Tentative Rulings for August 26, 2026
Department 503

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.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 503

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(34)

Tentative Ruling

Re:	***Breazeale v. Miller-Phelan, Inc., et al.*** Superior Court Case No. 24CECG01093 ***Foremost Insurance Company v. Miller-Phelan, Inc., et al.*** Superior Court Case No. 25CECG01570
Hearing Date:	August 26, 2026 (Dept. 503)
Motion:	(1) by Defendant Harley-Davidson Motor Company, Inc. for Summary Judgment (2) by Foremost Insurance Company to Consolidate

Tentative Ruling:

To grant defendant Harley-Davidson Motor Company's motion for summary judgment. Defendant is directed to submit to this court, within 10 days of service of the minute order, a proposed judgment consistent with the court's summary judgment order.

To deny Foremost Insurance Company's motion to consolidate, without prejudice. (Cal. Rules of Court, rule 3.350(a)(1)(C).)

Explanation:

Motion for Summary Judgment

In ruling on a motion for summary judgment or summary adjudication, the court must "consider all of the evidence' and all of the 'inferences' reasonably drawn there from and must view such evidence and such inferences 'in the light most favorable to the opposing party." (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 843.) In making this determination, courts usually follow a three-prong analysis: identifying the issues as framed by the pleadings; determining whether the moving party has established facts negating the opposing party's claims and justifying judgment in the movant's favor; and determining whether the opposition demonstrates the existence of a triable issue of material fact. (*Hutton v. Fidelity National Title Co.* (2013) 213 Cal.App.4th 486, 493.)

The moving party bears the burden of showing the court that the plaintiff 'has not established, and cannot reasonably expect to establish, a prima facie case ... .' [Citation.]" (*Miller v. Department of Corrections* (2005) 36 Cal.4th 446, 460.) Furthermore, "[t]o avoid summary judgment, admissible evidence presented to the trial court, not merely claims or theories, must reveal a triable, material factual issue. [Citations.] Moreover, the opposition to summary judgment will be deemed insufficient when it is essentially conclusionary, argumentative or based on conjecture and speculation." (*Wiz Technology, Inc. v. Coopers & Lybrand* (2003) 106 Cal.App.4th 1, 11.) In essence, if the party opposing summary judgment relies on inferences, those inferences must be "reasonably deducible" from the evidence. (*Joseph E. Di Loreto, Inc. v. O'Neill* (1991) 1 Cal.App.4th 149, 161.)

"Only when the inferences are indisputable may the court decide the issues as a matter of law.... An issue of fact becomes one of law only when 'the undisputed facts leave no room for a reasonable difference of opinion.'" (*Manuel v. Pacific Gas & Electric Co.* (2009) 173 Cal.App.4th 927, 937.) A court will liberally construe the evidentiary submissions of a party opposing summary judgment, but will strictly scrutinize the moving party's own evidence, "in order to resolve any evidentiary doubts or ambiguities in plaintiff's favor." (*Johnson v. American Standard, Inc.* (2008) 43 Cal.4th 56, 64.) However, "[c]ourts liberally construe declarations submitted in opposition to summary adjudication only to the extent the declarations are admissible." (*Esparza v. Safeway, Inc.* (2019) 36 Cal.App.5th 42, 57.) Finally, "an issue of fact can only be created by a conflict of evidence." (*Horn v. Cushman & Wakefield Western, Inc.* (1999) 72 Cal.App.4th 798, 807.) "It is not created by speculation or conjecture." (*Ibid*.)

Defendant Harley-Davidson Motor Company, Inc. ("Harley-Davidson") moves for summary judgment, or alternatively summary adjudication of each of plaintiffs' causes of action, on the basis that the undisputed facts demonstrate there was no defect in the 2022 Harley-Davidson FL TRXSE CVO Road Glide motorcycle driven by decedent Jerry Dale Breazeale II at the time of the accident causing his death. Plaintiffs allege causes of action for strict product liability, negligence and breach of warranty premised on a defect in the motorcycle causing the accident.

Under products liability theory, "[a] manufacturer, distributor, or retailer is liable in tort if a defect in the manufacture or design of its product causes injury while the product is being used in a reasonably foreseeable way." (*Soule v. GM Corp.* (1994) 8 Cal.4th 548, 560.)

> Under the Restatement, a product is defective if it: "(a) contains a manufacturing defect when the product departs from its intended design even though all possible care was exercised in the preparation and marketing of the product; [¶] (b) is defective in design when the foreseeable risks of harm posed by the product could have been reduced or avoided by the adoption of a reasonable alternative design by the seller or other distributor, or a predecessor in the commercial chain of distribution, and the omission of the alternative design renders the product not reasonably safe; [¶] (c) is defective because of inadequate instructions or warnings when the foreseeable risks of harm posed by the product could have been reduced or avoided by the provision of reasonable instructions or warnings by the seller or other distributor, or a predecessor in the commercial chain of distribution, and the omission of the instructions or warnings renders the product not reasonably safe." (Rest.3d Torts, Products Liability, § 2, p. 14.)

(*Brady v. Calsol, Inc.* (2015) 241 Cal.App.4th 1212, 1218–1219.)

It is undisputed that the motorcycle accident is alleged to have been caused by a sudden loss of engine oil resulting from a defect of the hose connection between the rear oil hose and the line assembly. (UMF No. 6.) It is additionally undisputed that in the year between the purchase of the motorcycle and the accident, decedent had the vehicle regularly serviced by Fresno Harley-Davidson and there were no complaints related to the rear oil hose separating from the assembly. (UMF Nos. 9, 10.) Defendant additionally submits as undisputed fact that there were no complaints of oil leaking from the vehicle until after an oil change and series of modifications to the motorcycle were performed at Cycle Masters, Inc. nine days before the accident. (UMF No. 11, 12.) The service work included removing the oil lines from the manifold and manipulation of the rear oil hose and line assembly that are alleged to be defective. (UMF No. 15.) Decedent brought the motorcycle back to Cycle Masters, Inc. after the modifications were performed having noticed an oil leak. (UMF No. 18.) The motorcycle was evaluated and a leak from an oil-cooler hose at the front of the motorcycle was addressed before the motorcycle was picked up by decedent on September 1, 2023. (UMF No. 18-22.) The accident ultimately resulting in the death of decedent occurred on September 2, 2023. (UMF No. 24.)

Defendant asserts these undisputed facts demonstrate the plaintiffs cannot establish the existence of a defect in the manufacture or design of the motorcycle and the intervening modifications by Cycle Masters, Inc. preclude finding causation due to any alleged defect in the motorcycle. Defendant further asserts plaintiffs' factually devoid discovery responses with respect to the existence of a defect and causation support the conclusion that plaintiffs have no evidence to support their causes of action and cannot reasonably obtain such evidence. (UMF Nos. 25-33; *Union Bank v. Superior Court* (1995) 31 Cal.App.4th 573, 590.)

The court finds defendant Harley-Davidson has met its burden in moving for summary judgment of the complaint.

Plaintiffs oppose the motion, challenging whether the cited evidence supports the stated fact (UMF Nos. 10, 11, 14, 15), improperly objecting to the evidence within the separate statement (UMF No. 16), and disputing the characterization of the material facts (UMF Nos. 16, 18, 20, 22, 23, 24). The court finds none of these challenges are supported with a reference to evidence in support of finding a dispute of material fact. (Code Civ. Proc., § 437c, subd. (b)(3).)

Plaintiffs attempt to assert a triable issue of fact as to the existence of a defect through the expert opinion of Peter Sullivan, a vehicle systems testing and analysis expert. Mr. Sullivan opines the motorcycle at issue "was defective as designed and manufactured," "inadequate service instructions and inadequate technical bulletins or publications" were provided by Harley-Davidson, and that "Harley-Davidson's failure to provide a more durable and reliable hose clamp was a substantial factor in causing the subject collision … ." (Sullivan Decl. ¶¶ 5, 7.) Mr. Sullivan identifies a spring clamp in the oil coolant line assembly and opines that defendant knew of instances where the clamp failed to ensure drain hose retention. (*Id*., ¶¶ 9, 13.) Mr. Sullivan additionally attests to a high number of replacement spring clamps having been distributed by Harley-Davidson as evidence that the spring clamps were not sufficient for securing the oil drain hoses making the oil coolant line assembly defective. (*Id*., ¶ 13.) Defendant's objections to Mr. Sullivan's conclusions as speculative are sustained. (Obj. Nos. 1-3, 6-7.)

Mr. Sullivan's declaration is devoid of factual support for his conclusions that the motorcycle at issue contained any type of defect or that said defect caused the decedent's accident. Speculation as to the relationship between the volume of replacement clamps distributed and the hoses to which they attach will not support the conclusion that the clamp was defective or that more warranty claims regarding failure of spring clamps must exist but have not been produced in discovery. Speculation that a design change in the coolant line assembly clamp means there are documents regarding the change that have not been produced in discovery is insufficient to raise a triable issue of material fact to defeat summary judgment. (Sullivan Decl., ¶¶ 16-20[1].)

Plaintiffs request a continuance pursuant to Code of Civil Procedure section 437c, subdivision (h) for additional depositions of defendant's employees regarding notice, defect, and causation. Counsel suggests defendant is withholding relevant warranty claims from discovery that would support their theory of an inadequately sealed connection at the oil hose progressively worsens from a seep to a full detachment. (Yoka Decl., ¶ 4.) Counsel's theory is not consistent with the undisputed facts of this case where the oil seeping appeared only after modifications performed by Cycle Masters, Inc. and the detachment occurred within days of the initial oil seepage. (UMF Nos. 18-22, 24.) Plaintiff's additional facts indicate the subject spring clamp was never detached during the modifications performed by Cycle Masters, Inc. and was secure at the conclusion of their work. (AMF Nos. 56-60, 66.) There is no evidence to suggest there was progressive wear on the clamp at issue. It does not appear from the affidavit that the further discovery sought to pursue this new theory of progressive wear on the clamp is consistent with the undisputed facts of the case and therefore necessary to oppose this motion.

Plaintiffs' opposition is limited to inferences and speculation that additional evidence to support the existence of a defect in the use of a spring clamp is being withheld by defendant. These inferences are unsupported by the evidence that the spring clamp at issue was confirmed to have been secure in the days before the incident giving rise to the complaint. The court finds plaintiffs have not met their burden to raise a dispute of material fact. As a result, Defendant Harley-Davidson's motion for summary judgment of the entire complaint against it is granted.

Motion to Consolidate

California Rules of Court, rule 3.350(a)(1)(C) requires the moving party to file the Notice of Motion to Consolidate in both cases proposed to be consolidated. The supporting memorandum of points and authorities, declarations and other supporting papers only need to be filed in the lower-numbered case. Here, Foremost Insurance Company neglected to file the Notice of Motion in case no. 25CECG01570 as required. (Cal. Rules of Court, rule 3.350(a)(1)(C).) Accordingly, the motion is denied without prejudice.

Application to Seal

The court is aware of defendant Harley-Davidson Motor Company, Inc.'s application to seal certain documents filed with the opposition to the motion for summary judgment. The application states that it will be heard on August 26, 2026, however this

[1] Defendant's objection no. 9 to paragraphs 16 through 20 of the Sullivan declaration is sustained.

date was not reserved with the court and no such hearing is on the court's calendar. In order to have such a motion or application heard the moving party will need to reserve a hearing date with the court's law and motion clerk. (Super. Ct. Fresno County, Local Rules, rule 2.2.1.)

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 8/24/2026 .
(Judge's initials) (Date)

(49)

Tentative Ruling

Re: ***Trujillo v. Sanchez et al.***
Superior Court Case No. 25CECG03240

Hearing Date: August 26, 2026 (Dept. 503)

Motion: By Defendants to Compel Arbitration, Dismiss Class Claims, and Stay or Dismiss Proceedings

Tentative Ruling:

To grant the motion to compel arbitration of the individual claims, including the individual PAGA claims, to dismiss the class claims, and to stay the representative PAGA claims pending arbitration of plaintiff's claims.

Explanation:

Defendants Fresno Valley SNF LLC dba Orchard Post Acute, PACS Group Inc., Rosemarie Sanchez and Patricia Knutson (collectively "Defendants") moves to compel arbitration against plaintiff Salina Trujillo ("Plaintiff").

Pursuant to California Code of Civil Procedure section 1281.2, "On petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party thereto refuses to arbitrate such controversy, the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists, unless it determines that: (a) The right to compel arbitration has been waived by the petitioner; or (b) Grounds exist for the revocation of the agreement. (c) A party to the arbitration agreement is also a party to a pending court action or special proceeding with a third party, arising out of the same transaction or series of related transactions and there is a possibility of conflicting rulings on a common issue of law or fact." (Civ. Proc. Code § 1281.2, paragraph breaks omitted.)

"[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 § 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.) Thus, in ruling on a motion to compel arbitration, the court must first determine whether the parties actually agreed to arbitrate the dispute, and 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.)

By its terms, the agreement is governed by the Federal Arbitration Act ("FAA"), 9 U.S.C. § 1, et seq. Section 2 of the FAA provides for enforcement of arbitration provisions in any contract "evidencing a transaction involving commerce." (9 U.S.C. § 2.) To determine whether there is an enforceable arbitration agreement, courts apply state law principles related to formation, revocation, and enforcement of contracts. (*Banner Entertainment, Inc. v. Alchemy Filmworks, Inc.* (1998) 62 Cal.App.4th 348, 357.) Moving defendants are not required to submit evidence of impact on interstate commerce to establish FAA preemption. (See *Valencia v. Smyth* (2010) 185 Cal.App.4th 153, 157; *Cronus Investments, Inc. v. Concierge Services* (2005) 35 Cal.4th 376, 387, 394.) Plaintiff does not challenge the governance of the FAA.

Here, Defendants has met the burden of establishing the existence of an agreement to arbitrate the claims raised in Plaintiff's Complaint. Defendants present verified copies of both a physically signed and digitally signed arbitration agreement by Plaintiff. (Sanchez Decl., ¶¶ 17-18, Exhs. A & B.) The agreement covers "all disputes that might arise out of or be related in any way to my application for employment and/or employment by" Defendants. (*Id*., at Exh. A & B, ¶ 1.) The agreement includes individual claims under the California Private Attorneys General Act ("PAGA"). (*Ibid*.) Thus, the agreement clearly applies to Plaintiff's claims.

Plaintiff admits to signing the arbitration agreement. (Trujillo Decl., ¶ 3.) However, Plaintiff argues the agreement is not enforceable due to procedural and substantive unconscionability.

Procedural Unconscionability

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." (*Armendariz v. Foundation Health Psychcare Services* (2000) 24 Cal.4th 83, 114.) To invalidate an arbitration agreement, the court must find both procedural and substantive unconscionability. (*Id*. at p. 122; *Stirlen v. Supercuts, Inc*. (1997) 51 Cal.App.4th 1519, 1533; *Mercuro v. Superior Court* (2002) 96 Cal.App.4th 167, 174.)

There is some degree of procedural unconscionability where, as here, the contract was drafted by the employer, preprinted for Plaintiff's signature, and required the signature before allowing an employee to work for them. (Sanchez Decl., ¶ 9.) As such it can be considered a contract of adhesion. However, courts frequently enforce employment arbitration agreements that are contracts of adhesion, as long as they are not also substantively unconscionable. "Arbitration clauses in employment contracts have been upheld despite claims that the clauses were unconscionable because they were presented as part of an adhesion contract on a take-it-or-leave-it basis. In finding the arbitration clause in *Lagatree* was not unconscionable, the court noted that, 'as *Gilmer* and its progeny make clear, the compulsory nature of a predispute arbitration agreement does not render the agreement unenforceable on grounds of coercion or for lack of voluntariness.'" (*Giuliano v. Inland Empire Personnel, Inc.* (2007) 149 Cal.App.4th 1276, 1292, citations omitted.)

The evidence presented by plaintiff supports minimal procedural unconscionability.

Substantive Unconscionability

Mandatory arbitration clauses in employment contracts are enforceable if they provide essential fairness to the employee. (*Armendariz v. Foundation Health Psychcare Services, Inc., supra,* 24 Cal.4th at pp. 90-91; see also *24 Hour Fitness v. Superior Court* (1998) 66 Cal.App.4th 1199, 1212 [arbitration clause in employee handbook was not unconscionable where it provided all parties with substantially same rights and remedies].) In the employment context, an agreement must include the following five minimum requirements designed to provide necessary safeguards to protect unwaivable statutory rights where important public policies are implicated: 1) a neutral arbitrator; 2) adequate discovery; 3) a written, reasoned, opinion from the arbitrator; 4) identical types of relief as available in a judicial forum; and 5) that undue costs of arbitration will not be placed on the employee. (*Armendariz, supra,* 24 Cal.4th at p. 102.)

Plaintiff raises multiple arguments that the arbitration agreement fails to meet these conditions. First, Plaintiff argues the arbitration agreement raises unnecessary hurdles to filing claims against Defendants by requiring Plaintiff to send written notice to the human resources department at a specific physical address. (Trujillo Decl., Exh. A, ¶ 5.) The requirement is the equivalent of service in the normal court process. The clause serves to inform Defendants that Plaintiff intends to bring a claim under the arbitration agreement and is neither a hurdle nor unnecessary.

Second, Plaintiff argues the agreement creates an ambiguity about the ability to rely upon fee-shifting statutes. The agreement states in pertinent part, "[Defendants] and I will be responsible for our own costs and for our attorneys' fees should we choose to be represented by counsel, unless the arbitrator shifts one party's costs and attorneys' fees to the other party in accordance with applicable law." (*Id*., Exh. A, ¶ 7.) Plaintiff is incorrect as the provision is a restatement of the standard rule that each party is expected to bear its own fees in the absence of an applicable statute or an attorney fees provision in a valid contract. (Code Civ. Proc., § 1021.)

Third, Plaintiff argues the clauses of the arbitration agreement lack mutuality. However, most of the clauses within the arbitration agreement apply to both Defendants and Plaintiff equally. The clauses that do not apply equally are either there to meet legal requirements, like the clauses that require the company to pay the arbitrator's fees and other costs, or do not make sense within a mutuality context, like the clause laying out how notice to Defendants is to be done under the arbitration agreement. Therefore the clauses under the arbitration agreement do have mutuality.

Finally, plaintiff contends that the arbitration clause is unconscionable because it contains a class action. However, courts have found that class action waivers in arbitration clauses are not invalid or unconscionable. (*Sanchez v. Valencia Holdings Co., LLC* (2015) 61 Cal.App.4th 899, 923.) Thus, the existence of a class action waiver in the agreement does not render it unconscionable. Separately, the California Supreme Court has found that waivers of PAGA representative actions in employee arbitration agreements are unenforceable. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014)

59 Cal.4th 348, 383-384, abrogated on other grounds in *Viking River Cruises, Inc. v. Moriana* (2022) 142 S.Ct. 1906.) Thus to the extent the class action waiver might extend to the representative PAGA action, the waiver is prohibited by controlling law.

Defendants have met their burden of demonstrating the existence of a valid arbitration agreement covering the claims of Plaintiff's complaint. Plaintiff has not met her burden of showing that the agreement is unconscionable. (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 413.) Accordingly, the motion to compel arbitration is granted, the class claims dismissed, and the representative PAGA claim is stayed until the arbitration is complete.

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 8/24/2026 .
(Judge's initials) (Date)

(48)

Tentative Ruling

Re: ***Pursell v. FRTO, LLC***
Superior Court Case No. 25CECG04990

Hearing Date: August 26, 2026 (Dept. 503)

Motion: By Defendant to Compel Arbitration

Tentative Ruling:

To grant defendant FRTO, LLS's motion to compel arbitration. To stay this action pending the completion of arbitration.

Explanation:

In moving to compel arbitration, defendants must prove by a preponderance of evidence the existence of the arbitration agreement and that the dispute is covered by the agreement. The party opposing the motion must then prove by a preponderance of evidence that a ground for denial of the motion exists (e.g., fraud, unconscionability, etc.). (*Rosenthal v. Great Western Fin'l Securities Corp.* (1996) 14 Cal.4th 394, 413-414; *Hotels Nevada v. L.A. Pacific Ctr., Inc.* (2006) 144 Cal.App.4th 754, 758; *Villacreses v. Molinari* (2005) 132 Cal.App.4th 1223, 1230.) There is a strong policy in favor of arbitration. (*AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 339.) Courts are to enforce valid arbitration agreements according to their terms. (*Ibid*.)

Defendant has met its burden of presenting evidence that shows there was an agreement to arbitrate all claims or disputes. Defendant presents a copy of the Retail Installment Sale Contract – Simple Finance Charge (With Arbitration Provision) ("RISC"), which contains an arbitration provision that requires the parties to arbitrate claims or disputes in contract arising out of the credit application or purchase of the vehicle. (Feldman Decl., Ex. A, p. 4, 8.)

Here, Plaintiff disputes that the arbitration agreement covers her cause of action seeking injunctive relief. Plaintiff points to the language addressing injunctive relief that states, "The arbitrator may not preside over a consolidated, representative, class, collective, injunctive, or private attorney general action." (*Ibid.*) In construing a contract, words are to be taken in their ordinary meaning. (Civ. Code, § 1644.) Specific provisions prevail over those that are general if the two are inconsistent. (*Jackson v. Donovan* (1963) 215 Cal.App.2d 685, 691; See Civ. Code, § 1652.) It is also a rule of contract interpretation to construe the language of a contract in a way that is consistent with the other terms of the contract, if possible.

The language quoted above refers to consolidated, representative, class, or other causes of action that involve multiple plaintiffs. The plain meaning of the sentence, taken in context, does not address individual injunctive relief. Furthermore, Plaintiff's argument contradicts language in the same agreement stating the parties are not giving up their right to arbitrate causes of action seeking individual injunctive relief. The court finds arbitration of causes of action seeking individual injunctive relief falls within the scope of the arbitration clause.

<u>Unconscionability</u>

"The party resisting arbitration bears the burden of proving unconscionability. Both procedural unconscionability and substantive unconscionability must be shown, but 'they need not be present in the same degree' and are evaluated on '"a sliding scale."' '[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.'" (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 247, internal citations omitted.)

Procedural Unconscionability

Procedural unconscionability has to do with the manner in which the contract was negotiated and the parties' circumstances at that time, and focuses on the factors of oppression or surprise. (*Kinney v. United HealthCare Services, Inc.* (1999) 70 Cal.App.4th 1322, 1327; *Martinez v. Master Protection Corp.* (2004) 118 Cal.App.4th 107, 113.) Oppression "arises from an inequality of bargaining power of the parties to the contract and an absence of real negotiation or a meaningful choice on the part of the weaker party." (*Kinney v. United HealthCare Services, Inc.*, *supra,* 70 Cal.App.4th at p. 1329.) "Surprise" involves the extent to which the supposedly agreed-upon terms are buried in an overly complex form; it deals with "the disappointed reasonable expectations of the weaker party. (*Harper v. Ultimo* (2003) 113 Cal.App.4th 1402, 1406.)

An agreement may be unconscionable where it is adhesive. An agreement is adhesive where a standardized contract, drafted and imposed by the party with superior bargaining strength, gives the other party only an opportunity to adhere to the terms or to reject them. (*Armendariz v. Foundation Health Psychcare Services, Inc.,* (2000), 24 Cal.4th 83, 113 ("*Armendariz*".)

Here, Plaintiff asserts that the arbitration provision has some degree of procedurally unconscionability because the provision is incorporated into the sales contract on a take-it-or-leave-it basis. Even so, adhesion does not *per se* render the arbitration agreement unenforceable, since such contracts "are an inevitable fact of life for all citizens, businessman and consumer alike." (*Graham v. Scissor-Tail, Inc.* (1981) 28 Cal.3d 807, 817-818.) The Supreme Court has stated this is the reason for "the various intensifiers in our formulations: '*overly* harsh,' '*unduly* oppressive,' '*unreasonably* favorable.'" (*Baltazar v. Forever 21, Inc.,* (2016) 62 Cal.4th 1237, 1245 (emphasis in the 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." (*Id.* at p. 1244.) Thus, the court finds that there is some degree of procedural unconscionability of the arbitration clause.

Plaintiff also alleges that the arbitration clause was procedurally unconscionable due to "surprise" because the text was dense and materially unclear on core rights. The format or presentation of the arbitration does not constitute a surprise in the RISC, and is thus is not procedurally unconscionable on these grounds.

Substantive Unconscionability

Substantive unconscionability exists if the terms of the agreement are overly harsh or one-sided, provisions which shock the conscience, are unduly oppressive, or unreasonably favorable to the party seeking to compel arbitration. (*Sanchez*, *supra* 61 Cal.4th 899, 909.) With substantive unconscionability, the "paramount consideration" is the mutuality of obligation to arbitrate. (*Nyulassy v. Lockheed Martin Corp.* (2004) 120 Cal.App.4th 1267, 1286.) To find substantive unconscionability, the court must find a *significant* degree of unfairness. A simple "bad bargain" does not qualify. (*Baltazar v. Forever 21, Inc., supra,* 62 Cal.4th at pp. 1244-1245.) Of "paramount consideration" is the mutuality of obligation to arbitrate. (*Nyulassy v. Lockheed Martin Corp., supra,* 120 Cal.App.4th at p. 1286.)

Agreements can provide a "margin of safety" to the party with superior bargaining power where that party has a legitimate commercial need, but the legitimate commercial need must be explained in the agreement. (*Armendariz, supra*, 24 Cal.4th 83, 117.) Courts have consistently required a "modicum of bilaterality" in arbitration agreements and where such agreements are one-sided, unconscionability is found not just for the lack of mutuality, but for the failure to justify the lack of mutuality. (*Ibid*.) The court in *Armendariz* noted that "the lack of mutuality can be manifested as much by what the agreement does not provide as by what it does." (*Id*. at p. 120.)

Plaintiff argues the discovery limitations, the arbitrator selection procedure, the costs of arbitration, the remedies to Defendant, and the inclusion of third parties make the arbitration provision substantively unconscionable. Plaintiff has failed to demonstrate these arguments are more than hypothetical and lack factual or evidentiary support.

Plaintiff then argues that the terms of the arbitration clause are unreasonably one-sided because Defendant may pursue self-help remedies without waiving arbitration while Plaintiff must arbitrate her claims. Substantive terms of the contract that are manifestly unfair or one sided are substantively unconscionable. (*Sanchez, supra,* 61 Cal.4th 899, 915.) In *Sanchez,* exempting the self-help remedy of repossession from arbitration was not unconscionable because, although it is favorable to the drafting party, it is expressly authorized by statute and is integral to selling automobiles on credit. (*Id., at p.* 922.) While favorable to Defendant, these terms are not overly harsh, unduly oppressive, or unreasonably favorable such that the provision would be considered unconscionable. (*Baltazar v. Forever 21, Inc., supra,* 62 Cal.4th at p. 1245.)

Defendant's motion is granted. This action is stayed pending the completion of arbitration.

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 8/24/2026 .
(Judge's initials) (Date)