APPENDIX

APPENDIX A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CHARLES E. TILLAGE; JOSEPH M. LOOMIS, Plaintiffs-Appellees, v. COMCAST CORPORATION; COMCAST CABLE COMMUNICATIONS, LLC, Defendants-Appellants.	No. 18-15288 D.C. No. 3:17-cv-06477-VC **MEMORANDUM**[*] Filed: June 28, 2019

Appeal from the United States District Court
for the Northern District of California
Vince Chhabria, District Judge, Presiding

Argued and Submitted February 12, 2019
San Francisco, California

Before: McKEOWN, W. FLETCHER, and MURGUIA, Circuit Judges.

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Comcast Corporation ("Comcast") appeals the district court's order denying Comcast's motion to compel arbitration. We have jurisdiction under 9 U.S.C. § 16(a)(1) and we affirm.

For the reasons set forth in our concurrently filed opinion in *Blair v. Rent-A-Center, Inc*., No. 17-17221, we hold that California's *McGill* rule is not preempted by the Federal Arbitration Act.

In light of this holding, we hold that the arbitration agreement between Comcast and plaintiffs Charles Tillage and Joseph Loomis is null and void in its entirety. Section 13(h) of the parties' subscriber agreement purports to waive plaintiffs' rights to pursue public injunctive relief in any forum and so is unenforceable under California law. *See McGill v. Citibank*, 393 P.3d 85, 94 (Cal. 2017). Section 13(h) also provides that "THIS WAIVER OF CLASS ACTIONS AND COLLECTIVE RELIEF IS AN ESSENTIAL PART OF THIS ARBITRATION PROVISION AND CANNOT BE SEVERED FROM IT." This non-severability clause results in the invalidation of the entire arbitration agreement.

Comcast argues that the opt-out clause of their subscriber agreement removes it from *McGill*'s coverage because the subscriber agreement waives a person's right to pursue a public injunction only if he or she agrees to arbitrate. That argument fails, as *McGill* applies to any consensual waiver of public injunctive relief, irrespective of how the parties choose to waive that relief. 393 P.3d at 93–94 (quoting Cal. Civ. Code § 3513).

AFFIRMED.

APPENDIX B

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PAULA L. BLAIR; ANDREA ROBINSON; HARRIS A. FALECHIA, *Plaintiffs-Appellees*, v. RENT-A-CENTER, INC., a Delaware corporation; RENT-A-CENTER WEST, INC., a Delaware corporation, *Defendants-Appellants.*	No. 17-17221 D.C. No. 3:17-cv-02335-WHA OPINION

Appeal from the United States District Court
for the Northern District of California
William Alsup, District Judge, Presiding

Argued and Submitted February 12, 2019
San Francisco, California

Filed June 28, 2019

Before: M. Margaret McKeown, William A. Fletcher, and Mary H. Murguia, Circuit Judges.

Opinion by Judge W. Fletcher

SUMMARY*

Arbitration / Preemption

The panel affirmed the district court's denial of Rent-A-Center's motion to compel arbitration and motion for a mandatory stay in a putative class action alleging Rent-A-enter charged excessive prices; and dismissed for lack of jurisdiction Rent-A-Center's appeals of the district court's denial of a discretionary stay and deferral on the motion to strike class claims.

In *McGill v. Citibank, N.A.*, 393 P.3d 85 (Cal. 2017), the California Supreme Court held that a contractual agreement purporting to waive a party's right to seek public injunctive relief in any forum was unenforceable under California law. The panel held that the Federal Arbitration Act does not preempt California's *McGill* rule.

Turning to the parties' 2015 rent-to-own agreement for an air conditioner, the panel held that its severance clause, which severs plaintiff's California's Karnette Rental-Purchase Act, Unfair Competition Law, and Consumer Legal Remedies Act claims from the scope of arbitration, was triggered by the *McGill* rule. The panel further held that the severance clause permitted such claims to be brought in court.

The panel affirmed the district court's refusal to impose either a mandatory or discretionary stay on

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

the non-arbitrable claims pending arbitration of plaintiff's usury claim.

The panel held that it lacked jurisdiction to review the district court's denial of a discretionary stay because appellate jurisdiction under the Federal Arbitration Act over interlocutory appeals is limited to the orders listed in 9 U.S.C. § 16(a)(1). The panel held that a discretionary stay that was based on the district court's inherent authority to manage its docket was not a stay under section 3 of the Federal Arbitration Act, and the exceptions that might justify extension of appellate jurisdiction did not apply to the *denial* of a stay. The panel also held that it lacked jurisdiction to review the district court's decision to defer ruling on Rent-A-Center's motion to strike because it was a non-final appealable order not covered by one of the categories set forth in 9 U.S.C. § 16(a)(1)(A).

COUNSEL

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Michael Rubin (argued) and Eric P. Brown, Altshuler Berzon LLP, San Francisco, California; Zach P. Dostart and James T. Hannink, Dostart Hannink & Coveneny LLP, La Jolla, California; for Plaintiffs-Appellees.

OPINION

W. FLETCHER, Circuit Judge:

In *McGill v. Citibank, N.A.*, 393 P.3d 85 (Cal. 2017), the California Supreme Court decided that a contractual agreement purporting to waive a party's right to seek public injunctive relief in any forum is unenforceable under California law. We are asked to decide in this case whether the Federal Arbitration Act ("FAA") preempts California's *McGill* rule.[1] We hold it does not.

Plaintiffs brought a putative class action alleging that defendants Rent-A-Center, Inc. and Rent-A-Center West, Inc. (collectively, "Rent-A-Center") charged excessive prices for its rent-to-own plans for household items. We affirm the district court's partial denial of Rent-A-Center's motion to compel arbitration. We also affirm the district court's denial of Rent-A-Center's motion for a mandatory stay of plaintiffs' non-arbitrable claims. Finally, we dismiss for lack of jurisdiction Rent-A-Center's appeal of the district court's denial of a discretionary stay and its decision to defer ruling on a motion to strike class action claims.

I. Factual and Procedural Background

Rent-A-Center operates stores that rent household items to consumers for set installment payments. If all payments are made on time, the con-

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[1] This panel received briefing and heard argument in two additional cases raising this same question: *McArdle v. AT&T Mobility LLC* (No. 17-17221) and *Tillage v. Comcast Corp.* (No. 18-15288). Those cases are resolved in separate memorandum dispositions filed simultaneously with this opinion.

sumer takes ownership of the item. Rent-A-Center also sets a cash price at which the consumer can purchase the item before the rent-to-own period has ended.

Paula Blair entered into rent-to-own agreements with Rent-A-Center for an air conditioner in 2015 and for a used Xbox in 2016. Blair, together with two other named plaintiffs, filed a class action complaint on March 13, 2017, on behalf of all individuals who, on or after March 13, 2013, entered into rent-to-own transactions with Rent-A-Center in California. The complaint alleged that Rent-A-Center structured its rent-to-own pricing in violation of state law.

In 1994, the California Legislature enacted the Karnette Rental-Purchase Act, Cal. Civ. Code §§ 1812.620 et seq. ("Karnette Act"), to "prohibit unfair or unconscionable conduct toward consumers" who enter into rent-to-own agreements. *Id.* § 1812.621. The Karnette Act sets statutory maximums for both the "total of payments" amount for installment payments and the "cash price" for rent-to-own items. *Id.* § 1812.644. These maximums are set in proportion to the "documented actual cost" of the items to the lessor/seller. *Id.* § 1812.622(k).

The operative complaint includes claims under the Karnette Act, as well as the Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 et seq. ("UCL"), the Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750 et seq. ("CLRA"), and California's anti-usury law, Cal. Const. art. XV, § 1(1). Plaintiffs seek a "public injunction" on behalf of the people of California to enjoin future violations of these laws, and to require that Rent-A-Center provide an accounting of monies obtained from California consumers and individualized notice to those consumers of

their statutory rights. Plaintiffs also seek declaratory relief, compensatory damages and restitution, and attorneys' fees and costs.

Of the named plaintiffs, Rent-A-Center has a valid arbitration agreement only with Blair, and only with respect to her 2015 air conditioner agreement. Blair opted out of arbitration in her 2016 Xbox agreement, and Rent-A-Center has been unable to locate signed arbitration agreements for either of the other two named plaintiffs. In June 2017, Rent-A-Center filed a motion to compel arbitration of all claims arising out of Blair's 2015 agreement, which reads in relevant part:

> **(B) What Claims Are Covered:** You and RAC [Rent-A-Center] agree that, in the event of any dispute or claim between us, either you or RAC may elect to have that dispute or claim resolved by binding arbitration. This agreement to arbitrate is intended to be interpreted as broadly as the FAA allows. Claims subject to arbitration include . . . claims that are based on any legal theory whatsoever, including . . . any statute, regulation or ordinance.
>
> . . .
>
> **(D) Requirement of Individual Arbitration**: You and RAC agree that arbitration shall be conducted on an individual basis, and that neither you nor RAC may seek, nor may the Arbitrator award, relief that would affect RAC account holders other than you. There will be no right or authority for any dispute to be brought, heard, or arbitrated as a class, collective, mass, private attorney

> general, or representative action. . . . If there is a final judicial determination that applicable law precludes enforcement of this Paragraph's limitations as to a particular claim for relief, then that claim (and only that claim) must be severed from the arbitration and may be brought in court.

The district court concluded that the agreement violates California's *McGill* rule because it constitutes a waiver of Blair's right to seek public injunctive relief in any forum. The court also held the *McGill* rule was not preempted by the FAA. Relying on the severance clause at the end of Paragraph (D), the court held that Blair's Karnette Act, UCL, and CLRA claims "must be severed from the arbitration." The district court granted Rent-A-Center's motion to compel arbitration of Blair's usury claim because California's usury law "is not amenable to public injunctive relief."

The district court denied Rent-A-Center's motion to stay proceedings on claims not sent to arbitration—including those of the other two named plaintiffs—pending the outcome of arbitration. It also delayed ruling on Rent-A-Center's motion to strike class action claims.

Rent-A-Center appealed the district court's denial of its motion to compel arbitration of Blair's Karnette Act, UCL, and CLRA claims. Rent-A-Center also appealed the court's denial of the motion to stay proceedings and its delay in ruling on the motion to strike.

II. The *McGill* Rule

Several California consumer protection statutes make available the remedy of a public injunction,

which is defined as "injunctive relief that has the primary purpose and effect of prohibiting unlawful acts that threaten future injury to the general public." *McGill*, 393 P.3d at 87. One key difference between a private and public injunction is the primary beneficiary of the relief. Private injunctions "resolve a private dispute" between the parties and "rectify individual wrongs," though they may benefit the general public incidentally. *Id.* at 89 (internal alterations and citation omitted). By contrast, public injunctions benefit "the public directly by the elimination of deceptive practices," but do not otherwise benefit the plaintiff, who "has already been injured, allegedly, by such practices and [is] aware of them." *Id.* at 90 (internal citation and quotations omitted).

The California Supreme Court held in *McGill* that an agreement to waive the right to seek public injunctive relief violates California Civil Code § 3513, which provides that "a law established for a public reason cannot be contravened by a private agreement." *Id.* at 93. Under § 3513, a party to a private contract may waive a statutory right only if the "statute does not prohibit doing so, the statute's public benefit is merely incidental to its primary purpose, and waiver does not seriously compromise any public purpose that the statute was intended to serve." *Id.* at 94 (internal alterations and citations omitted).

The California Supreme Court found that public injunctive relief available under the UCL and CLRA, among other statutes, is "[b]y definition . . . primarily 'for the benefit of the general public.'" *Id.* (citing *Broughton v. Cigna Healthplans of Cal.*, 988 P.2d 67 (Cal. 1999); *Cruz v. PacifiCare Health Sys., Inc.*, 66 P.3d 1157 (Cal. 2003)). Waiver "of the right to seek

public injunctive relief under these statutes would seriously compromise the public purposes the statutes were intended to serve." *Id.* Therefore, such waivers are "invalid and unenforceable under California law." *Id.*

The contract at issue in *McGill* was an arbitration agreement waiving the plaintiff's right to seek public injunctive relief in arbitration and requiring arbitration of all claims, thereby waiving the plaintiff's right to seek a public injunction through litigation. *Id.* at 87–88. Because this waiver prevented the plaintiff from seeking a public injunction in any forum, it was unenforceable under California Civil Code § 3513. *Id.* at 94.

III. FAA Preemption

Rent-A-Center argues the district court erred in denying its motion to compel arbitration of Blair's Karnette Act, UCL, and CLRA claims, contending that the *McGill* rule is preempted by the FAA. We have appellate jurisdiction under 9 U.S.C. § 16(a)(1)(C), which allows an interlocutory appeal of a district court's denial of a motion to compel arbitration. We review de novo such a denial. *Kilgore v. KeyBank, Nat'l Ass'n*, 718 F.3d 1052, 1057 (9th Cir. 2013) (en banc). We also review de novo a district court's preemption analysis. *AGG Enters. v. Washington Cty.*, 281 F.3d 1324, 1327 (9th Cir. 2002).

A. Federal Arbitration Act

The FAA directs courts to treat arbitration agreements as "valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. The saving clause of § 2 "permits agreements to arbitrate to be invalidated by generally applicable contract de-

fenses, such as fraud, duress, or unconscionability, but not by defenses that apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011) (internal quotation omitted). "[T]he saving clause does not save defenses that target arbitration either by name or by more subtle methods, such as by 'interfer[ing] with fundamental attributes of arbitration.'" *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1622 (2018) (quoting *Concepcion*, 563 U.S. at 344).

The Supreme Court has described the FAA as establishing "a liberal federal policy favoring arbitration agreements." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983). While the "FAA contains no express pre-emptive provision," it preempts state law "to the extent that [the state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Volt Info. Scis., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 477 (1989). A state-law rule can be preempted by the FAA in two ways.

First, a state-law rule is preempted if it is not a "generally applicable contract defense[]" and so does not fall within the saving clause as a "ground[] . . . for the revocation of any contract." 9 U.S.C. § 2; *Concepcion*, 563 U.S. at 339. A rule is generally applicable if it "appl[ies] equally to arbitration and nonarbitration agreements." *Sakkab v. Luxottica Retail N. Am., Inc.*, 803 F.3d 425, 432 (9th Cir. 2015). By contrast, a rule is not generally applicable if it "prohibits outright the arbitration of a particular type of claim." *Concepcion*, 563 U.S. at 341.

Second, even a generally applicable rule may be preempted if it "stand[s] as an obstacle to the accomplishment of the FAA's objectives." *Id.* An "overarching purpose of the FAA . . . is to ensure the enforcement of arbitration agreements according to their terms so as to facilitate streamlined proceedings." *Id.* As the Supreme Court recently restated, "[t]he general applicability of [a] rule [does] not save it from preemption under the FAA" if the rule "interferes with fundamental attributes of arbitration." *Lamps Plus, Inc. v. Varela*, 139 S. Ct. 1407, 1418 (2019) (citing *Concepcion*, 563 U.S. at 344).[2]

B. *Concepcion* and *Sakkab*

The Supreme Court's decision in *Concepcion* and our decision in *Sakkab* guide our analysis. Indeed, our decision in *Sakkab* all but decides this case.

In *Concepcion*, the Supreme Court considered whether the FAA preempted California's *Discover Bank* rule that class waivers in most consumer arbitration agreements were unconscionable under California law. *See Discover Bank v. Superior Court*, 113 P.3d 1100 (Cal. 2005). The Court recognized that unconscionability is "a doctrine normally thought to be generally applicable." *Concepcion*, 563 U.S. at 341. The Court nonetheless held the *Discover Bank* rule was preempted because it "interfere[d] with fundamental attributes of arbitration and thus cre-

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[2] The parties filed notices of supplemental authority pursuant to Federal Rule of Appellate Procedure 28(j) informing this court of the Supreme Court's decision in *Lamps Plus*, which was published after oral argument in this case. We have reviewed the Supreme Court's decision and considered it in our analysis.

ate[d] a scheme inconsistent with the FAA." *Id.* at 344. According to the Court, "the switch from bilateral to class arbitration sacrifices the principal advantage of arbitration—its informality—and makes the process slower, more costly, and more likely to generate procedural morass than final judgment." *Id.* at 348. The Court recognized that "class arbitration *requires* procedural formality" because if "procedures are too informal, absent class members would not be bound by the arbitration"—that is, due process compels procedural complexity in class arbitration. *Id.* at 349 (emphasis in original). The Court noted that "class arbitration greatly increases risks to defendants" because it combines high stakes with limited appellate review. *Id.* at 350–51. The Court concluded that classwide arbitration is therefore "not arbitration as envisioned by the FAA" and "lacks its benefits." *Id.* at 351.

In the wake of *Concepcion*, we considered in *Sakkab* whether the FAA preempts California's *Iskanian* rule, which bars contractual waiver in any fora of representative claims under California's Private Attorneys General Act of 2004 ("PAGA"), Cal. Lab. Code §§ 2698 et seq. *See Sakkab*, 803 F.3d at 427; *Iskanian v. CLS Transp. L.A., LLC*, 327 P.3d 129 (Cal. 2014). PAGA "authorizes an employee to bring an action for civil penalties on behalf of the state against his or her employer for Labor Code violations committed against the employee and fellow employees, with most of the proceeds of that litigation going to the state." *Iskanian*, 327 P.3d at 133.

We concluded that the *Iskanian* rule is generally applicable because it "bars any waiver of PAGA claims, regardless of whether the waiver appears in an arbitration agreement or a non-arbitration

agreement." *Sakkab*, 803 F.3d at 432. We also noted that the rule does not "prohibit the arbitration of any type of claim." *Id.* at 434. We recognized that although the purpose of the FAA is "to ensure that private arbitration agreements are enforced according to their terms," the saving clause of § 2 would be rendered "wholly ineffectual" if that purpose overrode all state-law contract defenses. *Id.* (internal quotations and citations omitted). Instead, "Congress plainly . . . intend[ed] to preempt . . . only those [state contract defenses] that 'interfere[] with arbitration.'" *Id.* (quoting *Concepcion*, 563 U.S. at 346).

We held the *Iskanian* rule does not interfere with arbitration. *Id.* at 435. Most important, the *Iskanian* rule does "not diminish parties' freedom to select informal arbitration procedures." *Id.* PAGA actions, unlike class actions, do not "resolve[] the claims of other employees," so "there is no need to protect absent employees' due process rights in PAGA arbitrations." *Id.* at 436. Nor does California state law "purport[] to limit parties' right to use informal procedures, including limited discovery." *Id.* at 438–39. Finally, while PAGA actions "may . . . involve high stakes" due to "hefty civil penalties," the FAA does not preempt causes of action merely because they impose substantial liability. *Id.* at 437. We concluded that "the *Iskanian* rule does not conflict with the FAA, because it leaves parties free to adopt the kinds of informal procedures normally available in arbitration." *Id.* at 439.

C. Discussion

1. Generally Applicable Contract Defense

The *McGill* rule, like the *Iskanian* rule, is a generally applicable contract defense. The California

Supreme Court specified that a waiver of public injunctive relief in "*any* contract—even a contract that has no arbitration provision"—is "unenforceable under California law." *McGill*, 393 P.3d at 94 (emphasis in original). The *McGill* rule thus applies "equally to arbitration and non-arbitration agreements." *Sakkab*, 803 F.3d at 432.

Rent-A-Center argues that the *McGill* rule is equivalent to an earlier and now-preempted California rule called the *Broughton-Cruz* rule. *See Broughton*, 988 P.2d 67; *Cruz*, 66 P.3d 1157. The *Broughton-Cruz* rule had established that "[a]greements to arbitrate claims for public injunctive relief . . . are not enforceable in California." *McGill*, 393 P.3d at 90. We held in *Ferguson v. Corinthian Colleges, Inc.*, 733 F.3d 928, 934 (9th Cir. 2013), that the FAA preempted the *Broughton-Cruz* rule because it "prohibits outright" the arbitration of public injunctive relief. The *McGill* rule bears no resemblance to the *Broughton-Cruz* rule. It shows no hostility to, and does not prohibit, the arbitration of public injunctions. It merely prohibits the waiver of the right to pursue public injunctive relief in any forum; the *Broughton-Cruz* rule specifically excluded public injunctive claims from arbitration.

The *McGill* rule is also unlike the rule at issue in *Kindred Nursing Centers Ltd. Partnership v. Clark*, 137 S. Ct. 1421 (2017). In that case, the Supreme Court struck down a judge-made Kentucky rule that an agent with general power of attorney could not waive a principal's right to a jury trial without explicit consent of the principal. *Id.* at 1425. The rule had been invoked to invalidate two arbitration agreements. *Id.* Though the rule did not explicitly forbid the arbitration of claims, the Court held that

"a legal rule hinging on the primary characteristic of an arbitration agreement—namely, a waiver of the right to go to court and receive a jury trial"—impermissibly targets arbitration. *Id.* at 1427. Unlike the Kentucky rule, the *McGill* rule does not "rely on the uniqueness of an agreement to arbitrate" to categorically disfavor arbitration as a forum. *See id.* at 1426 (quoting *Concepcion*, 563 U.S. at 341). To the contrary, the *McGill* rule expresses no preference as to whether public injunction claims are litigated or arbitrated, it merely prohibits the waiver of the right to pursue those claims in any forum.

Moreover, the Court in *Kindred* noted that the underlying principle behind the Kentucky rule—that an agent cannot waive a principal's "fundamental constitutional right" without express consent—had never been applied outside the context of arbitration. *Id.* at 1427–28. By contrast, the *McGill* rule derives from a general and long-standing prohibition on the private contractual waiver of public rights. California courts have repeatedly invoked California Civil Code § 3513 to invalidate waivers unrelated to arbitration. *See, e.g.*, *County of Riverside v. Superior Court*, 42 P.3d 1034, 1042 (Cal. 2002) (holding that a police officer's "blanket waiver" of his rights under the Public Safety Officers Procedural Bill of Rights Act as a condition of his employment would be inconsistent with § 3513); *Covino v. Governing Bd.*, 142 Cal. Rptr. 812, 817 (Ct. App. 1977) (invalidating under § 3513 a teacher's waiver of his right under the Education Code to become a contract, rather than temporary, employee); *Benane v. Int'l Harvester Co.*, 299 P.2d 750, 753 (Cal. Ct. App. 1956) (invalidating under § 3513 a collective bargaining agreement provision waiving employees' rights under the Election

Code to be paid for time taken off work to vote); *De Haviland v. Warner Bros. Pictures*, 153 P.2d 983, 988 (Cal. Ct. App. 1944) (invalidating under § 3513 a movie star's contractual waiver of the Labor Code's seven-year limit on personal service contracts); *Cal. Powder Works v. Atl. & Pac. R.R. Co.*, 45 P. 691, 693 (Cal. 1896) (relying on § 3513 to construe a common carrier's contractual exemption from liability to exclude liability caused by the carrier's negligence because that liability is "imposed upon it by law").

In sum, the *McGill* rule is a generally applicable contract defense derived from long-established California public policy. It is a "ground[] . . . for the revocation of any contract" and falls within the FAA's saving clause at the first step of the preemption analysis. 9 U.S.C. § 2.

2. Interference with Arbitration

"[A] doctrine normally thought to be generally applicable" is nonetheless preempted by the FAA if it "stand[s] as an obstacle to the accomplishment of the FAA's objectives." *Concepcion*, 563 U.S. at 341, 343. One objective of the FAA is to enforce arbitration agreements according to their terms "so as to facilitate streamlined proceedings." *Id.* at 344. However, we "do not read *Concepcion* to require the enforcement of all waivers of representative claims in arbitration agreements." *Sakkab*, 803 F.3d at 436. Instead, "Congress plainly . . . intend[ed] to preempt . . . only those [state contract defenses] that 'interfere[] with arbitration.'" *Id.* at 434 (quoting *Concepcion*, 563 U.S. at 346). Accordingly, we look at "whether refusing to enforce waivers" of a claim that is "technically denominated" as representative "will deprive parties of the benefits of arbitration." *Id.* at 436.

Our decision in *Sakkab* is squarely on point. The *McGill* rule, like the *Iskanian* rule, does not "deprive parties of the benefits of arbitration." *See id.* This characteristic distinguishes both rules from the *Discover Bank* rule barring the waiver of class actions at issue in *Concepcion*. A major concern in *Concepcion* was that compelling classwide arbitration "*requires* procedural formality," and, in so doing, "makes the process slower, more costly, and more likely to generate procedural morass than final judgment." *Concepcion*, 563 U.S. at 348–49. By contrast, neither state law nor constitutional due process gives rise to, let alone "*requires*[,] procedural formality" in the arbitration of public injunctive relief.

Public injunctive relief under the Karnette Act, UCL, and CLRA does not require formalities inconsistent with arbitration. In *McGill*, the California Supreme Court expressly held that claims for public injunctive relief need not comply with state-law class procedures. *McGill*, 393 P.3d at 93. We are bound by this ruling. *See Hemmings v. Tidyman's Inc.*, 285 F.3d 1174, 1203 (9th Cir. 2002). Nor does constitutional due process require unusual procedures inconsistent with arbitration. In *Sakkab*, we held that the due process rights of absent employees are not implicated by the arbitration of a PAGA claim because the claim is brought on behalf of the state, which is the "real part[y] in interest." *Sakkab*, 803 F.3d at 436. The small portion of a PAGA penalty distributed to employees is incidental to the statute's public enforcement purpose and effect. Similarly, here, public injunction claims are brought for the benefit of the general public, not on behalf of specific absent parties.

Crucially, arbitration of a public injunction does not interfere with the bilateral nature of a typical consumer arbitration. The rules struck down in *Concepcion* and *Epic Systems* "impermissibly disfavor[ed] arbitration" because they rendered an agreement "unenforceable just because it require[d] bilateral arbitration." *Epic Systems*, 138 S. Ct. at 1623 (emphasis removed). The *McGill* rule does no such thing. The *McGill* rule leaves undisturbed an agreement that both requires bilateral arbitration and permits public injunctive claims. A plaintiff requesting a public injunction files the lawsuit "on his or her own behalf" and retains sole control over the suit. *McGill*, 393 P.3d at 92. Nothing in the *McGill* rule requires a "switch from bilateral . . . arbitration" to a multi-party action. *Concepcion*, 563 U.S. at 348.

It is possible that arbitration of a public injunction will in some cases be more complex than arbitration of a conventional individual action or a representative PAGA claim. But as with PAGA actions, the complexity involved in resolving a request for a public injunction "flows from the substance of the claim itself, rather than any procedures required to adjudicate it (as with class actions)." *Sakkab*, 803 F.3d at 438. The distinction between substantive and procedural complexity is relevant to the preemption analysis because the Court found in *Concepcion* that classwide arbitration's "procedural formality" frustrated the FAA's objective of ensuring speedy, cost-effective, and informal arbitration. *Concepcion*, 563 U.S. at 348–49. But "potential complexity should not suffice to ward off arbitration" of substantively complex claims. *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 633 (1985). A state-law rule that preserves the right to

pursue a substantively complex claim in arbitration without mandating procedural complexity does not frustrate the FAA's objectives.

One theoretical distinction between arbitrating PAGA claims and arbitrating public injunctive claims is the potential for multiple injunctions against the same defendant imposing conflicting obligations, a scenario without an obvious analogue in the PAGA context. These concerns are conjectural and unpersuasive. We are unaware of a *single* such conflict in the decades public injunctive relief has been available in California courts. Even assuming such conflicts are (for some unidentified reason) imminent in the arbitral forum, the defendant can always inform the arbitrator of its existing obligations. We see no reason to believe that an arbitrator would then impose an irreconcilable obligation on the defendant. Nor would complex procedures be needed to avoid such conflicts: the defendant need simply tell the arbitrator. If the initial proceedings were confidential, the defendant could, to the extent necessary, obtain permission from the earlier arbitrator to make such a limited disclosure.

Ongoing injunctions sometimes need monitoring or modification. The need for monitoring and modification is inherent in all injunctive relief, public and private, and such monitoring and modification is not incompatible with informal arbitration. Arbitrators have long had the authority and ability to address requests for injunctive relief within bilateral arbitration. *See* AAA Commercial Arbitration Rule 47(a) ("The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties[.]"). We are not concerned that arbitrating public injunctions

would produce procedural complexities not already common to the arbitration of private injunctions.

Nor are public injunctions unique because of the need to weigh the public interest in deciding whether to grant an injunction. Judges and arbitrators routinely consider the public interest when issuing private injunctions. *See, e.g.*, *Sw. Voter Reg. Educ. Project v. Shelley*, 344 F.3d 914, 917 (9th Cir. 2003) (en banc) ("The district court must also consider whether the public interest favors issuance of the injunction"). Injunctive relief in antitrust actions, for example, requires "reconciliation between the public interest and private needs as well as between competing private claims." *See California v. Am. Stores Co.*, 495 U.S. 271, 284 (1990).

Rent-A-Center's contention that arbitration of a public injunction requires expansive discovery and presentation of class-wide evidence is mistaken. We are unconvinced by Rent-A-Center's suggestion that under *Cisneros v. U.D. Registry, Inc.*, 46 Cal. Rptr. 2d 233 (Ct. App. 1995), a public injunction claim "demands class-wide evidence." That case merely stands for the unremarkable notion that evidence of "similar practices involving other members of the public who are not parties to the action" may be relevant to and admissible to support a public injunction claim. *Id.* at 244. The Court of Appeal said nothing about the discoverability of such evidence, nor did it limit parties' ability to agree ex ante on the scope of discovery.

The parties remain free to reasonably limit by ex ante agreement discovery and presentation of evidence, as they may with any other arbitrable claim. Rent-A-Center chose to omit any such provision from the 2015 air conditioner agreement, and, in the ab-

sence of such an agreement, the breadth of discovery in a public injunctive action, as in a PAGA action, "flows from the substance of the claim itself, rather than any procedures required to adjudicate it." *Sakkab*, 803 F.3d at 438. Such is the case in the antitrust context as well, and, as we know, antitrust claims are unquestionably arbitrable. *See Mitsubishi Motors Corp.*, 473 U.S. at 628–40.

Finally, a public injunction may involve high stakes and could affect a lucrative business practice. But so could a private injunctive, declaratory, or damages action. As we explained in *Sakkab*, "the FAA would not preempt a state statutory cause of action that imposed substantial liability merely because the action's high stakes would arguably make it poorly suited to arbitration." *Sakkab*, 803 F.3d at 437 (citing *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996)). Where a public injunction does not interfere with the informal, bilateral nature of traditional consumer arbitration, high stakes alone do not warrant FAA preemption.

As we recognized in *Sakkab*, arbitration is "[i]n many ways . . . well suited to resolving complex disputes, provided that the parties are free to decide how the arbitration will be conducted." *Id.* at 438. Like the *Iskanian* rule, the *McGill* rule does not "mandate procedures that interfere with arbitration." *See id.* Arbitration of public injunctive relief accordingly need not "sacrifice[] the principal advantage of arbitration—its informality." *See Concepcion*, 563 U.S. at 348. We hold that the FAA does not preempt the *McGill* rule.

IV. Construction of the Arbitration Agreement

Having concluded that the FAA does not preempt the *McGill* rule, we now turn to the 2015 air conditioner agreement itself to determine its scope and effect. Rent-A-Center contends that the agreement requires Blair to submit her Karnette Act, UCL, and CLRA claims to arbitration for determination of liability. According to Rent-A-Center, only after the arbitrator has determined liability can Blair go to court to seek the remedy of a public injunction.[3] We disagree.

The severance clause in the 2015 agreement instructs us to sever Blair's Karnette Act, UCL, and CLRA claims from the scope of arbitration, and to permit such claims to be brought in court. The clause reads:

> If there is a final judicial determination that applicable law precludes enforcement of this Paragraph's limitations as to a particular claim for relief, then that claim (and only that claim) must be severed from the arbitration and may be brought in court.

The severance clause is triggered by the *McGill* rule. Paragraph (D) of the agreement prohibits the arbitrator from awarding "relief that would affect RAC account holders other than you," and eliminates any "right or authority for any dispute to be brought, heard, or arbitrated as a class, collective, mass, pri-

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[3] Rent-A-Center alternatively argues that the *McGill* rule does not apply because Blair's requested relief does not amount to a public injunction. Not so. Blair seeks to enjoin future violations of California's consumer protection statutes, relief oriented to and for the benefit of the general public.

vate attorney general, or representative action." Paragraph (D) thus precludes the arbitrator from awarding public injunctive relief. Paragraph (B) of the agreement permits Rent-A-Center to demand that all disputes be resolved in arbitration, which precludes Blair from seeking public injunctive relief in court. Read together, Paragraphs (B) and (D) waive Blair's right to seek a public injunction "in any forum." *McGill*, 393 P.3d at 87. The *McGill* rule is "applicable law" that "precludes enforcement" of Paragraph (D)'s limitations as to Blair's Karnette Act, UCL, and CLRA claims.

Rent-A-Center contends that the severance clause carves out only the potential public injunctive remedy for these causes of action, requiring the arbitrator to adjudicate liability first. Rent-A-Center reads "claim for relief" in the severance clause to refer only to a particular remedy, not to the underlying claim. The district court found Rent-A-Center's reading "unnatural and unpersuasive," and we agree. Parties are welcome to agree to split decision making between a court and an arbitrator in this manner. *Cf. Ferguson*, 733 F.3d at 937. But they did not do so here.

The severance clause refers to "a particular claim for relief," but it then goes on to require, a few words later in the same sentence, severance of "that claim" from the arbitration in order to allow it to "be brought in court." A "claim for relief," as that term is ordinarily used, is synonymous with "claim" or "cause of action." *See, e.g.*, Fed. R. Civ. P. 8(a) (interchangeably using "claim" and "claim for relief," and using "demand for relief sought" to refer specifically to requested remedy); *Claim*, Black's Law Dictionary (10th ed. 2014) (noting that a "claim" is "[a]lso

termed claim for relief"); *Claim for relief*, Black's Law Dictionary (10th ed. 2014) (referencing definition for "claim"); *In re Ocwen Loan Serv., LLC Mortg. Serv. Litig.*, 491 F.3d 638, 646 (7th Cir. 2007) ("The eighth claim is purely remedial; it seeks injunctive relief. Of course it is not a claim, that is, a cause of action, and should not have been labeled as such . . . ."); *Cannon v. Wells Fargo Bank N.A.*, 917 F. Supp. 2d 1025, 1031 (N.D. Cal. 2013) ("[E]quitable relief is not a claim for relief but rather only a remedy."). We read the clause, as did the district court, to provide that the entire claim be severed for judicial determination.

V. Other Issues

The district court refused to impose either a mandatory or discretionary stay on the non-arbitrable claims pending arbitration of Blair's usury claim. We have jurisdiction under 9 U.S.C. § 16(a)(1)(A) to review the denial of a mandatory stay, which is a question of law that we review de novo. Under 9 U.S.C. § 3, a district court must stay proceedings for claims and issues "referable to arbitration" pending resolution of the arbitration. *See Leyva v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863 (9th Cir. 1979). Only the usury claim was "referable to arbitration," so Rent-A-Center was not entitled to a stay under § 3 for any of the other claims. *See id.* We affirm the district court's ruling.

We lack jurisdiction to review the district court's denial of a discretionary stay. *See Portland Gen. Elec. Co. v. Liberty Mut. Ins. Co.*, 862 F.3d 981, 986 (9th Cir. 2017). Our appellate jurisdiction under the FAA over interlocutory appeals is limited to the orders listed in 9 U.S.C. § 16(a)(1). *Kum Tat Ltd. v. Linden Ox Pasture, LLC*, 845 F.3d 979, 982 (9th Cir.

2017). Relevant here, appellate jurisdiction extends to orders "refusing a stay of any action under section 3 of this title." 9 U.S.C. § 16(a)(1)(A). A discretionary stay is based on the district court's inherent authority to manage its docket and is not "a stay . . . under section 3" of the FAA. *See Portland Gen. Elec. Co.*, 862 F.3d at 984. The exceptions that, at times, justify extension of appellate jurisdiction over the *imposition* of a discretionary stay do not apply to the *denial* of a stay. *Cf. Dependable Highways Exp. Inc. v. Navigators Ins. Co.*, 498 F.3d 1059, 1063–64 (9th Cir. 2007).

We also lack jurisdiction to review the district court's decision to defer ruling on Rent-A-Center's motion to strike because it is a non-final order not covered by one of the categories set forth in 9 U.S.C. § 16(a)(1). *See Kum Tat Ltd.*, 845 F.3d at 982.

Conclusion

The district court's denials of Rent-A-Center's motion to compel arbitration and motion for a mandatory stay are **AFFIRMED**.

Rent-A-Center's appeals of the district court's denial of a discretionary stay and deferral on the motion to strike class claims are **DISMISSED** for lack of jurisdiction.

APPENDIX C

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

DAN ADKINS, et al., Plaintiffs, v. COMCAST CORPORATION, et al., Defendants.	Case No. 16-cv-05969-VC Re: Dkt. Nos. 115, 151 Filed: Feb. 15, 2018
CHARLES TILLAGE, et al., Plaintiffs, v. COMCAST CORPORATION, et al., Defendants.	Case No. 17-cv-06477-VC **ORDER DENYING MOTION TO COMPEL ARBITRATION, GRANTING LEAVE TO AMEND COMPLAINT, DENYING MOTION TO STRIKE CLASS ALLEGATIONS, DISMISSING CERTAIN NAMED PLAINTIFFS, DENYING MOTION TO CONSOLIDATE CASES, AND GRANTING MOTION TO REOPEN DISCOVERY** Re: Dkt. Nos. 10, 16

1. The defendants' motion to compel arbitration in the Tillage case (No. 17-cv-06477) is denied. The arbitration agreement in this case waives an individual's right to bring a public injunctive relief claim in any forum. *See* 2017 Subscriber Agreement § 13(h) (Dkt. No. 28-1, Ex. A at 14). Such a waiver is unenforceable under state law. *McGill v. Citibank, N.A.*, 2 Cal. 5th 945, 951 (2017); *see also Blair v. Rent-A-Center, Inc.*, No. C 17-02335 WHA, 2017 WL 4805577, at *2-6 (N.D. Cal. Oct. 25, 2017); *McArdle v. AT&T Mobility LLC*, No. 09-cv-01117-CW, 2017 WL 4354998, at *3-4 (N.D. Cal. Oct. 2, 2017). To the extent that Comcast argues the *McGill* rule is preempted by the Federal Arbitration Act, *McGill* itself explains why it is not.[1] *McGill*, 2 Cal. 5th at 961-66; *see also Blair*, 2017 WL 4805577, at *4-5; *McArdle*, 2017 WL 4354998, at *3-4. Moreover, the agreement includes language that invalidates the entire arbitration clause if the waiver is invalidated. *See* 2017 Subscriber Agreement § 13(h); *see also McArdle*, 2017 WL 4354998, at *4-5. Therefore, the motion to compel arbitration is denied. Any request

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[1] Contrary to Comcast's assertions, *Ferguson v. Corinthian Colleges, Inc.*, does not apply. *Ferguson* held that the Federal Arbitration Act preempted California's rule prohibiting parties from compelling the arbitration of public injunctive relief claims. 733 F.3d 928, 932-37 (9th Cir. 2013). *McGill* applies because it held that waivers of the right to bring claims for public injunctive relief in any forum are unenforceable. That is precisely the kind of waiver here. Given the similarities between public injunctive relief claims and representative actions under the Private Attorneys General Act of 2004 ("PAGA"), it is also worth noting that the Ninth Circuit has held that California's rule barring waivers of PAGA claims is not preempted by the Federal Arbitration Act. *See Sakkab v. Luxottica Retail North America, Inc.*, 803 F.3d 425, 431-40 (9th Cir. 2015).

to stay this case pending appeal of this ruling must be filed within 14 days of this order. It can be filed as an administrative request under Local Rule 7-11.

2. The plaintiffs in the Adkins case (No. 16-cv-05969) are granted leave to amend their complaint to add a public injunctive relief claim. The parties are ordered to meet and confer within 7 days of this order to determine how the complaint will be amended. The amended complaint must be filed within 14 days of this order.

3. The defendants' motion to strike the class allegations in the Tillage case is denied. The parties have stipulated that plaintiffs Dan Adkins and Christopher Robertson should be dismissed from the Tillage case since they are bringing their claims in the Adkins case. Therefore, Adkins and Robertson are dismissed from the Tillage case.

4. The plaintiffs' motion to consolidate the two cases is denied.

5. The plaintiffs' motion to reopen discovery in the Adkins case is granted. Discovery will be reopened as it relates to the issue of Comcast's evidence preservation, to the changes made to the deposition of Tom Karnishak, and to the addition of the public injunctive relief claim. Comcast is ordered to pay the costs of the resumed deposition of Karnishak, including any travel costs incurred by plaintiffs' counsel. The parties must file all discovery requests within 28 days of this order. All discovery disputes must be presented to Judge Ryu.

6. The schedule for the Adkins case will be as follows: the discovery cutoff is June 15, 2018; the last day for a hearing on dispositive motions is October 4, 2018; the pretrial conference will take place on December 3, 2018; and trial will begin December 10, 2018.

IT IS SO ORDERED.

Dated: February 15, 2018

/s/ Vince Chhabria
VINCE CHHABRIA
United States District Judge

APPENDIX D

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CHARLES E. TILLAGE; JOSEPH M. LOOMIS, Plaintiffs-Appellees, v. COMCAST CORPORATION; COMCAST CABLE COMMUNICATIONS, LLC, Defendants-Appellants.	No. 18-15288 D.C. No. 3:17-cv-06477-VC Northern District of California, San Francisco **ORDER** Filed: Jan. 17, 2020

Before: McKEOWN, W. FLETCHER, and MURGUIA, Circuit Judges.

The panel has voted to deny the petition for panel rehearing and rehearing en banc, filed by defendants-appellants on August 9, 2019 (Dkt. Entry 56).

The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for panel rehearing and rehearing en banc is **DENIED**.

APPENDIX E

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. art. VI, cl. 2

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

9 U.S.C. § 2. Validity, irrevocability, and enforcement of agreements to arbitrate

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

9 U.S.C. §4. Failure to arbitrate under agreement; petition to United States court having jurisdiction for order to compel arbitration; notice and service thereof; hearing and determination

A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by the Federal Rules of Civil Procedure. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed. If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default, or if the matter in dispute is within admiralty jurisdiction, the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may, except in cas-

es of admiralty, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by the Federal Rules of Civil Procedure, or may specially call a jury for that purpose. If the jury find that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

APPENDIX F

13. BINDING ARBITRATION

a. Purpose. Any Dispute involving you and us shall be resolved through individual arbitration. In arbitration, there is no judge or jury and there is less discovery and appellate review than in court.

b. Definitions. This Arbitration Provision shall be broadly interpreted. "Dispute" means any claim or controversy 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 that arose before this or any prior Agreement; (3) claims that arise after the expiration or termination of this Agreement, and (4) claims that are the subject of purported class action litigation. As used in this Arbitration Provision, "us" means Comcast and any of its predecessors, successors, assigns, parents, subsidiaries, and affiliates, and each of their respective officers, directors, employees and agents, and "you" means you and any users or beneficiaries of the XFINITY Service(s) or Equipment.

c. 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.

d. 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 XFINITY SERVICE ACTIVATION, BY VISITING WWW.XFINITY.COM/ARBITRATIONOPTOUT, OR IN WRITING BY MAIL TO COMCAST 1701 JOHN F. KENNEDY BLVD., PHILADELPHIA, PA 19103-2838, ATTN: LEGAL DEPARTMENT/ARBITRATION. YOUR WRITTEN NOTIFICATION TO US MUST INCLUDE YOUR NAME, ADDRESS AND OUR ACCOUNT NUMBER AS WELL AS 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 SERVICE(S) 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. YOU MUST SEPARATELY OPT OUT FOR EACH ACCOUNT UNDER WHICH YOU RECEIVE SERVICES. ANY OPTOUTS SUBMITTED AFTER THIS PERIOD WILL NOT BE CONSIDERED EFFECTIVE.

e. Initiation of Arbitration Proceeding/Selection of Arbitrator. The party initiating the arbitration proceeding may open 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 JFK Boulevard, Philadelphia, PA 19103-2838 – ATTN: LEGAL DEPARTMENT.

f. Right to Sue in Small Claims Court. Notwithstanding anything in this Arbitration Provision to the contrary, either you or we may elect to have an action heard in a small claims court in the area where you receive(d) Service(s) from us if the claim is not aggregated with the claim of any other person and if the amount in controversy is properly within the jurisdiction of the small claims court.

g. Arbitration Procedures. This Arbitration Provision shall be governed by the Federal Arbitration Act. Arbitrations shall be administered by the AAA pursuant to 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, the parties shall agree on a substitute arbitration organization. If the parties cannot agree, the parties 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 Consumer Arbitration 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 Service(s) from us. If you no longer receive Service(s) 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 Service(s) in that county, or in the area where you received Service(s) 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.

h. Waiver of Class Actions and Collective Relief. THERE SHALL BE NO RIGHT OR AUTHORITY FOR ANY CLAIMS TO BE ARBITRATED OR LITIGATED ON A CLASS ACTION, JOINT OR CONSOLIDATED BASIS OR 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. THE ARBITRATOR MAY NOT AWARD RELIEF FOR OR AGAINST ANYONE WHO IS NOT A PARTY. THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING. THIS WAIVER OF CLASS ACTIONS AND COLLECTIVE 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.

i. **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 and may only recover your attorneys' fees and costs in the arbitration to the extent that you could in court if the arbitration is decided in your favor. Notwithstanding anything in this Arbitration Provision to the contrary, we will pay all fees and costs that we are required by law to pay.

j. **Survival**. This Arbitration Provision shall survive the termination of your Service(s) with us.

k. For New York Residents. You may elect to resolve a Dispute for TV through the New York Public Service Commission in accordance with NYCRR 16§890.709(a) and NYCRR 16§709(c).