PROPOSED TENTATIVE

On March 3, 2026, plaintiff Jose Rodriguez (plaintiff) filed a complaint against defendant Ramco Enterprises LP and Herman Raygoza (defendants), advancing seven causes of action based on wage and hour violations (failure to pay overtime, failure to pay minimum wages, failure to provide meal and rest periods, failure to pay wages upon termination, failure to issue accurate and itemized wage statements, and failure to indemnify), as well as one cause of action for unlawful business practices. Plaintiff is suing in his own individual capacity only. Briefly, plaintiff began working for defendants on February 28, 2018, as a "Maintenance Mechanic," and during his employment, numerous wage and hour violations (as alleged above) occurred. Plaintiff left defendants' employment in August 2025. Defendants have not answered.

Defendants have filed a motion to compel arbitration pursuant to Code of Civil Procedure[1] section 1281.2, including a declaration from Gabriela Ahumada (Director of Human Resources for Ramco Enterprises). Ms. Ahumada's declaration contains as attachments both a Spanish and an English version of the same arbitration agreement (both were electronically signed by plaintiff on July 13, 2023).[2] Each is titled "Arbitration Agreement[,]" which provides that "any and all disputes, controversies, or claims between the Parties relating to, resulting from, or in any way arising out of Employee's relationship with Company, Employee's employment relationship with Company and/or the termination of Employee's employment relationship with Company shall be determined exclusively by final and binding arbitration . . . ." More specifically, in Section 1, the agreement provides that binding arbitration applies to claims "arising from, related to, or having any relationship or connection with an employee's seeking employment with, employment by, or other association with or termination by the Company, whether based on contract, tort, statutory or equitable law or otherwise, shall be submitted to and determination exclusively by binding arbitration." Arbitration shall follow the rules associated with the American Arbitration Association (AAA), and the arbitration agreement notes the policies and procedures are available on the AAA's website (http://www.adr.org.) The agreement (in section 6(b)) expressly indicates that it is governed by the Federal Arbitration Act (FAA). In capitalized letters just above the signature line, the arbitration agreement reads as follows: "EMPLOYEE ACKNOWLEDGES THAT EMPLOYEE HAS CAREFULLY READ THIS AGREEMENT, UNDERSTANDS ITS TERMS, AND AGREES THAT ALL UNDERSTANDINGS AND AGREEMENTS BETWEEN COMPANY AND EMPLOYEE RELATING TO THE SUBJECTS COVERED IN THE AGREMENT ARE CONTAINED IN IT. EMPLOYEE HAS KNOWINGLY AND VOLUNTARILY ENTERED INTO THE

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1 All future statutory references are to the Code of Civil Procedures unless indicated otherwise.

2 Defendants do not just rely on the fact plaintiff signed both a Spanish and English version of the arbitration agreement on July 13, 2023. According to the declaration of Gabriela Ahumada, who contends under penalty of perjury that she is fluent in Spanish and English, the English version is a "true and accurate translation of the" Spanish arbitration agreement signed by plaintiff. Plaintiff does not challenge this in opposition. Accordingly, the court will assume both are the same.

AGREEMENT WITHOUT RELIANCE ON ANY PROVISIONS OR REPRESENTATIONS BY COMPANY, OTHER THAN THOSE CONTAINED IN THIS AGREEMENT. [¶] EMPLOYEE FURTHER ACKNOWLEDGES THAT EMPLOYEE HAS BEEN GIVEN THE OPPORTUNITY TO DISCUSS THIS AGREEMENT WITH EMPLOYEE'S PRIVATE LEGAL COUNSEL AND EMPLOYEE HAS UTILIZED THAT OPPORTUNITY TO THE EXTENT DESIRED."

Defendants contend that they have met their burden to show the parties entered into an enforceable and valid arbitration agreement. They also claim the agreement satisfies the five-part fairness test for mandatory arbitration employment contracts contained in *Armendariz v. Foundation Health Psychcare Services* (2000) 24 Cal.4th 83. And they argue the arbitration agreement is not procedurally or substantively unconscionable.

Plaintiff in opposition claims as follows:1) the FAA does not apply (meaning the CAA applies) because there is no evidence that interstate commerce is involved in defendant's business; 2) defendants have failed to show by a preponderance of evidence that there was a mutual agreement to arbitrate under existing California contract principles, because defendant claims in his declaration that he did not sign the arbitration agreement, otherwise did not agree to arbitration, and did not review and sign the arbitration agreement; plaintiff argues defendant has failed to authenticate his electronic signature on the agreements; 3) even if there is an arbitration agreement, it is both procedurally and substantively unconscionable because it is a contract of adhesion and is presumptively (substantively) unconscionable under the standards enunciated in *Ingle v. Circuit City* (9th Cir. 2003) 328 F.3d 1165, and, specifically, it is substantively unconscionable because defendant failed to attach the AAA rules to the arbitration agreement; and 4) severance cannot cure any substantive unconscionability. Alternatively, plaintiff asks that if the court grants the motion to compel arbitration, it must stay the matter pending arbitration, and asks that the court (additionally) excise any "unconscionable or illegal provisions . . . to rectify any disparities that favor the drafter of the agreement." Plaintiff supplemented his opposition with two declarations filed on July 28, 2026.

Defendant filed a reply on July 13, 2026. All briefing has been reviewed.

The court will first outline the legal principles that frame the inquiry. It will then address whether the FAA or the CAA governs the arbitration agreement; whether defendants has met their prima face burden to show a valid arbitration agreement between the parties (including whether the signature was authentic and whether mutual assent was been demonstrated), and then ultimately determine whether the arbitration agreement is procedurally and substantively unconscionable, and if so, whether the substantively unconscionable provisions can be severed and any remaining portions of the arbitration agreement enforced. If necessary, the court will address plaintiff's alternative argument.

A) Legal Principles

Section 1281.2 authorizes a party to file a motion to compel arbitration, and this provision applies whether the arbitration is governed by the FAA or the CAA. 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 also has to demonstrate that 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.) In this, the moving party bears the burden of producing evidence of a written arbitration agreement, which is satisfied by attaching a copy of the arbitration agreement to the motion. (*Espejo v. Southern California Permanente Medical Group* (2016) 246 Cal.App.4th 1047, 1058.) Once plaintiff challenges the validity of a signature on the document in opposition, defendants are required to establish by a preponderance of evidence that the signature is authentic. (*Id.* at p. 1060; see also *Iyrere v. Wise Auto Group* (2023) 87 Cal.App.5th 747, 755 [if the moving party meets its initial burden by providing a signed agreement, the burden shifts to the opposing party to identify a factual dispute as to the authenticity of the signature, and to bear this burden, admissible evidence must be offered creating a factual dispute; once done, this shifts the burden back to the moving party to show the authenticity by a preponderance of evidence]; *Toothman v. Redwood Toxicology Laboratory, Inc.* (2026) 120 Cal.App.5th 412, 419 [same].) A declaration to the effect that plaintiff did not recall electronically signing the arbitration agreement is sufficient to raise an actual dispute that places the burden on the moving to prove authenticity by a preponderance of evidence. (*Ruiz v. Moss Bros. Auto Group, Inc*. (2014) 232 Cal.App.4th 836, 844.)

Additionally, general principles of contract law determine whether parties have a entered a binding agreement to arbitrate, including mutual asset. (*Caballero v. Premier Care Simi Valley LLC* (2021) 69 Cal.App.5th 512, 518.) Mutual assent is determined under an objective standard applied to the outward manifestations or expressions of the parties, i.e., based on the reasonable meaning of their words or acts, and not their unexpressed intentions or understandings. (*Ibid.*) One who accepts or signs an instrument, which on its face is a contract, is deemed to assent to all its terms, and cannot escape liability on the ground that he had not read it. If he cannot read, he should have it read or explained to him. Absent fraud or overreaching, a party's inability to read English and a party's limited ability to speak or understand English do not alter the conclusion that a signature on a contract manifested an agreement to its terms. If there is a language problem, "it is incumbent upon the party to have it read or explained to him or her," unless the person was fraudulently induced to sign the contract. (*Id.* at p. 519 [plaintiff's decision to sign a document he could not read is not a basis for avoiding an arbitration agreement].)

When there is a mandatory employment arbitration agreement, the employer in addition must show the arbitration agreement satisfies the five-part fairness test articulated under *Armendariz, 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.[3]

Finally, as for unconscionability, the party opposing arbitration (here plaintiff) bears the burden of proving the defense of unconscionability. (*Pinnacle Museum Town Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 236.) For a contract term to be

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[3] Our high court recently explained in *Ramirez v. Charter Communications, Inc.* (2024) 16 Cal.5th 478, 538, footnote 7 as follows: "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 it of any of provisions is unconscionable, ***but the two inquiries are distinct***. . . ." (Emphasis added.) As plaintiff examines any and all arguments through the prism of unconscionability, and not as byproduct of any the fairness factors contemplated by *Armendariz,* the court will do the same.

unenforceable as unconscionable, it must be both procedurally and substantively unconscionable. (*Wong v. Restoration Robotics, Inc*. (2022) 78 Cal.App.5th 48, 78.) Procedural unconscionability ' "addresses the circumstances of contract negotiation and formation, focusing on oppression or surprise due to unequal bargaining power." ' [Citation.] ' "Substantive unconscionability pertains to the fairness of an agreement's actual terms and to assessments of whether they are overly harsh or one-sided." ' [Citation.] Both elements must be proven, but they are evaluated on a sliding scale: 'the more substantively oppressive the contract term, the less evidence of procedural unconscionability is required' to find it unenforceable, 'and vice versa.' " (*Haydon v. Elegance at Dublin* (2023) 97 Cal.App.5th 1280, 1287.)

B) Merits

With this legal background, the court finds initially that the arbitration agreement is governed by the FAA, not the CAA. The court need look no farther than the express language of the arbitration agreement itself, for if the agreement is valid, a point discussed below, both parties expressly agreed in the arbitration agreements that arbitration was to be governed by the FAA. (*Tuufuli v. West Coast Dental Administrative Services, LLC* (2026) 117 Cal.App.5th 1048, 1054.) Put another way, it is defendant's burden to prove the arbitration agreement is governed by the FAA. However, when the arbitration agreement expressly provides that it is governed by the FAA, as it does here, 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."].) *Tuufuli* is dispositive on this question.

The court also finds that defendant has met its prima face burden of showing a consummated arbitration agreement and that the disputes at issue fall within its purview, based on a facial reading of the arbitration agreements, which have accompanied the motion. The court also finds that plaintiff has created a factual dispute about the authenticity of his electronic signature, as plaintiff in his declaration (in Spanish and translated to English) declares that he does not remember electronically signing the arbitration agreement; that that if he "actually signed the arbitration agreement, then my signature should be right on the signature line. There would be no space between my signature and the line." (*Ruiz, supra*, 232 Cal.App.4th at p. 846 [in the face of plaintiff's failure to recall signing the arbitration agreement, defendant has the burden of proving by a preponderance of evidence that the electronic signature was authentic].)

The court nevertheless finds that defendants, in reply, have presented sufficient evidence to demonstrate plaintiff's electronic signature is authentic by a preponderance of evidence. Specifically, defendants' signatory to the arbitration agreement, Antonia Chavarria (i.e., on defendant's behalf) declares that she was responsible for the onboarding process involving plaintiff; that on July 13, 2023, Ms. Chavarria "personally met with Plaintiff . . . I personally handed Plaintiff a company iPAD to complete and electronically sign the required documents, including the Arbitration Agreement through the platform Ganaz." She goes on: "Before Plaintiff began reviewing and signing the documents, I remained available to answer any questions he had regarding the documents. Plaintiff was not rushed or pressured to complete the documents and was free to ask questions at any time during the process." Ms. Chavarria decares, ***as a percipient witness,*** that she saw plaintiff "complete the documents himself using the iPad that I provided. I observed Plaintiff electronically sign both the English and Spanish versions of the Arbitration Agreement. At no time did I sign Plaintiff's name, direct anyone else to sign Plaintiff's name, or observe anyone other than Plaintiff execute the Arbitration Agreement." According to Ms. Chavarria, at no time did plaintiff "express any confusion regarding the Arbitration Agreement, state that he did not understand it, request additional time to review it, or ask me any questions regarding its terms. Plaintiff also did not indicate that he wished to consult with an attorney before signing it." "Based upon my personal observations, Plaintiff voluntarily completed and electronically signed the Arbitration Agreements during the July 13, 2023 personnel records update." Ms. Chavarria has provided critical, unchallenged,[4] admissible and ultimately persuasive evidence that plaintiff's electronic signature is genuine and authentic (i.e., even if plaintiff cannot remember electronically signing the document).

The court is not persuaded by plaintiff's claim that mutual assent is lacking because 1) he is a native Spanish speaker and thus not "fluent in English"; 2) he had no subjective intention of engaging in or agreeing to arbitrate; 3) defendants' agents "never explicitly informed me about the arbitration agreement or explained it significance to me"; 4) he did not know what arbitration was until recently; and 5) he was never informed that the arbitration agreement applied to all claims or controversies related to my application for employment. The fact plaintiff was provided an arbitration agreement in a language in which he was not fluent is not dispositive, for he clearly was presented the same arbitration agreement in both English and Spanish, and he signed both documents. Plaintiff does not claim he could not understand the Spanish version, which is the exact same as the English version. The fact he had no subjective intent to jettison his right to sue in court is not the test – under the authority above the test is objective, applied to the outward manifestations or expressions of the parties, i.e., reasonable meaning of their words or acts, and not their unexpressed intentions or understandings. The case law is clear – unless there

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[4] Plaintiff in his declaration does not actually disavow signing the arbitration agreements, claiming only that he does not remember signing them. He does deny using an iPad as alleged by Ms. Chavarria. (See, e.g., *Gonzalez v. Peak California Restaurant Group, LLC* (N.D. Cal. 2026) 831 F.Supp.3d 871, 879 ["Not recalling an event is not evidence that the event did not occur, and courts have consistently rejected the notion that an employee's failure to recall signing an agreement establishes lack of an agreement"].) This situation is therefore similar to the one confronted by the appellate court in *Iyere, supra*, 87 Cal.App.5th at page 756, in which the court found that in light of plaintiff's allegations – he did not recall signing the document – plaintiff's declaration did not create a factual dispute as to whether plaintiff actually signed the agreement. Of course, a party seeking to authenticate an electronic signature must show the electronic signature "was the act of the person," which can be shown "in any manner . . . ." (*Ruiz, supra*, at p. 843, citing Civ. Code § 1633.9, subd. (a).) While Ms. Chavarria does not explain the security procedures associated with the Ganaz platform (utilized for the electronic processing of the arbitration agreement), she expressly declares that she personally observed (i.e., in her presence) plaintiff electronically sign both documents, and thereafter processed those documents with the signature he witnessed. This uncontradicted evidence is sufficient to authentic plaintiff's electronic signature.

is fraud (and there are no allegations of fraud) – when plaintiff does not understand a term, plaintiff has an obligation to ask questions. (*Caballero, supra,* at p. 519; see also *Hulsey v. Elsinore Parachute Center* (1985) 168 Cal.App.3d 333, 339 [it is well established, in the absence of fraud, overreaching or excusable neglect, that one who signs an instrument may not avoid the impact of tits terms on the ground that he failed to read the instrument before signing it"].) Plaintiff does not indicate he asked any questions based on any confusion or uncertainty he may have had about any part of the arbitration agreements.

Defendants have met their burden to show a valid arbitration agreement that covers the nature of the claims advanced in the operative pleading.

Plaintiff does not claim the arbitration agreement violates any of the five fairness factors mandated by *Armendariz* for employment contracts with mandatory arbitration provisions. (*Fittante v. Palm Springs Motors Inc*. (2003) 105 Cal.App.4th 708, 716, citing *Armendariz, supra,* 24 Cal.4th at p 102 [an arbitration agreement passes muster under *Armendariz* if it provides for a neutral arbitrator, provides for minimum discovery, requires a written award, providers for all of the types of relief that would otherwise be availing in court, and does not require employees to pay either unreasonable costs or any arbitrator's fees and expenses as a condition of access to the arbitration forum].) Instead, plaintiff's challenges are advanced exclusively through the prism of unconscionability, and that is how the court will analyze any claim by plaintiff. (See fn. 2, *ante*.)

As for procedural unconscionability, as our high court has recently reiterated, some procedural unconscionability is present whenever an agreement is a contract of adhesion, i.e., defined as a standardized contract, which is imposed and drafted by the party of superior bargaining strength and relegates to the subscribing party only the opportunity to adhere to the contract or reject it. (*Fuentes v. Empire Nissan, Inc.* (2026) 19 Cal.5th 93, 103-104.) In this circumstance the issue (for purposes of procedural unconscionability) is one of degree. (*Id*. at p. 104.) A greater degree of procedural unconscionability is present when the circumstances of a contract's formation evince "oppression" or "surprise" beyond that usually present in a contract of adhesion. (*Ibid.*) Oppression occurs where a contract involves lack of negotiation and meaningful choice, and courts must be attentive to this in the employment setting where economic pressure exerted by employers on all but the most sought-after employers may be particularly acute. Surprise is present when an agreement's meaning is hard to ascertain, such as prolix agreement and/or small font size and illegibility. (*Ibid.*) Our high court has made it clear that the fact an arbitration agreement is a contract of adhesion by itself demonstrates only a low degree of procedural unconscionability. (*Ramirez*, *supra*, 16 Cal.5th at p. 494.)

The court agrees that the arbitration agreements at issue are contracts of adhesion. Both were written by defendants, and both were required for purposes of the employment, apparently on a take-it-or-leave it basis, presented to plaintiff in the workplace. There is some oppression. But contrary to plaintiff's claim, the court does not find a high degree of procedural unconscionability. (*Fuentes*, *supra,* 19 Cal.5th at p. 104). First, there is no significant oppression. Plaintiff was presented with both a Spanish and English version of the same arbitration agreement; he seems to admit he understood the Spanish version, which is exactly the same as the English version. Plaintiff does not claim he lacked a meaningful opportunity to review the agreements; he does not claim he was no afforded an opportunity to ask questions. (*Ibid.*) Indeed, according to Ms. Chavarria, plaintiff "was not rushed or pressured to complete the documents and was free to ask questions at any time during the process." Plaintiff does not claim otherwise. This stands in stark contrast to the situation in *Fuentes.* (*Ibid.* [heightened oppression is shown when plaintiff is told that he "should hurry," and defendant only gave plaintiff five minutes to complete the application].) Nor was there an unusually high degree of surprise. The arbitration agreements are not printed in "tiny, blurry font, making" them difficult to read. (*Ibid*.) Nor was plaintiff confronted with a collection of complex sentences replete with legal jargon. (*Id.* at p. 105.) This again stands in stark contrast to *Fuentes*. Plaintiff in his declaration claims that he was not afforded "a reasonable opportunity to consult an attorney about the terms of Defendants' arbitration agreement," although the arbitration agreement itself provides, with his signature, that he was given sufficient time to consult with private legal counsel. In fact, according to Ms. Chavarria's declaration, plaintiff at no time indicated "that he wished to consult with an attorney before signing." The court finds that while this is a relevant consideration (there likely was a short time at best to find an attorney), the totality of circumstances support a modicum rather than high or substantial degree of procedural unconscionability.

In any event (and even if the court assumes arguendo that a high degree of procedural unconscionability has been demonstrated), the merits of plaintiff's argument turns on whether there is a modicum of substantive unconscionable. And this is where plaintiff's arguments founder. First, the court finds plaintiff's reliance on *Ingle v. Circuit City* (9th Cir. 2004) 328 F.3d 1165, 1193 to be misplaced. The *Ingle* court, purportedly interpretating California law, found that a "contract to arbitrate between an employer and an employee, such as the one we evaluate in this case, ***raises a rebuttable presumption of substantive unconscionability***." (*Id.* at p. 1174, underscore added.) The court is not persuaded that *Ingle* properly summarizes California law. This court has found no published (or unpublished) California case holding a rebuttable presumption of substantively unconscionability exists in the employer-employee arbitration context. In fact, at least one published California Court of Appeal opinion has declined to follow *Ingle.* (See *Peng v. First Republic Bank* (2013) 219 Cal.App.4th 1462, 1474, fn. 8 ["We decline plaintiff's invitation to follow *Ingle*" on the topic of substantive unconscionability].) Indeed, contrary to *Ingle*, California case law has held that the necessary modicum of bilaterality is present as long as the arbitration agreement, by its terms, applies to claims by both the employer and the employee. (*Tiri v. Lucky Chances, Inc.* (2014) 226 Cal.App.4th 231, 247.) More significantly, as our high court has made clear very recently, unconscionability requires unfairness both in the procedure by which the contract was formed ***and*** the substance of is terms without mention of any rebuttable presumption; it emphasized instead a sliding scale theory, with the party opposing arbitration required to show both procedural and substantive unconscionability. (*Fuentes, supra*, 19 Cal.5th 93, 99; see [p. 103 [both procedural and substantive elements must be present to conclude a term is unconscionable, but these required elements need not be present in the same degree, and courts apply a sliding scale; when there is substantial procedural unconscionability, even a relatively low degree of substantive unconscionability may suffice to render the agreement unenforceable].) The court will apply the standards adopted and applied by the California Supreme Court and California appellate courts, rather than the standard articulated by *Ingle*. Plaintiff must identify a basis for substantive unconscionability no matter what degree of procedural unconscionability is present. (*Baltazar* v. *Forever 21, Inc.* (2016) 62 Cal.App.4th 1237, 1244 [" '[a] finding of procedural unconscionability does not mean that a contract will not be enforced, but rather that courts will scrutinize the substantive terms of the contract to ensure they are not manifestly unfair or one-sided' "]; *Roman v. Superior Court* (2009) 172 Cal.App.4th 1462, 1471 ["whatever measure of procedural unconscionability may be present . . ., [t]here must also be some measure of substantive unconscionability"].)

With this standard in mind, plaintiff argues substantive unconscionability exists based on one deficiency only – the fact the arbitration agreement does not expressly provide for discovery in the arbitration agreement itself. More specifically, according to plaintiff, the arbitration agreement "fails to include or attach the applicable discovery rules or procedures." Plaintiff goes on: "Given that Plaintiff was never provided with a copy of the rules to which Defendants not seek to bind him [the AAA employment disputes rules], Plaintiff does not know what discovery, if any, would be entitled to if this matter is compelled to arbitration," and this failure to attach the AAA rules amounts to substantive unconscionability. (Opp. at p. 10.)

Plaintiff's arguments are unpersuasive. First, the arbitration agreement itself, in section 6(e) and titled "Discovery," provides that all discovery during arbitration "shall be in conformity with the procedures of the California Arbitration Act (including Code of Civil Procedure § 1283.05 and all of the Act's other mandatory and permissive rights to discovery applicable to the dispute being arbitrated[)]. . . ." Second, in section 6(b), the arbitration agreement indicates that arbitration is governed by the AAA rules, and specifically the rules for employment disputes. The gold standard for discovery in the arbitration context is a reference to section 1283.05, which authorizes the full panoply of discovery. (*Armendariz, supra*, 24 Cal.4th at p.105-106 [parties are permitted to agree to either discovery pursuant to § 1283.05, which provides for the full panoply of discovery, or something less than that provision].) Additionally, the AAA employment dispute rules here provide for sufficient discovery to withstand challenge on grounds of substantive unconscionability. (See, e.g., *Doston v. Amgen, Inc.* (2010) 181 Cal.App.4th 975, 984.)

More significantly, the argument plaintiff advances in opposition ***<u>has been expressly rejected by our high court</u>*** in *Baltazar, supra,* 62 Cal.App.4th 1237. There, Baltazar argued that substantive unconscionability was shown "because Forever 21 did not provide Baltazar with a copy of the AAA's rules for arbitration of employment disputes, which, by the terms of the arbitration agreement, govern any arbitration between the parties." (*Id.* at p. 1246.) Our high court noted that "Baltazar's argument . . . might have force if her unconscionability challenge concerned some element of the AAA rules of which she had been unaware when she signed the arbitration agreement. But her challenge to the enforcement of the agreement has nothing to do with the AAA rules; her challenge concerns only matters that were clearly delineated in the agreement she signed. ***<u>Forever 21's failure to attach the AAA rules therefore does not affect our consideration of Baltazar's claims of substantive unconscionability</u>***." (*Ibid.,* underscore added.) Because Baltazar did not challenge the AAA discovery provisions, the fact the AAA rules were not provided has no bearing on the claims of substantive unconscionability that were actually raised. (See also *Nguyen v. Applied Medical Resources Corp.* (2016) 4 Cal.App.5th 232, 249 ["failure to attach the applicable AAA rules did not increase the procedural unconscionability of the application or its arbitration provision"]; *Lane v. Francis Capital Management LLC* (2014) 224 Cal.App.4th 676, 691 ["the failure to attach a copy of the AAA rules did not render the agreement procedurally unconscionable"].)

The same is true here. Plaintiff does not challenge the fairness of the AAA discovery rules themselves (that is, she does not claim that the discovery allowed by AAA is substantively unconscionable). Her sole contention is that failure to attach the rules to the arbitration agreements makes them substantive unconscionability. Based on the authorities above, there is neither procedural nor substantive unconscionability based on that omission alone. And more specifically per *Baltazar*, the failure to attach the AAA rules has no impact on any claims of substantive unconscionability. As the failure to attach the AAA rules is the only argument advanced by plaintiff to support claims of substantive unconscionability,[5] the failure to establish even a modicum of substantive unconscionability is fatal to plaintiff's claim. Plaintiff has therefore failed to meet its burden to show that the arbitration agreement is unenforceable as unconscionable. As no substantively unconscionable provision has been identified by plaintiff, severance is irrelevant. (See, e.g., *Stoker v. Blue Origin, LLC* O2026) 120 Cal.App.5th 91, 112 [Civ. Code, § 1670.5, subd. (a) provides that severance is appropriate only if a clause of a contract is unconscionable].)

Accordingly, the court grants defendants' motion to compel arbitration. As there is no substantively unconscionable provision, there is nothing to sever, redact, or extirpate. The court will stay the matter pursuant to section 1281.4 pending resolution of arbitration as ordered. The

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[5] Plaintiff claims perfunctorily on page 11 of the opposition that the "arbitration agreement in this case contains more than one unlawful provision as described above." But plaintiff (separate and apparent from the rebuttable presumption under Ninth Circuit precedent) identifies only one supposed unconscionable provision -- failure to provide the AAA rules as an attachment to the arbitration agreement. Nothing else is identified.

parties should be prepared to discuss a CMC schedule (say every 3 months) to monitor the progress of arbitration. A CMC is scheduled for today.