

Tentative Rulings for July 15, 2026
Department 501

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.

25CECG00846	<i>Hernandez v. SCCCD</i> is continued to Wednesday, August 19, 2026, 3:30 p.m. in Department 501.
25CECG01250	<i>Rodriguez Jimenez v. Marquez</i> is continued to Wednesday, August 26, 2026, 3:30 p.m. in Department 501.
24CECG05453	<i>Bedrosian v. Saint Agnes Medical Center</i> is continued to Wednesday, August 26, 2026, at 3:30 p.m. in Department 501.
26CECG00676	<i>Mic-Bry8, LLC v. Romelia Valdez</i> is continued to Thursday, July 16, 2026, at 3:30 p.m. in Department 501.

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Tentative Rulings for Department 501

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(34)

Tentative Ruling

Re: **NICBYTE, LLC v. Community West Bank**
Superior Court Case No. 24CECG01486

Hearing Date: July 15, 2026 (Dept. 501)

Motion: (1) Defendant's Motion to Seal
(2) Plaintiffs' Motion to Seal
(3) Defendant's Motion for Summary Judgment, or
alternatively Summary Adjudication

Tentative Ruling:

To grant Defendant's motion to seal non-party bank records, found in Exhibit 433 in its evidence in support of the motion for summary judgment.

To grant Plaintiffs' motion to seal identified portions of the transcripts of the depositions of Michael McCormick and Parren James within Exhibits 400, 401, and 402 within Defendant's evidence in support of the motion for summary judgment. To grant Plaintiffs' motion to seal Exhibits 100 and 102 within Defendant's evidence in support of the motion for summary judgment.

The motion for summary judgment was filed with redactions and sealed exhibits exceeding the scope of the parties' motions to seal and the orders on those motions. The parties are directed to appear to determine how to proceed in light of the need to refile the moving papers to comply with the court's orders on the motions to seal.

Explanation:

"Unless confidentiality is required by law, court records are presumed to be open." (Cal. Rules of Court, Rule 2.550(c).)

"A record must not be filed under seal without a court order. The court must not permit a record to be filed under seal based solely on the agreement or stipulation of the parties." (Cal. Rules of Court, Rule 2.551, subd. (a).)

"A party requesting that a record be filed under seal must file a motion or an application for an order sealing the record. The motion or application must be accompanied by a memorandum and a declaration containing facts sufficient to justify the sealing." (Cal. Rules of Court, Rule 2.551, subd. (b)(1).)

"The party requesting that a record be filed under seal must lodge it with the court under (d) when the motion or application is made, unless good cause exists for not lodging it or the record has previously been lodged under (3)(A)(i). Pending the determination of the motion or application, the lodged record will be conditionally under seal." (Cal. Rules of Court, rule 2.551, subd. (b)(4).)

The court must make certain express findings in order to seal records. Specifically, the court must find that the facts establish:

- (1) There exists an overriding interest that overcomes the right of public access to the record;
- (2) The overriding interest supports sealing the record;
- (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;
- (4) The proposed sealing is narrowly tailored; and
- (5) No less restrictive means exist to achieve the overriding interest.

(Cal. Rules of Court, Rule 2.550. subd. (d).)

Also, “[a]n order sealing the record must: (A) Specifically state the facts that support the findings; and (B) Direct the sealing of only those documents and pages, or, if reasonably practicable, portions of those documents and pages, that contain the material that needs to be placed under seal. All other portions of each document or page must be included in the public file.” (Cal. Rules of Court, rule 2.550, subd. (e)(1)(A), (B).)

Here, defendant seeks to seal eleven bank statements of non-party BW Industries, Inc. on the basis that they contain private financial data of a non-party. (*Valley Bank of Nevada v. Superior Court* (1975) 15 Cal.3d 652, 657-658.) As the nature of the documents is evident on their face, the court finds there is a sufficient, fact-based showing of the documents containing the non-party private financial information. (Falace Decl. ¶¶ 3-4.) The court is satisfied that the prejudice to the non-party bank customer in making public its bank statements overrides the public interest in the documents. The defendant's motion to seal the bank records found at Exhibit 433 in support of defendant's motion for summary judgment is granted.

Plaintiffs also seek for an order to seal records submitted with defendant's motion for summary judgment. Plaintiffs identify portions of the depositions of Michael McCormick and Parren James, found at Exhibits 400, 401, and 402, that reflect personally identifying information of the trust's third-party affiliates and confidential business information regarding the trust and its administration. Plaintiffs submit that public disclosure of the information would be highly prejudicial to the trust and third parties and put administration of the trust at risk. (Fogarty Decl., ¶¶ 6-7.) Plaintiffs additionally move to seal Exhibits 100 and 102, documents related to the trust's decision to invest with Bitwise, as they are internal recommendations from the investment advisor to the client and provided details regarding NICByte's business strategies, confidential business operations, methods and practices and their public disclosure would be prejudicial to plaintiffs in disclosing sensitive business information and financial information. (*Id.*, ¶¶ 8-9.) Plaintiffs have provided evidence of the measures to keep the records confidential in the regular course of business to maintain the privacy of the information therein. Plaintiffs further assert that they and non-parties in connection with the trust will be prejudiced by making the information public. Having reviewed the identified portions of the deposition transcripts and investment recommendation documents the court is satisfied that the prejudice to plaintiffs and the non-parties overrides the public interest in the testimony

and documents. The plaintiffs' motion to seal portions of Exhibits 400, 401, and 402, and to seal Exhibits 100 and 102 in their entirety is granted.

Plaintiffs have filed two motions to seal in connection with the motion for summary judgment. The first was filed May 4, 2026 and was calendared with the court for hearing on July 15, 2026. The second was filed on June 25, 2026 and the notice indicates a hearing date of July 15, 2026. This second motion was not calendared with the court for hearing on July 15, 2026 and will not be heard.

Defendant's evidence in support of its motion for summary judgment, also to be heard on July 15, 2025, was filed with the entirety of Exhibits 400, 401, 402, 103-107, 117 and 122 lodged conditionally under seal. The moving papers and declarations were filed with redactions presumably reflecting references to documents subject to the motions to seal. However, having granting both motions in their entirety leaves the moving papers with entire exhibits and portions of the moving papers outside the public file and not in conformity with the court's order on the motions to seal.

To the extent the scope of the redactions and lodged documents exceeds the parties' motions for orders sealing certain testimony and documents the court denies the implicit motion to seal these exhibits.

California Rules of Court, rule 2.551(b)(6) provides:

If the court denies the motion or application to seal, the moving party may notify the court that the lodged record is to be filed unsealed. This notification must be received within 10 days of the order denying the motion or application to seal, unless otherwise ordered by the court. On receipt of this notification, the clerk must unseal and file the record. If the moving party does not notify the court within 10 days of the order, the clerk must (1) return the lodged record to the moving party if it is in paper form or (2) permanently delete the lodged record if it is in electronic form.

Thus, the parties have 10 days to notify the court to file the documents unsealed. However, there are portions of the documents filed conditionally under seal that can remain under seal and many others that cannot. The underlying motion for summary judgment is calendared to be heard concurrent with the motions to seal rather than after the motion to seal to allow the papers to be filed to comply with the court's order on the motions to seal. The parties have created a problem for the court in how to proceed with the motion for summary judgement.

The parties are directed to appear for hearing to determine how to proceed with the motion for summary judgment in light of the need to re-file the moving papers for the motion for summary judgment to comply with the court's ruling on the motions to seal.

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

(47)

Tentative Ruling

Re: ***Alyssa Herrera v. ASFC LLC***
Superior Court Case No. 25CECG02335

Hearing Date: July 15, 2026 (Dept. 501)

Motion: By Defendants to Compel Arbitration

Tentative Ruling:

To grant defendants ASFC, LLC and Aspen Skilled Healthcare, Inc. motion to compel arbitration of all of plaintiff Alyssa Herrera individual non-class claims, and to dismiss plaintiff Alyssa Herrera's class claims. The Court hereby stays the entire action pending resolution of the arbitration proceeding.

Explanation:

Plaintiff Alyssa Herrera ("Herrera" or "plaintiff") brings an action for ten causes of action for various violations of the Labor Code, and one cause of action for unfair competition, on behalf of herself and all aggrieved employees.

Defendants ASFC, LLC and Aspen Skilled Healthcare, Inc., (together "defendants") filed their initial Petition to Compel Arbitration on August 6, 2025. On November 26, 2025, this Court denied Defendants' original Petition to Enforce Class action Waiver and Compel Arbitration, without prejudice. (Holmes Decl., ¶ 3, Ex. A.) On December 19, 2025, Defendants' filed the instant renewed motion styled as an Amended Petition to Enforce Class Waiver, Compel Arbitration and Dismiss Claims, pursuant to the Federal Arbitration Act (9 U.S.C. section 1, et seq.).

Motions Denied Without Prejudice

As an initial matter, Herrera argues that the motion is an improper motion for reconsideration pursuant to Code of Civil Procedure section 1008. (Herrera's Opposition, pps. 4:10-6:8.) However, the Court denied the prior motion "without prejudice" and Code of Civil Procedure section 1008 does not apply. (*Farber v. Bay View Terrace Homeowners Assn.* (2006) 141 Cal.App.4th 1007, 1015 ("[T]he trial court indicated it wanted to reconsider the fee issue when it denied the first motion without prejudice, so Code of Civil Procedure section 1008 is inapplicable. Denial of a motion without prejudice impliedly invites the moving party to renew the motion at a later date, when he can correct the deficiency that led to the denial.").)

Herrera's reliance on *Even Zohar Construction & Remodeling, Inc. v. Bellaire Townhouses, LLC* (2015) 61 Cal.4th 830 ("Zohar") is misplaced because that case did not involve a motion expressly denied without prejudice. The trial court in *Zohar* denied the initial motion on the merits. The moving party then filed a renewed motion advancing a new factual theory, triggering the application of Code of Civil Procedure section 1008.

Under those circumstances, the Supreme Court held that Section 1008 governs renewed motions. (*Id.* at 844.)

Accordingly, Code of Civil Procedure section 1008 does not apply under these circumstances

Evidentiary Objections

Plaintiff raises several evidentiary objections to the Declaration of Shelley Kwan in support of the Motion. The Court rules on these objections as follows:

Objection No. 1: Overruled. Not a legal conclusion. The statement itself lays foundation by explaining the matters which are in Kwan's personal knowledge.

Objection No. 2: Overruled. Kwan's statements are factual, not legal conclusions. Kwan's statements are based on her knowledge of her employer's practices, the working of the software used, and her personal review of the document.

Objection No. 3: Overruled. Kwan's statements are factual, not legal conclusions. She is describing the physical form and length of the arbitration agreement based on her firsthand review of the document contained in Plaintiff's personnel file.

Objection No. 4: Overruled. The statement is relevant because it describes Defendant's payroll and personnel record keeping practices, which bears on the circumstances surrounding Plaintiff's receipt of the Arbitration Agreement. Furthermore, Paragraph 8, subsection (i) of Kwan's declaration provides context, stating that "The Facility's UKG onboarding system produces a New Hire Online Onboarding Summary sheet that lists the documents signed by the employee and the date the employee signed the documents." Exhibit B is clearly identified as the New Hire Online Onboarding Summary sheet. This exhibit is relevant to show that these documents were sent to and signed by Plaintiff.

Objection No. 5: Overruled. Kwan lays the foundation for how she knows that Plaintiff was presented with employment documents through UKG to her personal email address. She attests to her personal knowledge of the process, and then attests that she has reviewed the UKG summary that shows the email that the link was sent to.

Objection No. 6: Overruled. See 5 above.

Objection No. 7: Overruled. Kwan establishes foundation by explaining her role as Payroll Coordinator, her familiarity with ASFC's onboarding and recordkeeping systems, and her personal review of Plaintiff's personnel file, including the UKG onboarding records.

Legal Standard

A trial court is required to grant a motion to compel arbitration "if it determines that an agreement to arbitrate the controversy exists." (Code Civ. Proc., § 1281.2.) However, there is "no public policy in favor of forcing arbitration of issues the parties have

not agreed to arbitrate.” (*Garlach v. Sports Club Co.* (2012) 209 Cal.App.4th 1497, 1505) “Thus, in ruling on a motion to compel arbitration, the court must first determine whether the parties actually agreed to arbitrate the dispute.” (*Mendez v. Mid-Wilshire Health Care Center* (2013) 220 Cal.App.4th 534, 541.)

The party moving to compel arbitration bears the burden of proving by a preponderance of the evidence the existence of an arbitration agreement. (*Fleming v. Oliphant Financial, LLC* (2023) 88 Cal.App.5th 13, 18; *Lane v. Francis Capital Management LLC* (2014) 224 Cal.App.4th 676, 683.) After the moving party establishes the existence of an arbitration agreement between the parties, then the burden shifts to the opposing party to show that the agreement is otherwise unenforceable. (*Condee v. Longwood Management Corp.* (2001) 88 Cal.App.4th 215, 219.)

Existence of an Agreement to Arbitrate

Defendants argue that the present action is subject to an arbitration dispute. Herrera began working for ASFC, LLC during July 2023. As part of the onboarding process, Herrera received the Arbitration Agreement at onboarding, was able to review and signed indicating she had done so, and returned the Arbitration Agreement electronically. (Kwan Decl., ¶13, Ex. A.) That agreement (“Arbitration Agreement”) is the subject of this petition. Defendants argue that Herrera electronically signed an Arbitration Agreement on July 19, 2023, and provide an Arbitration Agreement purportedly signed by Herrera on July 20, 2023. (Kwan Decl., Ex. A.) Defendants argue in their moving papers that the Arbitration Agreement signed by Herrera was signed on July 19, 2023, but was dated on July 20, 2023 based on the computer software defendants utilized:

However, the metadata shows that the Agreement was in fact signed on July 19, 2023. The agreement itself, by contrast, displays a date of July 20, 2023. This discrepancy is caused by the UKG system used for the electronic signature, which records timestamps in both Pacific Standard Time and Coordinated Universal Time. Here, the timestamp reflected in the metadata is in Pacific Standard Time and therefore shows the July 19, 2023 date. The timestamp embedded in the Arbitration Agreement itself is in Coordinated Universal Time, eight hours ahead, thus reflecting July 20, 2023. This explains the one-day difference between the date Plaintiff claims she signed electronic documents and the date shown on the Arbitration Agreement.

(Defendants' Moving Papers, pgs. 14:24-15:4.)

On May 28, 2026, the Court continued the hearing to allow for supplemental briefing on the following issues:

1. The process and mechanism by which the onboarding software assigns a date and time to documents;

2. A definitive statement as to the date and time plaintiff e-signed the documents listed by the "New Hire Online Onboarding Summary";
3. Why UKG's software provided a different date on the Arbitration Agreement as compared to the dates recorded on the "New Hire Online Onboarding Summary";
4. Why the I-9 form for authorization to work is dated July 19, 2023 rather than July 20, 2023, as compared to the Arbitration Agreement; and
5. How the name and date fields in each of the forms are populated.

On June 12, 2026, defendants filed their supplemental brief. Herrera did not file a supplemental brief as permitted by the Court.

Even where the signature is electronic, a movant "[meets] its initial burden to show an agreement to arbitrate by attaching a copy of the Contract to its petition, which purportedly bears [the plaintiff's] electronic initials and signature." (*Fabian v. Renovate America, Inc.* (2019) 42 Cal.App.5th 1062, 1067 ("*Fabian*").) Where the plaintiff does not recall signing the contract, the movant then has "'the burden of proving by a preponderance of the evidence that the electronic signature was authentic.'" (*Ibid.*)

Code of Civil Procedure section 1633.9, subdivision (a) provides: "An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable." The effect of such electronic signature "is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement." (Civ. Code, § 1633.9(b).)

For example, in *Espejo v. Southern California Permanente Medical Group* (2016) 246 Cal.App.4th 1047, the Court of Appeal concluded the employer had authenticated the electronic signature of the employee on the arbitration agreement by submitting a declaration from the employer's systems consultant, who was tasked with " 'maintaining and troubleshooting the online system' " for employment-related contracts. (*Id.* at p. 1052 & fn. 1.) The consultant in *Espejo* "detailed [the employer's] security precautions regarding transmission and use of an applicant's unique username and password, as well as the steps an applicant would have to take to place his or her name on the signature line of the employment agreement" and arbitration agreement. (*Id.* at p. 1062.) Further, the consultant concluded based on these procedures that the employee's name "could have only been placed on the signature pages of the employment agreement and the [arbitration agreement] by someone using [the employee's] unique user name and password." (*Ibid.*) The court explained these details in the consultant's declaration "establish[ed] that the electronic signature on the [arbitration agreement] was 'the act of' [the employee] (Civ. Code, § 1633.9, subd. (a)), and therefore provide[d] the necessary factual details to properly authenticate the document." (*Ibid.*)

In light of these authorities, defendants adequately demonstrate the existence of an Arbitration Agreement. Kwan initially details the unique onboarding process of how Herrera received the Arbitration Agreement, was able to review and signed indicating she had done so, and electronically returned the Arbitration Agreement. (Kwan Decl., ¶¶ 6-10, Ex. A-B.)

In supplemental briefing, defendants provide how the UKG onboarding platform records the date and time associated with an employee's electronic signature when the employee signs a document. (Mitchell Decl., ¶ 9.) UKG maintains an audit trail associated with electronically signed documents that records, among other things, the identity of the signer, the date and time of the signing event, and other system-generated information relating to the execution of the document. (*Id.*, ¶ 10.) Upon completion of onboarding, UKG generates onboarding records, including summaries and metadata reports reflecting the dates and times associated with onboarding activity and document execution. (*Id.*, ¶ 15.) Ms. Mitchell states that the metadata records generated by UKG are automatically generated as part of UKG's ordinary operation and are not manually entered by facility personnel. (*Id.*, ¶ 18.) Those records reflect that Herrera electronically signed onboarding documents through the UKG onboarding system, including the Arbitration Agreement. (*Id.*, ¶ 17.)

Herrera nonetheless argued in her opposing papers that she does not recall signing the Arbitration Agreement, and specifically not signing anything on July 20, 2023. (Herrera Decl., ¶6.) However, Herrera's declaration does not deny that she could have signed the Arbitration Agreement on July 19, 2023. Furthermore, Herrera does not contest the login activity and metadata exhibits chronicling what documents she signed and viewed on July 19, 2023, presented by Mitchell in supplemental briefing.

Defendants adequately explain date discrepancies between the different forms signed by Herrera. Once an employee finishes the onboarding process, UKG generates an audit report that contains the date and time each document was reviewed and signed, the email and username of the signer, and the IP address of the of the electronic device used. (Mitchell Decl.) The metadata maintained by UKG reflects that Herrera electronically signed the Arbitration Agreement, at 00:12:08 UTC on July 20, 2023. (Mitchel Decl., Exhibit A.)

According to the UKG audit records, that timestamp was automatically generated by the system at the moment Plaintiff completed the electronic signature process. (Mitchell Decl., Exhibit B.) The metadata report generated by UKG reflects that Herrera electronically signed the Arbitration Agreement and onboarding documents on July 20, 2023, at 00:12:08 UTC. Because Fresno, California was operating on Pacific Daylight Time ("PDT"), which was seven hours behind Coordinated Universal Time ("UTC"), the timestamp of 00:12:08 UTC on July 20, 2023, corresponds to 5:12:08 p.m. PDT on July 19, 2023.

Accordingly, the UKG records establish that Herrera executed the Arbitration Agreement at 5:12:08 p.m. Pacific Daylight Time on July 19, 2023.

Accordingly, defendants have adequately established the existence of an Arbitration Agreement that is governed by the Federal Arbitration Act ("FAA"), the

burden now shifts to Herrera to establish any defenses to the enforcement of this provision. In opposition, Herrera argues that arbitration should be denied because the Arbitration Agreement is both procedurally and substantively unconscionable.

Furthermore, the Arbitration Agreement also applies to defendant Aspen Skilled Healthcare, Inc. The plain language of the Arbitration Agreement states it applies to “all grievances, disputes, claims, complaints, allegations. . . arising out of or relating to the Parties’ employment relationship. . .” (Kwan Decl., Ex. A section 1.) By alleging that defendant Aspen Skilled Healthcare, Inc. is a joint employer and agent of ASFC, LLC, plaintiff has agreed to arbitrate her claims against it. Therefore, defendant Aspen Skilled Healthcare, Inc. is permitted to enforce the Arbitration Agreement and class-action waiver. Herrera did not contest this point in her opposition papers.

Unconscionability

“[P]rocedural 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.” (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 102.) Courts invoke a sliding scale 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, i.e., the more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to conclude that the term is unenforceable, and vice versa. (*Id.*, at pg. 114.) Plaintiff bears the burden of proving that the provision at issue is both procedurally and substantively unconscionable.

Procedural Unconscionability

“The procedural element addresses the circumstances of contract negotiation and formation, focusing on oppression or surprise due to unequal bargaining power.” (*Alvarez v. Altamed Health Servs. Corp.* (2021) 60 Cal.App.5th 572 589, as modified (Mar. 4, 2021.)

“A procedural unconscionability analysis ‘begins with an inquiry into whether the contract is one of adhesion.’ [Citation.] 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.’” (*OTO, LLC v. Kho* (2019) 8 Cal.5th 111, 126 (“OTO”).) “Arbitration contracts imposed as a condition of employment are typically adhesive[.] The pertinent question, then, is whether circumstances of the contract’s formation created such oppression or surprise that closer scrutiny of its overall fairness is required.” (*Ibid.*) “Oppression occurs where a contract involves lack of negotiation and meaningful choice, surprise where the allegedly unconscionable provision is hidden within a prolix printed form.” (*Ibid.*)

It is not disputed by either side that the Arbitration Agreement was a condition of employment and thus minimally adhesive, typical of standardized employment contracts.

Herrera argues that the Agreement is procedurally unconscionable because: the Agreement is oppressive as the Agreement is a non-negotiable condition of employment. (Herrera Decl., ¶9.) Herrera analogizes her situation to the recent California Supreme Court decision in *Fuentes v. Empire Nissan, Inc.* (2026) 19 Cal.5th 93 ("*Fuentes*"), where the Supreme Court by arguing that "in context of the onboarding process there is a high level of procedural unconscionability. See (*Fuentes v. Empire Nissan, Inc.* (Feb. 2, 2026, No. S280256) ___Cal.5th___ [2026 Cal. LEXIS 481, at *10].)" (Herrera's Opposition, pg. 10:16-18.)

However, *Fuentes* is wholly distinguishable from the present case. The Supreme Court found the existence "oppression" when the employee was only given about five minutes to review the entire onboarding packet before being rushed off to a mandatory drug test (*Fuentes, supra*, 19 Cal.5th. at p.104), and the existence of "surprise" where that arbitration agreement was "printed in a tiny, blurry font" and "consist[ed] of a "mammoth" paragraph consisting of "something like 900 words," with 35 lines squeezed into "about three vertical inches" of text." (*Id.* at p. 104 [citations omitted].)

Herrera's circumstances are different where Herrera does not submit evidence that anyone asked her to hurry or told her she had to sign the Agreement. Herrera's declaration makes clear that she was required to sign onboarding documents. (Herrera's Decl., ¶9.) Furthermore, the present Agreement is four pages long in regular size font and it is divided into separate sections. (Kwan Decl., ¶1, Ex. A.)]

Accordingly, the Court finds a very low level of procedural unconscionability typical of enforceable employment arbitration agreements.

Substantive Unconscionability

Substantive unconscionability focuses on overly harsh or one-sided results. (*Armendariz, supra*, 24 Cal. 4th at p. 114.) Herrera argues that the Arbitration Agreement is substantively unconscionable because the Arbitration Agreement precludes Green from pursuing an individual Private Attorney General Act claim and because the Arbitration Agreement requires arbitration of sexual assault and sexual harassment claims. Each of these contentions are analyzed in turn

PAGA and Class Action Waiver

Herrera asserts the Agreement contains a wholesale waiver of the right to bring a PAGA action. (Herrera's Opposition, pps. 11:13-12:2.) The Agreement provides a PAGA specific clause under section 5, which reads as follows:

To the fullest extent permitted by law, with respect to any Covered Matter, Company and Employee agree that they have waived, to the maximum extent possible, any of their rights to bring, participate in, initiate, join, or in any way become a party to any class action, collective action, consolidated action, representative action, Private Attorneys General Act ("PAGA") action or joint action involving any other person or entity, including, but not limited to any

officers, directors, members, supervisors, managers, owners, employees, alleged joint employers, or agents of the Company, whether as a plaintiff, claimant, or member of an alleged class or group asserting or bringing any claim ("Group Action"). All Covered Matters under this Agreement shall be submitted and arbitrated on an individual basis only. The Parties expressly waive any right to submit, initiate, assert, or participate in any Group Action regardless of whether the action is filed as a lawsuit, arbitration, or any other type of proceeding. To the extent applicable state law or state court decision precludes Employee and/or Company from arbitrating PAGA claims, and provided that the applicable state law or state court decision is not preempted by the Federal Arbitration Act or other federal law, then the Parties agree that PAGA claims shall be heard by a court of competent jurisdiction. To the maximum extent permitted by law, the Parties agree that all PAGA claims shall be heard on an individual basis in arbitration and that any non-individual or representative PAGA claims shall be promptly dismissed.

In any arbitration under this Agreement, the arbitrator shall not have any power to adopt, institute, or use any Group Action procedures.

(Kwan Decl., ¶13, Ex. A, Section 5.)

Section 5 does not strip Herrera of PAGA standing. The representative action waiver states that, to the extent Plaintiff seeks to bring PAGA claims, she must do so in an individual capacity in arbitration. The Agreement's waiver clause is limited to precluding the ability to aggregate non-individual claims in arbitration.

In *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639 (*Viking*), the United States Supreme Court held that "the FAA preempts the rule of [*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348] insofar as it precludes division of PAGA actions into individual and non-individual claims through an agreement to arbitrate." (*Id.* at p. 662.) In *Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104, the California Supreme Court confirmed that *Viking River* allowed PAGA claims to be split into individual and non-individual claims. (*Id.* at p. 1118.) In other words, PAGA claims are composed of "violations sustained by the plaintiff employee (what *Viking River* called individual claims" and "claims on behalf of other employees (i.e., non-individual claims)." (*Ibid.*)

The express terms of Section 5 of the Agreement and case law support the finding that the Agreement only applies to representative PAGA claims and is not an invalid PAGA waiver. Therefore, the Agreement is valid and Herrera's potential (Herrera has not asserted any PAGA claims) individual PAGA claims can be compelled to arbitration. Accordingly, Herrera has failed to prove that the PAGA provisions of the Agreement are substantively unconscionable.

With respect to the class action claims, it is now well settled that class action waivers are enforceable under the FAA. (See *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 344 [applying the FAA to invalidate California rule prohibiting class action waivers in consumer contracts of adhesion]; *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, 362–366 [recognizing validity of class action waivers under the FAA in employment contracts].) Along these lines, Plaintiff has not directed the Court's attention to any case which supports her contention that a waiver of representative claims, other than PAGA claims, is substantively unconscionable. (See *Poublon v. C.H. Robinson Company* (9th Cir. 2017) 846 F.3d 1251, 1264.) Given that the FAA applies under these circumstances, (Kwan Decl., Ex. A, Section 7), the class waiver is enforceable.

Sexual Assault and Sexual Harassment Claims

Herrera further argues the Agreement “requires arbitration of sexual assault and sexual harassment claims in violation of the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act and unconscionable under California law. ...” (Herrera's Opposition, pg. 12:5-18.)

However, section 4(a) of the Agreement explicitly excludes arbitration of sexual assault and sexual harassment claims:

4. Matters Excluded from this Agreement.

The following are not Covered Matters and are not subject to arbitration under this Agreement (“Excluded Matters”):

(a) Any claim for workers' compensation, unemployment compensation benefits, sexual assault, sexual harassment, or any other claims that, as a matter of law, the Parties cannot agree to arbitrate. Nothing in this Agreement shall be interpreted to mean that the Employee is precluded from filing complaints with the California Department of Fair Employment and Housing and/or federal Equal Employment Opportunity Commission, the Occupational Health and Safety Administration, the United States Department of Labor, and National Labor Relations Board or similar federal, state, and local governmental agencies.

(Kwan Decl., ¶13, Ex. A, Section 4(a).)

Accordingly, Herrera has failed to prove that the Agreement is substantively unconscionable where the clear terms of the Agreement expressly provide a carve-out that sexual assault and sexual harassment claims are not subject to the Agreement.

Therefore, Herrera has not met her burden of establishing that the any provisions in the Agreement are substantively unconscionable.

Accordingly, defendants' motion to compel arbitration is granted, class claims dismissed, and this action is stayed pending the resolution of the arbitration. (Code of Civ. Proc., §1281.4.)

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: KCK on 07/14/26
(Judge's initials) (Date)