PARTIES/ATTORNEYS

Plaintiff	Ignacia Maria Lopez Reyes	Stan S. Mallison Hector R. Martinez Cody A. Bolce Cristina Mathews Mallison & Martinez
Defendant	Smith Packing Inc.	Brian T. Daly Christina M. Behrman, Stephanie Gonzalez Mullen & Henzell L.L.P.
Defendant	Direct Advantage Farms, LLC	
Defendant	Greengate Fresh, LLP	Matthew J. Wayne Gordon Rees Scully Mansukhani, LLP
Defendant	JV Farms Organics, LLC	Alden J. Parker Rebecca A. Hause-Schultz Fisher & Phillips LLP
Defendant	Loomis Distributing, Inc.	June Monroe, Alexa K. Smith Fennemore LLP
Defendant	Triangle Farms, Inc	Alden J. Parker Rebecca A. Hause-Schultz Fisher & Phillips LLP
Defendant	68 Produce LLC.	No appearance.

TENTATIVE RULING

The court grants defendant's request for a statement of decision, pursuant to Code of Civil Procedure section 1291. (See *Metis v. Development LLC v. Bohacek* (2011) 200 Cal.App.4th 679, 687.) This written tentative, once finalized, will satisfy this request. (See Cal. Rules of Court, rule 3.1590.)

For all the reasons discussed below, the motion to compel is denied. The court finds the existence of the arbitration agreement satisfactorily proven; that the

agreement has a moderate to high degree of procedural unconscionability; that the agreement is substantively unconscionable; and that severance is inappropriate.

Plaintiff, Ignacia Maria Lopez Reyes, alleges she was a seasonal agricultural worker employed by defendant Smith Packing, Inc. to harvest, wash, and load cabbage and other vegetables in Santa Barbara County. Other employers contract with Smith Packing to obtain workers, which plaintiff refers to as Smith's "client employer." Plaintiff has named several of them as defendants, including Direct Advantage Farms, LLC, Greengate Fresh, LLP, JV Farms Organics, LLC, Loomis Distributing, Inc., Triangle Farms, Inc. and 68 Produce LLC.

She asserts on behalf of herself and a class of workers currently or formerly employed by defendant the following Labor Code violations: (1) Failure to Pay Contractual Wages; (2) Failure to Pay Nonproductive Time Separate from Piece-Rate; (3) Failure to Provide Rest Periods or Pay Additional Wages in Lieu Thereof; (4) Failure to Provide Meal Periods or Pay Additional Wages in Lieu Thereof; (5) Failure to Pay Minimum Wages; (6) Waiting Time Penalties; (7) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions; and (8) Violation of the Unfair Competition Law, California Business & Professions Code §§17200 et seq.; (9) Penalties under Labor Code section 2699 (PAGA).

Defendant moves to compel arbitration of the claims. Defendants Loomis Distributing, Inc., JV Farms Organics, LLC and Triangle Farms, Inc. joined the motion. Opposition and reply have been filed.

Existence of Agreement

Code of Civil Procedure section 1281.2 provides that a court "shall order the petitioner and the respondent to arbitrate a 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 . . . ." As our high court has explained, whether the arbitration is governed by the Federal Arbitration Act (FAA) or the California Arbitration Act (CAA), "when a petition to compel arbitration is filed and accompanied by prima facie evidence of a written agreement to arbitrate the controversy, the court itself must determine whether the agreement exists and, if any defense to enforcement is raised, whether it is enforceable. Because the existence of the agreement is a statutory prerequisite to granting the petition, the petitioner bears the burden of proving its existence by a preponderance of the evidence. If the party opposing the petition raises a defense to enforcement—either fraud in the execution voiding the agreement, or a statutory defense of waiver or revocation (see [Code Civ. Proc.,] § 1281.2, subds. (a) & (b))—that party bears the burden of producing evidence of, and proving by a preponderance of the evidence, any fact necessary to the defense." (*Rosenthal* v. *Great Western Fin.*

Securities Corp. (1996) 14 Cal.4th 394, 413; see also *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951. 972-976 [opposing party has burden to show a defense, such as waiver, by a preponderance of evidence].)

Whether an agreement to arbitrate exists is analyzed on state law principles. (*First Options of Chicago, Inc. v. Kaplan* (1995) 514 U.S. 938; *Peleg v. Neiman Marcus Group, Inc.* (2012) 204 Cal.App.4th 1425, 1466—the FAA relies on state-law contract principles in determining whether an arbitration agreement exists.)

The initial burden is on the party petitioning to compel arbitration to prove the existence of the agreement by a preponderance of the evidence. (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 413; *Villacreses v. Molinari* (2005) 132 Cal.App.4th 1223, 1230.)

Here, defendant provides the declaration of Elias Escheverria, who states he was a Food Safety/HR Assistant for Smith Packing, and one of his responsibilities was providing new employees with their new-hire paperwork, which included tax forms, copies of company policies, and other documents. It also included Smith Packing's "Dispute Resolution Agreement." (Escheverria Decl., ¶ 2.) If the new employee was hired in the field, he would meet with them one-on-one, go through the new-hire packet, explain what each document said, and answer questions. (Escheverria Decl., ¶ 3.) He speaks Spanish and the packet was provided in Spanish to Spanish-speaking employees. (*Id.*) He specifically states:

> "I remember Ignacia Maria Lopez Reyes. She worked on a Smith Packing crew in the Salinas area. I remember individually meeting with her when she was hired, and presenting her with Smith Packing's new-hire packet. I went through each page of the packet with her. I told her to take the time she needed to review the documents before signing them. I also told her that if she had any questions about the documents, she could ask me or the office. I remember Ms. Lopez Reyes signing the new-hire documents that were presented to her. I do not remember Ms. Lopez Reyes asking me any questions about the Dispute Resolution Agreement or any of the other documents in her new-hire packet. If she had asked me questions, I would have answered them. After Ms. Lopez Reyes signed the documents, I collected them from her, and they were sent to Smith Packing's main office in Santa Maria."
>
> (*Id.* at ¶ 4.)

In opposition, plaintiff does not deny having signed the agreement. However, she argues that it was obtained by fraud in the inception or execution. Fraud in the inception (also called fraud in the execution) covers ' "the inception or execution of

the agreement, so that the promisor is deceived as to the nature of his act, and actually does not know what he is signing, or does not intend to enter into a contract at all, mutual assent is lacking, and [the contract] is void. In such a case it may be disregarded without the necessity of rescission." ' " (*Rosenthal v. Great Western Fin. Securities Corp*. (1996) 14 Cal.4th 394, 415.) This requires a fraud so fundamental that the signatory was deceived as to the basic character of the documents signed and had no reasonable opportunity to learn the truth. (*Rosenthal*, at 425.)

In *Rosenthal*, the California Supreme Court considered whether statements to the effect that a contract was "unimportant" or that a party "need not read" it could show fraud in the execution. (*Rosenthal, supra*, 14 Cal.4th at pp. 423-424.) It held that "[s]uch statements, even if falsely and fraudulently made, do not void a written contract, because it is generally unreasonable, in reliance on such assurances, to neglect to read a written agreement before signing it. One party's making of such an assurance does not, by itself, deprive the other party to a prospective contract of the reasonable opportunity to discover the character and essential terms of the agreement." (*Id*. at p. 424, fn. omitted.) The Court also considered whether statements that the other contracting party " 'did not give me any time' to read the agreement ... or that they felt 'rushed' ... or 'pressured' " could show a lack of mutual assent. (*Id*. at p. 424, fn. 12.) It concluded that "[w]ithout evidence that [the other party] actually took some action or said something to hurry or pressure" the party, however, such claims would "add nothing" to the required showing. (*Ibid*.) Thus, the court held that statements of defendant's representatives to the effect the client agreements which contained an arbitration clause were merely a formality, or did not need to be read, were insufficient, even in light of the parties' relationship, was insufficient to warrant a finding of fraud in the inception of the agreements. (*Id.*)

Although *Rosenthal* held that misrepresentations by themselves would not deprive the other party of a reasonable opportunity to discover the essential terms of an agreement, it also held that misrepresentations made to a party who had a limited understanding of English might warrant a different result. (*Rosenthal, supra*, 14 Cal.4th at p. 428 ["In light of plaintiffs' prior relationship with [the corporation], which they were led to believe was also the employer of Divine and Daikovich, their limited ability to understand English, and Divine and Daikovich's representations that their oral recitals accurately reflected the terms of the agreements, plaintiffs would not have been negligent in relying on the [corporation's] representatives instead of reading the agreements themselves."].) In so holding, *Rosenthal* relied on *C.I.T. Corp. v. Panac* (1944) 25 Cal.2d 547, an earlier case where our Supreme Court held that the fact that the defendant "did not have an understanding of the English language," "did not know they were signing a negotiable instrument," and were subjected to " 'high pressure' selling methods" supported a finding of fraud in the execution. (*C.I.T. Corp., supra*, at pp. 558-559, cited in *Rosenthal, supra*, 14 Cal.4th at p. 428.) Although *Rosenthal* and *C.I.T.*

Corp. addressed individuals' inabilities to understand English, its reasoning applies to other languages when a disputed contract is in that language.

The following principles can be derived from *Rosenthal* and *Najarro*. A party's inability to read a contract prepared by another party is not, alone, sufficient to vitiate a contract. (*Rosenthal*, *supra*, 14 Cal.4th at p. 431.) But if the party discloses her inability to read the contract and asks for an explanation or translation, and the other party refuses to provide one, describes some terms but not others, or pressures the non-drafting party to sign, fraud in the execution may void the contract. (*Id.* at pp. 427– 29; *Najarro*, *supra*, 70 Cal.App.5th at pp. 886–891.)

Here, plaintiff's declaration[1] states that on her first day of work, she went into the field with other workers; that she and another worker were sent to the edge of the field to complete paperwork supplied by Elias; that Elias provided training on a number of sanitation topics; that while they were having their training, they were supposed to fill out paperwork; Elias did not explain what she was signing, or ask if she had any questions; and Elias did not say anything about the dispute resolution or arbitration. Finally, she states: "Elías told us that we had to sign or fill out in all the places in the packet where he told us to. He said that if we did not sign all the papers, we could not return to work or be paid for the day." (Lopez Decl., ¶¶ 4 – 10.) Plaintiff states that she left school after sixth grade; that she does not read Spanish well; and she speaks very little English and does not read English. (Lopez Decl., ¶ 12.)

Here, there are differences between the instant situation and that found in *Najarro.* Notably, plaintiff does not state that she asked Elias for clarification of the content of the documents, nor does she state that she told Elias that she was unable to read them. (*Rosenthal, supra,* 14 Cal.4th at 431 [Plaintiffs' "failure to take measures to learn the contents of the document they signed is attributable to their own negligence"]; *Caballero v. Premier Care Simi Valley LLC* (2021) 69 Cal.App.5th 512, 519—limited proficiency in English did not bar arbitration of wrongful death claim against nursing home where signatory's failure to take measures to learn contents of the document he signed attributable to his own negligence.) There is no evidence that plaintiff was, in fact, unable to read the agreement, which were provided in Spanish. (See Escheverria Decl., ¶ 3; Decl. of Hilda Lopez, Exh. A.)

[1] Defendant objects to Lopez's declaration, filed on December 2, 2025, which is written entirely in Spanish, on the basis that plaintiff did not comply with California Rules of Court, rule 3.1110(g), which provides that exhibits "written in a foreign language must be accompanied by an English translation, certified under oath by a qualified interpreter." The court overrules the objection, as defendant has cured it with the amended declaration filed on December 11, 2025. Defendant also objects that the declaration lacks foundation because plaintiff has failed to establish that the purported declaration is her own testimony – rather than statements that were drafted by her attorneys and then read to her. However, Isela Chavarria Oviedo states that she is fluent in English and Spanish and that she read the declaration to plaintiff in Spanish by phone, after which the plaintiff confirmed that she understood the translation and voluntarily signed the document. (Oviedo Decl., ¶ 3.) This, coupled with Lopez's statement that she has personal knowledge of the facts contained in the declaration, is sufficient. The court overrules the objections.

Plaintiff states that she "do[es] not read Spanish well" but does she does not state that she is entirely unable to read Spanish. (Lopez Decl., ¶ 12.) In fact, it appears she was able to identify that a tax form was contained in the packet. (Lopez Decl., ¶ 7—"A few pages had things we had to fill out, like a tax form.") Thus, the elements present in *Rosenthal* and *Najarro* that gave rise to fraud in the execution are not present here—namely, it does not appear that defendant pressured the plaintiff to sign documents *they knew she could not read*, without providing her an explanation of what the documents said.

On this record, plaintiff's failure to take steps to learn the contents of the agreement is attributable to her own negligence and may not be imputed to defendant. The agreement is not void.

The court finds the existence of the arbitration agreement satisfactorily proven.

Unconscionability

Arbitration may be refused where grounds exist for revocation or rescission of the agreement to arbitrate under state law. (9 USC § 2—"grounds as exist at law or in equity for the revocation of any contract"; Code Civ. Proc. § 1281—"grounds as exist for rescission of any contract.")

Unconscionability as it pertains to contracts has both a procedural and substantive element. The prevailing view is that procedural and substantive unconscionability must both be present for a court to exercise its discretion to refuse to enforce a contract or clause under the doctrine of unconscionability. But they need not be present in the same degree. Essentially a sliding scale is invoked which disregards the regularity of the procedural process of the contract formation, that creates the terms, in proportion to the greater harshness or unreasonableness of the substantive terms themselves. 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 v. Foundation Health Psychcare Services* (2000) 24 Cal.4th 83, 114, 119; see also *Harper v. Ultimo* (2003) 113 Cal.App.4th 1402, 1406–1407 ["There is a sliding scale where the greater the evidence of procedural unconscionability, the less evidence is needed of substantive unconscionability"].) Plaintiff has the burden to prove both procedural and substantive unconscionability. The greater the evidence there is of one of these, the less is required of the other. (*Crippen v. Central Valley RV Outlet, Inc.* (2004) 124 Cal.App.4th 1159, 1165.) The burden of proving unconscionability rests upon the party asserting it. (*OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 126.)

1. Procedural Unconscionability

Procedural unconscionability 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.) This element is generally established by showing the agreement is a contract of adhesion, i.e., a "standardized contract which, imposed and drafted by the party of superior bargaining strength, relegates to the subscribing party only the opportunity to adhere to the contract or reject it." (*Ramirez v. Charter Communications, Inc*. (2024) 16 Cal.5th 478, 492).) Adhesion contracts are subject to scrutiny because they are "not the result of freedom or equality of bargaining." (*Ibid*.) Courts must be particularly attuned to this danger in the employment setting, where economic pressure exerted by employers on all but the most sought-after employees may be particularly acute. (*Ramirez, supra,* 16 Cal.5th at 494.)

Procedural unconscionability pertains to the making of an agreement and requires oppression or surprise, usually as a contract of adhesion. (*Magno v. The College Network, Inc.* (2016) 1 Cal.App.5th 277, 285; see *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 9843 ["[i]n determining whether a contract term is unconscionable, we first consider whether the contract ... was one of adhesion"].) The 'oppression' component arises from an inequality of bargaining power of the parties to the contract and an absence of real negotiation or a meaningful choice on the part of the weaker party. 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.) Surprise is defined as "the extent to which the supposedly agreed-upon terms of the bargain are hidden in the prolix printed form drafted by the party seeking to enforce the disputed terms." (*Lennar Homes of California, Inc. v. Stephens* (2014) 232 Cal.App.4th 673, 688.)

Specific to the employment context, an agreement imposed on an employee as a condition of employment with no opportunity to negotiate is an adhesive contract and therefore may be procedurally unconscionable. (*Navas v. FreshVenture Foods, L.L.C.* (2022) 85 Cal.App.5th 626, 633.) The inequality in bargaining power between the low-wage employees and their employer makes it likely that the employees feel at least some pressure to sign the arbitration agreement. (*Sanchez v. Western Pizza Enterprises, Inc.* (2009) 172 Cal.App.4th 154, 174, abrogated on other grounds, see *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal.4th 348, 366, 173 Cal.Rptr.3d 289, 327 P.3d 129.)

Here, plaintiff asserts the Arbitration Agreement is a contract of adhesion and the court agrees. Plaintiff has described at least some level of pressure to sign the agreement based on the representation that failure to do so would forfeit her pay. There is at least a low degree of procedural unconscionability under these circumstances. (See, e.g., *Parada v. Superior Court* (2009) 176 Cal.App.4th 1554, 1573 [low-to-medium level of procedural unconscionability found when evidence showed contract of adhesion, weak bargaining, and no ability to negotiate terms, and defendant did not call attention to arbitration terms, while at the same time the arbitration term is not hidden in a prolix form].)

The pertinent question, then, is whether circumstances of the contract's formation created such oppression or surprise that closer scrutiny of its overall fairness is required. (*OTO, L.L.C. v. Kho* (2019) 8 Cal.5th 111, 126.) The circumstances here demonstrate oppression. The agreement was presented to plaintiff at the side of the field, after she had been working for about an hour, along with other employment-related documents. (Lopez Decl., ¶ 5.) Plaintiff was expected to sign the documents during a sanitation training. (Lopez Decl., ¶ 6.) The contents and significance of the Arbitration Agreement were not explained. Instead, Elias simply showed plaintiff where to sign. (Lopez Decl., ¶ 7-9.) The manner of its presentation did not promote voluntary or informed agreement to its terms. (*OTO, L.L.C., supra,* 8 Cal.5th at 129.)

The court thus finds there is a moderate level of procedural unconscionability.

2. Substantive Unconscionability

As noted above, both procedural and substantive unconscionability must be present for a court to exercise its discretion to refuse to enforce a contract or clause. (*Armendariz, supra*, 24 Cal.4th at 114.) "(T)he more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa." (*Id.*; *Mercuro v. Sup.Ct. (Countrywide Secur. Corp.)* (2002) 96 Cal.App.4th 167, 174-175—given employer's highly oppressive conduct in obtaining employee's consent to arbitration agreement, employee was required to make only minimal showing of substantive unconscionability.)

Unconscionability is not synonymous with making a bad bargain. (*Sanchez v. Valencia Holding Co., LLC* (2015) 61 Cal.4th 899, 912.) Instead, contracts are substantively unconscionable where they impose terms that are overly harsh or one-sided. (*Id.* at p. 910.) "The ultimate issue in every case is whether the terms of the contract are sufficiently unfair, in view of all relevant circumstances, that a court should withhold enforcement." (*Sanchez* at 912) Put another way, an arbitration provision is substantively unconscionable when the terms are unreasonably favorable to the more powerful party. (*Id.* at p. 911.) The paramount consideration

is mutuality. (*Nyulassy v. Lockheed Martin Corp*. (2004) 120 Cal.App.4th 1267, 1287.) In evaluating the substantive terms of an arbitration agreement, a court applying the unconscionability doctrine must consider not only what features of dispute resolution the agreement eliminates but also what features it contemplates. (*Sonic-Calabasas A, Inc. v. Moreno* (2013) 57 Cal.4th 1109, 1146.)

Plaintiff argues the agreement is substantively unconscionable for three reasons: (1) its confidentiality provision is unconscionable; (2) the agreement is unconscionably vague regarding arbitration initiation and arbitrability, grants Smith Packing one-sided control over the proceedings, and provides no rules; and (3) the agreement purports to bind plaintiff to arbitrate claims against nonsignatories.

(1) Confidentiality Provision

The arbitration agreement provides: "Except as may be permitted or required by law, as determined by the Arbitrator, neither a party nor an Arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of all parties." (H. Lopez Decl., Exh. B, ¶ 6.)

Appellate courts have found a confidentiality provision in an arbitration agreement, to the effect barring "disclosing the existence, content, or results from arbitration" – similar to the language here – to be substantively unconscionable. (*Haydon v. Elegance at Dublin* (2023) 97 Cal.App.5th 1280, 1290.) As noted by the *Haydon* court:

> "Another division of this court has explained that such a clause would restrict the plaintiff from gathering information informally, increasing his or her costs unnecessarily and "defeat[ing] the purpose of using arbitration as a simpler, more time-effective forum for resolving disputes." (*Ramos v. Superior Court* (2018) 28 Cal.App.5th 1042, 1066, 239 Cal.Rptr.3d 679.) And requiring an elder abuse action like this one to be "kept secret" unreasonably favors defendants to the detriment of those 'seeking to vindicate unwaivable statutory rights and may discourage potential plaintiffs' from bringing such cases. (*Id.* at pp. 1066–1067 [addressing employment discrimination action]; cf. *Murrey v. Superior Court, supra,* 87 Cal.App.5th at page 1255 [addressing sexual harassment action].)"

Even more recently, in *Hasty v. American Automobile Assn. etc*. (2023) 98 Cal.App.5th 1041, the court, following our high court, concluded that a confidentiality provision in an arbitration agreement is not *per se* unconscionable when it is based on a legitimate commercial need (such as to protect trade secrets or propriety information), citing to *Baltazar v. Forever 21, supra*, 62 Cal.4th at page

1250. However, where the defendant has identified no commercial need for requiring "employment-related proceedings to remain confidential," -- which is the case here -- the confidentiality provisions benefits only the defendant "with respect to harassment, retaliation, and discrimination, such as the claims here, and is thus substantively unconscionable. The fact that the provision applies to only 'the extent permitted by law' does not save it because the employee would have no way of knowing what could be covered or not covered by this provision. . . ." (*Id.* at p. 1062.) The concerns in *Hasty* also apply here.

Defendant suggests that a confidentiality provision in a wage and hour dispute like this one is distinguishable because any information about other claims against the employer would be irrelevant. But the concerns described by the *Haydon* court and others considering the issue also implicate the benefit the confidentiality clause bestows upon the defendant. For example, in *Ramos,* an employment discrimination case, the court observed: "In addition, requiring discrimination cases be kept secret unreasonably favors the employer to the detriment of employees seeking to vindicate unwaivable statutory rights and may discourage potential plaintiffs from filing discrimination cases." (*Ramos, supra,* 28 Cal.App.5th at 1066–1067.) The fact that this case involves wage and hour claims instead of discrimination claims is not dispositive.

Under the authority of *Hasty, Haydon*, *Ramos* (involving employment discrimination), and *Murrey* (involving sexual harassment), the court finds that the confidentiality provision here is substantively unconscionable, for the reasons stated in those opinions. Defendant has failed to identify any legitimate commercial interest in confidentiality.

(2) Arbitration Initiation and Arbitrability, One-Sided Control, and Lack of Rules

Plaintiff argues that the arbitration agreement is vague with respect to how an arbitration is initiated because it provides no suggested arbitration provider; does not indicate a time frame for when a response to a demand must be provided, meaning Defendant could neglect to respond for months or years; makes no provision for selection of an arbitrator; requires the arbitration proceeding take place "no more than 50 miles from the place where I last worked for the Company," meaning that defendant has the advantage, assuming it has previously participated in arbitration; and defendant has the advantage of knowing which arbitrators have ruled for or against it while the plaintiff is precluded from finding this out by the confidentiality clause.

Defendant handily refutes most of these concerns, except for one. As for the "repeat player" effect, while our Supreme Court in *Armendariz* has taken notice of

the "repeat player effect," the court has never declared this factor renders the arbitration agreement unconscionable per se. (*Mercuro v. Superior Court* (2002) 96 Cal.App.4th 167, 178.) Here, however, it is true that the confidentiality provision works in the favor of defendant employer, a repeat player. It is privy to all information related to previous arbitrations, which arbitrators ruled in their favor, which arguments were successful, etc. Plaintiff is precluded from discovering any of that information. This renders the provision requiring the arbitrator be selected by agreement of the parties to be somewhat illusory. The court finds this substantively unconscionable.

(3) Scope and Duration

The agreement provides for arbitration of "all disputes arising out of, or related directly or indirectly to, my employment relationship with, or the termination of my employment from, the Company and/or any putative joint or client employer (including but not limited to a client employer that retains labor from the Company) . . . (Decl. of H. Lopez, Exh. B, ¶ 1.) "This Agreement shall survive the termination of my employment and the expiration of any benefit plan." (*Id.* at ¶ 9.) Plaintiff argues:

> "Thus, if applied broadly, which a court may be obligated to do under the FAA, the Agreement would force Ms. Lopez to arbitrate claims against Smith Packing's client employers in perpetuity, as long as it relates to her employment relationship with Smith Packing in some way—including, perhaps, Smith Packing's role in her learning of the existence of these client employers. In such a reading, the Agreement would bind her to arbitration with client employers if she is later hired by one of Smith Packing's client employers independent of any involvement with Smith Packing."
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> (Opposition, p. 15, ll. 17-22.)

In reply, defendant asserts that the California Supreme Court decision in *Reigelsperger* applies here, specifically its finding that "[l]ike other contracts, arbitration agreements that do not specify a term of duration are terminable at will after a reasonable time has elapsed. (*Reigelsperger v. Siller* (2007) 40 Cal.4th 574, 580.) However, this does not resolve the issue because this conclusion is based on legal principles of contract interpretation rather than express terms. Consequently, this provision is arguably a surprise of the sort contemplated by procedural unconscionability, as the plain language of the agreement suggests one thing (e.g., that the agreement continues in perpetuity), but the rules of contractual

interpretation dictate another result. The degree of procedural unconscionability is thus increased.

In reply, defendant asserts that the case is unlike *Cook v. University of Southern California* (2024) 102 Cal.App.5th 312, because in *Cook,* the agreement at issue included language sufficient to support a finding that the Agreement had an indefinite term and would not be terminable even after a reasonable time had elapsed, *and* expressly covered claims that did not arise out of the employment relationship. Defendant points out that the agreement in this case limits arbitration to claims arising out of employment, thus distinguishing *Cook*.

However, *Cook* also found the provision lacked mutuality. "There is no question that it is more difficult for a party to enforce an arbitration agreement against a nonsignatory than it is for a nonsignatory to enforce an arbitration agreement against a party." (*Cook, supra*, 102 Cal.App.5th at 327.) "[N]onsignatories may enforce an arbitration agreement against a party to the agreement simply by showing they are intended third party beneficiaries of the arbitration agreement . . . Conversely, for Cook to enforce the arbitration agreement against USC's agents or employees as third-party beneficiaries, she would have to show they actually accepted a benefit under the agreement. [ ]It is difficult to imagine how Cook could carry this burden to compel USC's employees and agents to arbitration unless those specific agents or employees first moved to compel arbitration under the agreement. While it is theoretically possible for Cook to make this showing, it is unlikely." (*Id.* [cleaned up]—"The plain language of the arbitration agreement thus provides a significant benefit to USC's related entities without any reciprocal benefit to Cook.") The court thus found the agreement to lack mutuality as well as to be overly broad in scope. The same problem arises from the provision in this action. This is substantively unconscionable.

5. Summary

Given the moderate-to-high degree of procedural unconscionability, and the substantive unconscionability of the confidentiality agreement clause and lack of mutuality, plaintiff has met her burden to show the arbitration agreement is unconscionable and thus unenforceable.

Severance

If a contractual term is found unconscionable, the court may, in its discretion, choose to do one of the following: 1) refuse to enforce the contract; 2) sever an unconscionable term or clause; or 3) limit the application of any clause to avoid an unconscionable result. The strong legislative and judicial preference, however, is to

sever the offending term and enforce the balance of the agreement. (*Ramirez, supra*, 16 Cal.5th at p. 512.) Refusal to sever and enforce the remaining portions of the arbitration agreement is appropriate only when the agreement is permeated by unconscionability. (*Ibid*.)

No bright-line rule requires a court to refuse enforcement if a contract has more than one unconscionable term. Likewise, a court is not required to sever or restrict an unconscionable term if an agreement has only a single such term. The appropriate inquiry is qualitative and accounts for the two factors initially identified in *Armendariz* – if the central purpose of the contract is tainted with illegality, then the contract as a whole cannot be enforced. If the illegality, however, 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 severance and restriction are appropriate. (*Id.* at p. 515.)

Additionally, even if a contract can be cured, the court should ask whether the unconscionability *should* be cured through severance of restriction because the interests of justice would be furthered. This part of the inquiry focuses on whether mere severance of the unconscionable terms would function to condone an illegal scheme. The court should take into account the presence of a severance clause in the contract. (*Id.* at p. 517.) In the end, courts may liberally sever any unconscionable portion of a contract and enforce the rest when: the illegality is collateral to the contract's main purpose; it is possible to cure the illegality by means of severance; and enforcing the balance of the contact would be in the interests of justice." (*Id*. at pp. 516-517.)

Here, the court finds the agreement is tainted with unconscionability because the confidentiality provision tips the arbitration process in favor of the employer, underscored by the lack of mutuality in terms of enforcing the agreement against third parties. It is tainted with illegality because severance of the confidentiality provision will not rectify the unconscionability caused by its historic presence in the arbitration agreements. In other words, even if severed from *this* agreement, plaintiff will still be hampered by the confidentiality agreement that exists between this employer and any other employee with whom it may have arbitrated previously, meaning this plaintiff cannot access any information that may be useful to her in participating in the arbitration process. The court thus finds that severance would be inappropriate as discussed under *Ramirez, supra*. The motion to compel arbitration is denied.

The parties are instructed to appear at the hearing for oral argument. Appearance by Zoom Videoconference is optional and does not require the filing of Judicial Council form RA-010, Notice of Remote Appearance. (See Remote Appearance (Zoom) Information | Superior Court of California | County of Santa Barbara.)