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COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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Sprint Solutions, Inc. and Annette Jacobs,

Appellants,

v.

Pagecom Inc.,

Respondent.

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Brief of Appellants

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## I. INTRODUCTION

This appeal concerns Respondent Pagecom, Inc.’s (“Pagecom”) attempt to avoid its contractual obligation to arbitrate all disputes arising under its agreement with Sprint. By way of background, Sprint sells wireless communication services to customers in part through independent contractors, known as Authorized Representatives (ARs), who enter into AR agreements with Sprint. Pagecom has been a Sprint AR since 2005 and currently operates 13 retail locations (they are referred to as “doors” by the parties). Pagecom and Sprint entered into the AR agreement relevant to this appeal in April 2014 (“Agreement”).

The Agreement contains a dispute resolution clause (“Dispute Resolution Clause”), which makes all disputes under the Agreement subject to a mandatory dispute resolution process. The dispute resolution process is simple: disputes brought by Pagecom against Sprint are first subject to mediation. Pagecom can then file arbitration upon the earliest of the following to occur: Sprint does not require mediation; mediation fails; or more than 45 days pass after either party submits a request for mediation. Pagecom *cannot* initiate litigation in court. Indeed, the parties *expressly waive* the right to litigate disputes in court.<sup>1</sup>

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<sup>1</sup> Under the Agreement Sprint can bring certain claims for injunctive relief in court.

In June 2017, Pagecom alleged it was receiving unfair compensation under the Agreement. After six months of unsuccessful discussions between the parties, Pagecom requested mediation on November 21, 2017. However, the parties agreed to hold the mediation request in abeyance until Pagecom provided additional financial information to Sprint, in the hope that such information would lead to resolution of the dispute. Pagecom provided the additional information two months later. By this time, more than 45 days had passed since Pagecom requested mediation, meaning Pagecom had the right to initiate arbitration under the Agreement.

Pagecom did not initiate arbitration. Instead, Pagecom filed suit in Pierce County Superior Court (in violation of the Dispute Resolution Clause). Shortly thereafter, Sprint moved to compel arbitration. Pagecom opposed Sprint's motion, claiming it did not want to arbitrate due to its belief that the arbitrator would be biased in favor of Sprint. In support of its opposition, Pagecom misinterpreted the Dispute Resolution Clause, alleging it allowed Sprint to prevent Pagecom from initiating arbitration (it does not). Pagecom also argued that Sprint's failure to agree to mediation or arbitration during pre-litigation negotiation discussions resulted in the waiver of Sprint's right to arbitration (it does not).

The trial court erroneously denied Sprint and Ms. Jacobs'<sup>2</sup> motion to compel. The trial court improperly concluded that: it could decide issues of arbitrability and waiver, the Dispute Resolution Clause is unconscionable, and Sprint waived its right to compel arbitration through its pre-litigation conduct.

This Court should reverse the trial court's Order Denying Defendants' Motion to Compel Arbitration and Dismiss and instead, direct the trial court to compel arbitration as required under the Agreement.

## **II. ASSIGNMENTS OF ERROR**

1. The trial court erred by denying appellant Sprint's motion to compel arbitration by order entered on March 19, 2019 ("March 19 Order").

2. The trial court erred by entering the Order Determining Court's Jurisdiction to Determine Arbitrability, dated November 19, 2018 ("November 19 Order"), determining that it was the proper decision maker over the issue of arbitrability.

3. The trial court erred by resolving the question of whether the arbitration provision was unconscionable in its March 19 Order.

4. The trial court erred by entering its finding of fact that the arbitration agreement was ambiguous in its March 19 Order.

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<sup>2</sup> Both appellants will be collectively referred to together as Sprint.

5. The trial court erred by not resolving any ambiguity in the Dispute Resolution Clause in favor of arbitration.

6. The trial court erred by entering findings of fact 1.3, 1.4, 1.5, 1.6, 1.7, 1.11 in its March 19 Order, finding Pagecom could not initiate arbitration.

7. The trial court erred by entering findings of fact 1.11 and 1.12 and conclusion of law 2.1 in its March 19 Order, finding and concluding that the arbitration agreement is unconscionable.

8. The trial court erred by resolving the question of whether Sprint waived its right to arbitration.

9. The trial court erred by entering findings of fact 1.10, 1.11, and 1.13 and conclusion of law 2.2 in its March 19 Order, finding and concluding that Sprint waived its right to compel arbitration.

10. The trial court erred by inferring Sprint was obligated to tell Pagecom when it could initiate arbitration when it entered finding of fact 1.9 in its March 19 Order.

### **III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. The Federal Arbitration Act requires enforcement of valid agreements to arbitrate. Any doubt whether a dispute is arbitrable should be resolved in favor of arbitration. Congress passed the law to combat the hostility against arbitration manifest in the trial court's decision. Did the

trial court err in not compelling arbitration? (Assignments of Error 1, 4, 5, 7, and 9).

2. The challenge to the validity of the arbitration agreement should have been decided by the arbitrator. The express language of the Dispute Resolution Clause delegates to the arbitrator all disputes “arising out of or in connection with the negotiation, construction, validity, interpretation” of this Agreement to the arbitrator. Is this a clear and unmistakable delegation of authority to the arbitrator in light of the Supreme Court’s approval of nearly the same language? (Assignments of Error 2, 3, 5, 7, 8, and 9).

3. Whether the trial court erred in determining the Dispute Resolution Clause was unconscionable by resolving perceived ambiguities against arbitration instead of in favor of arbitration, as required by the Federal Arbitration Act and Supreme Court precedent. (Assignments of Error 4 and 5).

4. The express language of the Dispute Resolution Clause allowed Pagecom to initiate arbitration 45 days after Pagecom requested mediation (which it did) and allowed Pagecom to initiate arbitration after the parties actually mediated (which they did). Did the trial court err when it decided the clause was unconscionable? (Assignments of Error 6, 7, and 10).

5. The Dispute Resolution Clause provides that if Sprint terminates the Agreement, Pagecom cannot prevent the Agreement from terminating

by initiating the dispute resolution process. The termination would go into effect and Pagecom has the right to initiate the dispute resolution process if it disagrees with the reason for the termination. Did the trial court err when it decided the termination provision was unconscionable, decided the termination provision was relevant (despite the fact termination is not an issue in the case), and failed to find the provision was severable? (Assignment of Error 7).

6. Pagecom's assertion that Sprint waived its right to arbitrate should have been decided by the arbitrator. The United States Supreme Court has held that it is presumed the arbitrator will decide the issue of waiver. Further, the parties delegated all disputes to the arbitrator including waiver. Did the trial court error when it decided the question of waiver? (Assignment of Error 8).

7. Sprint's prelitigation conduct of negotiating with Pagecom in no way was a waiver of its right to compel arbitration. The parties do not dispute that Sprint moved promptly to compel arbitration after Pagecom initiated litigation in court. Further, Pagecom failed to demonstrate that it suffered any prejudice. Did the trial court error when it decided Sprint waived its right to arbitration? (Assignment of Error 9).

#### IV. STATEMENT OF THE CASE

##### A. **Sprint Sells Wireless Communication Services and Products Directly and through Authorized Representatives.**

Appellant Sprint is a nationwide provider of wireless services and products and markets to consumers and enterprise customers.<sup>3</sup> Sprint markets and sells wireless communication services to its customers through its own direct sales force and also through independent contractors, commonly known as Authorized Representatives (“ARs” or “dealers”), who enter into an AR agreement with Sprint.<sup>4</sup> Customers subscribe to Sprint’s wireless voice and data services through the ARs and Sprint pays the ARs a commission for each new service activation or upgrade.

To maintain competitive flexibility, Sprint’s contracts with ARs generally run for a 2-year term.<sup>5</sup> Sprint usually undertakes a review process every two years to update the terms of the Agreement, and then requires all ARs that wish to continue to sell Sprint services and products to sign the updated AR agreement.

ARs are responsible for managing their own businesses, including operating retail storefronts which are referred to in the industry as “doors.”<sup>6</sup> The number of doors that a specific AR operates varies depending on the

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<sup>3</sup> CP 1–2, ¶ 2.

<sup>4</sup> CP 4, ¶ 11. Appellant Annette Jacobs is an employee of Sprint.

<sup>5</sup> CP 7, ¶ 22; RP Vol. 1, p. 4:24–5:1.

<sup>6</sup> CP 4, ¶ 11.

business plan, market, and capacity of the individual AR as well as on Sprint's distribution needs.

**B. Pagecom is Owned by an Industry Experienced, Sophisticated Business Owner and has been a Sprint AR Since 2005.**

Pagecom was formed in 1999 and has 20 years of experience in the wireless industry. Pagecom has been a Sprint AR since 2005 and currently operates 13 doors.<sup>7</sup> Pagecom is owned by Jason Suprenant, a sophisticated business owner in the wireless telecommunications industry.<sup>8</sup> In addition to his Sprint doors, Mr. Suprenant previously owned another corporation that operated 39 stores selling T-Mobile goods and services.<sup>9</sup>

**C. Pagecom and Sprint Entered into the Agreement Relevant to this Appeal in 2014.**

Over the years, Pagecom and Sprint have entered into several versions of the AR agreement.<sup>10</sup> On more than one occasion, Pagecom has requested that Sprint modify specific terms of the AR agreement but in each case Sprint declined to make changes.<sup>11</sup> Pagecom entered into the AR agreement that is the subject of Pagecom's claims with Sprint in April of 2014 ("Agreement").<sup>12</sup>

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<sup>7</sup> CP 4, ¶ 11.

<sup>8</sup> CP 342, ¶ 1.

<sup>9</sup> CP 4, ¶ 11.

<sup>10</sup> CP 346, ¶ 9.

<sup>11</sup> CP 346, ¶ 9.

<sup>12</sup> CP 7, ¶ 22. Subsequent to Sprint's Notice of Appeal, on May 28, 2019, Sprint and Pagecom entered into a new version of the Agreement.

**D. The Agreement Contains a Mandatory Arbitration Provision under which the Parties Waived their Right to Litigate Disputes in Court.**

Since 2005, Pagecom has signed several versions of the Agreement with Sprint, all of which contain a mandatory Dispute Resolution Clause, requiring the parties to submit *all disputes* to arbitration.<sup>13</sup> The Dispute Resolution Clause specifies that “[a]ll Disputes under this Agreement are subject to the . . . dispute resolution process.”<sup>14</sup> Dispute is defined broadly as:

**all controversies, disputes, or claims of every kind and nature arising out of or in connection with** the negotiation, construction, validity, interpretation, performance, enforcement, operation, breach, continuation or termination **of this Agreement.**<sup>15</sup>

Under the Dispute Resolution Clause, disputes brought by Pagecom against Sprint are first subject to mediation. Pagecom can file arbitration upon the earliest of the following to occur: Sprint does not require mediation; mediation fails; or more than 45 days pass after either party submits a request for mediation. This is expressly stated in the Agreement:

**Mediation.** In the event of a Dispute pursued by [Pagecom], Sprint, may require that the Dispute be submitted to mediation. The mediation will occur at a location chosen by Sprint.<sup>16</sup>

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<sup>13</sup> RP Vol. II, p. 29:3–8; CP 57, Section 17

<sup>14</sup> CP 57, Section 17.

<sup>15</sup> CP 108, Section 1. Emphasis added.

<sup>16</sup> CP 108, Section 2.

**Arbitration.** [Pagecom] may not commence arbitration until a Dispute has been subject to mediation in accordance with this Agreement. Either party may initiate arbitration with respect to a Dispute by filing a written demand for arbitration pursuant to the Wireless Industry Arbitration Rules of the AAA. [Pagecom] may only initiate arbitration after the 45<sup>th</sup> calendar day following the date that a request for mediation of such Dispute was first submitted, or, if earlier, the date that mediation is terminated. This applies to all causes of action, whether nominally a “claim,” “counterclaim”, or “cross-claim”, arising under common law or any state or federal statute.<sup>17</sup>

The parties expressly waive “their rights to litigate Disputes in court” and any right “to receive a jury trial.”<sup>18</sup>

Pursuant to the Dispute Resolution Clause, any mediation will occur at a location chosen by Sprint.<sup>19</sup> Furthermore, the Dispute Resolution Clause also provides that the arbitration hearing will occur in Reston, Virginia, Overland Park, Kansas, or in New York, New York, at the discretion of Sprint, unless otherwise agreed upon by the parties.<sup>20</sup> The Agreement’s choice of law provision specifies that the “Agreement is governed by the laws of Kansas, regardless of conflicts of law provisions.”<sup>21</sup>

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<sup>17</sup> CP 109, Section 3.

<sup>18</sup> CP 110, Section 4.

<sup>19</sup> CP 108, Section 2.

<sup>20</sup> CP 109, Section 3.

<sup>21</sup> CP 57, Section 18.1.

**E. Pagecom Disputes a Change in Sprint’s Compensation Formula Under the Agreement.**

Sprint pays Pagecom according to a “Commission Plan” set forth in the Agreement. “Sprint may change [the] Commission Plan . . . at any time.”<sup>22</sup> Pursuant to the Agreement, Sprint changed the compensation it paid to its ARs (including Pagecom).<sup>23</sup> This is the core of Pagecom’s dispute with Sprint.<sup>24</sup>

According to the Complaint, Pagecom contacted Sprint in June 2017, alleging its belief that other Sprint dealers were being more favorably compensated than Pagecom, in violation of Washington State law.<sup>25</sup> In a letter, Pagecom’s attorney, Mark Bardwil outlined Pagecom’s “legal and equitable issues” in order “to facilitate an appropriate discussion” and “engage in a meaningful resolution” of the dispute raised by Pagecom.<sup>26</sup>

Thereafter, the parties “engaged in a series of communications both through telephone conferences and written correspondence” regarding the dispute raised by Pagecom.<sup>27</sup> After six months of unsuccessful discussions, Pagecom sent a letter to Sprint dated November 21, 2017, requesting

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<sup>22</sup> CP 59.

<sup>23</sup> CP 346, ¶ 10.

<sup>24</sup> CP 346, ¶ 10.

<sup>25</sup> CP 6, ¶ 19.

<sup>26</sup> CP 6 ¶ 19.

<sup>27</sup> CP 7, ¶ 20.

mediation pursuant to the terms of the Agreement.<sup>28</sup> Pagecom also submitted a Request for Mediation to the American Arbitration Association (“AAA”) on November 21, 2017, asking for the mediation to be held in Renton, Washington.<sup>29</sup> Mary Hull, senior legal counsel at Sprint, responded to AAA that Sprint (which is headquartered in Kansas) would not agree to hold the mediation in Washington, as the Agreement provides for Sprint to choose the location of the mediation.<sup>30</sup>

On December 7, 2017, Mary Hull and Pagecom’s attorney, Mark Bardwil, discussed mediation and determined that it would be more prudent to proceed with arbitration because it was likely mediation would not resolve the dispute.<sup>31</sup> At this time, the parties *agreed* to hold the mediation request in abeyance until Pagecom provided additional financial information to Sprint.<sup>32</sup> Because of the holiday selling season, Pagecom indicated it would not be able to provide the information until January 5, 2018.<sup>33</sup>

Pagecom provided the additional information on January 22, 2018.<sup>34</sup>

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<sup>28</sup> CP 308, 312–15.

<sup>29</sup> CP 308, 312–15.

<sup>30</sup> CP 309, 317–18.

<sup>31</sup> CP 309, 320–21.

<sup>32</sup> CP 309, 320–21.

<sup>33</sup> CP 309, 320–21.

<sup>34</sup> CP 377–39.

In the enclosure letter, Mr. Bardwil asked whether Sprint would “recognize Washington as the proper locale for arbitration” if Sprint was unwilling to mediate.<sup>35</sup>

On March 13, 2018, Mr. Bardwil sent Ms. Hull additional correspondence, stating “please advise if Sprint plans on opposing litigation (arbitration or otherwise) in Washington.”<sup>36</sup>

**F. Sprint Issues, and Withdraws, a Notice Terminating the Agreement.**

On March 30, 2018, Sprint gave notice to Pagecom that Pagecom was in violation of the Agreement and that the Agreement would terminate if the breach was not cured within 30 days.<sup>37</sup> Pagecom requested Sprint rescind its termination notice.<sup>38</sup> On June 8, 2018, Sprint withdrew its notice of termination.<sup>39</sup> The parties continued to perform under the Agreement until May 28, 2019, when they signed a new version of the AR agreement.

**G. Pagecom Files its Dispute in Court, in Violation of the Arbitration Provision.**

On May 11, 2018, Pagecom filed suit in Pierce County Superior

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<sup>35</sup> CP 377–79.

<sup>36</sup> CP 309, 323–24.

<sup>37</sup> CP 7, ¶ 20.

<sup>38</sup> CP 10, ¶ 36.

<sup>39</sup> CP 333.

Court.<sup>40</sup> Pagecom’s Complaint alleges that the Agreement creates a “franchise” relationship between Pagecom and Sprint under Washington law.<sup>41</sup> Moreover, Pagecom alleges that Sprint made changes to Pagecom’s compensation under the Agreement in 2015 and 2017<sup>42</sup> that were detrimental to Pagecom and violated Washington’s Franchise Investment Protection Act (“FIPA”).<sup>43</sup> Finally, Pagecom alleged that Sprint “breached its contract” with Pagecom and “breached its duty of good faith and fair dealing implied in every Washington contract.”<sup>44</sup>

On July 20, 2018, the parties engaged in a full day mediation in Seattle, for which two Sprint representatives traveled from Overland Park, Kansas; the mediation was not successful.<sup>45</sup> Sprint then moved to compel arbitration of Pagecom’s lawsuit.<sup>46</sup> During oral argument on Sprint’s Motion to Compel, Pagecom’s counsel explained that Pagecom did not want to arbitrate, believing arbitration favored Sprint and furthermore, that

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<sup>40</sup> CP 1–15. Sprint removed the action to federal court on diversity grounds and moved to compel arbitration pursuant to the Agreement. Subsequently, the federal court remanded the action back to state court and did not rule on the merits of the motion to compel arbitration.

<sup>41</sup> CP 8, ¶ 26–27.

<sup>42</sup> CP 4–5, ¶ 11–16.

<sup>43</sup> CP 12 ¶ 42–43.

<sup>44</sup> CP 12, ¶ 48.

<sup>45</sup> CP 368, ¶ 3.

<sup>46</sup> CP 195–300. The trial court requested, after the first round of briefing on Sprint’s Motion to Compel Arbitration and oral argument, two additional rounds of briefing and oral argument relating to said Motion to Compel.

Pagecom did not want to travel to the venue in which it agreed to resolve disputes under the Agreement:

No, I don't really want to be in arbitration. Who would? What franchisee ever wants to be in arbitration? These are preprinted clauses that are there for a reason. **They benefit the party that drafted the contract.**

I don't want to be off in Kansas listening to some Kansas lawyer who doesn't even have a statute telling me, "I don't quite get what's going on here." I don't want to have to educate him. **I don't want to have to travel, the expense involved in traveling.**

If we can be in court, we would rather be in court. I would also rather be bringing the motion that this thing is a franchise in front of Your Honor so we can just have that legal issue heard like the rights of appeal.

I mean nobody really wants to go to arbitration when they're the party that wants something. The institution wants arbitration when it figures that may create procedural hang-ups and mute results. . . . So do I want it? Of course I don't want it.<sup>47</sup>

On November 19, 2018, the trial court entered the Order Determining the Court's Jurisdiction to Determine Arbitrability.<sup>48</sup> The trial court ruled that it, not an arbitrator, would determine the issue of arbitrability.<sup>49</sup> Thereafter, on March 19, 2019, the trial court entered the Order Denying Defendants' Motion to Compel Arbitration and Dismiss.<sup>50</sup>

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<sup>47</sup> RP Vol. II, p. 46:3–47:10 (emphasis added).

<sup>48</sup> CP 406–07.

<sup>49</sup> CP 406–07.

<sup>50</sup> CP 438–45.

The trial court concluded that the Dispute Resolution Clause is unconscionable and Sprint waived its right to compel arbitration through its pre-litigation conduct and language in the Agreement.<sup>51</sup>

## V. ARGUMENT

### A. Standard of Review.

Questions of arbitrability are reviewed de novo. *Tjart v. Smith Barney, Inc.*, 107 Wn. App. 885, 893, 28 P.3d 823 (2001).<sup>52</sup> Likewise, whether a contract is unconscionable is reviewed de novo, *Adler v. Fred Lind Manor*, 153 Wn.2d 331, 344, 103 P.3d 773 (2004), and whether a party waived the right to compel arbitration is reviewed de novo. *Jeoung Lee v. Evergreen Hosp. Med. Ctr.*, 7 Wn. App. 2d 566, 572, 434 P.3d 1071 (2019). Factual findings are reviewed for clear error and will be reversed if they are “(1) illogical, (2) implausible, or (3) without support in inferences that may be drawn from the record.” *Schuster v. Prestige Senior Mgmt., L.L.C.*, 193 Wn. App. 616, 633, 376 P.3d 412 (2016); *O'Connor v. Uber Techs., Inc.*, 904 F.3d 1087, 1094 (9th Cir. 2018) (internal quotations omitted).

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<sup>51</sup> CP 438–45.

<sup>52</sup> Washington law is cited throughout this brief because Washington law and Kansas law are in accord on the issues presented. Resolving a dispute regarding whether a contractual choice of law provision should be enforced requires the court to determine (1) whether there is an actual conflict of laws and, if so, (2) whether the Agreement's choice-of-law provision, selecting Washington law, is effective. *Erwin v. Cotter Health Centers*, 161 Wn.2d 676, 692, 167 P.3d 1112 (2007). “When parties dispute choice of law, there must be an actual conflict between the laws or interests

**B. The Federal Arbitration Act (“FAA”) Requires Enforcement of Arbitration Agreements; Arbitration is Strongly Favored.**

The arbitration provision in the Agreement is governed by the FAA. The FAA (which preempts state law) requires the enforcement of arbitration agreements by expressly providing that agreements to arbitrate “shall be valid, irrevocable, and enforceable save upon such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2. Indeed, the “‘principal purpose’ of the FAA is to ‘ensur[e] that private arbitration agreements are enforced according to their terms.’” *AT&T Mobility, LLC v. Concepcion*, 563 U.S. 333, 344, 131 S. Ct. 1740 (2011).

The FAA was adopted by Congress “in response to a perception that courts were unduly hostile to arbitration.” *Epic Sys. Corp. v. Lewis*, -- U.S. --, 138 S. Ct. 1612, 1621 (2018). “The Act, [the U.S. Supreme] Court has said, establishes ‘a liberal federal policy favoring arbitration agreements.’” *Id.* (underline added). Any doubt regarding whether a dispute is arbitrable should be resolved in favor of arbitration. *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 25, 103 S. Ct. 998 (1983) (underline added).

Contrary to the strong policy in favor of arbitration, the trial court

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of Washington and the laws or interests of another state before Washington courts will engage in a conflict of laws analysis.” *Id.* Here, there is no such conflict between Washington law and Kansas law on the issues presented.

denied Sprint's Motion to Compel Arbitration. In so doing, the trial court erred by (1) failing to delegate the decision of whether the arbitration agreement was enforceable to an arbitrator; (2) finding that the arbitration agreement was not enforceable because it was unconscionable; and (3) determining Sprint waived its right to compel arbitration through pre-litigation conduct.

**C. Whether a Valid Arbitration Agreement Encompasses the Parties' Dispute is a Question for the Arbitrator—Not the Court.**

The trial court erred by retaining jurisdiction to decide whether a valid arbitration agreement exists that encompasses the parties' dispute, because the Dispute Resolution Clause delegates authority to determine questions of arbitrability to an arbitrator.

The arbitrator, not the court, must decide the validity of an arbitration provision when the parties have clearly and unmistakably agreed to delegate questions of arbitrability to the arbitrator. *First Options of Chicago Inc. v. Kaplan*, 514 U.S. 938, 944, 115 S. Ct. 1920 (1995).<sup>53</sup> For example, in *Rent-A-Ctr., W., Inc. v. Jackson*, the United States Supreme Court held the parties delegated threshold questions of arbitrability to the arbitrator where the arbitration agreement provided:

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<sup>53</sup> Washington courts are in accord. See, e.g., *Hill v. Garda CL Nw., Inc.*, 179 Wn.2d 47, 53, 308 P.3d 635 (2013).

for arbitration of all ‘past, present, or future’ disputes...arising out of [the] employment with Rent-A-Center, ‘[t]he Arbitrator...shall have exclusive authority to resolve any dispute relating to the...enforceability...of this Agreement including, but not limited to any claim that all or any part of this Agreement is void or voidable.’

*Rent-A-Ctr., W., Inc. v. Jackson*, 561 U.S. 63, 68, 130 S. Ct. 2772 (2010).

This rule is well-established. *See, e.g., PaineWebber Inc. v. Bybyk*, 81 F.3d 1193, 1199 (2d Cir. 1996) (holding an arbitration provision stating that “any and all controversies . . . [concerning] the construction, performance, or breach [of this agreement] shall be determined by arbitration” is elastic enough to encompass issues of arbitrability and is a clear delegation of authority to the arbitrator on issues of arbitrability).

Here, the express language of the Dispute Resolution Clause is substantially similar to the arbitration provisions in *Rent-A-Ctr.* and *PaineWebber*. The Dispute Resolution Clause delegates all disputes “**arising out of or in connection with** the negotiation, construction, validity, interpretation” of this Agreement to the arbitrator. Consistent with *Rent-A-Ctr.* and *PaineWebber*, this is a clear delegation of authority to the arbitrator to determine issues of arbitrability.

The trial court erred in retaining jurisdiction to decide questions of arbitrability which were properly delegated to the arbitrator.

**D. The Dispute Resolution Clause is Valid, Enforceable and Governs the Parties' Dispute.**

The Dispute Resolution Clause is enforceable and governs the parties' dispute. "[T]he court's role under the FAA is limited 'to determining (1) whether a valid agreement to arbitrate exists and, if it does, (2) whether the agreement encompasses the dispute at issue.'" *Lexington Ins. Co. v. Centex Homes*, 795 F.Supp.2d 1084, 1189 (D. Hawaii 2011) (citing *Cox v. Ocean View Hotel Corp.*, 533 F.3d 1114, 1119 (9th Cir. 2008)). With respect to validity, as noted above, agreements to arbitrate "shall be valid, irrevocable, and enforceable save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2 (underline added). Principles that govern the revocation of contracts include fraud, duress, or unconscionability. *Concepcion*, 563 U.S. at 339; *accord Adler*, 153 Wn.2d at 342. Thus, the Dispute Resolution Clause is valid unless Pagecom can prove that it is revocable for fraud, duress, or unconscionability.

The parties do not dispute that the Dispute Resolution Clause encompasses all of Pagecom's claims. The Dispute Resolution Clause of the Agreement is clear and broad in scope. The Dispute Resolution Clause encompasses "all controversies . . . of every kind and nature arising out of or in connection with the negotiation, construction, validity, interpretation,

performance, enforcement, operation, breach, continuation or termination of this Agreement.” Courts have consistently held arbitration clauses that contain language such as ‘arising out of’ “are ‘extremely broad’ and necessarily create a presumption of arbitrability.” *Faulkenberg v. CB Tax Franchise Sys., LP*, 637 F.3d 801, 810–11 (7th Cir. 2011) (underline added). Thus, under the plain language of the Agreement, Pagecom’s claims are subject to arbitration under the Dispute Resolution Clause.

**E. The Trial Court Erred in Ruling that the Dispute Resolution Clause is Unconscionable.**

Because the Dispute Resolution Clause is presumed valid and to govern the parties’ dispute, Pagecom has the high burden of proving the arbitration provision is unenforceable because it was obtained through fraud or duress, or is unconscionable. *See Green-Tree Fin. Corp.-Alabama v. Randolph*, 531 U.S. 79, 92, 121 S. Ct. 513 (2000). Moreover, Pagecom must demonstrate the arbitration provision *itself* is unconscionable—an attack on the formation of the contract as a whole is insufficient to invalidate an arbitration provision within it. *Rent-A-Ctr., W., Inc.*, 561 U.S. at 72.

Towards this end, Pagecom argued that the arbitration provision is unenforceable because it is unconscionable. There are two types of unconscionability: substantive and procedural. Substantive unconscionability applies where a term in the arbitration provision is

alleged to be one-sided or overly harsh. *Id.* A finding of substantive unconscionability requires an unfairness that “truly stands out.” *Torgerson v. One Lincoln Tower, LLC*, 166 Wn.2d 510, 519, 210 P.3d 318 (2009) (underline added). Terms used to define substantive unconscionability include “shocking the conscience,” “monstrously harsh,” and “exceedingly calloused.” *Id.* Procedural unconscionability applies to impropriety during the formation of the arbitration provision. *Romney v. Franciscan Med. Grp.*, 186 Wn. App. 728, 735, 349 P.3d 32 (2015).

Under this framework, Pagecom argued the Dispute Resolution Clause is unconscionable because (1) the clause permits only Sprint to initiate arbitration (it does not) and (2) if the dispute concerns termination of the Agreement, the arbitration provision limits Pagecom’s ability to initiate arbitration until after the termination is effective (it does not and in any event, this is an irrelevant, non-issue).

None of Pagecom’s assertions support the conclusion that the Dispute Resolution Clause is unconscionable, and the trial court erred in holding to the contrary.

**1. The Dispute Resolution Clause does not Prevent Pagecom from Initiating Arbitration.**

**(a) Pagecom Patently Misinterprets the Dispute Resolution Clause, Rendering Portions of the Clause Meaningless.**

Pagecom mistakenly argued (and the trial court erroneously held)

that the Dispute Resolution Clause can be read to deny Pagecom the right to initiate arbitration, rendering the clause unconscionable. Not even a strained reading of the Dispute Resolution Clause supports such a conclusion. The Dispute Resolution Clause is neither substantively, nor procedurally, unconscionable. In fact, Pagecom simply misstates and misinterprets the clause. The Dispute Resolution Clause states:

**Mediation.** In the event of a Dispute pursued by [Pagecom], Sprint, may require that the Dispute be submitted to mediation. The mediation will occur at a location chosen by Sprint.<sup>54</sup>

**Arbitration.** [Pagecom] may not commence arbitration until a Dispute has been subject to mediation in accordance with this Agreement. . . . [Pagecom] may only initiate arbitration after the 45<sup>th</sup> calendar day following the date that a request for mediation of such Dispute was first submitted, or, if earlier, the date that mediation is terminated. This applies to all causes of action, whether nominally a “claim,” “counterclaim”, or “cross-claim”, arising under common law or any state or federal statute.<sup>55</sup>

The clear effect of this language is to subject disputes brought by Pagecom against Sprint first to mediation. If Sprint does not require mediation, mediation fails, *or more than 45 days pass after either party requests mediation*, Pagecom *can* file arbitration. *Nowhere* does the Dispute Resolution Clause permit only Sprint to initiate arbitration or in any way deny Pagecom access to a forum to resolve disputes.

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<sup>54</sup> CP 108, Section 2.

<sup>55</sup> CP 109, Section 3.

Nevertheless, Pagecom ignores language in the Dispute Resolution Clause to manufacture an argument that Pagecom could not initiate arbitration unless and until mediation *had actually occurred*. Pagecom further argued that, because Sprint could choose not to mediate, Sprint could effectively deny Pagecom the ability to arbitrate. Pagecom’s cherry-picking of provisions of the Dispute Resolution Clause renders portions of the clause superfluous, a result Washington courts must avoid. *Wagner v. Wagner*, 95 Wn.2d 94, 101, 621 P.2d 1279 (1980) (“An interpretation of a writing which gives effect to all of its provisions is favored over one which renders some of the language meaningless or ineffective.”). This is obvious because the Dispute Resolution Clause provides that Pagecom *can initiate arbitration 45 days after requesting mediation* or, if earlier, the date that mediation is terminated. The italicized language is rendered meaningless if Pagecom cannot initiate arbitration *prior* to the mediation actually occurring. Giving effect to all of language in the arbitration provision, Pagecom was free to initiate arbitration as early as January 5, 2018—45 days after it initially requested mediation.

In reality, Pagecom chose not to initiate arbitration because it mistakenly believes an arbitrator will be biased against Pagecom and because Pagecom’s counsel does not want to travel to Kansas or have a

Kansas arbitrator decide the dispute.<sup>56</sup> These reasons do not form a basis to find an arbitration provision unconscionable. In fact, Pagecom's belief that an arbitrator will be biased is directly contrary to Congress's goal of reducing undue hostility to arbitration. Moreover, it is *Sprint* who will be unfairly prejudiced if this matter proceeds in the trial court in Washington and is not subject to arbitration. The Dispute Resolution Clause (to which the parties agreed) allows Sprint to choose the forum in which arbitration will proceed. Arbitration allows disputes concerning Sprint's compensation formula to remain confidential and not part of the public forum (unlike litigation in trial court). The Dispute Resolution Clause also provides for expedient resolution of disputes by limiting discovery and other related matters.

Pagecom's dubious reading of the Dispute Resolution Clause is not supported and does not render the clause unconscionable. The trial court erred in holding to the contrary.

**(b) Under Any Reading of the Dispute Resolution Clause, Pagecom could have Initiated Arbitration Because the Parties Actually Mediated this Dispute.**

Even under Pagecom's interpretation of the Dispute Resolution Clause, Pagecom can initiate arbitration after the parties have mediated.

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<sup>56</sup> RP Vol. II, p. 46:3-47:10.

Thus, there is no dispute that Pagecom could have initiated arbitration after *the parties actually mediated on July 20, 2018*, and the mediation was unsuccessful in resolving the dispute. The trial court erred in refusing to grant Sprint’s motion to compel arbitration that was filed in September 2018, *after the mediation between the parties had already occurred*.

**(c) The Trial Court Erred in Ignoring Controlling Precedent when it Refused to Construe any Ambiguity in the Dispute Resolution Clause in Favor of Arbitration.**

Despite the clear language in the Dispute Resolution Clause, and despite the fact that the parties actually mediated, the trial court found the Dispute Resolution Clause and Pagecom’s general “ability to initiate Dispute Resolution” “at best ambiguous.”<sup>57</sup> In light of this perceived ambiguity, the trial court concluded the arbitration clause was unconscionable and therefore unenforceable. However, this is directly contrary to established and controlling legal authority requiring that any ambiguities in dispute resolution agreements be resolved in favor of arbitration. *See, e.g., Mastrobuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52, 62, 115 S. Ct. 1212 (1995) (providing that any ambiguities as to the scope of the arbitration clause itself must be resolved in favor of

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<sup>57</sup> CP 440, ¶ 1.5, ¶ 2.2.

arbitration); *see also Lamps Plus, Inc. v. Varela*, -- U.S. --, 139 S. Ct. 1407, 1418–19 (2019) (stating that, as a default rule, the FAA provides for resolution of ambiguities in arbitration agreements in favor of arbitration without considering who drafted the agreement).

The trial court erred in resolving the perceived ambiguity of the Dispute Resolution Clause against arbitration, in violation of the FAA.

**2. Special Procedures for Disputes Arising in Connection with Termination of the Agreement are not Unconscionable, are Severable, and are Irrelevant.**

Pagecom also mistakenly argued the Dispute Resolution Clause was unconscionable because it does not allow Pagecom to dispute Sprint’s termination of the Agreement until the termination has gone into effect. The relevant portion of the Dispute Resolution Clause states: “It is expressly understood by AR that this dispute resolution process may only be invoked regarding Sprint’s right to terminate the AR Agreement after the termination has gone into effect.”<sup>58</sup>

Stated differently, if Sprint terminates the Agreement, Pagecom cannot prevent the Agreement from terminating by initiating the dispute resolution process. The termination would go into effect and Pagecom has the right to initiate the dispute resolution process if it disagrees with the

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<sup>58</sup> CP 282, Section 1.

reason for the termination. Such remedy limitation provision is not unconscionable. *Torgerson*, 166 Wn.2d at 520 (remedy limitation provision is substantively unconscionable only when it denies one party a meaningful remedy).

Even if such a provision was unconscionable (which it is not), the trial court could have simply severed the provision. Under either Kansas or Washington law, “[a] contract that contains valid and invalid provisions in which the lawful provisions can be easily severed will be upheld as to the lawful portion.” *Miller v. Foulston, Siefkin, Powers & Eberhardt*, 246 Kan. 450, 462, 790 P.2d 404 (1990); *see also Zuver v. Airtouch Communications, Inc.*, 153 Wn.2d 293, 320, 103 P.3d 293 (2004). Consequently, when parties have agreed to a severability clause in an arbitration agreement, as they have done in this case,<sup>59</sup> the court should strike the offending unconscionable provision(s) to preserve the contract's essential term of arbitration. *Id.* As such, even if the termination provision was unconscionable (it was not), the trial court erred in not severing the provision from the Agreement and enforcing the remainder of the Dispute Resolution Clause by compelling this case to arbitration.

Finally, and perhaps most importantly, this provision is irrelevant

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<sup>59</sup> CP 232, Section 18.7 of the Agreement (severability clause).

because Sprint did not terminate the Agreement. The pertinent facts are as follows: Sprint sent a notice of termination to Pagecom on March 31, 2018.<sup>60</sup> Pagecom responded by filing this lawsuit in Pierce County Superior Court on May 11, 2018, seeking an injunction to prevent the termination and also asserting its other claims.<sup>61</sup> It is *undisputed* Sprint withdrew its notice of termination on June 8, 2018.<sup>62</sup> The court found that Sprint’s withdrawal of the notice of termination (i.e., continuing the business relationship) was “callous and unconscionable.”<sup>63</sup> It is unclear how the withdrawal of a notice terminating the Agreement is unconscionable—such action certainly does not concern a substantive provision of the Agreement nor a procedural matter related to the formation of the Agreement. Regardless, the termination notice is not in issue, Pagecom’s argument to the contrary is a red herring, and the parties continue under a contractual arrangement to this day.

The trial court erred in relying on this provision to conclude that the Dispute Resolution Clause is unconscionable.

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<sup>60</sup> CP 7, ¶ 20.

<sup>61</sup> CP 1.

<sup>62</sup> CP 310, 333, 334.

<sup>63</sup> CP 441, ¶ 1.11.

**F. The Trial Court Erred in Ruling that Sprint Waived its Right to Compel Arbitration.**

The trial court erroneously concluded that Sprint's pre-litigation conduct waived Sprint's right to compel arbitration.<sup>64</sup> The trial court based its incorrect conclusion on the following findings of fact: the parties had been in a dispute for an extended period of time prior to litigation;<sup>65</sup> Sprint did not affirmatively state that Pagecom could initiate arbitration without Sprint first agreeing to mediation during pre-litigation discussions;<sup>66</sup> Sprint advised Pagecom it did not desire or intend to participate in mediation;<sup>67</sup> and Sprint did not agree to any means of dispute resolution until after Sprint had initiated the termination process with Pagecom.<sup>68</sup>

The trial court's decision misapplies the law, the Dispute Resolution Clause, and the facts. As an initial matter, it is well-settled that disputes over waiver are presumptively decided by the arbitrator. However, even if the issue was properly considered by the trial court (which it was not) Sprint did not prevent Pagecom from initiating arbitration, nor could it have done so.

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<sup>64</sup> CP 441, ¶ 1.13, 2.2.

<sup>65</sup> CP 440, ¶ 1.8.

<sup>66</sup> CP 441, ¶ 1.9.

<sup>67</sup> CP 441, ¶ 1.10.

<sup>68</sup> CP 441, ¶ 1.11.

**1. Issues of Waiver must be Decided by the Arbitrator.**

The Supreme Court has expressly noted that issues of waiver of are presumed to be decided by the arbitrator:

**[C]ourts presume that the parties intend arbitrators, not courts, to decide disputes about** the meaning and application of particular procedural preconditions for the use of arbitration. These procedural matters include **claims of ‘waiver,** delay, or a like defense to arbitrability.’

*BG Grp., PLC v. Republic of Argentina*, 572 U.S. 25, 34–35, 134 S. Ct. 1198 (2014) (internal citations omitted, emphasis added). Thus, unless the parties specified otherwise in their contract, it is *presumed* that the arbitrator will decide “procedural preconditions for the use of arbitration” such as waiver. *Id.*

Here, questions of procedural preconditions, such as waiver, are *presumed* to be determined by the arbitrator. This is particularly true in this case where, as noted above, the Dispute Resolution Clause expressly delegates such questions to the arbitrator by providing that “all” disputes shall be submitted to the arbitrator.

The trial court erred in retaining jurisdiction to decide whether Sprint waived its right to arbitrate this dispute.

**2. Sprint’s Prelitigation Conduct in no way Waived its Right to Compel Arbitration.**

Sprint’s prelitigation conduct did not waive its right to arbitration. “Waiver of a contractual right to arbitration is not favored” and the burden of proof is on the party seeking waiver.” *Fisher v. A.G. Becker Paribas Inc.*, 791 F.2d 691, 694 (9th Cir. 1986). The Ninth Circuit has found that “the FAA, and not [state] law, supplies the standard for waiver.” *Sovak v. Chugai Pharm. Co.*, 280 F.3d 1266, 1270 (9th Cir. 2002). “Any examination of whether the right to compel arbitration has been waived must be conducted in light of the strong federal policy favoring enforcement of arbitration agreements.” *Fisher*, 791 F.2d at 691. “A party seeking to prove waiver of a right to arbitration must demonstrate: (1) knowledge of an existing right to compel arbitration; (2) acts inconsistent with that existing right; and (3) prejudice to the party opposing arbitration resulting from such inconsistent acts.” *Id.* at 694.

The trial court found that Sprint waived its right to compel arbitration “through its pre-litigation conduct and use of the one-sided, ambiguous, and unconscionable language of the Dispute Resolution Provision.”<sup>69</sup> The trial court erred because Pagecom did not satisfy its burden to prove waiver. First, Sprint had no right to arbitration until

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<sup>69</sup> CP 441, ¶ 2.2.

Pagecom improperly initiated this lawsuit with the trial court (Sprint did not have a claim against Pagecom). Second, Sprint's actions after Pagecom filed suit are wholly consistent with its right to arbitration (it moved to compel arbitration shortly after Pagecom initiated this lawsuit, which was the first time that Sprint could file a Motion to Compel Arbitration). Third, even if Pagecom could satisfy these first two elements (which it cannot), Pagecom has unequivocally suffered no prejudice resulting from any alleged inconsistency by Sprint.

**(a) Sprint had no Right to Arbitration until Pagecom Improperly Commenced Litigation.**

Pagecom argues Sprint waived its right to arbitrate because it failed to force arbitration before Pagecom initiated litigation. Careful consideration of Pagecom's argument reveals its absurdity. Prior to Pagecom initiating litigation in court (the wrong forum), Sprint had *no existing right to compel arbitration*. Sprint had no claim against Pagecom; Sprint was not required to initiate arbitration against *itself* on *Pagecom's* behalf in order to preserve its right to arbitrate. Such an argument is simply nonsensical. Notably, it is undisputed Sprint acted promptly to enforce the arbitration provision by filing its Motion to Compel Arbitration once Pagecom initiated litigation (demonstrating Sprint intended to enforce its

right to arbitrate).<sup>70</sup>

**(b) Sprint Acted Consistently with its Right to Arbitrate.**

The parties do not dispute that after Pagecom filed its lawsuit with the trial court, Sprint acted consistently with its right to arbitrate. “A party asserting its right to arbitration acts inconsistently with that right where it seeks a decision on the merits of issues in the litigation and fails to assert its right at ‘obvious opportunities’ to do so.” *Jeoung Lee*, 7 Wn. App. 2d at 583-84. In plain terms, “a party waives a right to arbitrate if it elects to litigate instead of arbitrate.” *Id.*

Here, at every available opportunity, Sprint acted to enforce the mandatory arbitration provision in the Agreement. Pagecom filed suit on May 11, 2018, in Pierce County Superior Court. Shortly thereafter the parties engaged in a full day mediation in Seattle, which was not successful.<sup>71</sup> Without delay, Sprint then brought a motion to compel arbitration in the state court proceeding.<sup>72</sup> At no time since the filing of this lawsuit has Sprint sought a decision on the merits from the trial court, failed to assert its right to arbitrate, or taken actions inconsistent with its right to arbitration.

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<sup>70</sup> Pagecom has not raised any allegation that Sprint’s conduct after Pagecom filed suit constitutes waiver of its right to arbitration and the trial court has not so held.

<sup>71</sup> CP 368, ¶ 3.

<sup>72</sup> CP 195–300.

The same is true for Sprint's *pre-litigation* conduct. As an initial matter, Pagecom has not cited, and Sprint has not found, any legal authority standing for the proposition that pre-litigation conduct constitutes a waiver of a party's right to arbitration. In fact, the closest authority Pagecom could find is *JPD, Inc. v. Chronimed Holdings, Inc.*, 539 F.3d 388 (6<sup>th</sup> Cir. 2008), an inapposite case in which the court found the parties' pre-litigation conduct was *not* a waiver of its right to arbitrate.

In any event, the pre-litigation conduct that Pagecom alleges constitutes waiver is consistent with Sprint's right to arbitrate. Pagecom alleges only that: the parties engaged in unsuccessful discussions to resolve this matter for six months; Pagecom requested mediation to be held in Renton, Washington (to which Sprint would not agree, since the Agreement authorizes Sprint to choose the location of arbitration); the parties agreed to hold Pagecom's mediation request in abeyance until Pagecom provided additional financial information to Sprint; and Pagecom asked whether Sprint planned on opposing litigation (arbitration or otherwise) in Washington.<sup>73</sup> These pre-litigation acts do not constitute waiver. Sprint never stated that it opposed arbitration, never indicated that it would forego its contractual right to arbitration, and never acted inconsistently with its

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<sup>73</sup> CP 309, 320–21.

right to arbitrate.

Finally, it is worth noting that the trial court concluded that Sprint's "use of the one-sided, ambiguous, and unconscionable language of the Dispute Resolution [Clause], waived its right to compel arbitration."<sup>74</sup> Even if this was the case, which it is not, such a determination has no bearing on whether a party waived its right to arbitrate. Such a conclusion erroneously and improperly conflates *waiver* with *unconscionability*.

The trial court erred in determining Sprint acted inconsistently with its right to arbitration.

**(c) Pagecom Cannot Demonstrate it was Prejudiced by any Alleged Waiver.**

Pagecom utterly fails to demonstrate any prejudice resulting from Sprint's alleged waiver of its right to compel arbitration, nor did the trial court find that Pagecom has been prejudiced. It is settled law in the Ninth Circuit that prejudice is required to find waiver. *Fisher*, 791 F.2d at 694.

Pagecom cannot demonstrate prejudice because it is Pagecom's *own* delay and refusal to comply with the contractual Dispute Resolution Clause that has prevented the parties from arbitrating this dispute. In fact, Pagecom *has been able to initiate arbitration for nearly a year*. Pagecom simply does

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<sup>74</sup> CP 441, ¶ 2.2.

not want to arbitrate because it believes an arbitrator will be biased against it and Pagecom's attorneys do not want to travel.<sup>75</sup> Interestingly, Pagecom creatively argues that it has been prejudiced by a delay in obtaining a monetary award if it is ultimately successful in bringing this dispute and that it has incurred unidentified 'additional expense.' However, any delay and any additional expenses incurred by Pagecom's initiating this dispute in the wrong forum are self-inflicted and do not constitute prejudice. *See, e.g., Id.* at 698. Moreover, the simple passage of time by itself does not constitute the type of prejudice that supports waiver. *In re Bath Junkie Franchise, Inc.*, 246 S.W.3d 356, 368 (Ct. App. Tex. 2008) (14-month wait to compel arbitration *after litigation started* was not enough to find waiver).

Furthermore, the trial court did not make any finding that Pagecom was somehow prejudiced by an alleged waiver, and therefore erred in ruling that Sprint has waived its right to have this dispute resolved in arbitration.

## VI. CONCLUSION

Pagecom chose to enter into the Agreement, agreeing to resolve disputes through binding arbitration and waiving its right to litigate in court and right to a jury trial. Nevertheless, Pagecom now seeks to disregard the arbitration provision of the Agreement and bring the underlying suit in

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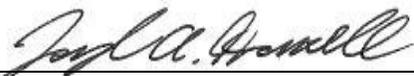
<sup>75</sup> *See supra*, Section IV.G.

Pierce County Superior Court because it believes that a Washington State judge will be more favorable to it than an arbitrator and because Pagecom does not want to travel. This is facially insufficient to deny Sprint its right to arbitrate. Moreover, Sprint's actions are wholly consistent with its right to arbitrate. The Dispute Resolution Clause is enforceable and encompasses all of Pagecom's claims.

The trial court erred in holding to the contrary and by resolving questions of arbitrability, finding the Agreement unconscionable, and holding Sprint's conduct amounted to a waiver of its right to arbitrate. This Court should reverse the trial court's Order Denying Sprint's Motion to Compel and direct the trial court to compel arbitration.

RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of July, 2019.

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## CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

On the date give below, I caused to be served in the manner noted a true and correct copy of Brief of Appellants on all attorneys and pro se parties of record:

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DATED this 19<sup>th</sup> day of July, 2019, at Seattle, Washington.

  
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Leslie Preskitt

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**Note: The Filing Id is 20190719154918D2861058**