THE STATE OF WASHINGTON**  
**DIVISION II**

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**PINNACLE PROPERTY MANAGEMENT SERVICES, LLC, a  
Delaware LLC, and HEATHER LAGAT, individually and the marital  
community comprised thereof,**

**Appellants,**

**v.**

**KIRANDEEP CZERWINSKI,**

**Respondent.**

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**REPLY BRIEF OF APPELLANTS**

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## I. REPLY

Czerwinski does not deny twice signing the arbitration agreement she submitted with her job applications to Pinnacle. She speculates that Pinnacle<sup>1</sup> could have forged her signature without stating it outright. She presents no evidence of this suggested forgery. Courts reject this kind of argument, and this Court should as well. It is an especially flimsy argument because *Czerwinski does not deny signing*. Further, her theory makes no sense. She speculates that Pinnacle could have forged her signature but then (1) failed to add a check mark in the “AGREED” box next to her signature block and (2) failed to sign for the company itself. She does not explain why anyone would forge two identical agreements,<sup>2</sup> which is redundant and creates no advantage for Pinnacle. The onus is on Czerwinski to prove fraud, and she has not.

The trial court incorrectly refused to compel arbitration because Pinnacle did not countersign the arbitration agreement. That was an error for several reasons. The Federal Arbitration Act (FAA) expressly governs the agreement, and it does not require that a valid arbitration agreement be signed. Because Czerwinski does deny signing the agreement and

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<sup>1</sup> All references to “Pinnacle” in this brief include both appellants Pinnacle Property Management Services, LLC and Heather Lagat. To be clear, Czerwinski has not specified that she thinks Ms. Lagat or any other identifiable agent of Pinnacle actually forged Czerwinski’s signature, just that they could have.

<sup>2</sup> Since the agreements are identical, Pinnacle will refer to them with the singular “agreement” throughout.

authenticating it with four digits of her Social Security Number, this Court should have no difficulty concluding that she manifested her assent to be bound. Pinnacle did as well because Pinnacle offered the agreement in the first place, printed it on company letterhead, and hired Czerwinski after she electronically signed it. There can be no reasonable doubt that Pinnacle manifested its assent to be bound. Therefore, Pinnacle has satisfied its burden to prove contract formation.

The real thrust of Czerwinski's argument is not contract formation, but contract enforceability. In an attempt to avoid her contractual obligations, she maintains that the agreement is either procedurally or substantively unconscionable. It is neither. The agreement repeatedly and conspicuously warned her in **bolded**, underlined, and CAPITALIZED text about the legal consequences of signing. She had all the time she needed to review before signing it because it predated her employment application. She had contact information for Pinnacle's Human Resources Department, but did not ask any questions.

For these reasons and the others explained below, the arbitration agreement is valid, enforceable, and supported by strong public policy. *Even if* the Court decides that one or more of the provisions is problematic and needs to be severed, the remaining provisions should still be enforced.

Accordingly, the Court should reverse the trial court's order and remand with instructions to compel this action into arbitration.

**A. Czerwinski Improperly Argues for the First Time on Appeal That Her Arbitration Agreement Is Not Valid Because It Was Made with American Management Services, Not Pinnacle.**

American Management Services is a business formerly connected with Pinnacle, which is why that name appears in the text of this arbitration agreement. CP at 73, 133. But these facts are not in the appellate record because Czerwinski did not raise any issue or make any argument about American Management Services before the trial court.<sup>3</sup> On that topic, the appellate record is not sufficiently developed under RAP 2.5(a), so it is improper for her now to make the new argument that she only had an agreement with American Management Services, not Pinnacle. *See* Resp. Br. at 4, 6, 16, 23, 24; RAP 2.5(a).

**B. The Agreement is Valid and Enforceable.**

**1. The Agreement Is Binding Under Federal and State Law.**

The agreement expressly states that the FAA governs it. CP at 81, 141. The FAA dispenses with the need for signatures. 9 U.S.C. § 2 (arbitration agreements need only be “written”); *Marino v. Dillard's, Inc.*, 413 F.3d 530, 532 (5th Cir. 2005); *Nghiem v. NEC Elec., Inc.*, 25 F.3d

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<sup>3</sup> If the Court prefers, Pinnacle can formally move under RAP 9.11(a) to supplement the appellate record with a short declaration describing the relationship between those two entity names.

1437, 1439 (9th Cir. 1994); *Stedor Enters., Ltd. v. Armtex, Inc.*, 947 F.2d 727, 733 (4th Cir. 1991); *Genesco, Inc. v. T. Kakiuchi & Co.*, 815 F.2d 840, 846 (2d Cir. 1987). “Both state and federal courts must enforce this body of substantive arbitrability law.” *Zuver v. Airtouch Commc’ns, Inc.*, 153 Wn.2d 293, 301, 103 P.3d 753 (2004).

Czerwinski briefly quibbles with the applicability of *Marino* and its use of Louisiana law, but she ignores *Nghiem* (arising in California), *Stedor Enterprises* (arising in South Carolina), and *Genesco* (arising in New York). These cases from across the nation all stand for the same proposition: Arbitration agreements governed by the FAA should be enforced even without signatures when the parties have otherwise manifested their intent to be bound. Czerwinski focuses her brief on a variety of arguments that one or both parties did not sign or may not have signed. Resp. Br. at 10-17. That is a distraction.

Signatures are unnecessary to form written contracts in Washington. *See, e.g., Retail Clerks Health & Welfare Trust Funds v. Shopland Supermarket, Inc.*, 96 Wn.2d 939, 944, 640 P.2d 1051 (1982) (“The proponent of a contract need only prove the existence of a contract and the other party’s objective manifestation of intent to be bound thereby. . . .”) (cited by Czerwinski). Czerwinski contends that Pinnacle cited no case law where a Washington court enforced a contract with a blank

signature line. Resp. Br. at 15. She overlooks Pinnacle’s citation to this Court’s recent decision in *Shelcon Construction Group, LLC v. Haymond*, 187 Wn. App. 878, 886, 894-95, 351 P.3d 895 (2015), affirming a judgment that enforced a written contract that neither party signed. “[O]ur law allows the enforcement of unsigned contracts, *even where a signature is required*, when it is clear from the parties’ actions that such a contract existed.” *Id.* at 895 (emphasis added). *Shelcon* did not describe the signature blocks yet it is clear from the opinion that both parties could have signed but did not. *Id.* at 886 (“Neither party signed this contract.”).

Czerwinski also ignores *Burgess v. Buddy’s Northwest LLC*, 2016 WL 7387099, 2016 U.S. Dist. LEXIS 176869 (W.D. Wash. 2016,<sup>4</sup> where, citing *Shelcon*, the U.S. District Court for the Western District of Washington, Tacoma Division, enforced an arbitration agreement signed by the plaintiff but not countersigned by the defendant. There, the plaintiff argued that the agreement was invalid because, among other theories, “there is no signature, execution, or acknowledgment on behalf of defendants.” *Id.* at \*5. However, the *Burgess* court astutely observed, **“Washington courts have routinely rejected the argument that a written agreement lacked mutual consent if not signed by the party seeking to enforce it.”** *Id.* at \*6-7 (emphasis added)

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<sup>4</sup> Pinnacle included a copy of the *Burgess* opinion in the appendix to the Brief of Appellants.

Czerwinski herself relies on a case standing for this proposition. Resp. Br. at 7. In *Jacob's Meadow Owners Association v. Plateau 44 II, LLC*, 139 Wn. App. 743, 162 P.3d 1153 (2007), Division One reversed the trial court's decision to dismiss a party's claim for breach of an unsigned contract, explaining:

The existence of mutual assent may be deduced from the circumstances, including the ordinary course of dealing between the parties. **Signatures of the parties are not essential to the determination.** See *Urban Dev., Inc. v. Evergreen Bldg. Prods., LLC*, 114 Wn. App. 639, 651, 59 P.3d 112 (2002)

*Id.* at 765 (emphasis added and citations omitted);

Just recently, the United States Supreme Court held that a court may refuse to enforce an arbitration agreement, but only on grounds that apply to **any other contract**. *Epic Sys. Corp. v. Lewis*, \_\_\_ U.S. \_\_\_, 138 S. Ct. 1612, 1622, 200 L. Ed. 2d 889 (2018). Not only must arbitration agreements receive "equal treatment" with other contracts, arbitration agreements are highly favored by the law. *Id.* at 1621-22.

Pinnacle has met its burden to prove the existence of a contract. There are two executed agreements in the appellate record. CP at 69, 129. Both bear her electronic signature. CP at 83, 143. Both bear the last four digits of her Social Security Number, which authenticates her electronic signatures. *Id.* She does not deny signing these agreements. CP at 112-13. For its part, Pinnacle has overwhelmingly manifested its intent to be

bound. Pinnacle was the party that offered the agreement and printed it on company letterhead. CP at 69, 129. Pinnacle hired her after she signed it, which Pinnacle never would have done without a signed agreement. CP at 43 ¶ 6. Before the lawsuit, Pinnacle’s attorney told her counsel that an agreement was in place. CP at 46 ¶ 2. At the outset of the lawsuit, Pinnacle moved to compel arbitration and then filed this appeal, again seeking to enforce them. CP at 26, 229. This Court should enforce Czerwinski’s signed agreement to arbitrate this dispute.

**2. Czerwinski’s Wild Speculation Does Not Diminish the Evidence in the Appellate Record.**

Czerwinski invites the court to speculate that “an agent for Pinnacle *could have* ‘signed’ the agreement for Mrs. Czerwinski.” Resp. Br. at 10-11 (emphasis added). She further guesses that someone at Pinnacle *could have* gone back and entered the last four digits of her Social Security Number after Pinnacle hired her and obtained that information. Resp. Br. at 2. Based on all of this speculation, she claims that Pinnacle has not conclusively disproved her theory.

But having raised the specter of forgery (though not denying that she signed the agreement), it is now *Czerwinski* who must prove that this is not her signature. *Sturtevant v. Xerox Commer. Solutions, LLC*, 2016 WL 4992468, 2016 U.S. Dist. LEXIS 127441, at \*13 (W.D. Wash. 2016) (“Mr. Sturtevant has presented no evidence to support his bald assertion

that he did not agree to an arbitration agreement, that he did not consent electronically to such an agreement, or that he did not open his email providing notice of the agreement.”)<sup>5</sup>; see *Brown v. Underwriters at Lloyd’s*, 53 Wn.2d 142, 145, 332 P.2d 228 (1958) (“[F]raud is never presumed, but must be proved by clear, cogent and convincing evidence.”); *Davis v. Rogers*, 128 Wash. 231, 237, 222 P. 449 (1924) (“The duty is upon the one asserting the fraud to prove it clearly and convincingly.”). “This is especially true where a party assails the integrity of written instruments.” *Pickle v. Lincoln County State Bank*, 61 Wash. 545, 547, 112 P. 654 (1911).

Czerwinski cannot prove fraud. Where a litigant does not remember an event, her theories about what may have happened are pure speculation, unless she can point to other evidence for support. *Marshall v. Bally’s Pacwest, Inc.*, 94 Wn. App. 372, 377, 972 P.2d 475 (1999) (affirming summary judgment of dismissal where a plaintiff had no memory of how she was hurt and therefore had no evidence to support that element of her claim); see *Moore v. Hagge*, 158 Wn. App. 137, 140, 241 P.3d 787 (2010); *Little v. Countrywood Homes, Inc.*, 132 Wn. App. 777, 778, 133 P.3d 944 (2006). Speculation is not evidence. *Gardner v. Seymour*, 27 Wn.2d 802, 808, 180 P.2d 564 (1947) (“The rule is well

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<sup>5</sup> Czerwinski cites to *Sturtevant* and includes a copy of that opinion in the appendix to her brief.

established that the existence of a fact or facts cannot rest in guess, speculation, or conjecture.”); *see Bd. of Regents v. Frederick & Nelson*, 90 Wn.2d 82, 86, 579 P.2d 346 (1978) (“The supporting facts for a theory and instruction must rise above speculation and conjecture.”). Czerwinski’s speculative theories are especially baseless because she does not deny that she signed the agreement, so there is no reason to even wonder who could have signed it.

In *Burgess*, the U.S. District Court for the Western District of Washington quickly disposed of the same argument, concluding, “While Plaintiff’s brief states that he does not recall signing an arbitration agreement, *this does not cast any doubt on whether his signature and repeated initials on the arbitration agreement are authentic.*” 2016 WL 7387099, 2016 U.S. Dist. LEXIS 176869, at \*1 & n.1 (emphasis added).

Czerwinski also argues that even if she did sign the agreement, she did not also check the “AGREED” box next to the signature block and therefore she *may not* have agreed to be bound. Resp. Br. at 13-14. She has no evidence that she intentionally left that box unchecked. She does not remember signing the agreement, CP at 113 ¶ 6, so any argument that she *may have* deliberately done something amounts to nothing more than rank speculation. There is no evidence in the appellate record supporting this argument—not even her own declaration. CP at 112-13. The fact is,

she signed the agreement and manifested her assent to contract with Pinnacle. There was no reason for her to sign the arbitration agreement if she did not agree to its terms. Given that she signed the agreement (twice), accepted the job, and actually worked for Pinnacle, marking the “AGREED” box represents nothing more than legal “belt and suspenders.” Her authenticated signature shows her intent to be bound.

*Prasad v. Pinnacle Management Services Co.*, 2018 WL 401231, 2018 U.S. Dist. LEXIS 6232 (N.D. Cal. 2018),<sup>6</sup> squarely addresses all of Czerwinski’s arguments about assent. There, the plaintiff was also a former employee of Pinnacle who signed the arbitration agreement. The plaintiff not only did “not have a specific recollection of reviewing” the agreement, but she affirmatively declared that she “did not type [her] name, the date, or the last four digits of [her] social security [number]” on the agreement and did not know that it existed until she was preparing to file suit. *Id.* at \*5. She also did not check the “AGREED” box next to the signature block. *Id.* Pinnacle did not complete its signature block on that agreement. *Id.* The *Prasad* court determined that Pinnacle’s application process sufficiently authenticated the plaintiff’s electronic signature and found a valid agreement to arbitrate. *Id.* at \*8.

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<sup>6</sup> Pinnacle provided a copy of this opinion to the trial court, CP at 216, and included a copy in the appendix to the Brief of Appellants.

Finally, Czerwinski briefly questions whether this agreement was “really” part of her personnel file because Pinnacle did not include it when sending the file to her attorney before the suit. Resp. Br. at 3. As Pinnacle explained to the trial court, the agreement should have been included and that was omitted because of an administrative error. CP at 125 ¶¶ 3, 5. More importantly, whether the agreement was “really” part of her personnel file has nothing to do with whether she signed it. She did.

### **3. Electronic Signatures Are Valid in Washington.**

Czerwinski relies on *Neuson v. Macy’s Department Stores, Inc.*, 160 Wn. App. 786, 796, 249 P.3d 1054 (2011)), claiming that Division Three reversed a decision to compel arbitration when there were similar concerns regarding an employee’s purported electronic signature. Resp. Br. at 11-12. She misstates the holding of that case. In *Neuson*, Division Three actually held that the trial court erred in weighing evidence on summary judgment, where the plaintiff had successfully satisfied her burden of production to rebut the “mailbox rule” presumption that Macy’s had mailed her the opt-out forms for the company’s arbitration program. 160 Wn. App. at 788-89, 793. *Neuson* bears little, if any, resemblance to the facts of this case.

However, Division Three indeed commented on the pros and cons of using electronic signatures, which Czerwinski quotes in her brief.

Resp. Br. at 11. Nevertheless, *Neuson* did not reverse the trial court based on concerns with the plaintiff's electronic signature. No published or unpublished appellate court decision appears to have cited *Neuson* for this proposition.

In fact, the U.S. District Court for the Western District of Washington interprets *Neuson* the same way that Pinnacle does, and Czerwinski even cites the opinion: *Sturtevant v. Xerox Commercial Solutions, LLC*, 2016 WL 4992468, 2016 U.S. Dist. LEXIS 127441 (W.D. Wash. 2016). Resp. Br. at 12. Like here, the plaintiff in *Sturtevant* denied that it was really his electronic signature on an arbitration agreement. *Sturtevant, LLC*, 2016 WL 4992468, 2016 U.S. Dist. LEXIS 127441, at \*5. Like here, he cited *Neuson* "for the proposition that an e-signature on an arbitration agreement is not reliable when the employer had access to the employee's identifying information." *Id.* \* 7-8.

The Court flatly rejected that argument as "misguided":

*Neuson* involved an in-house program that Macy's had implemented to resolve disputes. Employees had to affirmatively opt out of arbitration to avoid being bound to arbitrate. Macy's produced declarations that it mailed the in-house program materials and election forms to the employee, who denied receiving them by mail. The Spokane Superior Court found that Macy's had made a necessary showing to establish the presumption of mailing and that the employee failed to opt out of the program, and then ordered arbitration. On appeal, the Washington State Court of Appeals reversed and remanded. The Court of Appeals discussed "the mailbox rule" at length, and agreed

that Macy's had made the requisite showing for a presumption of mailing. Further, the court agreed that the Declarations supported the trial court's findings, but ultimately found that the trial court was not privileged to weigh the evidence in ruling on this summary proceeding. The court of appeals determined that the employee had met her burden to produce sufficient evidence to rebut the presumption that the employer mailed and she received the materials necessary to opt out of the in-house arbitration program. Thus, questions of fact existed for the trier of fact.

The case is distinguishable from the instant matter. **Indeed, in *Neuson* there was no dispute about the electronic process used to verify notice of the arbitration program.** Rather, this was a dispute about whether the Plaintiff has received hard copy forms in the mail that would have allowed her to opt out of the program.

*Id.* at \*8-9 (emphasis added and citations omitted). The Court queried how the plaintiff in *Sturtevant* could have been hired in the first place if he had not signed the pre-hire arbitration agreement. *Id.* at \*12-13. That same question applies here.

Despite Czerwinski's efforts to question the validity of electronic signatures on arbitration agreement, it remains valid and enforceable in Washington. RCW 7.04A.010(7); RCW 7.04A.060(1); RCW 7.04A.290. Importantly, she does not dispute her own electronic signature on other documents in her personnel file. CP at 103, 105, 107, 108, 111.

**4. By Signing the Agreement, Czerwinski Waived Her Right to Jury Trial.**

Citing *Adler v. Fred Lind Manor*, 153 Wn.2d 331, 103 P.3d 773 (2004), Czerwinski claims that she did not knowingly, voluntarily, and intelligently waive her right to a jury trial, and that the Court should therefore not enforce the agreement. Resp. Br. at 8, 23 n.5. She misreads *Adler*, which is easily distinguishable. Unlike here, in *Adler*, there were allegations that the employer coerced the employee to sign an arbitration agreement under threat of termination. *Id.* at 349, 350, 361. That was the “voluntariness” that the *Adler* Court questioned, not any aspect of the agreement itself. *Id.* at 361. According to the Washington Supreme Court, a party who signs an arbitration agreement in the absence of fraud, deceit, or coercion is waiving his or her right to a jury trial. *Id.* at 360-61; *DeWolf & Allen*, 25 WASH. PRACTICE: CONTRACT LAW AND PRACTICE § 5:15, at 176 (2d ed.) (“And because arbitration agreements are entered into voluntarily, there is no conflict with the constitutionally guaranteed right to a jury trial.”).

Czerwinski signed the agreement before she ever had a job with Pinnacle. She does not allege that any coercion took place. There is nothing in the record suggesting fraud, deceit, or coercion.

**C. The Agreement Is Not Procedurally Unconscionable.**

Czerwinski cherry picks a few sentences out of the agreement that she believes insufficiently state that the job applicant is agreeing to arbitrate her employment claims. Resp. Br. at 19-22. That is not how Washington courts interpret contracts. For well over a century, our courts have viewed contracts as a whole, interpreting particular language in the context of other contract provisions. *See, e.g., Heybrook v. Beard*, 75 Wash. 646, 650, 135 P. 626 (1913); *City of Union Gap v. Printing Press Props., LLC*, 2 Wn. App. 2d 201, 224-25, 409 P.3d 239 (2018).

The agreement here makes clear that it is about bringing employment-related claims in arbitration instead of court. The second paragraph of the first page begins, “As you read through our employment application, you will note that Pinnacle Property Management Services, LLC has implemented an arbitration procedure to provide quick, fair, final and binding resolution of employment-related legal claims.” CP at 69. On the last page, the agreement ends with the following paragraph before the candidate’s signature line:

This Agreement will be enforceable throughout the application process, my employment, and thereafter with respect to any claims arising from or relating to my application or candidacy for employment, employment, and/or cessation of employment with Pinnacle Property Management Services, LLC. **I then must arbitrate all my employment-related claims, and I may not file suit in court.**

CP at 83 (emphasis added).

Czerwinski selects the following sentence on the first page that she thinks does not adequately say that the applicant must enter the agreement to be considered for employment: “If you wish to be considered for employment you must read and sign the following [Agreement].” CP at 69; Resp. Br. at 19. That sentence is clear. But to the extent further clarity is needed, the next two sentences state:

**This Agreement requires you to arbitrate any legal dispute related to your application for employment, employment with, or termination from Pinnacle Property Management Services, LLC. You will not be considered as an applicant until you have signed the Agreement.**

CP at 69 (emphasis in original). Czerwinski asserts that an average person could read this language and not believe it bound him or her to arbitrate all employment-related claims. Resp. Br. at 19. That is absurd because the language is clear.

Czerwinski would have this Court rule that the presence of the “AGREED” box *necessarily* means that she can sign the agreement without being bound by it. Resp. Br. at 20-22. Though the “AGREED” box is redundant, there is no way a reasonable applicant could read this contract, see an “AGREED” box on the final page, and believe that he or she can sign the contract without agreeing to it. CP at 83. If an applicant believed that, there would be no point in her inserting her name and Social

Security information. This is not a question of Pinnacle's hidden subjective intent, or an effort to give false choice to trick its employees, as Czerwinski alleges. The Court should view this box for what it so patently is—legal belt and suspenders that has no effect on Czerwinski's agreement.

Finally, Czerwinski claims that she did not have a reasonable opportunity to understand the agreement. Resp. Br. at 22. But the agreement is part of the application process so she had all the time she wanted to review it or take it to a lawyer. She acknowledges that the agreement contains the contact information for Pinnacle's Human Resources Department, but she asserts that it was still unfair because she did not think that she could contact HR with questions. Resp. Br. at 5, 23. It is immaterial what Czerwinski subjectively—and incorrectly—believed. The undisputed fact is that she had access to HR to ask any question about her application or the agreement, and she chose not to.

Because Czerwinski had a meaningful choice about whether to enter the agreement or work elsewhere, the agreement is not procedurally unconscionable.

**D. The Agreement Is Not Substantively Unconscionable.**

Czerwinski claims that aspects of the agreement are substantively unconscionable. Resp. Br. at 24-33. She must prove that these provisions

are “monstrously harsh.” *Zuver*, 153 Wn.2d at 303. Even if she has done that, which Pinnacle denies, the Court should follow *Zuver* and apply the agreement’s severability clause:

**Rule 18. SEVERABILITY/CONFLICT WITH LAW**

In the event that any of these Issue Resolution Rules agreed upon by the Parties is held to be in conflict with a mandatory provision of applicable law, the conflicting Rule shall be modified automatically to comply with the mandatory provision of applicable law until such point as these Issue Resolution Rules may be modified in accordance with Rule 19 below. **In the event of an automatic modification with respect to a particular Rule, the remainder of these Rules shall not be affected.**

CP at 82, 142 (emphasis added). “Courts are generally loath to upset the terms of an agreement and strive to give effect to the intent of the parties. Consequently, when parties have agreed to a severability clause in an arbitration agreement, courts often strike the offending unconscionable provisions to preserve the contract’s essential term of arbitration.” *Zuver*, 153 Wn.2d at 320 (severing confidentiality and remedies provisions and sending the lawsuit to arbitration).

First, citing *Adler*, Czerwinski argues that the one-year limitations period in the agreement. Resp. Br. at 24-25. In *Adler*, the Court severed a limitations period from the remaining enforceable agreement. 153 Wn.2d at 338, 364. Even if this Court determines that the limitations period in Rule 4.b is unconscionable, the Court should similarly sever it and compel arbitration. Again, this is a moot point because Pinnacle admitted that

Czerwinski asserted timely claims, and to the extent that any of claim might have been outside the contractual limitations period, Pinnacle expressly waived the limitation period, CP at 118, which is allowable under IRP Rule 19. CP at 82.

Second, citing *Zuver*, Czerwinski argues that the confidentiality provision is unconscionable. Resp. Br. at 25-26. Again, the *Zuver* Court severed the provision in that case and enforced the remaining terms of the arbitration agreement. 153 Wn.2d at 322. As Czerwinski concedes, unlike the complete confidentiality required by the agreement in *Zuver*, Rule 9 of the parties' agreement contains exceptions to confidentiality. CP at 79-80. As in *Zuver*, this Court can sever the confidentiality provision if the Court concludes that the provision is substantively unconscionable.

Third, Czerwinski argues that the agreement's Rule 7 is unconscionable because it unreasonably limits discovery. Resp. Br. at 26-28. Czerwinski relies on *Woodward v. Emeritus Corp.*, 192 Wn. App. 584, 368 P.3d 487 (2016), in this regard. Resp. Br. at 27-28. Pinnacle has already distinguished *Woodward*. In *Woodward*, an elderly woman died at an assisted living facility, perhaps from neglect. 192 Wn. App. 589. In such a case, "[i]t is crucial to uncover the 'why' of the neglect—that is, the underlying factors and policies that led to the [decedent's] injury and/or death." *Id.* at 608. The estate had little to no evidence because the

allegedly abused woman died. Those concerns are not in play here, as Czerwinski is an eyewitness to the allegations she makes about Pinnacle. Unlike in *Woodward*, Czerwinski will not rely entirely on evidence from others. Rather, she will rely on her own observations and alleged experiences. *Woodward* is thus inapposite and the discovery limitation here is not unconscionable.

Fourth, Czerwinski claims that a sanctions provision in Rule 11.b of the Agreement is unconscionable. Resp. Br. at 28-30. Again, that provision applies equally to both parties and is substantially similar to Civil Rules 11, 26, and 37. CP at 80. Czerwinski's speculation about what an arbitrator might do under this provision is just that—speculation. This sanctions provision should not be deemed unconscionable. If this Court disagrees, it can and should sever the provision.

Fifth and finally, Czerwinski argues that Rule 19 of the Agreement allows Pinnacle to unilaterally withdraw from the Agreement at any time. Again, that is simply untrue. Pinnacle is bound by the agreement, just as Czerwinski is. She also claims that it is also unconscionable that she has a deadline if she decides to withdraw from the agreement. But without a deadline, every employee who has an employment dispute will withdraw from the agreement, which would render any arbitration agreement—

indeed, any agreement—meaningless. The Court should disregard Czerwinski’s arguments about Rule 19.

## II. CONCLUSION

Pinnacle respectfully requests that this Court reverse the trial court and remand with instructions to compel Czerwinski’s claims into arbitration under the parties’ signed agreement.

Respectfully submitted this 18<sup>th</sup> day of July, 2018.

JACKSON LEWIS P.C.

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**DECLARATION OF SERVICE**

The undersigned declares under penalty of perjury under the laws of the State of Washington that a true and accurate copy of the Brief of Appellants was sent via email and U.S. Mail, addressed to:

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\_\_\_\_\_  
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