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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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9 CoreCivic of Tennessee,

No. CV-21-00410-PHX-MTL

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Petitioner,

ORDER

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v.

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Local 825 International Union, Security,
Police and Fire Professionals of America, et
al.,

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Respondents.

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After CoreCivic of Tennessee (“CoreCivic”) terminated Guadalupe Luna-Ramirez the Local 825 International Union, Security, Police and Fire Professionals of America (“Union”) contested the termination by filing a grievance under the collective bargaining agreement (“CBA”). (Doc. 1-2 at 5.) The grievance was moved to arbitration under Article 17 of the CBA. (*Id.* at 5, 30.) After an arbitration award was issued, CoreCivic filed a Petition and Motion to Vacate Arbitrator’s Award Under § 301 of the Labor Management Relations Act (“Petition”) (Doc. 1) alleging grounds to vacate the arbitrator’s award. The Union has moved to dismiss. (Doc. 9, the “Motion”.) The Parties fully briefed the Motion and the Court held oral argument. The Court resolves the Motion as follows.

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I. FACTUAL BACKGROUND

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A. Ramirez’s Relevant Work History

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Ramirez was hired by CoreCivic around October 2014 as a corrections officer at the Central Arizona Florence Correctional Center (“CAFCC”) in Florence, Arizona.

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1 (Doc. 1 at 2; Doc. 1-2 at 86.) He was a member of the Union. (*See* Doc. 9 at 4.) Before the
2 incident leading to his termination, he had never been disciplined while working at
3 CAFCC. (Doc. 1-2 at 166.) In December 2018, Ramirez underwent eye surgery.
4 (*Id.* at 271.) A side effect of this surgery was vertigo. (*Id.*) Ramirez took time off of work
5 in order to recover. (*Id.* at 281–83.) He was cleared to return to work on or around January
6 20, 2019. (*Id.* at 283–84.)

7 The incident that gave rise to this action occurred less than two weeks later.
8 (*Id.* at 325, 358.) Ramirez was working in the Restricted Housing Unit (“RHU”) where he
9 and one other officer would observe around 52 detainees. (*Id.*) Because they pose a danger
10 to themselves, “[t]he facility’s protocol for such detainees involved a physician who
11 examined the detainee and issued orders for their care and supervision. Those orders were
12 included on a form posted outside the detainee’s cell, referred to as the Monitoring Form
13 13-63A.” (*Id.* at 8.) Part of Ramirez’s assignment to the RHU involved completing 13-63A
14 verification forms, one for each detainee under observation, every 15 minutes. (*Id.* at 108–
15 09.) Observing these detainees meant that Ramirez was required to make regular rounds—
16 walking to where each detainee was held and identifying their behavior at the time of
17 observation. (*See* Doc. 1-2 at 111; Doc. 9 at 5.)

18 During the first hour of his shift, Ramirez’s vertigo began to spike. (Doc. 1-2 at 286–
19 87; *see id.* at 286–288.) As it became progressively more severe, he was at risk of falling.
20 (*Id.* at 286–88.) This forced him to walk slowly while on his shift. (*Id.*) This made
21 completing his rounds in the required 15-minute increments difficult. (*Id.*) And so, he asked
22 his supervisor for an accommodation. (*Id.*) Instead of working a station that involved
23 walking, he asked to be reassigned to a position where he could sit, but his request was
24 denied. (*Id.*) Because Ramirez had to slow down while making his rounds, he was unable
25 to complete them within 15 minutes, and falsified several entries on the 13-63A forms as
26 a result. (*Id.* at 271–72, 280–81, 286–88.) No detainees were harmed. (*Id.* at 166.)

27 **B. CoreCivic’s Internal Investigation**

28 The completed 13-63A forms are reviewed by medical quality assurance nurses.

1 (*Id.* at 123, 128, 157.) These quality assurance reviews are done at random on a quarterly
2 basis meaning that any forms can be pulled at any time during the quarter they are
3 submitted. (*Id.* at 132.) The nurse checks the form under review against the video record
4 captured by surveillance cameras. (*Id.* at 8.) A nurse noticed inconsistencies between
5 Ramirez’s entries and the timestamps on the video for one of the cells he was supposed to
6 be monitoring. (*Id.*) The Assistant Chief of Security, David Running, was alerted, and he
7 determined that Ramirez falsified four 13-63A form entries. (*Id.*) Thus, Chief Running
8 began a more detailed investigation. (*Id.* at 8, 132, 268–70; Doc. 1 at 7.)

9 Chief Running asked Ramirez about the false entries, and Ramirez told him that he
10 was busy; he did not mention his vertigo. (Doc. 1 at 9–10; Doc. 1-2 at 363.) On April 16,
11 2019, Warden Kristopher Kline fired Ramirez for “failure to follow procedures,
12 misconduct related to safety and Security, Misconduct related to job performance, and
13 violation of the ‘[CBA] rules.’” (Doc. 1-2 at 472; *see id.* at 15, 17.) Specifically,
14 CoreCivic’s internal investigation found that Ramirez “failed to perform required duties
15 pertaining to close observation safety and welfare checks of a CAFCC at-risk detainee
16 housed in the facility’s [RHU] on suicide precautions” and “falsified four written entries
17 on official records in an attempt to cover up his failure to perform his suicide prevention
18 related duties.” (Doc. 1 at 2–3.)

19 Thereafter, the Union filed a grievance seeking to have Ramirez reinstated with a
20 one-day suspension based on the discipline other officers had received. (Doc. 1-2 at 10.)
21 The Union alleged that just cause for the termination did not exist and that Ramirez
22 received disparate treatment because he was a Union member.¹ (Doc. 1 at 5.)

23 ¹ The Parties’ briefs’ characterizations of the nature of the grievance are inconsistent.
24 CoreCivic’s Petition claims, “[t]he Union’s grievance did not contest the circumstances
25 upon which the discipline was based, i.e., that [Ramirez] failed to perform required close
26 observation safety checks and falsified records indicating that the checks had been
27 performed. Rather, the Union challenged the penalty alone, claiming [Ramirez’s]
28 termination was inconsistent with discipline issued to other correctional officers who
committed a similar offense. The grievance sought to have the termination reduced to a
one-day suspension.” (Doc. 1 at 6; *see also* Doc. 9 at 6–7.) But the Union claims it “filed
and pursued a grievance alleging that just cause did not exist for [Ramirez’s] termination
to arbitration, which occurred on September 22, 2020 before Arbitrator Mayne.” (Doc. 9
at 6–7.) Despite this conflict in the briefing, the arbitrator’s opinion clearly outlines that
both Parties’ issue statements filed before arbitration included a question about whether

1 **C. The Arbitration Hearing and Award**

2 The relevant portions of the CBA governing the grievance and arbitration
3 procedures and relating to this dispute include Article 7 (“Management Rights”), Article
4 16 (“Discipline and Discharge”), and Article 17 (“Grievance and Arbitration”). (Doc. 1-
5 2 at 25–26, 29–31.) Specifically, Article 7, Section 1c reserves to CoreCivic the “right to
6 discipline, suspend or discharge [employees] for just cause.” (*Id.* at 25.) In Article 7,
7 Section 2, CoreCivic “retains the right to establish and enforce work rules and
8 policies” Furthermore, “[w]ork rules and policies set out in [the CBA] or in existence
9 at the time of the [CBA] are presumed reasonable, in contract conformity, and just cause
10 for discipline.” (*Id.*) Article 16, Section 1 establishes that “[e]mployees shall be subject to
11 discipline, suspension, or discharge for just cause including, but not limited to, violations
12 set out in the Work Rule Appendix to [the CBA].” (*Id.* at 29.) Additionally, “[i]t is
13 expressly understood and agreed that just cause for discharge or other discipline is by no
14 means limited to” those reasons. (*Id.*) Article 16, Section 4 outlines CoreCivic’s policy of
15 “progressive discipline” but maintains that “the appropriate penalty shall be at the
16 discretion of [CoreCivic].” (*Id.*)

17 Article 17, Section 5b outlines that, in an arbitration, the arbitrator “shall have no
18 power to substitute [her] discretion in cases where [CoreCivic] has retained discretion or
19 has been given discretion by [the CBA].” (*Id.* at 31.) Article 17, Section 5b also maintains
20 that “[t]he arbitrator selected in accordance with the above procedure shall decide the
21 dispute and [her] decision shall be final and binding on [CoreCivic], the Union, and
22 [Ramirez], provided the arbitrator shall only have authority to decide if [CoreCivic]
23 violated the express terms of [the CBA]. [Sh]e shall have no authority to add to, subtract
24 from, supplement or modify [the CBA] in any way.” (*Id.*) Additionally, Article 17, Section
25 5e establishes:

26 In arbitrations which involve discipline for inappropriate
27 relationships or conduct of business with an inmate or inmates
28 or introduction of contraband to the Prison, theft, or positive

CoreCivic had “just cause to terminate [Ramirez].” (Doc. 1-2 at 6.)

1 drug or alcohol test, as defined by the applicable substance
2 abuse testing policy, the arbitrator’s authority shall be limited
3 solely to a determination of whether or not the employee
4 actually committed the act or acts for which he was disciplined
5 and, absent a finding of unreasonableness by the Arbitrator, the
6 Employer’s decision of the kind and degree of discipline shall
7 not be disturbed. *In all other matters of Employer discipline,*
8 *the arbitrator shall determine the circumstances upon which*
the discipline was based and if the circumstances were
substantially as found by the Employer, the discipline will not
be disturbed absent an express finding of unreasonableness.

9 (*Id.* (emphasis added)) Thus, the CBA outlines one standard—just cause—which
10 automatically warrants disciplinary action. (*See* Doc. 1-2 at 25–26, 29–31.) Some actions,
11 like violating work rules, are deemed automatic grounds for just cause. (*See id.*) The
12 arbitrator can review discipline levied by CoreCivic based on this just cause standard.
13 (*See id.*) But in the CBA, CoreCivic bargained for and reserved discretion regarding
14 disciplinary actions it takes “absent an express finding of unreasonableness” by the
15 arbitrator. (*Id.* at 31; *see id.* at 25–26, 29–31.)

16 Pursuant to the CBA’s terms, the grievance was taken to arbitration on September
17 22, 2020. (*Id.* at 5.) The Parties selected an arbitrator, Renee Mayne, to preside over a
18 dispute involving the termination of Ramirez. (*Id.*) The Union represented Ramirez at the
19 arbitration. (*Id.*) The arbitrator considered testimony she heard from several witnesses, the
20 evidence submitted in the arbitration, and the briefing the parties submitted before and after
21 the arbitration before determining the arbitration award. (*See id.* at 4–19.)

22 On December 11, 2020, the arbitrator issued her award. (*Id.* at 2–20.) She found that
23 Ramirez’s conduct was serious, violated CoreCivic’s policies and the CBA, and confirmed
24 many of the facts on which CoreCivic based its punishment. (*See id.*) But in light of
25 mitigating circumstances such as Ramirez’s good work record and his medical history, she
26 determined CoreCivic did not adequately prove it had just cause to terminate Ramirez
27 because his confession without video evidence did not establish just cause for termination.
28 (*See id.* at 17–18.) The award hinged on two material factors. First, the arbitrator provided

1 much weight to Ramirez’s explanation that he did not tell Chief Running about his vertigo
2 on March 29. (*Id.* at 289–90.) Ramirez said nothing because he believed his prior good
3 work record would prevent him from being fired and reporting the accommodation
4 rejection would make his supervisor look bad. (*Id.*) Instead of reporting his supervisor’s
5 decision to reject his accommodation, he wanted a light punishment. (*Id.*) Second, although
6 video evidence existed, CoreCivic did not to use it at the arbitration. (*Id.* at 11.) The video
7 showed that Ramirez had failed to make his required detainee checks and instead had
8 falsified evidence. (*Id.* at 11; Doc. 11 at 7.) CoreCivic previously indicated in an internal
9 investigation report that the video recording was the key piece of evidence that it
10 considered when deciding on Ramirez’s punishment. (Doc. 1-2 at 11.) Although she
11 determined that there was insufficient evidence to fire Ramirez, she also decided that there
12 was just cause to for a one-day suspension. (*Id.*) She reduced his discipline from
13 termination to a one-day suspension. (*Id.* at 18.)

14 **D. CoreCivic’s Petition to This Court**

15 CoreCivic filed its Petition with this Court claiming the arbitrator “ignored the plain
16 and unambiguous language of the [CBA], exceeded the scope of her authority, and violated
17 public policy by ordering” Ramirez’s reinstatement. (Doc. 1 at 10.) The Union responded
18 with the instant Motion to Dismiss. (Doc. 9.)

19 **II. STANDARD OF REVIEW**

20 **A. Motion to Dismiss**

21 A complaint must contain “a short and plain statement of the claim showing that the
22 pleader is entitled to relief” such that the defendant is given “fair notice of what
23 the . . . claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S.
24 545, 555 (2007) (quoting Fed. R. Civ. P. 8(a)(2); *Conley v. Gibson*, 355 U.S. 41, 47 (1957)).
25 A complaint does not suffice “if it tenders ‘naked assertion[s]’ devoid of ‘further factual
26 enhancement.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*,
27 550 U.S. at 556). Dismissal under Rule 12(b)(6) “can be based on the lack of a cognizable
28 legal theory or the absence of sufficient facts alleged under a cognizable legal theory.”

1 *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988). A complaint,
2 however, should not be dismissed “unless it appears beyond doubt that the plaintiff can
3 prove no set of facts in support of the claim that would entitle it to relief.” *Williamson v.*
4 *Gen. Dynamics Corp.*, 208 F.3d 1144, 1149 (9th Cir. 2000).

5 The Court must accept material allegations in a complaint as true and construe them
6 in the light most favorable to Plaintiffs. *North Star Int'l v. Arizona Corp. Comm'n*, 720
7 F.2d 578, 580 (9th Cir. 1983). “Indeed, factual challenges to a plaintiff’s complaint have
8 no bearing on the legal sufficiency of the allegations under Rule 12(b)(6).” *See Lee v. City*
9 *of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001). Review of a Rule 12(b)(6) motion is
10 “limited to the content of the complaint.” *North Star Int'l*, 720 F.2d at 581.

11 **B. Vacating an Arbitration Award**

12 “The cardinal precept of arbitration is that it is ‘simply a matter of contract between
13 the parties; it is a way to resolve those disputes—but only those disputes—that the parties
14 have agreed to submit to arbitration.’” *Loc. Joint Exec. Bd. v. Mirage Casino-Hotel, Inc.*,
15 911 F.3d 588, 595 (9th Cir. 2018) (citing *First Options of Chicago, Inc. v. Kaplan*, 514
16 U.S. 938, 947–48 (1995)). Section 301 of the Labor Management Relations Act
17 (“LMRA § 301”), 29 U.S.C. § 185 *et seq.*, grants this Court jurisdiction to vacate or enforce
18 an arbitration award issued pursuant to a collective bargaining agreement. *See,*
19 *e.g., Sprewell v. Golden State Warriors*, 266 F.3d 979, 986 (9th Cir. 2001) (citing *United*
20 *Steelworkers of Am. v. Enter. Wheel & Car Corp.*, 363 U.S. 593 (1960)). “[B]ecause federal
21 labor policy strongly favors the resolution of labor disputes through arbitration,” *United*
22 *Food & Commercial Workers Int'l Union, Local 588 v. Foster Poultry Farms*, 74 F.3d 169,
23 173 (9th Cir.1995), *as amended* (cleaned up), “judicial review of an arbitration award is
24 both limited and highly deferential.” *Sheet Metal Workers' Int'l Ass'n Loc. Union No. 359*
25 *v. Madison Indus., Inc.*, 84 F.3d 1186, 1190 (9th Cir. 1996).

26 “Arbitration awards are ordinarily upheld so long as they represent a plausible
27 interpretation of the contract.” *Aramark Facility Servs. v. Serv. Emps. Int'l Union, Local*
28 *1877*, 530 F.3d 817, 823 (9th Cir.2008) (internal quotation marks omitted). Indeed, “as

1 long as the arbitrator is even arguably construing or applying the contract and acting within
2 the scope of his authority, that a court is convinced he committed serious error does not
3 suffice to overturn his decision.” *United Paperworkers’ Int’l Union v. Misco, Inc.*, 484 U.S.
4 29, 38 (1987); *see also San Francisco–Oakland Newspaper Guild v. Tribune Pub. Co.*, 407
5 F.2d 1327, 1327 (9th Cir.1969) (per curiam) (“[S]o far as the arbitrator’s decision concerns
6 construction of the contract, the courts have no business overruling him, because their
7 interpretation of the contract is different than his.”). Judicial review of an arbitrator’s award
8 is limited and deferential because “[i]t is the arbitrator’s construction which was bargained
9 for; and so far as the arbitrator’s decision concerns construction of the contract, the courts
10 have no business overruling him because their interpretation of the contract is different
11 from his.” *Federated Dep’t Stores v. United Foods & Com. Workers Union, Loc. 1442*,
12 901 F.2d 1494, 1496 (9th Cir. 1990) (citing *Enter. Wheel*, 363 U.S. at 599). The Court is
13 tasked with “determin[ing] whether the arbitrator interpreted the collective bargaining
14 agreement, not whether [the arbitrator] did so correctly.” *Hawaii Teamsters & Allied*
15 *Workers Union, Local 996 v. United Parcel Serv.*, 241 F.3d 1177, 1178 (9th Cir. 2001)
16 (citing *Stead Motors of Walnut Creek v. Auto. Machinists Lodge No. 1173*, 886 F.2d 1200,
17 1204 (9th Cir.1989) (en banc).

18 Generally, courts have recognized four occasions that merit vacating an arbitration
19 award: “(1) when the award does not draw its essence from the collective bargaining
20 agreement; (2) when the arbitrator exceeds the scope of the issues submitted; (3) when the
21 award runs counter to public policy; and (4) when the award is procured by
22 fraud.” *Sprewell*, 266 F.3d at 986. CoreCivic challenges the arbitration award under the
23 first three exceptions. (Doc. 1 at 11–12.)

24 **III. DISCUSSION**

25 **A. Waiver to Argue for a No-Discretion Standard**

26 For the first time in its reply brief, the Union argues that CoreCivic raises the no-
27 discretion standard as a justification for vacating the arbitration award. (Doc. 12 at 2.) The
28 Union asserts that CoreCivic asked the arbitrator “to apply a normal discretionary just

1 cause analysis” in its opening statement during the arbitration, and did not argue for a no-
2 discretion standard in its post-hearing brief. (Doc. 12 at 2–3.) But here, according to the
3 Union, CoreCivic argues for a no discretion standard “under which it has complete
4 discretion to determine the severity of a penalty for any proven violation.” (*Id.* at 3.)

5 CoreCivic disagrees. (*See* Doc. 17 at 2–6.) It argues that it has consistently
6 maintained that if the arbitrator found that it had just cause to punish Ramirez, then the
7 arbitrator did not have the discretion to change the penalty without making an express
8 finding of unreasonableness. (*See id.*) CoreCivic cites to multiple excerpts from the
9 Petition, its post-hearing brief, and its arguments during the arbitration hearing. (*See id.*)

10 “In general, federal courts do not permit a party to withhold an issue or argument
11 during arbitration and then, upon losing, raise it to the reviewing court.” *Boehringer*
12 *Ingelheim Vetmedica, Inc. v. Food and Commercial Workers Dist. Local 2*, 739 F.3d 1136,
13 1140 (8th Cir. 2014). Parties “cannot stand by during arbitration, withholding certain
14 arguments, then, upon losing the arbitration, raise such arguments in federal court. We will
15 not tolerate such sandbagging.” *Nat’l Wrecking Co. v. Int’l Bhd. of Teamsters, Local 731*,
16 990 F.2d 957, 960 (7th Cir. 1993).

17 In a twist of irony, the Union fails to explain why this Court need address its
18 arguments at all as, typically, “arguments raised for the first time in a reply brief are
19 waived.” *Graves v. Arpaio*, 623 F.3d 1043, 1048 (9th Cir. 2010). Regardless, the Court
20 will consider the merits and finds that CoreCivic has not waived the argument that the
21 arbitrator failed to make an express finding of unreasonableness—the only way
22 CoreCivic’s discretion to discipline an employee can be disturbed. (*See* Doc. 17 at 3–6.)
23 The Union’s argument that CoreCivic is trying to change the standard from just cause to
24 no-discretion is simply not supported by the record.

25 **B. Scope of the Issues Submitted**

26 “[A]n arbitrator’s interpretation of the scope of the issue submitted to [her] is
27 entitled to the same deference accorded [her] interpretation of the [CBA].” *Pack Concrete,*
28 *Inc. v. Cunningham*, 866 F.2d 283, 285 (9th Cir. 1989). Indeed, “the scope of the

1 arbitrator’s jurisdiction extends to issues not only explicitly raised by the parties, but all
2 issues implicit within the submission agreement.” *Schoendube Corp. v. Lucent Techs., Inc.*,
3 442 F.3d 727, 733 (9th Cir. 2006).

4 CoreCivic argues that reducing Ramirez’s punishment was not an issue presented
5 because CoreCivic had just cause to discipline Ramirez and the arbitrator never made the
6 express finding of unreasonableness necessary to adjust CoreCivic’s disciplinary decision.
7 (See Docs. 1, 11, 17.) CoreCivic asserts that under Article 16, Sections 1 and 4, it, by
8 definition, had just cause to terminate Ramirez because he violated a work rule when he
9 falsified records. (See Doc. 11 at 5–6.) And so, CoreCivic argues, the CBA only permitted
10 the arbitrator to reduce Ramirez’s punishment if she expressly found that it was
11 unreasonable, which she did not. (See *id.* at 6–7.) Thus, CoreCivic argues, the arbitrator
12 went beyond the scope of the issues presented when she considered mitigating evidence,
13 and by reducing the disciplinary sanction without making the required finding. (See *id.* at 8–
14 11.)

15 The Union argues that the mitigating factors were within the scope of the issues
16 presented because it alleged that CoreCivic had failed to properly accommodate Ramirez’s
17 medical issues. (Doc. 9 at 13.) The Union also observes that “[CoreCivic’s] claim that [the]
18 [a]rbitrator . . . exceeded the scope of her authority in issuing the Opinion and Award
19 mirrors its claim that her award did not draw its essence from the CBA.” (*Id.* at 12.) Indeed,
20 CoreCivic’s own briefs do not contest that if the arbitrator had made an express finding of
21 unreasonableness, then the arbitrator would have been able to reduce Ramirez’s penalty.
22 (See Docs. 11, 17.)

23 Whether the arbitrator was allowed to consider evidence that CoreCivic did not
24 know, but could have learned about, when deciding if CoreCivic’s disciplinary action was
25 reasonable is a question of contract interpretation. This Court must defer to the arbitrator’s
26 interpretation of the CBA regarding what evidence she could and could not consider when
27 determining if CoreCivic had just cause. In fact, CoreCivic’s argument implicitly accepts
28 that the issue of penalty reduction was properly before the arbitrator because it agrees that

1 the arbitrator could have reduced Ramirez’s discipline if she made an express finding of
2 unreasonableness. (*See, e.g.*, Doc. 11 at 6; Doc. 17 at 6.) Even if, as CoreCivic argues, the
3 arbitrator never made that express finding, it does not mean the award was beyond the
4 scope of the issues presented. The arbitrator was always empowered by the CBA to make
5 such a decision if the proper conditions were satisfied. For these reasons, the Motion to
6 Dismiss will be granted regarding the Petition’s claims that the arbitrator acted beyond the
7 scope of the issues presented.

8 C. Essence of the CBA

9 An arbitration “award is legitimate only so long as it draws its essence from the
10 collective bargaining agreement.” *Enter. Wheel*, 363 U.S. at 597. “An award draws its
11 essence from the CBA when it is based on language in the CBA.” *SFIC Properties, Inc. v.*
12 *Int’l Ass’n of Machinists & Aerospace Workers, Dist. Lodge 94, Loc. Lodge 311*, 103 F.3d
13 923, 925 (9th Cir. 1996). Federal courts will set aside an arbitration award “for failing to
14 draw its essence from the contract in ‘those egregious cases in which a court determines
15 that the arbitrator’s award ignored the plain language of the contract.’” *Sprewell*,
16 266 F.3d at 986–87 (quoting *Stead Motors of Walnut Creek*, 886 F.2d at 1205–06 n. 6). “In
17 interpreting the contract, the arbitrator is not bound by precedent or by the record before
18 [her]” *Sheet Metal Workers’ Int’l Ass’n Loc. Union No. 359*, 84 F.3d at 1190.

19 CoreCivic argues that the arbitrator “only possessed authority to decide if CoreCivic
20 violated the express terms of the Agreement.” (Doc. 11 at 3.) CoreCivic asserts that under
21 the CBA it had just cause to discipline Ramirez up to and including termination because
22 he violated work rules.² (*Id.* at 3–4; *see id.*) And so, CoreCivic argues that the arbitrator
23 exceeded her authority from the CBA by reducing the penalty imposed on Ramirez despite
24 meeting the standard for just cause. (*See id.* at 4–11.)

25 CoreCivic also argues that the terms of the CBA unambiguously limit the
26 arbitrator’s power to modify the penalty imposed such that the arbitrator would need to
27 make an express finding that the penalty was unreasonable to modify the penalty imposed.

28 ² CoreCivic notes that whether Ramirez violated work rules is not disputed by the Parties
and that he admitted he failed to perform his duties and then falsified records. (*Id.* at 4.)

1 (See *id.* at 5–6.) Specifically, CoreCivic argues first that Article 17, Section 5b provides
2 that “the arbitrator ‘shall have no power to substitute their discretion’ in cases where
3 CoreCivic has retained discretion or has been given discretion by the [CBA];” second, the
4 Parties do not “dispute that CoreCivic retained the discretion to ‘discipline, suspend or
5 discharge for just cause” under Article 7, Section 1c; third, Article 16 grants CoreCivic
6 sole discretion “to set the appropriate disciplinary penalty for policy infractions;” and
7 fourth, Article 17, Section 5e “provides that in matters of discipline such as the underlying
8 arbitration, if the arbitrator determines the factual circumstances upon which the discipline
9 was based were substantially as found by CoreCivic, ‘the discipline will not be disturbed
10 absent an express finding of unreasonableness.” (See *id.*) But, CoreCivic argues, the
11 arbitrator never made that express finding. (See *id.*) It also argues that the mitigating factors
12 considered by the arbitrator do not constitute an express finding of unreasonableness and
13 do not justify the arbitrator disregarding the express language of the CBA which requires
14 such a finding. (See *id.* at 8–11.) Thus, the award deviates from the essence of the CBA.
15 (*Id.* at 7–8.)

16 CoreCivic finally argues that the only issue in dispute between the parties is whether
17 the arbitrator had the ability to reduce Ramirez’s punishment. (Doc. 17 at 6–7.) CoreCivic
18 asserts that the arbitrator did not make an express finding of unreasonableness and so the
19 award should be vacated. (See *id.* at 7–8.)

20 According to the Union, the arbitrator “was not required to make an express finding
21 that the disciplinary penalty was unreasonable in order to disturb the penalty imposed by
22 the Employer.” (Doc. 9 at 11.) The Union also argues that the arbitrator’s “determination
23 that [CoreCivic] lacked just cause to terminate [Ramirez] is a plausible interpretation of
24 the CBA.” (*Id.*) While CoreCivic was permitted to terminate employees for just cause and
25 has the sole discretion to determine the appropriate penalty when punishing an employee,
26 the Union argues that the arbitrator determined that CoreCivic “did not establish just cause
27 for termination primarily because the video evidence was not introduced to dispel the
28 Union’s argument that mitigating circumstances existed.” (*Id.*)

1 The Union also argues that Article 16 of the CBA does not give CoreCivic sole
2 discretion to discipline employees. (Doc. 12 at 4–5.) Instead, the Union asserts, under
3 Article 16, CoreCivic was only empowered to punish employees for “‘just cause,’ which
4 by nature allows the [a]rbitrator discretion to review the Company’s decision.” (*Id.* at 5.)
5 The Union then notes that while the CBA never grants CoreCivic sole discretion, it does
6 mention the concept of progressive discipline. (*Id.*) Progressive discipline is the concept
7 “that discipline starts with a small citation that gradually increases for further disciplinary
8 violations.” (*Id.*)

9 The Union also asserts that the CBA provides that the arbitrator has the authority to
10 change the punishment levied if the arbitrator makes a finding of unreasonableness.
11 (*Id.* at 6–7.) Thus, the Union argues, the CBA clearly gives the arbitrator the “discretion to
12 reverse [Ramirez’s] termination if she finds the circumstances different than that presented
13 by CoreCivic or if she found CoreCivic’s discipline of [Ramirez] unreasonable.” (*Id.* at 7.)
14 Here, the Union argues that the award should be upheld because “the [a]rbitrator both
15 disagreed with the circumstances found by Core[C]ivic, and found Core[C]ivic’s decision
16 to terminate unreasonable.” (*Id.* at 7; *see id.*)

17 Under the CBA, CoreCivic had just cause to discipline Ramirez up to and including
18 termination because he violated work rules. (Doc. 11 at 3–4.) Even though CoreCivic had
19 just cause to terminate Ramirez, under Article 17, Section 5e, the arbitrator still had the
20 authority to reduce the punishment CoreCivic levied upon an express finding of
21 unreasonableness. (Doc. 1-2 at 31.) In her decision, the arbitrator notes that (1) Ramirez’s
22 “admission is insufficient to prove just cause for his discharge;” (2) if video evidence of
23 Ramirez failing to perform his checks had been presented, the mitigating factor of his
24 recent surgery might have been dispelled; and (3) “[w]ithout the video evidence,
25 [CoreCivic’s] case to prove just cause was significantly impaired.” (*Id.* at 18.) The
26 arbitrator concludes that “there was insufficient evidence to terminate [Ramirez] for
27 falsifying rounds documentation during his scheduled shift, but there was just cause for a
28 one-day suspension without pay.” (*Id.*) But the arbitrator never explicitly states in her

1 opinion that CoreCivic’s punishment was unreasonable. (*See id.*)

2 Although this Court exercises a highly deferential standard, an arbitrator cannot
3 flatly ignore the plain language of the CBA. Here, the CBA leaves no room for error or
4 interpretation. If circumstances were substantially as found by CoreCivic, the CBA
5 requires the arbitrator to make an express finding of unreasonableness in order to reduce
6 the discipline CoreCivic levies on an employee. (*See id.* at 31.) The arbitrator did not make
7 an express finding of unreasonableness in her written award. Instead, she found that
8 CoreCivic lacked just cause to terminate Ramirez and then reduced the punishment. This
9 analysis fails to draw its essence from the CBA for two reasons.

10 First, the CBA expressly names a violation of work rules as just cause for
11 punishment up to and including termination. (*Id.* at 25, 29.) But the question here is *not*
12 whether just causes exists. The arbitrator’s statement that there was not just cause to fire
13 Ramirez is an egregious case of ignoring the CBA’s plain language. Second, the arbitrator
14 found the circumstances to be substantially as found by CoreCivic at the time of discipline
15 by confirming that Ramirez had in fact violated work rules. (*Id.* at 17–18.) Thus, the
16 arbitrator needed to make an express finding of unreasonableness in order to reduce
17 Ramirez’s punishment. Instead of making that finding, the arbitrator focused on mitigating
18 factors that, according to the arbitrator, undermined CoreCivic’s position that the
19 termination decision was supported by just cause. Such findings might imply that the
20 arbitrator believed that CoreCivic’s actions were unreasonable. But an express finding is
21 not an implied conclusion. The CBA requires more. As counsel emphasized at oral
22 argument, this Court must be highly deferential to an arbitrator’s interpretation of a CBA.
23 But this Court cannot ignore the CBA’s plain language. Express cannot mean implied. The
24 arbitrator’s award deviates from the plain language of the CBA. CoreCivic’s petition
25 therefore states a claim under LMRA § 301, 29 U.S.C. § 185 *et seq.*

26 **D. Public Policy**

27 “To vacate an arbitration award on public policy grounds, [a court] must (1) find
28 that ‘an explicit, well defined and dominant policy’ exists here and (2) that ‘the policy is

1 one that specifically militates against the relief ordered by the arbitrator.” *Sprowell*, 266
2 F.3d at 987 (citing *UFCW Local 588*, 74 F.3d at 174). “Any such public policy ‘must be
3 ascertained by reference to the laws and legal precedents and not from general
4 considerations of supposed public interests.” *Matthews v. Nat’l Football League Mgmt.*
5 *Council*, 688 F.3d 1107, 1111 (9th Cir. 2012) (citing *E. Associated Coal Corp. v. United*
6 *Mine Workers of Am., Dist. 17*, 531 U.S. 57, 62 (2000)). Federal regulations can be a
7 significant source for determining public policy. *See S. Cal. Gas Co. v. Util. Workers*
8 *Union, Local 132*, 265 F.3d 787, 803 (9th Cir. 2001) (citing *UFCW Local 588*,
9 74 F.3d at 174). But such regulations need to indicate whether they are intended “to
10 preempt already existing [CBAs] or to eliminate an employer’s duty to bargain under
11 federal labor laws.” *UFCW Local 588*, 74 F.3d at 174. “The party seeking to vacate the
12 arbitration award bears the burden of showing that the arbitration award violates an
13 ‘explicit, dominant and well-defined’ public policy.” *Id.*

14 CoreCivic argues that certain Federal regulations establish a public policy that the
15 arbitrator’s award contravenes.³ (*See Doc. 1 at 23–26.*) Specifically, CoreCivic cites the
16 United States Department of Homeland Security, U.S. Immigration and Customs
17 Enforcement Performance-Based National Detention Standards 2011 (“ICE PBNDS
18 2011”) and the Code of Federal Regulations, 5 CFR § 731.106 (“Designation of public
19 trust positions and investigative requirements”). (*Doc. 11 at 11.*) ICE PBNDS 2011 outlines
20 a number of compliance obligations and expectations to “protect[] the community, staff,
21 contractors, volunteers and detainees from harm by ensuring that facility security is
22 maintained and events which pose risk of harm are prevented.” 2011 OPERATIONS
23 MANUAL ICE PERFORMANCE-BASED NAT’L DET. STANDARDS 81 (2011)
24 <https://www.ice.gov/doclib/detention-standards/2011/2-4.pdf>. One expectation is that
25 facilities like CoreCivic housing ICE detainees will “develop and document

26
27 ³ The Court acknowledges the Union’s argument that the ICE PBNDS 2011 is not a Federal
28 regulation or a proper source where the United States government may articulate public
policy positions. (*Doc. 9 at 14–15.*) For the sake of argument, the Court assumes that
CoreCivic’s cited sources are legitimate sources capable of articulating Federal public
policy.

1 comprehensive detainee supervision guidelines . . .” and that “information about routine
2 procedures, emergency situations and unusual incidents will be continually recorded in
3 permanent post logs and shift reports” *Id.* Another is that CoreCivic will develop and
4 document comprehensive detainee supervision guidelines and supervise detainees to
5 prevent them from harming themselves or others. *Id.* at 82. Section 731.106 outlines three
6 levels of risk for each Federal agency position: high, medium, and low.
7 5 CFR § 731.106(a). “Positions at the high or moderate levels” are considered “public
8 trust” positions. 5 CFR § 731.106(b). “Such positions may involve policy making, major
9 program responsibility, public safety and health, law enforcement duties, fiduciary
10 responsibilities or other duties demanding a significant degree of public trust” *Id.*
11 “Public [t]rust positions,” CoreCivic argues, “require persons not only with the right job
12 skills, but also require a much higher degree of integrity and trustworthiness with
13 unwavering public confidence in the individual occupying the position.” (Doc. 1 at 25.)
14 Breaking these guidelines by falsifying records “violated the public trust bestowed on
15 [Ramirez] by the United States federal government as a correctional officer” working for
16 CoreCivic. (*Id.*) By extension, the public puts its trust not only in Ramirez, the correctional
17 officer, but also in CoreCivic, his employer, to properly house detainees. (*See id.* at 23–
18 26.) Thus, as it emphasized during oral argument, the award also violated CoreCivic’s duty
19 to the public. (*See id.* at 23–26; Doc. 11 at 11–12.)

20 Although this this Court must assume all facts alleged in the Petition to be true, this
21 Court also must ensure that the alleged facts show “that the arbitration award violates an
22 ‘explicit, dominant and well-defined’ public policy.” *UFCW Local 588*, 74 F.3d at 174.
23 The Court finds that CoreCivic’s Petition does not carry its weighty burden. Federal
24 regulations can be a significant source for determining public policy, but the regulations
25 on which CoreCivic relied do not establish a sufficiently specific public policy rule in these
26 circumstances. *S. Cal. Gas Co.*, 265 F.3d at 803. Broad statements in the Federal
27 Regulations about maintaining the public’s trust in correctional officers are far from a
28 specifically articulated public policy that this arbitration award violates. In fact,

1 CoreCivic's argument presents no logical end to its application. The Court cannot apply
2 CoreCivic's legal theory because it would swallow the narrow *Sprewell* exception.
3 *See, e.g., id.* at 795 (finding that applying a broad public policy argument with no logical
4 end would swallow the narrow rule in *Sprewell*). CoreCivic has not met its heavy burden
5 demonstrating the award violates an explicit, dominant, and well-defined public policy.
6 Thus, the Motion to Dismiss will be granted regarding the Petition's claims that the
7 arbitration award violated public policy.

8 **IV. CONCLUSION**

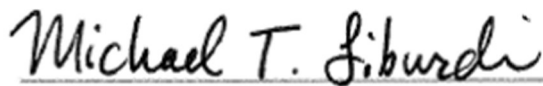
9 Accordingly,

10 **IT IS ORDERED granting in part and denying in part** Respondents' Motion to
11 Dismiss Petitioner's Petition and Motion to Vacate Arbitrator's Award under Fed. R. Civ.
12 P. 12(b)(6) (Doc. 9).

13 **IT IS FURTHER ORDERED** that the Petition's claims that the arbitrator acted
14 beyond the scope of the issues presented and that the arbitration award violate public policy
15 are dismissed with prejudice.

16 **IT IS FURTHER ORDERED** that the Petition's claims that the award did not
17 draw its essence from the CBA shall remain.

18 Dated this 9th day of February, 2022.

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20 

21 _____
22 Michael T. Liburdi
23 United States District Judge
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