

**FILED**

DEC 09 2011

COURT APPEALS  
DIVISION III  
STATE OF WASHINGTON  
BY \_\_\_\_\_

**No. 301419**

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**WASHINGTON STATE COURT OF APPEALS  
DIVISION III**

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KARLA BERSANTE and BRAND BERSANTE, together and  
as the marital community which they together comprise,

Respondents,

v.

NOTEWORLD, LLC, d/b/a Noteworld Servicing Center, a  
Delaware limited liability company; and FREEDOM DEBT  
CENTER, a California corporation,

Appellants.

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**BRIEF OF APPELLANT FREEDOM DEBT CENTER**

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## **I. INTRODUCTION**

This is an appeal from an order denying a motion to compel arbitration. The trial court below misconstrued applicable federal and state law in a variety of ways. It did not require the plaintiffs to submit any evidence to support their argument that the arbitration clause was unconscionable. The trial court made no effort to sever the provisions it found unconscionable (without evidence), although the Agreement contains a severability clause. Given the strong public policies, state and federal, supporting arbitration of disputes, the trial court's summary determination was erroneous and should be reversed.

## **II. ASSIGNMENTS OF ERROR**

1. The trial court erred by issuing an Order, dated July 28, 2011 denying defendants Noteworld, LLC and Freedom Debt Center's motion to compel arbitration, as the parties agreed.

2. The trial court erred by declining to require evidence bearing on unconscionability before deciding that an arbitration clause was, in fact, unconscionable.

3. Assuming, arguendo, that the trial court correctly found the venue provision of the arbitration clause unconscionable, the trial court erred by declining to sever the venue provision from the rest of the clause, and by failing to enforce it as modified.

4. The trial court erred to the extent that it decided that the arbitration of disputes arising under ch. 18.28 RCW or ch. 19.86 RCW should be treated differently, as a class, from other arbitration agreements.

### **III. STATEMENT OF THE CASE**

#### **A. Statement of Facts**

On August 29, 2009, the Bersantes signed a Debt Settlement Agreement (the “Agreement”) with Freedom Debt Center (“Freedom”). CP 7-10. The Agreement recites that Freedom is located in Irvine, California, which is located in

Orange County. CP 6. The Bersantes' Complaint

acknowledges that Orange County is Freedom's principal place of business. *Id.*

Directly above the Bersantes' signatures are the two clauses at issue on this appeal. The first is Paragraph 11, the arbitration clause. It states the following:

**11. ARBITRATION.** All disputes or claims between the parties related to this Agreement shall be submitted to binding arbitration in accordance with the rules of American Arbitration Association within 30 days from the dispute date or claim. Any arbitration proceedings brought by Client shall take place in Orange County, California. Judgment upon the decision of the arbitrator may be entered into any court having jurisdiction thereof. The prevailing party in any action or proceeding related to this Agreement shall be entitled to recover reasonable legal fees and costs, including attorney's fees which may be incurred.

CP 17. The second clause is the severability clause, which states:

**15. SEVERABILITY.** If any of the above provisions are held to be invalid or unenforceable, the remaining provisions will not be affected.

*Id.* The Bersantes became disenchanted with their Agreement with Freedom, and brought the instant lawsuit, claiming that Freedom violated the Consumer Protection Act and ch. 18.28 RCW.

**B. Procedures Below.**

After the Complaint was filed, Freedom moved the trial court for an order compelling arbitration and to stay proceedings pending the outcome thereof. CP 55. The Bersantes submitted a brief, CP 58, but did not submit any evidence on the question whether the arbitration clause was unconscionable.

The Bersantes simply argued that the venue provision in the arbitration clause was unconscionable because “In effect, [it would allow] Freedom [to] violate Washington laws with impunity knowing that it is highly unlikely that its customers would be able to pursue any legal action against them if the arbitration would have to be pursued in the state of California.” CP 62. The Bersantes’ argument was, essentially, that the

limited resources of consumers seeking debt relief and the allegedly high cost of arbitrating a consumer protection claim in California made arbitration of consumer claims under ch. 18.28 RCW and 19.86 RCW unconscionable.

The Bersantes also claimed that the arbitration clause was not applicable because “the Bersantes are not seeking to enforce the contract,” CP 59, and because the Agreement is “void” under Washington law; “since the entire contract is void, the arbitration clause ... is void as well,” they argued. CP 60. Finally, the Bersantes claimed that public policy was repelled by forcing them to arbitrate these consumer related disputes. No authority was provided to the trial court in support of these arguments.

The trial court agreed with the Bersantes, and denied the motion. This appeal followed.

## IV. ARGUMENT

### A. Summary of Argument.

The trial court overlooked both state and federal policies favoring arbitration, and disregarded clear Washington and federal precedent on several points. Established precedent covered every aspect of the Bersantes' argument below, and every aspect of the trial court's decision, which must be reversed. These points are discussed in turn.

First, both state and federal cases make clear that it is simply insufficient to claim that an arbitration provision is substantively unconscionable *without providing any evidence of the relative burdens* imposed by the provision. The trial court decision was unsupported by any evidence, and therefore must be reversed.

An arbitration provision is not by itself unconscionable. An unconscionable term is one that shocks the judicial conscience. By itself, there is nothing untoward or

unconscionable about the arbitration clause in the Agreement, and no evidence was submitted below to alter that conclusion.

Second, the Bersantes' argument that they were not seeking to *enforce* the contract, but seeking instead to *invalidate* it, therefore somehow freeing them from their agreement to arbitrate disputes related to the Agreement, is also inconsistent with law. So long as the claims made by the Bersantes are "related to" the Agreement, they are subject to arbitration. The arbitration clause defines its scope broadly, to encompass *any* disputes "related to" the Agreement. The plaintiffs attached the Agreement to their Complaint. CP 14-17. Any argument that the Agreement is *not* related to plaintiffs' claims seems concocted and disingenuous at best.

Third, Washington cases enforce contractual choice of law/choice of forum provisions when the chosen forum bears a rational relationship to the parties and the contract. *Schnall v. AT & T Wireless Services, Inc.*, 171 Wn.2d 260 (2011), *citing McKee v. AT & T Corp.*, 164 Wn.2d 372, 384, 191 P.3d 845

(2008) (citing *Erwin v. Cotter Health Ctrs., Inc.*, 161 Wn.2d 676, 694–96, 167 P.3d 1112 (2007)). As the Bersantes allege in their Complaint, Orange County, California is the principal place of business for Appellant Freedom, a relationship that is surely rational under *Schnall*.

But even if this Court is somehow offended by the venue provision, the remedy is to excise it, as other Washington courts have done, and not to refuse to enforce the arbitration agreement altogether. *See, e.g., Adler v. Fred Lind Manor*, 153 Wn.2d 331, 359-360, 103 P.3d 773, 788–789 (2004).

Finally, the Bersantes argued that “public policy” requires a judicial forum for disputes arising under the Consumer Protection Act, ch. 19.86 RCW, and the Debt Adjustment Act, ch. 18.28 RCW. Of course, neither statute expressly requires a judicial forum. Washington courts have rejected arguments that any Consumer Protection Act claims

must be decided in a judicial forum,<sup>1</sup> and this argument is foreclosed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16, in any event.

Plaintiffs bear the burden of proof to oppose enforcement of the parties' agreement to arbitrate disputes related thereto. *Townsend v. Quadrant Corp.*, 153 Wn.App. 870, 224 P.3d 818 (2009). They have not done so, and this Court should, accordingly, reverse.

**B. Scope of Review.**

On review of a trial court's denial of a motion to compel arbitration, the party opposing arbitration has the burden of showing that the arbitration clause is unenforceable or inapplicable. *Otis Housing Ass'n, Inc. v. Ha*, 165 Wn.2d 582, 587, 201 P.3d 309 (2009). Appellate review is conducted *de novo*. *Scott v. Cingular Wireless*, 160 Wn.2d 843, 851, 161 P.3d 1000 (2007), citing *Zuver v. Airtouch Communications*,

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<sup>1</sup> See *Satomi Owners Ass'n v. Satomi, LLC*, 167 Wn.2d 781, 225 P. 3d 213 (2009); see also *McKee v. AT&T Corp.*, 164 Wn.2d 372, 191 P.3d 845 (2008).

*Inc.*, 153 Wn.2d 293, 302, 103 P.3d 753 (2004). This Court may reach any decision the trial court could have reached on this record.

**C. Both Federal and State Cases Reject the Position Taken By Respondents that Mere Allegations of Substantive Unconscionability Suffice to Allow an Otherwise-Valid Arbitration Clause to be Rejected.**

*1. Federal Preemption Generally*

The Federal Arbitration Act (FAA), 9 U.S.C. §§ 1-16, applies to all arbitration agreements impacting interstate commerce, and preempts state laws inconsistent with its provisions and policies. *See, e.g., Preston v. Ferrer*, 552 U.S. 356, 353-354 (2008), citing *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 403-403 (1967), and *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440 (2006).

Section 2 of the FAA states:

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

9 U.S.C. § 2. This statute “declares a national policy favoring arbitration” of claims that parties contract to resolve in that manner. *Southland Corp. v. Keating*, 465 U.S. 1, 10 (1984).

As the Supreme Court noted in *Ferrer*:

That national policy, we held in *Southland*, “appli[es] in state as well as federal courts” and “foreclose[s] state legislative attempts to undercut the enforceability of arbitration agreements.” *Id.*, at 16. The FAA's displacement of conflicting state law is “now well-established,” *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 272 (1995), and has been repeatedly reaffirmed, *see, e.g., Buckeye*, 546 U.S., at 445-446; *Doctor's Associates, Inc. v. Casarotto*, 517 U.S. 681, 684-685 (1996); *Perry v. Thomas*, 482 U.S. 483, 489 (1987).

552 U.S., at \_\_\_, 128 S.Ct. at 353 (emphasis supplied).<sup>2</sup>

In *Ferrer*, an individual claimed that a state law providing him with specific protections (the California Talent Agencies Act) somehow trumped the FAA. The Supreme Court disagreed, pointing out that the FAA favors arbitration in both federal and state courts, and pre-empts categorical state

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<sup>2</sup> *Prima Paint* also teaches that the courts must focus solely on the arbitration clause when determining arbitrability, and may not deny a motion to compel arbitration if the contract as a whole, but not the arbitration clause specifically, is invalid.

efforts to vest exclusive jurisdiction over disputes arising out of agreements containing arbitration clauses in some other forum.<sup>3</sup>

In an even more recent decision, *AT&T Mobility LLC v. Concepcion*, \_\_\_ U.S. \_\_\_, 131 S.Ct. 1740 (2011), the Court made clear that the FAA preempts state decisional law rules that “stand as an obstacle to the accomplishment of the FAA’s objectives,” in that case, case law related to unconscionability and consumer contracts. 131 S.Ct. at 1748. In *Concepcion*, the Court held that a California holding that some types of consumer arbitration agreements were unconscionable *as a group* are inconsistent with the FAA and are preempted. *See* 131 S.Ct. at 1746 (generally applicable contract defenses may be applied consistently with the FAA, but a state may not deny a motion to compel arbitration on grounds “that apply only to arbitration or derive their meaning from the fact that an agreement to arbitrate is at issue”).

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<sup>3</sup> *Preston v. Ferrer*, 128 S. Ct. 978 (2008), citing Cal. Lab. Code §§ 1700.44(a), 1700.45.

Thus state court decisions that excuse a party from his or her agreement to arbitrate on grounds of unconscionability must be viewed with one eye toward federal preemption, and toward consistency with federal decisions under the FAA.<sup>4</sup>

2. *State Policies Favoring Arbitration of Disputes.*

Washington courts indulge every presumption in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability. *Verbeek Props., LLC v. GreenCo Env'tl., Inc.*, 159 Wn.App. 82, 87, 246 P.3d 205 (2010); *Heights at Issaquah Ridge Owners Ass'n v. Burton Landscape Grp., Inc.*, 148 Wn.App. 400, 405, 200 P.3d 254 (2009); *see also Peninsula Sch. Dist. No. 401 v. Pub. Sch. Empls. of Peninsula*, 130 Wn.2d 401, 413–14, 924 P.2d 13 (1996). Just last June, this Division of the Court of Appeals held:

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<sup>4</sup> *See Satomi Owners Ass'n v. Satomi, LLC*, 167 Wn.2d 781, 225 P. 3d 213 (2009) (arbitration clause in agreement was neither substantively nor procedurally unconscionable; FAA preempted Washington Condominium Act).

The courts have authority to determine whether parties to an action have agreed to arbitrate an underlying controversy. *Yakima County Law Enforcement Officers Guild v. Yakima County*, 133 Wn.App. 281, 285, 135 P.3d 558 (2006). But they have no authority to determine the merits of that controversy “ ‘unless it may be said with positive assurance the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.’ ” *Peninsula Sch. Dist. No. 401 v. Pub. Sch. Emps. of Peninsula*, 130 Wn.2d 401, 413–14, 924 P.2d 13 (1996) (emphasis omitted) (quoting *Council of County & City Emps. v. Spokane County*, 32 Wn.App. 422, 425, 647 P.2d 1058 (1982)). *We presume, strongly presume, that a controversy between parties is covered by their arbitration agreement. Id.* at 414, 924 P.2d 13. That presumption is rebutted only by evidence that shows expressly or by clear implication that the controversy is not covered. *Id.* “Thus, apart from matters that the parties specifically exclude, the questions on which they disagree must come within the scope of the grievance and arbitration provisions of the collective bargaining agreement.” *Id.*

*Chelan County v. Chelan County Deputy Sheriff’s Ass’n*, 162 Wn.App. 176, 181-182, 252 P.3d 421 (June 2, 2011, Division III) (emphasis supplied).

Thus under both state and federal law, arbitration of this dispute is “presumed, strongly presumed,” and the Bersantes have a heavy burden to prove otherwise. They have not met that burden.

3. *The Trial Court's Determination that the Arbitration Agreement is Unconscionable, Based Solely Upon Allegations and Absent Any Evidence, is Inconsistent with Both State and Federal Law.*

The Bersantes argued to the trial court, successfully, that the cost of arbitrating their claims in Orange County, California, was excessive in comparison with the value of the claim. CP 60. This was the sole *substantive* unconscionability argument advanced by the Bersantes; they also suggested that the arbitration agreement they entered “resembles an adhesion contract,” CP 62, but they did not elaborate, nor did they submit declarations to the effect that they did not know what they were signing.<sup>5</sup>

A party to an arbitration agreement cannot avoid its operation on grounds of unconscionability *without providing any evidence of the relative burdens* imposed by the provision. *Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79, 92 (2000); *Torgerson v. One Lincoln Tower, LLC*, 166 Wn.2d 510,

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<sup>5</sup> Of course, parties are presumed to have read the contracts they sign. *Nishikawa v. U.S. Eagle High, LLC*, 138 Wn.App. 841, 158 P.3d 1265 (2007).

519, 210 P.3d 318, 323 (2009); *see also M.A. Mortenson Co., Inc. v. Timberline Software Corp.*, 93 Wn.App. 819, 833-34, 970 P.2d 803 (1999) (noting lack of evidence that plaintiff was unwilling to enter challenged agreement), *aff'd*, 140 Wn.2d 568, 998 P.2d 305 (2000). Yet that is precisely what happened below.

In *Torgerson v. One Lincoln Tower, LLC*, *supra*, 166 Wn.2d 510, 519, 210 P.3d 318, 323 (2009), the court stated:

Here, the only evidence suggesting the Homeowners face financial difficulty are their identical declarations that requiring them to proceed in two forums would be financially ruinous. This presumes their tort claims are not subject to arbitration, a notion we reject *infra*. *Further, the Homeowners did not present evidence of the cost of arbitration as compared to the value of their claim, necessary to satisfy the burden recognized in Mendez. See id. at 465, 45 P.3d 594 (comparing burden of the \$2,000 expense up front to resolve a \$1,500 dispute). There is insufficient evidence on which to base an argument of substantive unconscionability under Mendez. (Emphasis added.)*

*See also Green Tree Fin. Corp.-Ala. v. Randolph*, 531 U.S. 79, 92 (2000) (rejecting a hypothetical contention that large arbitration costs rendered arbitration agreements unenforceable,

and holding that the party alleging unconscionability bears the burden of proving prohibitive costs); *M.A. Mortenson Co., Inc. v. Timberline Software Corp.*, 93 Wn.App. 819, 833-34, 970 P.2d 803 (1999) (noting lack of evidence that plaintiff was unwilling to enter challenged agreement), *aff'd*, 140 Wn.2d 568, 998 P.2d 305 (2000).

The Bersantes argued, in their briefing and without any affidavits or evidence of any kind, that it would be a hardship to force them to travel to Orange County, California, to arbitrate the case. The cases decided under *Green Tree* make abundantly clear that *proof* of unconscionability is required—mere allegations do not suffice.<sup>6</sup>

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<sup>6</sup> See also *Taylor Bldg. Corp. of Am. v. Benfield*, 117 Ohio St. 3d 352, 2008-Ohio-938, 884 N.E.2d 12 (2008) (applying the *Green Tree* rationale to state-law claims and declining to find unconscionability where the plaintiff failed to present evidence of prohibitive costs); *Faber v. Menard, Inc.*, 367 F.3d 1048, 1054 (8th Cir. 2004) (requiring party claiming that arbitration is cost-prohibitive to “present specific evidence of likely arbitrator’s fees and its financial inability to pay those fees,” including the claimant’s “particular financial situation”); *Kaneff v. Delaware Title Loans, Inc.*, 587 F.3d 616 (3d Cir. 2009) (\$125 filing fee was not unconscionable); *Pan Am Flight 73 Liaison Group v. Dave*, 711 F. Supp. 2d 13 (D.D.C. 2010), *aff’d*, 2011 WL 1544670 (D.C. Cir. 2011) (“The Dave’s allegation that the costs of arbitration are prohibitive fares no better. A party seeking to invalidate an arbitration agreement on the

Washington cases are to the same effect. *See, e.g., Woodall v. Avalon Care Center-Federal Way, LLC*, 155 Wn.App. 919, 231 P.3d 1252 (2010), in which the court rejected plaintiff's claim, based upon a conclusory allegation that he could not afford the cost of arbitration, that the clause was unconscionable. But even in *Woodall*, there was more evidence than the trial court had below; the Bersantes did not submit a declaration of any kind.

Similarly, in *Torgerson v. One Lincoln Tower, LLC*, *supra*, the court rejected a claim that an arbitration provision was unconscionable because there was insufficient evidence before it that the cost of arbitration was disproportionate to the value of the claim. This Court should note that American

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ground that arbitration would be prohibitively expensive bears the burden of showing the likelihood of incurring such costs. The Davés contend that the arbitration agreement's terms regarding costs are unreasonably favorable to ... the LG. But they offer no specific facts, as they must, to support this conclusion — for example, the expected cost difference between arbitration and litigation in court, and whether that cost differential is so substantial as to deter the bringing of claims. Indeed, arbitration may be a less costly alternative to formal litigation.”), citing *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 123 (2001) (“Arbitration agreements allow parties to avoid the costs of litigation”).

Arbitration Association “rules” are to be followed under this arbitration agreement, but there is no requirement that American Arbitration Association *fees* must be paid. This arbitration agreement is, therefore, relatively unburdensome on its face. There is no other evidence of costs before this Court.

This Court is respectfully requested to hold that the trial court erred by holding the arbitration agreement here unconscionable and unenforceable.

4. *The Appropriate Remedy for an Unconscionable Venue Provision is Severance, not Refusal to Enforce the Provision Altogether.*

In *Satomi Owners Ass'n v. Satomi, LLC*, 167 Wn.2d 781, 225 P. 3d 213 ( 2009), the court held that an arbitration clause like this one was neither substantively nor procedurally unconscionable; the court also held that the FAA preempted the Washington Condominium Act, a statute adopted to protect consumers. This result is similar to the result reached in *Woodall, supra*, and in other cases. *See, e.g., Townsend v. Quadrant Corp.*, 153 Wn.2d 870, 224 P.3d 818 (2009).

But if this Court is persuaded that the venue provision is unconscionable (though Freedom believes that would be inappropriate, because there is no evidence to sustain an unconscionability determination), the appropriate remedy is severance, not refusal to enforce. *Walters v. A.A.A. Waterproofing, Inc.*, 151 Wn.App. 316, 211 P.3d 454 (Div. 1 2009), *review denied*, 167 Wn.2d 1019, 224 P.3d 773 (2010) (unconscionable provisions were severed from agreement); *see also Zuver v. Airtouch Communications, Inc.*, 153 Wn.2d 293, 103 P.3d 753 (2004) (same, excising several parts of clause); *Adler v. Fred Lind Manor*, 153 Wn. 2d 331, 103 P.3d 773 (2004) (same; arbitration of WLAD claims).

The trial court apparently did not consider severance. The Agreement contains a severability clause, CP 17, however, and there is no reason why the arbitration clause cannot be

enforced with or without its venue provision. *See Walters*,  
*supra*.<sup>7</sup>

**D. The Arbitration Clause Applies to all Claims “Related to”  
the Agreement; the Scope of this Provision is Broad.**

The Bersantes claim that the arbitration clause is not sufficiently broad to apply to their lawsuit. This claim does not withstand even the slightest scrutiny. In *McClure v. Davis Wright Tremaine*, 77 Wn.App. 312, 314, 890 P.2d 466 (1995), an arbitration clause stating that disputes “relating to” the agreement were subject to arbitration was held applicable to a claim for breach of fiduciary duty, the court holding that the phrase “related to” was broader than the phrase “arising out of,” found in many arbitration clauses.

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<sup>7</sup> The *Walters* case has an interesting history. Originally the court entirely rejected plaintiff’s argument that the arbitration clause was unconscionable. Its first decision, found at 120 Wn.App. 354 (2004), was vacated in light of *Zuver v. Airtouch Communications, Inc.*, *supra*, 153 Wn.2d 1023 (2005), and remanded. On remand, the trial court followed the first *Walters* appellate decision, and enforced the arbitration clause without modification. On appeal a second time, the *Walters* court concluded that plaintiff had submitted just enough evidence on the cost of holding the arbitration in Denver, CO, to pass muster, and held that the venue clause was unconscionable. But the *Walters* court enforced the arbitration clause as modified by deletion of its venue provision.

The Bersantes' Complaint attaches the Agreement, the arbitration clause of which, quoted in full above, provides for arbitration of disputes "related to" the Agreement. This case is thus squarely controlled by *McClure*. See also *Chelan County Sheriff's Ass'n*, *supra*, 162 Wn.App. 176.

**E. *Concepcion* Holds Authoritatively That A Categorical Rejection of Arbitration Clauses for Consumer Disputes Violates the FAA.**

The *Concepcion* case, 131 S.Ct. 1740 (2011), *supra*, discussed above, reversed the California courts for applying, in essence, a judicial presumption that consumer claims were not suitable for arbitration, as they involved countervailing public policies and may be more burdensome for consumers than a judicial forum. According to *Concepcion*, this approach is preempted by the FAA.

The trial court below did *not* specifically hold that it was not enforcing the arbitration agreement because it believed that consumer cases are somehow inappropriate for arbitration. That was the tack taken by the Bersantes, however. Ignoring

*Prima Paint, supra*, and its teaching that courts only evaluate the enforceability of the arbitration clause *itself* when deciding a motion to compel arbitration, the Bersantes conflated the merits with the sole issue presented: whether the arbitration clause *itself* is enforceable. The Bersantes argued the merits, when (under *Prima Paint, supra*) the sole issue is validity of the arbitration clause.

Freedom points out that the Washington Supreme Court has approved of arbitration in a variety of settings, including the Consumer Protection Act and the Washington Law Against Discrimination.<sup>8</sup> There is no state “public policy” of which Freedom is aware that somehow transcends the FAA and requires a judicial forum for a class of consumer disputes. Such a policy would very likely fail to withstand scrutiny under *Concepcion*, however, if it did exist.

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<sup>8</sup> *Satomi Owners Ass’n, supra (CPA); Adler v. Fred Lind Manor*, 153 Wn.2d 331, 103 P.3d 773 (2004) (WLAD).

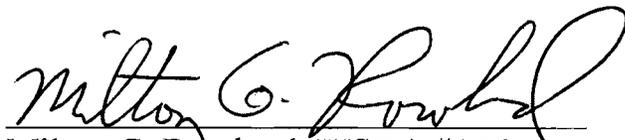
This Court is respectfully requested to reject the Bersantes' invitation to hold that "public policy" would be violated by compelling arbitration here. Such a holding would be inconsistent with ch. 7.04A RCW, the FAA, and the recent *Concepcion* decision.

#### V. CONCLUSION

Based upon the foregoing, Appellants respectfully request this Court to reverse, with directions to the trial court to compel arbitration of the disputes raised herein.

RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of  
December, 2011.

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