1. FEDOR v. THE GRAND WALL, INC., SC20180239

Motion to Continue

Plaintiff and defendants jointly move to continue the trial of this case to September 16, 2024. The parties have also stipulated to extend the five-year deadline to bring the case to trial, as required under Code of Civil Procedure section 583.310.[1]

Good cause appearing, the court grants the parties' motion to continue the trial to September 16, 2024.

TENTATIVE RULING # 1: MOTION TO CONTINUE TRIAL IS GRANTED. TRIAL IS CONTINUED TO 8:30 A.M., MONDAY, SEPTEMBER 16, 2024, AND THE ISSUES CONFERENCE IS CONTINUED TO 4:00 P.M., TUESDAY, AUGUST 27, 2024, IN DEPARTMENT FOUR. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

[1] Plaintiff currently has until June 12, 2024, to bring her case to trial. (Emer. Rule 10, subd. (a); Code Civ. Proc., § 583.310.)

2. IMPERIUM BLUE TAHOE HOLDINGS v. TAHOE CHATEAU LAND HOLDINGS, 22CV1204

Demurrer to Third Amended Complaint

Pending is the demurrer of defendants Tahoe Chateau Land Holding, LLC and Propriis, LLC (collectively, "defendants") to the First,[2] Second, and Fourth causes of action in plaintiff's Third Amended Complaint.

As a preliminary matter, plaintiff claims that defendants failed to meet and confer and failed to file the mandatory meet and confer declaration before filing the instant demurrer. (Code Civ. Proc., § 430.41, subd. (a)(2), (a)(3).) Defendants concede they did not meet and confer, but they argue that, under Code of Civil Procedure section 430.41, subdivision (a)(4), "[a] determination by the court that the meet and confer process was insufficient shall not be grounds to overrule or sustain a demurrer."

Defendants' point is taken. However, the court will not permit a party to rely on subdivision (a)(4) to entirely skirt the requirement to meet and confer. The parties are ordered to meet and confer in good faith regarding the alleged defects in plaintiff's operative complaint. The court continues the hearing date on the demurrer to June 28, 2024, to facilitate that effort. (See *Dumas v. Los Angeles County Bd. of Supervisors* (2020) 45 Cal.App.5th 348, 355–356, fn. 3.) Defendants shall file a meet and confer declaration prior to the hearing and indicate which issues, if any, have been resolved.

TENTATIVE RULING # 2: THE MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, JUNE 28, 2024, IN DEPARTMENT FOUR. THE PARTIES ARE ORDERED TO MEET AND

[2] The First cause of action for breach of contract includes "Count One" and "Count Two." Count One relates to Paragraph 1, subdivision (h) of the parties' Maintenance and Easement Agreement (requiring Tahoe Chateau to "conduct their activities and otherwise use the temporary construction easement in such a manner so as not to unreasonably interfere with [plaintiff's], the Chateau Retail tenants', their guests' and invitees' use of the Chateau Retail or the operation of their businesses"). Count Two relates to Paragraph 4 of the parties' Maintenance and Easement Agreement ("Maintenance Costs Allocation"). Of these two counts, defendants demur to Count Two only.

CONFER IN GOOD FAITH PRIOR TO THE NEXT HEARING. DEFENDANTS SHALL FILE THE MANDATORY MEET AND CONFER DECLARATION PRIOR TO THE HEARING AND INDICATE WHICH ISSUES, IF ANY, HAVE BEEN RESOLVED. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

3. VLAD v. LCP LAKE TAHOE EMP, ET AL., 23CV2287

Motion to Compel Arbitration

Pending is defendants LCP Lake Tahoe EMP, LLC, doing business as Beach Retreat & Lodge at Tahoe, and Linchris Hotel, Corp.'s (collectively, "defendants") motion to compel arbitration and stay action.

1. Background

The instant lawsuit arises out of plaintiff's former employment with LCP. LCP maintains a staffing agreement with Linchris. Plaintiff was employed by LCP from approximately August 2023 to September 2023.

As part of the onboarding process, LCP asked plaintiff to review and sign documents, including an arbitration agreement. The arbitration agreement was included in a five-page document issued by Paychex, a company that performed services for LCP, including the issuance of paychecks to LCP's employees.

Defendants attached a copy of the arbitration agreement to the instant motion. (Evans Decl., Ex. A at § 2.) The agreement provides in relevant part: "This Agreement governs legal disputes between you and any Paychex-affiliated company which may include Oasis Outsourcing, LLC, Paychex Business Solutions LLC, their subsidiaries, and other affiliates that have Paychex, Inc. as their ultimate parent company (for convenience all these are referred to herein as 'Paychex') or the business or organization you perform work for (your 'Worksite Employer,' which is an intended beneficiary of this Agreement) arising out of or in connection with your employment, application for employment, or separation from employment for which you are, were, or would be paid through Paychex. … [¶] The US Supreme Court has held that employees may be required to arbitrate disputes under the Federal Arbitration Act, the law which applies to this Agreement. … [¶] … [¶] To the greatest extent allowed by law, except as otherwise provided below, ANY DISPUTE BETWEEN YOU AND PAYCHEX OR YOUR WORKSITE EMPLOYER WILL BE RESOLVED EXCLUSIVELY THROUGH BINDING ARBITRATION. …

[¶] … [¶] Arbitration will be held in the capital or largest city of the state where you work, worked, or would have worked for your Worksite Employer, or another mutually agreeable location. … [¶] The following matters are not subject to the requirement to arbitrate in this Agreement: Unemployment claims; Workers' compensation claims; Claims that by law cannot be subject to pre-dispute arbitration agreements (such as certain sexual harassment and sexual assault claims); Administrative agency proceedings that by law are not subject to arbitration agreements (however, once the agency's proceedings are concluded if you pursue the matter further this Agreement will apply). … [¶] If for any reason a matter is not arbitrated, to the greatest extent allowed by law, THE MATTER WILL BE HEARD BY A JUDGE AND YOU WAIVE ANY RIGHT TO TRIAL BY JURY. This provision will not apply in jurisdictions or types of actions where employers are by law not permitted to require employees to agree to it. [¶] Waiver of class collective, and representative actions. To the greatest extent allowed by law, no matter whether a matter subject to this Agreement is heard in court, arbitration, or any other forum, THE PARTIES WILL PARTICIPATE ONLY IN THEIR INDIVIDUAL CAPACITIES AND NOT AS MEMBERS OR REPRESENTATIVES OF A CLASS, COLLECTIVE GROUP, OR ANOTHER PERSON, GOVERNMENT/GOVERNMENTAL AGENCY, OR ORGANIZATION WITH RESPECT TO HARMS ALLEGEDLY SUFFERED BY ANYONE OTHER THAN THEMSELVES (INCLUDING, BUT NOT LIMITED TO CLAIMS UNDER CALIFORNIA'S LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004). This provision will not apply in jurisdictions or types of actions where employers are by law not permitted to require employees to agree to it. … [¶] … [¶] Laws governing resolution of employment-related disputes change frequently and may vary in different jurisdictions so this Agreement must be flexible. If any part of this Agreement is held invalid, impermissible, or unenforceable with respect to a dispute, the invalid, impermissible, or unenforceable part of this Agreement will be deemed automatically amended for purposes of the dispute to the extent necessary to render it valid, permissible, and enforceable as near as possible to its original intent (which expressly

includes the intent to not resolve matters by class, collective, or representative actions to the greatest extent allowed by law) and to the extent it is not or cannot be so amended for any reason the provisions of this Agreement are severable and the remainder of this Agreement will continue to apply." (Evans Decl., Ex. A at § 2.)

Plaintiff submitted a declaration stating he does not recall reviewing or signing an arbitration agreement. (Vlad Decl., ¶ 4.) His declaration also states, "[b]efore my hire, I recall that while I was in the Defendants' restaurant lobby, the chef handed me a stack of papers to sign. These papers included, for example, a tax form and other documents that I understood to be basic employment documents that I was required to fill out in order to get a job. The chef left me alone with the documents for a short while, maybe 10 or 15 minutes, then came back and retrieved them from me. Nobody explained to me what the documents were. Nobody explained whether there was an arbitration agreement in these documents. If I signed the documents, it was only because I believed I had to do so to get the job." (Vlad Decl., ¶ 4.)

Plaintiff's class action Complaint alleges the following nine causes of action: (1) failure to pay minimum and straight time wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to timely pay final wages at termination; (6) failure to provide accurate itemized wage statements; (7) failure to reimburse employees for expenditures; (8) failure to produce requested employment records; and (9) unfair business practices.

2. Evidentiary Objections

Plaintiff objects to several portions of Dan Evans's declaration (submitted by defendants in support of the instant motion) on the grounds that they lack foundation and personal knowledge. Mr. Evans declares he has been employed by LCP as the General Manager and has held this position since May 2024 (Evans Decl., ¶ 2); and that plaintiff was presented with the arbitration agreement on July 31, 2023. (Evans Decl., ¶ 7.) The court agrees with plaintiff that the challenged portions of Mr. Evans's declaration relating

to plaintiff's execution of the arbitration agreement lack foundation and personal knowledge on behalf of Mr. Evans. The court sustains Objection Numbers 1, 2, 3, 4, and 7. The court overrules Objection Numbers 5, 6, 8, and 9.

3. Requests for Judicial Notice

Defendants request judicial notice of a tentative decision and a minute order that were both issued by the Superior Court of California (See Requests for Judicial Notice, Exs. A & B). However, a "tentative decision does not constitute a judgment and is not binding on the court." (Cal. Rules of Court, rule 3.1590, subd. (b).) The minute order is also not citable under California Rules of Court, rule 8.115. Accordingly, defendants' requests for judicial notice are denied as irrelevant. (*Jordache Enterprises, Inc. v. Brobeck, Phleger & Harrison* (1998) 18 Cal.4th 739, 748, fn. 6 [declining to take judicial notice of materials not "necessary, helpful, or relevant"].)

4. Discussion

Both state and federal law have statutory schemes for the enforcement of arbitration agreements. The California Arbitration Act ("CAA") (Code Civ. Proc., § 1280 et seq.) sets forth "a comprehensive statutory scheme regulating private arbitration in this state." (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 9.) The Federal Arbitration Act ("FAA") (9 U.S.C. § 1 et seq.) governs contractual arbitration in written contracts involving interstate or foreign commerce. (9 U.S.C. §§ 1, 2.)

As a threshold matter, the court must determine which body of law–the FAA or the CAA–applies to the arbitration agreement here. Defendants argue the FAA applies because (1) the parties agreed that the FAA would govern application of the arbitration agreement (Dem. at 8:4–6); and (2) plaintiff's employment with defendants involved interstate commerce. (Dem. at 9:1–10.) Plaintiff argues that "[d]efendants have failed to meet their burden to provide evidence establishing that the relationship between the [p]laintiff and [d]efendants had 'a specific effect or bear[ing] on interstate commerce in

a substantial way.' " (Opp. at 6:3–5 (citing *Hoover v. American Income Life Ins. Co.* (2012) 206 Cal.App.4th 1193, 1207).)

Since arbitration is a matter of contract, the FAA applies if it is so stated in the agreement. (See *Victrola 89, LLC v. Jaman Properties 8 LLC* (2020) 46 Cal.App.5th 337, 355 ["[T]he presence of interstate commerce is not the only manner under which the FAA may apply…. [T]he parties may also voluntarily elect to have the FAA govern enforcement of the Agreement"].) In this case, the arbitration agreement provides in relevant part, "The US Supreme Court has held that employees may be required to arbitrate disputes under the Federal Arbitration Act, *the law which applies to this Agreement*." (Evans Decl., Ex. A at Sec. 2 [emphasis added].) Based on this language, the court finds that the FAA applies here.

But "[i]n determining the rights of parties to enforce an arbitration agreement within the FAA's scope, courts apply state contract law while giving due regard to the federal policy favoring arbitration." (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 236.) In California, " '[g]eneral principles of contract law determine whether the parties have entered a binding agreement to arbitrate.' " (*Ibid.*)

The "party seeking arbitration bears the burden of proving the existence of an arbitration agreement." (*Pinnacle*, *supra*, 55 Cal.4th at p. 236.) The court's determination involves a three-step burden-shifting process. In the first step of the process, the moving party bears the initial "burden of producing 'prima facie evidence of a written agreement to arbitrate the controversy.' [Citation.] The moving party 'can meet its initial burden by attaching to the [motion or] petition a copy of the arbitration agreement purporting to bear the [opposing party's] signature.' [Citation.] Alternatively, the moving party can meet its burden by setting forth the agreement's provisions in the motion. [Citations.] For this step, 'it is not necessary to follow the normal procedures of document

authentication.' [Citation.]" (*Gamboa v. Northeast Cmty. Clinic* (2021) 72 Cal.App.5th 158, 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. [Citation.] 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. [Citations.]

"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. [Citation.]" (*Gamboa*, *supra*, 72 Cal.App.5th at pp. 165–166.)

Here, defendants satisfied their initial burden by submitting a copy of the document containing the arbitration agreement, along with plaintiff's purported signature. The agreement provides in relevant part, "This Agreement governs legal disputes between you and … the business or organization you perform work for (your 'Worksite Employer,' which is an intended beneficiary of this Agreement) arising out of or in connection with your employment, application for employment, or separation from employment." (Evans Decl., Ex. A at § 2.)

Then, plaintiff met his burden to produce evidence challenging the validity of the agreement by filing a declaration averring that he did not recall ever reviewing or signing an arbitration agreement as part of his onboarding. (Vlad Decl., ¶ 4; see *Gamboa*, *supra*, 72 Cal.App.5th at p. 167.) Accordingly, defendants bear the burden of proving by a preponderance of the evidence that plaintiff's signature was authentic. (*Espejo v. Southern Cal. Permanente Group* (2016) 246 Cal.App.4th 1047, 1060.)

Mr. Evans's declaration provides information regarding defendants' onboarding procedure for new hires. He declares in relevant part, "LCP utilizes a standard in-person onboarding process for all employees…. [¶] As a part of LCP's standard onboarding process, new hire employees are presented with physical copies of company policies and procedures, such as the employee handbook." (Evans Decl., ¶¶ 6, 7.)

Although defendants bear the burden here, it is important to note that plaintiff's declaration includes the following statement: "Before my hire, I recall that while I was in the Defendants' restaurant lobby, the chef handed me a stack of papers to sign. These papers included, for example, a tax form and other documents that I understood to be basic employment documents that I was required to fill out in order to get a job. The chef left me alone with the documents for a short while, maybe 10 or 15 minutes, then came back and retrieved them from me. Nobody explained to me what the documents were. Nobody explained whether there was an arbitration agreement in these documents. If I signed the documents, it was only because I believed I had to do so to get the job." (Vlad Decl., ¶ 4.) This statement corroborates Mr. Evans's declaration regarding the onboarding procedure and suggests that the signature on the arbitration agreement is, indeed, plaintiff's. And as a general matter, a party that fails to read an agreement the party signs may still be bound by that agreement. (See, e.g., *Pinnacle*, *supra*, 55 Cal.4th at p. 236 ["An arbitration clause within a contract may be binding on a party even if the party never actually read the clause"]; *Randas v. YMCA of Metropolitan Los Angeles* (1993) 17 Cal.App.4th 158, 163 ["As Mr. Witkin states: 'Ordinarily, one who accepts or signs an instrument, which on its face is a contract, is deemed to assent to all its terms, and cannot escape liability on the ground that he has not read it. If he cannot read, he should have it read or explained to him' "].) Based on the above, the court finds that defendants have met their burden of proving the agreement by a preponderance of the evidence. (*Gamboa*, *supra*, 72 Cal.App.5th at pp. 165–166.)

The next issue concerns the parties to the agreement. Because arbitration is a matter of contract, generally " 'one must be a party to an arbitration agreement to be bound by it or invoke it.' " (*Molecular Analytical Systems v. Ciphergen Biosystems, Inc.* (2010) 186 Cal.App.4th 696, 705.) However, both California and federal courts have recognized limited exceptions this rule, allowing nonsignatories to an agreement containing an arbitration clause to compel arbitration of, or be compelled to arbitrate, a dispute arising within the scope of that agreement. (See *Suh v. Superior Court* (2010) 181 Cal.App.4th 1504, 1513 [describing "six theories by which a nonsignatory may [compel or] be bound to arbitrate: '(a) incorporation by reference; (b) assumption; (c) agency; (d) veil-piercing alter ego; (e) estoppel; and (f) third-party beneficiary' "]; *Boucher v. Alliance Title Company, Inc.* (2005) 127 Cal.App.4th 262, 268; see also *J.J. Ryan & Sons, Inc. v. Rhone Poulenc Textile* (4th Cir. 1988) 863 F.2d 315, 320–321.)

Defendants are not signatories to the agreement. However, defendants argue that (1) LCP was plaintiff's "worksite employer" and thus, an intended beneficiary under the terms of the agreement (Dem. at 5:21–23); and (2) the theories of agency and third-party beneficiary apply to Linchris. (Dem. at 6:15–7:28.) Plaintiff's opposition does not address this issue.

" 'A third party beneficiary is someone who may enforce a contract because the contract is made expressly for his [or her] benefit.' [Citation] ' " 'The test for determining whether a contract was made for the benefit of a third person is whether an intent to benefit a third person appears from the terms of the contract.' " ' [Citation.]" (*Jensen v. U-Haul Co. of Cal.* (2017) 18 Cal.App.5th 295, 301.)

The agreement provides in relevant part, "[t]his Agreement governs legal disputes between you and any Paychex-affiliated company which may include Oasis Outsourcing, LLC, Paychex Business Solutions LLC, their subsidiaries, and other affiliates that have Paychex, Inc. as their ultimate parent company (for convenience all these are referred to herein as 'Paychex') or the business or organization you perform work for (your 'Worksite

Employer,' which is an intended beneficiary of this Agreement) arising out of or in connection with your employment, application for employment, or separation from employment for which you are, were, or would be paid through Paychex." (Evans Decl., Ex. A. at Sec. 2.)

The agreement expressly states that the business or organization that the employee performs work for is an intended beneficiary of the agreement. And plaintiff's Complaint expressly alleges that both defendants employed plaintiff. (Compl., ¶ 9, subd. (b).) Therefore, the court finds that both LCP and Linchris are third-party beneficiaries that can compel arbitration under the terms of the agreement.

However, the court disagrees that the agency theory applies to Linchris. Although plaintiff's Complaint alleges that each defendant was the agent for some or all other defendants (Compl., ¶ 12), LCP is not a party to the agreement. In order for the agency theory to apply to Linchris, Linchris would need to be an agent of *Paychex*, the only other party to the agreement.

"Once the court has determined the agreement exists, the court must grant the petition '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.' ([Code Civ. Proc.,] § 1281.2.)" (*Condee v. Longwood Mgmt. Corp.* (2001) 88 Cal.App.4th 215, 219.) Plaintiff does not argue that defendants waived their right to compel arbitration. However, plaintiff does argue that the arbitration agreement is procedurally and substantively unconscionable.

Under California law, a contract is unenforceable if it is both procedurally and substantively unconscionable. (*Armendariz v. Found. Health Psychcare Servs., Inc.* (2000) 24 Cal.4th 83, 114.) Unconscionability refers to "an absence of meaningful choice on the part of one of the parties together with contract terms which are unreasonably favorable to the other party." (*A&M Produce Co. v. FMC Corp.* (1982) 135 Cal.App.3d 473, 486.) "Procedural unconscionability focuses on the elements of oppression and surprise.

Oppression arises from an inequality of bargaining power which results in no real negotiation and an absence of meaningful choice. Surprise involves the extent to which the terms of the bargain are hidden in a prolix printed form drafted by a party in a superior bargaining position." (*Serafin v. Balco Properties Ltd., LLC* (2015) 235 Cal.App.4th 165, 177.) "Substantive unconscionability focuses on the actual terms of the agreement and evaluates whether they create 'overly harsh' or 'one-sided' results.' " (*Id.* (quoting *Roman v. Superior Court* (2009) 172 Cal.App.4th 1462, 1469.)

Procedural and substantive unconscionability need not be present to the same degree. A sliding scale is applied so that " ' "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." ' [Citations.]" (*Lhotka v. Geographic Expeditions, Inc.* (2010) 181 Cal.App.4th 816, 821; *Armendariz*, *supra*, 24 Cal.4th at p. 114.) The burden is on plaintiff, as the party challenging the arbitration agreement, to prove both procedural and substantive unconscionability. (*Crippen v. Central Valley RV Outlet, Inc.* (2004) 124 Cal.App.4th 1159, 1164–1165.)

Plaintiff claims the agreement is procedurally unconscionable because: (1) it is a contract of adhesion (Opp. at 10:11); (2) defendants never explained to plaintiff the contents, terms and conditions, or the significance of the agreement (Opp. at 12:15–16); and (3) plaintiff did not feel like he had the opportunity to ask questions about the documents he was asked to sign. (Opp. at 12:18–19.)

"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* (2019) 8 Cal.5th 111, 126.) Alone, the adhesive nature of a contract establishes a modest level of procedural unconscionability. (*Serpa v. Cal. Surety Investigations, Inc.* (2013) 215 Cal.App.4th 695, 704.)

The court agrees with plaintiff that the agreement is an adhesive contract. It appears on a standardized, preprinted form. Plaintiff's declaration states that if he signed the

document, "it was only because [he] believed [he] had to do so to get the job." (Vlad Decl., ¶ 4.) However, the court rejects plaintiff's other claims of procedural unconscionability. Although plaintiff did not feel like he had the opportunity to ask questions about the documents he was asked to sign, the first sentence of the arbitration agreement provides, "[y]ou may want to print this Agreement for your records, and if you would like to take time to review it or ask questions before agreeing you may do so." (Evans Decl., Ex. A at § 2.)

Next, plaintiff claims the agreement is substantively unconscionable because it: (1) potentially imposes costs of arbitration on the employee (Opp. at 13:7–15); (2) has an impermissible pre-dispute jury waiver (Opp. at 13:17–14:2); (3) requires arbitration of actions for injunction (Opp. at 14:4–11); (4) unlawfully restricts the location of an arbitration hearing (Opp. at 14:13–23); and (5) contains an unlawful wholesale PAGA waiver. (Opp. at 14:25–15:6.)

The court finds that plaintiff's argument regarding the costs of arbitration lacks merit. The agreement provides, "[i]f required by law, Paychex or your Worksite Employer will advance costs of arbitration." (Evans Decl., Ex. A at § 2.)

Regarding the jury trial waiver, the agreement provides, "[i]f for any reason a matter is not arbitrated, to the greatest extent allowed by law, THE MATTER WILL BE HEARD BY A JUDGE AND YOU WAIVE ANY RIGHT TO TRIAL BY JURY. This provision will not apply in jurisdictions or types of actions where employers are by law not permitted to require employees to agree to it." (Evans Decl., Ex. A at § 2.) Defendants argue that plaintiff raises only a hypothetical issue based on the word, "if," preceding the waiver. (Reply at 7:14–18.) The court rejects defendants' argument and finds that this "jury trial waiver is not susceptible to any interpretation other than as an unconscionable predispute jury trial waiver. [Citation.]" (*Lange v. Monster Energy Co.* (2020) 46 Cal.App.5th 436, 452.)

Plaintiff argues the agreement is substantively unconscionable where it fails to include actions for public injunctions[3] in the section labelled, "Are there any matters that are not subject to arbitration?" The California Supreme Court has held that a provision in a predispute arbitration agreement that waives the right to seek public injunctive relief is invalid. (*McGill v. Citibank, N.A.* (2017) 2 Cal.5th 945, 961.) Here, however, the agreement states that "[c]laims that by law cannot be subject to pre-dispute arbitration agreements" are not subject to arbitration. Therefore, the court finds no substantive unconscionability in this regard.

Next, plaintiff argues the agreement is substantively unconscionable because it requires that arbitrations pursuant to the agreement must be conducted "in the capital or largest city of the state where you work, worked, or would have worked [for your Worksite Employer]." (Opp. at 14:13–15.) However, the agreement also provides that the parties may mutually agree to another location. (Evans Decl., Ex. A at § 2.) The court does not find this provision to be overly harsh or one-sided.

Lastly, plaintiff argues the agreement is substantively unconscionable because it includes a "wholesale waiver" of PAGA claims. Defendants argue that (1) the issue is moot because plaintiff does not bring forth a PAGA claim (Reply at 9:8–9); and (2) the *Viking River* court held that arbitration agreements can contain PAGA waivers covering a plaintiff's representative PAGA claims, not individual claims. (Reply at 9:16–17 (citing *Viking River Cruises, Inc. v. Moriana* (2022) 596 U.S. 639, 662 (*Viking River*).) The court rejects both of defendants' arguments. The current issue is whether the terms of the arbitration agreement are substantively unconscionable–thus, it is irrelevant whether plaintiff has actually pleaded a PAGA claim. Additionally, the *Viking River* court concluded that the purported waiver of "representative" PAGA claims remained invalid under

[3] Public injunctive relief is injunctive relief that has the primary purpose and effect of prohibiting unlawful acts that threaten future injury to the general public.

Iskanian v. CLS Transp. Los Angeles, LLC (2014) 59 Cal.4th 348. (*Viking River*, *supra*, 596 U.S. at p. 662.)

The agreement in this case provides in relevant part, "[t]o the greatest extent allowed by law, no matter whether a matter subject to this Agreement is heard in court, arbitration, or any other forum, THE PARTIES WILL PARTICIPATE ONLY IN THEIR INDIVIDUAL CAPACITIES AND NOT AS MEMBERS OR REPRESENTATIVES OF A CLASS, COLLECTIVE GROUP, OR ANOTHER PERSON, GOVERNMENT/GOVERNMENTAL AGENCY, OR ORGANIZATION WITH RESPECT TO HARMS ALLEGEDLY SUFFERED BY ANYONE OTHER THAN THEMSELVES (INCLUDING, BUT NOT LIMITED TO CLAIMS UNDER CALIFORNIA'S LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004). This provision will not apply in jurisdictions or types of actions where employers are by law not permitted to require employees to agree to it." (Evans Decl., Ex. A at § 2.) As previously discussed, under *Iskanian*, a wholesale waiver of PAGA claims is invalid. (*Viking River*, *supra*, 596 U.S. at p. 662.) Yet the agreement states this provision will not apply in jurisdictions where employers are by law not permitted to require employees to agree to it. Thus, the court finds no substantive unconscionability.

Despite the severability clause in the arbitration agreement, plaintiff claims that severance cannot cure the unconscionability. (Opp. at 15:8–19.) Under Civil Code section 1670.5, subdivision (a), "[i]f 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."

In *Armendariz*, our Supreme Court explained that Civil Code section 1670.5 "appears to give a trial court some discretion as to whether to sever or restrict the unconscionable provision or whether to refuse to enforce the entire agreement. But it also appears to contemplate the latter course only when an agreement is 'permeated' by

unconscionability." (*Armendariz*, *supra*, 24 Cal.4th at p. 122.) "Courts are to look to the various purposes of the contract. If the central purpose of the contract is tainted with illegality, then the contract as a whole cannot be enforced. If the illegality is collateral to the main purpose of the contract, and the illegal provision can be extirpated from the contract by means of severance or restriction, then such severance and restriction are appropriate." (*Id.* at p. 124.) In determining whether to sever unconscionable provisions, the "overarching inquiry is whether ' "the interests of justice … would be furthered" ' by severance." (*Ibid.*)

Here, the purpose of the contract is not illegal. The only provision that the court finds substantively unconscionable is the jury waiver. The agreement is not permeated by unconscionability. The court concludes that the interests of justice would be furthered by severance. Therefore, the jury trial waiver is severed and the remainder of the agreement is enforceable.

Based on the above, the motion to compel arbitration of plaintiff's individual claims is granted.

Defendants request that the court dismiss plaintiff's class action claims based on the class action waiver in the arbitration agreement. Alternatively, defendants request that the court stay plaintiff's class action claims pending resolution of his individual claims in binding arbitration. Plaintiff's opposition does not address this issue. The arbitration agreement provides in relevant part: "Waiver of class collective, and representative actions. To the greatest extent allowed by law, no matter whether a matter subject to this Agreement is heard in court, arbitration, or any other forum, THE PARTIES WILL PARTICIPATE ONLY IN THEIR INDIVIDUAL CAPACITIES AND NOT AS MEMBERS OR REPRESENTATIVES OF A CLASS, COLLECTIVE GROUP, OR ANOTHER PERSON, GOVERNMENT/GOVERNMENTAL AGENCY, OR ORGANIZATION WITH RESPECT TO HARMS ALLEGEDLY SUFFERED BY ANYONE OTHER THAN THEMSELVES (INCLUDING, BUT NOT LIMITED TO CLAIMS UNDER CALIFORNIA'S LABOR CODE PRIVATE ATTORNEYS GENERAL

ACT OF 2004). This provision will not apply in jurisdictions or types of actions where employers are by law not permitted to require employees to agree to it." (Evans Decl., Ex. A at § 2.)

The California and U.S. Supreme Courts have recognized that class action or representative action waivers like the one here are enforceable. (See *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333, 351; *Iskanian*, *supra*, 59 Cal.4th 348, 366, abrogated by *Viking River*, *supra*, 596 U.S. 639.) Therefore, the court finds that plaintiff's class action claims should be dismissed because of the valid waiver in the agreement.

TENTATIVE RULING # 3: THE MOTION TO COMPEL ARBITRATION OF PLAINTIFF'S INDIVIDUAL CLAIMS IS GRANTED. PLAINTIFF'S CLASS ACTION CLAIMS ARE DISMISSED. NO HEARING ON THIS MATTER WILL BE HELD (*LEWIS v. SUPERIOR COURT* (1999) 19 CAL.4TH 1232, 1247), UNLESS A NOTICE OF INTENT TO APPEAR AND REQUEST FOR ORAL ARGUMENT IS TRANSMITTED ELECTRONICALLY THROUGH THE COURT'S WEBSITE OR BY TELEPHONE TO THE COURT AT (530) 573-3042 BY 4:00 P.M. ON THE DAY THE TENTATIVE RULING IS ISSUED. NOTICE TO ALL PARTIES OF AN INTENT TO APPEAR MUST BE MADE BY TELEPHONE OR IN PERSON. PROOF OF SERVICE OF SAID NOTICE MUST BE FILED PRIOR TO OR AT THE HEARING.

4. NAME CHANGE OF RODRIGUEZ, 24CV0519

OSC Re: Name Change

Mother petitions to change her minor child's last name. The biological father has not joined in the petition. To date, there is no proof of personal service as to the biological father. "[T]he petitioner shall cause, not less than 30 days prior to the hearing, to be served notice of the time and place of the hearing or a copy of the order to show cause on the other parent …." (Code Civ. Proc., § 1277, subd. (a)(4).)

Proof of Publication was filed.

TENTATIVE RULING # 4: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, MAY 10, 2024, IN DEPARTMENT FOUR.

5. RGG ENTERPRISES, LLP v. RODRIGUEZ, ET AL., 23CV0380

Status of Bankruptcy

On January 2, 2024, defendant notified the court he had filed a bankruptcy petition in the United States Bankruptcy Court for the Eastern District of California (case number 23-24654). To date, the court has not received a status update about the bankruptcy action.

TENTATIVE RULING # 5: APPEARANCES ARE REQUIRED AT 1:30 P.M., FRIDAY, MAY 10, 2024, IN DEPARTMENT FOUR.

6. WILSON v. MUCCILLO, 23CV0451

Motion for Preliminary Injunction

On the court's own motion, in the interest of judicial economy, this matter is continued to May 31, 2024, to be heard concurrently with plaintiff's motion for stay.

TENTATIVE RULING # 6: MATTER IS CONTINUED TO 1:30 P.M., FRIDAY, MAY 31, 2024, IN DEPARTMENT FOUR.

7. OLESON v. VANHEE, 22CV0505

OSC Re: Dismissal

On August 28, 2023, plaintiff filed a Notice of Settlement of Entire Case. On January 12, 2024, plaintiff's counsel represented to the court that the terms of the settlement agreement were not adhered to, and the parties intended to execute a new settlement agreement. The court notes that plaintiff filed a First Amended Complaint on May 8, 2024. Accordingly, it appears appropriate to discharge the OSC.

TENTATIVE RULING # 7: THE ORDER TO SHOW CAUSE IS DISCHARGED. THE COURT SETS A CASE MANAGEMENT CONFERENCE AT 11:30 A.M., WEDNESDAY, SEPTEMBER 4, 2024, IN DEPARTMENT 12.