Related Case (also on Calendar for a CMC):

State of California ex rel. Julio Zepeda v. Donahue Truck Center, LLC 25CV06836

PROPOSED TENTATIVE

On August 22, 2025, plaintiff Julio Zepeda (plaintiff) filed a class action lawsuit against defendants Donahue Truck Center, LLC, and Donahue Trucks, Inc. (collectively, defendants) for numerous wage and hour violations under the Labor Code, as follows: 1) unpaid overtime; 2) unpaid meal period premiums; 3) unpaid rest period premiums; 4) unpaid minimum wages; 5) final wages not timely paid; 6) wages not timely paid during employment); 7) failure to provide accurate wage statements; and 8) failure to reimburse necessary business expenses. The ninth cause of action is an unfair competition claim pursuant to Business and Professions Code section 17200, et seq. The proposed class is defined as all current and former non-exempt employees of defendants within the state of California at any time commencing four years preceding the filing of plaintiff's complaint up until the time that notice of the certified class action is provided to the class. According to the complaint, plaintiff was employed as a "Service Advisor" from March 2025 to June 2025. Defendants are "an authorized dealer" and perform "service for trucks." Defendants filed a joint answer on October 6, 2025.

On October 28, 2025, the State of California *ex rel.* (on behalf of) Jose Zepeda filed a complaint for civil penalties under the Private Attorney's General Act (§ 2699, et el.) against defendants. A notice of related case has been filed in both matters. This matter is on calendar for CMC.

On December 5, 2025, defendants filed a motion to compel arbitration. Accompanying the motion are the following documents: a declaration from Jimmy Wall, who is the General Manager of Donahue Truck Center, LLC; a declaration from Kyla Buenaventura, a defense attorney; and a declaration from Shauntee Casiday, Controller and Human Resources Manager at Donahue Truck Center, LLC. Attached to Ms. Casiday's declaration is a 3-page copy of the "Donahue Truck Center, LLC Arbitration Agreement" consummated between the parties, signed on February 25, 2025. It provides expressly that arbitration is governed by the Federal Arbitration Act (FAA). The parties agreed that "any dispute with any party (including, but not limited to the Company, its affiliates, successors, representatives, and related entities, including any entities where Employee has been sent to work by Company) arising out of or in any way related to Employee's application for employment and employment with the Company shall be resolved by mandatory binding arbitration before a retired judge or other arbitrator selected by mutual agreement of the Company and the Employee." The agreement applies to all statutory, contractual, and/or common law claims arising from employment with the Company where permitted by law, including "any dispute relating to the interpretation, applicability, enforceability, or formation of this Agreement . . ." It goes on to indicate that the parties will follow the Judicial Arbitration and Mediation Services, Inc (JAMS) rules for employment law disputes. "...With the exception of a filing fee that shall not exceed the cost to file a comparable claim in state or federal court, the Company shall pay the fees and costs of the Arbitrator, and each party shall pay for its own costs and attorney's fees . . ."

Defendants contend, pursuant to Code of Civil Procedure[1] section 1281.2, that the court should compel plaintiff to arbitration pursuant to the agreement, as he agreed to arbitration and his disputes are covered by the arbitration agreement. It contends the arbitration agreement satisfies the five-part fairness test under *Armendariz v. Foundation Health Psychcare Services*, (2000) 24 Cal.4th 83 and it is not unconscionable (procedurally or substantively) and is otherwise governed by the FAA.

Plaintiff has filed opposition, which includes a declaration from plaintiff Julio Zepeda and exhibits. While plaintiff acknowledges he signed the arbitration agreement, he makes the following claims: 1) he cannot be compelled to arbitration under the FAA because he is exempt from its coverage as a transportation worker; 2) as he is exempt, the matter is governed by the California Arbitration Act (CAA), not the FAA, meaning Labor Code section 229 applies, and thus arbitration is barred; 3) alternatively, even if the FAA applies, the arbitration agreement is both procedurally and substantively unconscionable. Plaintiff concludes (cursorily) that no substantive unconscionable term can be severed.

Defendant has filed a reply. Defendant disputes that plaintiff is exempt under the FAA as a transportation worker, and as a result insists the FAA, not the CAA, applies; and that the arbitration agreement is neither procedurally nor substantively unconscionable.

The court will examine the legal principles that frame the inquiry, and then examine the merits of the arguments advanced. It will conclude with a summary of its conclusions.

A) Legal Background

Section 1281.2 authorizes a party to file a motion to compel arbitration. The moving party bears the burden of proving the existence of a valid arbitration agreement by a preponderance of evidence. (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 972.) The moving party must also demonstrate the issues in the lawsuit are covered by the arbitration agreement. (See, e.g., *Brockman v. Kaiser Foundation Hospitals* (2025) 114 Cal.App.5th 569, 583.)

When there is a mandatory employment arbitration agreement, the employer must show the arbitration agreement satisfies the five-part fairness test articulated under *Armendariz v.*

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[1] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

Foundation Health Psychcare Services, Inc., *supra*, 24 Cal.4th 83. Our high court made it clear that every mandatory employment arbitration agreement, which an employer imposes on a prospective or current employee as a condition of employment, "must meet certain minimum requirements, including neutrality of the arbitration, the provision of adequate discovery, a written decision that will permit a limited form of judicial review, and limitations on the costs of arbitration." (*Id.* at p. 91.) Courts have described this as a "five-part" fairness test required by *Armendariz*. These requirements apply even when the FAA is implicated, as is the case here. (*Little v. Auto Stieglar, Inc.* (2003) 29 Cal.4th 1064, 1078-1079 [*Armendariz* requirements are applications of general state law contract principles regarding the unwaivability of public rights and thus are not preempted by the FAA]; p. 1080 ["Nothing in the United States Supreme Court case law leads us to believe that a state requirement shifting arbitration costs in mandatory employment agreements to the employe pursuant to established state contract law violates the FAA"]; see also *Ramos v. Superior Court* (2018) 28 Cal.App.5th 1042, 1055 [*Armendariz* remains controlling authority even when FAA rules apply].) Further, while *Armendariz* involved mandatory arbitration employment contracts raising causes of action under the Fair Employment Housing Act (FEHA), post-*Armendariz* appellate case authority indicates the five-part fairness test applies to other types of mandatory employment arbitration agreements when public policy issues are at play, such as wage and hour violations (under the Labor Code at issue here). (*Mercuro v. Superior Court* (2002) 96 Cal.App.4th 167. 180 ["we see no reason why *Armendariz*'s 'particular scrutiny of arbitration agreements should be confined to claims under FEHA; rather, under the Supreme Court's analysis, such scrutiny should apply to enforcement of rights under any statute enacted for a public reason' "]; see also *D.C. v. Harvard-Westlake School* (2009) 176 Cal.App.4th 836, 864 [same]; *Jones v. Humanscale Corp*. (2005) 130 Cal.App.4th 401, 412 [because the arbitration deals with plaintiff's wages claim, it covered an unwaivable statutory issue affecting public policy and therefore needed to comply with *Armendariz*'s minimum fairness requirements].) To be clear, the five-part test required under *Armendariz* is clearly related to, but nevertheless distinct from, an unconscionability determination.[2]

Section 1281.2 makes it clear that the employer also bears the initial burden to show the FAA applies to the arbitration. (See, e.g., *Tuufuli v. West Coast Dental Administrative Services, LLC* (2026) 117 Cal.App.5th 1048, 1054.) When the arbitration agreement expressly provides that it is governed by the FAA, that burden is satisfied. (*Ibid.* ["We agree with the trial court that the FAA governs the arbitration agreement between [plaintiff and defendant] because the parties agreed [in the arbitration agreement] that it would."].) However, pursuant to title 9 U.S.C.

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[2] As our high court recently explained in *Ramirez v. Charter Communications, Inc.* (2024) 16 Cal.5th 478, 538, footnote 7: "Charter criticizes the Court of Appeal for failing to address the [arbitration] Agreement's purported compliance with *Armendariz*'s five requirements. As [another appellate court] explained, " [t]he *Armendariz* requirements are an application of general state law principles regarding the unwaivability of public rights in the arbitration context.' [Citation.] . . . Here, Ramirez only challenged enforcement on unconscionability grounds. Whether an agreement satisfies *Armendariz'*s requirements may inform the determination whether any of its provisions is unconscionable, ***but the two inquiries are distinct*** . . ." (Emphasis added.)

section 1, the FAA expressly indicates it does not apply for any contract for "transportation workers" engaged in foreign or interstate commerce. (*Garrido v. Air Liquid Industrial U.S. L.P.* (2015) 241 Cal.App.4th 833, 839.) Thus, "a transportation worker's employment agreement does not become subject to the FAA simply because the agreement declares that it is subject to the FAA." (*Id*. at pp. 839-840.) It is settled that the opposing party to the motion to compel arbitration has the burden of proving any defense to enforcement, such as unconscionability. As clarified most recently in *Doss v. Tesla* (June 11, 2026, A173210) ___ Cal.App.5th ___ [2026 WL 1693423 at p. 3], this burden includes whether an exemption to the FAA applies. (See also *Betancourt v. Transportation Brokerage Specialists, Inc.(*2021) 62 Cal.App.5th 552, 559.)

Under existing law associated with the FAA, it is presumed a judge will decide arbitrability, unless there is a clause in the arbitration agreement that makes it clear and unmistakable that the parties intended the arbitrator to decide that question. (*Vallabos v. Maersk, Inc*. (2025) 114 Cal.App.4th 1170, 1185.) A clause in an arbitration agreement providing that the arbitrator will decide issues of arbitrability is called a delegation clause. (*Aanderud v. Superior Court* (2017) 13 Cal.App.5th 880, 891.) With a delegation clause, the parties agree to arbitrate "gateway" questions of "arbitrability," such as whether the parties have agreed to arbitrate or whether the agreement covers a particular controversy, such as unconscionability. (*J.R. v. Electronic Arts. Inc.* (2024) 98 Cal.App.5th 1107, 1114, quoting *Rent-A-Center W., Inc. v. Jackson* (2010) 461 U.S. 63, 70 (hereafter, *Rent-A-Center*.) A delegation clause "is simply an additional, antecedent agreement the party seeking arbitrations asks . . .[a] court to reenforce." (*J.R., supra*, at p. 1114.) Further, because each agreement is severable, the arbitration agreement is severable from the overarching agreement containing it, and the delegation provision is severable from the arbitration containing it. (*Id.* at p. 1117, citing *Rent-A-Center, supra*, at pp. 70-72.) Under existing authority, even if an arbitration agreement contains a delegation clause, the court is the one who must decide whether the FAA transportation worker exemption applies or not. (*Vallabos, supra*, citing *New Prime, Inc. v. Oliveria* (2019) 586 U.S. 105, 111 [a court should decide for itself whether § 1's "contracts of employment" exclusion applies before ordering arbitration].) When there is no delegation clause as defined under existing law, the court will decide generally whether the arbitration agreement is procedurally and substantively unconscionable. (*Peng v. First Republic Bank* (2013) 219 Cal.App.4th 1462, 1468.)

B) Merits

The court will in subparts (1) and (2) below first determine whether the moving party has met its initial burden to show the existence of an arbitration agreement, whether the disputes at issue in the lawsuit are covered by it, whether the five-part *Armendariz* requirements have been satisfied, and whether the transportation worker exemption to the FAA is applicable. The court will then examine whether a delegation clause exists in subpart (3) below, and, if so, its consequences. The court will then conclude with a summary of its conclusions.

1) Have Defendants Met Their Initial Burden?

Defendants have submitted a signed arbitration agreement between the parties, and plaintiff does not dispute his signature. The arbitration agreement covers the disputes at issue in the lawsuit.

Further, defendants have demonstrated that the arbitration agreement satisfies the five-part *Armendariz* fairness test. It provides for neutral arbitrators, adequate discovery, requires a written reward and judicial review, and provides for all types of relief that would otherwise be available in court. Plaintiff does not claim otherwise. Plaintiff (admittedly through the guise of substantive unconscionability – see fn. 2, *ante*) does claim that the cost of arbitration "falls on plaintiff" and thus violates *Armendariz*. As our high court concluded in *Armendariz*, "consistent with the majority of jurisdictions to consider this issue, we conclude that when an employer imposes mandatory arbitration as a condition of employment, the arbitration agreement or arbitration process cannot generally require the employee to bear any type of expense that the employee would not be required to bear if he or she were free to bring the action in court." (*Armendariz, supra*, 24 Cal.4th at pp. 110-111.) Plaintiffs point to the following language in the arbitration agreement: "With the exception of a filing fee that shall not exceed the cost to file a comparable claim in state of federal court, the Company shall pay the fees and costs of the ***<u>Arbitrator</u>***, and each party shall pay its own costs and attorney's fees." According to plaintiff, this language falls short of the requirements mandated by *Armendariz* because it does not cover the costs of the arbitration services, "and thus the term is unconscionable."

The court is not persuaded. The court must examine the contractual language *as a whole,* and interpret its meaning in the aggregate. (See, e.g., *People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.* (2003) 107 cal.App.4th 516, 526 [the language in a contract must be construed in the context of that instrument as a whole, and a court must give effect to every provision of the contract].) The first clause of the quoted provision above makes it clear that the plaintiff will be required to pay no more than the filling fee as would be required if a lawsuit were initiated; the defendant Company will pay all remaining costs. Again, the first clause conditions the second clause, meaning that anything outside the first would be paid by defendant. That is the most reasonable reading of the contractual language and harmonizes both parts of the sentence. *Armendariz* has thus been satisfied.

Defendant has also shown the FAA applies, as the FAA is expressly referenced in the arbitration agreement. *(Tuufuli, supra*, 117 Cal.App.5th at p. 1054.)

Defendants have met their burden to show that an arbitration agreement was consummated, that the disputes at issue are covered by the arbitration agreement, and that the FAA applies (at least on prima facie basis, pending the discussion below).

2) Is Plaintiff a "Transportation Worker" and thus Exempt from the FAA?

Plaintiff claims in opposition that the FAA does not apply because he was a "transportation worker" per Section 1 of the FAA (9 U.S.C § 1). That section provides that the FAA shall not apply "to contracts of seamen, railroad employees, or any other class or workers engaged in foreign interstate commerce." The last category, i.e., "any other class of workers engaged in foreign or interstate commerce" has been limited by the United States Supreme Court to "transportation workers" engaged in foreign or interstate commerce. (*Circuit City Stores, Inc. v. Adams* (2001) 532 U.S. 105, 109.) This construction must be narrowly construed, and for this provision to apply, it must share common attributes with seamen or railroad employees and play a "necessary role in the free flow of goods." (*Circuit City*, at pp. 115, 118, 119, 121.)

In *Southwest Airlines Co. v. Saxon* (2022) 596 U.S. 450, a two-part test was crafted to determine when an employee is a "transportation worker" under the exemption. First, courts must define the relevant "class of workers" to which the employee belongs. Second, courts must then determine whether that class of workers is "engaged in foreign interstate commerce." (*Id.* at p. 455.) Workers need not be employed by a company in the transportation industry to be exempt. Rather, determining the relevant "class of workers" requires examination of the work activity of the employee – e.g., the actual work that the members of the class, as a whole, typically carry out. (*Id.* at pp. 455-456.) Furthermore, the worker need not physically move goods or people across the state or international lines in order for the exemption to apply. Importantly, there is a sufficient nexus to interstate commerce for section 1 purposes if the worker performs "activities within the flow of interstate commerce." (*Id.* at pp. 461-463; see *Doss v. Tesla, supra*, 2026 WL 1693423 at p. 3.; see also *Betancourt, supra*, 62 Cal.App.5th at pp. 559.) The high court in *Southwest Airlines Co. v. Saxon* concluded that a class of workers who are only "perceptibly connected to . . . instrumentalities' of interstate commerce was not enough." (*Id*. at p. 462 [plaintiff must perform activities within the flow of interstate commerce].)

Southwest Airlines Co. v. Saxon found under this test that an airline ramp supervisor, who frequently loaded and unloaded baggage, mail, and commercial cargo on and off airplanes travelling across the country, was a "transportation worker," as he was "part of the interstate transportation of goods," and was "intimately involved with the commerce (e.g., transportation) of that cargo. (*Id.* at pp. 458-459.)

In *Ortiz v. Randstad Inhouse Services, LLC* (9th Cir. 2024) 95 F.4th 1152, plaintiff was a worker at an international supply chain warehouse for Adidas; the warehouse received products from international locations and held them temporarily before they were shipped to retailers and end-use consumers. Plaintiff moved the packages from storage racks and prepared them for shipment. (*Id*. at pp. 1157, 1161.) The *Ortiz* court held that plaintiff was like the ramp supervisor in *Southwest*, as Ortiz "ensured that goods would reach their final destination by processing and storing them while awaiting further interstate transport." Ortiz, as well as the ramp supervisor in *Southwest*, were "actively engaged" and "intimately involved" with transportation" as they both handled goods during a "necessary step in their ongoing interstate journey to their final destination." (*Id.* at p. 1162.)

Recently published California appellate authority provides further direction under the standards enunciated in *Southwest Airlines Co. v. Saxon*. In *Doss v. Tesla*, *supra* [2026 WL 1693423], the court noted it was useful to examine the permissible categories on a continuum. The first category would be those workers who directly transport goods in interstate commerce, such as truck drivers. The second category would involve those workers who do not themselves physically transport the goods across interstate commerce but are nevertheless intimately involved with the transport of commerce of that cargo. Even further along the continuum (and in a third category) are "so-called 'last-mile' delivery drivers – "contractors who deliver packages from warehouse to end-use consumers on a predominately intrastate basis. On this last point, "courts have reached differing conclusions as to whether last-mile delivery drivers are engaged in interstate commerce within the meaning of section 1. [Citations omitted.]" (*Doss, supra*, at p. 4; but see *Flowers Foods, Inc. v. Brock* (2026) 608 U.S. ____ [148 S.Ct. 1358, 1365 [last-mile delivery drivers can be exempt if they are direct, necessary, and active participants in moving goods from points in one state to points in another state without crossing state lines or interacting with vehicles that do].

Doss found plaintiff hostler was a "transportation worker" within this continuum, even though he did not cross state lines and remained on Tesla property because Doss played a direct and necessary role in the completion of interstate commercial transactions. While he may not have unloaded the trailers, "he performed preparatory work necessary to that end by moving the trailers from the part of the factory grounds where they were temporarily parked to the warehouse where they could be safely and efficiently unloaded. "If, as the United States Supreme Court has held, the unloading of a vehicle carrying goods in interstate transit constitutes activity within the flow of interstate commerce for purposes of section 1 [citation], the necessary preparatory work of Tesla's yard hostlers to facilitate that unloading likewise fits the bill." (*Ibid.*)

Plaintiff strives to fit his position within this continuum. He declares he was a "Service Advisor" at defendants' location (which serviced and repaired semitrucks, tractor-trailers, and other motor vehicles that transported goods in interstate commerce). He was the "link between truck-driver customers and the technicians serving and repairing" these vehicles. He describes his position in the following way: "I was the point of contact for the truck drivers needing to service their trucks, and I was responsible for assisting them with deciding to fix their trucks. As a Service Advisor, I was also in charge of communicating to the technicians what services and repairs the trucks needed and consulting with technicians about needed repairs. To ensure the trucks were being serviced and repaired as needed, I oversaw the technicians on the lot as they worked on the trucks." Further, as part of his job duties, "I facilitated the towing of these trucks from the interstate highway to Defendants' service center. I also communicated the status of repairs so that Defendants truck-driver customers could communicate the same with their employees who needed to know if the truck drivers were still able to deliver or pick up their cargo as scheduled." He also "drove the trucks within the service center to take trucks from the truck drivers to the technicians to get serviced and from the technicians to the truck drivers after the service was completed." These trucks contained interstate cargo. Defendant in reply does not dispute plaintiff's job description.

Under *Southwest Airlines Co.* v. *Saxon,* it seems plaintiff should be treated as a truck mechanic, as his services were directly related to and relevant to the repair of trucks that transported interstate cargo. The court finds that the class of workers – truck mechanics and thus plaintiff – are not sufficiently engaged in interstate commerce to be considered transportation workers (meaning the FAA exemption does not apply), for the reasons explained in further depth below.

Plaintiff here expressly relies on *Western Dairy Transport, LLC v. Vasquez* (Tex. Ap. 2014) 457 S.W.3d 458, a case that predates *Southwestern Airlines Co. v. Saxon*. There, a Texas appellate court held that an interstate trucking company mechanic qualified as a transportation worker under section 1. The court applied a "nonexclusive eight-part test"[3] and concluded that plaintiff was a mechanic transportation worker under section 1 because it found four of the factors weighed heavily in favor of that conclusion. (*Id*. at p. 466.)

The intellectual underpinnings of *Western Dairy* have been expressly challenged by a very recent published California appellate opinion – *Vela v. Harbor Rail Services of California, Inc*. (2026) 120 Cal.App.5th 353 [344 Cal.Rptr.3d 320], a case not cited by either party but with obvious import here. In *Vela*, plaintiff worked as a railcar repairmen (i.e., a rail freight repairment, providing train repair services). Plaintiff claimed he was a transportation worker and ~~was~~ thus exempt from FAA arbitration. The trial court rejected the claim, and the *Vela* court affirmed. "We distill [from the case law above] that to be a transportation worker a person must

[3] The court described the eight factors to be considered as "(1) whether the employee works in the transportation industry; (2) whether the employee is directly responsible for transporting goods in interstate commerce; (3) whether the employee handles goods that travel interstate; (4) whether the employee supervises employees who are themselves transportation workers, such as truck drivers; (5) whether like seamen or railroad employees, the employee is within a class of employees for which special arbitration already existed when Congress enacted the FAA; (6) whether the vehicle itself is vital to the commercial enterprise of the employer; (7) whether a strike by the employee would disrupt interstate commerce; and (8) the nexus that exists between the employee's job duties and the vehicle the employee uses in carrying out his duties." (*Western Dairy Transport, LLC v. Vasquez, supra*, 457 S.W.3d at pp. 465-466.)

play some role in the actual transportation of goods, and [plaintiff] has not adduced evidence of such involvement here. Here, 'the actual work' that workers in [plaintiff's] class 'typically carr[ied] out' [citation] was inspecting and repairing rail freight cars which had been temporarily taken out of service and delivered to [employer's] yard for the purpose of inspection. This type of work is too far removed from the actual process of transporting goods to 'play a direct and 'necessary role in the free flow of goods across borders' or constitute 'active[] engage[ment] in transportation' so as to qualify [plaintiff] as an exempt transportation worker. [Citation.] It was only after [plaintiff] and his coworkers completed their task that the freight cases were returned to actual service and again were actively engaged in transportation."[4] The Vela court did not find the court's analysis in Western Dairy to be persuasive because it predated *Southwest Airlines Co. v. Saxon* and the four factors upon which it relied were no longer relevant.

Although plaintiff was not actually a truck mechanic, he should be placed into that category for purposes of classification as he was intimately associated with truck repairs. The court finds under the authority and rationales articulated in *Halley-Gallegly*, and most significantly *Vela*, that is he not a "transportation worker" and thus not exempt from FAA arbitration, because he is not directly engaged in interstate commerce as required under this authority. Plaintiff's position in the end, as noted in *Southwest Airlines Co. v. Saxon*, is only "perceptibly connected to . . . instrumentalities' of interstate commerce . . ." That is not enough. The FAA, not the CAA, therefore applies, obviating the need for the court to address the impact of Labor Code section 229 (as argued by plaintiff), as that provision is preempted by the FAA. (*Garrido v. Air Liquide Industrial U.S. LP* (2015) 241 Cal.App.4th 833, 844-845.)

3) Delegation and Unconscionability

Finally, plaintiff argues the arbitration agreement is both procedurally and substantively unconscionable, and thus unenforceable.

There is a predicate problem with this contention. As noted, although a court typically decides the threshold question whether an arbitration is valid and enforceable, including fraud in the inducement and illegality of the agreement (including unconscionability), an exception to this rule applies under the FAA when the parties have ***clearly and unmistakably agreed*** to delegate questions regarding the validity of the arbitration clause to the arbitrator. The parties to an arbitration agreement can agree (in a so-called delegation clause or provision) to arbitrate

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[4] Citing to *Holley-Gallegly v. TA Operating LLC* (C.D. Cal., Sept. 16, 2022, No. EDCV22593JGBSHKX) 2022 WL 9959778, at *2, *vacated and remanded* (9th Cir. 2023) 74 F.4th 997 on other grounds. There, plaintiff was a truck mechanic, and he claimed he was a transportation worker under the FAA and thus exempt because his job duties were closely related to interstate commerce. The federal district court disagreed. "Under [*Southwest Airlines Co. v. Saxon*], [plaintiff[is not exempt from the FAA. Although his employer is directly engaged in interstate commerce, [plaintiff] is not; he is a truck mechanic and is thus not exempt under Section 1. Even though he is arguably 'perceptibly connected to the . . . instrumentalities of interest commerce, that is 'not enough.'," citing to *Southwest Airlines v. Saxon, supra*, at p. 463. (*Id.* at p. 3.) *Holley-Gallegly* has direct import here.

"gateway" questions of "arbitrability," such as whether the parties have agreed to arbitrate or whether the agreement covers a particular controversy. (*J.R. v. Electronic Arts. Inc.* (2024) 98 Cal.App.5th 1107, 1114.) "An agreement to arbitrate a gateway issue – otherwise known as a delegation provision – is simply an additional, antecedent agreement the party seeking arbitrations asks . . .[a] court to reenforce." (*J.R., supra*, at p. 1114.) Further, because each agreement is severable, the arbitration agreement is severable from the overarching agreement containing it, and the delegation provision is severable from the arbitration containing it. (*Id.* at p. 1117, citing *Rent-A-Center, supra*, at pp. 70-72.) If a delegation clause exists clearly and unmistakably, the party opposing the enforcement of a delegation provision must challenge the delegation provision ***specifically.*** (*J.R., supra,* at p. 1114.) Absent a specific challenge, a court must treat the delegation provision as valid and enforce it, "leaving any challenge to the validity of [the arbitration agreement or] the [a]greement as a whole for the arbitrator." (*Ibid*.)

The arbitration agreement at issue seems to contain a delegation clause. It provides that the "arbitration requirement" (i.e., binding arbitration) does apply to "any dispute relating to the interpretation, applicability, enforcement or formation of this agreement, including but not limited to any claim that all or any part of this Agreement is void or voidable." This language seems to manifest an intent to delegate all gateway issues to an arbitrator, including issues of enforceability (and thus unconscionability). It is similar to language in other cases that have found a delegation clause. (See, e.g.. *Tiri v. Lucky Chances, Inc.* (2014) 226 Cal.App.4th 231, 242 [delegation cause found where language that provided the "[t]he Arbitrator, and not any federal, state, or local court or agency, shall have the exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability, or formation of this Agreement . . ."]; *Najarro v. Superior Court* (2021) 70 Cal.App.5th 871, 888, 878 [delegation clause clear and unmistakable where it stated: " 'the arbitrator shall have the exclusive power to resolve any dispute relating to the interpretation, applicability, enforceability, or formation of this [a]greement, including the assumption that this [a]greement is unenforceable' "]; see also *Aanderud v. Superior Court* (2017) 13 Cal.App.5th 880, 892 [delegation clause found where arbitration agreement stated "agree to arbitrate all disputes, claims and controversies arising out of or relating to . . . the interpretation, validity, or enforceability of this Agreement, including the determination of the scope or applicability of this Section 5 [the 'Arbitration of Disputes' section]; *Ajamian v. CantorCO2E, L.P*. (2012) 203 Cal.App.4th 771, 786 [delegation clause is clear and unmistakable if it states "expressly that the arbitrator shall decide questions of enforceability" of the arbitration provision"].)

The problem, however, is that no party raised the delegation clause in either their moving or opposing papers. (See, e.g., *Barrera v. Apple American Group, LLC* (2023) 95 Cal.App.5th 63, fn. 3 [parties waived issue of having the arbitrator arbitrate the issue of unconscionability by failing to raise the delegation clause issue].) The problem is further exacerbated because plaintiff's unconscionability argument, as articulated and advanced in opposition, goes to the entirety of the arbitration agreement, not specifically to the delegation clause. (See, e.g., *Nielsen*

Contracting, Inc. v. Applied Underwriters, Inc. (2018) 22 Cal.App.5th 1096, 1111 [per high court authority, the unconscionability challenge must be made specifically to the delegation clause, not to the arbitration as a whole]; *Nickson v. Shemran, Inc.* (2023) 90 Cal.App.5th 121, 131 [if the party's challenge is directed to the agreement as a whole – even if it applies equally to the delegation clause – the delegation clause is enforced and the arbitrator, not the court will determine whether the agreement is enforceable]; see also *Malone v. Superior Court* (2014) 226 Cal.App.4th 1551, 1559-1560, [when a party is claiming that an arbitration agreement is unenforceable, it is important to determine whether the party is making a specific challenge to the enforceability of the delegation clause or is simply arguing that the agreement as a whole is unenforceable. If the party's challenge is directed to the agreement as a whole – even if it applies equally to the delegation clause—the delegation clause is severed out and enforced].)

The delegation clause may be dispositive of the motion. Accordingly, the court directs the parties to address whether the above language is actually a delegation clause, including its viability and scope. As the defendant did not raise the delegation clause in its motion, the court will afford plaintiff an opportunity in supplemental opposition to address any and all arguments in riposte. The court will continue the hearing for supplemental briefing. The parties should come prepared discuss a new hearing date, armed with a new briefing schedule (accounting for traditional law and motion deadlines). Defendant will be allowed to raise the delegation clause initially in a filing that must be made at least 16 court days before the new hearing date, with any opposition and reply following traditional law and motion deadlines. ***<u>Only the delegation clause issue will be permitted to be raised in any supplemental briefing.</u>*** Discussion of any other issues (including those resolved by the court today) will be stricken.

Summary:

The court finds that defendants have met their burden to show that the parties entered into an arbitration agreement; that the disputes in the operative pleading are covered by the arbitration agreement; and that the arbitration is governed by the FAA (at least on a prima facie basis).

The court rejects plaintiff's claim that he is exempt from FAA arbitration because he is a "transportation worker." The court finds that plaintiff is similarly situated to a truck mechanic, but finds there is an insufficient nexus between the actual work of a truck mechanic (and thus plaintiff's work) and interstate commerce. The FAA therefore applies in full. This determination obviates the need for the court to address plaintiff's challenge pursuant to Labor Code section 229, which is preempted by the FAA.

This leaves the last challenge advanced by plaintiff – unconscionability. The parties, however, have failed to address a critical precondition for that determination – the impact and import of a delegation clause, in which the parties appear to have agreed that the arbitrator, not the court, would address this gateway issue. The court will continue the hearing and direct the parties to submit supplemental briefing to address the impact of any delegation clause in the arbitration agreement, as discussed above, including any defense thereto. The parties should come prepared to discuss a new hearing date with a new briefing schedule (based on traditional law and motion deadlines). The court will permit briefing on the delegation clause ***only*** - nothing else. Any other discussion will be stricken/ignored.

There is a CMC scheduled in this matter and in the related case 25CV06836.