SUPERIOR COURT OF CALIFORNIA
COUNTY OF VENTURA

Tentative Ruling

2025CUOE054244: AMANI JOSHUA KING vs ASTON CARTER, INC.
04/13/2026 in Department 44
Motion to Compel Arbitration OF PLAINTIFF'S INDIVIDUAL PAGA CLAIMS AND TO STAY NON-INDIVIDUAL PAGA CLAIMS PENDING ARBITRATION

Effective **January 5, 2026**, Judge Charmaine H. Buehner and all cases previously assigned to Department J4 at the Juvenile Justice Center in Oxnard transferred to Department 44, located at the Hall of Justice, 800 South Victoria Avenue, Ventura, California 93009.

Department Rules. Parties and counsel shall follow the Department 44 rules and Zoom protocols, available at https://www2.ventura.courts.ca.gov/Courtroom/C44.

Remote Appearances. The Court allows Zoom appearances as a courtesy to parties and counsel. The Court does not accommodate Court Call appearances. **You MUST register by 4:00 p.m. the court day before your hearing or you will be DENIED entry to the hearing:**

ZOOM Registration Link:

https://ventura-courts-ca.zoom.us/meeting/register/iqN7uhQSQMuOqs-9TQXgEQ

No advance notice is required to appear in person.

Tentative Rulings. Oral argument should address the tentative decision. To submit on the tentative decision, email courtroom44@ventura.courts.ca.gov before 8:00 a.m. on the hearing date, copying all other parties, Use the subject line "SUBMISSION ON TENTATIVE", [Case Number], [Case Title] and [Party]. If not all parties submit, the hearing will proceed, and the tentative ruling may change.

The Court may adopt, modify or reject the tentative ruling after hearing. The tentative ruling has no legal effect unless and until adopted by the Court.

Motion: Defendant's Motion to Compel Arbitration of Plaintiff's Individual PAGA Claims and to Stay Non-Individual PAGA Claims Pending Arbitration

Tentative Ruling:

Defendant's Motion to Compel Arbitration of Plaintiff's Individual PAGA Claims and to Stay Non-Individual PAGA Claims Pending Arbitration is GRANTED. A status conference re: arbitration is set for April 13, 2027, at 8:30 a.m. in Department 44.

The parties shall file a joint statement ten days in advance of status conference.

Defendant to give notice.

I. Defendant's Request for Judicial Notice

The Court denies Defendant's request for judicial notice of Exhibits 1 through 44 on relevance grounds. Because judicial notice is a substitute for proof, it is "always confined to those matters which are relevant to the issue at hand." (*Gbur v. Cohen* (1979) 93 Cal.App.3d 296, 301.)

II. Discussion

A. Applicability of the FAA

"A written provision in any maritime transaction or 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 or as otherwise provided in chapter 4." (9 U.S.C.A. § 2 (West).) "[T]he word 'involving' is broad and is indeed the functional equivalent of 'affecting.' " (*Allied-Bruce Terminix Companies, Inc. v. Dobson* (1995) 513 U.S. 265, 273-274].)

"Section 2 of the FAA, the basic coverage provision of the FAA, makes the law applicable to contracts evidencing a transaction 'involving commerce' (9 U.S.C. § 2), which language reflects that Congress intended the law's coverage to extend to the full reach of its commerce clause power." (*Nieto v. Fresno Beverage Co., Inc.* (2019) 33 Cal.App.5th 274, 279.)

"Generally, the first step in reviewing an arbitration dispute is to determine whether the question presented is subject to the FAA or the CAA because different rules apply under the two acts, which in some cases leads to federal preemption." (*Aixtron, Inc. v. Veeco Instruments Inc.* (2020) 52 Cal.App.5th 360, 391, disapproved on other grounds by *Vo v. Technology Credit Union* (2025) 108 Cal.App.5th 632.) "A party seeking to enforce an arbitration agreement has the burden of showing FAA preemption." (*Lane v. Francis Capital Management LLC* (2014) 224 Cal.App.4th 676, 687.) "For example, a petitioner seeking an order to compel arbitration must show that the subject matter of the agreement involves interstate commerce." (*Id*. at pp. 687-688.)

Here, Defendant is a staffing company with a Maryland headquarters with dozens of offices throughout the United States, including in California. (Collum Decl., ¶ 3.) Further, the arbitration agreement itself states that it is governed by the FAA and also that Plaintiff's employment with Defendant affects interstate commerce. (*Id*., Exh. 4 [p. 3].) Plaintiff makes no argument and cites no authorities in support of a contrary conclusion.

The agreement that the FAA applies, without more, is sufficient to find that the FAA applies. (*Tuufuli v. West Coast Dental Administrative Services, LLC* (2026) 117 Cal.App.5th 1048, 1054, and cases cited therein.)

For these reasons, the Court finds that if there is a valid agreement to arbitrate, then the FAA shall apply.

B. Delegation

"It is well-settled under both state and federal law 'that absent the parties' commitment of the arbitrability decision to an arbitrator, disagreements over whether a particular dispute is within the scope of an arbitration provision are ordinarily the responsibility of a court.' " (*Mendoza v. Trans Valley Transport* (2022) 75 Cal.App.5th 748, 765 [quoting *Sandquist v. Lebo Automotive, Inc.* (2016) 1 Cal.5th 233, 249].) "There is a strong presumption that courts should determine the jurisdiction of arbitrators." (*Mendoza*, *supra*, at p. 765 [internal quotation marks omitted].)

Here, the arbitration agreement appears to delegate to the Court the arbitrability of the enforceability or validity of the class action/collective action/representative action waiver. (Collum Decl., Exh. 4 [p.1, 2d bullet pt.].) Because the agreement is otherwise silent on who should determine jurisdiction, the Court finds that the presumption applies and that the Court can determine jurisdiction.

C. Existence of Arbitration Agreement

"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.)

"The party seeking to compel arbitration bears the burden of proving by a preponderance of the evidence an agreement to arbitrate exists." (*Nixon v. AmeriHome Mortgage Co., LLC* (2021) 67 Cal.App.5th 934, 946; see also *Gamboa v. Northeast Community Clinic* (2021) 72 Cal.App.5th 158, 164 ["The burden of persuasion is always on the moving party to prove the existence of an arbitration agreement with the opposing party by a preponderance of the evidence."].)

"The party seeking arbitration can meet its initial burden by attaching to the petition a copy of the arbitration agreement purporting to bear the respondent's signature." (*Bannister v. Marinidence Opco, LLC* (2021) 64 Cal.App.5th 541, 543–544; see also Cal. Rules of Court, rule 3.1330.) "Alternatively, the moving party can meet its burden by setting forth the agreement's provisions in the motion." (*Gamboa*, *supra*, 72 Cal.App.5th at p. 165.) "For purposes of a petition to compel arbitration, it is not necessary to follow the normal procedures of document authentication." (*Condee v. Longwood Management Corp.* (2001) 88 Cal.App.4th 215, 218; see also *People v. Skiles* (2011) 51 Cal.4th 1178, 1187 ["The means of authenticating a writing are not limited to those specified in the Evidence Code." (citing Evid. Code, § 1410)].] and *ibid.* ["For example, a writing can be authenticated by circumstantial evidence and by its contents."].)

Here, Defendant has produced a copy of the arbitration agreement purporting to bear Plaintiff's electronic signature. (Collum Decl., Exh. 4. Defendant has thus met its initial burden. (*Gamboa*, *supra*, 72 Cal.App.5th at p. 165.)

"If the moving party meets its initial prima facie burden and the opposing party disputes the agreement, then in the second step, the opposing party bears the burden of producing evidence to challenge the authenticity of the agreement." (*Gamboa*, *supra*, 72 Cal.App.5th at p. 165.) "The opposing party can do this in several ways. For example, the opposing party may testify under oath or declare under penalty of perjury that the party never saw or does not remember seeing the agreement, or that the party never signed or does not remember signing the agreement." (*Ibid*.)

Plaintiff appears not to challenge the authenticity of the agreement, conceding in various places in his opposition that he multiple documents during the onboarding process. (See e.g., Opp. at 6:3-4, 6:18-19, 8:12-13 ["executed contemporaneously with the Mutual Arbitration Agreement"].)

'If the opposing party meets its burden of producing evidence, then in the third step, the moving party must establish with admissible evidence a valid arbitration agreement between the parties. The burden of proving the agreement by a preponderance of the evidence remains with the moving party." (*Id*. at pp. 165-166.)

Based on Plaintiff's concession that he signed the arbitration agreement, the Court need not decide whether the burden has shifted back to Defendant. But even if it were to do so, the Court would find that Defendant has met its burden by producing the declaration of Lindsey Collum, the Product Owner for Onboarding Automation/Applicant Candidate Tracker of Defendant's parent company, who describes her job duties; describes the onboarding software used by Defendant during the time of Plaintiff's hiring; and describes the onboarding process for new hires, which includes registering and creating a password known only to the new hire. After registration, new hires may complete the paperwork onsite, at home, or on a mobile device, electronically signing the documents, the first of which is an "Electronic Disclosure" form. Plaintiff completed his onboarding documents on September 30, 2024. (Collum Decl., ¶¶ 2-8, 10-23, Exhs. 1-18.)

Based on the above, the Court finds that an agreement to arbitrate exists.

D. Consent to Arbitrate

1. Plaintiff's *Alberto* Argument

Plaintiff argues that he has not consented to arbitrate. He signed many documents in succession during the onboarding process. Citing *Alberto*, which in turn cited Civil Code section 1642, Plaintiff argues that all documents must be construed together as a single contract. (*Alberto v. Cambrian Healthcare* (2023) 91 Cal.App.5th 482.) Given that some documents indicate that they were not a contract, such as the handbook acknowledgment form, there is no consent to arbitrate.

Defendant responds that the arbitration agreement cannot be read together with other onboarding documents, and Plaintiff's reliance on *Alberto* is misplaced because the arbitration agreement is a standalone document, as are the other documents Plaintiff signed.

"Arbitration agreements are construed to give effect to the intention of the parties." (*Sandoval-Ryan v. Oleander Holdings LLC* (2020) 58 Cal.App.5th 217, 222.) "If contractual language is clear and explicit, it governs." (*Bank of the West v. Superior Court* (1992) 2 Cal.4th 1254, 1264.)

Plaintiff relies heavily on the Court of Appeal's decision in *Alberto v. Cambrian Healthcare* (2023) 91 Cal.App.5th 482. Plaintiff is incorrect that construing multiple documents together merges them into a single contract. (Id. at p. 491 ["Construing different instruments together pursuant to Civil Code section 1642 is not the same thing as incorporating them into one instrument."]; see also *Mountain Air Enterprises, LLC v. Sundowner Towers, LLC* (2017) 3 Cal.5th 744, 759 ["[J]oint execution would require the court to construe the two agreements in light of one another; it would not merge them into a single written contract." (quoting *Pankow Const. Co. v. Advance Mortg. Corp.* (9th Cir. 1980) 618 F.2d 611, 616)].)

Next, the facts of *Alberto* are also relevant to the issue of consent. In that case, the plaintiff brought wage-and-hour claims against the defendant. She signed a written arbitration agreement at the time of hiring – notably the employer did not sign the arbitration agreement. (*Id*. at p. 485.) The defendant employer moved for arbitration based on the written arbitration agreement. The Court of Appeal found that three onboarding documents were relevant to the analysis: the arbitration agreement, a confidentiality agreement, and an addendum to the confidentiality agreement, which it noted were signed on the same day by the plaintiff as part of the same process in which the plaintiff had signed the arbitration agreement. (*Id*. at p. 486.) Two of the three documents were silent on arbitration. (*Id*. at pp. 486-487.) The court focused the analysis of whether the terms across the agreements were substantively unconscionable. (*Id*. at p. 490.) The court read the documents together under Civil Code section 1642 because they were executed the same day and "[t]hey were both separate aspects of a single primary transaction," which was the plaintiff's hiring. Further, the court held that the documents "governed, ultimately, the same issue—how to resolve disputes arising between" the plaintiff and the defendant that arose from the plaintiff's employment. Accordingly, the court held that unconscionability in the confidentiality provision "can, and does, affect whether the Arbitration Agreement is also unconscionable. To hold otherwise would let Cambrian impose unconscionable arbitration terms, and then avoid a finding of unconscionability because it put the objectionable terms in a (formally) separate document. That is contrary to Civil Code section 1642." (*Id*. at pp. 490-491.)

Civil Code section 1642, cited within *Alberto*, is housed within Title 3 of the Civil Code, which is titled "Interpretation of Contracts." It states as follows: "Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together." (Civ. Code, § 1642.)

Among the documents signed by Plaintiff during the onboarding process, he identifies the California Employee Acknowledgment Form, the Offer of Employment, and the Mutual Arbitration Agreement when arguing that the documents must be taken together and, under Civil

Code section 1642. (Opp. at 5:11-19.) Plaintiff points out that the acknowledgment form expressly states that the handbook (which was not produced) "is neither a contract of employment nor a legal document." (Opp. at 6:21-27.) Consequently, according to Plaintiff, the acknowledgment form "undermines any intent by the Parties to enter into a legal arbitration contract." Initially, the conclusion does not follow from the premise; there is no evidence before the Court that the handbook was the source of the arbitration agreement. Here, Defendant offers the arbitration agreement, which is a separate document. (Collum Decl., Exh. 4.)

Second, the *Alberto* decision is not relevant to the issue of whether Plaintiff consented to arbitration. First, the Court of Appeal did not decide whether the parties consented; it assumed consent and proceeded in its analysis. (*Alberto*, *supra*, at p. 488 ["The trial court found that Cambrian's failure to sign the Arbitration Agreement meant that the parties had not formed an agreement to arbitrate. It reasoned that the Arbitration Agreement contained an "express[ ] provision that the parties need[ed] to sign it in order [for it] to be binding."] and *id*. at p. 489 ["We need not reach the contract formation issue. Assuming (without deciding) that Cambrian and Alberto formed an arbitration agreement despite Cambrian's missing signature, the agreement had unconscionable terms."].)

Third, the fact that *Alberto* affirmed the decision on unconscionability grounds alone establishes that consent and unconscionability are different issues. This is supported by the Civil Code itself. Part 2 of the Civil Code, titled "Contracts," contains several titles. The provisions relating to consent (Civ. Code, §§ 1565-1590) fall under Title 1, which is titled "Nature of a Contract." Civil Code section 1642, relied upon by the Court of Appeal in *Alberto*, is housed under Title 3, which, as mentioned above, is titled "Interpretation of Contracts." Finally, the provision relating to unconscionability is found with Title 4, which is titled "Unlawful Contracts." (Civ. Code, § 1670.5 ["If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result."].)

For these reasons, the Court does not find that the documents signed during Plaintiff's onboarding process defeat Defendant's motion.

2. Plaintiff's Integration Clause Argument

Plaintiff's argument with respect to the integration clause in paragraph 20 of the Offer of Employment is not entirely clear. He appears not to be arguing that paragraph 20 bars reference to the separate arbitration agreement. Instead, he seems to simply point to paragraph 20 as additional evidence of conflicting provisions within the entire onboarding packet, which therefore precludes a finding that Plaintiff consented to arbitrate.

Defendant responds that the arbitration agreement expressly states that by executing it, Plaintiff is not relying on any promises or representations by Defendant except those contained in the arbitration agreement.

The integration clause states as follows:

> Except as expressly set forth herein, this Agreement represents the entire agreement of the parties with respect to the subject matter hereof, and any and all agreements entered into prior hereto with respect to the subject matter hereof are revoked and superseded by this Agreement. No representations, promises, warranties, inducements or oral agreements have been made by any of the parties with respect to the subject matter hereof except as expressly set forth herein or in other contemporaneous written agreements executed as part of your Aston Carter, Inc. pre-employment paperwork, including any mutual arbitration agreement. This Agreement may not be changed, modified or rescinded except in writing, signed by all parties hereto, and any attempt at oral modification of this Agreement shall be of no effect.

(Collum Decl., Exh. 13 [¶ 20].)

The Court finds that Defendant is correct based on the language of the integration clause itself. First, the first sentence expressly indicates that agreements entered into *before* the Offer of Employment are revoked and superseded. The time stamp on the document indicates it was signed at 2:48 p.m. on September 27, 2024. The standalone arbitration agreement, on the other hand, was signed at 3:29 p.m. Thus, the first sentence does not extinguish the subsequently-signed arbitration agreement.

Second, the first sentence of paragraph 20 expressly states that the agreement set forth in paragraph 20 is the entire agreement "with respect to the subject matter hereof."

Third, the third sentence of paragraph 20 expressly states that no representations have been made "with respect to the subject matter hereof except as expressly set forth herein or in other contemporaneous written agreements executed as part of your Aston Carter, Inc. pre-employment paperwork, including any mutual arbitration agreement."

The language thus supports Defendant's argument that paragraph 20 is not intended to supersede all other onboarding documents, including the arbitration agreement; rather, the documents were intended to stand alone and be interpreted without regard to other documents, except as expressly stated in such other documents. Support for this position also comes from the language of the arbitration agreement itself, which states, in relevant part: "I am not relying on any promises or representations by the Company except those contained in this Agreement[.]" (Collum Decl., Exh. 4. [p.3, 2d bullet point under "I acknowledge that"].)

Silva v. Cross Country Healthcare, Inc. (2025) 111 Cal.App.5th 1311, cited by neither Plaintiff nor Defendant, is relevant to the effect of integration clauses in situations like these that involve onboarding documents. In that case, the plaintiff signed an arbitration agreement and a separate employment agreement. (*Id*. at p. 1317.) The employment agreement was the latter to be signed, and it contained an integration clause that stated that the agreement "supersedes all prior and contemporaneous agreements[.]" (*Id*. at p. 1319.) Citing *Alberto* and Civil Code section 1642, the Court of Appeal affirmed the trial court's decision to read the documents together. (*Id*. at p. 1321-1326.) Further, the court rejected the *employer's* argument that the documents could not be read together because they "talk past each other" and "contradict each other." The court stated that the inclusion of an integration clause weighs against reading the contracts together but does

not preclude the application of section 1642. (*Id*. at pp. 1325-1326.) Moreover, the court underscored that the arbitration agreement did not contain the integration clause, which constituted substantial evidence supporting the trial court's decision to read the arbitration agreement in conjunction with the employment agreement. (*Id*. at p. 1326.)

Silva and *Alberto* stand for the proposition that when an employee signs a multitude of documents during the onboarding process, the documents should be read together, especially to determine whether an arbitration agreement is unconscionable. *Silva* notes that where one of the documents contains an integration clause, the language of the integration clause weighs against reading the documents together but does not necessarily preclude it.

Here, the Court finds that the language of the Offer of Employment can, and should be, read together with the language of the arbitration agreement for purposes of determining whether the parties intended to arbitrate their claims against each other, as well as for purposes of determining whether the agreement is unconscionable. But in respect to consent, based on the language of the integration clause at issue in this case, the Court finds that the parties did consent to arbitrate.

3. The Retaliation Argument

Plaintiff also argues that because the offer of employment apparently reserves to Plaintiff the right to pursue a lawsuit for retaliation, Plaintiff cannot have agreed to arbitrate all employment-related disputes when one such claim is not required to be arbitrated. Plaintiff specifically cites paragraph 10 of the document. (Opp. at 9:11-22.) The Court rejects this argument. Paragraph 10 pertains to trades secrets, specifically referring to the Defendant's Trade Secrets Act ("DTSA"). From paragraph 10, the DTSA appears to contain whistleblower provisions that grant immunity from trade secret liability for qualifying disclosures and permit trade secret information to be disclosed in a lawsuit. (Collum Decl., Exh. 13 [¶ 10].) But the language quoted by Plaintiff does not reserve the right to file a lawsuit, and Plaintiff does not discuss the DTSA at all, including whether it requires or prohibits arbitration of retaliation claims. Additionally, arbitration of such a retaliation claim would be consistent with the DTSA because, according to the language of paragraph 10, if trade secrets are disclosed in a lawsuit, filings containing the trade secrets must be made under seal. Given that arbitration is usually confidential (as the arbitration agreement here specifies), compelling arbitration of such a claim would seem not to run afoul of the DTSA.

For the reasons stated herein, the Court finds that Plaintiff consented to arbitrate all claims covered by the arbitration agreement.

E. Scope of the Agreement

"The scope of arbitration is a matter of agreement between the parties[.]" (*Mendoza v. Trans Valley Transport* (2022) 75 Cal.App.5th 748, 763.) "The party opposing arbitration has the burden to show the arbitration provision cannot be interpreted to cover the claims in the

complaint." (*Id*. at p. 764.) Plaintiff has the burden to show that the provision does not cover the claims alleged. (*Id*.)

The arbitration agreement is broad in terms of its scope, covering "all disputes, claims, complaints, or controversies" that Plaintiff may have against Defendant or that Defendant may have against Plaintiff, "including contract claims, tort claims, discrimination and/or harassment claims; retaliation claims; claims for wages, compensation, penalties or restitution; and any other claim under any federal, state, or local statute, constitution, regulation, rule, ordinance, or common law, arising out of and/or directly related to my application for employment with the Company, and/or my employment with the Company, and/or the terms and conditions of my employment with the Company, and/or termination of my employment with the Company[.]" (Collum Decl., Exh. 4 [p. 1].)

The agreement is broad enough to cover the claims at issue, expressly providing that the covered claims include claims for penalties. Plaintiff makes no argument and offers no authorities to the contrary. Hence, the Court finds that the matters alleged in the Complaint are within the scope of the agreement.

F. Unconscionability

"Once an agreement to arbitrate has been proved, the burden shifts to the party opposing arbitration to establish a defense to the enforcement of the agreement, including the burden of demonstrating that the exemption [from arbitration] applies." (*Nixon v. AmeriHome Mortgage Co., LLC*, *supra*, 67 Cal.App.5th at p. 946 [internal quotation marks and citation omitted].)

"Unconscionability in a contract is one reason a court may decline enforcement." (*Lange v. Monster Energy Co.* (2020) 46 Cal.App.5th 436, 445.) "If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result." (Civ. Code, § 1670.5, subd. (a); see also *Ramirez v. Charter Communications, Inc.* (2024) 16 Cal.5th 478, 505]"[A]n unconscionability assessment focuses on circumstances known at the time the agreement was made."].)

"The general principles of unconscionability are well established. A contract is unconscionable if one of the parties lacked a meaningful choice in deciding whether to agree and the contract contains terms that are unreasonably favorable to the other party." (*OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 125.)

"Unconscionability consists of both procedural and substantive elements. The procedural element addresses the circumstances of contract negotiation and formation, focusing on oppression or surprise due to unequal bargaining power." (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 246.) "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." (*Id*. at p. 247 [quoting in part *Armendariz v. Foundation Health Psychare Services, Inc.* (2000) 24 Cal.4th at p. 83, 114

(internal quotation marks omitted)].) "In other words, the more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa." (*Armendariz*, *supra*, at p. 114.)

"The party resisting arbitration bears the burden of proving unconscionability." (*Pinnacle Museum Tower*, *supra*, at p. 247.)

1. Procedural Unconscionability

"Unconscionability analysis begins with an inquiry into whether the contract is one of adhesion." (*Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83, 113.) "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, L.L.C. v. Kho*, *supra*, 8 Cal.5th at p. 126 [quoting *Baltazar v. Forever 21, Inc.* (2016) 62 Cal.4th 1237, 1245].)

Here, Defendant offers evidence that the agreement to arbitrate was presented and signed electronically, and that completing onboarding documents is a prerequisite to employment. (Collum Decl., ¶¶ 6-16 and Exh. 4.) Given that unconscionability is evaluated on the circumstances at the time the agreement was made, the Court finds the agreement was a contract of adhesion. But even so, this indicates only a low degree of procedural unconscionability. (*Ramirez*, *supra*, 16 Cal.5th at p. 494.)

"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." (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 247.) "The circumstances relevant to establishing oppression include, but are not limited to (1) the amount of time the party is given to consider the proposed contract; (2) the amount and type of pressure exerted on the party to sign the proposed contract; (3) the length of the proposed contract and the length and complexity of the challenged provision; (4) the education and experience of the party; and (5) whether the party's review of the proposed contract was aided by an attorney." (*Grand Prospect Partners, L.P. v. Ross Dress for Less, Inc.* (2015) 232 Cal.App.4th 1332, 1348, *as modified on denial of reh'g* (Feb. 9, 2015).)

Plaintiff argues that the presentation was oppressive because it was presented on a take-it-or-leave it basis without an opportunity to negotiate. Defendant has presented evidence that Plaintiff had the option of reviewing and signing the documents at home and that Plaintiff did not have to sign the arbitration agreement. (Collum Decl., ¶¶ 10, 16.)

As Defendant points out, Plaintiff has submitted no evidence that he refused to sign the agreement, that he questioned it, that he asked any questions about the agreement, that he attempted to negotiate, that he was pressured into signing it, or that he had insufficient time to review it.

Weighing the factors, the Court finds a low level of procedural unconscionability.

2. Substantive Unconscionability

"A court should consider substantive unconscionability only after procedural unconscionability has been established. A 'conclusion that a contract contains no element of procedural unconscionability is tantamount to saying that, no matter how one-sided the contract terms, a court will not disturb the contract because of its confidence that the contract was negotiated or chosen freely, that the party subject to a seemingly one-sided term is presumed to have obtained some advantage from conceding the term or that, if one party negotiated poorly, it is not the court's place to rectify these kinds of errors or asymmetries.'" (*Ramirez v. Charter Communications, Inc.* (2024) 16 Cal.5th 478, 494 [quoting *Gentry v. Superior Court* (2007) 42 Cal.4th 443, 470].)

"Substantive unconscionability pertains to the fairness of an agreement's actual terms and to assessments of whether they are overly harsh or one-sided." (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC*, *supra*, 55 Cal.4th at p. 246.) "A contract term is not substantively unconscionable when it merely gives one side a greater benefit; rather, the term must be so one-sided as to shock the conscience." (*Ibid*. [internal quotation marks and citation omitted].)

Plaintiff first argues that the agreement is substantively unconscionable because it contains a waiver of the right to bring a class, collective, or representative action in court or in arbitration, referring to it as a "wholesale waiver."

Defendant argues that only Plaintiff's individual claims are subject to arbitration, citing to the language of the arbitration agreement. First, immediately above the class and PAGA waiver, the agreement begins, "To the maximum extent permitted by applicable law, the parties agree that:". Second, the first bullet point, which contains the class and PAGA waiver begins, "Except as permitted by law". (Collum Decl., Exh. 4 [p.1].) The Court finds that this language alone precludes a finding that the class and PAGA waiver is a wholesale waiver.

Next, Defendant argues that the agreement contains a severability clause which permits the individual claims to be severed and arbitrated. Defendant cites *Viking River Cruises, Inc., v. Moriana* (2022) 596 U.S. 639 in support of its position. In that case, the arbitration agreement at issue "contained a 'Class Action Waiver' providing that in any arbitral proceeding, the parties could not bring any dispute as a class, collective, or representative PAGA action. It also contained a severability clause specifying that if the waiver was found invalid, any class, collective, representative, or PAGA action would presumptively be litigated in court. But under that severability clause, if any 'portion' of the waiver remained valid, it would be 'enforced in arbitration.' " (*Id*. at p. 647.) The Supreme Court expressly held that the employer could compel an employee to arbitrate the employee's individual claims. (*Id*. at p 662.) But it also held that an agreement that contained a waiver of non-individual claims would be contrary to the FAA and therefore invalid. (*Ibid*.) Based on the severability clause, which allowed for the employee's individual PAGA claims to be arbitrated, the court held that the defendant could compel arbitration of the plaintiff's individual claims. (*Ibid*.) The Supreme Court also expressly held that *Iskanian*'s holding still applied if the waiver is construed as a wholesale waiver. (*Ibid*.)

The agreement at issue here contains a similar severability clause:

> If any court of competent jurisdiction finds any part or provision of this Agreement void, voidable, or otherwise unenforceable, such a finding will not affect the validity of the remainder of the Agreement, and all other parts and provisions remain in full force and effect.

(Collum Decl., Exh. 4 [p. 3, "Construction"].)

In *Nickson v. Shemran, Inc.* (2023) 90 Cal.App.5th 121, a PAGA case, the arbitration agreement contained the following waiver: "All claims that are covered by this Agreement can only be brought ... on an individual basis. ... I agree to waive any right to join or consolidate claims with others, or to make any claims as representative of a class, a member of a class, or in a private attorney general capacity." (*Id*. at p. 127.) The trial court had denied the defendant's motion to compel arbitration, relying on *Iskanian*. (*Id*.) But then the U.S. Supreme Court decided *Viking River*. After reviewing *Viking*, the Court of Appeal reversed the denial of the motion, finding that the plaintiff's individual claims could be arbitrated, while his non-individual claims could not be arbitrated, based on the fact that the agreement at issue contained a severability clause. That clause stated as follows: "If any provision of this Agreement is determined to be void or otherwise unenforceable, such determination shall not affect the validity of the remainder of the Agreement." (*Id*. at p. 130.)

Because the severability clause of the agreement at issue in this matter is very similar to the agreement in *Nickson*, the Court finds that the class and PAGA waiver is not substantively unconscionable.

Next, Plaintiff contends the agreement's attorney fee provisions, as set forth in the arbitration agreement and the Offer of Employment, are substantively unconscionable. The attorney fee provision in the arbitration agreement states: "I will pay my own attorneys' fees and all other costs that I incur in connection with the Arbitration[.]" (Collum Decl., Exh. 4 [p. 2, 3d bullet pt. under "Arbitration Fees and Costs"].) Defendant responds that this is just a statement of the American Rule. Further, Defendant points to language under the fifth bullet point in the "Arbitration Fees and Costs" section, which states as follows:

> The Arbitrator will not have authority to award attorneys' fees unless a statute or contract at issue in the dispute authorizes the award of attorneys' fees to the applicable prevailing part, in which case the Arbitrator shall have the authority to make an award of attorneys' fees to the full extent permitted by applicable law. If there is a dispute as to whether the Company or I am the prevailing party, the Arbitrator will decide the issue.

(Collum Decl., Exh. 4 [p. 2].)

The Court finds that the language of the provision in the arbitration agreement does not preclude an award of attorney fees to Plaintiff if he is the prevailing party.

The Offer of Employment states as follows regarding attorney fees:

> "Unless otherwise prohibited by law, you agree that in the event of any dispute or claims seeking to enforce the obligations contained in this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and all

> costs relating to the dispute or claims and any process through which such a dispute or claims may be resolves.

(Collum Decl., Exh. 13 [p. 3, ¶ 19].)

PAGA provides for attorney fees to a prevailing employee and is a one-way attorney-fee provision. (Lab. Code, § 2699, subd. (k)(1); *Estrada v. Royalty Carpet Mills, Inc.* (2024) 15 Cal.5th 582, 609.)

The Court finds that the inclusion of "Unless otherwise prohibited by law" precludes a finding that this provision is contrary to the attorney-fee provision of Labor Code section 2699, subdivision (k)(1).

Without citation to authority or developed argument, Plaintiff alleges the indemnification provision is "unreasonably overbroad" because "a *mere allegation of dishonesty* could trigger an award of attorney fees." (Opp. at 16:17-22 [partially quoting ¶ 11 of Offer of Employment]. Defendant does not address this argument in its reply.

Because Plaintiff's argument is not developed or supported by legal analysis, the Court declines to consider it. (*Paglia & Associates Construction, Inc. v. Hamilton* (2023) 98 Cal.App.5th 318, 327 ["Appellants may not enlist the court as their legal assistant to develop arguments they merely suggest. The duty to present legal analysis belongs to the parties. It would be unfair for one side to loft an undeveloped legal idea, to rely on the court to work it out, and to leave the opposing party with nothing concrete to tackle in the briefing."]; *Meridian Financial Services, Inc. v. Phan* (2021) 67 Cal.App.5th 657, 684 ["The reviewing court is not required to develop the parties' arguments or search the record for supporting evidence and may instead treat arguments that are not developed or supported by adequate citations to the record as waived."].)

Next, relying on *Nylassy v. Lockheed Martin Corp.* (2004) 120 Cal.App.4th 1281, *Hasty v. American Automobile Assn.* (2023) 98 Cal.App.5th 1041, and *Baltazar v. Forever 21, Inc.* (2016) 62 Cal.4th 1237, Plaintiff argues that the confidentiality provision in the arbitration agreement is substantively unconscionable. Plaintiff appears to cite *Nylassy* only for the proposition that confidentiality must be mutual. Although Plaintiff alleges that the provision is one-sided, its language shows that it applies to "the parties." Plaintiff even notes that in her opposition. (Opp. at 16:26.) Thus, he has not explained how the provision is not mutual.

Hasty is not relevant. The part of the opinion cited by Plaintiff relates to the discussion of another case, *Murrey v. Superior Court* (2023) 87 Cal.App.5th 1223, in which the Court of Appeal noted that the *Murrey* court had found a confidentiality provision substantively unconscionable on the facts of that case, which involve claims of sexual harassment. *Hasty* itself also involved claims of harassment, retaliation, and discrimination. (*Hasty*, *supra*, at p. 1062.)

Finally, *Baltazar* does not support Plaintiff's argument either. The confidentiality provision at issue in that case related to the desire to protect confidential and proprietary information of the defendant company, including trade secrets. (*Baltazar*, *supra*, at p. 1250.) The cited portion did not hold that every confidentiality provision must be supported by a legitimate commercial need to protect trade secrets or proprietary information, as Plaintiff suggests. Further, Plaintiff argues

that "Defendant has not made such a showing." Given that unconscionability is an affirmative defense, Plaintiff has the burden of proof on the issue. He has not met it here. (*Pinnacle Museum Tower Assn.*, *supra*, 55 Cal.4th at p. 247.)

For these reasons, the Court finds that the arbitration agreement is not substantively unconscionable.

G. Stay of Non-Individual PAGA Claims

"[W]here a plaintiff has filed a PAGA action comprised of individual and non-individual claims, an order compelling arbitration of individual claims does not strip the plaintiff of standing to litigate non-individual claims in court." (*Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104, 1123.) "Nothing in PAGA or any other relevant statute suggests that arbitrating individual claims effects a severance. When a case includes arbitrable and nonarbitrable issues, the issues may be adjudicated in different forums while remaining part of the same action." (*Id*. at p. 1124.)

"[C]ase law establishes that a stay of proceedings as to any inarbitrable claims is appropriate until arbitration of any arbitrable claims is concluded." (*McGill v. Citibank, N.A.* (2017) 2 Cal.5th 945, 966.)

Given that the Court has discretion to stay the proceedings pending the outcome of arbitration, the Court exercises its discretion and stays the non-individual claims. (Code Civ. Proc., § 1281.4.)

III. Conclusion

For the reasons stated herein, the Court grants the motion, orders Plaintiff to arbitrate his individual PAGA claims, and stays the action until arbitration has occurred. (Code Civ. Proc., § 1281.4.)

Counsel for Defendant is ordered to give notice of the Court's ruling.