No. _____

IN THE
Supreme Court of the United States

U.S. LEGAL SERVICES GROUP, L.P,
Petitioner,

v.

PATRICIA ATALESE,
Respondent.

On Petition for a Writ of Certiorari to the New Jersey Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The arbitration agreement at issue in this case states: "In the event of any claim or dispute … the claim or dispute shall be submitted to binding arbitration upon the request of either party upon the service of that request on the other party.… Any decision of the arbitrator shall be final and may be entered into any judgment in any court of competent jurisdiction."

In the decision below, the New Jersey Supreme Court held that this agreement is unenforceable because it "did not clearly and unambiguously signal to plaintiff that she was surrendering her right to pursue her statutory claims in court."

The question presented is:

Whether the Federal Arbitration Act preempts a state-law rule holding that an arbitration agreement is unenforceable unless it affirmatively explains that the contracting party is waiving the right to sue in court.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Petitioner U.S. Legal Services Group, L.P. states that it is a professional corporation that has no parent company.

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OPINIONS AND ORDERS BELOW

The opinion of the New Jersey Supreme Court in this matter is reported at 9 A.3d 306 (N.J. 2014) and reprinted at Pet. App. 1a – 19a. The opinion of the Appellate Division of the Superior Court of New Jersey is unreported and reprinted at Pet. App. 20a – 27a. The order of the Superior Court of New Jersey is reprinted at Pet. App. 28a – 29a.

JURISDICTION

The judgment of the New Jersey Supreme Court was entered on September 23, 2014. Pet. App. 1a. By order dated December 12, 2014, Justice Alito extended the time for filing a petition for writ of certiorari to January 21, 2015. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Supremacy Clause of the Constitution, Art. VI, Cl. 2, provides in pertinent part:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof … 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.

Section 2 of the Federal Arbitration Act ("FAA"), 9 U.S.C. § 2, provides in pertinent part:

> A written provision in … a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, … or an agreement in writing to submit to arbitration an existing controversy arising out of such 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.

STATEMENT OF THE CASE

1. Petitioner is a law firm that specializes in providing services to clients in financial distress. Pet. App. 20a-21a. On July 5, 2011, Respondent Patricia Atalese retained Petitioner to negotiate with her creditors regarding certain debts. Pet. App. 20a. The retainer agreement contained an arbitration provision. Pet. App. 3a. That provision, which is entitled "Arbitration" in bolded letters, states:

> **Arbitration**: In the event of any claim or dispute between [Respondent] and [Petitioner] related to this Agreement or related to any performance of any services related to this Agreement, the claim or dispute shall be submitted to binding arbitration upon the request of either party upon the service of that request on the other party.

> The parties shall agree on a single arbitrator to resolve the dispute. The matter may be arbitrated either by the Judicial Arbitration Mediation Service or American Arbitration Association, as mutually agreed upon by the parties or selected by the party filing the claim. The arbitration shall be conducted in either the county in which Client resides, or the closest metropolitan county. Any decision of the arbitrator shall be final and may be entered into any judgment in any court of competent jurisdiction. The conduct of the arbitration shall be subject to the then current rules of the arbitration service. The costs of arbitration, excluding legal fees, will be split equally or be borne by the losing party, as determined by the arbitrator. The parties shall bear their own legal fees.
>
> Pet. App. 3a-4a, 30a-31a (emphasis in original).

Respondent checked a box next to the arbitration provision to indicate that she had "read and … understood the paragraph." Pet. App. 30a. Over the course of the engagement, Respondent paid Petitioner approximately $5,000 in legal fees. Pet. App. 3a.

2. Respondent filed a civil action in New Jersey state court against Petitioner. Pet. App. 2a – 3a. The action brought claims under two state consumer protection statutes and alleged, among other things, that Petitioner had billed Respondent for work that it had not actually performed and was not licensed to provide "debt-adjustment" services. Pet. App. 3a.

Petitioner moved to compel arbitration under the parties' agreement. Pet. App. 3a. Respondent opposed on the ground that the contract did not adequately make clear that she was waiving her right to proceed in court. Pet. App. 4a, 22a. The trial court granted the motion to compel and dismissed the complaint without prejudice. Pet. App. 4a, 22a – 23a. The court explained that

> in light of the favored status of Arbitration, when it's close, I think we have to come down then on the side of favoring Arbitration …. It says 'any and all, arising out of relating to are going to be decided in Arbitration.' It's right there for the consumer to see and initial.

Pet. App. 23a.

3. Respondent appealed the dismissal to the Appellate Division, which affirmed. Pet. App. 20a – 27a. The Appellate Division held "that the lack of express reference to a waiver of the right to sue in court or to arbitration as the 'exclusive' remedy" did not bar enforcement of the arbitration clause." Pet. App. 26a. Although the arbitration clause "did not explicitly state that plaintiff agreed to waive her right to try her dispute in court, it clearly and unambiguously stated that … *any* dispute relating to the underlying agreement *shall* be submitted to arbitration and the resolution of that forum shall be *binding* and *final*." Pet. App. 26a. (emphasis in original).

4. Respondent sought review in the New Jersey Supreme Court, contending that arbitration agreements are not enforceable unless they "(1) indicate that

the parties waive their right to sue; or (2) indicate that arbitration is the parties' exclusive remedy." Pet. App. 6a. That court granted review and reversed. Pet. App. 1a – 19a.

The court began by setting out the requirements imposed by the FAA. It acknowledged that under the FAA, the court could not "'subject an arbitration agreement to more burdensome requirements than' other contractual provisions." Pet. App. 8a (citing authority). At the same time, the court observed that Section 2 of the FAA permits "agreements to arbitrate to be invalidated by '*generally* applicable contract defenses.'" Pet. App. 9a (citing authority) (emphasis added by New Jersey court).

Having articulated those two principles, the court explained that an arbitration agreement involved a waiver of rights, and that under New Jersey law such a waiver "must reflect that the party has agreed 'clearly and unambiguously' to its terms." Pet. App. 11a (brackets omitted). The court stated that this "clear and unambiguous" waiver standard was "not specific to arbitration provisions." Pet. App. 11a. The court held, however, that in the context of arbitration this principle requires that the "parties must know that there is a distinction between resolving a dispute in arbitration and in a judicial forum." Pet. App. 14a.

The court found that the arbitration provision here did not meet the "clear and unambiguous" standard. The court described the provision as an agreement that

> either party may submit any dispute to 'binding arbitration,' that '[t]he parties shall agree on a

> single arbitrator to resolve the dispute,' and that the arbitrator's decision 'shall be final and may be entered into judgment in any court of competent jurisdiction.'

Pet. App. 15a.

In the view of the New Jersey court, that language was inadequate because

> [n]owhere in the arbitration clause is there any explanation that plaintiff is waiving her right to seek relief in court for a breach of her statutory rights….
>
> The provision does not explain what arbitration is, nor does it indicate how arbitration is different from a proceeding in a court of law. Nor is it written in plain language that would be clear and understandable to the average consumer that she is waiving statutory rights.
>
> Pet. App. 15a.

The court stressed that it was not imposing a "magic words" requirement, but explained that a clause would pass muster if it stated "that the plaintiff is giving up her right to bring her claims in court or have a jury resolve the dispute." Pet. App. 15a – 16a. Because the parties' agreement did not include language of this kind, the court held that the provision "did not clearly and unambiguously signal to plaintiff that she was surrendering her right to pursue her statutory claims in court" and was unenforceable. Pet. App. 17a.

Petitioner timely filed this petition for certiorari.

REASONS FOR GRANTING THE WRIT

The New Jersey Supreme Court has held that arbitration agreements stating that disputes "shall be submitted to binding arbitration" are not enforceable in New Jersey. According to that court, an arbitration agreement is unenforceable unless it affirmatively states that the plaintiff is "giving up her right to bring her claims in court or have a jury resolve the dispute." Pet. App. 15a – 16a.

This Court's review of that decision is urgently needed. The New Jersey Supreme Court's decision is irreconcilable with the decisions of the Third Circuit and numerous other courts. It also directly contradicts decades of this Court's precedents, which require arbitration agreements to be enforced according to their terms. Put simply, the New Jersey Supreme Court's decision reflects the type of judicial hostility toward arbitration that the FAA was intended to prevent: state law cannot be used to thwart as "ambiguous" an express agreement to resolve disputes through "binding," "final" arbitration.

The New Jersey court's decision also creates major practical problems. Not only will it disrupt the expectations of innumerable New Jersey contracting parties who reasonably expected their arbitration agreements with similar language to be enforced, but it will result in forum-shopping based on the diametrically different standards between New Jersey state and federal courts. Parties to arbitration agreements will race to their preferred New Jersey courthouse knowing that the federal court will enforce their agreement while the

state court will not. Indeed, litigants in New Jersey state court have already begun invoking the decision below to invalidate arbitration agreements that would—and should—be enforceable in other jurisdictions. The Court should grant certiorari and reverse.

I. The Decision Below Conflicts With Decisions Of Numerous Other Federal Circuit Courts And State Courts Of Last Resort.

The New Jersey Supreme Court held an arbitration agreement is unenforceable unless it "explain[s] that the plaintiff is giving up her right to bring her claims in court or have a jury resolve the dispute." Pet. App. 15a – 16a. The decision of the New Jersey court rested on three legal conclusions: (1) arbitration agreements are subject to a heightened knowing and voluntary standard because they involve the waiver of the right to proceed in a judicial forum; (2) such agreements must therefore be clear and unambiguous to be enforced; and (3) an arbitration agreement that fails to state affirmatively that a party may not proceed in court does not meet those heightened standards and is therefore unenforceable. Pet. App. 10a – 14a.

Numerous federal and state courts have held that all three aspects of the New Jersey Supreme Court's reasoning violate the FAA.

1. *Arbitration agreements are subject to a knowing-and-voluntary standard.* The New Jersey Supreme Court's first premise was that arbitration agreements are subject to a heightened knowing and voluntary standard because they involve the waiver of

a right to a jury trial. Scores of courts—including the Third Circuit, which governs New Jersey's federal district courts—have held that the FAA preempts that kind of heightened standard.

a. In *Morales v. Sun Contractors, Inc.*, 541 F.3d 218 (3d Cir. 2008), the Third Circuit expressly held that under the FAA, arbitration agreements may not be subjected to a heightened standard of voluntariness. It held that under the law of the Third Circuit, "applying a heightened 'knowing and voluntary' standard," requiring "more than … an understanding that a binding agreement is being entered and without fraud or duress," violated the FAA. *Id.* at 223-24 (citing *Seus v. John Nuveen & Co.*, 146 F.3d 175 (3d Cir. 1998)).

This reasoning directly contradicts the New Jersey Supreme Court's decision, which required an understanding of the consequences of signing an arbitration agreement, not merely that an agreement was being entered. Pet. App. 14a. Here, Respondent understood that she was entering a binding agreement and has not alleged fraud or duress; accordingly, the arbitration agreement would have been enforced in a New Jersey federal court.

b. The conflict between the New Jersey Supreme Court and the Third Circuit is not the only conflict between state and federal courts in the same jurisdiction on this issue. A parallel split exists between the Montana Supreme Court and the Ninth Circuit. Similar to the New Jersey Supreme Court, the Montana Supreme Court has held that because "arbitration agreements constitute a waiver of a party's fundamental constitutional rights to trial by jury and

access to courts, all arbitration agreements where waiver is not 'voluntarily, knowingly, and intelligently' made are void as a matter of public policy." *Mortensen v. Bresnan Commc'ns, LLC*, 722 F.3d 1151, 1160 (9th Cir. 2013) (quoting *Kortum-Managham v. Herbergers NBGL*, 204 P.3d 693, 699 (Mont. 2009))). Yet, the Ninth Circuit has held that Montana's state-law rule is preempted by the FAA because it "disproportionally applies to arbitration agreements, invalidating them at a higher rate than other contract provisions." *Mortensen*, 722 F.3d at 1161. Thus, as in New Jersey, the legal standard governing the enforceability of arbitration agreements in Montana depends on whether the case is litigated in federal or state court.

c. Consistent with the Third and Ninth Circuits, numerous other courts have expressly held that a knowing-and-voluntary standard for arbitration agreements is preempted by the FAA. For instance, in *Awuah v. Coverall North America, Inc.*, 703 F.3d 36, 45 (1st Cir. 2012), the First Circuit reversed the district court's decision imposing a "knowing and voluntary" requirement on arbitration clauses because "[e]ven if the district court had identified a principle of state law that imposed a special notice requirement before parties such as these could enter into an arbitration agreement, as it did not, such a principle would be preempted by the FAA."

Similarly, in *Caley v. Gulfstream Aerospace Corp.*, 428 F.3d 1359, 1372 (11th Cir. 2005), the Eleventh Circuit concluded that under the FAA, "general contract principles govern the enforceability of arbitration agreements and that no heightened 'knowing and

voluntary' standard applies, even where the covered claims include federal statutory claims generally involving a jury trial right." *See also id.* at 1371-72 (collecting cases to the same effect from the Third, Fourth, Fifth, and Seventh Circuits).

State courts have rejected the New Jersey Supreme Court's reasoning as well. In *Melena v. Anheuser-Busch, Inc.*, 847 N.E.2d 99 (Ill. 2006), the Illinois Supreme Court held that the FAA prohibited the imposition of a knowing-and-voluntary standard in arbitration cases:

> [T]he FAA's plain language makes clear that arbitration agreements are enforceable except for state-law grounds for ordinary contract revocation …. It is widely recognized that state statutes or court … [decisions cannot hold arbitration agreements to a standard] any different or higher than those applicable to other contracts in general …. Similarly, the failure to apply general contract doctrines to arbitration agreements which require waiver of fundamental, statutory rights would raise arbitration agreements to an elevated status not contemplated by the FAA or Congress …. [B]y "knowing" and "voluntary," plaintiff means "much more than a general understanding that a binding agreement or contract is being entered into …. Such an approach is contrary to the usual maxim of contract law that a party to an agreement is charged with knowledge of and assent to the agreement signed.

Id. at 107-08; *see also id.* at 103-07 (collecting authority from numerous federal circuit courts).

2. *Arbitration agreements must be clear and unambiguous.* In addition to rejecting the New Jersey Supreme Court's knowing-and-voluntary standard, multiple courts have rejected the New Jersey Supreme Court's second arbitration-specific rule: arbitration agreements must be "clear and unambiguous." Pet. App. 12a. Instead, they have heeded this Court's admonition that "ambiguities as to the scope of the arbitration clause itself resolved in favor of arbitration." *Volt Info. Sci., Inc. v. Bd. of Trs. of Leland Stanford Junior Univ.*, 489 U.S. 468, 475-76 (1989).

On this issue as well, the New Jersey Supreme Court's decision directly conflicts with the Third Circuit. In *Khan v. Dell Inc.*, 669 F.3d 350 (3d Cir. 2012), the Third Circuit addressed a dispute in which the arbitration clause stated that disputes "shall be resolved exclusively and finally by binding arbitration administered by the National Arbitration Forum," yet the National Arbitration Forum was unavailable. *Id.* at 357. The Third Circuit acknowledged that the contract was "ambiguous as to whether the parties intended to have their disputes arbitrated in the event that NAF was unavailable." *Id.* at 356. Thus, unlike the arbitration agreement at issue in the New Jersey Supreme Court, this was a genuinely ambiguous arbitration provision. Yet the Third Circuit held that in light of the "liberal federal policy in favor of arbitration," it must "resolve this ambiguity *in favor* of

arbitration." *Id.* (emphasis in original) (internal quotation marks omitted).

It is worth pausing on the extraordinary disparity between the Third Circuit and the New Jersey Supreme Court. In the Third Circuit, if an arbitration clause is *ambiguous* as to whether the parties should go to arbitration or litigation, the FAA requires the parties to go to arbitration. In the New Jersey Supreme Court, even if a contract *unambiguously* states the parties should go to arbitration, the arbitration agreement is unenforceable unless it "explain[s] that the plaintiff is giving up her right to bring her claims in court or have a jury resolve the dispute." Pet. App. 15a – 16a. It is difficult to imagine a clearer conflict on the legal standard for enforcing an arbitration agreement.

Other courts have likewise applied the canon that ambiguities should be resolved in favor of arbitration. For instance, in *Huffman v. Hilltop Companies, LLC*, 747 F.3d 391 (6th Cir. 2014), a case described in further detail below, the plaintiff attempted to avoid arbitration on the ground that the underlying employment contract had expired, and the employment agreement's survival clause enumerated a list of provisions that survived the agreement's expiration, which did *not* include the arbitration provision. 747 F.3d. at 393-94. The Sixth Circuit nonetheless enforced the arbitration agreement, holding that because it "cannot say with certainty that the parties did not intend for the arbitration clause to survive expiration of the contract," "the strong presumption in favor of arbitration controls." *Id.* at 398. *See also, e.g.*, *Wash.*

Square Sec., Inc. v. Aune, 385 F.3d 432, 434-36 (4th Cir. 2004) (because arbitration agreement was "susceptible to a meaning" for which agreement applied to plaintiff, dispute was arbitrable).

These cases essentially apply the opposite rule from the New Jersey Supreme Court—whereas the New Jersey Supreme Court held that arbitration agreements must satisfy a heightened clear-and-unambiguous standard to be enforceable, other courts have held that even ambiguous contracts must be construed in favor of arbitration. Accordingly, the arbitration agreement at issue here would have been enforced in all of those courts, yet it was rejected by the court below.

3. *Arbitration agreements must contain an express waiver of the right to proceed in court.* Finally, the New Jersey Supreme Court's ultimate conclusion—that arbitration agreements are unenforceable unless they contain express waiver language—conflicts with decisions of the Fourth and Sixth Circuits, which have specifically found that requirement is not consistent with the FAA.

In *Huffman*, the Sixth Circuit case described above, the arbitration agreement at issue was essentially identical to the agreement here: "Any Claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by binding arbitration." 744 F.3d at 393. The plaintiff, like Respondent here, argued that her arbitration agreement was unenforceable because it lacked an express jury waiver. The Sixth Circuit disagreed and held that the agreement must be enforced under the FAA. *Id.* at 394-95. It relied on its

case law that had "flatly rejected the contention that an arbitration clause must contain a provision expressly waiving the employee's right to a jury trial because the fairly obvious consequence of an agreement to arbitrate is straightforward," and held that "an unequivocal waiver of the right to a jury trial is not required outside of the collective-bargaining context" (internal quotation marks omitted). *Id.* at 396 n.2.

Similarly, in *Snowden v. CheckPoint Check Cashing*, 290 F.3d 631, 638 (4th Cir. 2002), the arbitration agreement stated that "[a]ny claim, dispute or controversy" would be resolved by binding arbitration. *Id.* at 633-34 (alteration in original). Snowden argued that the "Arbitration Agreement itself is unenforceable because it does not include an express jury waiver provision," and that "[w]ithout an express jury waiver provision, … she could not have knowingly and voluntarily waived her Seventh Amendment right to a jury trial." *Id.* at 638. The Fourth Circuit disagreed. Applying the FAA, *id.* at 634-35, it held: "Common sense dictates that we reject this argument. [T] he loss of the right to a jury trial is a necessary and fairly obvious consequence of an agreement to arbitrate." *Id.* at 638 (internal quotation marks omitted) (alterations in original).

If Respondent had brought her lawsuit in either of those circuits, the arbitration agreement would have been enforced. The New Jersey Supreme Court's contrary conclusion resulted in a conflict that only this Court can resolve.

II. The Decision Below Is Contrary To The FAA And This Court's Precedents.

In addition to conflicting with decisions of numerous federal and state courts, the New Jersey Supreme Court's decision is wrong. It blatantly contradicts the plain text of the FAA and decades of this Court's precedents, and evinces the very "judicial hostility to arbitration agreements" that the FAA was designed "broadly to overcome." *Allied-Bruce Terminix Cos., Inc. v. Dobson*, 513 U.S. 265, 272 (1995).

1. The FAA provides that arbitration agreements "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2. "Thus, generally applicable contract defenses, such as fraud, duress, or unconscionability, may be applied to invalidate arbitration agreements without contravening § 2." *Doctor's Assocs., Inc. v. Casarotto*, 517 U.S. 681, 687 (1996). *All* contracts, no matter what they say, are invalid if they are procured through fraud (or other generally applicable defenses), and so fraud may be a ground for revoking an arbitration agreement under § 2.

By contrast, defenses that "derive their meaning from the fact that an agreement to arbitrate is at issue" may not be applied to invalidate an arbitration agreement under § 2. *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740, 1746 (2011). Thus, when a state-law defense applies to arbitration agreements *because* they are arbitration agreements, but does not apply generally to the mine run of contracts, it is preempted by the FAA. *Doctor's Associates* illustrates this principle. In

that case, the Court addressed a Montana statute that imposed a heightened burden on arbitration agreements by requiring them to appear "'in underlined capital letters on the first page of the contract.'" 517 U.S. at 683 (quoting MONT. CODE ANN. § 27-5-114(4) (1994)). The Court held that the FAA preempted Montana's law, reasoning that when a "State's law conditions the enforceability of arbitration agreements on compliance with a special notice requirement not applicable to contracts generally," such a law "directly conflicts with § 2 of the FAA." *Doctor's Associates*, 517 U.S. at 687.

Here, the New Jersey Supreme Court did precisely what this Court has forbidden: it invalidated an arbitration agreement based on a contract defense that is *not* generally applicable to all contracts. Specifically, the New Jersey Supreme Court reasoned that "an average member of the public may not know—without some explanatory comment—that arbitration is a substitute for the right to have one's claim adjudicated in a court of law." Pet. App. 10a. Thus, it held that "because arbitration involves a waiver of the right to pursue a case in a judicial forum, courts take particular care in assuring the knowing assent of both parties to arbitrate, and a clear mutual understanding of the ramifications of that assent." *Id.* (quotation marks omitted). These are not general principles that apply to all contracts: ordinary contracts to pay money or provide goods or services, for example, would not be subjected to New Jersey's heightened knowing-and-voluntary standard and would not require explanatory comments to be enforceable. Rather, as the New Jersey Supreme Court made expressly clear, these

principles apply "because arbitration involves a waiver of the right to pursue a case in a judicial forum." *Id.*

New Jersey's requirement of an "explanatory comment" accompanying an arbitration agreement, *id.*, is thus substantively identical to Montana's requirement that the arbitration agreement be in underlined capital letters—it imposes "a special notice requirement not applicable to contracts generally," *Doctor's Associates*, 517 U.S. at 687, and "derive[s] [its] meaning from the fact that an agreement to arbitrate is at issue," *AT&T*, 131 S. Ct. at 1746. Hence, it is preempted.

2. The New Jersey Supreme Court attempted to reconcile its opinion with this Court's precedents by holding that it was applying a rule applicable to other contractual provisions *involving waiver-of-rights provisions*: "Arbitration clauses are not singled out for more burdensome treatment than other waiver-of-rights clauses under state law…. To be clear, under our state contract law, we impose no greater burden on an arbitration agreement *than on any other agreement waiving constitutional or statutory rights*." Pet. App. 12a, 17a (emphasis added).

This was erroneous. Again, the FAA states that an arbitration agreement is valid "save upon such grounds as exist at law or in equity for the revocation of *any* contract." 9 U.S.C. § 2 (emphasis added). It does not permit invalidation of an arbitration agreement on grounds that exist for *some* contracts. Thus, "generally applicable" defenses may be applied to invalidate arbitration agreements, as long as they operate without reference to the fact that an arbitration agreement is at

issue. *Doctor's Associates*, 517 U.S. at 687. But defenses that disfavor arbitration agreements *because of the characteristics of arbitration agreements* are by definition not "generally applicable," and do not apply to "any contract," even if one can locate some other sub-category of non-arbitration agreements that are similarly disfavored.

Here, the New Jersey Supreme Court explicitly acknowledged that its "explanatory comment" requirement, Pet. App. 10a, applied *only* to "agreement[s] waiving constitutional or statutory rights," Pet. App. 17a, and not to the mine run of contracts. And it applied its rule to arbitration agreements precisely *because*, on its view, arbitration agreements—unlike the mine run of contracts—result in a waiver of substantive constitutional or statutory rights. *But see infra* at 22-24. Thus, the "explanatory language" requirement is *not* a ground for revocation of "*any* contract." 9 U.S.C. § 2. Hence, it may not be applied to invalidate arbitration agreements.

Indeed, the New Jersey Supreme Court's reasoning contradicts the very facts of *Concepcion* itself, which invalidated a state-law defense that applied in both arbitration and litigation. In *Concepcion*, this Court addressed a California rule, known as the "*Discover Bank* rule," holding that contracts with class-action waivers were unconscionable. Critically, the *Discover Bank* rule was *not* an arbitration-specific rule—it also applied to *all* class-action waivers, regardless whether the dispute would be litigated or arbitrated. The Ninth Circuit held that the FAA permitted California's rule for precisely that reason: "*Discover Bank* placed

arbitration agreements with class action waivers on the exact same footing as contracts that bar class action litigation outside the context of arbitration." *Concepcion*, 131 S. Ct. at 1745 (quoting *Laster v. AT&T Mobility LLC*, 584 F.3d 849, 855 (9th Cir. 2009)) (quotation marks omitted). This Court reversed the Ninth Circuit's judgment, holding that rules with a "disproportionate impact on arbitration agreements" were preempted, even if they applied to a certain subset of other contracts as well. *Id.* at 1747.

So too here. The New Jersey Supreme Court's rule plainly has a disproportionate impact on arbitration agreements—it imposes a knowing-and-voluntary standard on 100% of contracts *with* arbitration provisions, but only on the subset of contracts *without* arbitration provisions that contain other so-called waiver-of-rights provisions. A garden-variety contract, for which disputes are settled in court, will not be subjected to New Jersey's heightened standard. That is the epitome of a rule that imposes a disproportionate impact on arbitration agreements relative to other types of contracts.

3. The New Jersey Supreme Court's decision violated the FAA in two other respects.

a. First, this Court has held that "in applying general state-law principles of contract interpretation to the interpretation of an arbitration agreement within the scope of the Act, due regard must be given to the federal policy favoring arbitration, and ambiguities as to the scope of the arbitration clause itself resolved in favor of arbitration." *Volt Info. Sci.*, 489 U.S. at 475-76.

To put it mildly, the New Jersey Supreme Court did not abide by that principle. Recall that the arbitration agreement at issue here says that "In the event of any claim or dispute between Client and the USLSG related to this Agreement or related to any performance of any services related to this Agreement, the claim or dispute shall be submitted to binding arbitration upon the request of either party …. Any decision of the arbitrator shall be final and may be entered into any judgment in any court of competent jurisdiction." Pet. App. 3a – 4a, 30a – 31a.

This is an unambiguous agreement to arbitrate. The notion that the lack of a jury-waiver provision renders this arbitration agreement "ambiguous" is fanciful at best.[1] As numerous courts have explained, "[t]he loss of the right to a jury trial is a necessary and fairly obvious consequence" of an agreement to arbitrate. *Snowden*, 290 F.3d at 638 (quotation marks omitted); *see also Harrington v. Atlantic Sounding Co.*, 602 F.3d 113, 126 (2d Cir. 2010) (describing an agreement to arbitrate as something "which necessarily waives jury trial"); *Caley*, 428 F.3d at 1372 (noting that "the loss of the right to a jury trial is a necessary and fairly obvious consequence of an agreement to arbitrate" (quotation marks omitted)); *Pierson v. Dean*, *Witter*, *Reynolds*,

[1] Tellingly, the New Jersey Supreme Court incorrectly described the agreement as stating that "either party *may* submit any dispute to 'binding arbitration.'" Pet. App. 15a (emphasis added). The agreement actually says that any "claim or dispute *shall* be submitted to binding arbitration upon the request of either party." Pet. App. 3a (emphasis added).

Inc., 742 F.2d 334, 339 (7th Cir. 1984) ("[T]hough perhaps not contemplated by the Piersons when they signed the contract, loss of the right to a jury trial is a necessary and fairly obvious consequence of an agreement to arbitrate. The Piersons cannot use their failure to inquire about the ramifications of that clause to avoid the consequences of agreed-to arbitration.").

The court's decision should be recognized for what it is: a subterfuge intended to prevent enforcement of arbitration agreements, based on the exact judicial hostility to arbitration that the FAA was intended to preempt. But even assuming the New Jersey Supreme Court was correct in identifying an ambiguity in the agreement, *Volt* required it to resolve that ambiguity in favor of arbitration. By instead striking the arbitration agreement, the Court violated this Court's teaching in *Volt*.

b. Second, the premise of the court's opinion—that an arbitration agreement should be treated as a "waiver of rights" provision—is wrong. This Court has made clear that when parties sign an arbitration agreement, they may pursue any cause of action, defense, and remedy they would otherwise have had—but in an arbitral forum, rather than a judicial forum. *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 628 (1985) ("By agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than a judicial, forum. It trades the procedures and opportunity for review of the courtroom for the simplicity, informality, and expedition of arbitration.").

Yet, the New Jersey Supreme Court analogized arbitration agreements to provisions in which parties waived their right to a hearing altogether, or waived their rights to particular remedies such as expenses or the ability to file a lien. Pet. App. 11a – 12a. The premise of the New Jersey Supreme Court's opinion—that an arbitration agreement should be treated like a waiver of a remedy, rather than a selection of a forum—is contrary to this Court's understanding of arbitration agreements.

The New Jersey Supreme Court attempted to analogize its decision to this Court's decision in *Wright v. Universal Maritime Service Corp.*, 525 U.S. 70, 80 (1998), which held that a "union-negotiated waiver of employees' statutory right to a judicial forum for claims of employment discrimination" must be "clear and unmistakable." But *Wright* only proves the rule. In *Wright*, the Court made clear that a waiver of a right to jury trial is "not a substantive right," and held that the clear-and-unmistakable standard applied only because the case involved "a union's waiver of the rights of represented employees." *Id.* Critically for this case, it held that in a case involving "an individual's waiver of his own rights," "the 'clear and unmistakable' standard [is] not applicable." *Id.* at 80-81. That analysis resolves this case. Respondent waived her own right to a jury trial, and the "clear and unmistakable" standard is therefore not applicable under the FAA.

III. The New Jersey Supreme Court's Decision Is Extremely Important And Requires This Court's Review.

This Court's review of the New Jersey Supreme Court's decision is urgently needed.

First, if left uncorrected, the court's decision will invalidate scores of arbitration agreements. Under the court's new rule, arbitration agreements stating that the parties agree to arbitrate their disputes can no longer be enforced in New Jersey. This rule is a radical departure from innumerable contracting parties' settled expectations. As the California Supreme Court explained in a case involving the California Arbitration Act:

> [T]o predicate the legality of a consensual arbitration agreement upon the parties' express waiver of jury trial would be as artificial as it would be disastrous. When parties agree to submit their disputes to arbitration they select a forum that is alternative to, and independent of, the judicial—a forum in which, as they well know, disputes are not resolved by juries. Hence there are literally thousands of commercial and labor contracts that provide for arbitration but do not contain express waivers of jury trial. Courts have regularly enforced such agreements.... Relying on this consistent pattern of judicial decision, contracting parties, ... continue to draft arbitration provisions without express mention of any right to jury trial. Before today no one has so much as

> imagined that such agreements are consequently invalid; to destroy their viability upon an extreme hypothesis that they fail expressly to negative jury trials would be to frustrate the parties' interests and destroy the sanctity of their mutual promises.

Madden v. Kaiser Found. Hosp., 552 P.2d 1178, 1187-88 (Cal. 1976). Regrettably, that is precisely the outcome of the New Jersey Supreme Court's decision.

Indeed, the ramifications of the New Jersey Supreme Court's opinion are already being felt in New Jersey state courts. In *Dispenziere v. Kushner Companies*, 101 A.3d 1126 (N.J. Super. Ct. App. Div. 2014), the court held that *Atalese* applied to both statutory and common-law causes of action, and further held that *Atalese* applied to cases in which the plaintiffs were represented by counsel in connection with the underlying transaction. *Id.* at 1131-32. The court thus invalidated an arbitration agreement stating: "Any disputes arising in connection with this Agreement … shall be heard and determined by arbitration before a single arbitrator of the American Arbitration Association in Morris County, New Jersey. The decision of the arbitrator shall be final and binding." *Id.* at 1128. In *Kelly v. Beverage Works NY Inc.*, No. A-3851-13T4, 2014 WL 6675261, at *1-3 (N.J. Super. Ct. App. Div. Nov. 26, 2014), the court held that *Atalese* applied to arbitration provisions in collective bargaining agreements, and invalidated a provision stating: "Either disputant may elect to have such dispute arbitrated by a panel of arbitrators consisting of the American Arbitration Association, Mr.

Wellington Davis, or Mr. J J. Pierson." *See also Rosenthal v. Rosenblatt*, No. A-3753-12T2, 2014 WL 5393243, at *5 (N.J. Super. Ct. App. Div. Oct. 24, 2014) (invalidating provision stating that disputes "shall be exclusively resolved as provided herein through mediation and arbitration" and setting forth arbitration procedures). Such decisions will multiply rapidly without the Court's intervention.[2]

Second, the conflict between the New Jersey Supreme Court and other courts warrants this Court's immediate review. This conflict creates the obvious risk of forum-shopping—any time a dispute arises in a case involving an arbitration agreement that does not meet the New Jersey Supreme Court's clear-and-unambiguous requirement, parties seeking to litigate will try their utmost to sue in New Jersey state court, while parties seeking to arbitrate will attempt the opposite. And whenever a dispute arises, there will be a race to the courthouse—the party seeking to litigate will try to file as quickly as possible in a New Jersey state court, while the party seeking to arbitrate will try to file as quickly as possible in a jurisdiction that enforces arbitration agreements as written. Indeed, to

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[2] Petitioner is aware that in *Guidotti v. Legal Helpers Debt Resolution, LLC*, No. 11-1219 (JBS/KMW), 2014 WL 6863183 (D.N.J. Dec. 3, 2014), a federal district court in New Jersey followed *Atalese*. The District Court's opinion did not cite any of the pertinent Third Circuit authority cited in this Petition. It was likely unaware of that authority, as the party seeking arbitration did not cite it in its brief submission to the Court addressing *Atalese*. Dkt. #171.

achieve their preferred forum, both parties will have a strong incentive to file immediate, premature lawsuits, even if they might otherwise have preferred to negotiate a settlement before filing suit. The very purpose of the FAA was to avoid such state-by-state variance in the enforceability of arbitration agreements.

These practical concerns are exacerbated by the fact that the New Jersey Supreme Court's decision conflicts with case law from the Third Circuit, which encompasses New Jersey's federal district courts. *Supra*, at 9, 12-13. This split parallels a similar split between Montana's state and federal courts. *Supra*, at 9-10.

Indeed, this state/federal split will trigger a particularly heated race to the court in light of this Court's decision in *Vaden v. Discover Bank*, 556 U.S. 49 (2009). In *Vaden*, the Court held that if a plaintiff files state-law claims, and the defendant files federal counterclaims, the defendant cannot go to federal court to enforce the arbitration agreement. *Id.* at 62 ("[A] federal court may not entertain a § 4 petition based on the contents, actual or hypothetical, of a counterclaim"). Thus, if a party with federal claims sues first, he can go to federal court and the court will apply the Third Circuit's standards, resulting in arbitration; if the party with state claims sues first, he can go to state court and the court will apply the New Jersey Supreme Court's standards, resulting in litigation in court. Notably, in *Vaden*, this Court acknowledged that a litigant's entitlement to federal court enforcement of an arbitration provision might well depend on the order of filing, *id.* at 68 n.17, but held this did not pose a concern be-

cause "[u]nder the FAA, state courts as well as federal courts are obliged to honor and enforce agreements to arbitrate." *Id.* at 71. But that reasoning is of cold comfort to litigants when state courts defy the FAA, as occurred here.[3]

The New Jersey Supreme Court's decision reflects judicial hostility toward arbitration that the Court has been fighting for decades. The Court should grant certiorari and reverse.

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[3] The same race will be run even where both parties have pure state-law claims, but the requirements for diversity of citizenship are met. Consider a contract between a New Jersey resident and an out-of-state resident. If the New Jersey resident sues first in New Jersey federal court, he will be able to arbitrate, because he can bring a diversity suit in federal court, 28 U.S.C. § 1332(a)(1), and the federal court will order arbitration. But if an out-of-state resident sues first in New Jersey state court, the New Jersey resident will be forced to litigate—he will be unable to remove the case to federal court, notwithstanding the existence of diversity jurisdiction. *See* 28 U.S.C. § 1441(b)(2) (no removal by home state defendant).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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January 21, 2015

APPENDIX

Appendix A

SUPREME COURT OF NEW JERSEY
A-64 September Term 2012 072314

PATRICIA ATALESE,

Plaintiff-Appellant, v.
U.S. LEGAL SERVICES GROUP, L.P.,

Defendant-Respondent.

Argued April 9, 2014 – Decided September 23, 2014
On certification to the Superior Court,
Appellate Division.

JUSTICE ALBIN delivered the opinion of the Court.

Arbitration provisions are now commonplace in consumer contracts. Consumers can choose to pursue arbitration and waive their right to sue in court, but should know that they are making that choice. An arbitration clause, like any contractual clause providing for the waiver of a constitutional or statutory right, must state its purpose clearly and unambiguously. In choosing arbitration, consumers must have a basic understanding that they are giving up their right to seek relief in a judicial forum.

Here, plaintiff, Patricia Atalese, contracted with defendant, U.S. Legal Services Group, L.P. (USLSG), for debt-adjustment services. The contract contained an arbitration provision for the resolution of any dispute between the parties, but the provision made no mention that plaintiff waived her right to seek relief in

court. Plaintiff brought a lawsuit against USLSG in the Special Civil Part alleging violations of two consumer-protection statutes.

The trial court granted USLSG's motion to compel arbitration pursuant to the service contract. The Appellate Division affirmed, finding that "the lack of express reference to a waiver of the right to sue in court" did not bar enforcement of the arbitration clause.

We now reverse. The absence of *any* language in the arbitration provision that plaintiff was waiving her statutory right to seek relief in a court of law renders the provision unenforceable. An arbitration provision—like any comparable contractual provision that provides for the surrendering of a constitutional or statutory right—must be sufficiently clear to a reasonable consumer. The provision here does not pass that test. We therefore vacate the judgment of the Appellate Division and remand to the Special Civil Part for proceedings consistent with this opinion.

I.

A.

This case arises from a civil complaint filed in the Special Civil Part. Plaintiff alleged that defendant violated the Consumer Fraud Act (CFA), *N.J.S.A.* 56:8-1 to -20, and the Truth-in-Consumer Contract, Warranty and Notice Act (TCCWNA), *N.J.S.A.* 56:12-14 to -18. She sought treble damages, statutory penalties, and attorney's fees.

The trial court's decision to compel arbitration was based on the pleadings. *See R.* 4:46-2(c). We briefly review those pleadings.

B.

Plaintiff entered into a service contract with USLSG, which promised to provide debt-adjustment services. For those services, she paid USLSG approximately $5000, which included $4083.55 in legal fees, $940 in supplemental legal fees, and $107.50 in other fees. Plaintiff alleged that USLSG misrepresented that the monies were spent on numerous attorneys negotiating with creditors on her behalf. She maintained that the only work done by an attorney was the preparation of a single one-page answer for a collection action in which she represented herself. Plaintiff also alleged that USLSG settled only a single debt for her and "knowingly omitted" that it was not a licensed debt adjuster in New Jersey. Last, plaintiff contended that USLSG violated New Jersey's usury law.

USLSG denied the allegations in the complaint.

C.

USLSG moved to compel arbitration based on an arbitration provision in the twenty-three-page service contract. The arbitration provision is located on page nine, paragraph sixteen, of the contract and states:

> **Arbitration**: In the event of any claim or dispute between Client and the USLSG related to this Agreement or related to any performance of any services related to this Agreement, the claim or dispute shall be submitted to binding arbitration upon the request of either party upon the service of that request on the other party. The parties shall agree on a single arbitrator to resolve the dispute. The matter may be arbitrated either by the Judicial Arbitration

> Mediation Service or American Arbitration Association, as mutually agreed upon by the parties or selected by the party filing the claim. The arbitration shall be conducted in either the county in which Client resides, or the closest metropolitan county. Any decision of the arbitrator shall be final and may be entered into any judgment in any court of competent jurisdiction. The conduct of the arbitration shall be subject to the then current rules of the arbitration service. The costs of arbitration, excluding legal fees, will be split equally or be born by the losing party, as determined by the arbitrator. The parties shall bear their own legal fees.

The trial court granted USLSG's motion to compel arbitration and dismissed the complaint without prejudice. The court found the arbitration clause to be "minimally, barely . . . sufficient to put the [plaintiff] on notice that if [the parties] have any sort of dispute arising out of [the] agreement, it's going to be heard in [a]rbitration." The court also believed that the arbitration clause met the criteria outlined in *Curtis v. Cellco Partnership*, 413 *N.J. Super.* 26, 33-37 (App. Div.), *certif. denied*, 203 *N.J.* 94 (2010). There, the Appellate Division held that an arbitration provision will be enforced so long as it is "sufficiently clear, unambiguously worded, satisfactorily distinguished from the other [a]greement terms, and . . . provide[s] a consumer with reasonable notice of the requirement to arbitrate." *Id.* at 33. The trial court concluded that although upholding the arbitration provision was not "a slam dunk," the policy favoring arbitration compelled the outcome.

Plaintiff appealed.

II.

In an unpublished opinion, the Appellate Division affirmed the trial court's order compelling arbitration, relying heavily on language in *Curtis*, *supra*, 413 *N.J. Super.* at 33, in reaching that conclusion. The panel held that "the lack of express reference to a waiver of the right to sue in court or to arbitration as the 'exclusive' remedy" did not bar enforcement of the arbitration clause. The panel stated that while the arbitration clause "did not explicitly state that plaintiff agreed to waive her right to try her dispute in court, it clearly and unambiguously stated that . . . *any* dispute relating to the underlying agreement *shall* be submitted to arbitration and the resolution of that forum shall be *binding* and *final*." It noted that other appellate panels had upheld arbitration provisions that did not have explicit waiver-of-rights language. (Citing *Griffin v. Burlington Volkswagen, Inc.*, 411 *N.J. Super.* 515, 518 (App. Div. 2010); *EPIX Holdings Corp. v. Marsh & McLennan Cos.*, 410 *N.J. Super.* 453, 476 (App. Div. 2009), *overruled in part on other grounds by Hirsch v. Amper Fin. Servs., LLC*, 215 *N.J.* 174, 192-93 (2013)).

The panel concluded that the language of the arbitration clause gave the "parties reasonable notice of the requirement to arbitrate all claims under the contract," and that "a reasonable person, by signing the agreement, [would have understood] that arbitration is the sole means of resolving contractual disputes."

We granted plaintiff's petition for certification. *Atalese v. U.S. Legal Servs. Grp.*, L.P., 214 *N.J.* 117 (2013). We also granted Pacific Legal Foundation's

request to participate as amicus curiae, limited to the filing of a brief.

III.

A.

Plaintiff contends that the arbitration clause does not comply with New Jersey law, specifically *Curtis* and our decision in *Marchak v. Claridge Commons, Inc.*, 134 *N.J.* 275, 281 (1993), because it "does not clearly and unequivocally state its purpose in depriving [plaintiff] of her time-honored right to sue." She asserts that New Jersey courts do not uphold "arbitration provisions that fail to: (1) indicate that the parties waive their right to sue; or (2) indicate that arbitration is the parties' exclusive remedy." Plaintiff does not suggest that an incantation of "magic words" is necessary for a waiver of rights but does assert that the language for such a waiver must be clear and unequivocal.

B.

USLSG contends that the term "arbitration" is universally understood and that "[n]o reasonable consumer could have any doubt that arbitration is different than litigation." USLSG emphasizes that the Federal Arbitration Act (FAA) reflects a "liberal federal policy favoring arbitration" and requires courts to "place arbitration agreements on an equal footing with other contracts and enforce them according to their terms." (Citations and internal quotation marks omitted) (quoting *AT&T Mobility LLC v. Concepcion*, 563 *U.S.* , , 131 S. Ct. 1740, 1745-46, 179 *L. Ed.* 2d 742, 751 (2011)). It argues that the language in *Marchak*, *supra*—that an arbitration "clause depriving a citizen of access to the courts should clearly state its purpose,"

134 *N.J.* at 282—as construed by plaintiff, is in conflict with *Concepcion* and New Jersey case law. Last, USLSG submits that the arbitration clause is sufficiently clear and "adequately advised" plaintiff that her lawsuit would be resolved "in an arbitral forum."

C.

Pacific Legal Foundation, participating as amicus curiae, urges this Court to affirm the Appellate Division and enforce the arbitration agreement. Amicus emphasizes that arbitration provisions in contracts must be viewed with favor, consistent with the dictates of federal and state law, and not with "suspicion or hostility." Amicus maintains that consumers entering into contracts with arbitration clauses are "presumed" to be sufficiently competent to understand what they are signing and that "the law does not require invocation of particular terms of art to create an enforceable arbitration contract." In short, amicus insists that plaintiff signed an arbitration agreement "written in standard form and simple language" and should be bound by it.

IV.

A.

The Federal Arbitration Act (FAA), 9 *U.S.C.A.* §§ 1-16, and the nearly identical New Jersey Arbitration Act, *N.J.S.A.* 2A:23B-1 to -32, enunciate federal and state policies favoring arbitration. *Concepcion*, *supra*, 563 *U.S.* at __, 131 S. Ct. at 1745, 179 *L. Ed.* 2d at 751 (describing Section 2 of FAA as reflecting "a 'liberal federal policy favoring arbitration'" (quoting *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 *U.S.* 1, 24, 103 S. Ct. 927, 941, 74 L. Ed. 2d 765, 785 (1983)));

Hojnowski v. Vans Skate Park, 187 *N.J.* 323, 342 (2006) (noting that Legislature, in enacting New Jersey's Arbitration Act, codified existing judicial policy favoring arbitration as "means of dispute resolution"); *Martindale v. Sandvik, Inc.*, 173 *N.J.* 76, 92 (2002) ("[T]he affirmative policy of this State, both legislative and judicial, favors arbitration as a mechanism of resolving disputes.").

Section 2 of the FAA provides that

> [a] written provision in . . . a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.
>
> [9 *U.S.C.A.* § 2.]

The FAA requires courts to "place arbitration agreements on an equal footing with other contracts and enforce them according to their terms." *Concepcion*, *supra*, 563 *U.S.* at __, 131 S. Ct. at 1745-46, 179 *L. Ed.* 2d at 751 (citations omitted). Thus, "a state cannot subject an arbitration agreement to more burdensome requirements than" other contractual provisions. *Leodori v. CIGNA Corp.*, 175 *N.J.* 293, 302, *cert. denied*, 540 *U.S.* 938, 124 S. Ct. 74, 157 *L. Ed.* 2d 250 (2003). An arbitration clause cannot be invalidated by state-law "defenses that apply only to arbitration or that derive their meaning from the fact that an agreement to arbitrate is at issue." *Concepcion*, *supra*, 563 *U.S.* at __, 131 S. Ct. at 1746, 179 *L. Ed.* 2d at 751.

Arbitration's favored status does not mean that every arbitration clause, however phrased, will be

enforceable. *See Hirsch*, *supra*, 215 *N.J.* at 187 ("[T]he preference for arbitration 'is not without limits.'" (quoting *Garfinkel v. Morristown Obstetrics & Gynecology Assocs.*, 168 *N.J.* 124, 132 (2001))). Section 2 of the FAA "permits agreements to arbitrate to be invalidated by '*generally* applicable contract defenses.'" *Concepcion*, *supra*, 563 *U.S.* at __, 131 S. Ct. at 1746, 179 *L. Ed.* 2d at 751 (emphasis added) (quoting *Doctor's Assocs., Inc. v. Casarotto*, 517 *U.S.* 681, 687, 116 S. Ct. 1652, 1656, 134 *L. Ed.* 2d 902, 909 (1996)). Accordingly, the FAA "permits states to regulate . . . arbitration agreements under general contract principles," and a court may invalidate an arbitration clause "'upon such grounds as exist at law or in equity for the revocation of any contract.'" *Martindale*, *supra*, 173 *N.J.* at 85 (quoting 9 *U.S.C.A.* § 2); *see First Options of Chi., Inc. v. Kaplan*, 514 *U.S.* 938, 944, 115 S. Ct. 1920, 1924, 131 *L. Ed.* 2d 985, 993 (1995) ("When deciding whether the parties agreed to arbitrate a certain matter . . . , courts generally . . . should apply ordinary state-law principles that govern the formation of contracts."); *Hojnowski*, *supra*, 187 *N.J.* at 342 ("[S]tate contract-law principles generally govern a determination whether a valid agreement to arbitrate exists." (citing *First Options*, *supra*, 514 *U.S.* at 944, 115 S. Ct. at 1924, 131 *L. Ed.* 2d at 993)).

B.

An agreement to arbitrate, like any other contract, "must be the product of mutual assent, as determined under customary principles of contract law." *NAACP of Camden Cnty. E. v. Foulke Mgmt.*, 421 *N.J. Super.* 404, 424 (App. Div.), *certif. granted*, 209 *N.J.* 96 (2011), *and appeal dismissed*, 213 *N.J.* 47 (2013). A legally enforceable agreement requires "a meeting of the

minds." *Morton v. 4 Orchard Land Trust*, 180 *N.J.* 118, 120 (2004). Parties are not required "to arbitrate when they have not agreed to do so." *Volt Info. Scis. v. Bd. of Trs. of Leland Stanford Jr. Univ.*, 489 U.S. 468, 478, 109 S. Ct. 1248, 1255, 103 *L. Ed.* 2d 488, 499 (1989); *see Garfinkel*, *supra*, 168 *N.J.* at 132 ("'[O]nly those issues may be arbitrated which the parties have agreed shall be.'" (quoting *In re Arbitration Between Grover & Universal Underwriters Ins. Co.*, 80 *N.J.* 221, 228 (1979))).

Mutual assent requires that the parties have an understanding of the terms to which they have agreed. "An effective waiver requires a party to have full knowledge of his legal rights and intent to surrender those rights." *Knorr v. Smeal*, 178 *N.J.* 169, 177 (2003) (citing *W. Jersey Title & Guar. Co. v. Indus. Trust Co.*, 27 *N.J.* 144, 153 (1958)). "By its very nature, an agreement to arbitrate involves a waiver of a party's right to have her claims and defenses litigated in court." *Foulke*, *supra*, 421 *N.J. Super.* at 425. But an average member of the public may not know—without some explanatory comment—that arbitration is a substitute for the right to have one's claim adjudicated in a court of law.

Moreover, because arbitration involves a waiver of the right to pursue a case in a judicial forum, "courts take particular care in assuring the knowing assent of both parties to arbitrate, and a clear mutual understanding of the ramifications of that assent." *Ibid.*

The requirement that a contractual provision be sufficiently clear to place a consumer on notice that he or she is waiving a constitutional or statutory right is

not specific to arbitration provisions. Rather, under New Jersey law, any contractual "waiver-of-rights provision must reflect that [the party] has agreed clearly and unambiguously" to its terms. *Leodori*, *supra*, 175 *N.J.* at 302; *see, e.g.*, *Dixon v. Rutgers, the State Univ. of N.J.*, 110 *N.J.* 432, 460-61 (1988) (holding that collective bargaining agreement cannot deprive one of statutory rights to evidentiary materials in anti-discrimination case because "[u]nder New Jersey law[,] for a waiver of rights to be effective it must be plainly expressed"); *Red Bank Reg'l Educ. Ass'n v. Red Bank Reg'l High Sch. Bd. of Educ.*, 78 *N.J.* 122, 140 (1978) (explaining, in public-employment labor-relations context, that any waiver of statutory right to file grievances "must be clearly and unmistakably established"); *W. Jersey Title & Guar. Co.*, *supra*, 27 *N.J.* at 152-53 ("It is requisite to waiver of a legal right that there be a clear, unequivocal, and decisive act of the party . . . . Waiver presupposes a full knowledge of the right and an intentional surrender . . . ." (citations and internal quotation marks omitted)); *Christ Hosp. v. Dep't of Health & Senior Servs.*, 330 *N.J. Super.* 55, 63-64 (App. Div. 2000) (requiring "clear and unmistakable waiver" of statutory right to hearing following refusal to renew license); *Franklin Twp. Bd. of Educ. v. Quakertown Educ. Ass'n*, 274 *N.J. Super.* 47, 53 (App. Div. 1994) (holding that waiver of court-ordered, strike-related expenses must be "clear and unmistakable" (citation and internal quotation marks omitted)); *Otis Elevator Co. v. Stafford*, 95 *N.J.L.* 79, 82 (Sup. Ct. 1920) ("Clear and unmistakable evidence is necessary to hold that the right to file a [mechanics'] lien has been waived."); *Amir v. D'Agostino*, 328 *N.J. Super.* 141, 160 (Ch. Div. 1998) (holding that waiver of statutory rights under Condominium Act requires that party "kn[ow]

that there [i]s a statutory protection available and then elect[] to waive it" because "conduct that purports to constitute a waiver must be clear and unmistakable"), *aff'd o.b.*, 328 *N.J. Super.* 103, 105 (App. Div. 2000); *cf. Wright v. Universal Mar. Serv. Corp.*, 525 *U.S.* 70, 80, 119 S. Ct. 391, 396, 142 *L. Ed.* 2d 361, 371 (1998) (holding that "union-negotiated waiver of employees' statutory right to a judicial forum for claims of employment discrimination" must be "clear and unmistakable").

Arbitration clauses are not singled out for more burdensome treatment than other waiver-of-rights clauses under state law. Our jurisprudence has stressed that when a contract contains a waiver of rights—whether in an arbitration or other clause—the waiver "must be clearly and unmistakably established." *Garfinkel*, *supra*, 168 *N.J.* at 132 (citation and internal quotation marks omitted). Thus, a "clause depriving a citizen of access to the courts should clearly state its purpose." *Ibid.* (quoting *Marchak*, *supra*, 134 *N.J.* at 282). We have repeatedly stated that "[t]he point is to assure that the parties know that in electing arbitration as the exclusive remedy, they are waiving their time-honored right to sue." *Ibid.* (quoting *Marchak*, *supra*, 134 *N.J.* at 282); *Hirsch*, *supra*, 215 N.J. at 187 (same).

No particular form of words is necessary to accomplish a clear and unambiguous waiver of rights. It is worth remembering, however, that every "consumer contract" in New Jersey must "be written in a simple, clear, understandable and easily readable way." N.J.S.A. 56:12-2. Arbitration clauses—and other contractual clauses—will pass muster when phrased in plain language that is understandable to the reasonable consumer.

Our courts have upheld arbitration clauses phrased in various ways when those clauses have explained that arbitration is a waiver of the right to bring suit in a judicial forum. For example, in *Martindale*, *supra*, we upheld an arbitration clause because it explained that the plaintiff agreed "to waive [her] right to a jury trial" and that "all disputes relating to [her] employment . . . shall be decided by an arbitrator." 173 *N.J.* at 81-82, 96 (stating that "arbitration agreement not only was clear and unambiguous, it was also sufficiently broad to encompass reasonably plaintiff's statutory causes of action"). In *Griffin*, *supra*, the Appellate Division upheld an arbitration clause, which expressed that "[b]y agreeing to arbitration, the parties understand and agree that they are waiving their rights to maintain other available resolution processes, such as a court action or administrative proceeding, to settle their disputes." 411 *N.J. Super.* at 518. In *Curtis*, *supra*, the Appellate Division found the arbitration provisions were "sufficiently clear, unambiguously worded, satisfactorily distinguished from the other [a]greement terms, and drawn in suitably broad language to provide a consumer with reasonable notice of the requirement to arbitrate." 413 *N.J. Super.* at 33. The arbitration agreement in *Curtis* stated:

> Instead of suing in court, we each agree to settle disputes (except certain small claims) only by arbitration. The rules in arbitration are different. There's no judge or jury, and review is limited, but an arbitrator can award the same damages and relief, and must honor the same limitations stated in the agreement as a court would.
>
> [*Id.* at 31 (emphasis omitted).]

Martindale, *Griffin*, and *Curtis* show that, without difficulty and in different ways, the point can be made that by choosing arbitration one gives up the "time-honored right to sue." See Garfinkel, supra, 168 N.J. at 135 (declining to "suggest that a party need refer specifically to the [Law Against Discrimination] or list every imaginable statute by name to effectuate a knowing and voluntary waiver of rights"). The waiver-of-rights language, however, must be clear and unambiguous—that is, the parties must know that there is a distinction between resolving a dispute in arbitration and in a judicial forum.

With those principles in mind, we turn to the arbitration provision before us.

V.

Our review of a contract, generally, is de novo, and therefore we owe no special deference to the trial court's or Appellate Division's interpretation. *Kieffer v. Best Buy Stores, L.P.*, 205 *N.J.* 213, 222-23 (2011). Our approach in construing an arbitration provision of a contract is governed by the same de novo standard of review. *Hirsch*, *supra*, 215 *N.J.* at 186.

The arbitration clause at issue appears on page nine of a twenty-three-page contract between plaintiff and USLSG. Under the terms of the agreement, USLSG promised to provide plaintiff with debt-adjustment services. In her civil complaint, plaintiff alleged that USLSG failed to deliver the services promised, misrepresented that various attorneys were working on her case, and knowingly omitted that it was not a licensed debt adjuster in this State. Plaintiff asserted that USLSG violated two consumer-protection statutes, the CFA and the TCCWNA, both of which

explicitly provide remedies in a court of law. *See N.J.S.A.* 56:8-19 ("Any person who suffers any ascertainable loss . . . may bring an action or assert a counterclaim therefor in any court of competent jurisdiction."); *N.J.S.A.* 56:12-17 ("A consumer also shall have the right to petition the court to terminate a contract which violates the provisions of section 2 of [the TCCWNA] and the court in its discretion may void the contract.").

Nowhere in the arbitration clause is there any explanation that plaintiff is waiving her right to seek relief in court for a breach of her statutory rights. The contract states that either party may submit any dispute to "binding arbitration," that "[t]he parties shall agree on a single arbitrator to resolve the dispute," and that the arbitrator's decision "shall be final and may be entered into judgment in any court of competent jurisdiction." The provision does not explain what arbitration is, nor does it indicate how arbitration is different from a proceeding in a court of law. Nor is it written in plain language that would be clear and understandable to the average consumer that she is waiving statutory rights. The clause here has none of the language our courts have found satisfactory in upholding arbitration provisions—clear and unambiguous language that the plaintiff is waiving her right to sue or go to court to secure relief. We do not suggest that the arbitration clause has to identify the specific constitutional or statutory right guaranteeing a citizen access to the courts that is waived by agreeing to arbitration. But the clause, at least in some general and sufficiently broad way, must explain that the plaintiff is giving up her right to bring her claims in

court or have a jury resolve the dispute.[1] Mutual assent to an agreement requires mutual understanding of its terms. After all, "[a]n effective waiver requires a [consumer] to have full knowledge of [her] legal rights" before she relinquishes them. *See Knorr*, *supra*, 178 *N.J.* at 177.

In the employment setting, we have stated that we would "not assume that employees intend to waive [their rights under the Law Against Discrimination] unless their agreements so provide in unambiguous terms." *Garfinkel*, *supra*, 168 *N.J.* at 135. We indicated that although a waiver-of-rights provision need not "list every imaginable statute by name to effectuate a knowing and voluntary waiver of rights," employees should at least know that they have "agree[d] to arbitrate all statutory claims arising out of the employment relationship or its termination." *Ibid.*

We emphasize that no prescribed set of words must be included in an arbitration clause to accomplish a waiver of rights. Whatever words compose an arbitration agreement, they must be clear and unambiguous that a consumer is choosing to arbitrate disputes rather than have them resolved in a court of law.[2] In this way, the agreement will assure reasonable

---

[1] Article I, Paragraph 9 of the 1947 New Jersey Constitution guarantees that "[t]he right of trial by jury shall remain inviolate." That guarantee has appeared in every New Jersey Constitution. *See N.J. Const. of 1776* art. XXII; *N.J. Const. of 1844* art. I, § 7.

[2] Both plaintiff and USLSG reference *EPIX Holdings*, *supra*, 410 *N.J. Super.* 453, in their briefs. There, a panel of the Appellate Division enforced an arbitration provision that stated that "[a]ny other unresolved dispute arising out of this Agreement must be submitted to arbitration," and that "the arbitrators would have

notice to the consumer. To be clear, under our state contract law, we impose no greater burden on an arbitration agreement than on any other agreement waiving constitutional or statutory rights.

In the matter before us, the wording of the service agreement did not clearly and unambiguously signal to plaintiff that she was surrendering her right to pursue her statutory claims in court. That deficiency renders the arbitration agreement unenforceable.[3]

'exclusive jurisdiction over the entire matter in dispute, including any question as to arbitrability.'" *Id.* at 461, 482. The parties in *EPIX Holdings* did not challenge whether that language satisfied the standard for a waiver of rights. We find that the language there is not sufficient to constitute a clear and unambiguous waiver of a consumer's right to sue in court.

[3] Our opinion should not be read to approve that part of the arbitration clause that states: "The costs of arbitration, excluding legal fees, will be split equally or born by the losing party, as determined by the arbitrator. The parties shall bear their own legal fees." *See Delta Funding Corp. v. Harris*, 189 *N.J.* 28, 44 (2006) (stating that "defendant [] may not limit a consumer's ability to pursue the statutory remedy of attorney's fees and costs when it is available to prevailing parties" and explaining that "[b]y agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral[,] rather than a judicial forum.") (internal quotation marks omitted); *see also N.J.S.A.* 56:12-16 (stating that under TCCWNA "[n]o consumer contract . . . shall contain any provision by which the consumer waives his rights under this act"); *N.J.S.A.* 56:8-19 ("In all actions under [the CFA], . . . the court shall also award reasonable attorneys' fees, filing fees and reasonable costs of suit.").

VI.

The judgment of the Appellate Division is reversed. We remand to the trial court for proceedings consistent with this opinion.

CHIEF JUSTICE RABNER; JUSTICES LaVECCHIA, PATTERSON, and FERNANDEZ-VINA; and JUDGES RODRÍGUEZ and CUFF (both temporarily assigned) join in JUSTICE ALBIN's opinion.

SUPREME COURT OF NEW JERSEY

NO. A-64 SEPTEMBER TERM 2012

ON CERTIFICATION TO

Appellate Division, Superior Court

PATRICIA ATALESE,

Plaintiff-Appellant,

v.

U.S. LEGAL SERVICES GROUP, L.P.,

Defendant-Respondent.

DECIDED September 23, 2014

Chief Justice Rabner PRESIDING

OPINION BY Justice Albin

CONCURRING/DISSENTING OPINIONS BY ____

DISSENTING OPINION BY ____

CHECKLIST	REVERSE AND REMAND	
CHIEF JUSTICE	X	
JUSTICE LaVECCHIA	X	
JUSTICE ALBIN	X	
JUSTICE PATTERSON	X	
JUSTICE FERNANDEZ-	X	
JUDGE RODRÍGUEZ	X	
JUDGE CUFF (t/a)	X	
TOTALS	7	

Appendix B

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF
NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0654-12T3

PATRICIA ATALESE,

Plaintiff-Appellant,

v.

U.S. LEGAL SERVICES GROUP, L.P.,

Defendant-Respondent.

Argued January 22, 2013
Decided February 22, 2013

Before Judges Parrillo and Fasciale.

PER CURIAM

Plaintiff Patricia Atalese appeals the August 21, 2012 order of the Law Division dismissing her complaint against defendant United States Legal Services Group, L.P., and compelling arbitration. We affirm.

On July 5, 2011, plaintiff entered into a debt resolution service agreement with defendant in which defendant was to assist plaintiff in dealing with her credit problems. Among the services contracted for,

defendant was to review plaintiff's financial circumstances, provide consultations, evaluate potential legal defenses to plaintiff's debts and claims under the Fair Debt Collection Practices Act, and then negotiate and attempt to enter into settlements with creditors in an effort to modify and restructure plaintiff's debt obligations.

The written contract between plaintiff and defendant contained an arbitration clause that read as follows:

> Arbitration: In the event of any claim or dispute between Client and the USLS[] related to this agreement or related to any performance of any services related to this Agreement, the claim or dispute shall be submitted to binding arbitration upon the request of either party upon the service of that request on the other party. The parties shall agree on a single arbitrator to resolve the dispute. The matter may be arbitrated either by the Judicial Arbitration Mediation Service or American Arbitration Association, as mutually agreed upon by the parties or selected by the party filing the claim. The arbitration shall be conducted in either the county in which Client resides, or the closest metropolitan county. Any decision of the arbitrator shall be final and may be entered into judgment in any court of competent jurisdiction. The conduct of the arbitration shall be subject to the then current rules of the arbitration service. The costs of arbitration, excluding legal fees, will be split equally or be born by the losing party, as

> determined by the arbitrator. The parties shall bear their own legal fees.

According to plaintiff, defendant settled one debt on her behalf, negotiated with other creditors, and retained an attorney who prepared a single page answer for her to file in a collection action filed by a creditor. She paid defendant over $5,000 in fees.

Plaintiff became dissatisfied with defendant's efforts and commenced the instant lawsuit in the Special Civil Part alleging defendant, as an unlicensed debt adjuster, engaged in deceptive and unlawful practices in violation of the New Jersey Consumer Fraud Act (CFA), *N.J.S.A.* 56:8-1 to -195, and the Truth-In-Consumer Contract, Warranty & Notice Act, *N.J.S.A.* 56:12-14 to -18, and further is guilty of criminal usury, *N.J.S.A.* 2C:21- 19(f). Defendant did not timely answer and consequently a default was entered, which defendant later succeeded in vacating.

Following its answer, defendant moved to compel arbitration based on the arbitration provision of the agreement, and to dismiss plaintiff's complaint. Plaintiff resisted and cross-moved for default judgment. Following argument, the court referred the parties to arbitration and dismissed plaintiff's complaint without prejudice. The judge reasoned:

> I do think that I agree then with the [f]ederal [j]udges who have come to the conclusion that this identical language is minimally, barely, but it is sufficient to put the party on notice that if you have any sort of dispute arising out of your agreement, it's going to be heard in Arbitration. It doesn't explicitly say it won't be in [c]ourt, it

> won't be a trial by jury. Neither did, as we pointed out, the Epix agreement, [*Epix Holdings Corp. v. Marsh & McLennan Cos.*, 410 *N.J. Super.* 453 (App. Div. 2009)], but that wasn't fatal. It's otherwise unambiguous that you're going to go to Arbitration, it's going to be decided by the Arbitrator, and then later after that if you get an award, you can take it to [c]ourt. It's not lengthy. It's conspicuous as everything else. The font is the same. It's not hidden. It's got its own title, heading. It's right above the bottom of the page where the consumer initialed.
>
> And I think it meets every other criteria as enunciated in *Curtis v. Cellco* [, 413 *N.J. Super.* 26 (App. Div.), *certif. denied*, 203 N.J. 94 (2010)]. And in light of the favored status of Arbitration, when it's close, I think we have to come down then on the side of favoring Arbitration. . . . It says, "any and all, arising out of relating to are going to be decided in Arbitration." It's right there for the consumer to see and initial.

On appeal, plaintiff contends the contractual arbitration provision is unenforceable because it does not clearly state its purpose or contain an express waiver of her right to sue in court on her statutory claims. We disagree.

New Jersey courts favor arbitration as a means of resolving disputes, embracing the federal policy preferring this method of alternative dispute resolution. *EPIX Holdings Corp. v. Marsh & McLennan Cos.*, 410 *N.J. Super.* 453, 471 (App. Div. 2009); *Bruno v. Mark MaGrann Assocs.*, 388 *N.J.*

Super. 539, 545 (App. Div. 2006). "Because of the favored status afforded to arbitration, '[a]n agreement to arbitrate should be read liberally in favor of arbitration.'" *Garfinkel v. Morristown Obstetrics & Gynecology Assocs.*, 168 N.J. 124, 132 (2001) (quoting *Marchak v. Claridge Commons, Inc.*, 134 *N.J.* 275, 282 (1993)).

It is equally well-settled "that parties to an agreement may waive statutory remedies in favor of arbitration." *Garfinkel*, *supra*, 168 *N.J.* at 131. Pertinent here, courts have determined arbitration is an appropriate forum to vindicate statutory rights under the CFA. *See, e.g., Curtis v. Cellco P'ship*, 413 *N.J. Super.* 26, 36-37 (App. Div.) ("We have found nothing in the CFA that precludes vindication of a consumer's 'statutory rights in the forum.'"), *certif. denied*, 203 *N.J.* 94 (2010); *Gras v. Assocs. First Cap.*, 346 *N.J. Super.* 42, 52 (App. Div. 2001) ("There is no inherent conflict between arbitration and the underlying purposes of the CFA."), *certif. denied*, 171 *N.J.* 445 (2002); *Caruso v. Ravenswood Developers*, 337 *N.J. Super.* 499, 505 (App. Div. 2001) ("[C]laims arising under the Consumer Fraud Act may be heard and resolved through arbitration."); *Cybul v. Atrium Palace Syndicate*, 272 *N.J. Super.* 330, 335 (App. Div.) (same), *certif. denied*, 137 *N.J.* 311 (1994).

To be sure, "such a waiver contained in a written provision 'must reflect that [a party] has agreed clearly and unambiguously to arbitrate the disputed claim.'" *NAACP of Camden Cnty. E. v. Foulke Mgmt. Corp.*, 421 *N.J. Super.* 404, 425 (App. Div.) (quoting *Leodori v. CIGNA Corp.*, 175 *N.J.* 293, 302, *cert. denied*, 540 U.S. 938, 124 S. Ct. 74, 157 L. Ed. 2d 250 (2003)), *certif.*

granted, 209 *N.J.* 96 (2011), appeal dismissed, *N.J.* (2013). Consequently, courts "must examine whether the terms of the provisions were stated with sufficient clarity and consistency to be reasonably understood by the consumer who is being charged with waiving her right to litigate a dispute in court." *Foulke*, *supra*, 421 *N.J. Super.* at 428. In this regard, an arbitration will be upheld if

> [t]he arbitration provisions are sufficiently clear, unambiguously worded, satisfactorily distinguished from the other Agreement terms, and drawn in suitably broad language to provide a consumer with reasonable notice of the requirement to arbitrate all possible claims arising under the contract.
>
> [*Curtis*, *supra*, 413 *N.J. Super.* at 33.]

Applying this rule here, we conclude the arbitration provision at issue survives this level of scrutiny. In the first place, the clause is not hidden in fine print but rather set off in a separate paragraph (#16) and bears the title "Arbitration" in bold, thus distinguishing it from other terms of the agreement. Moreover, the arbitration clause is plainly and clearly written, expressly stating: "In the event of any claim or dispute between [the client] and [defendant] USLSG related to this Agreement or related to any performance of any services related to this Agreement, the claim or dispute shall be submitted to binding arbitration upon the request of either party . . . ." (Emphasis added). The clause goes on to state, "[a]ny decision of the arbitrator shall be final and may be entered into judgment in any court of competent jurisdiction." (Emphasis added). Finally, the provision informs where the arbitration

shall take place, responsibility for the payment of the costs thereof, and the process under which it will be conducted. We find the consistency and clarity of the language employed allows the parties to reasonably understand the arbitration clause and to knowingly agree to be bound thereby.

Contrary to plaintiff's contention, we do not find the lack of express reference to a waiver of the right to sue in court or to arbitration as the "exclusive" remedy to be a bar to enforcement of the clause. In fact, we have previously upheld arbitration provisions in the absence of such language. *See, e.g., EPIX Holdings Corp., supra*, 410 *N.J. Super.* at 476; *Griffin v. Burlington Volkswagen, Inc.*, 411 *N.J. Super.* 515, 518 (App. Div. 2010) (approving arbitration provision that did not explicitly refer to a "jury trial" waiver).

Here, while the disputed provision did not explicitly state that plaintiff agreed to waive her right to try her dispute in court, it clearly and unambiguously stated that at the request of a party, *any* dispute relating to the underlying agreement *shall* be submitted to arbitration and the resolution of that forum shall be *binding* and *final*. Such language provides the parties reasonable notice of the requirement to arbitrate all claims under the contract and sufficiently distinguishes the arbitral forum, with its own processes and procedures, from a court of law, where the decision of the arbitrator may later be enforced. Thus, a reasonable person, by signing the agreement, understands that arbitration is the sole means of resolving contractual disputes upon the election of either party; that the resolution binds both parties and is final in nature; and that such resolution may be

reduced to a judgment in a separate and distinct judicial forum. Accordingly, we conclude the language used is sufficient to render the arbitration clause at issue valid and enforceable.

Affirmed.

Appendix C

Filed Aug. 21, 2012
Steven F. Nemeth, J.S.C.

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PATRICIA ATALESE	:	SUPERIOR COURT OF NEW JERSEY LAW DIVISION SPECIAL CIVIL PART
Plaintiff(s),	:	OCEAN COUNTY
	:	DOCKET NO: DC-006622-12
U.S. LEGAL SERVICES GROUP, a professional corporation of the State of California, John Does 1-10, Corporations 1-10, XYZ Partnerships 1-10, XYZ, LLC 1-10	:	*Civil Action*
	:	**ORDER COMPELLING ARBITRATION AND DISMISSING COMPLAINT WITH PREJUDICE**
v.	:	
Defendant(s).	:	

This matter having been presented to the Court upon Defendant, U.S. Legal Services Group, P.C.'s motion seeking an Order Compelling Arbitration and Dismissing the Plaintiff, Patricia Atalese's complaint with Prejudice, and the Court having considered the submissions of the parties and for good cause shown,

IT Is on this 21st day of Aug., 2012 ORDERED:

1. The parties are referred to arbitration pursuant to the terms of the arbitration clause contained in the agreement between them;
2. The Plaintiff s complaint is dismissed without prejudice; and
3. A copy of this Order shall be served upon all parties within seven days.

Steven F. Nemeth

_____

Steven F. Nemeth, J.S.C.

_X_ Opposed

_____ Unopposed

For the reasons expressed on the record on Aug 21, 2012

ORAL DECISION RENDERED DATE

Aug 21, 2012

Appendix D

Contract

RETAINER AGREEMENT

This agreement for legal services ("Agreement") is between US Legal Services Group ("USLSG") and Patricia Atalese ("Client") relating to reparation services on Client's unsecured debt.

By checking the box next to each paragraph, you are stating that you have read and you understand the paragraph.

…

☑ 16. **Arbitration**: In the event of any claim or dispute between Client and USLSG related to this Agreement or related to any performance of any services related to this Agreement, the claim or dispute shall be submitted to binding arbitration upon the request of either party upon the service of that request by the other party. The parties shall agree on a single arbitrator to resolve the dispute. The matter may be arbitrated either by the Judicial Arbitration Mediation Service or American Arbitration Association, as mutually agreed upon by the parties or selected by the party filing the claim. The arbitration shall be conducted in either the county in which Client resides, or the closest metropolitan county. Any decision of the arbitrator shall be final and may be entered into any judgment

in any court of competent jurisdiction. The conduct of the arbitration shall be subject to the then current rules of the arbitration service. The costs of arbitration, excluding legal fees, will be split equally or be borne by the losing party, as determined by the arbitrator. The parties shall bear their own legal fees.

…