Tentative Rulings for November 9, 2021
Department 501

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

20CECG02097 ***Escalante v. Dyvig*** **is continued to Tuesday, November 16, 2021, at 3:30 p.m. in Department 501.**

20CECG02758 ***Midland Funding, LLC v. Doherty*** **is continued to Wednesday, December 1, 2021 at 3:30 p.m. in Dept. 501.**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 501

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(32)

Tentative Ruling

Re: ***Lindon v. K.W.P.H Enterprises***
Superior Court Case No. 20CECG03667

Hearing Date: November 9, 2021 (Dept. 501)

Motion: by Defendant K.W.P.H. Enterprises *dba* American Ambulance for Order Compelling Arbitration, Dismissing Class Claims, and Staying Action

Tentative Ruling:

To grant the motion to compel arbitration, and to stay proceedings pending arbitration of plaintiff's claims. The issue of the arbitrability of plaintiff's class claims is deferred to the arbitrator, as explained below.

Explanation:

Agreement to Arbitrate.

"Under both federal and California law, arbitration agreements are valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 98; see Federal Arbitration Act (FAA)(9 U.S.C. § 1 et seq.).)

Title 9 United States Code section 2 states that, "A written provision in ... a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract."

A written agreement to submit to arbitration an existing controversy or a controversy thereafter arising is valid, enforceable and irrevocable, save upon such grounds as exist for the revocation of any contract. (Code Civ. Proc., § 1281.) "On petition of a party to an arbitration agreement alleging the existence of a written agreement to arbitrate a controversy and that a party to the agreement refuses to arbitrate that 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 rescission of the agreement." (Code Civ. Proc., § 1281.2.)

State law applicable to contracts generally governs whether a valid agreement to arbitrate exists. (*Perry v. Thomas* (1987) 482 U.S. 483.) With a motion to compel arbitration, the moving party must prove by a preponderance of the 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 the

evidence that a ground for denial of the motion exists (e.g., fraud, unconscionability, etc.). (See *Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 413-414; *Hotels Nevada v. L.A. Pacific Center, Inc.* (2006) 144 Cal.App.4th 754, 758; *Villacreses v. Molinari* (2005) 132 Cal.App.4th 1223, 1230.) With respect to the moving party's burden to provide evidence of the existence of an agreement to arbitrate, it is generally sufficient for that party to present a copy of the contract to the court; once such a document is presented to the court, the burden shifts to the party opposing the motion to compel, who may present any challenges to the enforcement of the agreement and evidence in support of those challenges. (See Civ. Proc. Code, § 1281.2; *Baker v. Italian Maple Holdings, LLC* (2017) 13 Cal.App.5th 1152; Cal. Rules of Court, rule 3.1330.)

Here, a copy of the purported arbitration agreement executed by plaintiff on July 14, 2017, is attached to the declaration of defendant's Director of Human Resources, Robert Adams. (Adams Decl. ¶ 5, Ex. A.) Hence defendant has produced evidence establishing the existence of an agreement to arbitrate. The agreement encompasses "any and all disputes, claims, or controversies ("claims") [the parties] may have (or such claims as may at any later time arise) ... which arise from the employment relationship between Employee and Employer or the termination thereof." (See *Lane v. Francis Capital Mgmt. LLC* (2014) 224 Cal.App.4th 676, 684, 687 [plaintiff's Labor Code claims for unpaid overtimes wages, unpaid meal period wages, waiting time penalties, and itemized wage statement violations were subject to arbitration because they were encompassed by the arbitration agreement].)

Applicability of the Federal Arbitration Act

Defendant contends that the agreement is enforceable under California law and the FAA. (9 U.S.C. § 1 et seq.) Therefore, a threshold issue is whether the procedural provisions of the FAA applies to the arbitration agreement, or whether the California Arbitration Act (CAA) applies. The party claiming that the FAA applies (here, defendant) has the burden of proof. (*Woolls v. Superior Court* (2005) 127 Cal.App.4th 197, 211-214.) When the moving party proffers no evidence that the contract is one "evidencing a transaction involving [interstate] commerce,"[1] it is the wording of the agreement, and not the interstate commerce analysis, which determines the applicable law. (*Valencia v. Smyth* (2010) 185 Cal.App.4th 153, 178 ("*Valencia*").) Here, defendant relies on the wording of the contract, and not the interstate commerce analysis, in urging application of the FAA. Defendant does not maintain that the contract involves interstate commerce; in fact, it appears to concede that it does not transact in interstate commerce. Therefore, the fact that it did not present any evidence of such involvement is immaterial.

Plaintiff also argues that the FAA should not apply because the agreement has a choice of law clause mandating application of California law, which would include application of the CAA. The agreement states: "Except as otherwise stated herein, this Agreement shall be governed by and shall be interpreted in accordance with the laws of the State of California." Plaintiff relies on *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University* (1989) 489 U.S. 468 ("*Volt*"). There, the

[1] 9 U.S.C., § 2; *Mount Diablo Medical Center v. Health Net of California, Inc.* (2002) 101 Cal.App.4th 711, 717.

contract specified that it would be governed by "the law of the place where the project is located," and the California Supreme Court affirmed that this meant they had incorporated the CAA, which meant they had "agreed to arbitrate in accordance with California law." (*Id.* at p. 477.) However *Volt* is inapposite and thus inapplicable, since the contract there did not contain an express provision for application of the FAA, as is the case here. The choice of law provision in the agreement here states that California law will apply "[e]xcept as otherwise stated herein[.]" The statement further on in the agreement that "[t]he Policy is intended to be subject to the Federal Arbitration Act for the purposes of this and each other provision contained herein[.]" is illustrative of such an exception. "[R]eferences to California law do not override the Agreement's provision that 'Enforcement of this agreement to arbitrate shall be governed by the Federal Arbitration Act.'" (*Victrola 89, LLC v. Jaman Properties 8 LLC* (2020) 46 Cal.App.5th 337, 349.) In *Victrola,* plaintiff pointed to a reference in the agreement very similar to the provision in the agreement at issue here – "[e]xcept as otherwise specified, this Agreement shall be interpreted and disputes shall be resolved in accordance with the Laws of the State of California" – but the court found that this language "does not help Victrola because the agreement in fact 'otherwise specified.'" (*Ibid.*, fn. 4.)

Plaintiff also argues that the express provision regarding the FAA is inapplicable because it states, "The *Policy* is intended to be subject to the Federal Arbitration Act for the purposes of this and each other provision contained herein." (Emphasis added.) Plaintiff contends that the word "policy" is used only in the paragraph containing this sentence (each of the three sentences in that paragraph use this word), and it is not defined in the agreement, and in all other paragraphs the word "Agreement" is used. Plaintiff contends that it is impossible to determine the meaning of this paragraph because the word "policy" is used.[2] Plaintiff argues that because of the ambiguity in the wording that the agreement does not manifest an intention to be governed by the FAA.

The court disagrees. The subject paragraph must be interpreted in accordance with basic rules of contract interpretation, as set forth in Civil Code sections 1635 through 1663. The overarching principal is that the contract "must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful." (Civ. Code, § 1636.) The California Supreme Court has called this the "fundamental goal of contractual interpretation." (*Bank of the West v. Superior Court* (1992) 2 Cal.4th 1254, 1264; *Signal Companies, Inc. v. Harbor Ins. Co.* (1980) 27 Cal.3d 359, 375 ["paramount rule"].) And when this rule is coupled with others, a noticeable judicial policy is discernible which enforces contracts despite mistakes or imperfections in the contract. "The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause

[2] The entire paragraph reads:

> Unless otherwise prohibited by applicable law, all claims subject to the Policy must be brought in Employee's individual capacity and not as a member of any purported class or by way of a representative action/proceeding. The Policy is intended to be subject to the Federal Arbitration Act for the purposes of this and each other provision contained herein. In the event this provision is deemed unenforceable as a matter of law, the Policy is intended to apply to all claims brought by Employee on Employee's own behalf and on behalf of or related to any other individuals.

helping to interpret the other." (Civ. Code, § 1641.) "A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect, if it can be done without violating the intention of the parties." (Civ. Code, § 1643.) "A contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates." (Civ. Code, § 1647.) "Repugnancy in a contract must be reconciled, if possible, by such an interpretation as will give some effect to the repugnant clauses, subordinate to the general intent and purpose of the whole contract." (Civ. Code, § 1652.) "Contradictory or inconsistent provisions of contract are to be reconciled by interpreting language in such a manner that will give effect to entire contract." (See *Estate of Petersen* (1994) 28 Cal.App.4th 1742, fn. 4.) "A contract term should not be construed to render some of its provisions meaningless or irrelevant." (*Ibid*.) Apparent conflicts in contracts should, if possible, be harmonized. (*Coast Counties Real Estate & Inv. Co. v. Monterey County Water Works* (1929) 96 Cal.App. 269, 278.)

Interpreting the subject paragraph in the context of the agreement as a whole, and with a view to harmonizing its meaning with that of the other provisions in the agreement, it is apparent that the term "Policy" is intended to refer to the agreement itself. To ascribe to it the interpretation advanced by plaintiff would render the subject provision meaningless and irrelevant which would be antithetical to the tenets of contract interpretation. The statement that "[t]he Policy is intended to be subject to the Federal arbitration Act for the purposes of this and *each other provision contained herein*" indicates that the term "Policy" connotes the agreement itself. Hence, the agreement is subject to the provisions of the FAA.

Plaintiff's Claim of Exemption from the FAA

Plaintiff argues he is exempt from the FAA as a "transportation worker." Under 9 United States Code section 1 ("FAA § 1), the FAA does not apply to employment contracts involving (*inter alia*) any "class of workers engaged in foreign or interstate commerce." Plaintiff cites to cases finding that this class includes "transportation workers,"[3] and notes that ambulance service has traditionally been considered part of the transportation industry. He points out that "ambulance drivers and attendants" are expressly covered by Wage Order No. 9, at California Code of Regulations, Title 9, section 11090, subdivision 3(K), which governs wages, hours, and working conditions in the transportation industry.

However, the United States Supreme Court has ruled that the exempt group stated in FAA § 1 as "workers engaged in commerce" must be defined narrowly. (*Circuit City Stores, Inc. v. Adams* (2001) 532 U.S. 105, 118.) Just because an ambulance attendant is considered a "transportation worker" under Wage Order No. 9 does not necessarily mean he is considered an *exempt* transportation worker within the meaning of FAA § 1. Namely, the exemption expressly applies to a class of worker "engaged in . . . *interstate* commerce." (FAA § 1, emphasis added.) Plaintiff states that he travels on public highways and freeways and transports injured people to hospitals on public roads,

[3] *Circuit City Stores, Inc. v. Adams* (2001) 532 U.S. 105, 119; *Garrido v. Air Liquide Industrial U.S. LP* (2015) 241 Cal.App.4th 833, 840.

but there is no evidence that he ever engages in *interstate* travel in doing so. Further, as noted above, no evidence was presented that plaintiff's employer was engaged in a business largely involved in interstate commerce, which might serve to exempt plaintiff from the FAA. (See, *e.g., Rittmann v. Amazon.com, Inc.* (9th Cir. 2020) 971 F.3d 904, 919 [Amazon drivers exempt from FAA as "transportation workers because they deliver goods shipped from across United State even though they themselves never cross state lines.].) Hence, plaintiff is not exempt from the FAA based on FAA § 1. Accordingly, the agreement is subject to the FAA.

Unconscionability

Plaintiff contends that the agreement is procedurally and substantively unconscionable, and hence unenforceable. If the court finds as a matter of law that a contract or any portion of it was unconscionable at the time it was made, the court may refuse to enforce it, or may enforce the contract without the unconscionable provisions, or limit their application to avoid any unconscionable result. (Civ. Code, § 1670.5, subd. (a).) There are two prongs considered in this analysis: procedural unconscionability and substantive unconscionability. Both must be present for a court to exercise its discretion to refuse to enforce an arbitration agreement under the doctrine of unconscionability. (*Armendariz v. Foundation Health Psychcare Services, Inc.*, supra, 24 Cal.4th 83, 113 ["*Armendariz*"]; *Mission Viejo Emergency Medical Associates v. Beta Healthcare Group* (2011) 197 Cal.App.4th 1146, 1158 - even though contract may have been adhesive, it was enforceable because not substantively unconscionable; *Nelsen v. Legacy Partners Residential, Inc.* (2012) 207 Cal.App.4th 1115, 1124 (Accord).) But they need not be present in equal amounts; essentially a sliding scale is used, and where there is substantive unconscionability, less procedural unconscionability need be shown. (*Armendariz,* at pp. 113-114.)

- *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 1322, 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.)

Plaintiff contends that several aspects of the agreement's formation are procedurally unconscionable. Plaintiff states that he was given the agreement at the end of an eight-hour long training session and he believed that he was required to sign as a condition of employment. (Lindon Decl. ¶ 3-7.) Plaintiff's signature appears on the agreement, and this he does not dispute, but he claims that he does not recall signing it and was surprised to learn that he had signed such an agreement. (Lindon Decl. ¶ 4.) He states that he was not given the opportunity to take the agreement home, and was required to sign it before he could leave the training. (Lindon Decl. ¶ 7.) Plaintiff states that he does not recall attending any meeting for the purpose of reviewing the revised

arbitration policy. (Lindon Decl. ¶ 5.) Plaintiff also states that even though the agreement states that the American Arbitration Association ("AAA") rules shall govern and are attached and incorporated into the agreement, no such rules were attached or otherwise provided to plaintiff. (Lindon Decl. ¶ 4.) Plaintiff claims therefore that he could not have known from the face of the agreement what rules he was agreeing to be bound by. Plaintiff also claims that the AAA rules were not readily available because they could only have been found in the archives of the AAA's website. (Pyle Decl. ¶ 9.) Plaintiff further claims that the terms of the agreement are confusing in that it states that it shall be governed by and interpreted in accordance with the laws of the State of California and subsequently states that "[t]he Policy is intended to be subject to the Federal Arbitration Act for the purposes of this and each and other provision contained herein." Plaintiff also claims that the word "Policy" is not defined in the agreement and that the sudden use of the term in this one paragraph is "mysterious."

According to defendant's Director of Human Resources, defendant scheduled meetings with employees to present them with updated forms and arbitration agreements in 2017. (Adams Decl. ¶ 4.) On July 14, 2017, plaintiff signed the agreement in the presence of Mr. Adams. (Adams Decl. ¶ 5.) The agreement was presented to all employees in 12 point Calibri font. (Adams Decl. ¶ 4.) Plaintiff had previously executed an earlier version of defendant's arbitration agreement when he was hired in July 2016. (*Ibid*.) Mr. Adams states that he made no attempts to threaten or harass plaintiff to sign the agreement. (Adams Decl. ¶ 6.) He states that no promises or threats were made to plaintiff or any other employee with regard to the agreement. (*Ibid*.) He also states that most, but not all, employees signed the new agreement. (*Ibid*.) Plaintiff was also advised that he could take the agreement home to review at his convenience. (*Ibid*.)

Here, it appears that plaintiff was not required to sign and return the agreement during the session at which it was presented to him and was given the opportunity to take it home to review at his convenience. No promises or threats were made to coerce plaintiff into executing the agreement, the agreement was only two pages long and was presented in clear 12 point Calibri font, and the critical provisions were presented in bold font or were otherwise capitalized. Moreover, plaintiff had signed a previous version of defendant's arbitration agreement when he was hired in July 2016, and therefore was not totally unfamiliar with an agreement of this nature. Moreover, the last paragraph of the agreement advised plaintiff of his right to consult with counsel with regard to the agreement. Plaintiff's contention that he does not recall signing the agreement or that he did not understand its terms and that he was surprised to learn that he had signed such an agreement is not compelling. "A party who signs a document is presumed to have read it and to understand its contents." (*Baker v. Italian Maple Holdings, LLC, supra,* 13 Cal.App.5th 1152.) Failure to read or understand an arbitration agreement is generally no defense to enforcement. (*Madden v. Kaiser Foundation Hospitals* (1976) 17 Cal.3d 699, 710.)

Plaintiff also claims that he believed that he was required to sign the agreement as a condition of his employment. The language of the agreement provides that "[e]mployee has signed this Agreement in exchange for consideration including Employee's employment by the Company[.]" Concededly, the agreement was prepared by the party with the greater bargaining power (the employer), without input from the employees. Plaintiff does not contend that he was precluded from negotiating

with defendant regarding the terms of the agreement. In fact, the agreement states that "[t]his agreement *can be modified* only by a written document signed by an Officer of the Company and the Employee[.]" [Emphasis added.] The agreement further states that "[t]he Parties [] agree that this Agreement is the product of an arms-length negotiation ...." Therefore, plaintiff's belief that signing the agreement was a necessary condition of his employment does not necessarily provide a basis for his claim that the agreement was oppressive. (See *Poublon v. C. H. Robinson Company* (2017) 846 F.3d 1251, 1263.)

Plaintiff also contends that the agreement indicated that the AAA rules were attached to the agreement, but they were not, and nor was plaintiff told where he could obtain these rules. Although plaintiff claims that he was not provided with a copy of the AAA rules, he does not claim that he asked for a copy of the AAA rules from defendant or that he asked for an explanation regarding any confusing terms and that defendant refused to comply with any such request. In any event, an employer's failure to provide a copy of the AAA rules, which are incorporated by reference in the arbitration agreement, does not necessarily give rise to "a greater degree of procedural unconscionability." (See *Baltazar v. Forever 21, Inc.* (2016) 62 Cal.4th 1237, 1245.) "Employment contract's arbitration provision was not rendered unconscionable by employer's failure to attach applicable arbitration rules, which were incorporated by reference into the agreement." (*Peng v. First Republic Bank* (2013) 219 Cal.App.4th 1462.) Based on these facts, the court concludes that there was some procedural unconscionability with regard to the agreement, in that it was slightly adhesive. However, the court does not find the "significant oppression" found in *OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 146 ("Kho"), the case plaintiff heavily relied on for this factor.

Adhesion does not *per se* render an 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., supra,* 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.) In other words, because procedural unconscionability may be found, the analysis turns on consideration of the substantive unconscionability prong. As the court noted in *Graham v. Scissor-Tail, Inc.* "To describe a contract as adhesive in character is not to indicate its legal effect. It is, rather, 'the beginning and not the end of the analysis insofar as enforceability of its terms is concerned.'" (*Graham,* at p. 819.)

- *Substantive Unconscionability*

Substantive unconscionability exists if the terms of the agreement are overly harsh or one-sided, or if they shock the conscience, are unduly oppressive, or unreasonably favorable to the party seeking to compel arbitration. (*Sanchez v. Valencia Holding Co., LLC* (2015) 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 1267, 1286.)

Plaintiff contends that the AAA rules adopted by the agreement violate *Armendariz* by making it possible that plaintiff may be required to bear the cost of arbitration, even if he is successful on his claims; that the AAA rules also violate *Armendariz* by restricting plaintiff's access to adequate discovery; that the agreement includes an unlawful waiver on representative claims; and that the agreement contains an unconscionable pre-dispute jury waiver.

Here, the agreement provides that, "[t]he Employer will pay the arbitrator's fee for the proceeding, as well as any room or other charges assess by the AAA." It further provides that "[t]he arbitrator shall have the power to award any type of legal or equitable relief that would be available in a court of competent jurisdiction including, but not limited to attorney's fees and punitive damages when such damages and fees are available under applicable statute and/or judicial authority." The court must presume the arbitrator will behave reasonably. (*Torrecillas v. Fitness International, LLC* (2020) 52 Cal.App.5th 485, 497.) Therefore, the court does not find the agreement to be substantively unconscionable on these grounds.

Next, plaintiff contends that the waiver of representative claims renders the agreement unconscionable and unenforceable. When a party challenges a class arbitration waiver provision as unconscionable and hence invalid, the issue is for the court to determine, applying relevant state contract law principles. (*Puleo v. Chase Bank USA, N.A.* (2010) 605 F.3d 172, 179-180.) However, plaintiff has not cited to any case holding that a waiver of a representative claim, other than a PAGA claim, is substantively unconscionable. (See *Poublon v. C. H. Robinson Company*, *supra,* 846 F.3d 1251, 1261.) Moreover, the Supreme Court has suggested that arbitration agreements can generally waive collective, classwide and representative claims. (See *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 344 [[t]he overarching purpose of the FAA ... is to ensure the enforcement of arbitration agreements according to their terms so as to facilitate streamlined proceedings," and "[r]equiring the availability of classwide arbitration interferes with fundamental attributes of arbitration and thus creates a scheme inconsistent with the FAA."].) Also, the FAA preempts California law holding class action waivers as to employees' unwaivable rights to be contrary to public policy. (See *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348.) See also *Perry v. Thomas*, *supra,* 482 U.S. 483 [the FAA preemts Labor Code section 229.) Since the agreement is subject to the FAA, the waiver of representative claims does not render the agreement unconscionable.

Next, plaintiff argues that the AAA rules do not allow adequate discovery, but does not explain how the agreement or the AAA rules supposedly inhibit discovery. Rule 7 of the AAA National Rules for the Resolution of Employment Disputes states that "[t]he arbitrator shall have the authority to order such discovery, by way of deposition, interrogatory, document production, or otherwise, as the arbitrator considers necessary to a full and fair exploration of the issues in dispute, consistent with the expedited nature of arbitration." The California Supreme Court has made clear that "limitation on discoveryis one important component of the 'simplicity, informality, and expedition of arbitration.' " (*Armendariz, supra,* 24 Cal.4th 83 at 106 fn.11.) Arbitration is intended to be

a streamlined process, and discovery limits have long been recognized as an integral part of the process. (*Ibid*. [citing *Gilmer v. Interstate/Johnson Lane Corp.* (1991) 500 U.S. 20, 31].) There is no evidence here that defendant required the arbitration agreement in order to deprive its employees of necessary discovery. (See, *e.g., Hayes Children Leasing Co. v. NCR Corp.* (1995) 37 Cal.App.4th 775, 780.) Plaintiff fails to make any showing that he would be unable to vindicate his rights under the standard provided in the AAA. The court declines to find the limits on discovery that exist here to be substantively unconscionable.

Plaintiff also argues that the waiver of plaintiff's right to jury trial renders the agreement unconscionable. An employee's right to a jury trial may be validly waived by a predispute agreement requiring work-related disputes to be resolved through binding arbitration, even where the waiver was required as a condition of employment. (See *Lagatree v. Luce, Forward, Hamilton & Scripps* (1999) 74 Cal.App.4th 1105.) To be enforceable, a contract provision which in effect waives the right to jury trial by imposing an alternative dispute resolution clause, must be clearly apparent in the contract and its language must be unambiguous and unequivocal, leaving no room for doubt as to the intention of the parties. (See *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 804.)

Plaintiff's reliance on *Dougherty v. Roseville Heritage Partners* (2020) 47 Cal.App.5th 93, 107 is misplaced as that case is factually distinguishable in that it involved claims under the Elder Abuse Act and the predispute waiver applied to a waiver of jury claims for which arbitration *was not* allowed by law. Here, the agreement contains the following language in bold font, "[t]he parties understand and agree that they are waiving their right to bring such claims to court, including the right to a jury trial." Moreover, the last line of the agreement, just above plaintiff's signature, states in capitalized script that "EMPLOYEE ALSO UNDERSTANDS THAT BY ENTERING INTO THIS AGREEMENT, S/HE IS WAIVING ANY RIGHT TO A TRIAL BY JURY." Here the waiver provision is conspicuously stated in the contract and its language is unambiguous and unequivocal, leaving no room for doubt as to the intention of the parties. Therefore, this does not support a finding of substantive unconscionability.

As stated above, to find the agreement unenforceable based on unconscionability, plaintiff needs to establish both procedural and substantive unconscionability. Plaintiff shows relatively minor procedural unconscionability, but does not establish substantive unconscionability. As plaintiff has failed to meet his burden, the agreement is enforceable.

Dismissal of Class Claims

Defendant contends that the arbitration agreement does not provide for the arbitration of class claims and that the court should compel arbitration of plaintiff's individual claims only and dismiss his class claims. Plaintiff argues that the agreement is governed by California law, that the FAA does not apply and that under *Gentry v. Superior Court* (2007) 42 Cal.4th 443, the class waiver is unenforceable. "When it is alleged that an employer has systematically denied proper overtime pay to a class of employees and a class action is requested notwithstanding an arbitration agreement that contains a class arbitration waiver, the trial court must consider ... the modest size of the potential individual recovery, the potential for retaliation against members of the class, the fact

that absent members of the class may be ill informed about their rights, and other real world obstacles to the vindication of class members' rights to overtime pay through individual arbitration." (See *Gentry v. Superior Court*, *supra,* 42 Cal.4th 443, 463.) "If it concludes, based on these factors, that a class arbitration is likely to be a significantly more effective practical means of vindicating the rights of the affected employees than individual litigation or arbitration, and finds that the disallowance of the class action will likely lead to a less comprehensive enforcement of overtime laws for the employees alleged to be affected by the employer's violations, it must invalidate the class arbitration waiver to ensure that these employees can 'vindicate [their] unwaivable rights in an arbitration forum." (*Id*. at p. 463.) But see *Stolt-Nielson S.A. v. AnimalFeeds International Corp.* (2010) 559 U.S. 662 ["a party may not be compelled under the FAA to submit to class arbitration unless there is a contractual basis for concluding that the party agreed to do so."]

When a case falls under the FAA, as is the case here, the question of whether an arbitration agreement prohibits class arbitration is for the arbitrator(s) to decide. "The Supreme Court has spoken, and the foundational issue - whether a particular arbitration agreement prohibits class arbitrations - must (in FAA cases) henceforth be decided by the arbitrators, not the courts." (*Garcia v. DIRECTV, Inc.* (2004) 115 Cal.App.4th 297, 298.) Hence, the court will defer to the arbitrator on the issue of the arbitrability of the class claims and whether or not they should be dismissed.

Here, an enforceable arbitration agreement has been shown to exist to which the FAA applies and defendant is not in default in proceeding with arbitration. The agreement encompasses the claims asserted by plaintiff in the instant action. In cases governed by the FAA, where the court orders the parties to arbitration, it must impose a stay on the underlying litigation. (*Rodriguez v. American Technologies, Inc.* (2006) 136 Cal.App.4th 1110, 1114 9 U.S.C. § 3.) Accordingly, the action is stayed pending 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: DTT (Judge's initials) on 11/2/2021 (Date).

(03)

Tentative Ruling

Re: ***BMY Construction Group, Inc. v. Pacific Choice Brands, Inc.***
Superior Court Case No. 20CECG02998

Hearing Date: November 9, 2021 (Dept. 501)

Motion: by Plaintiff for Order Charging Interest of Judgment Debtor in Limited Liability Company

Tentative Ruling:

To grant plaintiff's motion for a charging order against the interest of judgment debtor Bonifacio Villalobos in Triple H Processors, LLC for the unsatisfied amount of the judgment. (Code Civ. Proc. §§ 680.010, *et seq*.; 708.310; 708.320, Corp. Code § 17705.03.)

Explanation:

Plaintiff has established that it has a valid default judgment against defendant Bonifacio Villalobos, that Villalobos has failed to pay off the judgment, and that Villalobos holds a 2.5% interest in Triple H Processors, LLC. Villalobos has admitted that he has failed to pay off the judgment, and that he lacks the funds to do so. However, it appears that his interest in Triple H has substantial value and may be applied to pay off the outstanding judgment. Therefore, to the extent that Villalobos receives any distributions from his ownership interest in Triple H, those sums should be applied to the outstanding judgment against him. Moreover, neither Villalobos nor any other party or entity has opposed the motion, despite being given notice of the motion. As a result, the court intends to grant plaintiff's motion for a charging order against Villalobos's interest in Triple H. (Code Civ. Proc. §§ 680.010, *et seq*.; 708.310; 708.320, Corp. Code § 17705.03.)

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: DTT on 11/3/2021.
(Judge's initials) (Date)