

PROPOSED TENTATIVE

On March 3, 2025, plaintiff Jessica Madrid (plaintiff) filed a complaint against defendant JS Audit Group, Inc. (defendant), advancing five causes of action under the Fair Employment and Housing Act (disability discrimination based on pregnancy and mental disability, failure to engage in the interactive process, retaliation, and failure to prevent harassment, discretion, and retaliation); one cause of action for violation of the Pregnancy Disability Leave Act; one cause of action for wrongful termination in violation of public policy; and two causes of action for violations of the California Family Rights Act. Briefly, defendant employed plaintiff as a “social worker,” and employment began on December 2014. Plaintiff was terminated in November 2024. Plaintiff was on maternity leave from December 2023 and returned in June or July 2024. After she returned, her supervisor, Javier Sollozo started “making demands that Plaintiff travel more for work,” and to visit clients in Mexico, Costa Rica, Chile and other parts of the United States. Mr. Sollozo apparently changed plaintiff’s role while she was on maternity leave, replacing plaintiff with Amber Shakely, and telling Ms. Shakely that plaintiff “was unable to fill her duties in the role being a mother.” In November 2024, plaintiff challenged this substantial increase in her travel time, which had changed the terms of her employment, and shortly thereafter, Mr. Sollozo “responded, asking whether Plaintiff wanted him to process her termination that day or Friday” According to plaintiff, she was terminated for taking maternity leave and for her familial status. Defendant answered on April 7, 2025.

On July 10, 2025, defendant filed a motion to compel arbitration, pursuant to Code of Civil Procedure section 1281.2 (all further statutory references are to this provision). Defendant submitted the declaration of Mr. Sollozo, who declares that he was defendant’s Chief Executive Officer during all relevant times, and is currently employed as the Vice President of Customer Relations. He has attached to his declaration a document that is part of the 2015 Employee Handbook, which includes a “Dispute Resolution Policy” starting on page 53 of the Employee Handbook. According to the document, disputes are required to be “resolved only by an arbitrator through final and binding arbitration and not by way of court or jury trial. Such disputes include without limitation disputes arising out of or relating to the interpretation or application of this Policy, but not as to the enforceability or validity of the Policy or any portion of the Policy. The Policy also applies, without limitation to disputes regarding the employment relationship, trade secrets, unfair competition, compensation, breaks and rest periods, termination, or harassment and claims arising under the Uniform Trade Secrets Act, Civil Rights Act of 1964, Americans With Disabilities Act, Age Discrimination in Employment Act, Family Medical Leave Act, Fair Labor Standards Act, employee Retirement Income Security Act, and state statutes, if any, addressing the same or similar subject matters, and all other state statutory and common law claims (excluding workers compensation, state disability insurance and unemployment insurance claims” Defendant has attached plaintiff’s written acknowledgement of this dispute policy, dated March 3, 2015.

Defendant contends that it is entitled to arbitration because there was a valid, written arbitration agreement governed by the Federal Arbitration Act (FAA); the disputes at issue fall within the scope of the arbitration agreement; and all five fairness factors required by *Armendariz v. Foundation Health Psychcare Services, Inc.* (2000) 24 Cal.4th 83 have been satisfied.

Plaintiff has filed opposition, claiming the 2015 Employee Handbook agreement does not govern, because 1) defendant has not filed a complete copy of 2015 Dispute Policy, providing only pages 53 to 58 of the 2015 Employee Handbook; plaintiff has attached as Exhibit 3 “a copy of the actual pages 56 and 57 out of the 58-page March 1, 2015 handbook,” meaning the one offered is not the dispute resolution policy at issue¹; 2) defendant’s subsequent Employee Handbook, in 2016, superseded the 2015 Employee Handbook, and notably the dispute policy provision containing the requirement of binding arbitration, as neither contains or outlines any reference to arbitration²; 3) the same is true for an even newer Employee Handbook from 2024, which also claimed to supersede any and all earlier handbooks; it also makes no reference to arbitration;³ and 4) even if there was an arbitration agreement, the arbitration “agreement” is both procedurally and substantively unconscionable, meaning it is unenforceable.

Defendant has filed a reply. It secured a court order allowing it to file a supplemental declaration from Mr. Sollozo under seal (because the exhibits consist of contents of plaintiff’s employment file), which in turn garnered five evidentiary objections from plaintiff. Defendant contends in reply that plaintiff has failed to present any documentary evidence to support the claims offered in opposition concerning the import of the 2016 and 2024 Employee Handbooks. According to defendant, “There is no document displaying a mutual intent to rescind” the 2015 Dispute Policy in the 2015 Employment Handbook.” Also according to defendant: “Moreover, the new handbooks only act as substitute for the policies in the original Handbook, not for an agreement which is not within the new handbook.” Further, according to defendant, demonstrate that any provision is either procedurally or substantively unconscionable.

¹ According to plaintiff, its Exhibit 3 allegedly shows a “mismatch” between the Employee Handbook Dispute Policy Handbook, attached to Javier Sollozo’s declaration, and the Handbook Dispute Policy Handbook in Exhibit 3. According to plaintiff, Mr. Sollozo’s version has 57 pages, while Exhibit 3 has 58 pages.

² Attached to plaintiff’s declaration is Exhibit 4, which is the 2016 Employee Handbook, distributed in 2017. Plaintiff contends this is the binding agreement of employment, and it does not contain an arbitration agreement. Page 1 of the 2016 Employee Handbook (under the heading “Word About This Handbook”) provides in pertinent part: “This Employee Handbook supersedes and replaces any and all prior Employee Handbooks and any inconsistent verbal or written policy statements.” Under Section 5 of the 2016 Employee Handbook, under the title “Safety in the Workplace,” in association with “Receipt of Employee Handbook and Employment -AT-Will Statement,” the following appears: “I understand that this Employee Handbook supersedes and replaces any and all prior Employee Handbooks and any inconsistent verbal or written policy statements.” The receipt portion is unsigned.

³ Exhibit 5 attached to the opposition, which includes the 2024 Employee Handbook, also provides in the section titled Welcome,” “This handbook supersedes any previously issued handbooks or policy statements dealing with the subjects discussed herein.” On page 1 under “General Employment Policies” and “Introductory Statement.” In the “confirmation of Receipt” portion (on page 58), the following attestation appears: “It supersedes all prior agreements, understandings, and presentations concerning my employment with Primus Auditing Operations.”

Separate and apart from the motion to compel arbitration plaintiff on September 12, 2025, filed a motion to permit limited discovery regarding the alleged arbitration agreement. Essentially, plaintiff asks the court that if it contemplates granting defendant's motion to compel arbitration, it grant her motion for limited discovery and continue the motion to compel arbitration.

The court will first detail the relevant legal principles that define and frame the inquiry. It will then examine the merits of the motion to compel arbitration. The court will finish with a summary of its conclusion.

A) Legal Background

A party to an arbitration agreement may seek a court order compelling the parties to arbitrate a dispute covered by the agreement. (§ 1281.2.) “The validity of an arbitration agreement in California is determined by a petition or motion to compel arbitration.” (*Juen v. Alain Pinel Realtors, Inc.* (2019) 32 Cal.App.5th 972, 977.) The party seeking to compel arbitration bears the burden of proving the existence of a valid arbitration agreement by a preponderance of evidence. (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development, LLC* (2012) 55 Cal.4th 223, 236.) A petition to compel arbitration is essentially a suit in equity to compel specific performance of the arbitration agreement. (*Spear v. California State Auto. Assn.* (1992) 2 Cal.4th 1035, 1040.) “ ‘The trial court must determine in advance whether there is a duty to arbitrate the controversy. . . . This determination ‘necessarily requires the court to examine and, to a limited extent, construe the underlying agreement.’ ” (Gravillis v. Coldwell Banker Residential Brokerage Co. (2006) 143 Cal.App.4th 761, 770-771; *Brockman v. Kaiser Foundation Hospitals* (2025) 114 Cal.App.5th 569, ___ [337 Cal.Rptr.3d 281, 292].) A trial court must grant a petition to compel arbitration only “if it determines that an agreement to arbitrate the controversy exists.” (§ 1281.2; see also *Avery v. Integrated Healthcare Holdings, Inc.* (2013) 218 Cal.App.4th 50, 59[“ ‘ ‘the trial court's first task is to determine whether the parties have in fact agreed to arbitrate the dispute’ ”].) The trial court makes this determination using a summary procedure in the manner “for the making and hearing of motions.” (§ 1290.2.) “In these summary proceedings, the trial court sits as a trier of fact, weighing all the affidavits, declarations, and other documentary evidence, as well as oral testimony received at the court's discretion, to reach a final determination.” (*Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 972.) “The [party seeking arbitration] bears the burden of proving the existence of a valid arbitration agreement by the preponderance of the evidence, and [the opposing [party] bears the burden of proving by a preponderance of the evidence any fact necessary to its defense.” (*Ibid.*; see also *Pinnacle, supra*, 55 Cal.4th 223, 236; *Mendoza v. Trans Valley Transport* (2022) 75 Cal.App.5th 748, 764.)

Whether the parties formed a valid agreement to arbitrate is determined under general California contract law. (*City of Vista v. Sutro & Co.* (1997) 52 Cal.App.4th 401, 407.) “Even when an agreement provides that it is governed by the FAA, courts must first apply state law

principles in determining whether the parties entered into an agreement to arbitrate.” (*Garcia v. Stoneledge Furniture LLC* (2024) 102 Cal.App.5th 41, 51; see *Pinnacle, supra*, 55 Cal.4th at p. 236 [“In California, ‘[g]eneral principles of contract law determine whether the parties have entered a binding agreement to arbitrate’ ”]; *Banc of California, National Assn. v. Superior Court* (2021) 69 Cal.App.5th 357, 366 [“Whether there is a written agreement to arbitrate ‘is a matter of contract, and courts must enforce arbitration contracts according to their terms’ ”].)

Although the burden of persuasion is always on the moving party to prove the existence of a valid agreement to arbitrate the controversy, the burden of production may shift in a three-step process. (*Gamboa v. Northeast Community Clinic* (2021) 72 Cal.App.5th 158, 164-165.) “First, the moving party bears the burden of producing ‘prima facie evidence of a written agreement to arbitrate the controversy.’ ” (*Id.* at p. 165.) “The arbitration proponent must first recite verbatim, or provide a copy of, the alleged agreement.” (*Iyere v. Wise Auto Group* (2023) 87 Cal.App.5th 747, 755; Cal. Rules of Court, rule 3.1330.) The moving party can meet its initial burden “ ‘by attaching a copy of the arbitration agreement purportedly bearing the opposing party’s signature.’ ” (*Iyere*, at p. 755; *Gamboa*, at p. 165.) “At this step, a movant need not ‘follow the normal procedures of document authentication’ and need only ‘allege the existence of an agreement and support the allegation as provided in rule [3.1330].’ ” (*Iyere*, at p. 755.) “If the moving party meets its initial prima facie burden and the opposing party disputes the agreement, then in the second step, the opposing party bears the burden of producing evidence to challenge the authenticity of the agreement. [Citation.] The opposing party can do this in several ways. For example, the opposing party may testify under oath or declare under penalty of perjury that the party never saw or does not remember seeing the agreement, or that the party never signed or does not remember signing the agreement.” (*Gamboa, supra*, 72 Cal.App.5th at p. 165; *Brockman, supra*, 114 Cal.App.5th at p. ____ [337 Cal.Rptr.3d at p. 295].) “If the opposing party meets its burden of producing evidence, then in the third step, the moving party must establish with admissible evidence a valid arbitration agreement between the parties. The burden of proving the agreement by a preponderance of the evidence remains with the moving party.” (*Gamboa, supra*, 72 Cal.App.5th at pp. 165-166; see *Rosenthal, supra*, 14 Cal.4th at p. 413.)

The need to raise a defense to enforcement, which in this case would be the employee’s burden, arises only if the moving party first meets its burden of proving the existence of an arbitration agreement between the parties. (*Pinnacle, supra*, 55 Cal.4th at p. 236.) In this case plaintiff in opposition claims the arbitration agreement (assuming there is an arbitration agreement) is unconscionable and thus enforceable. Unconscionability has both a procedural and substantive element. Procedural unconscionability address the circumstances of contract negotiation and formation, focusing on oppression or supervise due to unequal bargaining power. Substantive unconscionability pertains to the fairness of an agreement’s actual terms and to assessment whether they are overly harsh or one sided. (*Haydon v. Elegance at Dublin* (2023) 97 Cal.App.5th 1280, 1287.)

B) Merits

With this legal background squarely in mind, the court finds it unnecessary to address all issues raised by the parties. The court does not need to rule on plaintiff's five evidentiary objections to Mr. Sollozo's supplemental declaration, and will assume without deciding the declaration and its contents are admissible in toto. Nor does the court find it necessary to determine whether the arbitration agreement complies with *Armendariz*, or whether plaintiff has offered or presented a sufficient "mismatch" between the true version of the 2015 Employee Handbook and its actual version to preclude the motion to compel arbitration. Finally, the court does not find it necessary to determine whether there was sufficient procedural or substantive unconscionability to render the any arbitration agreement unenforceable. (But *cf.* fn. 4, *infra.*) The reason for this is foundational – the court is not persuaded that defendant has met its ultimate burden to show by a preponderance of evidence that there is a present, existing, enforceable arbitration contract, an essential prerequisite to grant a motion to compel arbitration.

Of course, an arbitration agreement need not be a standalone document to be enforceable. (See *Harris v. TAP Worldwide, LLC* (2016) 248 Cal.App.4th 373, 383–384 [employee consented to arbitration agreement in employee handbook and its appendix by commencing work after acknowledging receipt of both].) If the only issue before the court was the viability and efficacy of the 2015 Employee Handbook, and its contents concerning the dispute policy and arbitration, as outlined by defendant in its motion, the court likely would conclude that defendant had met its prima facie burden under section 1281.2 to show a binding arbitration agreement (with the disputes in the operative complaint falling within its purview). (*Pinnacle, supra*, 55 Cal.4th at p. 236.) But that is not the case, for, as permitted under the standards enunciated above, plaintiff disputes the viability of the 2015 Employee Handbook and its dispute policy (and thus the viability of arbitration) by presenting compelling evidence that defendant rescinded/abrogated the scope and content of the 2015 Employee Handbook (including the dispute policy that contains the relevant arbitration agreement), by issuing two new Employee Handbooks – one in 2016 and one in 2024 – that supersede the efficacy and viability of the 2015 Handbook, thereby undermining defendant's argument that the 2015 Employee Handbook created a current, binding arbitration agreement between the parties.

The court has reviewed the language of the two new Employee Handbooks, distributed to all employees (new or otherwise, including plaintiff). Plaintiff contends in opposition that either or both superseded the 2015 Employee Handbook, although plaintiff seems to concede there is no evidence she signed the acknowledgment for each. It is undisputed, however, that neither handbook contains any reference to arbitration (i.e., in other words, all references to arbitration that were contained in the 2015 Employee Handbook have been removed). Defendant in reply does not find this dispositive or even relevant, arguing there is no evidence to evince or show that the parties intended to rescind or revoke the 2015 Employee Handbook and its dispute policy language, relying on Civil Code section 1689, subdivision (a) ["A contract may be

rescinded if all the parties thereto consent”)), underscored by the general rule under the FAA that the law favors arbitration. (Reply, pp. 6-7.)

The court is not persuaded by defendant’s reply arguments. Defendant has the burden of persuasion to show a current, binding arbitration agreement exists. In the court’s view the express language of both the 2016 and 2024 Employee Handbooks patently undermines defendant’s claim that the parties did not intend to alter the scope and tenor of the 2015 Employee Agreement, and specifically its dispute resolution policy. The language of the 2016 Employee Handbook, for example, makes this abundantly clear, as it reads: “This Employee Handbook supersedes and replaces any and all prior Employee Handbooks and any inconsistent verbal or written policy statements.” This language seems patent – any and all Employee Handbooks, including 2015 Employee Handbook relied upon by defendant, have been replaced and superseded, along with any “inconsistent verbal or written policy statements.” The word “inconsistent” is used only with regard to any verbal or written policy statements and not with the term “Employee Handbook.” A logical reading of this language (taking into account every word of the sentence) means the dispute resolution policy, with its requirements for binding arbitration as outlined in any previous Employee Handbook, is no longer operative, while only those previous policy statements that are inconsistent with the Employee Handbook have been replaced and superseded. (*Advanced Network, Inc v. Peerless Ins. Co.* (2010) 190 Cal.App.4th 1054, 1064 [court must give significant to every word of a contract when possible in order to avoid an interpretation that renders a word surplusage].) As the arbitration policy was in the 2015 Employee Handbook, which has been fully replaced and superseded, it seems no longer operative.

It is true, as defendant argues, that rescission of a contract requires both parties to consent thereto. And it is also true that there is no evidence that plaintiff signed the acknowledgment receipt for either new employee handbook, meaning there is no evidence that it expressly repudiated the earlier 2015 Employee Handbook by expressly acknowledging that both Employee Handbooks superseded the earlier dispute policy. Nevertheless, rescission by consent need not be express; it *may be implied from the acts of the partes*. (*Pennel v. Pond Union School Dist.* (1973) 29 Cal.App.3d 832, 838 [rescission by consent may be implied from the acts of the parties, based on the giving of notice and the conduct of the parties, which may amount to rescission by mutual consent].) Further, a contract may be mutually abandoned, i.e., rescinded, “at any stage of its performance or before any performance has been commenced,” and such abandonment “terminates” the contract and “entirely abrogates so much of it as is unperformed.” (*Honda v. Reed* (1958) 156 Cal.App.2d 539-540; see *Urica, Inc. v. Pharmaplast S.A.E.* (C.D. Cal., May 6, 2013, No. CV1102476MMMRZX) 2013 WL 12123230, at *4 [Mutual consent to abandon can be implied through actions, but such actions must demonstrate the parties' intent in a “positive” and “unequivocal” way, citing *Pennel* and *Honda*]; see *Busch v. Globe* (1962) 200 Cal.App.2d 315, 320 [abandonment of a contract is matter of intent and is to be ascertained from

the facts and circumstances surrounding the transaction out of which the abandonment is claimed to have resulted].)

There is more than sufficient evidence in the record to show the parties impliedly consented to the rescission of the arbitration agreement contained in the 2015 Employee Handbook, or, at least in the alternative, that defendant has abandoned arbitration altogether, thus terminating the contract and leaving any unperformed promise abrogated. Indeed, any new employees (hired after 2015) would not be subject to arbitration pursuant to the 2015 Employee Handbook, as the topic is not discussed in the more recent employee handbooks. Unless a specific agreement was entered into by any individual employee, which defendant does not indicate in any way, it would be reasonable for a longstanding employee, such as plaintiff, to believe that arbitration (despite the 2015 Agreement) had been revoked, rescinded, or abrogated, given her continuing of employment. These same facts would reasonably support any conclusion that arbitration was abandoned by defendant as to all employees, including both new and old alike.⁴

Defendant's arguments are further undermined by three additional points. For all intents and purposes, defendant's argument rests on an incorporation rationale – that is, the 2015 Handbook and its dispute policy was incorporated into the newer employee handbooks. It is settled, however, that arbitration agreements are subject to the same rules of construction as any other contract. And while parties may incorporate by reference into their contract the terms of some other document, for the terms to be incorporated, the reference “must be clear and unequivocal, the reference must be called to the attention of the other party and [he or she] must consent thereto, and the terms of the incorporated document must be known or easily available to the contracting parties.” (*Brockman, supra*, 114 Cal.App.5th at pp. 293-294; see *Remedial Construction Services, L.P. v. AECOM, Inc.* (2021) 65 Cal.App.5th 658, 663, citing *Shaw v. Regents of University of California* (1997) 58 Cal.App.4th 44, 54.) There was nothing clear and

⁴ Defendant's interpretation of the relationship between the employee handbooks establishes another reason why the motion to compel should be denied. The gist of defendant's argument as offered in reply essentially means that new employees (i.e., those hired after 2015, under the newer Employee Handbooks) would not be subject to arbitration, while older employers, such as plaintiff (i.e., those like plaintiff who signed the receipt of acknowledgement in the 2015 Employee Handbook) must arbitrate all disputes. This interpretation creates an imbalance. The essence of substantive unconscionability requires the court to ensure that the substantive terms of an arbitration agreement are not manifestly unfair or one-sided. (*Sanchez v. Valencia Holding Co.* (2015) 61 Cal.4th 899, 915.) Specifically, substantive unconscionability occurs when the imbalance of an arbitration term is not shown to have a “reasonable justification” based on “business realities”; this is the point when an arbitration contract crosses the line into substantive unconscionability. (*Silva v. Cross County Healthcare, Inc.* (2025) 111 Cal.App.5th 1311, 1327.) Although the court need not rely on this rationale to deny the motion to compel (it instead determines there is no arbitration contract that can be enforced), as noted in the body of the order, the court does observe that defendant's interpretation seems to create a one-sided tilt, unsupported by any reasonable business justification, which seemingly crosses into the realm of substantive unconscionability. Indeed, such an imbalance permeates the entirety of the arbitration process (as the central purpose of arbitration seems tainted), rendering the arbitration agreement unenforceable. (*Ramirez v. Charter Communications, Inc.* (2024) 16 Cal.4th 478, 515-516.) This rationale offers an alternative basis to deny defendant's motion to compel arbitration.

unequivocal about any incorporation of the 2015 Employee Handbook – there was no reference to the dispute policy of the 2015 Employee Handbook at all (other than to say it had been superseded); there was no objective indication (clearly and unequivocally) that defendant intended the 2015 Employee Handbook, and its reference to arbitration, to remain operative and viable.

Additionally, defendant’s arguments run afoul of the appellate court’s observations in *Sparks v. Vista De Mar Child & Family Services* (2012) 207 Cal.App.4th 1511, 1522, abrogated on other grounds by *Harris v. TAP Worldwide, LLC* (2016) 248 Cal.App.4th 373, 385-390, as follows: “The increasing phenomenon of depriving employees of the right to a judicial forum should not be enlarged by imposing upon an employee an obligation to arbitrate based on one obscure clause in large employee handbook distributed “to employees for information purposes. (See also *Mendoza v. Trans Valley Transport* (2022) 75 Cal.App.5th 748, 786 [agreeing with *Sparks* on this point].) The impact of defendant’s argument offered here is similar to the impact of the employer’s argument advanced in *Sparks*. Defendant’s argument rests on the existence of an arbitration agreement that is just as obscure as the language condemned in *Sparks* – perhaps even more attenuated, more labyrinthine, and too distal for any reasonable person to think the arbitration requirement in the 2015 Employee Handbook remained viable.

Finally, defendant attempts to fill any contractual lacuna by asking the court to apply the strong presumption, under the FAA, of enforcing arbitration agreements. (See, e.g., *Shearson/Am. Express, Inc. v. McMahon* (1987) 482 U.S. 220, 226-227 [because the FAA creates a strong presumption in favor of enforcing arbitration agreement, any doubts concerning the scope of arbitration issues should be resolved in favor of arbitration].) This is a bridge too far. “As with any other specific performance claim, a party seeking to enforce an arbitration agreement must show the agreement’s terms ‘ “are sufficiently definite to enable the court to know what it is to enforce.” ’ ” (*Avery, supra*, 218 Cal.App.4th at p. 71.) “Only the valid and binding agreement of the parties, including all material terms well-defined and clearly expressed, may be ordered specifically performed.” ’ ” (*Ibid.*) While public policy favors contractual arbitration of disputes, arbitration is a matter of contract and a party who has not reasonably agreed to arbitrate a controversy cannot be compelled to do so. (*Brockman, supra*, 114 Cal.App.5th at p. ____ [337 Cal.Rptr.3d at p. 283]; see also *Layman v. J. Rockcliff, Inc.* (2017) 12 Cal.App.5th 812, 820 [noting that the contractual terms must be carefully examined before parties to the contract can be ordered to arbitration].) A court, before granting a petition to compel arbitration, must determine the factual issue of the existence or validity of the arbitration agreement. (*Chambers v. Crown Asset Management, LLC* (2021) 71 Cal.App.5th 583, 590.) For the reasons discussed above, defendant has not met his burden to show the existence of a current, operative arbitration agreement as a condition predicate for its motion to compel.

For all of these reasons, the court denies defendant’s motion to compel arbitration.

This determination obviates the need to examine the merits of plaintiff's motion to allow limited discovery, which is moot.

C) Summary

The court finds that defendant has failed by a preponderance of evidence to show a current, viable, enforceable arbitration contract, which is part of defendant's prima facie burden pursuant to section 1281.2. The court therefore denies the motion to compel arbitration. This obviates the need to explore the merits of plaintiff's separate motion to permit limited discovery.

Defendant is directed to file a responsive pleading within 30 days of today's hearing.