PARTIES/ATTORNEYS

Plaintiff	Raymond Sanchez Jr.	John G. Yslas William M. Pao W. Christina Chang Wilshire Law Firm, PLC
Defendant	Pacific Coast Energy Company LP	Jared M. Katz Rafael Gonzalez Christina M. Behrman Mullen & Henzell L.L.P.

RECOMMENDATION

For all the reasons discussed below, the motion to compel arbitration is denied. The court finds there is at least a moderate level of procedural unconscionability present in these circumstances based on the adhesive nature of the contract as well as the duration of the contract. The court finds the lack of mutuality to be substantively unconscionable to an intermediate degree. The Arbitration Agreement is thus unconscionable and unenforceable. The court further finds that the Agreement is not amenable to severance. The motion to compel arbitration is denied.

Plaintiff Raymond Sanchez, Jr. worked for Pacific Coast Energy Co. as an hourly-paid, non-exempt employee. On January 29, 2025, he filed a complaint against Pacific asserting Labor Code violations as follows: (1) Failure to Pay Minimum and Straight Time Wages (Cal. Lab. Code §§ 204, 1194, 1194.2, 1197, and 1197.1); (2) Failure to Pay Overtime Wages (Cal. Lab. Code §§ 1194 and 1198); (3) Failure to Provide Meal Periods (Cal. Lab. Code §§ 226.7, 512); (4) Failure to Authorize and Permit Rest Breaks (Cal. Lab. Code §§ 226.7); (5) Failure to Timely Pay Final Wages at Termination (Cal. Lab. Code §§ 201-203); (6) Failure to Provide Accurate Itemized Wage Statements (Cal. Lab. Code § 226); (7) Failure to Indemnify Employees for Expenditures (Cal. Lab. Code § 2802); (8) Unfair Business Practices (Cal. Bus. & Prof. Code §§ 17200, et seq.).

On August 15, 2024, Sanchez filed a separate action (Case No. 24CV04587) against the same defendants alleging one cause of action for civil penalties under PAGA. On July 1, 2025, Sanchez filed a Notice of Related Case. On July 11, 2025, this court ordered the cases related.

On April 25, 2025, Pacific filed a motion to compel arbitration. On May 29, 2025, Sanchez filed opposition, asserting the arbitration agreement was unconscionable. Reply has been filed. On June 4, 2025, Pacific filed a Request for Statement of Decision. All briefing has been reviewed.

FAA Applies

The Arbitration Agreement at issue here specifically provides the Federal Arbitration Act applies. (Bauer Decl., Exh. A, first paragraph-- "This Agreement is governed by the Federal Arbitration Act, 9 U.S.C. § 1 et seq. ("FAA")."].)[1]

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.) Thus, under both federal and California law, arbitration agreements are valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract. (9 U.S.C. § 2; see also, Code Civ. Proc., § 1281.) In other words, under California law, as under federal law, an arbitration agreement may only be invalidated for the same reasons as other contracts. (*Armendariz, supra*, 24 Cal.4th at 98.)

Even when the FAA applies, interpretation of the arbitration agreement is governed by state law principles. (*Western Bagel Co., Inc. v. Superior Court* (2021) 66 Cal.App.5th 649, 662.) While the Ninth Circuit has held that "[a]ny general state-law contract defense, based [on] unconscionability or otherwise, that has a disproportionate effect on arbitration is displaced by the FAA" (*Mortensen v. Bresnan*

[1] Sanchez argues that several of the claims in his complaint are not arbitrable because Labor Code section 229. Section 229 provides in pertinent part, "Actions to enforce the provisions of this article for the collection of due and unpaid wages claimed by an individual may be maintained without regard to the existence of any private agreement to arbitrate." This argument is meritless. The Federal Arbitration Act governs the arbitration agreements. Under federal and state law arbitration is a matter of consent or agreement by the parties. *(Granite Rock Co. v. International Brotherhood of Teamsters* (2010) 561 U.S. 287, 298; *Cable Connection, Inc. v. DIRECTV, Inc*. (2008) 44 Cal.4th 1334, 1355.) The parties' agreements that their disputes would be governed by the Federal Arbitration Act are, under California contractual law, enforceable choice of law provisions (*Biller v. Toyota Motor Corp.* (9th Cir. 2012) 668 F.3d 655, 662–663; *Harris v. Bingham McCutchen LLP* (2013) 214 Cal.App.4th 1399, 1404; *Rodriguez v. American Technologies, Inc*. (2006) 136 Cal.App.4th 1110, 1120–1121.) Thus, Sanchez's argument that Pacific failed to submit independent evidence that the employment relationship evidences a transaction involving interstate commerce pursuant to 9 USC § 2 is unavailing. The court will apply the Federal Arbitration Act to the present disputes. Accordingly, the court finds the FAA preempts the Labor Code section 229 limitation on the duty to arbitrate. (*Perry v. Thomas* (1987) 482 U.S. 483, 492*; Lane v. Francis Capital Management LLC* (2014) 224 Cal.App.4th 676, 687.)

Communications, LLC (9th Cir. 2013) 722 F3d 1151, 1159, 1161), California's unconscionability law has been challenged based on that holding and the challenge was rejected. (See *Carlson v. Home Team Pest Defense, Inc*. (2015) 239 Cal.App.4th 619, 639 & fn. 7—"until the United States Supreme Court holds otherwise, we are bound to follow California Supreme Court authority on this issue"; see also *Sanchez v. Valencia Holding Co., LLC* (2015) 61 Cal.4th 899, 906-907, 912-913—same unconscionability standard applies to both arbitration and nonarbitration contracts.)

Existence of Agreement

Code of Civil Procedure section 1281.2 provides that a court "shall order the petitioner and the respondent to arbitrate a controversy if it determines that an agreement to arbitrate the controversy exists, unless it determines that (a) the right to compel arbitration has been waived by the petitioner . . . ." As our high court has explained, whether the arbitration is governed by the Federal Arbitration Act (FAA) or the California Arbitration Act (CAA), "when a petition to compel arbitration is filed and accompanied by prima facie evidence of a written agreement to arbitrate the controversy, the court itself must determine whether the agreement exists and, if any defense to enforcement is raised, whether it is enforceable. Because the existence of the agreement is a statutory prerequisite to granting the petition, the petitioner bears the burden of proving its existence by a preponderance of the evidence. If the party opposing the petition raises a defense to enforcement—either fraud in the execution voiding the agreement, or a statutory defense of waiver or revocation (see [Code Civ. Proc.,] § 1281.2, subds. (a) & (b))—that party bears the burden of producing evidence of, and proving by a preponderance of the evidence, any fact necessary to the defense." (*Rosenthal* v. *Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 413; see also *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951. 972-976 [opposing party has burden to show a defense, such as waiver, by a preponderance of evidence].)

Whether an agreement to arbitrate exists is analyzed on state law principles. (*First Options of Chicago, Inc. v. Kaplan* (1995) 514 U.S. 938; *Peleg v. Neiman Marcus Group, Inc.* (2012) 204 Cal.App.4th 1425, 1466—the FAA relies on state-law contract principles in determining whether an arbitration agreement exists.) The initial burden is on the party petitioning to compel arbitration to prove the existence of the agreement by a preponderance of the evidence. (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 413; *Villacreses v. Molinari* (2005) 132 Cal.App.4th 1223, 1230.) 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.)

Here, Pacific presents evidence that in November 2020, Pacific hired plaintiff; during the onboarding process, Sanchez completed documentation through a secure self-service portal; that Sanchez was prompted to review and sign the Arbitration

Agreement; and that on November 11, 2020, Sanchez electronically signed the Arbitration Agreement. (Bauer Decl., ¶¶ 7-8.)

The Agreement provides:

> "The employee identified below ("Employee"), on the one hand, and Worksite Employer, Pacific Coast Energy Com ("Company"), and G&A Partners and/or its affiliates ("PEO" or "G&A Partners"), on the other hand, agree to utilize binding arbitration as the sole and exclusive means to resolve all covered disputes that may arise by and between Employee and the Company and/or Employee and PEO, including but not limited to disputes regarding the application and selection process, the employment relationship, termination of employment, and compensation."
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> (Bauer Decl., Exh. A, ¶ 1.)

Unconscionability

While plaintiff does not deny the existence of the Agreement, he argues it is "irredeemably 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.")[2]

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

[2] 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 their 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*. (2000) 24 Cal.4th 83, 103, 106, 113.) 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.) In light of *Ramirez*, the court analyzes any possible *Armendariz* violations through the prism of unconscionability.

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.)

a. Procedural Unconscionability

Procedural unconscionability addresses the circumstances of contract negotiation and formation, focusing on oppression or surprise due to unequal bargaining power." (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 246.) "Oppression occurs where a contract involves lack of negotiation and meaningful choice, surprise where the allegedly unconscionable provision is hidden within a prolix printed form." (*Id.* at 247 (quotation marks and citation omitted).) "[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." (*Gentry v. Superior Ct.* (2007) 42 Cal. 4th 443, 469.)

"A procedural unconscionability analysis 'begins with an inquiry into whether the contract is one of adhesion.' " (*OTO, LLC v. Kho* (2019) 8 Cal.5th 111, 125 (quoting *Armendariz*, 24 Cal. 4th at 114).) "An adhesive contract is standardized, generally on a preprinted form, and offered by the party with superior bargaining power 'on a take-it-or-leave-it basis.' " (*Id.* (quoting *Baltazar v. Forever 21, Inc.* (2016) 62 Cal.4th 1237, 1245). "[T]he adhesive nature of the contract is sufficient to establish some degree of procedural unconscionability." (*Sanchez v. Valencia Holding Co., LLC* (2015) 61 Cal.4th 899, 914 (2015); *Discover Bank v. Superior Ct.* (2005) 36 Cal.4th 148, 160 ["The procedural element of an unconscionable contract generally takes the form of a contract of adhesion, '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.' "].) "Ordinary contracts of adhesion, although they are indispensable facts of modern life that are generally enforced [ ], contain a degree of procedural unconscionability even without any notable surprises, and 'bear within them the clear danger of oppression and overreaching.' " (*Ramirez v. Charter Commc'ns, Inc.* (2024) 16 Cal. 5th 478, 530–31 (2024). "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." (*Id.* at 531 [internal quotation marks

and citations omitted].) "Thus, although adhesion alone generally indicates only a low degree of procedural unconscionability, the potential for overreaching in the employment context warrants close scrutiny of the contract's terms." (*Id.*)

Here, Sanchez argues that procedural unconscionability exists from the fact that Pacific presented him with a pre-printed form agreement that was finalized prior to presentation, and (2) not a single term in the alleged agreement was a product of negotiation between the parties. Sanchez presented no evidence of his own on these points.

It is undisputed that Pacific, the party with superior bargaining power, drafted the Arbitration Agreement, which has all the appearances of a standard agreement used for all employees. Pacific does present any evidence that employees had the opportunity to negotiate or modify the terms of the Arbitration Agreement. Bauer states: " . . . If an employee has any questions or concerns regarding the substance of any documents or agreements presented to them during the onboarding process, including the Arbitration Agreement, an employee from G&A is available to answer any questions or concerns that they may have." (Bauer Decl., ¶ 9.) But this evidence is inadequate to overcome the clear inference that Pacific presented the Arbitration Agreement to Sanchez, the party with inferior bargaining power, "on a take-it-or-leave-it basis." (*OTO, LLC*, *supra,* 8 Cal. 5th at 125; *Swain v. LaserAway Med. Grp., Inc.* (2020) 57 Cal.App.5th 59, 69 [concluding that an arbitration agreement presented by the employer to an employee was an adhesive contract even though the employee had the opportunity to opt-out].) This establishes a minimal degree of procedural unconscionability such that "closer scrutiny of [the Agreement's] overall fairness is required." (*OTO, LLC*, 8 Cal. 5th at 126.)

The court is satisfied there is at least a low degree of procedural unconscionability under these circumstances. (See, e.g., *Parada v. Superior Court* (2009) 176 Cal.App.4th 1554, 1573 [low-to-medium level of procedural unconscionability found when evidence showed contract of adhesion, weak bargaining, and no ability to negotiate terms, and defendant did not call attention to arbitration terms, while at the same time the arbitration term is not hidden in a prolix form].)

b. Substantive Unconscionability

As noted above, both procedural and substantive unconscionability must be present for a court to exercise its discretion to refuse to enforce a contract or clause. (*Armendariz, supra*, 24 Cal.4th at 114.) "(T)he more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come

to the conclusion that the term is unenforceable, and vice versa." (*Id.*; *Mercuro v. Sup.Ct. (Countrywide Secur. Corp.)* (2002) 96 Cal.App.4th 167, 174-175—given employer's highly oppressive conduct in obtaining employee's consent to arbitration agreement, employee was required to make only minimal showing of substantive unconscionability.)

Unconscionability is not synonymous with making a bad bargain. (*Sanchez v. Valencia Holding Co., LLC* (2015) 61 Cal.4th 899, 912.) Instead, contracts are substantively unconscionable where they impose terms that are overly harsh or one-sided. (*Id.* at p. 910.) "The ultimate issue in every case is whether the terms of the contract are sufficiently unfair, in view of all relevant circumstances, that a court should withhold enforcement." (*Sanchez* at 912) Put another way, an arbitration provision is substantively unconscionable when the terms are unreasonably favorable to the more powerful party. (*Id.* at p. 911.) The paramount consideration is mutuality. (*Nyulassy v. Lockheed Martin Corp*. (2004) 120 Cal.App.4th 1267, 1287.) In evaluating the substantive terms of an arbitration agreement, a court applying the unconscionability doctrine must consider not only what features of dispute resolution the agreement eliminates but also what features it contemplates. (*Sonic-Calabasas A, Inc. v. Moreno* (2013) 57 Cal.4th 1109, 1146.)

1. Lack of Mutuality

Sanchez argues that the Agreement lacks mutuality in that it requires plaintiff to arbitrate claims against Pacific's "related entities" without requiring those entities to arbitrate against Sanchez.

In *Cook v. University of Southern California* (2024) 102 Cal.App.5th 312, plaintiff was an employee of the University of Southern California. She signed an arbitration agreement that required the arbitration of "all claims, whether or not arising out of Employee's University employment, remuneration or termination, that Employee may have against the University *or any of its related entities, including but not limited to faculty practice plans, or its or their officers, trustees, administrators, employees or agents,* in their capacity as such or otherwise; and all claims that the University may have against Employee." [Emphasis added.] However, the agreement did not require USC's "related entities" to arbitrate their claims against Cook. The *Cook* court observed: "This confers a benefit on USC and its broadly-defined "related entities" that is not mutually afforded to Cook." Thus, the court found the arbitration was substantively unconscionable for lack of mutuality. (*Id.* at 328.) Sanchez argues the terms here are similarly one-sided.

Under the paragraph discussing "Covered Claims" [Bauer Decl., Exh. A, p. 1. ¶ 2], the Arbitration Agreement states:

> "This Agreement is intended to be as broad as legally permissible. Except as otherwise provided in this Agreement, Employee, the Company, and PEO agree that any claim, dispute, and/or controversy that Employee may have against the Company *(or its owners, directors, officers, managers, employees, or agents)*, or PEO *(or its owners, directors, officers, managers, employees, or agents)*, or that the *Company or PEO* may have against Employee, shall be submitted to and determined exclusively by final and binding arbitration.

Sanchez argues the plain and explicit language of the Arbitration Agreement obligates him to arbitrate any claims against affiliated individuals and entities of Pacific or G&A but does not impose a corresponding obligation to arbitrate claims against Plaintiff upon those same individuals and entities.

Pacific argues that the Agreement is not similarly one-sided because the first sentence of the Arbitration Agreement provides:

> The employee identified below ("Employee"), on the one hand, and Worksite Employer, Pacific Coast Energy Com ("Company"), and G&A Partners *and/or its affiliates* ("PEO" or "G&A Partners"), on the other hand, agree to utilize binding arbitration as the sole and exclusive means to resolve all covered disputes that may arise by and between Employee and the Company and/or Employee and PEO . . ."
>
> (Bauer Decl., Exh. A, first sentence.)

In other words, it argues that because PEO is defined as inclusive of affiliates, the Agreement does, in fact, cover affiliates claims against Sanchez. This, it argues, distinguishes the instant Agreement from the one in *Cook*.

Not quite. The prefatory language does not include the affiliates of Pacific, which is the worksite employer and the more likely entity to be involved in litigation with its employees.

The Agreement is not satisfactorily distinguished. The court finds the lack of mutuality to be substantively unconscionable.

2. Scope

Here, Sanchez argues that the arbitration term is substantively unconscionable because it is overly broad. (*Cook v. University of Southern California* (2024) 102 Cal.App.5th 312.) As noted, in *Cook*, plaintiff employee signed an arbitration agreement that required the arbitration of "all claims, *whether or not arising* out of

Employee's University employment, remuneration or termination, that Employee may have against the University or any of its related entities, including but not limited to faculty practice plans, or its or their officers, trustees, administrators, employees or agents, in their capacity as such or otherwise; and all claims that the University may have against Employee." [Emphasis added.]

The court held that plain language of the agreement required Cook to arbitrate claims that are *unrelated* to her employment with USC, which is unconscionable. It observed: "It is difficult to see how it is justified to expect Cook—as a condition of her employment at the university—to give up the right to ever sue a USC employee in court for defamatory statements or other claims that are completely unrelated to Cook's employment." (*Cook, supra,* 102 Cal.App.5th at 325.)

Here, Sanchez argues: "Although lacking the specific "whether or not arising" language, the AA's scope (untrammeled by any stated limitations) is substantively the same scope found to be overly broad in *Cook* . . . Accordingly, the AA's scope must be deemed unconscionable." (Opposition, p. 6, ll. 4-5.) The court is unconvinced. Absent the limiting language, it is unclear how the Agreement is analogous to *Cook*.

3. Duration

The Agreement expressly states: "This Agreement will survive the termination of Employee's employment and the expiration of any benefit, and it will continue to apply to G&A Partners and Employee upon Employee's transfer, rehire, or hire by any other Company and/or if Employee's employment is ended but later renewed." (Bauer Decl., Exh. A, p. 1, ¶ 3.) Plaintiff argues that these provisions make the Agreement of indefinite duration and thus substantively unconscionable pursuant to *Cook*. (*Cook, supra,* 102 Cal.App.5th at 325-326.)

Arbitration agreements that do not specify a term of duration are terminable at will after a reasonable time has elapsed. (*Reigelsperger v. Siller* (2007) 40 Cal.4th 574, 576; see *Consolidated Theatres, Inc. v. Theatrical Stage Employees Union* (1968) 69 Cal.2d 713, 727–728; *Zee Medical Distributor Assn., Inc. v. Zee Medical, Inc.* (2000) 80 Cal.App.4th 1, 10.) *Zee Medical Distributor Association, Inc. v. Zee Medical, Inc.* (2000) 80 Cal.App.4th 1 is instructive. In that case, a medical distributor association sued a provider of occupational first aid and safety products and services, seeking a declaration that its distributorship agreements were terminable at any time with reasonable notice. The court held that the plain, unambiguous language of the distribution agreements, stating that they "shall continue" until the grounds for termination as specified in the contract arose, was a valid, express contractual term of duration. The *Zee* court reached this decision based on a three-step analysis of the contractual terms: (1) The court first seeks an express term; (2) If one is absent, the court determines whether one can be implied

from the nature and circumstances of the contract; (3) If neither an express nor an implied term can be found, the court will generally construe the contract as terminable at will. (*Id*. at p. 727 citing *Consolidated Theatres, Inc. v. Theatrical Stage Employees Union* (1968) 69 Cal.2d 713, 727.)

Under this analysis, the *Cook* court found the arbitration agreement in that case specified it would survive the employee's termination and until it was revoked in writing signed by the President of the University: "The arbitration agreement specifically provides that it will survive unless and until Cook and USC's president specifically terminate the agreement in a writing, signed by both parties . . . . [T]his is an express term of duration; thus [the arbitration agreement is not terminable at will]." (*Cook, supra,* 102 Cal.App.5th at 326.).) The *Cook* court also observed that the presence of such language shows the parties did not contemplate that the agreement would be terminable at will. (*Id.*) The relevance of these conclusions is that the arbitration agreement was of indefinite duration and thus substantively unconscionable.

Defendant argues the term at issue here is more like the one examined in *Reigelsperger v. Siller* (2007) 40 Cal.4th 574. In *Reigelsperger*, the court considered whether an arbitration agreement, signed when a chiropractor first treated a patient, applied to a medical malpractice claim by that patient arising from treatment performed two years later for a different condition. (*Reigelsperger, supra*, 40 Cal.4th at p. 576.) Based on language in the arbitration agreement stating that it intended to bind the patient and health care provider " 'who now or in the future treat[s] the patient [,]' " the Cal. Supreme Court held the arbitration agreement was enforceable and required arbitration of the malpractice claim arising from the later treatment. (*Ibid*.) In reaching that conclusion, it observed that the Court of Appeal held that the phrase "now or in the future treat[s]" "cannot reasonably be construed to bind the parties in perpetuity...." The Court stated: "The answer to this objection is that, like other contracts, arbitration agreements that do not specify a term of duration are terminable at will after a reasonable time has elapsed. (*Consolidated Theatres, Inc. v. Theatrical Stage Employees Union* (1968) 69 Cal.2d 713, 727–728, 73 Cal.Rptr. 213, 447 P.2d 325; *Zee Medical Distributor Assn., Inc. v. Zee Medical, Inc.* (2000) 80 Cal.App.4th 1, 10, 94 Cal.Rptr.2d 829.) Reigelsperger did not try to terminate the arbitration agreement." (*Reigelsperger, supra*, 40 Cal.4th at p. 580.) The Cal. Supreme Court thus implied that the agreement at issue did not contain an express term of duration.

Here, the contract specifies that it shall survive termination of plaintiff's employment and the expiration of any benefit plan. This is similar to the provision in *Reigelsperger* (covering a term for treatment provided "now or in the future"), as neither contain a method of recission or modification. The agreement in *Cook,* on the other hand, provided for a method of termination at the discretion of the USC's President. Because the Agreement at issue has no specified method of recission or

modification, the arbitration provision is thus terminable at will after a reasonable time. Consequently, it is not of indefinite duration and therefore it is not substantively unconscionable.

As this conclusion is based on contract interpretation rather than express terms, this provision is arguably a surprise of the sort contemplated by procedural unconscionability, as the plain language of the Agreement suggests one thing (e.g., that the Agreement continues in perpetuity), but the rules of contractual interpretation dictate another result. The degree of procedural unconscionability is thus increased to intermediate.

4. Violation of EFAA

In 2022, Congress amended the FAA by adopting the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act (EFAA). In relevant part, the EFAA provides: "Notwithstanding any other provision of this title, at the election of the person alleging conduct constituting a sexual harassment dispute or sexual assault dispute, ... no predispute arbitration agreement or predispute joint-action waiver shall be valid or enforceable with respect to a case which is filed under Federal, Tribal, or State law and relates to the sexual assault dispute or the sexual harassment dispute." (9 U.S.C. § 402(a).)

Here, there are no allegations of sexual assault or harassment. Although plaintiff argues there are good policy reasons for finding the violation of the prohibition to be substantively unconscionable, he has cited no cases that have so held. The court declines to make such a finding. In any event, the Agreement states: "The following claims are not covered under this Agreement: … disputes that an applicable federal statute expressly states cannot be arbitrated or subject to a pre-dispute arbitration agreement." (Bauer Decl., Exh. A p. 1.) This satisfactorily precludes the argument that the Agreement covers arbitration of sexual assault or harassment since a federal statute excludes arbitration of such claims.

5. Delegation Clause

Sanchez "anticipates Defendant will contend that the AA requires the arbitrator to decide issues of arbitrability based upon the language if the AA at . (sic) The Court should not delegate to the arbitrator a ruling on these issues, because the delegation language stated in the agreements is not clear and unmistakable."

Pacific did not at any point in its motion contend that the Arbitration Agreement requires the arbitrator to decide the issues of arbitrability or ask the court to enforce any such clause. It instead asked the court to determine whether the Arbitration Agreement was an enforceable contract, whether it encompassed

Sanchez's claim, and argued the Agreement was not unconscionable. A word search of the motion does not uncover any mention of "delegation" or "delegate."

To the extent this argument was intended to be a request that the court find the delegation clause to be substantive unconscionable and thus bolstering Sanchez's argument about the substantive unconscionability of the Agreement (see *Pinela v. Neiman Marcus Group, Inc.* (2015) 238 Cal.App.4th 227),[3] it is unsupported. The only case cited stands for the proposition that the delegation language stated in the agreement is not clear and unmistakable. (*Jack v. Ring LLC* (2023) 91 Cal.App.5th 1186, 1199.)].) Rule 3.1113 rests on a policy-based allocation of 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. (*Quantum Cooking Concepts, Inc. v. LV Assocs., Inc.* (2011) 197 Cal.App.4th 927, 934.) The court rejects thus rejects this argument.

Summary of Conclusions re Unconscionability

The court finds there is at least a moderate level of procedural unconscionability present in these circumstances based on the adhesive nature of the contract as well as the duration of the contract, which necessitates a contractual interpretation to be clear.

The court finds the lack of mutuality to be substantively unconscionable to an intermediate degree.

The court finds this Agreement is thus unconscionable and unenforceable.

Severance

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

[3] Any claim of unconscionability must be specific to the delegation clause. ([*Rent–A–Center, supra*, 561 U.S. at p. 73].) Clear delegation clauses in employment arbitration agreements are substantively unconscionable only if they impose unfair or one-sided burdens that are *different* from the clauses' inherent features and consequences. (*Pinela v. Neiman Marcus Group, Inc.* (2015) 238 Cal.App.4th 227, 245 [emphasis in original]—finding that delegation clause was procedural and substantively unconscionable because on section provides the arbitrator will determine a challenge to the enforceability of the Agreement brought by a California employee of NMG while another section prohibits the arbitrator from applying California unconscionability standards in making that determination.)

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

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

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

Here, the court need go no further than the consideration re illegality. In *Armendariz*, the court rejected the proposition that the "agreement's lack of mutuality" was collateral to the contract's main purpose. The court reasoned that "such permeation is indicated by the fact that there is no single provision a court can strike or restrict in order to remove the unconscionable taint from the agreement." (*Armendariz, supra*, 24 Cal.4th at pp. 124–125.) Instead, "the court would have to, in effect, reform the contract, not through severance or restriction, but by augmenting it with additional terms." (*Id*. at p. 125.)

The court finds the same to be true here; similarly, the Agreement is tainted with unconscionability because its central purpose appears to be the ability for the parties to arbitrate all possible disputes between each other with defendant able to move for arbitration of claims against it and its related entities, but plaintiff only able to move for arbitration of claims by defendants against her. (See *Cook*, at p. 329-330.)

The motion to compel arbitration is denied.

Statement of Decision

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

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.)