Tentative Rulings for April 18, 2024
Department 403

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)
The above rule also applies to cases listed in this "must appear" section.

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

21CECG02514 ***Janet Hernandez v. Maria Navarro*** **is continued to Tuesday, May 21, 2024, at 3:30 p.m. in Department 403**

23CECG01394 ***Barbara Wheeler v. Maria Navarro*** **is continued to Thursday, May 16, 2024, at 3:30 p.m. in Department 403**

23CECG05134 ***Dwight Nelson v. Denise Brehm*** **is continued to Thursday, May 23, 2024, at 3:30 p.m in Department 403**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 403

Begin at the next page

(03)

Tentative Ruling

Re: ***Barnes v. Stonebridge Association***
Case No. 23CECG03903

Hearing Date: April 18, 2024 (Dept. 403)

Motion: Plaintiff's Motion for Leave to File First Amended Complaint

Tentative Ruling:

To grant plaintiff's motion for leave to file her first amended complaint. Plaintiff shall serve and file her first amended complaint within 10 days of the date of service of this order. All new allegations shall be in **boldface**.

Explanation:

First, while plaintiff has cited to Code of Civil Procedure section 426.50 in support of her motion to amend, section 426.50 only applies to motions to amend cross-complaints. Code of Civil Procedure section 426.26 is part of Article 2 of Title 6 of Part 2, which sets forth the procedures applicable to compulsory cross-complaints. Therefore, section 426.50 is not the applicable code section when seeking leave to amend a complaint. The correct code section is Code of Civil Procedure section 473, subdivision (a)(1), which sets forth the procedures for seeking leave to amend a complaint.

Under section 473, subdivision (a)(1), "The court may, in furtherance of justice, and on any terms as may be proper, allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect... The court may likewise, in its discretion, after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars..."

"'Code of Civil Procedure section 473, which gives the courts power to permit amendments in furtherance of justice, has received a very liberal interpretation by the courts of this state.... In spite of this policy of liberality, a court may deny a good amendment in proper form where there is unwarranted delay in presenting it.... On the other hand, where there is no prejudice to the adverse party, it may be an abuse of discretion to deny leave to amend.' 'In the furtherance of justice, trial courts may allow amendments to pleadings and if necessary, postpone trial.... Motions to amend are appropriately granted as late as the first day of trial ... or even during trial ... if the defendant is alerted to the charges by the factual allegations, no matter how framed ... and the defendant will not be prejudiced.'" (*Rickley v. Goodfriend* (2013) 212 Cal.App.4th 1136, 1159, citations omitted.) "Inexcusable delay in presenting a proposed amendment, however, constitutes grounds for denial of leave to amend." (*Young v. Berry Equipment Rentals, Inc.* (1976) 55 Cal.App.3d 35, 39, citations omitted.)

In the present case, plaintiff seeks leave to amend to add a new cause of action for breach of fiduciary duty, as well as a prayer for punitive damages. The plaintiff does not appear to have unduly delayed in seeking leave to amend, as the case has only

been pending for about a year and a half and there is no trial date set. Nor has defendant made any showing that it would be prejudiced by the proposed amendment. Defendant does have a motion for summary judgment set for June 26, 2024, which may be affected by the amendment, but this fact alone does not appear to constitute the kind of prejudice that would justify denying leave to amend.

Nevertheless, defendant argues that the court should deny leave to amend because the new cause of action does not add any new facts or different legal theories that are distinct from the claims she has already alleged for negligence and premises liability. Defendant contends that plaintiff's new claim for breach of fiduciary duty is simply a reformulation of her negligence claims, and that she has not alleged any facts or cited to any part of the governing documents of the homeowners' association that would justify imposing a special fiduciary duty to protect her from attacks by a neighbors' dogs. Defendant also contends that there are no facts alleged to support a finding of malice, fraud, or oppression needed to award punitive damages. (Civil Code, § 3294.) Therefore, defendant concludes that the court should deny leave to amend.

However, as discussed above, there is a policy of liberally granting leave to amend the complaint absent a showing of undue delay and prejudice to the other party. (*Rickley v. Goodfriend*, *supra*, 212 Cal.App.4th at p. 1159.) Here, it does not appear that plaintiff has unduly delayed in seeking to amend the complaint, nor does it appear that defendant would be prejudiced by the amendment. While defendant contends that plaintiff's new claims are not well alleged, such contentions are best raised by a demurrer or motion to strike, not opposition to a motion to amend.

It is true that the court may deny leave to amend where the proposed amendment completely fails to state a valid claim. (*Foxborough v. Van Atta* (1994) 26 Cal.App.4th 217, 230.) Here, however, it is not clear that plaintiff cannot state a valid claim for breach of fiduciary duty against the defendant, as courts have found that homeowners' associations do owe fiduciary duties toward their members. (*Raven's Cove Townhomes, Inc. v. Knuppe Development Co*. (1981) 114 Cal.App.3d 783, 799; *Cohen v. Kite Hill Community Assn.* (1983) 142 Cal.App.3d 642, 650–651.) While defendant argues that its fiduciary duty does not extend to protecting plaintiff from her neighbors' dogs, this is an issue that is best resolved by way of a demurrer or motion for summary judgment, not by denying leave to amend to assert the proposed claim. Likewise, while defendant contends that plaintiff has not alleged any facts to show malice, fraud, or oppression to support her claim for punitive damages, this is a contention that should be raised in a motion to strike, not opposition to a motion to amend. Therefore, the court intends to grant the plaintiff's motion for leave to file her first amended complaint.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS (Judge's initials) on 4/12/2024 (Date).

(35)

Tentative Ruling

Re: ***Blanco v. Pacheco et al.***
Superior Court Case No. 21CECG01940

Hearing Date: April 18, 2024 (Dept. 403)

Motion: By Defendants Irma Serrano Pacheco and Edsel Antunez for Bifurcation of Trial

Tentative Ruling:

To deny, without prejudice.

Explanation:

Defendants Irma Serran Pacheco and Edsel Antunez (collectively "Defendants") move to bifurcate trial into a liability phase and a damages phase.[1] The decision to grant or deny a motion to bifurcate issues and to have separate trials, lies within the court's sound discretion. (Code Civ. Proc. §§ 598, 1048, subd. (b); *Grappo v. Coventry Financial Corp*. (1991) 235 Cal.App.3d 496, 503-504; *see also Cook v. Superior Court* (1971) 19 Cal.App.3d 832, 834.) The court also has the power to "provide for the orderly conduct of proceedings before it," and to "amend and control its process and orders so as to make them conform to law and justice." (Code Civ. Proc. § 128, subd. (a)(3),(8).)

Defendants submit that they will call eight witnesses in the proposed liability phase, and that none of the eight witnesses will overlap with any damages issue. Plaintiffs Daniel Ricky Blanco and Oscar Rudolfo Blanco (collectively "Plaintiffs") submit that they intend to submit the same evidence to prove liability as to prove damages as a factor of the overall award sought.

The issue is premature. No witnesses have been proposed actually to appear at trial. Neither is it clear whether those witnesses will be unique in their testimony to only speak about, among other things, Plaintiffs' general damages. Consequently, judicial economy favors determining factors of trial sequence and bifurcation closer to trial when trial scheduling is more in focus, perhaps as a motion in limine. The motion is denied, but without prejudice.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS on 4/15/2024.
(Judge's initials) (Date)

[1] Defendants' Request for Judicial Notice is granted.

(24)

Tentative Ruling

Re: ***Alaniz v. Singh***
Superior Court Case No. 23CECG02734

Hearing Date: April 18, 2024 (Dept. 403)

Motion: Application of Michael R. Cowen to Appear *Pro Hac Vice*

Tentative Ruling:

To grant. The applicant has satisfied the requirements of California Rules of Court, Rule 9.40. No appearance required.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS on 4/16/2024.
(Judge's initials) (Date)

(27)

Tentative Ruling

Re: ***Henry Jimenez v. Dora Marmolejo Duarte***
Superior Court Case No. 17CECG04132

Hearing Date: April 18, 2024 (Dept. 403)

Motion: By Plaintiff to Enforce Settlement

Tentative Ruling:

To grant. The proposed order shall be modified to show a debt of $22,500.

Explanation:

"Code of Civil Procedure section 664.6 provides a summary procedure to enforce a settlement agreement by entering judgment pursuant to the terms of the settlement…." (*Hines v. Lukes* (2008) 167 Cal.App.4th 1174, 1182, internal citations omitted).) As with law and motion matters generally, the court may receive evidence in determining motions under section 664.6. *(Pajaro Valley Water Management Agency v. McGrath* (2005) 128 Cal.App.4th 1093, 1107; see also Cal. Rule of Court, rule 3.1306(a); *Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 810.)

Plaintiff's counsel's declaration attaches the subject fully executed settlement agreement which provides that the court retains enforcement jurisdiction (see West, Decl. Ex. A, § 14) and that the payments are to be paid to counsel. (*Id.* § 1.) Unlike that offered in support of the previous motion, here counsel's declaration specifically confirms that, under the settlement agreement terms, he was to directly receive the settlement payments, only one payment was received, and that communication with opposing counsel has ceased. (*Id*. *passim*.)

The motion is unopposed, and thus plaintiff's evidence is uncontroverted. Therefore, the motion is granted. Because plaintiff's evidence shows that one $2,500 payment was received, the total debt is now $22,500, not the original $25,000 as stated in the settlement agreement.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS on 4/16/2024.
(Judge's initials) (Date)

(46)

Tentative Ruling

Re: ***Julia Castro v. Amy Zwaan et al.***
Superior Court Case No. 23CECG02824

Hearing Date: April 18, 2024 (Dept. 403)

Motion: Default Prove-Up

Tentative Ruling:

To take the matter off calendar.

Explanation:

A hearing for default judgment is premature. Plaintiff has not filed any paperwork in conjunction with this default prove-up hearing pursuant to Rules of Court, rule 3.1800. More importantly, neither defendant to this action has been defaulted. In fact, an answer to the complaint was filed by defendant Transamerica Life Insurance Company on April 15, 2024, and their default cannot now be taken.

Furthermore, even if the other defendant, Amy Nuttall Zwaan, is eventually defaulted, it does not appear it would be proper to grant a default judgment against her while the litigation proceeds as to the appearing defendant. Pursuant to Code of Civil Procedure section 579, judgment as to less than all of the named defendants is only proper where the court, in its discretion, determines "a several judgment is proper." In cases where there are some defaulting defendants and some answering defendants, and the defenses posed by the answering defendant go to the right of the plaintiff to recover at all, courts generally find that several judgments are not appropriate, and it is best to wait to enter judgment against the defaulted defendant until the case is tried on the merits. (*Kooper v. King* (1961) 195 Cal.App.2d 621, 629 (jury verdict finding answering defendant not liable meant no judgment could be obtained against the defaulting defendant, notwithstanding the default); *Mirabile v. Smith* (1953) 119 Cal.App.2d 685, 689 (Where liability alleged was joint, no judgment should be entered against defaulting defendant until merits of the underlying case was settled.); *Lynch v. Bencini* (1941) 17 Cal. 2d 521, 529 (Where liability was joint and several, default judgment should have been "held in abeyance" until the matter decided against answering defendant, although the judgment, when finally determined, "would be equally applicable against both of these defendants.").) Here, plaintiff alleges that defendant Zwaan was the agent of defendant Transamerica Life Insurance Company and was responsible for the annuity's Beneficiary Designation Form not being properly recorded, which resulted in damage to plaintiff. (Compl., ¶ 10.) Thus, joint and several liability is alleged.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS on 4/16/2024.
(Judge's initials) (Date)

(24)

Tentative Ruling

Re: ***Ophelia Lee v. Valen Lee***
Superior Court Case No. 21CECG01254

Hearing Date: April 18, 2024 (Dept. 403)

Motion: Default Prove-Up

Tentative Ruling:

To order off calendar, as premature.

Explanation:

Counsel should not have set a prove-up hearing until and unless defendants' defaults had been entered. Furthermore, counsel is directed to Local Rule 2.1.14, and in particular the direction that any default packets should be filed with the Clerk's Office *at least ten court days prior to the scheduled hearing date*. The court is aware that plaintiffs e-filed several documents on April 10, 2024, which was well short of 10 court days before the hearing. The clerk has not yet processed these documents out of the e-file queue, so it is as yet unknown whether the defendants' defaults will even be entered.

Once defendants' defaults have been entered, plaintiff may once again schedule a default prove-up hearing. There is no need to file the paperwork for the hearing again; the court will review what is currently in queue with the next prove-up hearing.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS on 4/17/2024.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Mejia v. Poindexter Nut Company, Inc.***
Superior Court Case No. 23CECG03574

Hearing Date: April 18, 2024 (Dept. 403)

Motion: by defendant Compelling Plaintiff to Arbitrate his Claims and Request to Stay the Proceedings

Tentative Ruling:

To grant the motion and compel plaintiff to arbitrate his individual claims and to stay the remaining proceedings.

Explanation:

Defendant moves for an order compelling plaintiff to arbitrate his individual claims, and requests to stay the action pending arbitration. Pursuant to the Federal Arbitration Act ("FAA"),

> 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 the refusal to perform the whole or any part thereof, … 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.)

"In recognition of Congress' principal purpose of ensuring that private arbitration agreements are enforced according to their terms, we have held that the FAA pre-empts state laws which 'require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration.'" (*Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University* (1989) 489 U.S. 468, 478, internal citations omitted.)

"California courts traditionally have maintained a strong preference for arbitration as a speedy and inexpensive method of dispute resolution. To this end, 'arbitration agreements should be liberally construed', with 'doubts concerning the scope of arbitrable issues [being] resolved in favor of arbitration.'" (*Market Ins. Corp. v. Integrity Ins. Co*. (1987) 188 Cal.App.3d 1095, 1098, internal citations omitted.) "This strong policy has resulted in the general rule that arbitration should be upheld 'unless it can be said with assurance that an arbitration clause is not susceptible to an interpretation covering the asserted dispute. [Citation.]' [Citations.] [¶] It seems clear that the burden must fall upon the party opposing arbitration to demonstrate that an arbitration clause *cannot* be interpreted to require arbitration of the dispute….'" (*Bono v. David* (2007) 147 Cal.App.4th 1055, 1062.)

However, "[a]s our Supreme Court stressed several decades ago, the contractual terms themselves must be carefully examined before the parties to the contract can be ordered to arbitration: "Although '[t]he law favors contracts for arbitration of disputes between parties' [citation], ' "there is no policy compelling persons to accept arbitration of controversies which they have not agreed to arbitrate...." ' [Citations.]" (*Id*. at p. 1063.)

> [W]hen a petition to compel arbitration is filed and accompanied by prima facie evidence of a written agreement to arbitrate the controversy, the court itself must determine whether the agreement exists and, if any defense to its enforcement is raised, whether it is enforceable. Because the existence of the agreement is a statutory prerequisite to granting the petition, the petitioner bears the burden of proving its existence by a preponderance of the evidence. If the party opposing the petition raises a defense to enforcement—either fraud in the execution voiding the agreement, or a statutory defense of waiver or revocation (see [Code Civ. Proc.,] § 1281.2, subds. (a), (b))—that party bears the burden of producing evidence of, and proving by a preponderance of the evidence, any fact necessary to the defense.

(*Rosenthal v. Great Western Fin. Securities Corp*. (1996)14 Cal.4th 394, 413 ("*Rosenthal*").)

Thus, in ruling on a motion to compel arbitration, the court must first determine whether the parties actually agreed to arbitrate the dispute, and the general principles of California contract law guide the court in making this determination. (*Mendez v. Mid-Wilshire Health Care Center* (2013) 220 Cal.App.4th 534, 541.)

Here, defendant has met its burden of showing that a valid agreement to arbitrate the plaintiff's claims exists. It has presented evidence that plaintiff signed the agreement on October 10, 2017 when he was hired, for a second time, to work for Poindexter Nut Company, Inc. (Avila Decl., ¶2, Exh. A.) The agreement provides that the parties agreed to arbitrate all disputes arising out of plaintiff's employment with defendant, including the same types of claims that plaintiff has raised in his civil complaint, such as wage and hour violations. (Exhbit A to Avila Decl., p. 1, second and third paragraphs.) Therefore, defendant has met its burden of showing that an agreement to arbitrate plaintiff's legal disputes exists, and that it covers the claims raised by plaintiff in the present action. As a result, the burden shifts to plaintiff to show that he did not actually agree to arbitrate his disputes, the agreement is not valid or enforceable, or that some other defense exists to the agreement.

Plaintiff has not disputed that he signed the agreement, or that the agreement covers the claims that he has raised. In fact, he admits that he signed the agreement when he was hired by defendant because he believed that it was a condition of his employment with defendant. (Mejia Decl., ¶ 4-6.) Instead, plaintiff argues that the agreement is both procedurally and substantively unconscionable and therefore the court should not enforce it.

Unconscionability

"The burden of proving unconscionability rests upon the party asserting it." (*OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 126, citations omitted.) "One common formulation of unconscionability is that it refers to an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party. As that formulation implicitly recognizes, the doctrine of unconscionability has both a procedural and a substantive element, the former focusing on oppression or surprise due to unequal bargaining power, the latter on overly harsh or one-sided results." (*Baltazar v. Forever 21, Inc.* (2016) 62 Cal.4th 1237, 1243, citations and quote marks omitted.)

"The prevailing view is that [procedural and substantive unconscionability] must *both* be present in order for a court to exercise its discretion to refuse to enforce a contract or clause under the doctrine of unconscionability. But they need not be present in the same degree. Essentially a sliding scale is invoked which disregards the regularity of the procedural process of the contract formation, that creates the terms, in proportion to the greater harshness or unreasonableness of the substantive terms themselves.' [Citations.] In other words, the more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa." (*Id.* at pp. 1243–1244, citations and quote marks omitted, italics in original.)

"[A] finding of procedural unconscionability does not mean that a contract will not be enforced, but rather that courts will scrutinize the substantive terms of the contract to ensure they are not manifestly unfair or one-sided. [Citation.] ... [T]here are degrees of procedural unconscionability. At one end of the spectrum are contracts that have been freely negotiated by roughly equal parties, in which there is no procedural unconscionability.... Contracts of adhesion that involve surprise or other sharp practices lie on the other end of the spectrum. Ordinary contracts of adhesion, although they are indispensable facts of modern life that are generally enforced, contain a degree of procedural unconscionability even without any notable surprises, and 'bear within them the clear danger of oppression and overreaching. We have instructed that courts must be particularly attuned to this danger in the employment setting, where economic pressure exerted by employers on all but the most sought-after employees may be particularly acute." (*Id.* at p. 1244, citations and quote marks omitted.)

"The unconscionability doctrine ensures that contracts, particularly contracts of adhesion, do not impose terms that have been variously described as overly harsh, unduly oppressive, so one-sided as to shock the conscience or unfairly one-sided. All of these formulations point to the central idea that the unconscionability doctrine is concerned not with a simple old-fashioned bad bargain, but with terms that are unreasonably favorable to the more powerful party. These include terms that impair the integrity of the bargaining process or otherwise contravene the public interest or public policy; terms (usually of an adhesion or boilerplate nature) that attempt to alter in an impermissible manner fundamental duties otherwise imposed by the law, fine-print terms, or provisions that seek to negate the reasonable expectations of the nondrafting party, or unreasonably and unexpectedly harsh terms having to do with price or other central aspects of the transaction." (*Id.* at pp. 1244–1245, citations and quote marks omitted.)

Procedural Unconscionability

"The procedural element focuses on two factors: 'oppression' and 'surprise.' 'Oppression' arises from an inequality of bargaining power which results in no real negotiation and 'an absence of meaningful choice.' 'Surprise' involves the extent to which the supposedly agreed-upon terms of the bargain are hidden in a prolix printed form drafted by the party seeking to enforce the disputed terms. Characteristically, the form contract is drafted by the party with the superior bargaining position." (*A & M Produce Co. v. FMC Corp.* (1982) 135 Cal.App.3d 473, 486, citations omitted.)

"A procedural unconscionability analysis begins with an inquiry into whether the contract is one of adhesion. An adhesive contract is standardized, generally on a preprinted form, and offered by the party with superior bargaining power 'on a take-it-or-leave-it basis.' Arbitration contracts imposed as a condition of employment are typically adhesive..." (*OTO, L.L.C. v. Kho*, *supra*, 8 Cal.5th at p. 126, citations and some quote marks omitted.)

Here, there is a dispute as to whether the arbitration agreement was a contract of adhesion. Plaintiff argues that the contract was presented to him on a take-it-or-leave-it basis. In particular, plaintiff indicates that when he was presented with the arbitration agreement, he was not told that he had the option to not sign the documents, and thus, felt compelled to sign it, since it was presented to him amongst other employment documents. (Mejia Decl., ¶ 4.) However, defendant indicates that its regular procedure is to present the arbitration agreement to the employee, provide him with the opportunity to review it, and inform the employee that he is not required to sign the arbitration agreement. (Avila Decl., ¶ 3.) Defendant points out that plaintiff does not present any evidence to show that the arbitration agreement was actually a condition of his employment, rather, plaintiff only testifies to his *belief* that signing it was a condition of his employment. Defendant contends that this is an insufficient showing of procedural unconscionability.

Although defendant is correct that little evidence is submitted in support of plaintiff's contention that the contract was one of adhesion, the court finds it sufficient that the contract was presented to him for signature without explanation. (Mejia Decl., ¶ 4, 7.) "To establish procedural unconscionability, [plaintiff is] not required to show she attempted to negotiate the terms of the [a]greement because the imbalance of bargaining power is apparent from the relationship between the parties." (*Carbajal v. CWPSC, Inc.* (2016) 245 Cal.App.4th 227, 244.) In *Carbajal*, the Fourth District Court of Appeal determined the existence of procedural unconscionability where plaintiff was presented with the arbitration agreement along with other employment documents during her interview, without explanation of the provisions of the arbitration agreement. (*Id.*, at p. 234.) There, the plaintiff neglected to sign certain documents, including page two of the arbitration agreement and was later contacted by defendant-employer for completion of the documents. Defendant-employer e-mailed the missing documents to plaintiff, who signed and returned them to defendant-employer as instructed. (*Id.*, at p. 235.) Taking in consideration, the relationship between the parties, that defendant was an employer and plaintiff one of many college students who was not a highly sought-after employee, the appellate court determined the arbitration agreement to be one of

adhesion. (*Id*., at p. 243-244.) Likewise, here, plaintiff was not informed that he was permitted to not sign the arbitration agreement, and he was not a highly sought-after employee in a position to challenge the agreement, as he was a Forklift Driver for defendant who worked for $17 per hour.

Moreover, although defendant provides evidence to show its general procedure in its presentation of the arbitration agreement to employees, no evidence is provided to dispute plaintiff's evidence showing that *he* was neither provided an explanation as to what the arbitration agreement was, nor provided an option to not to sign. Accordingly, plaintiff has sufficiently shown that the arbitration agreement was a contract of adhesion and therefore, contains at least some degree of procedural unconsionability.

On the other hand, just because the agreement was a contract of adhesion does not necessarily mean that it was so unconscionable as to make it unenforceable. By itself, the contract of adhesion only establishes a modest degree of procedural unconscionability. (*Id*., at p. 243-244; see also *Serpa v. California Surety Investigations, Inc.* (2013) 215 Cal.App.4th 695, 704 ["When ... there is no other indication of oppression or surprise, 'the degree of procedural unconscionability of an adhesion agreement is low ...' "].)

Substantive Unconscionability

Plaintiff further also argues that the agreement is substantively unconscionable because it contains a clause imposing a shortened deadline to bring a claim: one year after termination of employment, or in the case of unlawful retaliation, discrimination, sexual or unlawful harassment claims, one year of the cessation of the alleged conduct.

"The substantive element of unconscionability 'pertains to the fairness of an agreement's actual terms and to assessments of whether they are overly harsh or one-sided.' [Citation.] This includes consideration of the extent to which the disputed term is outside the reasonable expectation of the nondrafting party or is unduly oppressive." (*Carbajal v. CWPSC, Inc.* (2016) 245 Cal.App.4th 227, 247, citations omitted.) "[T]he more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa." (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 114.)

The statutes upon which plaintiff's claims are premised provide significantly longer periods of time than one year within which to assert a claim of violation. Specifically, "the Labor Code, which provides the bases for [plaintiff's] causes of action for unpaid wages and penalties, affords an employee three or four years to assert the claims sued upon here." (*Martinez v. Master Protection Corp.* (2004) 118 Cal.App.4th 107, 117.) "If there was any doubt, after *Armendariz*, it is clear that 'parties agreeing to arbitrate statutory claims must be deemed to "consent to abide by the substantive and remedial provisions of the statute.... Otherwise, a party would not be able to fully ' "vindicate [his or her] statutory cause of action in the arbitral forum." ' " ' " [Citation.] (*Id*., citing *Armendariz, supra,* 24 Cal.4th at p. 101.) Thus, the shortened limitations period provided by the

arbitration agreement is substantively unconscionable and insufficient to protect its employees' right to vindicate their statutory rights.

Defendant does not dispute the substantive unconscionability of the shortened limitations period provision, and instead, contends that, insofar as there are unconscionable provisions, they should be severed and the rest of the agreement enforced.

Severability

"Arbitration agreements that fail to meet conscionability standards, or those that violate public policy, nevertheless may be enforced if the objectionable terms can be severed." (*Abramson v. Juniper Networks, Inc.* (2004) 115 Cal.App.4th 638, 658.) "If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result." (Civ. Code, § 1670.5, subd. (a).)

"Two reasons for severing or restricting illegal terms rather than voiding the entire contract appear implicit in case law. The first is to prevent parties from gaining undeserved benefit or suffering undeserved detriment as a result of voiding the entire agreement — particularly when there has been full or partial performance of the contract." (*Id*., at p. 123-124.) "Second, more generally, the doctrine of severance attempts to conserve a contractual relationship if to do so would not be condoning an illegal scheme." (*Id*. at p. 124.) "In determining whether to void the entire contract or merely sever objectionable terms, the 'overarching' question for the court is whether severance serves the interests of justice." (*Abramson v. Juniper Networks, Inc.* (2004) 115 Cal.App.4th 638, 659 citing *Armendariz* at p. 124.)

"In *Armendariz*, the California Supreme Court identified several factors that affect severability." (*Abramson v. Juniper Networks, Inc.*, *supra,* at p. 659 citing *Armendariz, supra,* at pp. 124–125.) "Each relates to whether the contract is permeated by unconscionability or illegality. In simple terms, courts will not sever when the 'good cannot be separated from the bad, or rather the bad enters into and permeates the whole contract, so that none of it can be said to be good....'" (*Abramson v. Juniper Networks, Inc.* (2004) 115 Cal.App.4th 638, 659, citations omitted.)

In this case, the factors weigh in favor of severance of the unconscionable provision. Here, plaintiff only delineates one objectionable provision contained within the arbitration agreement, which affects only the timeframe in which plaintiff may bring a claim against defendant. "One relevant factor in assessing severability is whether the agreement contains more than one objectionable term." (*Id*., at p. 666.) Other considerations include whether there is a single provision that may be stricken to remove the unconscionable taint from the agreement. (*Armendariz, supra,* 24 Cal.4th at pp. 124-125.) If the court were to remove the shortened limitations period clause from the agreement, the contract would otherwise be undisturbed. Moreover, even in the case primarily relied upon by plaintiff, a United States District Court case, *Amin v. Advanced Sterilization Products Services Inc.* (C.D. Cal. 2019) 2019 WL 2912862 at *7 found the

arbitration agreement, there, to be enforceable and "the limitations period provision [to be] amendable to being severed from the remainder of the Agreement." (*Ibid*.)

Accordingly, this court finds the arbitration agreement to be enforceable, but the provision shortening the limitations period in paragraph 9 of the agreement must be severed.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS on 4/16/2024.
(Judge's initials) (Date)

(36)

Tentative Ruling

Re: ***Arellano-Espiritu v. Ceja, et al.***
Superior Court Case No. 22CECG02641

Indemnity Insurance Company of North America v. Cholico, et al.
Superior Court Case No. 23CECL07849

Hearing Date: April 18, 2024 (Dept. 403)

Motion: by Defendant to Consolidate Actions

Tentative Ruling:

To grant, consolidating for all purposes Case No. 22CECG02641 with Case No. 23CECL07849, with Case No. 22CECG02641 being designated as the master file. Defense counsel is ordered to file and serve a notice of entry of this order in all actions, properly captioned with all case names and numbers. Other than this, all further documents shall be filed only in the lead case.

The Mandatory Settlement Conference on July 25, 2024, Trial Readiness on August 23, 2024, and Jury Trial on August 26, 2024 are vacated.

The court sets a Case Management Conference on 5/14/2024 at 3:30 p.m. in Department 403 to schedule a new trial date. Zoom appearance is authorized.

Explanation:

The purpose of consolidation is to enhance trial court efficiency by avoiding unnecessary duplication of evidence and procedures, and to avoid the substantial danger of inconsistent adjudications. (*Todd-Stenberg v. Dalkon Shield Claimants Trust* (1996) 48 Cal.App.4th 976, 978.) The party moving for consolidation must file a notice of motion in each of the pending lawsuits, while supporting papers are filed only in the lead (lower numbered) case. (Cal. Rules of Court, Rule 3.350, subd. (a).) All the moving party needs to show in its motion is that the issues in each case are basically the same, and that "economy and convenience" would be served by consolidation. (*Jud Whitehead Heater Co. v. Obler* (1952) 111 Cal.App.2d 861, 867.) The court has broad discretion to grant or deny the motion. (*Fellner v. Steinbaum* (1955) 132 Cal.App.2d 509, 511.)

Although there is a technical defect in the motion, in that defendants failed to file the notice of motion in each action as required by California Rules of Court, rule 3.350(a)(1)(C), the court finds that defendants have substantially complied with the requirements for a motion to consolidate. The defect is non-prejudicial as it is evident that all parties were noticed of the motion, since a joint stipulation signed by all parties' counsel was attached as Exhibit A to defense counsel's declaration. Therefore, the court will grant the motion despite the procedural defect.

Although it appears that the parties have signed a joint stipulation to consolidate the cases, it is unclear why defendants have not simply filed the joint stipulation instead of proceeding with their motion and submitting it as an exhibit in support of the motion. Nonetheless, the court notes that the joint stipulation as attached to defense counsel's declaration also includes a provision agreeing to vacate the existing trial date, August 26, 2024, and scheduling a case management conference to set a new trial date. Accordingly, in the interest of judicial economy, the court vacates the Mandatory Settlement Conference on July 25, 2024, Trial Readiness on August 23, 2024, and Jury Trial on August 26, 2024. However, in the future, the parties are encouraged to actually file any signed stipulations to prevent waste of judicial time and resources.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS on 4/16/2024.
(Judge's initials) (Date)

(29)

Tentative Ruling

Re: ***Lanas v. Hall***
Superior Court Case No. 21CECG00514

Hearing Date: April 18, 2024 (Dept. 403)

Motions (x2): Petitions to Approve Compromise of Disputed Claim of Minor

Tentative Ruling:

To deny without prejudice. Petitioner must file amended petitions, with appropriate supporting papers and proposed orders.

Explanation:

Both petitions indicate that claimants suffered some physical injury in addition to the extensive emotional trauma caused by the accident. (Petitions, at items 6, 7, 12.) However, there is no prognosis from a treating physician or medical records showing that claimants' physical injuries have resolved and no further treatment is needed. The petitions are therefore denied without prejudice. The court reviewed the fee agreements and counsel's declarations, which adequately support the fee request. There is no need to provide the reporter's transcript of an unrelated, distinguishable case, with the amended petitions.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JS on 4/17/2024.
(Judge's initials) (Date)