PARTIES/ATTORNEYS

Plaintiff	Ethan John Alva-Sheppard	Justin F. Marquez Arrash T. Fattahi Shooka Dadashzadeh WILSHIRE LAW FIRM
Defendant	Pacific Beverage Co.	Melissa J. Fassett, Timothy E. Metzinger PRICE, POSTEL & PARMA LLP

TENTATIVE RULING

For all the reasons discussed below, the motion to compel arbitration of plaintiff's individual PAGA claims is granted. The Agreement is not procedurally unconscionable nor unfair. The court grants the motion to stay the nonindividual claims that will remain pending as a court proceeding until the arbitration is complete.

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.)

There are a series of cases involving defendant Pacific Beverage Co. All cases have been related by the court.

On April 28, 2023, plaintiff Garrett Matueski filed a class action against defendant for Labor Code violations and unfair business practices stemming from its' failure to pay for all hours worked (minimum, straight time, and overtime wages), failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay final wages, failure to furnish accurate wage statements, and failure to indemnify employees for expenditures. On July 12, 2023, this matter was ordered to arbitration and the case was stayed pending resolution. (See July 12, 2023 Notice of Ruling.) (Case No. 23CV01867.)

On September 5, 2023, plaintiff Garrett Matueski filed a separate action against defendant Pacific Beverage Co. for civil penalties under the Private

Attorneys General Act of 2004, Labor Code §§ 2698 et seq. ("PAGA") stemming from defendants' failure to pay for all hours worked (including minimum wages, straight time wages, and overtime wages), failure to provide meal periods, failure to authorize and permit rest periods, failure to pay all earned wages twice per month, failure to maintain accurate records of hours worked and meal periods, failure to timely pay final wages, failure to furnish accurate wage statements, and failure to indemnify for necessary expenditures or losses. On November 7, 2023, the court ordered, pursuant to the parties' stipulation, that Matueski's individual PAGA claims would be submitted to arbitration, and that any PAGA representative claims were stayed pending resolution of the arbitration. (Case No. 23CV03925.)

On June 10, 2024, plaintiff Ethan Alva-Sheppard brings this action against defendant Pacific Beverage Co. for civil penalties under the Private Attorneys General Act of 2004, Labor Code §§ 2698 et seq. ("PAGA") stemming from Defendants' failure to pay for all hours worked (including minimum wages, straight time wages, and overtime wages), failure to provide meal periods, failure to authorize and permit rest periods, failure to pay all earned wages twice per month, failure to maintain accurate records of hours worked and meal periods, failure to timely pay final wages, failure to furnish accurate wage statements, and failure to indemnify for necessary expenditures or losses. (Case No. 24CV03230.) This is the only case that has not been stayed by the court.

On Calendar

In *Alva-Sheppard v. Pacific Beverage Co*., defendant moves to compel arbitration of plaintiff's individual PAGA claims, and a stay of proceeding as to the PAGA representative claims until the individual claims are resolved.

FAA Applies

The Agreement states:

> This Agreement is an arbitration agreement governed by the Federal Arbitration Act, 9 U.S.C. sections 1 et seq., and evidences a transaction involving commerce. To the extent the Federal Arbitration Act is inapplicable, this Agreement shall be governed by the arbitration law of the state where Employee primarily performed services for the Company.
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> (Motion, Exhibit B, Prefatory Paragraph.)

This issue is usually immaterial because both the Federal Arbitration Act (FAA) and the California Arbitration Act (CAA) provide for enforcement of arbitration agreements. (Code Civ. Proc. § 1280 et seq.; 9 USC § 1 et seq.) Moreover, under both the FAA and the CAA, the court may deny an application to arbitrate if it finds the party resisting arbitration did not, in fact, agree to arbitrate. (FAA, §

4[4]; Code of Civ. Proc., § 1281.2.) Even when the FAA applies, however, "the FAA relies on state-law contract principles" in determining whether an arbitration agreement exists. (*Peleg v. Neiman Marcus Group, Inc.* (2012) 204 Cal.App.4th 1425, 1466.)

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 . . . ." 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.) By attaching a copy of the agreement to its petition, defendant may satisfy the initial burden of establishing the existence of an arbitration agreement. (*Condee v. Longwood Management Corp*. (2001) 88 Cal.App.4th 215, 217–219.)

Pacific Beverage produced evidence it hired Plaintiff as a stocker in its Santa Maria facility on or about January 23, 2023. On February 14, 2023, Plaintiff signed Pacific Beverage Company's Mutual Arbitration Agreement attached to the motion as Exhibit A. Two months later, on April 27, 2023, Plaintiff signed the updated version of Pacific Beverage Company's Mutual Arbitration Agreement (Agreement) attached to the motion as Exhibit B. (Ortega Decl., ¶¶3-5.) The latter is the operative Agreement. There is no dispute about the existence of the Agreement, which generally provides:

> "[T]he Company and I mutually agree any disputes the Company may have against me or I may have against the Company, or its current or past officers, directors, owners, employees, or agents arising out of, or related directly or indirectly to, my employment application, employment relationship, 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) shall be resolved only by an Arbitrator through final and binding arbitration and not by way of court or jury trial."
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> (Motion, Exh. B, ¶ 1.)[1]

[1] In its motion, defendant points out that related case *Matueski v. Pacific Beverage Co*. (Case No. 23CV03925) is also a PAGA action and that plaintiff's counsel stipulated to arbitration of an action based on the same Agreement that is at issue here. Defendant makes general claims that plaintiff's opposition, and the position taken here, is "barred by principles of res judicata, and appear to be forum shopping." Defendant provides no authority in support or analysis of this argument, advancing it conclusorily. That alone is enough to reject it. (*Quantum Cooking Concepts, Inc. v. LV Assocs., Inc*. (2011) 197 Cal. App. 4th 927—"Rule 3.1113 rests on a policy-based allocation of

The Agreement is Not Unconscionable

Although plaintiff does not deny the existence of the Agreement, he argues it is unconscionable. 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 in order 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.)

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

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resources, preventing the trial court from being cast as a tacit advocate for the moving party's theories by freeing it from any obligation to comb the record and the law for factual and legal support that a party has failed to identify or provide.") In any event, res judicata (and specifically, issue preclusion) is *inapplicable* to bar plaintiff's unconscionability argument as advanced. The party against whom the doctrine is invoked (i.e., plaintiff) must be bound by the prior proceeding. This occurs only after final adjudication, of an identical issue, actually litigated and decided in the first suit, and asserted against one who was a party in the first suit or one in privity with that party. (*DKN Holdings, LLC v. Faerber* (2015) 61 Cal.4th 813, 824-825.) Case No. 23CV03925 is not yet final. Further, whether Mr. Matueski and plaintiff have identical interests because of the PAGA representative action has not yet been determined in any way – the matter was stayed pending resolution of the Mr. Matueski's individual claims. Whether this becomes an issue for the court in the future is unclear. It is not an issue at present.

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.)

Plaintiff contends that the arbitration agreement is procedurally unconscionable because defendant "failed to attach the arbitration rules to the Arbitration Agreement and, as a result, make it virtually impossible to understand the critical areas of arbitration that would only be addressed by the rules. Defendant did not even a simple web link in the Agreement to view the rules in an online format. [Citation.] Defendant makes references to the Judicial Arbitration and Mediation Services ('JAMS') rules within the Agreement; however, instructions for how to access any hard copies or online copies of JAMS rules are nowhere to be found in the Agreement. Effectively, Plaintiff would have been *forced* to proactively go through additional efforts to seek out the unattached rules and comprehend those rules (which are filled with legal jargon) all in a hurried fashion (and without the assistance of counsel) prior to signing the Arbitration Agreement." (Opposition, p. 4, ll. 11-20.) Also, according to plaintiff, the "language within the Agreement is also confusing, as it states that '. . . the JAMS Rules [are] discussed below,' but the JAMS rules are never discussed after the initial mention." (Opposition, p. 4, ll. 20-24.)

The Agreement states:

> "Notwithstanding any other language in the Agreement and/or any rules or procedures that might otherwise apply by virtue of this Agreement (including without limitation ***the JAMS Rules discussed below***) or any amendments and/or modifications to those rules, any claim that the all or part of the Class and Collective Action Waivers or California Private Attorneys General Act Individual Action Requirement are unenforceable, inapplicable, unconscionable, or void or voidable, will be determined only by a court of competent jurisdiction and not by an Arbitrator."
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> (Motion, Exh. B, ¶ 1 [emphasis added].)

Plaintiff is correct – there is no express mention of JAMS or JAMS rules in the remainder of the arbitration agreement. To the extent plaintiff's argument is that the confusion engendered by the reference to JAMS without an express adoption of those rules results in impermissible surprise, the court rejects that theory based on the present record. No doubt, procedural unconscionability may result from an agreement that designates the rules of a recognized arbitration provider as governing the dispute while also providing contrary terms in the agreement itself. (*Nelson v. Dual Diagnosis Treatment Center, Inc.* (2022) 77 Cal.App.5th 643, 662—referenced AAA rules allocated authority for arbitrability and enforceability in a manner contrary to the express terms of the enrollment agreement.) Here, however, plaintiff identifies no such contrary terms.

Nor does plaintiff identify any material source of confusion. Here, the Agreement is detailed about the procedures that will apply. Item 3 details the selection of the arbitrator by mutual agreement, the requirements for an arbitrator, and if a conflict, either party may apply to court to appoint a neutral arbitrator, with the location of arbitration to be no more than 50 miles from the place where plaintiff worked. Item 4 details how the arbitration procedure is initiated, including the requirements of notice. Item 5 explains how the arbitration process and hearing will be conducted, including the right to file pleadings, subpoena witnesses, bring dispositive motions, present witnesses, and to conduct discovery. Item 7 describes the arbitration hearing, the right and timing of briefing, as well as other issues discussed above.

Without an express adoption of the JAMS rules, it appears the reference excluding the application of those rules was simply an error. Absent any material confusion about the governing rules, the court declines to find procedural unconscionability based on this argument.

Even assuming the court were to interpret the Agreement to provide that the JAMS rules apply, plaintiff's argument that defendant failed to provide him with a copy of the relevant rules also fails. The failure to provide a copy of the arbitration rules generally raises procedural unconscionability concerns only if there is a substantively unconscionable provision in the omitted rules. (*Baltazar v. Forever 21, Inc.* (2016) 62 Cal.4th 1237, 1246; *Cisneros Alvarez v. Altamed Health Services Corporation* (2021) 60 Cal.App.5th 572, 590.) In fact, the *Baltazar* court considered each case cited by plaintiff in his opposition:

> "Baltazar relies on *Trivedi*, which notes that "[n]umerous cases have held that the failure to provide a copy of the arbitration rules to which the employee would be bound supported a finding of procedural unconscionability." (*Trivedi, supra*, 189 Cal.App.4th at p. 393, 116 Cal.Rptr.3d 804, citing cases.) But in *Trivedi* itself and in each of the Court of Appeal decisions cited therein, the plaintiff's unconscionability claim depended in some manner on the arbitration rules in question. (See *id*. at pp. 395–396, 116 Cal.Rptr.3d 804; *Fitz v. NCR Corp*. (2004) 118 Cal.App.4th 702, 721, 13 Cal.Rptr.3d 88 (*Fitz*); *Harper v. Ultimo* (2003) 113 Cal.App.4th 1402, 1406–1407, 7 Cal.Rptr.3d 418; *Gutierrez v. Autowest, Inc.* (2003) 114 Cal.App.4th 77, 89–92, 7 Cal.Rptr.3d 267; *Patterson v. ITT Consumer Financial Corp.* (1993) 14 Cal.App.4th 1659, 1665–1666, 18 Cal.Rptr.2d 563.) These cases thus stand for the proposition that courts will more closely scrutinize the substantive unconscionability of terms that were "artfully hidden" by the simple expedient of incorporating them by reference rather than including them in or attaching them to the arbitration agreement."
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> (*Baltazar, supra*, 62 Cal.4th 1237, 1246.)

This is demonstrated by *Harper v. Ultimo* (2003) 113 Cal.App.4th 1402, a case cited by plaintiff. In *Harper,* the plaintiff contracted with defendant to stabilize soil and re-level a pool. The contract provided that disputes were to be settled pursuant to the Uniform Rules for Better Business Bureau Arbitration. Those rules were not attached to the contract. A pipe broke and litigation ensued with plaintiff alleging tort causes of action for negligence, fraud and breach of contract, and seeking punitive damages. The defendant moved to compel arbitration. The trial court granted the motion, concluding that the arbitration clause was unconscionable and therefore would not be enforced. The decision was affirmed. The appellate court explained:

> "The arbitration rules of the Better Business Bureau limit the damages and remedies available to dissatisfied customers. Customers cannot obtain compensation for "personal injuries" unless all parties otherwise agree in writing . . . Customer remedies are limited to full or partial refund, completion of work, costs of repair or any out of pocket loss or property damage, but 'not to exceed $2,500, caused by provision of the service.' Any additional remedies may be

awarded 'only if' the remedy is already included in a business's precommitment with the Bureau or, as in the case of personal injury claims, if agreed in writing by all parties. Customers are thus precluded under the Better Business Bureau arbitration rules from obtaining tort damages, punitive damages, or any other damages otherwise appropriate in a court of law.

[¶] Here is the oppression: The inability to receive full relief is artfully hidden by merely referencing the Better Business Bureau arbitration rules, and not attaching those rules to the contract for the customer to review. The customer is forced to go to another source to find out the full import of what he or she is about to sign—and must go to that effort prior to signing.

But the oppression is even more onerous than that: As written, the clause pegs both the scope and procedure of the arbitration to rules which might change. And it is unclear whether an arbitration would be conducted under the Better Business Bureau rules as of the time of contracting, or at the time of arbitration. Thus even a customer who takes the trouble to check the Better Business Bureau arbitration rules before signing the contract may be in for a preliminary legal battle in the event that Better Business Bureau arbitration rules were to become substantively less favorable in the interim. Before the main battle commenced in arbitration, there would be a preliminary fight over which set of arbitration rules governed—something which, at the very least, would add to the customer's legal expense. (Cf. *Armendariz, supra*, 24 Cal.4th at pp. 110–112, 99 Cal.Rptr.2d 745, 6 P.3d 669 [noting problem of forum fees in requiring party who imposes the arbitration to bear its costs].)"

(*Harper v. Ultimo* (2003) 113 Cal.App.4th 1402, 1406-1407.)

Thus, the failure to attach the arbitration rules is a factor in determining unconscionability *where the rules limit the damages and remedies available.* Here, plaintiff has identified no particular provision in the JAMS rules that are unconscionable.

Plaintiff's reliance on *Samaniego v. Empire Today LLC* (2012) 205 Cal.App.4th 1138, 1146 is also misplaced, as that case is easily distinguishable. It must first be observed that it predates *Baltazar*. But more significantly, the court's procedural unconscionability analysis identified the failure to provide the relevant rules as only one factor in its conclusion. Here, plaintiff did not attempt to show other sharp practices on the part of defendant, such as placing him under duress. (*Baltazar v. Forever 21, Inc.* (2016) 62 Cal.4th 1237, 1245.)

The court is not persuaded that procedural unconscionability has been shown based on this record. "A conclusion that a contract contains no element of procedural unconscionability is tantamount to saying that, no matter how one-sided

the contract terms, the court will not disturb the contract because of its confidence that the contract was negotiated or chosen freely, that the party subject to a seemingly one-sided term is presumed to have obtained some advantage from conceding the term or that, if one party negotiated poorly, it is not the court's place to rectify these kinds of errors or asymmetries. (*Ramirez v. Charter Communications, Inc.* (2024) 16 Cal.5th 478, 494; *Gentry v. Superior Court* (2007) 42 Cal.4th 443, 470.)

The Agreement is Fair

Although the court need not examine substantive unconscionability, it must still undertake the *Armendariz* inquiry. In the employment context, there is an additional consideration of fairness. (*Armendariz v. Foundation Health Psychcare Services, Inc*. (2000) 24 Cal.4th 83, 103, 106, 113.) The following requirements must be shown before an arbitration agreement in the employment context is enforceable: (1) the arbitration agreement may not limit damages normally available under the statutes; (2) there must be discovery sufficient to adequately arbitrate the statutory claim; (3) there must be a written arbitration decision and judicial review "sufficient to ensure the arbitrators comply with the requirements of the statute"; and (4) the employer must "pay all types of costs that are unique to arbitration." (*Armendariz v. Foundation Health Psychcare Services, Inc., supra,* 24 Cal.4th at 103, 106, 113.) *Armendariz* remains good law even when the FAA is implicated. (*Ramos v. Superior Court* (2018) 28 Cal.App.5th 1042, 1055.)[2]

The arbitration agreement here satisfies the minimum requirements set forth in *Armendariz.* There are no limitation of remedies. The arbitration agreement provides in paragraph 7 that the arbitrator "may award any party any remedy to which that party is entitled under applicable law, but such remedies shall be limited to those that would be available to a party in his or her individual capacity in a court of law for the claimed presented to and decided by the Arbitrator." This language authorizes all remedies available for individual PAGA claims. Plaintiff does not claim otherwise.

Plaintiff claims there is inadequate discovery as contemplated by *Armendariz.* Not so. Arbitration of statutory claims can be compelled if the agreement "provides for more than minimal discovery." (*Armendariz, supra*, at p. 102.) In *Armendariz*, the California Supreme Court established a standard for evaluating the validity of discovery limits within arbitration agreements. (See *id.* at pp. 104-106.) While parties can agree "to something less than the full panoply of discovery provided" in the Code of Civil Procedure, "adequate discovery is indispensable for the vindication

[2] Plaintiff treats this inquiry almost exclusively through the prism of unconscionability. This inquiry is distinct from an unconscionability determination. (*Ramirez v. Charter Communications, Inc.* (2024) 16 Cal.5th 478, 504, fn. 7 [the two inquiries are distinct].) However, whether an agreement satisfies *Armendariz's* requirements may inform the determination whether it or any of its provisions is unconscionable." (*Ramirez, supra,* 16 Cal.5th at p. 504, fn. 7.) The court will consequently consider those arguments that are relevant through the *Armendariz* inquiry.

of FEHA claims." (*Id.* at pp. 104, 105-106, italics omitted.). " ' "[A]dequate" ' discovery does not mean 'unfettered' discovery. [Citation.]" (*Dotson v. Amgen, Inc.* (2010) 181 Cal.App.4th 975, 983.) What employees are "entitled to [is] discovery sufficient to adequately arbitrate their statutory claim, including access to essential documents and witnesses, as determined by the arbitrator(s)." (*Armendariz*, at p. 106.) Here, each party is entitled to propound ten (10) interrogatories, ten (10) RFAs, and requests for production of documents. Moreover, the Agreement provides that "[a]dditional discovery may be conducted by mutual stipulation, and the Arbitrator will have exclusive authority to entertain requests for additional discovery, and to grant or deny such requests based on circumstances of the particular case. Any disputes with respect to the proceeding items shall be resolved by the Arbitrator." (Motion, Exh. B, ¶ 5.) As our high court has recently observed, allowing "the arbitrator to deviate from agreed-upon default discovery limits ensures that neither party will be unfairly hampered in pursuant a statutory claim based on circumstances that arise post-formation," and comports with *Armendariz*. (*Ramirez*, supra, 16 Cal.5th at 506; see also *Vo v. Technology Credit Union* (2025) ____ Cal.App.5th ___ [2025 WL 384496, at *3 [citing *Ramirez* for the proposition that given the arbitrator authority to expand discovery is one way to ensure adequate discovery is available].) That is the case here.

Armendariz requires that there must be a written arbitration award and the opportunity for judicial review. (*Armendariz, supra*, 24 Cal.4th at 107.) Here, the Agreement provides that the arbitrator "will issue a decision or award in writing, stating the essential findings of fact and conclusions of law." Plaintiff contends in opposition that the arbitration agreement fails to provide for judicial review of the arbitrator's decision or award. Plaintiff, however, fails to account for the following language in the arbitration agreement. "A court of competent jurisdiction shall have the authority to enter a judgment upon the award made pursuant to the arbitration." This includes, by logic and common sense, the court's ability to either confirm, vacate or correct the arbitration award as contemplated by Code of Civil Procedure section 1285. (See, *Gutierrez v. Autowest, Inc.* (2003) 114 Cal.App.4th 77, 100 [arbitration is subject to judicial review, on a petition to confirm, correct or vacate the award, pursuant to Code Civ. Proc., § 1285, and this comports with *Armendariz*].) Plaintiff's challenge is therefore unpersuasive.

Finally, plaintiff is not required to pay unreasonable costs and arbitration fees. Our high court in *Armendariz* held that "when an employer imposes mandatory arbitration as 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 bring the action in court." (*Armendariz, supra*, at pp. 110-111.) The Agreement provides that each "party will pay the fee for his, her, or its own attorneys, subject to any remedies to which the party may later be entitled under applicable law. However, the Company will pay the Arbitrator's fees and costs." This comports with *Armendariz*, as

defendant is required to pay all arbitration costs, plaintiff is not required to pay defendant's attorney's fees, and, in fact, plaintiff can seek attorney's fees under statute if warranted. Nothing in the arbitration agreement restricts the authority to award plaintiff attorney's fees under statute. All *Armendariz* requirements have been met.

Plaintiff's Representative Claim Should be Stayed Pending Resolution of Arbitration

The parties agree, and case law mandates, that a plaintiff who files a PAGA action with individual and non-individual claims does not lose standing to litigate the non-individual claims in court simply because the individual claims have been ordered to arbitration. (*Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104, 1128.) Here, plaintiff's individual PAGA claim will be compelled to arbitration. His representative claim will remain here as a court proceeding. Defendant asks the court to stay the court proceeding pending resolution of the arbitration. Plaintiff urges the court to allow it to proceed.

Both the FAA and the CAA provide that if a matter is referrable to arbitration, the Court shall, upon motion of a party, stay the action until the arbitration has been completed. (9 U.S.C. §3 and CCP 1281.4.) In *Adolph*, the court approved, but did not mandate, the following procedure: "First, the trial court may exercise its discretion to stay the non-individual claims pending the outcome of the arbitration pursuant to section 1281.4 of the Code of Civil Procedure. Following the arbitrator's decision, any party may petition the court to confirm or vacate the arbitration award under section 1285 of the Code of Civil Procedure. If the arbitrator determines that Adolph is an aggrieved employee in the process of adjudicating his individual PAGA claim, that determination, if confirmed and reduced to a final judgment (Code Civ. Proc., § 1287.4), would be binding on the court, and Adolph would continue to have standing to litigate his nonindividual claims. If the arbitrator determines that Adolph is not an aggrieved employee and the court confirms that determination and reduces it to a final judgment, the court would give effect to that finding, and Adolph could no longer prosecute his non-individual claims due to lack of standing." (*Adolph, supra,* 14 Cal.5th at 1128.)

Here, plaintiff argues that staying the representative PAGA claims runs counter to the underlying purpose of the PAGA itself, that is, protecting the public and points out that a stay will impact the aggrieved employees who must await the decision from the arbitrator before having their claims litigated. While this is true, plaintiff cites no reason for urgency to resolve these claims, such as potential loss of witnesses or other evidence, or even legislative policy that gives such claims priority. The court is not convinced that a stay is impractical and thus grants the stay, consistent with the statutory mandates of both the FAA and CAA.

Tentative Ruling

The motion to compel arbitration of plaintiff's individual PAGA claims is granted. The Agreement is neither procedurally unconscionable nor unfair. The court grants the motion to stay the nonindividual claims that will remain pending as a court proceeding until the arbitration is complete.

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.)