APPENDIX

APPENDIX TO
PETITION FOR A WRIT OF CERTIORARI

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

CHARLES RAMSEY, Plaintiff and Respondent, v. COMCAST CABLE COMMUNICATIONS, LLC, Defendant and Appellant.	H049949 (Santa Clara County Super. Ct. No. 21CV384867)

Charles Ramsey subscribes to Comcast Cable Communications, LLC's (Comcast) Xfinity services. Ramsey sued Comcast for violations of California's consumer protection statutes, alleging that Comcast engaged in unfair, unlawful, and deceptive business practices under the Consumers Legal Remedies Act (CLRA) and the unfair competition law (UCL). Ramsey's complaint sought injunctive relief. Comcast filed a petition to compel arbitration pursuant to the arbitration provision in the parties' subscriber agreement. The trial court denied the petition based on the Supreme Court's decision in *McGill v. Citibank, N.A.* (2017) 2 Cal.5th 945 (*McGill*), which held that a predispute arbitration provision that waives a plaintiff's right to seek public injunctive relief in any

forum is "contrary to California public policy and is thus unenforceable under California law." (*Id.* at p. 951.) Because the arbitration provision in Comcast's subscriber agreement required the parties to arbitrate all disputes and permitted the arbitrator to grant only individual relief, the trial court held that the provision waived Ramsey's right to seek public injunctive relief in any forum. Further concluding that Ramsey's complaint sought public injunctive relief, the court held the arbitration provision to be unenforceable.

On appeal, Comcast argues that the trial court erred in concluding that Ramsey was seeking public injunctive relief. Comcast contends that the requested injunction was private because it would benefit only a subset of Comcast subscribers. Comcast further argues that the Federal Arbitration Act (FAA) preempts *McGill*. Concluding that Ramsey's complaint seeks public injunctive relief, and that *McGill* is not preempted, we affirm the trial court's order.

I. FACTUAL AND PROCEDURAL BACKGROUND[1]

Comcast designs, operates, markets, and sells its Xfinity cable television, internet, home telephone, and related subscription services to millions of consumers in California and nationwide. Ramsey has been a subscriber to Comcast's services since 2009. When Ramsey initially signed up for services, Comcast offered him a "limited time promotional rate" and represented that it would last for approximately one

[1] Our statement of facts is based on the allegations from Ramsey's underlying complaint.

year from the date the subscription began, after which, the price of the subscription would increase.

When Ramsey's promotional rate for Comcast's services was nearing its initial expiration, he determined that he was not willing to pay the additional price increase to maintain his subscription, and contacted Comcast to discuss cancelling his service. Upon speaking to a customer service representative regarding the cancellation, Ramsey was "instead offered additional channels, faster internet speed, and additional services at a premium cost." Ramsey expressed his lack of interest in the upgraded packages and indicated he was only willing to continue purchasing Comcast's most basic subscription package. After some discussion, the customer service representative eventually offered Ramsey a "new" limited-time promotion, consisting of "similar, if not identical services to what [Ramsey] had been receiving, at a cost comparable to the current promotional rate he was being charged." The customer service representative again informed Ramsey that this promotional rate would expire in approximately one year.

Each year since then, Ramsey has contacted Comcast near the conclusion of his promotional period to discuss pricing options. Each year, Comcast's customer service representative has "miraculously come up with a 'new' comparable promotional package" to offer Ramsey. Comcast does not contact Ramsey to inform him that his promotional period is about to expire, nor offer him any new and comparable promotions "unless and until he contacts [Comcast]." Each time, the new promotional rate Ramsey is offered has "arbitrarily varied," but is always less than the

non-promotional rate he would otherwise pay if he did not reach out to Comcast.

A. Ramsey's Complaint for Violations of the CLRA and UCL

In 2021, Ramsey filed a complaint against Comcast in superior court, alleging violations of the CLRA and UCL. Ramsey's complaint sets forth four causes of action. The first cause of action alleges a violation of the CLRA, which prohibits "unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or that results in the sale or lease of goods or services to any consumer." (Civ. Code, § 1770, subd. (a).) In connection with this cause of action, Ramsey alleges that by "failing to disclose to [Ramsey] and concealing the existence of, and true and actual reasons for, Xfinity subscription service pricing, Defendants violated [the CLRA], as they misrepresented the reasons for, existence of, or amounts of, price reductions with respect to their services." For this cause of action, Ramsey seeks "public injunctive relief enjoining Defendants' unfair or deceptive acts or practices and correcting all false and misleading statements and material omissions concerning pricing models, reasons for changes in pricing, and the availability of discounts, to prevent future injury to the general public."

Ramsey's second cause of action alleges a violation of the UCL's prohibition against unfair business practices. According to the complaint, "[Ramsey] purchased Defendants' services at costs he reasonably believed to be the accurate, true, and the actual price of those services, when in fact, Defendants have and continue to offer secret and unearned

discounts on their services to select consumers, and concealing the existence and amount of these discounts to the general public." This practice of "issuing secret rebates constitutes an unfair business practice in violation of California Business and Professions Code section 17200, *et seq*."[2] For this cause of action, Ramsey seeks a "permanent injunction requiring Defendants to halt their practice of issuing secret discounts."

Ramsey's third cause of action alleges a violation of section 17045, which falls under the UCL's prohibition against unlawful business practices. Section 17045 provides that the "secret payment or allowances of rebates, refunds, commissions, or unearned discounts . . . to the injury of a competitor and where such payment or allowance tends to destroy competition, is unlawful." (§ 17045.) In this cause of action, Ramsey seeks "public injunctive relief and declaratory relief enjoining Defendants' unfair or deceptive acts or practices to prevent injury to the general public."

Ramsey's fourth cause of action seeks declaratory and injunctive relief for the aforementioned law violations. In connection with this cause of action, Ramsey requests that the court adjudicate and declare that, (1) Ramsey has a right to view and rely upon truthful advertising, (2) that Comcast has an obligation to "ensure all of their advertisements and related statements and representations are truthful, complete, and not misleading," (3) that Comcast not issue "secret and earned [*sic*] discounts to select

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[2] All statutory references are to the Business & Professions Code, unless otherwise stated.

consumers," and (4) that Comcast has an obligation to "train their personnel not to misrepresent Defendants' services and pricing and to present consumers with truthful, complete and accurate information." Ramsey also seeks "related injunctive relief that requires Defendants to comply with their legal obligations and utilize only truthful and complete advertisements, statements, and representations, and ensure consumers are aware of any and all price reductions and rebates Defendants seek to grant to consumers."

In his prayer for relief, Ramsey seeks a "declaration requiring Defendants to comply with the various provisions of the CLRA and UCL alleged herein," and an order "enjoining Defendants from continuing their unlawful and unfair business practices." Though Ramsey alleges that he had suffered "an ascertainable loss of money, including . . . out of pocket costs incurred in paying nonpromotional rates when he did not immediately contact [Comcast] to obtain new promotional pricing," he does not seek monetary damages but only declaratory and injunctive relief, and an award of costs and attorney's fees.

B. Comcast's Petition to Compel Arbitration

Comcast sought to compel arbitration. In the petition, Comcast argued that Ramsey has continuously accepted the terms of Comcast's subscriber agreements, which has contained an arbitration provision since 2011. Comcast asserted that the trial court should compel arbitration based on the subscriber agreement included in Ramsey's May 2021 bill (the 2021 subscriber agreement), which provided that any "Dispute" between the parties "shall

be resolved through individual arbitration." The 2021 subscriber agreement also included a waiver of all class, collective, and representative claims, providing that "[t]he arbitrator may award injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that individual party's claim, and the arbitrator may not award relief for or against or on behalf of anyone who is not a party."

In the petition, Comcast acknowledged the *McGill* decision, but argued that because Ramsey's complaint sought private, not public injunctive relief, *McGill* was not implicated. Ramsey opposed Comcast's petition, arguing that his complaint sought public injunctive relief within the meaning of *McGill*.

C. Trial Court's Order Denying Comcast's Petition to Compel Arbitration

The trial court denied Comcast's petition, finding unpersuasive Comcast's argument that *McGill* did not apply because Ramsey was seeking private, not public injunctive relief. The court held that the subject arbitration provision violated *McGill* because it "explicitly barred the arbitrator from determining 'the rights, obligations, or interests of anyone other than a named party,' or from 'making an award for the benefits of anyone . . . other than a named party.'"

Relying on *Mejia v. DACM Inc.* (2020) 54 Cal.App.5th 691(*Mejia*) and *Maldonado v. Fast Auto Loans, Inc.* (2021) 60 Cal.App.5th 713 (*Maldonado*), the trial court further held that *McGill* applies when a plaintiff seeks to "enjoin future violations of California's consumer protection statutes." The court held that the requested relief in Ramsey's complaint is

"indistinguishable" from that sought in *Mejia* and *Maldonado*, and "describe[s] public injunctive relief." The trial court thus concluded that the arbitration provision was unenforceable.

Comcast timely appealed the trial court's order.

II. DISCUSSION

On appeal, Comcast argues that the trial court erred in holding the arbitration provision in its 2021 subscriber agreement to be unenforceable under *McGill*. Comcast does not dispute that the arbitration provision, by its terms, waives Ramsey's right to seek public injunctive relief in any forum. Rather, Comcast contends that *McGill* is not implicated because Ramsey does not seek a public injunction, but a private one. Alternatively, Comcast argues that *McGill* itself is invalid because it is preempted by the FAA.

We conclude that the requested relief set forth in Ramsey's complaint falls within *McGill*'s definition of public injunctive relief. We decline to hold that the FAA preempts *McGill*. We affirm the trial court's order denying Comcast's petition to compel arbitration.

A. Standard of Review

An order denying a petition to compel arbitration is appealable. (Code Civ. Proc., § 1294, subd. (a).) When, as here, a trial court's order denying a petition to compel arbitration is based on a question of law, we review the denial de novo. (*Clifford* v. *Quest Software Inc.* (2019) 38 Cal.App.5th 745, 749.)

B. The Complaint Seeks Public Injunctive Relief

1. The Relief Sought Falls Within McGill's Definition of Public Injunctive Relief

To determine whether Ramsey's complaint seeks public or private injunctive relief, we look first to *McGill* itself. In *McGill*, the Supreme Court, relying on its earlier decisions in *Broughton v. Cigna Healthplans* (1999) 21 Cal.4th 1066 (*Broughton*) and *Cruz v. PacifiCare Health Systems, Inc.* (2003) 30 Cal.4th 303 (*Cruz*), distinguished between the two types of injunctive relief: Private injunctive relief is "relief that primarily 'resolve[s] a private dispute' between the parties . . . and 'rectif[ies] individual wrongs' . . . and that benefits the public, if at all, only incidentally." (*McGill, supra*, 2 Cal.5th at p. 955, quoting *Broughton*, *supra*, 21 Cal.4th at pp. 1079-1080.) Public injunctive relief is "relief that 'by and large' benefits the general public . . . and that benefits the plaintiff, 'if at all,' only 'incidental[ly]' and/or as 'a member of the general public.'" (*McGill, supra*, at p. 955, alterations in original.) "To summarize, public injunctive relief under the UCL, the CLRA, and the false advertising law is relief that has 'the primary purpose and effect' of prohibiting unlawful acts that threaten future injury to the public. (*Broughton*, *supra*, at p. 1077.)" (*McGill, supra*, at p. 955.) "Relief that has the primary purpose or effect of redressing or preventing injury to an individual plaintiff—or to a group of individuals similarly situated to the plaintiff—does not constitute public injunctive relief." (*Ibid.*)

McGill opened a credit card account with Citibank and purchased a credit protection plan, which permitted her to defer payments on the credit card in a qualifying event, such as long-term disability or unemployment. (*McGill, supra*, 2 Cal.5th at p. 952.) While McGill's initial accountholder agreement did not contain an arbitration provision, such a provision was later added and there was no dispute that it was in effect during the relevant time period. (See *id.* at pp. 952-953.)

McGill filed a class action lawsuit against Citibank based on Citibank's marketing of the credit protection plan and its handling of a claim she had made under it after she lost her job. (*McGill, supra*, 2 Cal.5th at p. 953.) The complaint alleged various violations of California's consumer protection laws, including the CLRA, UCL, and the false advertising laws, and sought "an injunction prohibiting Citibank from continuing to engage in its illegal and deceptive practices," in addition to other relief. (*Ibid.*) Citibank moved to compel arbitration based on the arbitration provision set forth in the accountholder agreement. (*Id.* at pp. 952-953.) The trial court granted the petition in connection with McGill's monetary claims but denied it in connection with the requests for injunction under the CLRA, UCL, and false advertising laws. The Court of Appeal reversed, concluding that all of McGill's claims were subject to arbitration. (*Id.* At p. 953.)

The Supreme Court in turn reversed the appellate court, holding that an arbitration provision that waives a plaintiff's right to seek public injunctive relief in any forum is invalid and unenforceable. (*McGill, supra*, 2 Cal.5th at pp. 951-952.) The court

then examined McGill's complaint to determine whether it sought public or private injunctive relief. (*Id.* at p. 956.) The court provided two examples of what it believed constituted public injunctive relief. "[A]n injunction under the CLRA against a defendant's deceptive methods, acts, and practices 'generally benefit[s]' the public 'directly' by the elimination of deceptive practices and 'will . . . not benefit' the plaintiff 'directly,' because the plaintiff has 'already been injured, allegedly, by such practices and [is] aware of them.' [*Broughton, supra*, 21 Cal.4th at p. 1080, fn. 5]." (*McGill*, at p. 955.) Likewise, "an injunction under the UCL or the false advertising law against deceptive advertising practices 'is clearly for the benefit of . . . the general public'; 'it is designed to prevent further harm to the public at large rather than to redress or prevent injury to a plaintiff.' (*Cruz*, *supra*, 30 Cal.4th at pp. 315-316.)" (*McGill*, at p. 955.)

The court concluded that McGill's requested relief "does, in fact, appear to seek the type of public injunctive relief that *Broughton* and *Cruz* identified." (*McGill, supra*, 2 Cal.5th at p. 956.) The complaint was brought under the consumer protection statutes and alleged "unfair, deceptive, untrue, and misleading" advertising and marketing, and "false, deceptive, and/or misleading" representations and omissions. (*Id.* at pp. 956-957.) The complaint sought an injunction "to ensure compliance" with these laws, and to enjoin Citibank from "continuing to falsely advertise or conceal material information and conduct business via the unlawful and unfair business acts and practice complained herein." (*Id.* at p. 957.) "In light of these allegations and requests for relief . . . we disagree with Citibank that McGill has failed

adequately . . . 'to explain how the public at large would benefit from' that relief." (*Ibid.*)

As in *McGill*, Ramsey alleges violations of California's consumer protection statutes—specifically, the CLRA and UCL. The complaint similarly seeks injunctive relief that "has the primary purpose and effect of prohibiting unlawful acts that threaten future injury to the general public." (*McGill, supra*, 2 Cal.5th at p. 955.) For example, as in *McGill*, where the plaintiff sought to enjoin unfair and deceptive marketing practices and ensure Citibank's future compliance with consumer protection laws, Ramsey's complaint seeks to (1) enjoin Comcast from engaging in "unfair or deceptive acts or practices and correcting all false and misleading statements and material omissions . . . to prevent future injury to the general public"; (2) require Comcast to "halt their practice of issuing secret discounts"; (3) require Comcast to "comply with their legal obligations and utilize only truthful and complete advertisements, statements, and representations"; and (4) enjoin Comcast from "continuing their unlawful and unfair business practices."

An injunction that seeks to prohibit a business from engaging in unfair or deceptive practices and marketing, requires it to provide enhanced pricing transparency, and requires it to comply with our consumer protection laws, does have the primary purpose and effect of protecting the public, and thus falls within *McGill*'s definition of public injunctive relief.

2. An Injunction That Primarily Benefits Both Subscribers and Potential Subscribers Is a Public Injunction

Comcast contends that Ramsey's complaint does not seek public injunctive relief because "any injunction flowing from Ramsey's claims would, primarily—if not exclusively, benefit a limited group of existing Comcast subscribers whose promotional terms are coming to an end." Specifically, Comcast argues that any injunctive relief granted under the complaint would benefit only the following subset of individuals: "(1) existing Comcast subscribers, (2) who currently receive services on a promotional rate term agreement, (3) who are far enough into that term to make a decision about their next contact, and (4) who would make a commitment to another fixed term subscription."

But we conclude that the scope of the requested injunction is not so constricted. As Ramsey's complaint sets forth, "[r]easonable consumers . . . rely on the representations made by service providers in determining whether to purchase their services and consider that information important to their purchase decision." Ramsey argues that any consumer would want a "complete and accurate representation of what happens after promotional pricing ends, what other pricing is available, further discounts, etc., without misrepresentations and concealment, when deciding whether to purchase such subscription services." Thus, an injunction that prohibits Comcast from engaging in "deceptive acts and practices," requires Comcast to utilize "only truthful and complete advertisements," and requires Comcast to make consumers "aware of any and all price reductions and

rebates," would benefit both existing Comcast subscribers and any member of the public who considers signing up with Comcast (i.e., potential subscribers). This benefit would come in the form of more accurate and transparent pricing options, not only for the one-year promotional term, but for the duration of the consumer's subscription. Such enhanced transparency, in turn, would enable subscribers and potential subscribers alike to make informed decisions from the outset about whether to subscribe to Comcast, for how long, and to compare Comcast prices against those of its competitors.

The issue, then, is whether an injunction that benefits both existing and potential Comcast subscribers qualifies as a public injunction under *McGill*. On this question, Ramsey urges us to follow *Mejia* and *Maldonado*. Comcast argues that we should reject *Mejia* and *Maldonado* in favor of *Hodges v. Comcast Cable Communications, LLC* (9th Cir. 2021) 21 F.4th 535 (*Hodges*). We conclude that *Mejia* and *Maldonado* are both persuasive and consistent with the Supreme Court's decision in *McGill*. We thus decline to follow *Hodges*.

(a) Mejia and Maldonado

Mejia bought a used motorcycle from Del Amo (a dealership) and financed the purchase using a credit card he obtained through the dealership. (*Mejia, supra*, 54 Cal.App.5th at p. 694.) He subsequently filed a class action complaint, alleging that Del Amo violated the Rees-Levering Automobile Sales Finance Act, the CLRA, and the UCL by "failing to provide its consumers with a *single document* setting forth all the financing terms for motor vehicle purchases made

with a conditional sale contract." (*Id.* at p. 695.) Among other relief, the complaint sought an injunction prohibiting Del Amo from selling motor vehicles "without first providing the consumer with a single document containing all of the agreements of Del Amo and the consumer with respect to the total cost and the terms of payment." (*Ibid.*) Del Amo moved to compel arbitration based on the parties' prior agreement, but the trial court denied the petition, holding that the arbitration provision was unenforceable under *McGill*. (*Id.* at pp. 693, 696-697.)

On appeal, Del Amo disputed that Mejia sought public injunctive relief, arguing that the requested injunction was private because it would benefit "only a narrow group of Del Amo customers—the class of similarly situated individuals who, like *Mejia*, would buy a motorcycle from Del Amo with a conditional sales contract." (*Mejia, supra*, 54 Cal.App.5th at p. 702.) The court rejected this argument as "mak[ing] little sense," reasoning that the requested injunction would force Del Amo to stop selling motorcycles in California without first providing consumers with statutorily mandated disclosures in a single document. (*Id.* at p. 702.) This request is "plainly one for a public injunction given that [plaintiff] 'seeks to enjoin future violations of California's consumer protection statutes, relief oriented to and for the benefit of the general public.' (*Blair v. Rent-A-Center, Inc.* (9th Cir. 2019) 928 F.3d 819, 831.)" (*Mejia, supra*, at p. 703.) In addition, the requested injunction did not "limit itself to relief only for class members or some other small group of individuals; it encompassed 'consumers' generally." (*Ibid.*) For these reasons, the court in *Mejia* concluded that the requested injunction

"fits the Supreme Court's definition of 'public injunctive relief' in *McGill*: 'injunctive relief that has the primary purpose and effect of prohibiting unlawful acts that threaten future injury to the general public.' (*McGill, supra*, 2 Cal.5th at p. 951.)" (*Mejia, supra*, at pp. 703-704.)

Similarly, in *Maldonado*, Fast Auto Loans (Lender) offered loans to California consumers in immediate need of cash who had limited credit opportunities. (*Maldonado, supra*, 60 Cal.App.5th at p. 713.) The plaintiffs brought a putative class action against Lender under the CLRA and UCL, alleging that Lender charged "unconscionable interest rates" in violation of state law. (*Ibid.*) The complaint sought an injunction requiring Lender to "cease charging an unlawful interest rate on its loans exceeding $2500" and to "institute corrective advertising and provide written notice to the public of the unlawfully charged interest rate on prior loans." (*Id.* at p. 715.) The trial court denied Lender's petition to compel arbitration based on *McGill*. (*Id.* at p. 716.) On appeal, Lender argued that *McGill* did not apply because the relief sought was private in that it would benefit only a narrow group of "similarly situated individuals who would borrow money from Lender and agree to a similar arbitration provision." (*Id.* at p. 720.)

The court rejected this contention, concluding that the complaint "does not limit the requested remedies for only some class members, but rather encompasses all consumers and members of the public." (*Maldonado, supra*, 60 Cal.App.5th at p. 721.) Moreover, "an injunction under the CLRA against Lender's unlawful practices will not directly benefit [the plaintiffs] because they have already been

harmed and are aware of the misconduct." (*Ibid.*) The court further rejected Lender's argument that the lawsuit challenged only the interest rates charged in the putative class members' loans. "To accept this argument, we would have to ignore the complaint's unequivocal request to enjoin Lender from harming other consumers *in future contracts* for outrageous interest rates." (*Ibid.*) Ultimately, the court agreed with the plaintiffs that "although 'not all members of the public will become customers of [Lender],' this does not negate the fact that public injunctive relief will nevertheless offer benefits to the general public. . . . The requested injunction cannot be deemed private simply because Lender could not possibly advertise to, or enter into agreements with, every person in California." (*Id.* at pp. 722-723.) "Such a holding would allow Lender to continue violating the UCL and CLRA because consumers harmed by the unlawful practices would be unable to act as a private attorney general and seek redress on behalf of the public." (*Ibid.*)

As in *Mejia* and *Maldonado*, the requested injunction here "seeks to enjoin future violations of California's consumer protection statutes." (*Mejia, supra*, 54 Cal.App.5th at p. 703.) The complaint does not limit the requested remedies to Ramsey himself or those similarly situated, but "encompasses all consumers and members of the public." (*Maldonado, supra*, 60 Cal.App.5th at p. 721.) For example, in connection with his CLRA claim, Ramsey seeks "public injunctive relief enjoining Defendants' unfair or deceptive acts or practices . . . to prevent future injury to the general public." In connection with the two UCL claims, Ramsey seeks "a permanent injunction

requiring Defendants to halt their practice of issuing secret discounts" and "related injunctive relief that . . . ensure consumers are aware of any and all price reductions and rebates." In the prayer for relief, Ramsey seeks to enjoin Comcast "from continuing their unlawful and unfair business practices."

The injunctive relief Ramsey seeks here is forward-looking and "oriented to and for the benefit of the general public." (*Mejia, supra*, 54 Cal.App.5th at p. 703.) The requested relief also does not directly benefit Ramsey, as he has "already been harmed and [is] aware of the misconduct." (*Maldonado, supra*, 60 Cal.App.5th at p. 721.) Ramsey and those similarly situated to him are already aware of Comcast's practice of offering "new" promotional rates only to those who reach out to Comcast toward the end of their subscription cycle, and the relief he seeks—i.e., cessation of Comcast's unfair or deceptive practices—will not compensate him for the "ascertainable loss of money" he had previously incurred from "paying nonpromotional rates when he did not immediately contact [Comcast] to obtain new promotional pricing." Rather, the requested injunction would primarily benefit existing and potential Comcast subscribers by providing them with more truthful and transparent pricing options. To the extent Ramsey benefits from this relief, it would be incidentally, as a member of the public. (See *McGill, supra*, 2 Cal.5th at p. 955.)

(b) Hodges

The Ninth Circuit's decision in *Hodges* deviated sharply from *Mejia* and *Maldonado*, holding that unless a plaintiff's requested injunctive relief benefits the entire public "as a diffuse whole," it does not fall

within *McGill*'s definition of public injunctive relief. (See *Hodges, supra*, 21 F.4th at p. 549.) *Hodges* also examined the holdings of *Mejia* and *Maldonado* and concluded that they represent a "patent misreading of California law." (*Id.* at p. 544.) Comcast urges that we follow *Hodges*, but we respectfully disagree with both its holding and the Ninth Circuit's characterization of *Mejia* and *Maldonado*.

In *Hodges*, a former Comcast subscriber brought a putative class action lawsuit against Comcast, alleging that Comcast violated class members' statutory privacy rights by collecting various personal data without first obtaining subscriber consent. (*Hodges, supra*, 21 F.4th at pp. 537-538.) The complaint alleged various federal and state law violations, including a violation of the UCL. (*Id.* at p. 538.) Among other things, the complaint sought "statewide public injunctive relief" to require Comcast to "clearly and conspicuously notify cable subscribers in writing, at the requisite times, of the period during which it maintains their [personally identifiable information ("PII")], including video activity data and demographic data." (*Id.* at pp. 538, 548-549.)

Comcast moved to compel arbitration under the subscriber agreement. (*Hodges, supra*, 21 F.4th at pp. 538-539.) The district court denied the petition based on *McGill* and Comcast appealed. The Ninth Circuit reversed, holding that *McGill* was not implicated because the complaint did not seek public injunctive relief. (*Id.* at p. 540.) While recognizing that some of the relief sought was "forward-looking prohibitions against future violations of law," the *Hodges* majority nevertheless concluded that alone was "not enough to classify the remedy as public within the meaning of

the *McGill* rule." (*Id.* at p. 549.) Instead, to meet *McGill*'s definition of public injunctive relief, the plaintiff must seek relief that "could be said to primarily benefit the general public as a more diffuse whole." (*Ibid.*) Under that definition, the plaintiff in *Hodges* was not seeking public injunctive relief because the requested relief would benefit only Comcast cable subscribers. (*Ibid.*) The *Hodges* majority further posited that the plaintiff in *Mejia* was not seeking public injunctive relief because the requested injunction there would only "benefit the class of persons who actually purchased motorcycles, and not the general public as a whole." (*Id.* at pp. 544-545.) *Hodges* also disagreed with *Maldonado*, noting that the plaintiff there was not seeking public injunctive relief because his requested injunction would only benefit "those who actually sign lending agreements." (*Id.* at p. 545.)

(c) Mejia and Maldonado Are More Consistent with McGill

The definition of public injunctive relief the courts set forth in *Mejia* and *Maldonado* is consistent with *McGill*, in which our Supreme Court expressly recognized injunctions issued under the CLRA and UCL as injunctions that benefit the public. (See *McGill, supra*, 2 Cal.5th at p. 955.) Injunctive relief under the CLRA and UCL is precisely what plaintiffs sought in *Mejia* and *Maldonado*, and what Ramsey seeks here. In our view, *Mejia* and *Maldonado*'s definition of public injunctive relief also better reflects the overarching purpose of the consumer protection statutes. While the requested injunction in those cases and here may not benefit the entire public as a "diffuse whole," we agree with the court in *Maldonado*

that "a requested injunction cannot be deemed private simply because [a business] could not possibly advertise to, or enter into agreements with, every person in California. . . . Such a holding would allow [that business] to continue violating the UCL and CLRA because consumers harmed by the unlawful practices would be unable to act as a private attorney general and seek redress on behalf of the public." (*Maldonado, supra*, 60 Cal.App.5th at pp. 722-723.) *McGill* did not require that public injunctive relief have such a universal reach.

Finally, we disagree with the majority in *Hodges* that the requested injunctions in *Mejia* and *Maldonado* stood to benefit only those who purchased motorcycles or signed lending agreements. (See *Hodges, supra*, 21 F.4th at pp. 544-545.) We find compelling the reasoning of the dissent, which observed that an injunction requiring a dealership to provide consumers with statutorily mandated disclosures in a single document, though not benefiting every member of the public, would benefit "potential *and* actual purchasers of motorcycles . . . when they are considering whether to enter into a transaction." (*Id.* at pp. 551-552.) Similarly, an injunction prohibiting a lender from charging "unconscionable interest rates" would benefit not only those who took out loans, but any member of the public with limited credit options who find themselves in need of cash. (*Ibid.*)

The injunctive relief Ramsey seeks in this case would require Comcast to cease its "unfair or deceptive practices" and provide increased pricing transparency. Such relief would benefit not only those who subscribe to Comcast (such as Ramsey), but any member of the

public considering such a subscription, by "preventing [Comcast] from contracting or proposing to contract with any member of the public—not just current customers—on unfair terms." (*Hodges, supra*, 21 F.4th at p. 551.) This is the essence of what the consumer protection statutes are designed to do. (*McGill, supra*, 2 Cal.5th at p. 954 [purpose of CLRA is to "protect consumers against unfair and deceptive business practices," and purpose of UCL is to "prevent, protect both consumers and competitors by promoting fair competition"].)[3]

Because the relief Ramsey requests both "seeks to enjoin future violations of California's consumer

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[3] To the extent we look to federal authority to guide our analysis on the issue of whether Ramsey's requested injunctive relief is public or private, *Blair v. Rent-A-Center, Inc.* (9th Cir. 2019) 928 F.3d 819 (*Blair*) is more consistent with *McGill*. In *Blair*, plaintiffs entered into "rent-to-own agreements" with Rent-A-Center, which operates stores that rent household items to consumers for set installment payments. (*Blair, supra*, 928 F.3d at p. 822.) They subsequently brought a putative class action lawsuit against the company, alleging that it structured its rent-to-own pricing in violation of California law, including the Karnette Rental-Purchase Act, the CLRA, and the UCL. (*Ibid.*) Among other forms of relief, plaintiffs' complaint sought an injunction against the company to "enjoin future violations of these laws." (*Id.* at p. 823.) The Ninth Circuit held that plaintiffs' requested relief constituted public injunctive relief under *McGill*—even though the requested injunction would not benefit every member of the public, but only those who enter or contemplate entering into an agreement with Rent-a-Center. (See *id.* at p. 831, fn. 3; see also *Hodges, supra*, 21 F.4th at p. 550.) Under *Blair*, benefitting every member of the public as a "diffuse whole" was neither necessary nor required. It was sufficient that plaintiffs sought "to enjoin future violations of California consumer protection statutes, relief oriented to and for the benefit of the general public." (*Blair, supra*, at p. 831, fn. 3.)

protection statutes," and is "oriented to and for the benefit of the general public," it falls within *McGill*'s definition of public injunctive relief. (See *Mejia, supra*, 54 Cal.App.5th at p. 703.)

C. The FAA Does Not Preempt McGill

Lastly, Comcast argues that the FAA preempts *McGill*. The Supreme Court held in *McGill* itself that there is no preemption. (*McGill, supra*, 2 Cal.5th at p. 963; *Maldonado, supra*, 60 Cal.App.5th at p. 724 [rejecting Lender's argument that the FAA preempts *McGill*].) As Comcast acknowledges, we are bound to follow Supreme Court precedent. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) We do so here, concluding that the FAA does not preempt *McGill*.

III. DISPOSITION

The order denying the petition to compel arbitration is affirmed.

Greenwood, P. J.

WE CONCUR:

Grover, J.

Lie, J.

H049949

Ramsey v. Comcast Cable Communications, LLC

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

CHARLES RAMSEY, Plaintiff and Respondent, v. COMCAST CABLE COMMUNICATIONS, LLC, Defendant and Appellant.	H049949 (Santa Clara County Super. Ct. No. 21CV384867)

BY THE COURT:

The written opinion, which was filed on December 29, 2023, has now been certified for publication pursuant to rule 8.1105(b) of the California Rules of Court, and it is therefore ordered that the opinion be published in the official reports.

(Greenwood, P. J., Grover, J. and Lie, J. participated in this decision.)

Date: 01/29/2024 /s/ Mary J. E P.J.

Trial Court:	Santa Clara County Superior Court Superior Court No.: 21CV384867
Trial Judge:	The Honorable Patricia M. Lucas
Attorneys for Plaintiff and Respondent, Charles Ramsey:	
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	Bevin Elaine Pike Trisha Kathleen Monesi Ryan Hung-Hsi Wu Liana Carol Carter Capstone Law APC
Attorneys for Defendant and Appellant, Comcast Cable Communications, LLC:	
	Aileen Marie McGrath Michael Weisbuch Marshall Lee Baker Akin Gump Strauss Hauer & Feld LLP

H049949

Ramsey v. Comcast Cable Communications, LLC

ORDER ON SUBMITTED MATTER

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

CHARLES RAMSEY, Plaintiff vs. COMCAST CABLE COMMUNICATIONS, LLC, a Delaware limited liability company; and DOES 1 through 10, inclusive, Defendants	Case No. 21CV384867 **ORDER RE: PETITION TO COMPEL ARBITRATION AND STAY PROCEEDINGS**

The above-entitled matter came on for hearing on Wednesday, February 23, 2022, at 1:30 p.m. in Department 3, the Honorable Patricia M. Lucas presiding. Having reviewed and considered the written submissions filed by the parties, and having listened carefully to arguments of counsel, the court rules as follows:

I. INTRODUCTION

This is an action under the Unfair Competition Law ("UCL") and Consumers Legal Remedies Act ("CLRA"), arising out of defendant Comcast Cable Communications, LLC's ("Defendant") alleged unlawful marketing and sales practices used in providing Xfinity cable, internet, home telephone,

security, and/or other subscription services to consumers. (Complaint, ¶ 2.)

As alleged in the Complaint, filed on June 28, 2021, Defendant designs operates, markets, and sells cable television, internet, home telephone, and other subscription services to millions of consumers nationwide and throughout California. (Complaint, ¶ 14 & 24.) Xfinity's subscription services are sold and marketed to consumers at attractive promotional rates. (*Id.* at ¶ 3.) Once the promotional periods expire, consumers see their monthly bills increase. (*Ibid.*) Faced with this price increase, some consumers opt to contact Defendant's customer service phone line to complain about the price increase, and request to downgrade and/or cancel Defendant's subscription services. (*Id.* at ¶ 4.) Only if and when the consumers affirmatively reach out to Defendant's customer service agents in this manner are they informed of a "new" promotional package that will provide them a substantial discount on their continued services. (*Ibid.*) The "new" promotional package provides consumers the same or similar subscription services at a rate comparable to the initial promotional rate they had been paying. (*Ibid.*) Defendant does not disclose that a promotional rate is available to consumers unless and until they contact Defendant. (*Ibid.*) In other words, Defendants do not make the "new" promotional rates available to all consumers and those rates are not advertised to the public. (*Id.* at ¶¶ 4 & 25-26.)

Since approximately 2009, plaintiff Charles Ramsey ("Plaintiff") has been a subscriber of the Xfinity subscription services provided by Defendant. (Complaint, ¶¶ 1, 12-13, & 35.) Plaintiff purchased a

basic subscription bundle package from Defendant at a limited-time promotional rate. (*Id.* at ¶ 35.) Defendant informed Plaintiff that the rate would last for one year and would thereafter increase. (*Id.* at ¶ 36.) When the promotional rate was nearing its expiration, Plaintiff contacted Defendant's customer service number to discuss cancelling his subscription. (*Id.* at ¶ 37.) After Plaintiff declined offers to upgrade his subscription package, Defendant's customer service representative offered Plaintiff a "new" limited-time promotion that was similar to the current services and rate he received. (*Ibid.*) The "new" promotion was good for one year. (*Ibid.*) Each time Plaintiff's promotional rate has expired, Plaintiff has contacted Defendant's customer service to discuss canceling or downgrading his service and he is, subsequently, offered a "new" promotional rate. (*Id.* at ¶ 38.) As a result of Defendant's conduct, Plaintiff is unable to determine the future cost of his subscription service with Defendant until at or near the time his promotional rate will expire, which prevents him from being able to make informed decisions about competing offers from other service providers. (*Id.* at ¶ 6.) In addition, Plaintiff incurred actual damages incurred in paying nonpromotional rates when he did not immediately contact Defendant to obtain new promotional pricing. (*Id.* at ¶¶ 7 & 51.)

Plaintiff alleges that by failing to disclose and concealing the existence of, and the true and actual reasons for, the Xfinity subscription service pricing, Defendant violated Civil Code section 1770, subdivision (a). (Complaint, ¶ 39.) Furthermore, Defendant's practice of issuing "new" promotional rates to consumers allegedly violates Business and

Professions Code section 17045. (*Id.* at ¶ 59.) Defendant's unfair and deceptive acts and practices occurred repeatedly in Defendant's trade or business and were capable of deceiving a substantial portion of the purchasing public at large. (*Id.* at ¶ 40.) The facts concealed and misrepresented by Defendant are material in that a reasonable consumer would have considered them important in deciding whether to purchase Xfinity services or pay a lower cost for them. (*Id.* at ¶ 44.) Reasonable consumers rely on the representations made by service providers in determining whether to purchase their services and consider that information important to their purchase decision. (*Id.* at ¶ 45.) Additionally, the secret nature of the discounts has caused and continues to cause injury to competing service providers as they are unable to discern pricing models that would allow them to offer competitive rates for the same or similar services. (*Id.* at ¶ 28.) Plaintiff alleges that Defendant has been unjustly enriched through the continued sales of subscription services at misleading and noncompetitive prices. (*Id.* at ¶ 29.)

Plaintiff seeks "public injunctive relief" enjoining Defendant's unfair or deceptive acts or practices and correcting all false and misleading statements and material omissions concerning pricing models, reasons for changes in pricing, and the availability of discounts to prevent future injury to the general public. (Complaint, ¶¶ 7, 47, & 63.) Plaintiff also seeks a permanent injunction requiring Defendant to halt its practice of issuing secret discounts. (*Id.* at ¶ 53.) Plaintiff further requests a declaration that he has a right to view and rely upon truthful advertising; that Defendant has an obligation to ensure all of its

advertisements and related statements and representations are truthful, complete, and not misleading; that Defendant has an obligation not to make misleading statements as to the reasons for, existence of, or amounts of price reductions; that Defendant not issue secret and unearned discounts to select consumers; and that Defendant has an obligation to train its personnel not to misrepresent its services and pricing and to present consumers with truthful, complete, and accurate information. (*Id.* at ¶ 66.) Lastly, Plaintiff asks for injunctive relief that requires Defendant to comply with its legal obligations and utilize only truthful and complete advertisements, statements, and representations, and ensure consumers are aware of any and all price reductions and rebates Defendant seeks to grant to consumers. (*Id.* at ¶ 67.)

Based on the foregoing allegations, the Complaint sets forth the following causes of action: (1) Violations of California Consumers Legal Remedies Act, California Civil Code §§ 1750 *et seq*. - Injunctive Relief Only; (2) Violations of California Business & Professions Code §§ 17200 *et seq*. (Unfair Business Practices - Injunctive Relief Only); (3) Violations of California Business & Professions Code §§ 17200 *et seq*. (Unlawful Business Practices - Injunctive Relief Only); and (4) Declaratory and Injunctive Relief.

Now before the court is Defendant's petition to compel arbitration. Plaintiff opposes the motion.

II. LEGAL STANDARD

"The FAA [Federal Arbitration Act], which includes both procedural and substantive provisions, governs [arbitration] agreements involving interstate

commerce." (*Avila v. Southern California Specialty Care, Inc.* (2018) 20 Cal.App.5th 835, 840.) However, "[t]he procedural aspects of the FAA do not apply in state court absent an express provision in the arbitration agreement." (*Ibid.*)

Here, the parties do not dispute that the substantive provisions of the FAA apply here while the procedural aspects are governed by California law.

The California Arbitration Act provides that a court must grant a petition to compel arbitration "if it determines that an agreement to arbitrate ... exists, unless it determines that: (a) The right to compel arbitration has been waived by the petitioner; or (b) Grounds exist for the revocation of the agreement," among other exceptions. (Code Civ. Proc., § 1281.2.)

The moving party must prove by a preponderance of evidence the existence of the arbitration agreement and that the dispute is covered by the agreement. (See *Cruise v. Kroger Co.* (2015) 233 Cal.App.4th 390, 396 [under both federal and state law, "the threshold question presented by a petition to compel arbitration is whether there is an agreement to arbitrate"]; *Rosenthal v. Great Western Fin'l Securities Corp.* (1996) 14 Cal.4th 394, 413 (*Rosenthal*) [moving party's burden is a preponderance of the evidence].) The burden then shifts to the resisting party to prove a ground for denial. (*Rosenthal, supra*, 14 Cal.4th at p. 413.) "In determining the rights of parties to enforce an arbitration agreement within the FAA's scope, courts apply state contract law while giving due regard to the federal policy favoring arbitration." (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US)*, LLC (2012) 55 Cal.4th 223, 236.)

If the court orders arbitration "of a controversy which is an issue involved in [the] action or proceeding pending before [it], the court... shall, upon motion of a party ..., stay the action or proceeding until an arbitration is had in accordance with the order to arbitrate or until such earlier time as the court specifies." (Code Civ. Proc., § 1281.4.) "If the issue which is the controversy subject to arbitration is severable, the stay may be with respect to that issue only." (*Ibid.*)

III. DISCUSSION

Defendant argues that Plaintiff is required to arbitrate individually all of his claims against it. Defendant states that Plaintiff repeatedly accepted its subscriber agreement, and asserts that the court should compel arbitration based on the revised subscriber agreement contained in Plaintiff's May 2021 bill. Defendant presents evidence that the relevant subscriber agreement contains an arbitration provision, which provides that any "Dispute," defined as any and all claims or controversies related to the parties, must be resolved through individual arbitration. (Declaration of Colin M. Padgett in Support of Defendant Comcast Cable Communications, LLC's Petition to Compel Arbitration and Stay Proceedings Pending Arbitration ("Padgett Dec."), Ex. 7, § 13.) The arbitration provision also contains a waiver of all class, collective, and representative claims. (*Ibid.*) Defendant also asserts that the arbitration agreement is not rendered unenforceable by *McGill v. Citibank, N.A.* (2017) 2 Cal.5th 945 (*McGill*) [remedies under the UCL and CLRA include public injunctive relief and waiver is contrary to public policy]—the so-called "*McGill*

rule"—because Plaintiff does not seek public relief. Although Plaintiff, like *McGill*, seeks relief under the UCL and CLRA, Defendant contends that Plaintiff instead seeks private injunctive relief that would benefit a subset of existing subscribers only. Finally, Defendant contends that the FAA preempts the *McGill* rule although Defendant acknowledges that this court is bound by *McGill*'s holding to the contrary.

In opposition, Plaintiff does not dispute that the revised subscriber agreement contained in his May 2021 bill contains the parties' arbitration agreement or that the arbitration agreement covers all of his claims. Instead, Plaintiff argues that the arbitration agreement is unenforceable under the rule announced by *McGill*.

The "*McGill* rule" provides that an arbitration provision requiring individuals to waive their right to pursue public injunctive relief is invalid and unenforceable. (See *Maldonado v. Fast Auto Loans, Inc.* (2021) 60 Cal.App.5th 710, 713 (*Maldonado*).)

Here, the arbitration agreement provides that "[t]he arbitrator may award injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that individual party's claim, and the arbitrator may not award relief for or against or on behalf of anyone who is not a party." (Padgett Dec., Ex. 7, § 13.) As urged by Plaintiff, this language violates the *McGill* rule—which courts construing substantively identical language have confirmed. (See *Snarr v. HRB Tax Grp., Inc.* (9th Cir. 2020) 839 F.Appx. 53, 54 [affirming order denying motion to compel arbitration: agreement that "requires arbitration of almost all

claims and states that any relief in arbitration 'must be individualized to you and will not affect any other client,' ... waives the right to seek public injunctive relief in any forum" in violation of the *McGill* rule]; Mejia *v. DACM Inc.* (2020) 54 Cal.App.5th 691, 704, fn. 2 (*Mejia*) [agreement that "explicitly barred the arbitrator from determining 'the rights, obligations, or interests of anyone other than a named party' or from 'mak[ing] an award for the benefit of ... anyone other than a named party'" violated the *McGill* rule].)

Furthermore, the court is not persuaded by Defendant's contention that the *McGill* rule does not apply here because Plaintiff is not really seeking public injunctive relief.

> The Supreme Court in McGill distinguished private and public injunctions. The opinion defined "private injunctive relief" as "relief that primarily 'resolve[s] a private dispute' between the parties [citation] and 'rectif[ies] individual wrongs' [citation], and that benefits the public, if at all, only incidentally." (*McGill, supra*, 2 Cal.5th at p. 955.) The opinion defined "public injunctive relief" as "relief that 'by and large' benefits the general public [citation] and that benefits the plaintiff, 'if at all,' only 'incidental[ly]' and/or as 'a member of the general public' [citation]." (*Ibid.*) The high court cited as an example of a public injunction "an injunction under the CLRA against a defendant's deceptive methods, acts, and practices [which] 'generally benefit[s]' the public 'directly by the elimination of deceptive practices' and 'will

> ... not benefit' the plaintiff 'directly,' because the plaintiff has 'already been injured, allegedly, by such practices and [is] aware of them.' [Citation.] '[E]ven if a CLRA plaintiff stands to benefit from an injunction against a deceptive business practice, it appears likely that the benefit would be incidental to the general public benefit of enjoining such a practice.' [Citation.]" (*Ibid.*)

(*Mejia, supra*, 54 Cal.App.5th at p. 703; *Maldonado, supra*, 60 Cal.App.5th at p. 718.)

The case of *Maldonado* is instructive here. In that case, the defendant asserted the court erred by failing to consider whether the customers "were actually seeking public injunctive relief" as required by the *McGill* case and its progeny. (*Maldonado, supra*, 60 Cal.App.5th at p. 720.) The defendant asserted that although the customers requested a public injunction in the complaint, "the relief sought 'is private because it will, at best, benefit [the Customers] and a discrete, narrowly-defined group of other ... customers.'" (*Ibid.*) The defendant contended the narrow group was a class of similarly situated individuals who would borrow money from the defendant and agree to a similar arbitration provision.

The reviewing court concluded that the argument made little sense in light of the allegations in the complaint. (*Maldonado, supra*, 60 Cal.App.5th at p. 720.) The court pointed to allegations that the alleged misconduct—providing high interest loans without proper licensing—was ongoing and injurious to the public and consumers, and would continue unless the

court took action to enjoin said practices. (*Id.* at pp. 720-721.) The court highlighted the fact that the customers specifically asked for "[p]ublic injunctive relief" prohibiting "future violations of the aforementioned unlawful and unfair practices" and clarified that the injunctive relief should require the defendant to stop charging unlawful interest rates and adopt "corrective advertising." (*Ibid.*) The court concluded that the complaint encompassed all consumers and members of the public. (*Id.* at p. 721.) The court further determined that an injunction against the defendant's unlawful practices would not directly benefit the customers because they had already been harmed and are already aware of the misconduct. (*Ibid.*)

The court explained that it was not persuaded by the defendant's argument that the lawsuit challenged only the interest rates charged in the customer's loans because the complaint sought to enjoin the defendant from harming other consumers in future contracts from outrageous interest rates. (*Maldonado, supra*, 60 Cal.App.5th at pp. 721-722.) The customers had nothing to personally gain from an injunction stopping the defendant from imposing high interest rates in future contracts with members of the public. (*Ibid.*) The court held:

> [A]lthough "not all members of the public will become customers of [the defendant]" this "does not negate the fact that public injunctive relief will nevertheless offer benefits to the general public." The requested injunction cannot be deemed private simply because [the defendant] could not possibly advertise to, or enter into

> agreements with, every person in California. Such a holding would allow [the defendant] to continue violating the UCL and CLRA because consumers harmed by the unlawful practices would be unable to act as a private attorney general and seek redress on behalf of the public. It is enough that the requested relief has the purpose and effect of protecting the public from [the defendant's] ongoing harm.

(*Ibid.*) The court concluded that both *McGill* and the Ninth Circuit decision of *Blair v. Rent-A-Center, Inc.* (9th Cir. 2019) 928 F.3d 819, held that the *McGill* rule applied when the plaintiff sought to enjoin future violations of California's consumer protection statutes.

Here, Plaintiff expressly requests public injunctive relief and asserts that Defendant's alleged conduct is ongoing. (Complaint, ¶¶ 7, 40, 50-51, & 61.) Plaintiff states that he seeks an injunction enjoining Defendant's unfair or deceptive acts or practices and correcting all false and misleading statements and material omissions concerning pricing models, reasons for changes in pricing, and the availability of discounts (Complaint, ¶¶ 7, 47, & 63); requiring Defendant to halt its practice of issue secret discounts (*id.* at ¶ 53); and requiring Defendant to comply with its legal obligations and to utilize only truthful and complete advertisements, statements, and representations, and ensure consumers are aware of any and all price reductions and rebates Defendant seeks to grant to consumers (*id.* at ¶ 67).

These requests for relief are indistinguishable from those at issue in *Mejia* and *Maldonado*, and

describe public injunctive relief. (See *Mejia, supra*, 54 Cal.App.5th at p. 703 [prayer for injunction forcing defendant to cease selling motor vehicles without providing mandated disclosures was for public injunctive relief]; see also *Maldonado, supra*, 60 Cal.App.5th at p. 721 [prayer for injunction "prohibiting 'future violations of the aforementioned unlawful and unfair practices'" by "requir[ing] Lender to stop charging unlawful[] interest rates and adopt 'corrective advertising'" was for public injunctive relief].)

Defendant encourages this court to follow the nonbinding authority of *Hodges v. Comcast Cable Communs., LLC* (9th Cir. 2021, No. 19-16483) 12 F.4th 1208 (*Hodges*). In *Hodges*, the Ninth Circuit reversed the District Court's denial of a motion to compel arbitration, concluding that the California Court of Appeal decisions of *Mejia* and *Maldonado* were wrongly decided and improperly broadened the *McGill* rule. (*Hodges, supra*, 12 F.4th at p. 1117-19.) The court declines to follow *Hodges* as it is contrary to the weight of authority in California.

Defendant also contends that the employment cases of *Clifford v. Quest Software Inc.* (2019) 38 Cal.App.5th 745 (Clifford), *Torrecillas v. Fitness Internal, LLC* (2020) 52 Cal.App.5th 485 (*Torrecillas*), and *Capriole v. Uber Techs., Inc.* (9th Cir. Aug. 2, 2021, No. 20-16030) 2021 U.S. App. LEXIS 22738 (*Capriole*) support its position in this consumer case.

However, in *Clifford*, the plaintiff's requests for injunctive relief under the UCL were limited to him as an individual and are, therefore, distinguishable from the requests at issue in this case. (See *Maldonado,*

supra, 60 Cal.App.5th at pp. 719-720, citing *Clifford, supra*, 38 Cal.App.5th at pp. 747 & 753.) Similarly in *Torrecillas*, the plaintiff's request was for an injunction to stop the defendant from engaging in the practices "described above" and those practices were the defendant's alleged failures to pay the individual plaintiff. (*Torrecillas, supra*, 52 Cal.App.5th at p. 500.) In *Capriole*, the relief sought by the plaintiffs—to "enjoin Uber from misclassifying its drivers as independent contractors, thus entitling them to the protections of Massachusetts wage laws, including paid sick leave"—was overwhelmingly directed at plaintiffs and other alleged employees of Uber (i.e., other rideshare drivers). (*Capriole, supra*, 2021 U.S. App. LEXIS 22738, at *38.) Unlike the injunctions sought in this case, the sought-after injunctions in *Clifford*, *Torrecillas*, and *Capriole* helped only the individual plaintiffs and possibly current employees of the defendants, rather than the public at large. Notably, members of the general public could not freely become an employee of the defendant software company in *Clifford*, the defendant gym chain in *Torrecillas*, or a driver for Uber. In contrast here, any member of the general public may decide to sign up with Defendant and thereafter rely on representations or omissions made by Defendant before deciding whether to continue subscription services. Based on the materials presented by the parties, Defendant offers its services to the public at large, the only criteria for admission into the customer group being willingness to sign an initial agreement for services and pay the requisite service rates. Consequently, injunctions at issue here seek to enjoin unlawful acts that threaten future injury to the general public.

Accordingly, Defendant's petition to compel arbitration is DENIED.

Dated: February 24, 2022 /s/ Patricia M. Lucas
Patricia M. Lucas
Judge of the Superior Court

Li, Marilyn

From:	Notify@jud.ca.gov
Sent:	Wednesday, May 1, 2024 2:58 PM
To:	Li, Marilyn
Subject:	Supreme Court of California Case Notification for: S283742

EXTERNAL Email

lim@akingump.com, the following transaction has occurred in:

RAMSEY v. COMCAST CABLE COMMUNICATIONS

Case: S283742, Supreme Court of California

Date (YYYY-MM-DD):	2024-05-01
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

CHARLES RAMSEY, Plaintiff v. COMCAST CABLE COMMUNICATIONS, LLC, a Delaware limited	Case No. 21CV384867 **DECLARATION OF COLIN M. PADGETT IN SUPPORT OF DEFENDANT COMCAST CABLE**

liability company and DOES 1 through 10, inclusive, Defendants	**COMMUNICATIONS, LLC'S PETITION TO COMPEL ARBITRATION AND STAY PROCEEDINGS PENDING ARBITRATION** Assigned For All Purposes to: Honorable Patricia M. Lucas, Dept. 3 Date: February 23, 2022 Time: 1:30 p.m. Dept.: 3 Date Action Filed: June 28, 2021 Trial Date: Not set.

DECLARATION OF COLIN M. PADGETT

I, Colin M. Padgett, declare as follows:

1. I am a Director of Regulatory Compliance Strategy at Comcast Cable Communications, LLC's ("Comcast"). I am an authorized custodian of Comcast records, have authority to certify Comcast's records, and I submit this declaration in support of Comcast's Petition to Compel Arbitration in this action. I have reviewed Comcast's records that were created and maintained in the ordinary course of business and collected by myself or others working at my direction. If called as a witness, I would and could competently testify to all of the facts stated herein, which are

within my personal knowledge or based upon information gathered within the course and scope of my duties as Director of Regulatory Compliance Strategy at Comcast.

2. In my role as Director of Regulatory Compliance Strategy for Comcast, I am familiar with Comcast's records, policies, and practices for disseminating annual and other legal notices to subscribers of services. I am also familiar with the Comcast Agreement for Residential Services (the "Subscriber Agreement") and its terms and conditions, and versions thereof, and the general processes under which subscribers order Comcast service.

3. Comcast provides telecommunications services (e.g., video, voice and Internet services) to residential customers throughout the United States, including in certain areas in the state of California, subject to the terms and conditions of the Subscriber Agreement and other acceptable use policies.

4. The Subscriber Agreement applies to Comcast subscribers who have term agreements as well as those without term agreements (i.e., month-to-month customers). All residential customers subscribing to Comcast services do so pursuant to the terms of the Subscriber Agreement.

5. As set forth below, Comcast's records reflect that, since November 2009, Plaintiff Charles Ramsey ("Mr. Ramsey") has continuously received and paid for Comcast services at his residential address on O'Farrell Street in San Francisco, California (the "O'Farrell Street Account").

6. Comcast's records reflect that on or about November 3, 2009, Mr. Ramsey first ordered Comcast cable services for the O'Farrell Street Account.

7. Since before 2009, it has been Comcast's routine and regular business practice to provide all residential customers a copy of the Subscriber Agreement, along with other service related information, including the Comcast Customer Privacy Notice, in the Comcast Welcome Kit. A true and correct copy of the Subscriber Agreement in effect at the time Mr. Ramsey ordered services in 2009 (the "2009 Subscriber Agreement") is attached hereto as **Exhibit 1**. As seen in **Exhibit 1**, the Subscriber Agreement begins on page 10, immediately after the Comcast Customer Privacy Notice.

8. It is a routine and regular business practice for Comcast to provide legal notices with subscribers' monthly bills, including notices regarding the terms and conditions of receiving the services provided pursuant to the Subscriber Agreement. The Subscriber Agreement is also available on Comcast's website at all times at https://www.xfinity.com/Corporate/Customers/Policies/SubscriberAgreement.

9. Comcast business records reflect that in July 2011, Comcast sent all of its existing California subscribers a notice with an arbitration provision stating that the Subscriber Agreement was being updated to include the arbitration provision (the "2011 Arbitration Notice"). A true and correct copy of the 2011 Arbitration Notice is attached hereto as **Exhibit 2**. Comcast's business records reflect that Comcast has no record of Mr. Ramsey opting out of arbitration.

10. Comcast's business records further reflect that in August 2017, Comcast sent its existing California subscribers an updated version of the Subscriber Agreement (the "2017 Subscriber Agreement") with their monthly bill statements. A true and correct copy of Mr. Ramsey's August 2017 Comcast monthly bill statement (redacted to protect Mr. Ramsey's personal information) containing the 2017 Subscriber Agreement is attached hereto as **Exhibit 3**.

11. Comcast's records further reflect that on August 1, 2019, Mr. Ramsey renewed his Comcast service for the O'Farrell Street Account pursuant to a 12 Month Term Customer Agreement (the "Term Contract") that was subject to and incorporated the Subscriber Agreement. Comcast's records reflect that Plaintiff affirmed his consent on August 1, 2019, via SMS text message, after reviewing his customer approval page. A true and correct copy of Mr. Ramsey's August 1, 2019 customer approval page is attached as **Exhibit 4**. A true and correct copy of Mr. Ramsey's Term Contract (redacted to protect his personal information) is attached as **Exhibit 5**.

12. By its terms, the Term Contract makes clear that the offer "selected and accepted" by Mr. Ramsey is "subject to . . . the Comcast Agreement for Residential Services that is available online at https://www.xfinity.com/corporate/customers/policies/subscriberagreement[.]" A true and correct copy of the agreement in effect when Mr. Ramsey accepted his Term Contract in 2019 (the "2019 Subscriber Agreement") is attached hereto as **Exhibit 6**.

13. Comcast's records further reflect that in May 2021, Comcast sent its existing California subscribers an updated version of the Subscriber Agreement (the "2021 Subscriber Agreement") with their monthly bill statements. A true and correct copy of Mr. Ramsey's May 28, 2021 Comcast monthly bill statement (redacted to protect Mr. Ramsey's personal information) containing the 2021 Subscriber Agreement is attached hereto as **Exhibit 7**.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 4, 2022 at Philadelphia, Pennsylvania.

/s/ Colin M. Padgett
Colin M. Padgett

Exhibit 7

Xfinity Residential Services Agreement

The terms of this agreement (the "**Agreement**") apply to your use of any of the Xfinity services described in Section 1 below and the Xfinity Equipment described in Section 7 below (collectively, the "**Services**"). An operating subsidiary or other affiliate of Comcast Cable Communications, LLC (collectively, "**Comcast**," "**we**," "**us**," or "**our**") provides the Services.

You accept this Agreement and agree to its terms by activating the Services, using the Services, continuing to use the Services after we provide notice of a change to this Agreement, or otherwise indicating your acceptance of the Services. You may not modify this Agreement by making any typed, handwritten, or other changes.

Note: THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION IN SECTION 13 THAT AFFECTS YOUR RIGHTS UNDER THIS AGREEMENT WITH RESPECT TO ALL SERVICES. UNLESS YOU HAVE OPTED OUT IN A TIMELY MANNER, THE ARBITRATION PROVISION REQUIRES THAT ALL DISPUTES BE RESOLVED IN INDIVIDUAL ARBITRATIONS OR SMALL CLAIMS COURT PROCEEDINGS. IN ARBITRATION, THERE IS NO JUDGE OR JURY AND THERE IS LESS DISCOVERY AND APPELLATE REVIEW THAN IN COURT.

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1. COVERED XFINITY SERVICES

The following services are covered by this Agreement: Xfinity cable television and other video services ("**TV**"); Xfinity Internet services ("**Internet**"); Xfinity digital phone services ("**Voice**"); and other ancillary services Comcast may designate.

The terms of this Agreement do not apply to any other services provided by Comcast (such as Xfinity Home or Xfinity Mobile). This Agreement also does not apply to any Comcast-owned or -controlled websites and mobile apps, which are subject to their own terms of service and policies, such as our Web Services Terms of Service (available at https://my.xfinity.com/terms/web/) and our Website Terms of Service (available at https://www.xfinity.com/corporate/legal/visitoragreement).

2. ADDITIONAL TERMS

Tariffs, service guides, and posted policies and procedures may apply to the Services. Additional Service-specific terms may apply to your use of TV, Internet, Voice, or any ancillary service or device. These additional terms are available at https://www.xfinity.com/policies (under "**Xfinity Residential Services**") and at https://www.xfinity.com/Corporate/Customers/Policies/additionalterms. We reserve the right to provide notice of new websites or locations for additional terms. These additional terms are also part of this Agreement. If any additional terms conflict with these terms, the additional terms specific to the particular Service will govern.

3. CHARGES AND BILLINGS

a. You must pay certain charges, fees, and taxes

You agree to pay all amounts due upon demand. You agree to pay any monthly Service charges. We will give you notice of applicable pricing at the time of your order or

activation of the Services. If you receive the Services at a promotional rate, our then-current standard pricing will apply to you at the end of the promotional period. You should consult our rate card for then-current standard charges. If you receive the Services under a minimum term agreement, we will charge you the specified price for the Services subject to the minimum term pricing for the duration of the minimum term agreement. All other pricing is subject to change at any time and from time to time.

You agree to pay all other charges associated with the Services. These may include charges for installation and service calls. These may also include fees identified at the time of your order or imposed after you begin receiving Services. You may incur charges for Xfinity Equipment (as defined in Section 7 below), purchases or rentals, or ancillary services. You may also incur measured and per-call charges. You can find price information for Voice at www.xfinitv.com/corporate/about/phonetermsofservice/comcastdigitalvoice/cdvresidential.

You agree to pay any applicable taxes and fees. These include applicable federal, state, and local taxes and fees (however designated), fees to recoup governmental or quasi-governmental assessments on us, and cost recovery charges. These include fees for any governmental or public programs in which we participate, such as public, educational, and governmental access, telecom relay services, and programs supporting the 911/E911 system.

YOU ARE RESPONSIBLE FOR PAYING ANY SUCH FEES AND TAXES (WHETHER IMPOSED ON YOU OR ON US), INCLUDING THOSE THAT BECOME APPLICABLE RETROACTIVELY.

b. Third-party charges are your responsibility

In addition to the amounts we charge, you may incur charges from third-party services providers. These third parties may charge you for access to online services, telephone-based services, or other offerings. You are solely responsible for these third-party charges, including any applicable taxes. If we have agreed to provide billing services on behalf of a third party, you agree to make these payments to us. We will not be responsible for any disputes between you and any third party regarding any third-party charges.

c. Changes to pricing, charges, and fees

Certain pricing, charges, and fees may change at any time and from time to time. In general, we will provide you with notice of any change in our standard prices or fees or new prices or fees. However, if there is a change in governmental or quasi-governmental taxes, fees, or assessments, or in any third-party charges billed through us, we may not provide notice unless required by applicable law.

d. How we bill you

We generally bill you monthly, in advance, for recurring monthly Service charges, equipment

charges, and fees. **UPON REQUEST, YOU MUST PAY THE FIRST MONTH'S SERVICE CHARGES, XFINITY EQUIPMENT CHARGES, DEPOSITS, ACTIVATION FEES AND INSTALLATION CHARGES ON OR BEFORE THE DATE THAT WE INSTALL ANY OR ALL OF THE SERVICES**. We may bill you for some Services individually after we provide the Services to you. For example, we may bill you for measured and per-call charges, pay-per-view movies or events, interactive television, e-commerce purchases, and other third-party services after you incur these charges.

The Service charges will begin on one of the following dates, whichever occurs first: (i) the day you pick up Xfinity Equipment at our service center; (ii) the day you or we install the Services; (iii) the day your order for the Services is entered into our billing system, if Xfinity Equipment is not required; or (iv) five (5) days after the date we ship Xfinity Equipment to you.

e. Payment methods

You may pay by credit card, debit card, check, or certain third-party services, and we may change the payment methods we accept from time to time. Certain additional terms may apply depending on your selected payment method. If we do not receive your payment by the due date, you agree to pay any amounts due upon demand, regardless of your selected payment method. If you pay by check, you authorize us to collect your check electronically.

You may not make restrictive endorsements (such as "**paid in full**") or other statements or releases on or with checks or other payments accepted by us. If you do so, we may disregard the restrictive endorsement or reject the payment.

f. Our remedies if you pay late or fail to pay

If, for any reason, we do not receive payment for the full amounts billed to you by the due date, you may be billed additional fees, charges, and assessments.

We may accept a partial payment, but we still have the right to collect the full balance. We will apply any partial payment to outstanding charges in amounts and in the order we determine, in our sole discretion.

Our fees are not interest or penalties. We expect you to pay amounts due on a timely basis, and we do not extend credit to customers. Any fees, charges, and assessments due to late payment or non-payment will be difficult to calculate or predict, and are liquidated damages intended to be a reasonable estimate of our costs resulting from late payments and non-payments.

We may charge fees for suspension or disconnection. If you fail to pay the full amount due for any or all charges, we may suspend or disconnect any or all of the Services without reducing fees or charges for the Services, in our sole discretion and subject to applicable law.

We may charge fees to reconnect services. If you ask us to resume any Services after a suspension or disconnection, we may charge you additional installation or activation fees. These fees are in addition to all past-due charges and other fees. Reconnection of the Services is subject to this Agreement, and applicable law.

We may charge you collection costs. We may use a collection agency or attorney to collect money you owe. If we do so, you agree to pay our reasonable costs of collection, including any collection agency fees, reasonable attorneys' fees, and arbitration or court costs.

g. We have the right to make credit inquiries

YOU AUTHORIZE US TO MAKE INQUIRIES AND TO RECEIVE INFORMATION ABOUT YOUR CREDIT EXPERIENCE FROM OTHERS, TO ENTER THIS INFORMATION IN YOUR FILE, AND TO DISCLOSE THIS INFORMATION TO APPROPRIATE THIRD PARTIES FOR REASONABLE BUSINESS PURPOSES. We will not discriminate in the application of our credit inquiries and deposit policy on the basis of race, color, sex, creed, religion, nationality, sexual orientation, or marital status. We (or third-party credit bureaus) will conduct risk assessments in accordance with all applicable laws.

h. Contact us with billing questions or disputes

You may dispute charges on a bill or request billing credits. You must contact us within 120 days of the date on your bill, or you waive any disputes or credits, subject to applicable law and our binding legal obligations.

i. We may require a refundable deposit

We may require you to pay a refundable deposit when you activate the Services, add Services, or fail to pay any amounts when they are due. Subject to applicable law, your deposit will be credited to your account (without interest) if your account remains in good standing for twelve (12) months. We may refund your deposit sooner if all of the Services are disconnected. We will provide this refund within thirty (30) days of Service disconnection and the return of all Xfinity Equipment or within the timeline set by applicable law. Refund amounts are equal to the credit balance on your account, if any, minus any amounts due on your account. Amounts due on your account may include amounts owed for the Services, including for any Xfinity Equipment that is damaged, altered, or subject to an Unreturned Equipment Fee (as defined in Section 7(b) below).

4. CHANGES TO SERVICES, RATES, CHARGES, AND THIS AGREEMENT

a. Changes to Services, Rates, and Charges

We reserve the right to change the Services, rates, and charges at any time, with or without notice to you, to the extent permitted by applicable law. For example, we may delete or change content, programming, functionality, features, rate limitations, available speeds, or Xfinity Equipment. If we provide notice of such a change, it will be in accordance with Section 4(b), below. If any such change is material and negatively affects your Services, you have the right to cancel your Services; but you accept any such change if you continue to use or receive the Services for more than thirty (30) days after the change.

We apply a monthly data consumption threshold to Xfinity Internet accounts. We retain the right to trial or adopt different data consumption thresholds or other usage plans for the Service at any time. If we do this we will notify you. You can learn about the data plan that applies in your area by going to https://dataplan.xfinity.com/. You can view your current data usage at any time by logging into your My Account page and viewing the data usage meter at https://customer.xfinity.com/MyServices/lnternet/UsageMeter/. You can also use the Xfinity My Account mobile app to view your data usage.

b. Changes to this Agreement

We reserve the right to make changes to this Agreement We may deliver any notice concerning our relationship with you and any change to our relationship, including notice of any change to this Agreement in any one or more of the following ways (at our discretion): (a) post notice on www.xfinity.com, your "My Account" page, or another website we identify; (b) send notice by mail or hand delivery to your home or other property where the Services will be provided (the "**Premises**"); (c) send notice by email to the email address we have on file for your account; (d) include information about the change on or with your bill for the Services; or (e) use any other method of notice reasonably determined by us to result in your receipt of such notice. You agree that any one of these methods is sufficient and effective notice. It is your responsibility to check your postal mail, email, service texts, and postings at www.xfinity.com, your "My Account" page, or another website we identify.

If any material change to our relationship with you, including any material change to this Agreement, negatively affects your Services, you have the right to cancel your Services; but you accept any such change if you continue to use or receive the Services for more than thirty (30) days after such change.

5. ACCESS TO YOUR PREMISES

To provide you with the Services, we may need to enter your Premises. We may have our agents

enter your Premises on our behalf. You agree that we (or our agents) may enter your Premises at reasonable times to install, configure, maintain, inspect, upgrade, replace, and remove the Services.

You represent and warrant that you own the Premises or have obtained the authority to give us access to the Premises. If you do not own the Premises, you agree to supply the owner's name, address, and phone number, and evidence that the owner has approved our access, upon request.

6. CUSTOMER EQUIPMENT AND INSIDE WIRING

a. You may use your own Customer Equipment

"**Customer Equipment**" means software, hardware, or services used in connection with the Services that we (or our agents) do not provide or lease. Customer Equipment also includes certain equipment that you purchase from us (or our agents) under an express sale agreement. Customer Equipment does not include Xfinity Equipment for which you have paid an Unreturned Equipment Fee (as defined in Section 7(b) below).

You agree that we (or our agents) may access your Customer Equipment in order to configure, maintain, inspect, or upgrade it, set up Services, or install or download software. For example, we may send software, downloads, or updates remotely to modems, gateways, routers, and digital interactive televisions with CableCARDs. These updates may change, add,

or remove features or functionality of your Customer Equipment or the Services.

You represent and warrant that you own your Customer Equipment or have obtained the authority to give us access to your Customer Equipment If you do not own your Customer Equipment, you agree to supply the owner's name, address, and phone number, and evidence that the owner has approved our access, upon request.

b. You are solely responsible for your Customer Equipment

We have no responsibility for the operation, support, maintenance, or repair of any Customer Equipment, including Customer Equipment to which we (or third parties) send software or downloads.

We may certify certain Customer Equipment or recommend particular configurations. Any other Customer Equipment or configuration may not meet our minimum technical or other specifications (a "**Non-Recommended Configuration**"). We reserve the right to deny support for the Services, or terminate the Services, if you use a Non-Recommended Configuration. WE AND THE RELEASED ENTITIES (AS DEFINED IN SECTION 10 BELOW) MAKE NO REPRESENTATIONS OR WARRANTIES ABOUT NON-RECOMMENDED CONFIGURATIONS, WHICH COULD CAUSE CUSTOMER EQUIPMENT TO FAIL OR OTHERWISE CAUSE DAMAGE. WE AND THE RELEASED

ENTITIES ARE NOT LIABLE FOR SUCH FAILURE OR DAMAGE.

c. You are solely responsible for Inside Wiring

Wiring inside the Premises, including additional cable wiring, telephone wiring, and outlets, is "**Inside Wiring**." Inside Wiring must not interfere with the Services or the normal operations of our cable network. Upon your request we can install, repair, or maintain Inside Wiring. If we perform this work, we will charge you for that service. Regardless of who installed it, the Inside Wiring is your property, or the property of whomever owns the Premises. If you do not own the Premises, contact your landlord or building manager about the installation, repair, or maintenance of Inside Wiring. We have no responsibility for the operation, support, maintenance, or repair of Inside Wiring, except as set forth below.

7. XFINITY EQUIPMENT

"**Xfinity Equipment**" means all new or reconditioned equipment that we or our agent provides or leases to you, including, but not limited to, cabling or wiring (except for Inside Wiring, as defined above) and related electronic devices, modems, routers, CableCARDs, and any other hardware and includes all software and programs contained within Xfinity Equipment or downloaded to Customer Equipment by us.

a. We own all Xfinity Equipment

You expressly agree that you will use the Xfinity Equipment exclusively in connection with the Services. You agree that all Xfinity Equipment belongs to us or other third parties and will not be deemed fixtures or in any way part of the Premises. We may remove or change the Xfinity Equipment at our discretion at any time the Services are active or following the termination of your Services. You acknowledge that any addition to, removal of, or change to the Xfinity Equipment may interrupt your Services. You may not sell, lease, abandon, or give away the Xfinity Equipment, or permit any other service provider to use the Xfinity Equipment, including Xfinity Equipment for which an Unreturned Equipment Fee has been paid. The Xfinity Equipment may only be used in the Premises unless expressly permitted by us. At your request, we may relocate the Xfinity Equipment for an additional charge. YOU UNDERSTAND AND ACKNOWLEDGE THAT IF YOU ATTEMPT TO INSTALL OR USE THE XFINITY EQUIPMENT OR SERVICES AT A LOCATION OTHER THAN THE PREMISES OR OTHERWISE EXPRESSLY AUTHORIZED BY US, THE SERVICES MAY FAIL TO FUNCTION OR MAY FUNCTION IMPROPERLY. You agree that you will not allow anyone other than us or our agents to service the Xfinity Equipment You are responsible for loss, repair, replacement, and other costs, damages, fees, and charges if you do

not return the Xfinity Equipment to us in an undamaged condition.

b. You do not own Xfinity Equipment, even if you pay an Unreturned Equipment Fee

For avoidance of doubt Xfinity Equipment remains Comcast-owned equipment, and Comcast retains title to all Xfinity Equipment, at all times, including but not limited to after payment of an Unreturned Equipment Fee. "**Unreturned Equipment Fee**" refers to a fee charged by Comcast to a subscriber for any unreturned Xfinity Equipment upon termination of the Services provided under this Agreement. The payment of an Unreturned Equipment Fee shall not result in a sale of, or the transfer of title to, any Xfinity Equipment, and such Xfinity Equipment shall remain the property of Comcast, and Comcast retains title to Xfinity Equipment at all times. Comcast in no way relinquishes ownership of (including title to) Xfinity Equipment by the payment of an Unreturned Equipment Fee. Even if an Unreturned Equipment Fee has been paid, Xfinity Equipment shall not be resold, used, or operated in any manner. If you pay an Unreturned Equipment Fee and subsequently return the Xfinity Equipment undamaged (with the exception of normal wear and tear), you will be refunded your Unreturned Equipment Fee in full.

8. USE OF THE SERVICES

The Services are for personal, residential, non-commercial use only, unless otherwise specifically authorized by us in writing.

We prohibit the following activities:

- Reselling the Services in whole or in part;
- Using the Services, directly or indirectly, for any unlawful purpose or in violation of any applicable policy that we make available to you;
- Using the Services to transmit, communicate, or store any information, data, or material in violation of any law, rule, or regulation;
- Tampering with, making any unauthorized connection to, or modifying any part of our cable network or the Services for any purpose;
- Attaching any unauthorized device to our cable network or the Services; or
- Attaching anything to the Inside Wiring, the Xfinity Equipment or Customer Equipment that impairs the integrity of our cable network, that degrades our cable network's signal quality or strength, or that creates signal leakage.

You agree not to engage in these or other similar prohibited activities, or help anyone else do so. You acknowledge that you are accepting this Agreement on behalf of all persons who use the Services at your Premises (or any other locations authorized by us). You are solely responsible for ensuring that all other users of the Services understand and comply with this Agreement and any applicable policies. You are liable for all

authorized and unauthorized use of the Services. If the Xfinity Equipment has been stolen or the Services have been used without your authorization or in violation of this Agreement, you agree to notify us immediately in writing, or by calling 1-800-XFINITY during normal business hours.

If you violate this Agreement, or if you fail to notify us of unauthorized use in a timely manner, we may terminate the Services and recover damages. Since it would be difficult, if not impossible, to precisely calculate our lost revenue from unauthorized Services or tampering, you agree to pay $500.00 per device used to receive unauthorized Services as liquidated damages. These liquidated damages are in addition to our cost to replace any altered, damaged, or unreturned Xfinity Equipment, or other equipment owned by us, including any incidental costs. The unauthorized reception of the Services may also result in criminal fines and/or imprisonment, and we reserve the right to report any illegal activities to law enforcement.

In connection with your use of the Services, if you need to access third-party software or hardware, you will be subject to third-party terms and conditions. Certain components of the Services are also subject to our Software License Agreement, available at https://my.xfinity.com/terms/license/.

Your use of certain Services may also be subject to acceptable use policies, available at https://www.xfinity.com/policies. For example, our Acceptable Use for Xfinity Internet Policy is available at https://www.xfinity.com/Corporate/

Customers/Policies/HighSpeedlntemetAUP. To understand how we collect and use information through the Services, please read our privacy policy, available at http://www.xfinity.com/ Corporate/Customers/Policies/CustomerPrivacy.

We may amend these policies and agreements from time to time, with or without notice to you. You should consult these policies and agreements regularly to comply with the most recent versions. We incorporate these additional policies and agreements (including any amendments) into this Agreement by reference. WE RESERVE THE RIGHT TO LIMIT OR BLOCK ANY SERVICE USAGE AS WE DEEM NECESSARY TO PREVENT HARM TO OUR NETWORK, FRAUD, OR OTHER ABUSE OF THE SERVICES, OR AS OTHERWISE PROVIDED BY LAW.

9. TERMINATION

This Agreement will remain in effect from Service activation until this Agreement is terminated (by us or by you), as described below. This Agreement may also be terminated if it is replaced by a revised agreement.

a. How you may terminate

If your Services are subject to a minimum term agreement, and you terminate all or any portion of the Services under the minimum term agreement before the end of the minimum term, you may be charged an early termination fee. Review your minimum term agreement for additional details.

If your Services are not subject to a minimum term agreement, you may terminate the Services and this Agreement for any reason at any time. You must notify us that you want to terminate in one of the following ways: (a) mail a written notice to our local business office; (b) send an electronic notice to the email address specified on www.xfinity.com; (c) provide notice in person at a service center; or (d) call our customer service number during normal business hours. Applicable fees and charges for the Services may accrue until the Services have been disconnected, all Xfinity Equipment has been returned, and this Agreement has been terminated, subject to applicable law or the terms of any agreements we have with governmental authorities. At our election, and subject to applicable law, we may change our policy to continue all Services (or any part of them) through the end of the billing cycle in which we received your notice, which means those Services will terminate at the end of the applicable billing cycle. We may refund all prepaid monthly service fees charged for the Services after the effective date of termination, and we reserve the right to subtract from your refund any outstanding amounts due to us for the Services, for any affiliate or third-party services, or for other applicable fees and charges. Certain fees and charges are non-refundable and are also excluded.

b. How we may terminate or suspend Services

Subject to applicable law, we reserve the right to immediately terminate or suspend the Services without notice for any reason or no reason. We also reserve the right to remove from the Services any information stored or transmitted by or to any users (e.g., email or voicemail). We may take these actions if we reasonably determine that your use of the Services: (a) violates this Agreement, any applicable policies, or any laws, rules, or regulations; (b) interferes with our ability to provide the Services to you or to others; or (c) interferes with or endangers the health or safety of our personnel or third parties, including if you threaten, harass, or use vulgar or inappropriate language toward our personnel. We have discretion in deciding whether and why to terminate or suspend Services. If we continue providing Services, this does not mean we have reviewed or approved any use of the Services, or any information transmitted through the Services.

c. You have certain obligations upon termination

You must cease all use of the Services as of the effective date of termination. You must pay in full for your use of the Services up to the date that this Agreement is terminated and the Services are disconnected (subject to applicable law).

You must return all Xfinity Equipment to us at our local service center or to our designated agent within ten (10) days of the date on which the Services are disconnected. You must return the Xfinity Equipment in working order, with the exception of normal wear and tear. If you fail to return the Xfinity Equipment, we will charge you an Unreturned Equipment Fee. As the owner of the Xfinity Equipment at all times, we have the right to retrieve any equipment you fail to return. We (or our agents) may request access to your Premises to remove all Xfinity Equipment and other material provided by us during regular business hours at a mutually agreed upon time.

10. LIMITED WARRANTY

TO THE EXTENT PERMITTED BY LAW, THE SERVICES ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED. NEITHER WE NOR ANY OF OUR SERVICE PROVIDERS, AFFILIATES, SUPPLIERS, EMPLOYEES, AGENTS, CONTRACTORS, DISTRIBUTORS, LICENSORS, OR BUSINESS PARTNERS (OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, CONTRACTORS, OR REPRESENTATIVES) (COLLECTIVELY, THE "**RELEASED ENTITIES**") WARRANT THAT ANY COMMUNICATIONS WILL BE TRANSMITTED IN UNCORRUPTED FORM, OR THAT THE SERVICES WILL MEET YOUR REQUIREMENTS, PROVIDE UNINTERRUPTED USE, OR OPERATE AS REQUIRED, WITHOUT DELAY, OR WITHOUT

ERROR. ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF PERFORMANCE, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, OR MERCHANTABILITY, ARE HEREBY DISCLAIMED AND EXCLUDED, UNLESS OTHERWISE PROHIBITED OR RESTRICTED BY APPLICABLE LAW.

11. LIMITATION OF LIABILITY

Application. The limitations of liability in this Section 11 apply to our acts, omissions, and negligence, and any acts, omissions, or negligence by a Released Entity which, but for the provisions of this Section 11, could give rise to a cause of action in contract, tort, or under any other legal doctrine.

Our liability for Customer Equipment is limited. YOU UNDERSTAND THAT OPENING, UPDATING, ACCESSING, OR USING CUSTOMER EQUIPMENT IN CONNECTION WITH THE SERVICES MAY VOID WARRANTIES PROVIDED BY THE MANUFACTURER OR OTHER THIRD PARTIES. NEITHER WE NOR ANY OF THE RELEASED ENTITIES WILL HAVE ANY LIABILITY WHATSOEVER AS THE RESULT OF (A) THE VOIDING OF ANY SUCH WARRANTIES, OR (B) FOR ANY DAMAGE, LOSS, OR DESTRUCTION TO THE CUSTOMER EQUIPMENT, EXCEPT DUE TO OUR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. IN THE EVENT OF

GROSS NEGLIGENCE OR WILLFUL MISCONDUCT BY US OR A RELEASED ENTITY WE WILL PAY, AT OUR SOLE DISCRETION, FOR THE REPAIR OR REPLACEMENT OF THE DAMAGED CUSTOMER EQUIPMENT UP TO A MAXIMUM OF $500. THIS WILL BE YOUR SOLE AND EXCLUSIVE REMEDY RELATING TO SUCH ACTIVITY.

Our liability for viruses and bugs is limited. Software or applications installed on your Customer Equipment, downloaded to your Customer Equipment, or available through the Internet may contain viruses or other harmful features. It is your sole responsibility to take appropriate precautions to protect your Customer Equipment. We may, but are not required to, terminate all or any portion of the Services if a virus or other harmful feature, bug, or software is present on your Customer Equipment and/or causes harm to the Services. We may, in our sole discretion, install or run software to check for viruses and other harmful features, including on your Customer Equipment. We make no representation or warranty that any virus check software will detect, correct, or resolve any or all viruses. You may incur additional charges for any service call related to a virus or other harmful feature detected on your Customer Equipment. WE AND THE RELEASED ENTITIES WILL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OF ANY HARDWARE, SOFTWARE, FILES, OR DATA RESULTING FROM A VIRUS, ANY OTHER HARMFUL

FEATURE, OR FROM ANY ATTEMPT TO REMOVE IT.

Our liability for certain installations and modifications is limited. As part of the installation process for software and other components of the Services, we may need to modify system files on Xfinity Equipment or your Customer Equipment We may make these modifications in connection with installing software or applications, or allowing access to our online portals. We make no representations, warranties, or covenants as to whether these modifications or this software will disrupt the normal operations of the Services or your Customer Equipment, including causing the loss of files. FOR THESE AND OTHER REASONS, YOU ACKNOWLEDGE AND UNDERSTAND THE IMPORTANCE OF BACKING UP ALL FILES TO ANOTHER STORAGE MECHANISM. YOU UNDERSTAND AND ACCEPT THE RISKS IF YOU DECIDE NOT TO BACK UP FILES. WE AND THE RELEASED ENTITIES WILL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGE TO OR LOSS OF ANY SOFTWARE, FILES, OR DATA RESULTING FROM OUR MODIFICATIONS TO SYSTEM FILES AND/OR INSTALLATION OF SOFTWARE OR OTHER COMPONENTS OF THE SERVICES.

Our liability for other services or equipment is limited. BY ACCEPTING THIS AGREEMENT, YOU WAIVE ALL CLAIMS AGAINST US AND THE RELEASED ENTITIES FOR INTERFERENCE, DISRUPTION, OR INCOMPATIBILITY BETWEEN THE SERVICES

AND ANY OTHER SERVICE, SYSTEMS, OR EQUIPMENT. IN THE EVENT OF SUCH INTERFERENCE, DISRUPTION, OR INCOMPATIBILITY, YOUR SOLE REMEDY WILL BE TO TERMINATE THE SERVICES IN ACCORDANCE WITH THIS AGREEMENT.

Our liability for disruption of Services is limited. The Services are not fail-safe, and are not designed or intended for use in situations that qualify as "**High Risk Activities**." High Risk Activities include activities requiring fail-safe performance, or where an error or interruption in the Services could lead to severe injury to businesses, persons, property, or the environment. High Risk Activities also include vital business or personal communications, or activities where absolutely accurate data or information is required. You expressly assume the risk of any damages resulting from use of the Services in connection with High Risk Activities.

We will not be liable for any inconvenience, loss, liability, or damage resulting from any interruption of the Services, directly or indirectly caused by, or proximately resulting from, any circumstances beyond our immediate control, including (but not limited to) the following: (a) causes attributable to you, your Customer Equipment, your Premises, your property, or third parties, including our inability to access your Premises or any third-party negligence or willful misconduct; (b) failure of any signal or satellite, loss of use of poles or other utility facilities, or any failure or reduction of power; (c) labor disputes, riot or insurrection, war, explosion, malicious mischief,

fire, flood, lightning, earthquake, weather conditions, or other acts of God; or (d) any court order, law, act, or order of government restricting or prohibiting the operation or delivery of the Services.

In all other cases of an interruption of the Services, you may request a pro rata credit for any Service interruption exceeding twenty-four (24) consecutive hours after the interruption is reported to us (or another period of time provided by law). You must request a pro rata credit within 120 days of the Service interruption. Unless required by law, your pro rata credit will not exceed your fixed monthly charges for the Services that month. Your pro rata credit will exclude all nonrecurring charges, one-time charges, per-call or measured charges, regulatory fees, and surcharges, taxes, and other governmental and quasi-governmental fees. **EXCEPT AND UNLESS SPECIFICALLY PROHIBITED BY LAW, A CREDIT WILL BE YOUR SOLE AND EXCLUSIVE REMEDY FOR AN INTERRUPTION OF SERVICES**. Any additional credits, if any, are provided by us at our sole discretion and will not constitute, or be construed as, a course of conduct.

If your Services are interrupted, you may have certain rights depending on where you live.

> **For Connecticut residents:** In the event of an interruption of TV of more than twenty-four (24) consecutive hours and of which we have received actual notice, a credit will be issued to your TV monthly service charges for the length of time TV was interrupted.

For Maine residents: In the event TV is interrupted for more than six (6) consecutive hours in a thirty (30) day period, you may request a pro-rata credit or refund by calling 1-800-XFINITY.

For New York residents: In the event TV is interrupted for at least four (4) hours between 6:00 p.m. and 12:00 a.m., except for emergency notice events, a credit equal to one day will be issued to your TV monthly service charges. If TV is interrupted for less than four (4) hours or outside of the hours of 6:00 p.m. and 12:00 a.m., please call 1-800-XFINITY to request a credit.

Our liability for third parties is limited. Notwithstanding anything to the contrary in this Agreement, you acknowledge and understand that we may use third parties to provide the Services. This may include third-party services, equipment, infrastructure, or content. We are not bound by any undertaking, representation, or warranty made by an agent or employee of ours, or of our underlying third-party providers and suppliers in connection with the installation, maintenance, or provision of the Services if that undertaking, representation, or warranty is inconsistent with the terms of this Agreement. We are not responsible for and have no liability with respect to any services, equipment, infrastructure, and content that are not provided by us, or the performance (or non-performance) of third-party services, equipment, infrastructure, or content, even if they are components of the Services. You should address questions or concerns relating to third-party services, equipment, infrastructure,

and content to the corresponding third-party provider. We do not endorse or warrant any third-party services, equipment, infrastructure, or content that are distributed or advertised over the Services.

Our liability for damages is limited. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, WE AND THE RELEASED ENTITIES WILL HAVE NO LIABILITY TO YOU OR TO ANY OTHER PERSON OR ENTITY FOR THE FOLLOWING LOSSES, DAMAGES, OR COSTS UNDER ANY CIRCUMSTANCES OR UNDER ANY LEGAL THEORY (INCLUDING, BUT NOT LIMITED TO, TORT OR CONTRACT):

(1) ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, TREBLE, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL LOSSES OR DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOST DATA, LOSS OF PROFITS, LOSS OF EARNINGS, LOSS OF BUSINESS OPPORTUNITIES, PERSONAL INJURIES, OR DEATH) THAT RESULT DIRECTLY OR INDIRECTLY FROM OR IN CONNECTION WITH CUSTOMER EQUIPMENT OR THE SERVICES (INCLUDING, BUT NOT LIMITED TO, ANY MISTAKES, OMISSIONS, INTERRUPTIONS, HARDWARE OR SOFTWARE BREACH, FAILURES OR MALFUNCTIONS, DELETION OR CORRUPTION OF FILES, WORK STOPPAGE, ERRORS, DEFECTS, DELAYS IN OPERATION, OR DELAYS IN TRANSMISSION); OR

(2) ANY LOSSES, CLAIMS, DAMAGES, EXPENSES, LIABILITIES, LEGAL FEES, OR OTHER COSTS THAT RESULT DIRECTLY OR INDIRECTLY FROM OR IN CONNECTION WITH ANY ALLEGATION, CLAIM, SUIT, OR OTHER PROCEEDING BASED UPON A CONTENTION THAT THE USE OF THE SERVICES OR THE CUSTOMER EQUIPMENT BY YOU OR ANY OTHER PERSON OR ENTITY INFRINGES UPON THE CONTRACTUAL RIGHTS, PRIVACY, CONFIDENTIALITY, COPYRIGHT, PATENT, TRADEMARK, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

These are your sole remedies. This Agreement sets forth your sole and exclusive remedies. Some of the above limitations on our liability may not apply if your state does not allow the exclusion or limitation of implied warranties or does not allow the limitation or exclusion of incidental or consequential damages. In those states, our liability and the liability of any Released Entity is limited to the maximum extent permitted by law.

These limitations survive termination. All representations, warranties, indemnifications, and limitations of liability contained in this Agreement will survive termination of this Agreement. Any other obligations hereunder will also survive if they relate to the period before termination or if, by their terms, they would be expected to survive termination.

12. ONE YEAR LIMITATION PERIOD

YOU MUST COMMENCE ANY ACTION WITHIN ONE (1) YEAR OF THE DATE OF THE OCCURRENCE OF THE EVENT OR FACTS GIVING RISE TO A DISPUTE OR YOU WAIVE THE RIGHT TO PURSUE ANY CLAIM BASED ON SUCH EVENTS OR FACTS. FOR BILLING DISPUTES, YOU MUST NOTIFY US WITHIN 120 DAYS AND MUST COMMENCE AN ACTION WITHIN ONE (1) YEAR OF RECEIVING THE CHARGES.

13. BINDING ARBITRATION, AND CLASS/COLLECTIVE/REPRESENTATIVE ACTION/RELIEF WAIVER

Any Dispute involving you and us shall be resolved through individual arbitration as described in this Section 13 (the "**Arbitration Provision**"). In arbitration, there is no judge or jury, and there is less discovery and appellate review than in court.

Definitions. This Arbitration Provision shall be interpreted broadly. "**Dispute**" means any and all claims or controversies related to us or our relationship, including, but not limited to, any and all: (1) claims for relief and theories of liability, whether based in contract tort, fraud, negligence, statute, regulation, ordinance, or otherwise; (2) claims or controversies that arose before this Agreement or any prior agreement; (3) claims or controversies that arise after the expiration or termination of this Agreement; and (4) claims or controversies that are the subject of purported class, collective, or representative action litigation. As used in this Arbitration Provision, "**us**" and

"**we**" means Comcast Cable Communications, LLC and any of its parents, subsidiaries, and other affiliates, each of their respective predecessors, successors, and assigns, and each of their respective officers, directors, employees, and agents; and "**you**" means you and any users or beneficiaries of the Services.

Exclusions. NOTWITHSTANDING THE FOREGOING, THE FOLLOWING DISPUTES WILL NOT BE SUBJECT TO ARBITRATION: (i) DISPUTES RELATING TO THE SCOPE, VALIDITY, OR ENFORCEABILITY OF THIS ARBITRATION PROVISION; (ii) DISPUTES THAT ARISE BETWEEN US AND ANY STATE OR LOCAL REGULATORY AUTHORITY OR AGENCY THAT IS EMPOWERED BY FEDERAL, STATE, OR LOCAL LAW TO GRANT A FRANCHISE UNDER 47 U.S.C. § 522(9); AND (iii) DISPUTES THAT CAN ONLY BE BROUGHT BEFORE THE LOCAL FRANCHISE AUTHORITY UNDER THE TERMS OF THE FRANCHISE.

Right to Opt Out. IF YOU DO NOT WISH TO ARBITRATE DISPUTES, YOU MAY DECLINE TO HAVE YOUR DISPUTES WITH US ARBITRATED BY NOTIFYING US, WITHIN 30 DAYS OF YOUR FIRST SERVICE ACTIVATION, (i) BY VISITING WWW.XFINITY.COM/ARBITRATIONOPTOUT, OR (ii) IN WRITING BY MAIL TO: COMCAST, 1701 JOHN F. KENNEDY BLVD., PHILADELPHIA, PA 19103-2838, ATTN: LEGAL DEPARTMENT/ARBITRATION. ANY SUCH WRITTEN NOTIFICATION TO US MUST INCLUDE YOUR NAME, SERVICE ADDRESS,

AND COMCAST ACCOUNT NUMBER, AND A CLEAR STATEMENT THAT YOU DO NOT WISH TO RESOLVE DISPUTES WITH US THROUGH ARBITRATION. YOUR DECISION TO OPT OUT OF THIS ARBITRATION PROVISION WILL HAVE NO ADVERSE EFFECT ON YOUR RELATIONSHIP WITH US OR THE SERVICES PROVIDED BY US. IF YOU HAVE PREVIOUSLY OPTED OUT OF ARBITRATION WITH RESPECT TO THE ACCOUNT GOVERNED BY THIS AGREEMENT, YOU DO NOT NEED TO DO SO AGAIN. BUT YOU MUST SEPARATELY OPT OUT FOR EACH ACCOUNT UNDER WHICH YOU RECEIVE SERVICES. ANY OPT-OUTS SUBMITTED AFTER THIS 30-DAY PERIOD WILL NOT BE EFFECTIVE AND ALL DISPUTES WITH US WILL BE ARBITRATED.

Initiation of Arbitration Proceeding/Selection of Arbitrator. Either you or we may initiate an arbitration proceeding by opening a case with the American Arbitration Association ("AAA") by visiting its website (www.adr.org) or calling its toll free number (1-800-778-7879). You may deliver any required or desired notice to us by mail to: Comcast, 1701 John F. Kennedy Boulevard, Philadelphia, PA 19103-2838-ATTN: LEGAL DEPARTMENT/ARBITRATION.

Right to Sue in Small Claims Court. Notwithstanding anything in this Arbitration Provision to the contrary, either you or we may elect to have a Dispute heard in a small claims court in the area where you receive(d) Services from us, if the claim(s) underlying the Dispute is

not aggregated with the claim(s) of any other person and if the amount in controversy is properly within the jurisdiction of the smallclaims court.

Arbitration Procedures. Any arbitration under this Arbitration Provision shall be governed by the Federal Arbitration Act. Arbitrations shall be administered by the AAA pursuant to the most recent version of its Consumer Arbitration Rules (the "AAA Rules") as modified by the version of this Arbitration Provision that is in effect when you notify us about your Dispute. You can obtain the AAA Rules from the AAA by visiting its website (www.adr.org) or calling its toll-free number (1-800-778-7879). If there is a conflict between this Arbitration Provision and the rest of this Agreement, this Arbitration Provision shall govern. If there is a conflict between this Arbitration Provision and the AAA Rules, this Arbitration Provision shall govern. If the AAA will not administer a proceeding under this Arbitration Provision as written, you and we shall agree on a substitute arbitration organization. If you and we cannot agree, you and we shall mutually petition a court of appropriate jurisdiction to appoint an arbitration organization that will administer a proceeding under this Arbitration Provision, as written, applying the AAA Rules. A single arbitrator will resolve the Dispute. Unless you and we agree otherwise, any arbitration hearing will take place at a location convenient to you in the area where you receive Services from us. If you no longer receive Services from us when you notify us of your Dispute, then any arbitration hearing will take place at a location convenient to you in the

county where you reside when you notify us of your Dispute, provided that we offer Services in that county, or in the area where you received Services from us at the time of the events giving rise to your Dispute. The arbitrator will honor claims of privilege recognized by law and will take reasonable steps to protect customer account information and other confidential or proprietary information. The arbitrator shall issue a reasoned written decision that explains the arbitrator's essential findings and conclusions. The arbitrator's award may be entered in any court having jurisdiction over the parties only if necessary for purposes of enforcing the arbitrator's award. An arbitrator's award that has been fully satisfied shall not be entered in any court.

Waiver of Class, Collective, and Representative Actions/Relief. THERE SHALL BE NO RIGHT OR AUTHORITY FOR ANY CLAIMS TO BE ARBITRATED OR LITIGATED (I) ON A CLASS ACTION, COLLECTIVE ACTION, OR OTHER JOINT OR CONSOLIDATED BASIS, OR (II) ON BASES INVOLVING CLAIMS BROUGHT IN A PURPORTED REPRESENTATIVE CAPACITY ON BEHALF OF THE GENERAL PUBLIC (SUCH AS A PRIVATE ATTORNEY GENERAL), OTHER SUBSCRIBERS, OR OTHER PERSONS. THE ARBITRATOR MAY AWARD RELIEF ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF WARRANTED BY THAT INDIVIDUAL PARTY'S CLAIM, AND THE ARBITRATOR MAY NOT

AWARD RELIEF FOR OR AGAINST OR ON BEHALF OF ANYONE WHO IS NOTA PARTY. THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A CLASS, COLLECTIVE, OTHER JOINT OR CONSOLIDATED, OR REPRESENTATIVE PROCEEDING. THIS WAIVER OF CLASS, COLLECTIVE, OTHER JOINT OR CONSOLIDATED, OR REPRESENTATIVE ACTIONS AND RELIEF IS AN ESSENTIAL PART OF THIS ARBITRATION PROVISION AND CANNOT BE SEVERED FROM IT. THE REMAINING PORTIONS OF THIS ARBITRATION PROVISION ARE NOT ESSENTIAL PARTS OF THIS ARBITRATION PROVISION AND CAN BE SEVERED FROM IT BY A COURT OF COMPETENT JURISDICTION.

Arbitral Fees and Costs. If your claim seeks more than $75,000 in the aggregate, the payment of the AAA's fees and costs will be governed by the AAA Rules. If your claims seek less than $75,000 in the aggregate, the payment of the AAA's fees and costs will be our responsibility. However, if the arbitrator finds that your Dispute was frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), the payment of the AAA's fees and costs shall be governed by the AAA Rules, and you shall reimburse us for all fees and costs that were your obligation to pay under the AAA Rules. You may hire an attorney to represent you in arbitration. You are responsible for your attorneys' fees and additional costs. You may only recover

your attorneys' fees and costs in the arbitration if the arbitration is decided in your favor and to the extent that you could have recovered those fees in court in accordance with the law or statute(s) that apply to the case. Notwithstanding anything in this Arbitration Provision to the contrary, we will pay all fees and costs that we are required by law to pay.

Survival. This Arbitration Provision shall survive the termination of your Services with us.

14. WAIVER OF JURY TRIAL

WHETHER ANY DISPUTE IS RESOLVED IN COURT OR IN ARBITRATION, YOU AND WE AGREE TO WAIVE THE RIGHT TO A TRIAL BY JURY IN RELATION TO THE DISPUTE.

15. INDEMNIFICATION

YOU AGREE TO DEFEND, INDEMNIFY, AND HOLD US AND EACH RELEASED ENTITY HARMLESS FROM AND AGAINST ANY DAMAGES, LOSSES, OR EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND COSTS) INCURRED IN CONNECTION WITH ANY CLAIMS, SUITS, JUDGMENTS, AND CAUSES OF ACTION ARISING OUT OF (a) YOUR USE OF THE SERVICES OR THE CUSTOMER EQUIPMENT; (b) YOUR ACTUAL OR ALLEGED VIOLATION OF APPLICABLE LAW; (c) YOUR FAILURE TO NOTIFY US OF A CHANGE IN OR THE INACCURACY OF THE INFORMATION YOU PROVIDED (INCLUDING, FOR EXAMPLE, CLAIMS UNDER THE

TELEPHONE CONSUMER PROTECTION ACT AND RELATED REGULATIONS); AND (d) YOUR BREACH OF THIS AGREEMENT OR ANY APPLICABLE POLICIES. YOUR INDEMNIFICATION OBLIGATIONS WILL SURVIVE ANY TERMINATION OF THIS AGREEMENT.

16. MONITORING AND RECORDING

You agree that we (and our agents) may monitor and record any telephone calls or other voice communications, data, or images transmitted between: (1) us and our agents, and (2) you, your agents, any user of your Services, your Customer Equipment or any user of any phone numbers associated with your account.

17. OUR INTELLECTUAL PROPERTY RIGHTS

All Services, information, documents, materials, firmware, and software we provide are protected by trademark, copyright patent, and other intellectual property laws and international treaty provisions. You are granted a revocable license to use our firmware and software in object code form (without making any modification thereto) strictly in accordance with this Agreement. You have no other license to use firmware or software embedded in or used to provide the Services. You must not take any action nor allow anyone else to take any action that will reverse compile, disassemble, reverse engineer, or otherwise attempt to derive the source code from the binary code of the firmware or software.

All of our and our affiliates' websites, corporate names, service marks, trademarks, trade names, logos, and domain names (collectively "**Marks**") are and will remain our and our affiliates' exclusive property. Nothing in this Agreement grants you the right or license to use any of the Marks.

18. YOUR REPRESENTATIONS AND WARRANTIES

You represent and warrant that you are at least 18 years of age and that you have provided us with information that is accurate, complete, and current.

For example, you must provide us with your accurate, complete, and current legal name, address (including apartment unit, suite number, etc., where applicable), telephone number(s), the number of devices on which or through which the Services are being used, and payment information. You must also provide accurate information when authorizing recurring payments. You agree to promptly update your contact information to keep it accurate and complete. YOU ARE RESPONSIBLE FOR MAINTAINING THE ACCURACY OF YOUR INFORMATION, EVEN AFTER TERMINATION OF THIS AGREEMENT, UNTIL YOU PAY ALL AMOUNTS DUE AND RETURN ALL XFINITY EQUIPMENT. FAILURE TO DO SO IS A BREACH OF THIS AGREEMENT. THIS OBLIGATION WILL SURVIVE THE TERMINATION OF THIS AGREEMENT.

You represent and warrant that you will comply with all applicable laws, including export rules.

19. CONSENT TO COMMUNICATIONS FROM COMCAST

You agree that Comcast or third parties acting on Comcast's behalf may call or text you at any telephone number that you provide to Comcast or that Comcast issues to you, and may do so for any purpose relating to your account and/or the Services to which you subscribe. You expressly consent to receive such calls and texts and agree that these calls and texts are not unsolicited. You understand and acknowledge that these calls and texts may entail the use of an automatic telephone dialing system and/or artificial or prerecorded messages. If you do not wish to receive these communications, you may visit the Preference Center at www.xfinity.com/donotcontact to manage your communications preferences. You understand and acknowledge that this is the exclusive means of opting out of such communications. You may not opt-out of receiving certain communications pertaining to your account, including but not limited to communications regarding emergencies, fraud or other violations of law, security issues, and harm caused to the network. Message frequency depends on your activity with your Services. Message and/or data rates may apply.

20. INFORMATION PROVIDED TO THIRD PARTIES

We are not responsible for any information provided by you to third parties including credit/debit card or banking information, and this information is not subject to the privacy provisions of this Agreement or the privacy notice for the Services. You assume all privacy, security, and other risks associated with providing any information, including customer proprietary network equipment or personal information, to third parties via the Services. For a description of the privacy protections associated with providing information to third parties, you should refer to the privacy policies, if any, provided by those third parties.

21. ASSIGNABILITY

You may not assign your right to use the Services without our authorization. You may not assign your rights and obligations under this Agreement. We may freely assign this Agreement, any of our rights and obligations, or any debt you owe us, without notifying you.

22. RETENTION OF RIGHTS

We may decide not to enforce our rights or exercise a remedy under this Agreement in a specific instance. This will not be a waiver of our rights or remedies. Nothing contained in this Agreement limits our rights and remedies available at law or in equity. If this Agreement terminates, we (and the Released Entities) reserve the right to delete all of your data, files, electronic messages, voicemails,

user account names, email addresses, IP addresses, websites, or other information that are stored and/or used with the Services. If you cancel Voice without porting your service or telephone number to another service provider, you will forfeit the telephone number. We and the Released Entities will not be liable for the loss of any data, information, or phone numbers.

23. ENTIRE AGREEMENT

This Agreement, any additional terms related to the Services, and any other documents incorporated into this Agreement by reference, form the entire agreement between you and us. No other written or verbal agreements between us have any legal force or effect. If any part of this Agreement is found invalid or unenforceable, that part will be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties. The remainder of the Agreement will remain in effect. Neither the course of conduct between us, nor trade practice, can modify this Agreement.

24. CONTACT US

If our local office cannot resolve your problem to your satisfaction, you may write to the Comcast corporate offices at 1701 John F. Kennedy Blvd., Philadelphia, PA 19103-2838, Attention: Executive Customer Relations.

If you experience a problem with your Services, please contact us first and give us an opportunity to resolve your problem.

- **Massachusetts Residents:** In addition, if you are unsatisfied with our handling of your TV complaint, you may contact the Consumer Division of the Department of Telecommunications and Cable (DTC) toll free at 1-800-392-6066, or you may write to them at 1000 Washington Street, Suite 600, Boston, MA 02118.

- **Connecticut Residents**: If a TV matter is not resolved to your satisfaction, please contact the Connecticut Public Utilities Regulatory Authority at 1 -800-382-4586 (toll free within Connecticut) or 1-860-827-1553 (outside Connecticut or TDD 1-860-827-2837.

- **New York Residents:** If your TV concerns have not been resolved, contact your local government, or call the **New York State Public Service Commission (PSC) at 1-800-342-3377**, or write to: **Customer Service Representative, New York State Public Service Commission, Office of Customer Services**, Three Empire State Plaza, Albany, NY 12223-1350.

- **New Hampshire Residents:** The Office of the Attorney General Consumer Protection Bureau has the authority to enforce consumer protection laws and provide assistance in the mediation of consumer complaints. Customers should file written complaints concerning any alleged misrepresentations and unfair or deceptive practices of the cable company to: Office of the Attorney General, Consumer Protection Bureau, 33 Capitol Street, Concord, NH 03301.

- **Maine Residents:** The Office of the Attorney General Consumer Protection Division has the

authority to enforce consumer protection laws and provide assistance in the mediation of consumer complaints. Customers should file written complaints concerning any alleged misrepresentations and unfair or deceptive practices of the cable company to: Office of the Attorney General, Consumer Information and Mediation Service, 6 State House Station, Augusta, ME 04333.

S____

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

CHARLES RAMSEY,

Plaintiff and Respondent,

v.

COMCAST CABLE COMMUNICATIONS, LLC,

Defendant and Appellant.

AFTER A DECISION OF THE COURT OF APPEAL
SIXTH APPELLATE DISTRICT
CASE NO. H049949

PETITION FOR REVIEW

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ATTORNEYS FOR PETITIONER, DEFENDANT, AND APPELLANT
COMCAST CABLE COMMUNICATIONS, LLC

CERTIFICATE OF INTERESTED ENTITIES AND PARTIES

Comcast Cable Communications, LLC is an indirect subsidiary of Comcast Corporation, a publicly held corporation. No entity or person has either (1) an ownership interest of 10 percent or more in Comcast Corporation, or (2) a financial or other interest in the outcome of the proceeding that the Justices should consider in determining whether to disqualify themselves.

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QUESTIONS PRESENTED

Under this Court's decision in *McGill v. Citibank, N.A.* (2017) 2 Cal.5th 945, 951-952, an arbitration provision waiving the right to seek "public injunctive relief" in any forum is "unenforceable" against a plaintiff who actually seeks such relief. In this case, the Court of Appeal held in a published decision that any requested injunction under California's Unfair Competition Law and/or Consumers Legal Remedies Act, if not expressly limited to the plaintiff and similarly situated individuals, constitutes public injunctive relief and thus falls within *McGill*'s rule. The questions presented are:

1. Does the Federal Arbitration Act preempt the Court of Appeal's expansion of *McGill*, as the U.S. Court of Appeals for the Ninth Circuit has held?

2. Is the Court of Appeal's expansion of *McGill*'s definition of "public injunctive relief" incorrect, as the Ninth Circuit has held?

3. Does the Federal Arbitration Act preempt *McGill*'s anti-waiver rule?

REASONS WHY REVIEW SHOULD BE GRANTED

The Federal Arbitration Act (FAA) requires courts to enforce arbitration agreements according to their terms, "save upon such grounds as exist at law or in equity for the revocation of any contract." (9 U.S.C. § 2.) Under this Court's decision in *McGill v. Citibank, N.A.* (2017) 2 Cal.5th 945, 951-952, an arbitration agreement is unenforceable if it precludes a party from seeking "public injunctive relief" in any forum.

A plaintiff must "in fact" seek public injunctive relief to invoke *McGill*. (See *McGill, supra*, 2 Cal.5th at p. 956.) And *McGill* expressly limited such relief to injunctions that would "primarily" benefit the "general public," not the plaintiff or a group of "similarly situated" persons. (*Id.* at pp. 955, 961.) But in purporting to apply *McGill*, the courts of appeal have expanded the concept of public injunctive relief to include virtually any request for an injunction under the Unfair Competition Law (UCL) and/or Consumers Legal Remedies Act (CLRA).

The Court of Appeal applied that broad interpretation of *McGill* in the published opinion below. Plaintiff-Appellee Charles Ramsey sued Comcast, alleging that when Comcast's fixed-term promotional rates for telecommunications services expire, Comcast offers new, individualized promotional rates to Ramsey and some other subscribers who reach out to Comcast and request service downgrades or threaten to cancel their subscriptions. (AA 7 ¶¶ 3-4.) Ramsey's theory is that Comcast may not offer "secret discounts" to only those

fixed-term subscribers who contact Comcast in this manner seeking new fixed-term promotional rates. (AA 11 ¶¶ 26-27.)

The Court of Appeal held that the arbitration agreement between Ramsey and Comcast was unenforceable because Ramsey's Complaint requested a broad injunction under the UCL and CLRA. (Slip Op. 10.) The Court of Appeal held that Ramsey's request was sufficient to bring this case within *McGill*'s anti-waiver rule for complaints seeking "public injunctive relief." To the Court of Appeal, that an injunction in this case would primarily benefit only a subset of existing Comcast subscribers similarly situated to Ramsey—subscribers currently paying promotional rates, who would otherwise need to contact Comcast to receive pricing information—made no difference.

The question whether the FAA—which "protect[s] pretty absolutely" parties' ability to agree to "individualized" arbitration and preempts "new devices and formulas" that disfavor arbitration (*Epic Systems Corp. v. Lewis* (2018) 584 U.S. 497, 506, 509)—preempts this understanding of *McGill* is of exceptional importance. Because virtually every plaintiff in a consumer lawsuit can throw in a boilerplate request for an injunction under the UCL and/or the CLRA, the Court of Appeal's application of *McGill* creates a significant loophole in the FAA's enforcement mandate. Whether the FAA tolerates that loophole is an important question that this Court must resolve. Indeed, recent developments since this Court decided *McGill* suggest that this Court should revisit whether the FAA preempts *McGill* itself,

regardless of the intermediate appellate courts' expansive misapplication of that decision.

The Court of Appeal's decision also deepens not one, but two conflicts between the U.S. Court of Appeals for the Ninth Circuit and the consensus view among California's courts of appeal. The Ninth Circuit has squarely held that the Court of Appeal's version of *McGill*, based on the Court of Appeal's broad conception of "public injunctive relief," is both "preempted by the FAA" and a "patent misreading" of *McGill* itself. (*Hodges v. Comcast Cable Communications, LLC* (9th Cir. 2021) 21 F.4th 535, 544, 547.) All the courts of appeal to have addressed those issues—including the First, Fourth, and now the Sixth District—disagree with the Ninth Circuit as to both the preemption question and the definition of public injunctive relief. (See *Mejia v. DACM Inc.* (2020) 54 Cal.App.5th 691; *Maldonado v. Fast Auto Loans, Inc.* (2021) 60 Cal.App.5th 710; *Vaughn v. Tesla, Inc.* (2023) 87 Cal.App.5th 208.) Federal courts are thus applying a significantly narrower version of *McGill* than California courts, leading to confusion and conflicting outcomes.

This case is the right vehicle to resolve those significant and worsening conflicts. It cleanly presents the questions whether (i) the Court of Appeal's expansion of *McGill* is preempted; (ii) that expansion is erroneous under *McGill*; and (iii) *McGill* itself is preempted. Each of those issues was pressed and passed upon below. And the time for this Court's intervention is ripe, given the entrenched conflict between the federal and state courts that—as the decision below indicates— shows no sign of abating on its own.

STATEMENT OF THE CASE

I. FACTUAL BACKGROUND

Comcast sells Xfinity-branded cable, internet, home telephone, security, and other subscription services to consumers in certain areas of California. (See AA 7 ¶ 3; AA 54 ¶ 3.) Some new customers choose to sign up for fixed-term subscriptions (typically lasting 12 or 24 months), usually at a discounted monthly rate, while many other new and existing subscribers are on "month-to-month" subscriptions. (AA 54 ¶ 3; see AA 114-120.) New fixed-term subscribers pay upfront equipment and installation fees, along with recurring monthly fees. (AA 114-120.) Fixed-term customers can cancel their subscriptions at any time, typically for no fee if within 30 days of signing up and subject to a gradually decreasing early termination fee thereafter. (AA 119.) Assuming they do not cancel or agree to new fixed terms with Comcast, fixed-term subscribers roll off their promotional rates when their fixed terms end and become month-to-month subscribers. (AA 68, 107, 122.)

According to the allegations in the Complaint, Comcast sells subscriptions to new fixed-term customers "at attractive promotional rates." (AA 7 ¶ 3.) After those promotional terms expire, existing Comcast subscribers see their monthly bills increase. (See *id.*) When that happens, "some consumers" contact Comcast and "seek[] to downgrade and/or cancel [their] subscription services." (*Id.* ¶ 4.) "Only if and when" such existing customers reach out to Comcast, customer service agents may offer them "a 'new' promotional package that will provide them a

substantial discount on their continued services . . . at a rate comparable to the initial promotional rate they had been paying." (*Id.*) Comcast allegedly does not (and could not) "advertise the exact promotional rate offered to these consumers, because each subscription rate is calculated on an individual basis using an internal algorithm." (AA 11 ¶ 26.)

Ramsey has subscribed to Comcast Xfinity services since 2009. (AA 9 ¶ 12.) He alleges that "each year" he threatens to cancel or downgrade his service and receives a "promotional package" that "varie[s]" but is "less than the nonpromotional rate [he] would otherwise pay." (AA 13 ¶ 38.)

Ramsey's subscriber agreement provides that "[a]ny dispute" between him and Comcast "shall be resolved through individual arbitration[.]" (AA 144.) Neither party may arbitrate or litigate claims "brought in a purported representative capacity on behalf of the general public (such as a private attorney general), other subscribers, or other persons." (*Ibid.*, all caps omitted.) "The arbitrator may award relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that individual party's claim," and may not award relief "for or against or on behalf of anyone who is not a party." (*Ibid.*, all caps omitted.)

II. PROCEDURAL HISTORY

A. Ramsey Sues Comcast

Ramsey sued Comcast in Santa Clara County Superior Court. (AA 6-22.) He challenges Comcast's discounts "offered only to Comcast subscribers who, at the time of the expiration of their initial promotional

pricing term, contact Comcast directly to complain about increases in their monthly subscriptions." (AA 25.)

Ramsey asserts one claim under the CLRA and two claims under the Business & Professions Code. (AA 11-17 ¶¶ 30-63.) First, Ramsey alleges that by telling him that "promotional pricing would last until a specified date," but then giving Ramsey "a new promotional rate," Comcast "misrepresented the reasons for, existence of, or amounts of, price reductions" in violation of the CLRA. (AA 12-13 ¶¶ 36, 38-39, citing Civ. Code, § 1770, subd. (a)(13).) Second, Ramsey alleges that this "practice of issuing secret rebates" constitutes an "unfair business practice" under the UCL. (AA 15 ¶¶ 51-52.) Third, Ramsey alleges that the practice violates Business & Professions Code § 17045's prohibition on "secret payments . . . of . . . unearned discounts" where such payments cause "the injury of a competitor" and "ten[d] to destroy competition." (AA 16 ¶ 57.)

Ramsey alleges that Comcast's conduct harms him and similar subscribers in several ways. According to Ramsey, requiring such subscribers to "contact [Comcast] . . . to be offered a discounted rate" causes a "loss of money" for customers who do not "contact [Comcast] to obtain new promotional pricing," and makes customers "unable to determine the future cost of [their] subscription service . . . until at or near the time [their] promotional rate will expire[.]" (AA 7-8 ¶¶ 5-7.) Ramsey also alleges that the practice "cause[s] injury to competing service providers" that are "unable to discern [Comcast's] pricing models." (AA 11 ¶ 28.)

As relevant here, Ramsey's Complaint seeks an injunction "that requires [Comcast] to comply with [its] legal obligations and utilize only truthful and complete advertisements, statements, and representations, and ensure consumers are aware of any and all price reductions and rebates [Comcast] seek[s] to grant to consumers." (AA 18 ¶ 67.)

B. The Trial Court Denies Comcast's Petition To Compel Arbitration

The trial court denied Comcast's petition to compel arbitration based on *McGill*, and in doing so rejected Comcast's argument that this case does not implicate *McGill* because Ramsey seeks a remedy that will primarily benefit him and similarly situated Comcast subscribers. (AA 198.) According to the trial court, Ramsey seeks public injunctive relief because he "expressly requests" it in his Complaint, and "any member of the general public may decide to sign up with [Comcast] and thereafter rely on representations or omissions made by [Comcast] before deciding whether to continue subscription services." (AA 199-200.)

C. The Court Of Appeal Affirms

Comcast filed a timely appeal. The Sixth District Court of Appeal affirmed in a published opinion.

The Court of Appeal held that Ramsey seeks public injunctive relief because he "alleges violations of California's consumer protection statutes—specifically, the CLRA and UCL," and because Ramsey's Complaint "does not limit the requested remedies to Ramsey himself or those similarly situated." (Slip Op. 9, 13.)

Comcast had argued that Ramsey did not actually seek public injunctive relief because any injunction based on Ramsey's claims would "primarily . . . benefit a limited group of existing Comcast subscribers," and the general public would benefit only incidentally. (Slip Op. 10.) But to the Court of Appeal, "where the plaintiff s[eeks] to enjoin unfair and deceptive marketing practices and ensure . . . future compliance with consumer protection laws," *McGill* applies. (*Id.* at 9.) The Court of Appeal also concluded that Ramsey's requested injunction "would benefit both existing Comcast subscribers and . . . potential subscribers" because "enhanced transparency . . . would enable subscribers and potential subscribers alike to make informed decisions from the outset." (*Id.* at 11.) In the Court of Appeal's view, any request for an injunction that might benefit both "potential *and* actual" customers constitutes public injunctive relief. (*Id.* at 16.)

The Court of Appeal also addressed a division of authority between the Fourth District Court of Appeal's decisions in *Mejia* and *Maldonado* and the Ninth Circuit's decision in *Hodges*. According to the Court of Appeal, *Mejia* and *Maldonado* held that when a plaintiff "seeks to enjoin future violations of California's consumer protection statutes" and his complaint "does not limit the requested remedies to . . . himself or those similarly situated," the relief is "'oriented to and for the benefit of the general public.'" (Slip Op. at 13-14 [quoting *Mejia, supra*, 54 Cal.App.5th at p. 703].) But *Hodges* "deviated sharply" from *Mejia* and *Maldonado* by holding that public injunctive relief must primarily benefit the public "'as a diffuse whole.'" (*Id.* at 14-15 [quoting

Hodges, supra, 21 F.4th at p. 549].) The Court of Appeal recognized that Ramsey's requested injunction would not have that effect. (See *id.* at 16.) But the Court of Appeal sided with *Mejia* and *Maldonado*. (*Ibid.*)

Finally, the Court of Appeal held that the FAA does not preempt the Court of Appeal's understanding of *McGill*. (Slip Op. 18.) In doing so, the Court of Appeal rejected (i) the Ninth Circuit's holding that "*Mejia*'s and *Maldonado*'s broader reading of the *McGill* rule . . . is preempted" (*Hodges, supra*, 21 F.4th at p. 547), (ii) Comcast's argument that the FAA preempts the trial court's (and now the Court of Appeal's) broadening of *McGill* beyond *Mejia* and *Maldonado*, and (iii) Comcast's argument that the FAA preempts *McGill* entirely.

The Court of Appeal issued its decision on December 29, 2023. No petition for rehearing was filed. The Court of Appeal published its decision on January 29, 2024.

GROUNDS FOR REVIEW

Under California Rule of Court 8.500(b)(1), review is warranted "[w]hen necessary to secure uniformity of decision or to settle an important question of law."

This case readily satisfies both grounds for review. Review is necessary to settle the important question whether the Court of Appeal's significant expansion of *McGill*—an expansion that effectively precludes bilateral arbitration of consumer disputes in California—is preempted by the FAA. Review is also needed to secure uniformity of decision because the

Court of Appeal's preemption ruling splits irreconcilably with the Ninth Circuit's contrary ruling in *Hodges*. Indeed, that split extends beyond preemption to the very meaning of "public injunctive relief" set forth in *McGill*. As a result of those conflicts, California and federal courts now apply markedly different understandings of *McGill*, leading to incongruous decisions and arbitrarily disparate outcomes that will persist unless this Court steps in. Finally, review is necessary to settle the important question whether, particularly in light of intervening high court precedent, *McGill* itself is preempted.

I. REVIEW IS NECESSARY TO DETERMINE WHETHER THE COURT OF APPEAL'S INTERPRETATION OF *McGILL* IS PREEMPTED OR OTHERWISE ERRONEOUS

When this Court held in *McGill* that waivers of the right to seek public injunctive relief are unenforceable, it expressly considered FAA preemption principles and limited its anti-waiver rule accordingly. Specifically, this Court held that a plaintiff must *actually* seek relief that *primarily* benefits the general public, *not* a group of similarly situated individuals.

But the courts of appeal have gradually expanded what constitutes public injunctive relief—culminating with the decision below, which reads *McGill* as an easily satisfied pleading requirement. The Ninth Circuit has already held that (i) the FAA preempts the Court of Appeal's understanding of *McGill*, and (ii) the Court of Appeal's understanding of *McGill* is erroneous. This Court should grant review to settle

those important questions and resolve the conflict between the courts of appeal and the Ninth Circuit.

A. Under *McGill*, An Arbitration Agreement Waiving A Party's Ability To Seek Public Injunctive Relief Is Unenforceable Only When A Party Actually Seeks Relief That Primarily Benefits The General Public

McGill held that "insofar as [an] arbitration provision . . . purports to waive [the] right to request in any forum . . . public injunctive relief, it is invalid and unenforceable under California law." (*McGill, supra*, 2 Cal.5th at p. 961.)[1] In other words, *McGill* conditioned the enforceability of certain arbitration agreements on the availability of public injunctive relief. According to this Court, that rule arises from a California Civil Code provision stating that "'[a]ny one may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement.'" (*Ibid.*, quoting Civ. Code, § 3513; see also Civ. Code, § 3509.)

McGill set forth guardrails delineating its prohibition on waivers of public injunctive relief. Most importantly, *McGill*'s anti-waiver rule applies only

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[1] California courts used to apply a rule that "[a]greements to arbitrate claims for public injunctive relief . . . are not enforceable in California." (*McGill, supra*, 2 Cal.5th at p. 953, citing *Cruz v. PacifiCare Health Systems, Inc.* (2003) 30 Cal.4th 303 and *Broughton v. Cigna Healthplans* (1999) 21 Cal.4th 1066.) The rule was based on "an inherent conflict between arbitration and a statutory injunctive relief remedy designed for the protection of the general public." (Cruz, at p. 313.) In *McGill*, this Court determined that the *Broughton-Cruz* rule was "not at issue." (*McGill*, at pp. 633-634.)

when the "complaint does, in fact, seek the type of public injunctive relief that *Broughton* and *Cruz* identified." (*McGill, supra*, 2 Cal.5th at p. 956.) To guide courts in conducting that inquiry, *McGill* defined public injunctive relief as having "the *primary* purpose and effect of prohibiting unlawful acts that threaten future injury to the *general public*." (*Id.* at p. 951, italics added.) Public injunctive relief "'by and large' benefits the general public," and "benefits the plaintiff, 'if at all,' only 'incidental[ly]' and/or as a 'member of the general public[.]'" (*Id.* at p. 955, quoting *Broughton*, *supra*, 21 Cal.4th at pp. 1079, 1080, fn. 5.)

By contrast, "[r]elief that has the primary purpose or effect of redressing or preventing injury to an individual plaintiff—or to a group of individuals similarly situated to the plaintiff—does not constitute public injunctive relief." (*McGill, supra*, 2 Cal.5th at p. 955.) An "incidental[]" public benefit is not enough. (*Ibid.*) And, as *McGill* explained, a plaintiff may not seek public injunctive relief in connection with a claim that could be brought as a class action, "because class certification requires 'the existence of both an ascertainable class and a well-defined community of interest among the class members,' and 'the general public . . . fails to meet this requirement.'" (*Id.* at p. 960, quoting *Washington Mutual Bank v. Superior Court* (2001) 24 Cal.4th 906, 913 and *Czap v. Credit Bureau of Santa Clara Valley* (1970) 7 Cal.App.3d 1, 6.) Class actions are also brought "on behalf of specific absent parties" (*Blair v. Rent-A-Center, Inc.* (9th Cir. 2019) 928 F.3d 819, 829), not "the public at large" (*McGill*, at p. 955).

McGill further held that this definition of public injunctive relief is consistent with the limitations the FAA places on state-law rules governing arbitration. (2 Cal.5th at pp. 961-964.) *McGill* concluded that the California policy that "a law established for a public reason cannot be contravened by a private agreement" is a ground "for revoking any contract," including those with "no arbitration provision." (*Id.* at p. 962, quotation omitted.) And *McGill* reasoned that a rule invalidating waivers of public injunctive relief—as *McGill* defined such relief—does not "interfere[] with the fundamental attributes of arbitration[.]" (*Id.* at pp. 965-966.) The Ninth Circuit later agreed on the ground that arbitrating a claim for public injunctive relief, as described in *McGill*, does not require a degree of "procedural complexity" that would "frustrate the FAA's objectives." (*Blair, supra*, 928 F.3d at p. 829.)

B. The Courts Of Appeal Have Expanded *McGill's* Definition Of "Public Injunctive Relief" To Include Virtually All Injunctions Under The UCL And CLRA

This case is the latest example of the courts of appeal broadening *McGill*'s definition of public injunctive relief beyond all recognition. In *Mejia* and *Maldonado*, the Fourth District held that an injunction dictating the contract terms a company may offer potential customers primarily benefits the general public. In this case, the Court of Appeal held that any requested injunction under California's consumer protection laws that is not expressly limited to the plaintiff or a similarly situated group of persons also primarily benefits the general public. Under those expansive interpretations of *McGill*, it does not matter whether (i) the underlying claim could not

actually give rise to an injunction reaching all potential customers (let alone the general public), or (ii) the injunction will primarily benefit a group of similarly situated persons and only incidentally (if at all) benefit the general public.

1. *Mejia* And *Maldonado* Broadened *McGill* By Equating Customers Of A Business With The General Public

The Fourth District Court of Appeal's decisions in *Mejia* and *Maldonado* concerned requests for injunctions that would dictate the defendants' upfront communications with, or offerings to, their customers at the time of initial purchase. Specifically, *Mejia* addressed allegations that the defendant had induced customers to finance motorcycle purchases through an "open-ended" credit arrangement that "substantially increases the customer's cost" without "provid[ing] all the required financing information in a single document[.]" (54 Cal.App.5th at p. 695.) An injunction would remedy that harm by stopping the defendant from "selling motor vehicles . . . without first providing the consumer with all disclosures mandated by [law] in a single document." (*Id.* at p. 703.) The court in *Mejia* held that because any member of the public could buy a motorcycle from the defendant without receiving the required disclosures, the injunction would benefit "consumers generally." (*Ibid.*)

Similarly, *Maldonado* addressed allegations that an auto lender charged customers "unconscionable interest rates." (60 Cal.App.5th at p. 713.) An injunction would prevent that harm by stopping the defendant from "charging unlawful interest rates."

(*Id.* at p. 721.) Such relief would benefit anyone who took out a loan from the defendant. (See *ibid.*)

In each case, the court treated a company's potential customers—in *Mejia*, "persons who actually purchased motorcycles," and in *Maldonado*, "those who actually sign lending agreements"—as "the public more generally." (See *Hodges, supra*, 21 F.4th at p. 545.) And in each case, the court upheld application of *McGill*'s rule even though those customers alone would benefit from any injunction that might issue.

2. The Decision Below Treats Virtually Any Request For An Injunction Under The UCL Or CLRA As Primarily Benefitting The General Public

In this case, the Court of Appeal not only expressly relied on *Mejia* and *Maldonado* (Slip Op. 11), but also further expanded those decisions' interpretation of *McGill* in three ways.

First, *McGill* requires a threshold analysis of a plaintiff's "allegations and request for relief" to determine "the *actual* nature of the injunctive relief sought." (*McGill, supra*, 2 Cal.5th at pp. 956-957, italics added.) But below, the Court of Appeal indicated that because "injunctions issued under the CLRA and UCL" are necessarily "injunctions that benefit the public," a plaintiff need only include a generally worded request for such relief to trigger *McGill*. (Slip Op. 16.) Indeed, the Court of Appeal suggested that courts should accept the "scope of the requested injunction" on its face, without scrutinizing how it connects to the plaintiff's actual allegations. (*Id.* at 10.) This reasoning eliminates *McGill*'s

requirement that a plaintiff must actually seek public injunctive relief to invoke *McGill*'s anti-waiver rule.

Second, *McGill* requires assessing allegations and requests for relief to determine who would "primarily" benefit. (*McGill, supra*, 2 Cal.5th at p. 961.) But rather than weigh the relative benefits, the Court of Appeal indicated that *any* "injunction that primarily benefits *both* subscribers and potential subscribers is a public injunction." (Slip Op. at 10, formatting modified, italics added.)

Third, *McGill* clarifies that an injunction that would primarily benefit "a group of individuals similarly situated to the plaintiff" is not public in the relevant sense. (*McGill, supra*, 2 Cal.5th at p. 955.) By treating Ramsey's broad request for a consumer injunction as dispositive, the Court of Appeal effectively cast aside this limitation. The Court of Appeal thus eliminated any requirement to weed out requests for relief that primarily benefit an ascertainable group. (*See id.* at p. 960.)

C. This Court Should Address The Critical Question Whether The FAA Preempts The Expanded Application Of *McGill*

This Court must determine whether the FAA preempts such a broad understanding of *McGill*. When *McGill* held that the FAA did not preempt its rule forbidding waivers of public injunctive relief because the rule did not "interfere[] with fundamental attributes of arbitration," this Court had no occasion to assess whether the FAA preempts the rule now being applied by the courts of appeal. (*McGill, supra*, 2 Cal.5th at pp. 964-965.) Specifically, the Court did not address whether a rule that enables a plaintiff to

avoid arbitration merely by seeking a UCL or CLRA injunction that is not expressly limited to the plaintiff or those similarly situated "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." (*Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University* (1989) 489 U.S. 468, 477, citation omitted.)

That question is exceptionally important. "[C]laims under the UCL are easily alleged in the context of business activities." (*Cruz*, *supra*, 30 Cal.4th at p. 322 (conc. opn. of Baxter, J.); see also Blackston, *California's Unfair Competition Law—Making Sure the Avenger Is Not Guilty of the Greater Crime* (2004) 41 San Diego L.Rev. 1833, 1839.) Indeed, a plaintiff can plead a claim under the UCL for "any unlawful" business practice—meaning any alleged violation of any state or federal law. (See *Cel-Tech Communications, Inc. v. L.A. Cellular Telephone Co.* (1999) 20 Cal.4th 163, 180.) As this case demonstrates, virtually every consumer litigation concerning conduct that is ongoing can thus include a generally worded request for an injunction under the UCL. Accordingly, under the Court of Appeal's rule, virtually every consumer-litigation plaintiff can use artful pleading to circumvent an arbitration agreement. Whether that broad rule impermissibly discriminates against arbitration (*Kindred Nursing Centers Ltd. Partnership v. Clark* (2017) 581 U.S. 246, 250-251), or requires parties who agreed to "the individual and informal mode of arbitration contemplated by the FAA" to arbitrate disputes in a manner "inconsistent" with those features (*Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639,

651), are critical questions that this Court must answer.

D. Independently, The Court Of Appeal's Interpretation Of *McGill* Warrants Review

Indeed, this Court's review would be warranted even if there were no FAA preemption issues. Given the importance of *McGill* in consumer litigation under California law, the need to clarify the scope of "public injunctive relief" requires this Court's immediate intervention.

As discussed above, the decision below effectively eliminates *McGill*'s guardrails requiring an examination of the relief a plaintiff *actually* seeks, who would *primarily* benefit from such relief, and whether those primary beneficiaries constitute an ascertainable group distinguishable from the general public. (See pp. 23-24, *supra*.)

The nature of Ramsey's claims in this case underscore that departure from *McGill*. The point of this lawsuit, as alleged, is to ensure that Comcast subscribers who are nearing the end of their promotional terms are made aware of Comcast's purported "secret discounts," which Ramsey alleges are individually determined using an algorithm. (AA 11 ¶¶ 26-27; see also AA 25.) Only (1) Comcast subscribers, (2) who currently receive services on a promotional-rate fixed-term agreement, and (3) who are far enough into that term to receive an individualized discount offer and decide about their next contract would receive additional communications from Comcast. At a minimum, the "primary purpose and effect" of any injunction would

be to benefit that limited group of Comcast subscribers. (See *McGill, supra*, 2 Cal.5th at pp. 951-952.)

Rather than focus on those case-specific factors, the Court of Appeal emphasized the broad language in Ramsey's request for relief. Given the ease with which plaintiffs may request such relief, that approach raises the same preemption concerns already discussed. But it also raises independent concerns regarding the scope of the statutory provision on which *McGill* relied. (See Civ. Code, § 3513.) By expanding the concept of relief that qualifies as "public," the Court of Appeal's reasoning opens the door to arguments that a contract is unenforceable because it purportedly "contravene[s]" a "law established for a public reason." (See *id.*) Without a clear limiting principle, the implications of that broad interpretation could extend well beyond the arbitration context, from forum selection clauses to contractual waivers more generally. The question whether the Court of Appeal's reasoning is faithful to *McGill* thus independently merits review.

II. REVIEW IS NECESSARY TO RESOLVE A CONFLICT BETWEEN THE COURTS OF APPEAL AND THE NINTH CIRCUIT

The Court of Appeal's opinion also deepens a conflict with the Ninth Circuit, and thus every federal district court within it. The Ninth Circuit had previously held that *McGill*—as originally formulated—is not preempted because it "does not interfere with the bilateral nature of a typical consumer arbitration." (*Blair, supra*, 928 F.3d at pp. 828-829.) But in *Hodges*, the Ninth Circuit explained

that "any broader conception of public injunctive relief . . . would plainly 'interfere with the informal, bilateral nature of traditional consumer arbitration,'" and therefore would "require[] a different conclusion as to the preemption issue." (*Hodges, supra*, 21 F.4th at p. 544, quoting *Blair*, at p. 830.)

For that very reason, the Ninth Circuit held that "*Mejia*'s and *Maldonado*'s broader reading of the *McGill* rule . . . is preempted by the FAA." (*Hodges, supra*, 21 F.4th at p. 547.) The court pointed to *Broughton*, where this Court explained that a specific injunction's "compatibility with bilateral arbitration must be evaluated in light of how [it] would actually be *implemented*." (*Id.* at p. 548, citing *Broughton*, *supra*, 21 Cal.4th at pp. 1081-1082.) But, as *Hodges* explained, "the broader *Mejia-Maldonado* rule forbids waiving claims for prospective injunctive relief against unlawful conduct even if . . . the implementation of such an injunction would require evaluation of the individual claims of numerous non-parties." (*Id.* at p. 547.) For example, the injunction requested in *Maldonado* would prohibit unconscionable loan agreements with excessive interest rates. (60 Cal.App.5th at p. 713.) But implementing that decree would require "determining whether any particular future loan agreement was unconscionable"—an "individualized inquiry" in each instance. (*Hodges*, at p. 546.) "By insisting that contracting parties may not waive a form of relief that is fundamentally incompatible with the sort of simplified procedures the FAA protects," the Ninth Circuit reasoned, "the *Mejia-Maldonado* rule effectively bans parties from agreeing to arbitrate all of their disputes arising from such contracts." (*Id.* at p. 548.)

The Ninth Circuit's reasoning is directly contrary to the Court of Appeal's FAA preemption analysis below. (Slip Op. 18.) But the conflict between the Ninth Circuit and the courts of appeal runs deeper than preemption. In the Ninth Circuit's view, the *Mejia-Maldonado* rule on which the Court of Appeal relied not only is preempted, but also "rests on . . . a patent misreading of California law." (*Hodges*, 21 F.4th at p. 544.)

According to the Ninth Circuit, *McGill* indicated that public injunctive relief "is limited to forward-looking injunctions that seek to prevent future violations of law for the benefit of the general public as a whole, as opposed to a particular class of persons, and that do so without the need to consider the individual claims of any non-party." (*Hodges, supra*, 21 F.4th at p. 542 [discussing *McGill, supra*, 2 Cal.5th at pp. 955-956].) One of the hallmarks of a public injunction is that a court should be able to evaluate a defendant's compliance with the injunction without engaging in fact-finding as to "specific absent parties." (See *Blair, supra*, 928 F.3d at p. 829.) For example, an order that prohibits certain false statements in advertisements can be administered by simply viewing the advertisements. (*Hodges*, at pp. 546-547 ["injunctions against false advertising" are "paradigmatic examples of public injunctive relief"], citations omitted.) Likewise, an order that requires a defendant to "obtain and maintain . . . required lender licenses" can be administered by determining whether the defendant has those licenses. (*Id.* at p. 547 [discussing a portion of the relief at issue in *Maldonado*].) But an order that requires resolving a series of "private dispute[s]"—such as what

information each unique customer received—is categorically not an injunction "to remedy a public wrong[.]" (*McGill*, at p. 961, quotation omitted.) According to the Ninth Circuit, *Mejia*'s and *Maldonado*'s (and thus the Court of Appeal's) contrary analysis "disregards all of the limitations on public injunctive relief that were emphasized in *McGill* and *Blair*." (*Hodges*, at p. 547.)[2]

The First District Court of Appeal has expressly disagreed with this understanding of public injunctive relief while endorsing the broader conception set forth by the Fourth District in *Mejia* and *Maldonado*. (See *Vaughn*, *supra*, 87 Cal.App.5th 208, 231, fn. 16.) With the decision below, there is now a clear consensus among the courts of appeal.

That consensus "deviate[s] sharply" from the Ninth Circuit's views on both FAA preemption and the meaning of *McGill*. (Slip Op. 14.) After all, the Court of Appeal expressly relied on *Mejia* and *Maldonado* while rejecting *Hodges*. (*Id.* at 11-14.) And, as in *Mejia* and *Maldonado*, administering the injunction that Ramsey seeks would require a fact-intensive analysis to resolve individualized disputes in a

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[2] *Hodges* did not imply that public injunctive relief must literally benefit "every member of the public." (Slip Op. 17, fn. 3.) Enjoining false advertising does not benefit people who would not see the advertising, and a requirement to obtain lender licenses does not benefit people who will never take out a loan. Rather, *Hodges* provides that public injunctive relief must primarily operate at the level of the "public at large," not a group similarly situated to the plaintiff. (*Hodges, supra*, 21 F.4th at p. 546; see also *McGill, supra*, 2 Cal.5th at p. 955 [public injunctive relief "is designed to prevent further harm to the public at large"], quoting *Cruz, supra*, 30 Cal.4th at pp. 315-316.)

manner that "plainly 'interfere[s] with the informal, bilateral nature of traditional consumer arbitration.'" (*Hodges, supra*, at p. 544, quoting *Blair, supra*, 928 F.3d at p. 830.) Determining compliance with any injunction would "require the examination of" Comcast's communications with "each individual" subscriber on a promotional term. (*Id.* at p. 545.) As to each, there would be questions about whether Comcast had an obligation to communicate pricing information and whether Comcast satisfied that obligation.

If this Court declines to resolve these conflicts, there will be continuing confusion and gamesmanship because vastly different rules now apply in California and federal courts. In California courts, a plaintiff need include only a general request for relief that, on its face, could potentially impact how a business interacts with potential customers. But in the Ninth Circuit, a plaintiff must actually seek relief that would primarily benefit the general public as a diffuse whole—and the FAA preempts any broader understanding of public injunctive relief.

The significance of that division of authority is indisputable. As Dostart Hannink LLP—"a law firm that represents plaintiffs in consumer litigation"—explained in its request for publication below, litigants purporting to seek "public injunctive relief under California consumer-protection laws are subject to two radically different standards that lead to opposite results depending on whether the particular case happens to be pending in state court or in federal court." (See Request for Publication (Jan. 16, 2024) at pp. 2, 5.) This problem is not hypothetical: "It is an inescapable fact that many cases in which plaintiffs

allege a violation of California's consumer protection laws end up being litigated in federal court." (*Id.* at p. 5.) According to a Westlaw search conducted on February 7, 2024, *McGill* has been cited in 307 judicial decisions in less than seven years—including 218 decisions in federal courts within the Ninth Circuit (as compared with 72 decisions in California state courts).

As things stand, courts will continue to issue conflicting decisions on the preemptive effect of the FAA and the meaning of public injunctive relief under *McGill*—until this Court steps in.

III. REVIEW IS NECESSARY TO SETTLE WHETHER *McGILL* ITSELF IS PREEMPTED

Regardless of the conflicts sown by the courts of appeal's expansion of *McGill*, more recent high court precedent requires a reexamination of *McGill*.

In *Epic Systems*, the U.S. Supreme Court made clear that the FAA "protect[s] pretty absolutely" the ability of contracting parties to agree to "use individualized . . . procedures" to resolve disputes. (*Epic Systems*, *supra*, 584 U.S. at pp. 506-507.) And in *Viking River*, the high court emphasized the FAA's protection of agreements to arbitrate using "individualized and informal" procedures (*Viking River*, *supra*, 596 U.S. at p. 651.) In light of those pronouncements, this Court should address whether its rule—that a "private agreement" that conflicts with a "law established for a public reason" *cannot* be enforced—circumvents the FAA's enforcement mandate without any limiting principle. (Civ. Code,

§ 3513.)[3] It should also consider whether *McGill* prevents bilateral dispute resolution by requiring parties to litigate claims for public injunctive relief. By definition, a plaintiff seeks public injunctive relief not for himself but for the "general public." (*McGill, supra*, 2 Cal.5th at pp. 951-952.)

This Court should also reconsider whether *McGill* is directly aimed at arbitration in evident purpose and effect, rather than a ground "for the revocation of any contract." (9 U.S.C. § 2.) Even by its terms, *McGill* is not a rule about the revocability of contracts; it is a rule about when contracts are "unenforceable." (2 Cal.5th at p. 951; see *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 354 (conc. opn. of Thomas, J.) ["The use of only 'revocation' and the conspicuous omission of 'invalidation' and 'nonenforcement' suggest that the exception does not include all defenses applicable to any contract but rather some subset of those defenses."].)

This Court should grant review to explain how *McGill* can be reconciled with those principles—to say

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[3] *McGill* sought to resolve this apparent contradiction based on the high court's statements that the FAA does not categorically protect the "waiver of a party's right to pursue statutory remedies." (*McGill, supra*, 2 Cal.5th at pp. 965-966, quoting *American Express Co. v. Italian Colors Restaurant* (2013) 570 U.S. 228, 235, italics omitted.) But that "effective-vindication" doctrine "serves to harmonize competing *federal* policies," not to protect *state* policies. (See *Italian Colors*, *supra*, 570 U.S. at p. 235; see also *id.* at p. 252 (dis. opn. of Kagan, J.).) And the high court's opinion in *Italian Colors* "suggests that the principle will no longer apply in any case." (*DIRECTV, Inc. v. Imburgia* (2015) 577 U.S. 47, 476, fn.3 (dis. opn. of Ginsburg, J.).)

nothing of the Court of Appeal's dramatic expansion of *McGill*.

IV. THIS CASE IS THE RIGHT VEHICLE TO RESOLVE THE QUESTIONS PRESENTED

This case is the right vehicle for this Court to address any or all of the questions presented. There are no disputed factual issues. And Comcast has preserved arguments that (i) the FAA preempts the courts of appeal's expansion of *McGill*; (ii) the courts of appeal's expansion of *McGill*—in *Mejia*, *Maldonado*, and the opinion below—rests on an erroneous reading of *McGill*; and (iii) the FAA preempts *McGill* itself. This Court can thus comprehensively put a stop to the worsening confusion among the federal and state courts that frequently encounter these issues.

CONCLUSION

For the foregoing reasons, Comcast respectfully requests that the petition for review be granted.

Respectfully submitted,

Dated: February 7, 2024

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CERTIFICATE OF COMPLIANCE

This brief consists of 6,567 words as counted by the Microsoft Word version 2016 word processing program used to generate the brief.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is: 100 Pine Street, Suite 3200, San Francisco, California 94111. On February 7, 2024, I served the foregoing document described as **PETITION FOR REVIEW** on the interested parties below, using the following means:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 7, 2024, at San Francisco, California.

/s/ Marilyn Li
Marilyn Li

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

CHARLES RAMSEY, Plaintiff and Respondent, v. COMCAST CABLE COMMUNICATIONS, LLC, Defendant and Appellant.	H049949 (Santa Clara County Super. Ct. No. 21CV384867)

Charles Ramsey subscribes to Comcast Cable Communications, LLC's (Comcast) Xfinity services. Ramsey sued Comcast for violations of California's consumer protection statutes, alleging that Comcast engaged in unfair, unlawful, and deceptive business practices under the Consumers Legal Remedies Act (CLRA) and the unfair competition law (UCL). Ramsey's complaint sought injunctive relief. Comcast filed a petition to compel arbitration pursuant to the arbitration provision in the parties' subscriber agreement. The trial court denied the petition based on the Supreme Court's decision in *McGill v. Citibank, N.A.* (2017) 2 Cal.5th 945 (*McGill*), which held that a predispute arbitration provision that waives a plaintiff's right to seek public injunctive relief in any forum is "contrary to California public policy and is

thus unenforceable under California law." (*Id.* at p. 951.) Because the arbitration provision in Comcast's subscriber agreement required the parties to arbitrate all disputes and permitted the arbitrator to grant only individual relief, the trial court held that the provision waived Ramsey's right to seek public injunctive relief in any forum. Further concluding that Ramsey's complaint sought public injunctive relief, the court held the arbitration provision to be unenforceable.

On appeal, Comcast argues that the trial court erred in concluding that Ramsey was seeking public injunctive relief. Comcast contends that the requested injunction was private because it would benefit only a subset of Comcast subscribers. Comcast further argues that the Federal Arbitration Act (FAA) preempts *McGill*. Concluding that Ramsey's complaint seeks public injunctive relief, and that *McGill* is not preempted, we affirm the trial court's order.

I. FACTUAL AND PROCEDURAL BACKGROUND[1]

Comcast designs, operates, markets, and sells its Xfinity cable television, internet, home telephone, and related subscription services to millions of consumers in California and nationwide. Ramsey has been a subscriber to Comcast's services since 2009. When Ramsey initially signed up for services, Comcast offered him a "limited time promotional rate" and represented that it would last for approximately one

[1] Our statement of facts is based on the allegations from Ramsey's underlying complaint.

year from the date the subscription began, after which, the price of the subscription would increase.

When Ramsey's promotional rate for Comcast's services was nearing its initial expiration, he determined that he was not willing to pay the additional price increase to maintain his subscription, and contacted Comcast to discuss cancelling his service. Upon speaking to a customer service representative regarding the cancellation, Ramsey was "instead offered additional channels, faster internet speed, and additional services at a premium cost." Ramsey expressed his lack of interest in the upgraded packages and indicated he was only willing to continue purchasing Comcast's most basic subscription package. After some discussion, the customer service representative eventually offered Ramsey a "new" limited-time promotion, consisting of "similar, if not identical services to what [Ramsey] had been receiving, at a cost comparable to the current promotional rate he was being charged." The customer service representative again informed Ramsey that this promotional rate would expire in approximately one year.

Each year since then, Ramsey has contacted Comcast near the conclusion of his promotional period to discuss pricing options. Each year, Comcast's customer service representative has "miraculously come up with a 'new' comparable promotional package" to offer Ramsey. Comcast does not contact Ramsey to inform him that his promotional period is about to expire, nor offer him any new and comparable promotions "unless and until he contacts [Comcast]." Each time, the new promotional rate Ramsey is offered has "arbitrarily varied," but is always less than the

non-promotional rate he would otherwise pay if he did not reach out to Comcast.

A. Ramsey's Complaint for Violations of the CLRA and UCL

In 2021, Ramsey filed a complaint against Comcast in superior court, alleging violations of the CLRA and UCL. Ramsey's complaint sets forth four causes of action. The first cause of action alleges a violation of the CLRA, which prohibits "unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or that results in the sale or lease of goods or services to any consumer." (Civ. Code, § 1770, subd. (a).) In connection with this cause of action, Ramsey alleges that by "failing to disclose to [Ramsey] and concealing the existence of, and true and actual reasons for, Xfinity subscription service pricing, Defendants violated [the CLRA], as they misrepresented the reasons for, existence of, or amounts of, price reductions with respect to their services." For this cause of action, Ramsey seeks "public injunctive relief enjoining Defendants' unfair or deceptive acts or practices and correcting all false and misleading statements and material omissions concerning pricing models, reasons for changes in pricing, and the availability of discounts, to prevent future injury to the general public."

Ramsey's second cause of action alleges a violation of the UCL's prohibition against unfair business practices. According to the complaint, "[Ramsey] purchased Defendants' services at costs he reasonably believed to be the accurate, true, and the actual price of those services, when in fact, Defendants have and continue to offer secret and unearned

discounts on their services to select consumers, and concealing the existence and amount of these discounts to the general public." This practice of "issuing secret rebates constitutes an unfair business practice in violation of California Business and Professions Code section 17200, *et seq*."[2] For this cause of action, Ramsey seeks a "permanent injunction requiring Defendants to halt their practice of issuing secret discounts."

Ramsey's third cause of action alleges a violation of section 17045, which falls under the UCL's prohibition against unlawful business practices. Section 17045 provides that the "secret payment or allowances of rebates, refunds, commissions, or unearned discounts . . . to the injury of a competitor and where such payment or allowance tends to destroy competition, is unlawful." (§ 17045.) In this cause of action, Ramsey seeks "public injunctive relief and declaratory relief enjoining Defendants' unfair or deceptive acts or practices to prevent injury to the general public."

Ramsey's fourth cause of action seeks declaratory and injunctive relief for the aforementioned law violations. In connection with this cause of action, Ramsey requests that the court adjudicate and declare that, (1) Ramsey has a right to view and rely upon truthful advertising, (2) that Comcast has an obligation to "ensure all of their advertisements and related statements and representations are truthful, complete, and not misleading," (3) that Comcast not issue "secret and earned [*sic*] discounts to select

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[2] All statutory references are to the Business & Professions Code, unless otherwise stated.

consumers," and (4) that Comcast has an obligation to "train their personnel not to misrepresent Defendants' services and pricing and to present consumers with truthful, complete and accurate information." Ramsey also seeks "related injunctive relief that requires Defendants to comply with their legal obligations and utilize only truthful and complete advertisements, statements, and representations, and ensure consumers are aware of any and all price reductions and rebates Defendants seek to grant to consumers."

In his prayer for relief, Ramsey seeks a "declaration requiring Defendants to comply with the various provisions of the CLRA and UCL alleged herein," and an order "enjoining Defendants from continuing their unlawful and unfair business practices." Though Ramsey alleges that he had suffered "an ascertainable loss of money, including . . . out of pocket costs incurred in paying nonpromotional rates when he did not immediately contact [Comcast] to obtain new promotional pricing," he does not seek monetary damages but only declaratory and injunctive relief, and an award of costs and attorney's fees.

B. Comcast's Petition to Compel Arbitration

Comcast sought to compel arbitration. In the petition, Comcast argued that Ramsey has continuously accepted the terms of Comcast's subscriber agreements, which has contained an arbitration provision since 2011. Comcast asserted that the trial court should compel arbitration based on the subscriber agreement included in Ramsey's May 2021 bill (the 2021 subscriber agreement), which provided that any "Dispute" between the parties "shall

be resolved through individual arbitration." The 2021 subscriber agreement also included a waiver of all class, collective, and representative claims, providing that "[t]he arbitrator may award injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that individual party's claim, and the arbitrator may not award relief for or against or on behalf of anyone who is not a party."

In the petition, Comcast acknowledged the *McGill* decision, but argued that because Ramsey's complaint sought private, not public injunctive relief, *McGill* was not implicated. Ramsey opposed Comcast's petition, arguing that his complaint sought public injunctive relief within the meaning of *McGill*.

C. Trial Court's Order Denying Comcast's Petition to Compel Arbitration

The trial court denied Comcast's petition, finding unpersuasive Comcast's argument that *McGill* did not apply because Ramsey was seeking private, not public injunctive relief. The court held that the subject arbitration provision violated *McGill* because it "explicitly barred the arbitrator from determining 'the rights, obligations, or interests of anyone other than a named party,' or from 'making an award for the benefits of anyone . . . other than a named party.'"

Relying on *Mejia v. DACM Inc.* (2020) 54 Cal.App.5th 691(*Mejia*) and *Maldonado v. Fast Auto Loans, Inc.* (2021) 60 Cal.App.5th 713 (*Maldonado*), the trial court further held that *McGill* applies when a plaintiff seeks to "enjoin future violations of California's consumer protection statutes." The court held that the requested relief in Ramsey's complaint is

"indistinguishable" from that sought in *Mejia* and *Maldonado*, and "describe[s] public injunctive relief." The trial court thus concluded that the arbitration provision was unenforceable.

Comcast timely appealed the trial court's order.

II. DISCUSSION

On appeal, Comcast argues that the trial court erred in holding the arbitration provision in its 2021 subscriber agreement to be unenforceable under *McGill*. Comcast does not dispute that the arbitration provision, by its terms, waives Ramsey's right to seek public injunctive relief in any forum. Rather, Comcast contends that *McGill* is not implicated because Ramsey does not seek a public injunction, but a private one. Alternatively, Comcast argues that *McGill* itself is invalid because it is preempted by the FAA.

We conclude that the requested relief set forth in Ramsey's complaint falls within *McGill*'s definition of public injunctive relief. We decline to hold that the FAA preempts *McGill*. We affirm the trial court's order denying Comcast's petition to compel arbitration.

A. Standard of Review

An order denying a petition to compel arbitration is appealable. (Code Civ. Proc., § 1294, subd. (a).) When, as here, a trial court's order denying a petition to compel arbitration is based on a question of law, we review the denial de novo. (*Clifford* v. *Quest Software Inc.* (2019) 38 Cal.App.5th 745, 749.)

B. The Complaint Seeks Public Injunctive Relief

1. The Relief Sought Falls Within McGill's Definition of Public Injunctive Relief

To determine whether Ramsey's complaint seeks public or private injunctive relief, we look first to *McGill* itself. In *McGill*, the Supreme Court, relying on its earlier decisions in *Broughton v. Cigna Healthplans* (1999) 21 Cal.4th 1066 (*Broughton*) and *Cruz v. PacifiCare Health Systems, Inc.* (2003) 30 Cal.4th 303 (*Cruz*), distinguished between the two types of injunctive relief: Private injunctive relief is "relief that primarily 'resolve[s] a private dispute' between the parties . . . and 'rectif[ies] individual wrongs' . . . and that benefits the public, if at all, only incidentally." (*McGill, supra*, 2 Cal.5th at p. 955, quoting *Broughton*, *supra*, 21 Cal.4th at pp. 1079-1080.) Public injunctive relief is "relief that 'by and large' benefits the general public . . . and that benefits the plaintiff, 'if at all,' only 'incidental[ly]' and/or as 'a member of the general public.'" (*McGill, supra*, at p. 955, alterations in original.) "To summarize, public injunctive relief under the UCL, the CLRA, and the false advertising law is relief that has 'the primary purpose and effect' of prohibiting unlawful acts that threaten future injury to the public. (*Broughton*, *supra*, at p. 1077.)" (*McGill, supra*, at p. 955.) "Relief that has the primary purpose or effect of redressing or preventing injury to an individual plaintiff—or to a group of individuals similarly situated to the plaintiff—does not constitute public injunctive relief." (*Ibid.*)

McGill opened a credit card account with Citibank and purchased a credit protection plan, which permitted her to defer payments on the credit card in a qualifying event, such as long-term disability or unemployment. (*McGill, supra*, 2 Cal.5th at p. 952.) While McGill's initial accountholder agreement did not contain an arbitration provision, such a provision was later added and there was no dispute that it was in effect during the relevant time period. (See *id.* at pp. 952-953.)

McGill filed a class action lawsuit against Citibank based on Citibank's marketing of the credit protection plan and its handling of a claim she had made under it after she lost her job. (*McGill, supra*, 2 Cal.5th at p. 953.) The complaint alleged various violations of California's consumer protection laws, including the CLRA, UCL, and the false advertising laws, and sought "an injunction prohibiting Citibank from continuing to engage in its illegal and deceptive practices," in addition to other relief. (*Ibid.*) Citibank moved to compel arbitration based on the arbitration provision set forth in the accountholder agreement. (*Id.* at pp. 952-953.) The trial court granted the petition in connection with McGill's monetary claims but denied it in connection with the requests for injunction under the CLRA, UCL, and false advertising laws. The Court of Appeal reversed, concluding that all of McGill's claims were subject to arbitration. (*Id.* At p. 953.)

The Supreme Court in turn reversed the appellate court, holding that an arbitration provision that waives a plaintiff's right to seek public injunctive relief in any forum is invalid and unenforceable. (*McGill, supra*, 2 Cal.5th at pp. 951-952.) The court

then examined McGill's complaint to determine whether it sought public or private injunctive relief. (*Id.* at p. 956.) The court provided two examples of what it believed constituted public injunctive relief. "[A]n injunction under the CLRA against a defendant's deceptive methods, acts, and practices 'generally benefit[s]' the public 'directly' by the elimination of deceptive practices and 'will . . . not benefit' the plaintiff 'directly,' because the plaintiff has 'already been injured, allegedly, by such practices and [is] aware of them.' [*Broughton, supra*, 21 Cal.4th at p. 1080, fn. 5]." (*McGill*, at p. 955.) Likewise, "an injunction under the UCL or the false advertising law against deceptive advertising practices 'is clearly for the benefit of . . . the general public'; 'it is designed to prevent further harm to the public at large rather than to redress or prevent injury to a plaintiff.' (*Cruz*, *supra*, 30 Cal.4th at pp. 315-316.)" (*McGill*, at p. 955.)

The court concluded that McGill's requested relief "does, in fact, appear to seek the type of public injunctive relief that *Broughton* and *Cruz* identified." (*McGill, supra*, 2 Cal.5th at p. 956.) The complaint was brought under the consumer protection statutes and alleged "unfair, deceptive, untrue, and misleading" advertising and marketing, and "false, deceptive, and/or misleading" representations and omissions. (*Id.* at pp. 956-957.) The complaint sought an injunction "to ensure compliance" with these laws, and to enjoin Citibank from "continuing to falsely advertise or conceal material information and conduct business via the unlawful and unfair business acts and practice complained herein." (*Id.* at p. 957.) "In light of these allegations and requests for relief . . . we disagree with Citibank that McGill has failed

adequately . . . 'to explain how the public at large would benefit from' that relief." (*Ibid.*)

As in *McGill*, Ramsey alleges violations of California's consumer protection statutes—specifically, the CLRA and UCL. The complaint similarly seeks injunctive relief that "has the primary purpose and effect of prohibiting unlawful acts that threaten future injury to the general public." (*McGill, supra*, 2 Cal.5th at p. 955.) For example, as in *McGill*, where the plaintiff sought to enjoin unfair and deceptive marketing practices and ensure Citibank's future compliance with consumer protection laws, Ramsey's complaint seeks to (1) enjoin Comcast from engaging in "unfair or deceptive acts or practices and correcting all false and misleading statements and material omissions . . . to prevent future injury to the general public"; (2) require Comcast to "halt their practice of issuing secret discounts"; (3) require Comcast to "comply with their legal obligations and utilize only truthful and complete advertisements, statements, and representations"; and (4) enjoin Comcast from "continuing their unlawful and unfair business practices."

An injunction that seeks to prohibit a business from engaging in unfair or deceptive practices and marketing, requires it to provide enhanced pricing transparency, and requires it to comply with our consumer protection laws, does have the primary purpose and effect of protecting the public, and thus falls within *McGill*'s definition of public injunctive relief.

2. An Injunction That Primarily Benefits Both Subscribers and Potential Subscribers Is a Public Injunction

Comcast contends that Ramsey's complaint does not seek public injunctive relief because "any injunction flowing from Ramsey's claims would, primarily—if not exclusively, benefit a limited group of existing Comcast subscribers whose promotional terms are coming to an end." Specifically, Comcast argues that any injunctive relief granted under the complaint would benefit only the following subset of individuals: "(1) existing Comcast subscribers, (2) who currently receive services on a promotional rate term agreement, (3) who are far enough into that term to make a decision about their next contact, and (4) who would make a commitment to another fixed term subscription."

But we conclude that the scope of the requested injunction is not so constricted. As Ramsey's complaint sets forth, "[r]easonable consumers . . . rely on the representations made by service providers in determining whether to purchase their services and consider that information important to their purchase decision." Ramsey argues that any consumer would want a "complete and accurate representation of what happens after promotional pricing ends, what other pricing is available, further discounts, etc., without misrepresentations and concealment, when deciding whether to purchase such subscription services." Thus, an injunction that prohibits Comcast from engaging in "deceptive acts and practices," requires Comcast to utilize "only truthful and complete advertisements," and requires Comcast to make consumers "aware of any and all price reductions and

rebates," would benefit both existing Comcast subscribers and any member of the public who considers signing up with Comcast (i.e., potential subscribers). This benefit would come in the form of more accurate and transparent pricing options, not only for the one-year promotional term, but for the duration of the consumer's subscription. Such enhanced transparency, in turn, would enable subscribers and potential subscribers alike to make informed decisions from the outset about whether to subscribe to Comcast, for how long, and to compare Comcast prices against those of its competitors.

The issue, then, is whether an injunction that benefits both existing and potential Comcast subscribers qualifies as a public injunction under *McGill*. On this question, Ramsey urges us to follow *Mejia* and *Maldonado*. Comcast argues that we should reject *Mejia* and *Maldonado* in favor of *Hodges v. Comcast Cable Communications, LLC* (9th Cir. 2021) 21 F.4th 535 (*Hodges*). We conclude that *Mejia* and *Maldonado* are both persuasive and consistent with the Supreme Court's decision in *McGill*. We thus decline to follow *Hodges*.

(a) Mejia and Maldonado

Mejia bought a used motorcycle from Del Amo (a dealership) and financed the purchase using a credit card he obtained through the dealership. (*Mejia, supra*, 54 Cal.App.5th at p. 694.) He subsequently filed a class action complaint, alleging that Del Amo violated the Rees-Levering Automobile Sales Finance Act, the CLRA, and the UCL by "failing to provide its consumers with a *single document* setting forth all the financing terms for motor vehicle purchases made

with a conditional sale contract." (*Id.* at p. 695.) Among other relief, the complaint sought an injunction prohibiting Del Amo from selling motor vehicles "without first providing the consumer with a single document containing all of the agreements of Del Amo and the consumer with respect to the total cost and the terms of payment." (*Ibid.*) Del Amo moved to compel arbitration based on the parties' prior agreement, but the trial court denied the petition, holding that the arbitration provision was unenforceable under *McGill*. (*Id.* at pp. 693, 696-697.)

On appeal, Del Amo disputed that Mejia sought public injunctive relief, arguing that the requested injunction was private because it would benefit "only a narrow group of Del Amo customers—the class of similarly situated individuals who, like *Mejia*, would buy a motorcycle from Del Amo with a conditional sales contract." (*Mejia, supra*, 54 Cal.App.5th at p. 702.) The court rejected this argument as "mak[ing] little sense," reasoning that the requested injunction would force Del Amo to stop selling motorcycles in California without first providing consumers with statutorily mandated disclosures in a single document. (*Id.* at p. 702.) This request is "plainly one for a public injunction given that [plaintiff] 'seeks to enjoin future violations of California's consumer protection statutes, relief oriented to and for the benefit of the general public.' (*Blair v. Rent-A-Center, Inc.* (9th Cir. 2019) 928 F.3d 819, 831.)" (*Mejia, supra*, at p. 703.) In addition, the requested injunction did not "limit itself to relief only for class members or some other small group of individuals; it encompassed 'consumers' generally." (*Ibid.*) For these reasons, the court in *Mejia* concluded that the requested injunction

"fits the Supreme Court's definition of 'public injunctive relief' in *McGill*: 'injunctive relief that has the primary purpose and effect of prohibiting unlawful acts that threaten future injury to the general public.' (*McGill, supra*, 2 Cal.5th at p. 951.)" (*Mejia, supra*, at pp. 703-704.)

Similarly, in *Maldonado*, Fast Auto Loans (Lender) offered loans to California consumers in immediate need of cash who had limited credit opportunities. (*Maldonado, supra*, 60 Cal.App.5th at p. 713.) The plaintiffs brought a putative class action against Lender under the CLRA and UCL, alleging that Lender charged "unconscionable interest rates" in violation of state law. (*Ibid.*) The complaint sought an injunction requiring Lender to "cease charging an unlawful interest rate on its loans exceeding $2500" and to "institute corrective advertising and provide written notice to the public of the unlawfully charged interest rate on prior loans." (*Id.* at p. 715.) The trial court denied Lender's petition to compel arbitration based on *McGill*. (*Id.* at p. 716.) On appeal, Lender argued that *McGill* did not apply because the relief sought was private in that it would benefit only a narrow group of "similarly situated individuals who would borrow money from Lender and agree to a similar arbitration provision." (*Id.* at p. 720.)

The court rejected this contention, concluding that the complaint "does not limit the requested remedies for only some class members, but rather encompasses all consumers and members of the public." (*Maldonado, supra*, 60 Cal.App.5th at p. 721.) Moreover, "an injunction under the CLRA against Lender's unlawful practices will not directly benefit [the plaintiffs] because they have already been

harmed and are aware of the misconduct." (*Ibid.*) The court further rejected Lender's argument that the lawsuit challenged only the interest rates charged in the putative class members' loans. "To accept this argument, we would have to ignore the complaint's unequivocal request to enjoin Lender from harming other consumers *in future contracts* for outrageous interest rates." (*Ibid.*) Ultimately, the court agreed with the plaintiffs that "although 'not all members of the public will become customers of [Lender],' this does not negate the fact that public injunctive relief will nevertheless offer benefits to the general public. . . . The requested injunction cannot be deemed private simply because Lender could not possibly advertise to, or enter into agreements with, every person in California." (*Id.* at pp. 722-723.) "Such a holding would allow Lender to continue violating the UCL and CLRA because consumers harmed by the unlawful practices would be unable to act as a private attorney general and seek redress on behalf of the public." (*Ibid.*)

As in *Mejia* and *Maldonado*, the requested injunction here "seeks to enjoin future violations of California's consumer protection statutes." (*Mejia, supra*, 54 Cal.App.5th at p. 703.) The complaint does not limit the requested remedies to Ramsey himself or those similarly situated, but "encompasses all consumers and members of the public." (*Maldonado, supra*, 60 Cal.App.5th at p. 721.) For example, in connection with his CLRA claim, Ramsey seeks "public injunctive relief enjoining Defendants' unfair or deceptive acts or practices . . . to prevent future injury to the general public." In connection with the two UCL claims, Ramsey seeks "a permanent injunction

requiring Defendants to halt their practice of issuing secret discounts" and "related injunctive relief that . . . ensure consumers are aware of any and all price reductions and rebates." In the prayer for relief, Ramsey seeks to enjoin Comcast "from continuing their unlawful and unfair business practices."

The injunctive relief Ramsey seeks here is forward-looking and "oriented to and for the benefit of the general public." (*Mejia, supra*, 54 Cal.App.5th at p. 703.) The requested relief also does not directly benefit Ramsey, as he has "already been harmed and [is] aware of the misconduct." (*Maldonado, supra*, 60 Cal.App.5th at p. 721.) Ramsey and those similarly situated to him are already aware of Comcast's practice of offering "new" promotional rates only to those who reach out to Comcast toward the end of their subscription cycle, and the relief he seeks—i.e., cessation of Comcast's unfair or deceptive practices—will not compensate him for the "ascertainable loss of money" he had previously incurred from "paying nonpromotional rates when he did not immediately contact [Comcast] to obtain new promotional pricing." Rather, the requested injunction would primarily benefit existing and potential Comcast subscribers by providing them with more truthful and transparent pricing options. To the extent Ramsey benefits from this relief, it would be incidentally, as a member of the public. (See *McGill, supra*, 2 Cal.5th at p. 955.)

(b) Hodges

The Ninth Circuit's decision in *Hodges* deviated sharply from *Mejia* and *Maldonado*, holding that unless a plaintiff's requested injunctive relief benefits the entire public "as a diffuse whole," it does not fall

within *McGill*'s definition of public injunctive relief. (See *Hodges, supra*, 21 F.4th at p. 549.) *Hodges* also examined the holdings of *Mejia* and *Maldonado* and concluded that they represent a "patent misreading of California law." (*Id.* at p. 544.) Comcast urges that we follow *Hodges*, but we respectfully disagree with both its holding and the Ninth Circuit's characterization of *Mejia* and *Maldonado*.

In *Hodges*, a former Comcast subscriber brought a putative class action lawsuit against Comcast, alleging that Comcast violated class members' statutory privacy rights by collecting various personal data without first obtaining subscriber consent. (*Hodges, supra*, 21 F.4th at pp. 537-538.) The complaint alleged various federal and state law violations, including a violation of the UCL. (*Id.* at p. 538.) Among other things, the complaint sought "statewide public injunctive relief" to require Comcast to "clearly and conspicuously notify cable subscribers in writing, at the requisite times, of the period during which it maintains their [personally identifiable information ("PII")], including video activity data and demographic data." (*Id.* at pp. 538, 548-549.)

Comcast moved to compel arbitration under the subscriber agreement. (*Hodges, supra*, 21 F.4th at pp. 538-539.) The district court denied the petition based on *McGill* and Comcast appealed. The Ninth Circuit reversed, holding that *McGill* was not implicated because the complaint did not seek public injunctive relief. (*Id.* at p. 540.) While recognizing that some of the relief sought was "forward-looking prohibitions against future violations of law," the *Hodges* majority nevertheless concluded that alone was "not enough to classify the remedy as public within the meaning of

the *McGill* rule." (*Id.* at p. 549.) Instead, to meet *McGill*'s definition of public injunctive relief, the plaintiff must seek relief that "could be said to primarily benefit the general public as a more diffuse whole." (*Ibid.*) Under that definition, the plaintiff in *Hodges* was not seeking public injunctive relief because the requested relief would benefit only Comcast cable subscribers. (*Ibid.*) The *Hodges* majority further posited that the plaintiff in *Mejia* was not seeking public injunctive relief because the requested injunction there would only "benefit the class of persons who actually purchased motorcycles, and not the general public as a whole." (*Id.* at pp. 544-545.) *Hodges* also disagreed with *Maldonado*, noting that the plaintiff there was not seeking public injunctive relief because his requested injunction would only benefit "those who actually sign lending agreements." (*Id.* at p. 545.)

(c) Mejia and Maldonado Are More Consistent with McGill

The definition of public injunctive relief the courts set forth in *Mejia* and *Maldonado* is consistent with *McGill*, in which our Supreme Court expressly recognized injunctions issued under the CLRA and UCL as injunctions that benefit the public. (See *McGill, supra*, 2 Cal.5th at p. 955.) Injunctive relief under the CLRA and UCL is precisely what plaintiffs sought in *Mejia* and *Maldonado*, and what Ramsey seeks here. In our view, *Mejia* and *Maldonado*'s definition of public injunctive relief also better reflects the overarching purpose of the consumer protection statutes. While the requested injunction in those cases and here may not benefit the entire public as a "diffuse whole," we agree with the court in *Maldonado*

that "a requested injunction cannot be deemed private simply because [a business] could not possibly advertise to, or enter into agreements with, every person in California. . . . Such a holding would allow [that business] to continue violating the UCL and CLRA because consumers harmed by the unlawful practices would be unable to act as a private attorney general and seek redress on behalf of the public." (*Maldonado, supra*, 60 Cal.App.5th at pp. 722-723.) *McGill* did not require that public injunctive relief have such a universal reach.

Finally, we disagree with the majority in *Hodges* that the requested injunctions in *Mejia* and *Maldonado* stood to benefit only those who purchased motorcycles or signed lending agreements. (See *Hodges, supra*, 21 F.4th at pp. 544-545.) We find compelling the reasoning of the dissent, which observed that an injunction requiring a dealership to provide consumers with statutorily mandated disclosures in a single document, though not benefiting every member of the public, would benefit "potential *and* actual purchasers of motorcycles . . . when they are considering whether to enter into a transaction." (*Id.* at pp. 551-552.) Similarly, an injunction prohibiting a lender from charging "unconscionable interest rates" would benefit not only those who took out loans, but any member of the public with limited credit options who find themselves in need of cash. (*Ibid.*)

The injunctive relief Ramsey seeks in this case would require Comcast to cease its "unfair or deceptive practices" and provide increased pricing transparency. Such relief would benefit not only those who subscribe to Comcast (such as Ramsey), but any member of the

public considering such a subscription, by "preventing [Comcast] from contracting or proposing to contract with any member of the public—not just current customers—on unfair terms." (*Hodges, supra*, 21 F.4th at p. 551.) This is the essence of what the consumer protection statutes are designed to do. (*McGill, supra*, 2 Cal.5th at p. 954 [purpose of CLRA is to "protect consumers against unfair and deceptive business practices," and purpose of UCL is to "prevent, protect both consumers and competitors by promoting fair competition"].)[3]

Because the relief Ramsey requests both "seeks to enjoin future violations of California's consumer

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[3] To the extent we look to federal authority to guide our analysis on the issue of whether Ramsey's requested injunctive relief is public or private, *Blair v. Rent-A-Center, Inc.* (9th Cir. 2019) 928 F.3d 819 (*Blair*) is more consistent with *McGill*. In *Blair*, plaintiffs entered into "rent-to-own agreements" with Rent-A-Center, which operates stores that rent household items to consumers for set installment payments. (*Blair, supra*, 928 F.3d at p. 822.) They subsequently brought a putative class action lawsuit against the company, alleging that it structured its rent-to-own pricing in violation of California law, including the Karnette Rental-Purchase Act, the CLRA, and the UCL. (*Ibid.*) Among other forms of relief, plaintiffs' complaint sought an injunction against the company to "enjoin future violations of these laws." (*Id.* at p. 823.) The Ninth Circuit held that plaintiffs' requested relief constituted public injunctive relief under *McGill*—even though the requested injunction would not benefit every member of the public, but only those who enter or contemplate entering into an agreement with Rent-a-Center. (See *id.* at p. 831, fn. 3; see also *Hodges, supra*, 21 F.4th at p. 550.) Under *Blair*, benefitting every member of the public as a "diffuse whole" was neither necessary nor required. It was sufficient that plaintiffs sought "to enjoin future violations of California consumer protection statutes, relief oriented to and for the benefit of the general public." (*Blair, supra*, at p. 831, fn. 3.)

protection statutes," and is "oriented to and for the benefit of the general public," it falls within *McGill*'s definition of public injunctive relief. (See *Mejia, supra*, 54 Cal.App.5th at p. 703.)

C. The FAA Does Not Preempt McGill

Lastly, Comcast argues that the FAA preempts *McGill*. The Supreme Court held in *McGill* itself that there is no preemption. (*McGill, supra*, 2 Cal.5th at p. 963; *Maldonado, supra*, 60 Cal.App.5th at p. 724 [rejecting Lender's argument that the FAA preempts *McGill*].) As Comcast acknowledges, we are bound to follow Supreme Court precedent. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) We do so here, concluding that the FAA does not preempt *McGill*.

III. DISPOSITION

The order denying the petition to compel arbitration is affirmed.

Greenwood, P. J.

WE CONCUR:

Grover, J.

Lie, J.

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Ramsey v. Comcast Cable Communications, LLC

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

CHARLES RAMSEY, Plaintiff and Respondent, v. COMCAST CABLE COMMUNICATIONS, LLC, Defendant and Appellant.	H049949 (Santa Clara County Super. Ct. No. 21CV384867)

BY THE COURT:

The written opinion, which was filed on December 29, 2023, has now been certified for publication pursuant to rule 8.1105(b) of the California Rules of Court, and it is therefore ordered that the opinion be published in the official reports.

(Greenwood, P. J., Grover, J. and Lie, J. participated in this decision.)

Date: 01/29/2024 /s/ Mary J. E P.J.

Trial Court:	Santa Clara County Superior Court Superior Court No.: 21CV384867
Trial Judge:	The Honorable Patricia M. Lucas
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